

ACT 166

An Act Relating to the Water and Land Development Program of the Department of Land and Natural Resources and Amending Chapters 86, 87 and 87A of the Revised Laws of Hawaii, as Amended.

*Be it Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Title 10 of the Revised Laws of Hawaii is amended to read as follows:

**"TITLE 10: DEPARTMENT OF LAND AND NATURAL RESOURCES".**

SECTION 2. The title of Chapter 86 of the Revised Laws of Hawaii is amended to read as follows:

**"CHAPTER 86. WATER AND LAND DEVELOPMENT".**

SECTION 3. Chapter 86 of the Revised Laws of Hawaii 1955, as amended is hereby amended to read as follows:

**"Section 86-1. Findings and declaration of necessity.** It is hereby found that it is important to the welfare of the people of Hawaii that the overall economy of the State, including but not limited to agricultural production, be developed as fully as possible. It is further found that water presently tapped for consumption is inadequate for the fullest development of the economy of the State. It is therefore hereby declared that additional water and water facilities are necessary for the development of the overall economy of the State.

It is the intent of the legislature that no project shall be organized in the city and county of Honolulu or other counties without the board first consulting the board of water supply of the city and county of Honolulu or the water board or department of each county.

**Section 86-2. Definitions.** The following terms, whenever used and referred to in this chapter, shall have the following respective meaning, unless a different meaning clearly appears in the context:

'Board' means the board of land and natural resources.

'Project' or 'irrigation project' means an area, contiguous or non-contiguous, established under the provisions of this chapter within which water is supplied to the State or the Hawaiian homes commission for the development and opening of lands for farming or to land occupiers engaged in farming.

'Water facility' includes all real and personal property, together with all improvements to the same, acquired or constructed pursuant to a plan or undertaking to provide water within a project for irrigation or for economic development, under the terms of this chapter.

'Farming' means agricultural pursuits, including the care and production of livestock and poultry, engaged in by a land occupier owning or having a leasehold of land, within any existing or proposed irrigation project.

'Water tolls' means any charges established by the board for irrigation water supplied by it to the State, the Hawaiian homes commission, and land occupiers.

'Acreage assessments' means any levy imposed pursuant to the provisions of this chapter on the agricultural and pasture land within an irrigation project and any amount charged to the State or the Hawaiian homes commission for the purpose of acquiring, establishing or maintaining irrigation facilities for an irrigation project.

'Land occupier' means the owner or in the case of leased land, the lessee of lands lying within an irrigation project organized or to be organized under the provisions of this chapter.

'Leased land', 'leasehold' and simliar expressions wherever used in this chapter shall be deemed to include land subject to and held under lease or other tenancy, purchase or homestead agreement; 'lease' wherever used herein means such lease, tenancy, purchase or homestead agreement; 'lessor' wherever used herein includes the lessor, landlord, seller or state as grantor of the homestead and 'lessee' wherever used herein includes the lessee, tenant, purchaser or homesteader under such lease or other agreement, as the case may be.

'Agricultural land' means that portion of the land of a land occupier as lies within an existing or proposed irrigation project and is of such location and character as may be profitably employed in the growing of irrigated crops; and 'pasture land' means that portion of the land of a land occupier as lies within an existing or proposed irrigation project and is of such location and character as may be suitable with the use of water for irrigated pasture and may be profitably employed in the production of livestock or poultry.

'Government' includes the State and the United States and any political subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

**Section 86-3. Manager-chief engineer.** The board shall appoint a registered professional engineer who shall act as manager-chief engineer of the water and land development program and have such qualifications as the board may deem necessary. The appointment and removal of the manager-chief engineer shall be in accordance with chapters 3 and 4 and he shall perform the duties as set forth by the board.

**Section 86-4. Interested members of the board or employees.** No member of the board or employees of the board shall acquire any interest, direct or indirect, in any water facility or project or in any property, included or planned to be included in any facility or project, nor shall he have any interest, direct or indirect, in any contract or proposed contract, for materials or services to be furnished or used in connection with any water facility or project. If any member of the board or employee of the board owns or controls an interest, direct or indirect, in any property included or planned to be included in any water facility or project, he shall immediately disclose the same in writing to the board and such disclosure shall be entered upon the minutes of the board. Such member of the board or employee shall be immediately disqualified from taking any part in the action of the board relative to such water facility or project. Failure to so disclose such interest shall constitute misconduct in office.

