

ACT 306

S.B. NO. 398

A Bill for an Act Relating to Irrigation Systems.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter under title 11, to be appropriately designated and to read as follows:

**“CHAPTER  
IRRIGATION WATER DEVELOPMENT**

§ -1 **Findings and declaration of necessity.** It is important to the welfare of the people of Hawaii that agricultural production be developed as fully as possible. It is further found that water presently tapped for irrigation 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 agriculture in the State.

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

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

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

"Agricultural land" means that portion of the land of a land occupier lying within an existing or proposed irrigation project and 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 lying within an existing or proposed irrigation project and 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.

"Board" means the board of agriculture.

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

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

"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 this chapter.

"Leased land", "leasehold", and similar 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 in this chapter means such lease, tenancy, purchase, or homestead agreement; "lessor" wherever used in this chapter includes the lessor, landlord, seller, or State as grantor of the homestead; and "lessee" wherever used in this chapter includes the lessee, tenant, purchaser, or homesteader under such lease or other agreement, as the case may be.

"Project" or "irrigation project" means an area, contiguous or non-contiguous, established under 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 under this chapter.

"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.

**§ -3 Engineering program manager.** The board of agriculture shall appoint a registered professional engineer who shall act as engineering program manager of the irrigation water development program and have such qualifications as the board may deem necessary. The appointment and removal of the engineering program manager shall be in accordance with chapters 76 and 77 and the engineering program manager shall perform the duties as set forth by the board.

**§ -4 Interested members of the board or employees.** No member of the board of agriculture 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 any member of the board or employee of the board 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, the member of the board or employee of the board shall immediately disclose the same in writing to the board and the disclosure shall be entered upon the minutes of the board. The member of the board or employee shall be immediately disqualified from taking any part of the action of the board relative to the water facility or project. Failure to so disclose the interest shall constitute misconduct in office.

§ -5 Powers. In addition to any other powers granted to the board of agriculture 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:

- (1) To acquire by eminent domain, water and water sources either above or underground, watershed, reservoir sites, rights-of-way over lands and property for paths, trails, roads, and landing sites, ditches, tunnels, flumes, reservoirs, and pipelines