**Section 86-5. Powers.** In addition to all the powers granted to the board in chapter 99 for the purpose of carrying out all of its functions and duties, the board shall have the following powers for the purposes of this chapter:

To acquire by eminent domain, water and water sources either above or underground, water shed, reservoir sites, rights of way over lands and property for paths, trails, roads and landing sites, ditches, tunnels, flumes, reservoirs and pipe lines necessary or proper for the construction and maintenance of water facilities for conveying, distributing and transmitting water for irrigation and domestic use and for such other purposes as may properly fall within the scope of its activities in creating, managing, controlling, operating and maintaining irrigation water facilities, any of which purposes shall be held to be for a public use and purpose; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the board, including,

without prejudice to the generality of the foregoing, contracts and other instruments for the purchase or sale of water and for the purchase or lease of water facilities for irrigation or for the overall economic development of the area, including but not limited to the production of agricultural products and the land on which such facilities are situated, and for securing to the owners and occupiers of land already using water in a project a priority right to so much water from those of their sources and facilities which are taken over for the project as is required for the purposes or needs of such land, whether agricultural or non-agricultural in nature, as such purposes or needs exist at the inception of the project or are then contemplated in the immediate future; to make and from time to time amend and repeal by-laws, rules and regulations, not inconsistent with this chapter, which upon compliance with sections 7-29 to 7-32 shall have the force and effect of law, to carry into effect the powers and purposes of the board; to make surveys for the purpose of determining the engineering and economic feasibility of each project; to conduct or have prepared comprehensive studies of the crops, livestock and poultry which may be profitably grown or produced within each project and the probable market for such crops, livestock and poultry; to conduct feasibility studies of the economic potential of the area; to determine the probable costs and value of providing water for irrigation or for economic development in any proposed project; to investigate and make surveys of water resources, including the possibility and feasibility of inducing rain by artificial or other means; to define and re-define the boundaries of projects and to consolidate or separate projects, existing or proposed pursuant to this chapter, provided, that in the event the redefinition of the boundaries of or the consolidation or separation previously effected increases the total amount required to be derived from acreage assessments upon lands within the existing project or projects by more than five per cent or will require an increase in the tolls charged for water supplied to such lands or will reduce the amount of water normally available for distribution to such lands, then such redefinition, consolidation or separation may be accomplished only after notice has been published and a public hearing held as required for the formation of a project upon the initiative of the board. At such hearing, right to protest and the procedure relative to protest shall be the same as specified in section 86-16 concerning the formation of projects, and the proposed redefinition of boundaries, consolidation or separation of projects shall not be accomplished if protests, such as would be sufficient to prevent such action if it were the formation of a project, are filed by owners and lessees of land within the existing project or projects affected thereby.

The board is empowered, upon petition of land occupiers as provided by section 86-12 herein, or upon petition of the Hawaiian homes commission or upon its own initiative, to prepare detailed plans for the acquisition or construction of facilities for irrigation or for economic development which in its opinion are economically feasible; to prepare estimates of the probable cost of each; and to prepare estimates of the water tolls and acreage assessments required for the cost of operation and the amortization of the investment of each project, so that the project shall be self-supporting.

The board shall also have power to establish the total amount of acreage assessments to be levied annually within each project; to set and from time to time revise tolls which it shall charge for the water provided by its facilities, subject to the rate policies established hereunder, to establish priorities between the several lands included in a project according to the use to which said lands are put or other reasonable basis for classification, to govern the

furnishing of water in the event of a shortage of supply and to correlate water tolls with such priorities ; to charge and collect such tolls, fees and other charges established in connection herewith ; to sell, exchange, transfer, assign or pledge any property, real or personal, or any interest therein to any person, firm, corporation or government, except as prohibited by the laws of the State ; to hold, clear and improve property ; to borrow money for any of the purposes hereunder ; to insure or provide for the insurance of the property or operations of the board against such risks as the board may deem advisable ; to include in any construction contract let in connection with a project stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project.

The board shall also have the power to enter into any repayment or other contracts with the United States for the construction, operation and maintenance of any projects as may be required or provided for by the federal reclamation laws, or acts amendatory thereof or supplementary thereto, or other federal laws, and further to borrow money or accept grants or assistance from the federal government, or any department, bureau or agency thereof with respect to the engineering, construction, operation and financing of any project hereunder. The board shall make every effort to obtain all federal aid possible for the purposes of this chapter.

In making surveys, studies and investigations, the planning and designing and in constructing projects and facilities for irrigation and for economic development the board shall also have power to include therein surveys, studies and investigations of, plans and designs for and construction of facilities for flood control and the utilization of water for the production of hydroelectric power, where the same may be practicable in conjunction with the formation and operation of an irrigation project or projects.

**Section 86-6. Issuance of revenue bonds.** The board shall have the power to issue revenue bonds, as provided by part III of Chapter 137 to finance in whole or in part, the cost of construction, acquisition or maintenance of any facility or project hereunder, and, in connection therewith, to pledge for the punctual payment of such bonds, and interest thereon, any and all revenues derived from the project or projects for the construction, acquisition or maintenance of which the bonds were issued, and the revenue of other or all projects, in an amount sufficient to pay the principal and interest of such bonds as they become due, and to create and maintain reasonable reserves or sinking funds therefor. Funds of the board, not otherwise required, may be advanced to pay necessary expenses incurred in making preparation for the initial issuance of bonds under this chapter, and to take any other action necessary or proper in connection therewith. Any project authorized by this chapter shall be designated an 'undertaking' within the meaning of part III of Chapter 137 and shall be the public undertaking, the revenues of which are hereby charged with the payment of the principal and interest of such bonds.

**Section 86-7. Investment of funds.** The director of the budget may authorize the investment of any funds held in reserves, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control.

**Section 86-8. Security for funds deposited by board.** The board may by resolution provide that all moneys deposited by it shall be secured: (a) by

any securities by which funds deposited by the director of the budget of the State may be legally secured, as provided in section 133-3; or (b) by an undertaking with such sureties as shall be approved by the board faithfully to keep and pay over upon the order of the board any such deposits and agreed interest thereon, and all banks and trust companies are authorized to give any such security for such deposits.

**Section 86-9. Eligibility of revenue bonds for investment.** It shall be legal for the State and any of its political subdivisions, or any political or public corporation, including the employees' retirement system of the State, or any instrumentality of the State, or any insurance company or building and loan association, or any savings bank or trust company, or any bank or other financial institution operating under the laws of the State, or for any executor, administrator, guardian, trustee or other fiduciary or any educational, charitable or eleemosynary institution to invest their funds or moneys in their custody in the revenue bonds issued hereunder; provided, that the foregoing shall not be deemed to obviate or otherwise affect any statutory or other requirement with respect to the use of judgment and care in investing any such funds. No holder of any revenue bonds issued hereunder, however, shall have the right to compel any exercise of the taxing power of the State to pay such bonds or interest thereon.

**Section 86-10. Rate policy; sale of excess water.** The board shall have the power to fix and adjust rates and charges for the furnishing of irrigation or domestic water and for water service so that the revenues derived therefrom shall be sufficient to cover the cost of operation, maintenance and replacement and may make such charges as may be necessary to cover the capital cost of such system or other costs incurred in connection with such system.

Nothing in this chapter shall be construed to prevent the board from selling water to persons other than land occupiers and other consumers within a water project in the event and to the extent that water in excess of the needs of such land occupiers and other consumers may from time to time be available.

**Section 86-11. Lands included within irrigation projects.** Except as otherwise expressly permitted in this chapter, lands to be included within an irrigation project shall be only those used or to be used in farming. The number of acres of agricultural and pasture land of each land occupier within the project shall be determined by the board and shall not be increased or decreased, nor shall any such land included within a project thereafter be withdrawn, after final determination to construct the project except in the manner and with the limitations specified in this chapter for redefining the boundaries of a project. The project shall include only such lands as can be adequately irrigated by the quantity of water and facilities to be provided under normal conditions of supply. No land which at the time of formation of the project is irrigated, or is devoted to the cultivation for commercial purposes of sugar, pineapples, coffee, bananas, citrus, papayas or macadamia nuts, or other horticultural crops, whether or not such land so devoted is irrigated, or is being devoted to an industrial or townsite or other use of greater economic value than agriculture shall be included in such project if the owner of such land (or the land occupier thereof if other than the owner, in the event that such land occupier is legally chargeable with the acreage assessments) shall object in writing to such inclusion. The foregoing provisions of this paragraph shall be applicable to all irrigation projects.

Notwithstanding the limitation expressed in the foregoing paragraph, lands of the State used by the University of Hawaii for experimental farms may be included in irrigation projects, provided the board of regents undertakes the payment of water tolls and acreage assessments and for the purposes of such inclusion the University of Hawaii shall be deemed a land occupier within the meaning of this chapter. Lands within such farms shall be assessed accordingly as the same are of the character of agricultural or pasture lands, as defined in this chapter, although they are used for experimental purposes. Such assessments shall not, however, become a lien upon said lands.

**Section 86-12. Petition of land occupiers for formation of water project.** Land occupiers, including the Hawaiian homes commission, comprising at least sixty per cent of the acreage of lands lying within an area proposed to be organized into a water project may file a petition with the board requesting that such project be organized. Where any of the lands of such petitioners in the proposed area are leased lands, it shall be necessary for the lessor and lessee to join in such petition. The petition shall contain a general description and the acreage of the area proposed to be organized into a water project and shall state the acreage owned or leased by each of the petitioners within that area. Before the board shall commence any water project involving homesteaded lands of the Hawaiian homes commission, it shall require the commission to assure the payment of any acreage assessment thereon, in pursuance of section 208(5) of the Hawaiian homes commission Act, 1920.

**Section 86-13. Petition of Hawaiian homes commission for formation of irrigation project, community pastures.** The Hawaiian homes commission may petition the board to organize irrigation projects for any of the lands designated as 'available lands' in the Hawaiian homes commission Act, 1920, whether or not such lands are occupied in whole or in part. If the lands for which the proposed project is to be organized are not occupied or are occupied by persons whose rights to occupancy will expire before the project water will be supplied to said lands, no notice need be published nor public hearing held as in section 86-15 required. Project water may be supplied to community pastures established by the Hawaiian homes commission within any project even though such pastures exceed one hundred acres in area. Before the board shall commence any irrigation project involving community pastures it shall require agreement from Hawaiian homes commission that tolls for water supplied to and acreage assessments upon such pastures shall be paid by the commission. Before the board shall commence any irrigation project involving available lands which the Hawaiian homes commission desires to develop and open for small scale farming it shall require agreement from the Hawaiian homes commission that in the event the development and opening of said lands does not enable the making of acreage assessments sufficient to repay the costs of construction of the project that the same will be paid by the commission. The payments referred to in this section may be made by the Hawaiian homes commission from any of its funds designated or created by congress for that purpose.

**Section 86-14. State lands, formation of irrigation project.** The board may organize irrigation projects for lands under its control, whether or not such lands are occupied in whole or in part. If the lands for which the proposed project is to be organized are not occupied or are occupied by persons whose rights to occupancy will expire before the project water will be supplied to

said lands, no notice need be published nor public hearing held as in section 86-15 required. The costs of construction of the project, shall be paid by the board, in the event and to the extent that the development and opening of said lands does not enable the making of acreage assessments sufficient to repay such construction costs, from any funds in the state treasury derived from the lease or license of public lands or waters, which funds are hereby made available for such purposes.

**Section 86-15. Consideration of petitions; notice and hearing.** When more than one petition is filed covering portions of the same territory, the board may consolidate the petitions. Having received such petitions, on the basis of such evidence as may be submitted to it by the petitioners and on the findings of investigations or surveys made by or for it, or by other governmental agencies, the board shall establish such irrigation projects as it deems necessary to carry out the purposes of this chapter. Before making a final determination to establish a project or projects, the board shall hold a hearing, notice of which shall be duly advertised in the same manner and form, as nearly as may be, as in the following section provided.

**Section 86-16. Formation of irrigation project on initiative of board; notice and hearing; protests.** The board may organize irrigation projects upon its own initiative. In such event, it shall fix a date for public hearing upon the proposed project, which date shall not be less than sixty days after the first publication of notice thereof in a newspaper of general circulation in the county in which the project is proposed. Such notice shall be published once in each of four successive weeks, giving notice of the area to be included in and general details of the proposed project, stating the time and place of the public hearing. If the owners of fifty-five per cent of the acreage of agricultural and pasture lands proposed to be organized into an irrigation project shall at the hearing or prior thereto file written protest against the proposed project, the project shall not be made and proceedings shall not be renewed within twelve months from the date of closing the public hearing, unless each and every owner protesting shall withdraw his protest; provided, that any lessee of any agricultural or pasture lands included within the proposed project, who, by the express terms of his lease must pay the assessment contemplated hereunder shall be subrogated to all the rights of such owner to protest by filing at the hearing or prior thereto written protest against the proposed project, such written protest to be accompanied by a certified copy of the lease; provided, further, that any lessor may, at any time before the closing of the public hearing, make void the protest of his lessee on consideration of the filing with the board a duly acknowledged waiver of the provision in the lease which requires the lessee to pay the assessment, and a written undertaking of the lessor to pay the assessment to be made on account of the proposed project; and further provided that a project may be instituted without further advertisement for a smaller acreage within the advertised acreage in the event the board shall determine such smaller project to be economically feasible, if written protests by the owners, or lessees subrogated to the right to protest, of fifty-five per cent of such smaller acreage shall not be filed.

**Section 86-17. Approval of legislature, appropriations.** Funds for acquisition or construction of irrigation facilities for each project, established by the board under the provisions of sections 86-12, 86-13, 86-14, 86-16 may be requested from the legislature, as an appropriation to be repaid without interest to the general funds of the State by the board from water tolls, acreage assess-

ments and other receipts of the board within such period as may be specified in the act making the appropriation.

**Section 86-18. Administration of irrigation project; acreage assessments; liens.** All irrigation projects established pursuant to the provisions of this chapter shall be administered by the board. In making the final determination to establish a project, the board shall determine the proportion of acreage assessments to be borne by the agricultural land and pasture land within the project. The proportion to be borne by pasture land may, in the discretion of the board, be less but not more than the proportion to be borne by agriculture land, in which event the agricultural land shall be first served with water in times of drought or shortage of supply. The proportions to be borne by agricultural and pasture lands shall be certified to the director of taxation and shall not be changed after final determination to establish the project, except in conjunction with a redefinition of the boundaries of or consolidation or separation of the project and then only in the manner and within the limitations specified in conjunction therewith. The board shall determine and certify to the director of taxation on or before March 31 of each year (a) the amount of acreage assessments necessary in that calendar year for acquisitions, construction and maintenance of irrigation facilities for each project, and (b) the acreage of agricultural and pasture land of each land occupier within said project.

Upon such certification the director of taxation or his properly authorized deputies or other assistants, shall determine the acreage assessment to be levied against the property of each land occupier in the following manner: (a) by determining the amount of acreage assessments to be borne by the agricultural land and the pasture land within the project according to the proportion previously certified to him by the board; (b) by dividing the amount of acreage assessment to be borne by the agricultural land by a number of acres of agricultural land within the project and multiplying the quotient by the number of acres of agricultural land of said occupier within the project; and (c) by dividing the amount of acreage assessment to be borne by the pasture land by the number of acres of pasture land within the project and multiplying the quotient by the number of acres of pasture land of said land occupier within the project. Such acreage assessments shall be in addition to any real property taxes, and shall be collected by the director of taxation in the same manner as said taxes. Except in the case of public lands and lands designated as 'available lands' under the Hawaiian homes commission Act, 1920, acreage assessments shall be a paramount lien against the entire tract, including improvements, of the land occupier of which the assessed agricultural or pasture land or both of the land occupier included within the project forms a part. Said lien may be foreclosed in the same manner as liens for real property taxes and in accordance with the provisions of sections 128-38 to 128-44. In case of the foreclosure of any homestead land pursuant to such sections the foreclosure sale shall be subject to the provisions of Chapter 99. In the case of public lands and lands designated as 'available lands' under the Hawaiian homes commission Act, 1920, acreage assessments shall not constitute a lien on the property involved and notice of any delinquent acreage assessment shall be served upon the board of land and natural resources or the Hawaiian homes commission, as the case may be, for payment.

Acreage assessments shall be deemed revenues within the meaning of part III of Chapter 137 and shall be used for the payment of the principal and interest of any revenue bonds issued hereunder.



Water tolls fixed by the board for each project under the provisions of this chapter shall be collected by the board under such reasonable rules and procedures as it may establish and may modify from time to time.

All water tolls, acreage assessments and receipts from properties sold by way of foreclosure for failure to pay acreage assessments shall be realizations of the board.

**Section 86-19. Furnishing domestic water.** In conjunction with any irrigation project which it has established, and subject to pertinent provisions of law governing such supply, the board is authorized to establish a system for and to supply water for domestic purposes to residents within and in close proximity to the irrigation project. Such system shall be established only if (a) the board determines that it would be advisable and in the public interest to provide such domestic supply; (b) its construction and operation by the board has been consented to by the board of water supply of the county in which the project is situated, or if situated in the city and county of Honolulu by the board of water supply or the suburban water system of the city and county as appropriate, and by a majority of the land occupiers within the irrigation project; and (c) if under normal conditions of water availability, the operation of said system will not prejudice or interfere with the supply of irrigation water to the land occupiers within the project. The board is also authorized, subject to the limitations previously set forth in this section, to take over, improve and operate any existing system for the supply of domestic water if requested so to do by the owners and operators of such system.

**Section 86-20. Repayment of certain state advances.** Whenever under legislative authorization, past, present or future, general obligation bonds of the State are issued or the proceeds of general obligation bonds of the State are used, by way of advancement, for the establishment and construction of any specific project under the jurisdiction of the board in its water program, the board may repay the same to the director of the budget, upon the expiration of ten years from the time of initial irrigation service to the project, which ten-year term shall be the development period, as repayment on account of the advancement. Such payments shall be made over the period of the next succeeding forty years after the termination of the development period, the total of which payments shall be sufficient to reimburse the State for redemption of the bonds together with interest paid by the State in respect of the same.

The foregoing method of repayment of advances shall be effective for each phase of any multiphase project, the amortization period for the advancement commencing ten years from the time that facilities to provide irrigation service for each new project phase are put into operation.

In the event that changing use of the land in a project substantially increases revenues, or other circumstances make it reasonably possible or desirable for the board to accelerate the amortization of advances, it shall be permitted to do so.

**Section 86-21. Water development revolving fund.** There shall be a special fund to be known as the 'water development revolving fund.' Moneys in the revolving fund shall be expended for administrative costs, engineering surveys, economic studies, plans, maps and for other water projects or purposes of the board. In the event any moneys are expended therefrom for engineering surveys, economic studies, plans and other expenses directly attributable to any water project, or for the establishment of any water project, the

amount of such expenditures shall be reimbursed to the revolving fund from any funds received by the board for and on account of such project.”

SECTION 4. Chapter 87, entitled “Molokai Irrigation and Water Utilization Project”, of the Revised Laws of Hawaii 1955, as amended, is hereby amended to read as follows:

**“Section 87-1. Administration of chapter.** The board of land and natural resources in its water and land development program is charged with the administration of this chapter.

**Section 87-2. Powers.** In addition to all the powers conferred upon the board of land and natural resources by Chapters 99 and 86, the board shall have the powers hereinafter set forth. The board shall have the power to make preliminary surveys and engineering studies, and to construct an irrigation and water utilization project, designed to serve and supply the owners and occupants of lands on the island of Molokai, and to manage, control, operate and maintain such project in accordance with the provisions of this chapter. It shall also have the power to contract with domestic water users including the county of Maui. It shall further have the power to contract with the government of the United States or any bureau or agency thereof with regard to the construction or the financing of such system.

The board shall have power to fix, charge and collect reasonable water rates for service from such water system to defray the cost of operation, maintenance and replacements of such system. It shall also have the right to acquire by eminent domain, water and water sources either above or underground, water sheds, reservoir sites, rights of way over lands and property for paths, trails, roads and landing sites, ditches, tunnels, flumes, reservoirs and pipe lines necessary or proper for the construction and maintenance of a system for conveying, distributing and transmitting water for irrigation and domestic use and for such other purposes as may properly fall within the scope of its activities in creating, managing, controlling, operating and maintaining an irrigation and water utilization system. Such right of eminent domain shall be exercised in the manner and under the procedure provided by law.

**Section 87-3. Funds.** The board shall pay all receipts and revenues received by it from the operation of such irrigation and water utilization system into a special fund in the state treasury. Such fund shall be used and expended for the following purposes:

- (a) Payment of the operating and maintenance costs of the system;
- (b) Repairs, replacements, additions and extensions;
- (c) Reimbursement to the State the amount of any principal or interest due upon any bond issued under this chapter.

**Section 87-4. Preference.** To the extent that the same may be necessary from time to time for the satisfaction of their water needs, domestic and agricultural, the Hawaiian homes commission and lessees of the Hawaiian homes commission shall at all times, upon actual need therefor being shown to the board, have a prior right to two-thirds of the water developed for such irrigation and water utilization project by the tunnel development extending to Waikolu valley and ground water developed west of Waikolu valley, which is planned by the board as the first stage of such project.

**Section 87-5. Molokai irrigation system account.** There shall be a special account in the ‘water and land development revolving fund’ of the board of land and natural resources to be known as ‘Molokai irrigation system account.’ The director of the budget may make temporary use of any portion

or all of the money not immediately needed for construction and operation of the system for the purpose of paying warrants drawn on the treasury for current indebtedness of the State, or for deposit in the state sinking fund for the repayment of bonds, or for investment in state bonds; provided that sufficient of the sums so taken, deposited or invested shall be redeposited to the credit of the Molokai irrigation system account prior to the time when any engagement for the payment from the account falls due.

The moneys from the account shall be expended upon warrants drawn by the comptroller for the purposes of this Act.

In connection with the construction or operation or maintenance of such project the board may utilize such contributions of labor, materials and property, including money, as may be allocated or otherwise made available by any person or instrumentality whatsoever, if in the judgment of the board the acceptance thereof will not limit the scope of construction or operation of the project provided for by this chapter.

Money received and accepted under this section shall be available for expenditure for the purposes for which contributed in like manner as if the sums had been specifically appropriated for such purposes.

Any provisions of this chapter or any other state law to the contrary notwithstanding, it is expressly provided that, in the event that it is found possible to secure federal funds made available under any act of Congress to be expended in connection with or for the construction of the project authorized by this chapter, the board may enter into such undertakings with the proper officers or agencies of the federal government, agree to such conditions, and do and perform such other acts and things as may be necessary, or be required by such acts of congress or any regulations or requirements of the federal government, as a condition to securing such federal funds for such project.

Any other provision of law to the contrary notwithstanding, any bonds issued under this chapter may, with the approval of the governor, be deposited with and pledged to, or be otherwise disposed of to, the United States or any board, agency or instrumentality of the United States government, to secure the repayment, or in actual payment, of any loans or advances made or to be made, under any act or acts of congress authorizing such loans or advances, by the United States or any such board, agency or instrumentality to the State for the construction, in whole or in part, of the project authorized under this chapter or the cost of which, or any portion thereof, would be payable or could legally be paid, out of the proceeds of such bonds if sold.

**Section 87-6. Development period.** The board shall fix a development period for the project authorized by this chapter of not to exceed ten years from and including the first calendar year in which water is first delivered for the lands in the project. During the development period the board shall annually fix the tolls to be charged for water use and for acreage service charges, so that the cost of operation and maintenance of the project during the development period plus any amounts reimbursable to the State under section 87-3(c) will be returned over the full development period.

**Section 87-7. Construction, when.** No actual construction of the physical features of the project shall be undertaken unless (a) lands or interests in lands deemed by the board to be necessary for the construction and operation of the major features of the project works have been secured, or negotiations therefor have been initiated and it is indicated that the lands or

interests in lands can be secured, at prices satisfactory to the board; and (b) the board has found (1) that water rights adequate for the purposes of the project have been acquired with titles and at prices satisfactory to the board or have been initiated and can be perfected in conformity with the law of the State and in a manner satisfactory to the board, and (2) that such water rights can be utilized for the purposes of the projects in a manner satisfactory to the board.

**Section 87-8. Regulations.** The board may perform any and all acts and make such rules and regulations as may be necessary and proper for the purpose of carrying out the provisions of this chapter, which upon compliance with Chapter 7 shall have the force and effect of law."

SECTION 3. Chapter 87A, entitled "Water Resources", of the Revised Laws of Hawaii 1955, as amended, is hereby amended to read as follows:

**"Section 87A-1. Definitions.** The following terms whenever used and referred to in this chapter has the following respective meanings unless a different meaning clearly appears in the context:

(a) 'Board' means the board of land and natural resources.

(b) 'Water resources' means all sources of water supply in the State which are or may be used or can be made to be usable to supply the domestic, military, agricultural and industrial water requirement within the State, and without limiting the generality of the foregoing includes surface water, ground water and brackish, salt and other water which is or may be made usable to supply any of such water requirements.

**Section 87A-2. Findings and declaration of necessity.** It is hereby found and determined that the general welfare and health of the people of the State and the sound economic development of the State require thorough investigation and study of all of the water resources of the State, a current and continuing inventory of all water resources of the State, including full information concerning their nature, location, quantity, quality and existing and potential utilization, and the development and revision from time to time as necessary of a master plan for the development, conservation and use of all of the water resources of the State.

**Section 87A-3. Compilation of existing information.** The board shall collect and correlate all information heretofore recorded concerning the water resources of the State. The several boards of water supply and county water department, the comptroller, board of agriculture and conservation, director of planning and all other agencies and departments of the State and several county governments having any such information shall upon request of the board make their records of the same available to the board for such period as the board shall reasonably require. The board shall also request the cooperation of and the disclosure of any such information by the Hawaiian homes commission and the United States geological survey.

**Section 87A-4. Surveys and inventory of water resources.** The board shall initiate and conduct such surveys of the water resources and requirements in the State as may be required to enable the formulation and revision from time to time as necessary of a master plan for the development, conservation and most beneficial use of all such water resources. As an aid thereto, the board shall also make an inventory of all of such water resources and compile sufficient information concerning the nature, location, quantity, quality, existing and potential utilization and other characteristics of the

same as will enable a proper evaluation to be made of such water resources for the purposes of planning their development, conservation and use.

**Section 87A-5. Study of processes for utilization of currently unusable water resources.** The board shall review available information concerning the use of evaporation, distillation, ion exchange and other process for, and shall conduct such research, studies and tests as may be necessary to ascertain and keep current upon the possibilities for and feasibility of the conversion of non-potable water to domestic use and the utilization for agricultural and industrial purposes of brackish, salt or other water not suitable in its natural state for such use.

**Section 87A-6. Cooperation with United States geological survey.** The board in its water and land development program shall have the power to investigate and determine the water resources of the State by the gauging of streams and rainfall and other means, in cooperation with the United States geological survey or otherwise in furtherance thereof take over and exercise the functions of the State in the conduct of the hydrographic survey of the State. The board may also accept grants and matching funds from and enter into contracts and agreements with the United States geological survey and any other department, bureau or agency of the United States, State and municipal agencies and private sources to carry out the purposes of this chapter.

**Section 87A-7. Publication of information.** The board shall keep all information assembled by it concerning the water resources of the State on file in its offices and available for public inspection, and shall publish so much of the same in compilation or other convenient form from time to time as may be necessary or desirable for the use and guidance of the major users or suppliers of water and the public.

**Section 87A-8. Qualified personnel.** Qualified geologists, hydrographers and other scientific and technical personnel necessary to carry out the purposes of this chapter may be engaged by the board without regard to the requirements of chapters 3 and 4 and section 5-1.

**Section 87A-9. Planning water systems.** The board shall assist and cooperate with the several boards of water supply and water departments, the Hawaiian homes commission, and industry in the State in investigating and planning the development and use of water for domestic and industrial water supply systems when requested so to do by any of them and upon arrangements being made concerning payment by them for the services of the board in such connection. In addition to the authority vested in the board by section 86-19, the board is authorized to design or construct domestic or industrial water systems.

**Section 87A-10. Functions of boards of water supply and water departments unimpaired.** Nothing in this chapter shall be deemed to restrict or modify the powers and duties of the several boards of water supply and water departments, or to prevent any of them from continuing to carry out such investigations, studies and planning as may be necessary or convenient to their proper and efficient management and operation and the accomplishment of the purposes of the legislation governing them."

SECTION 6. This Act shall take effect upon its approval.

(Approved July 8, 1961.) S.B. 430.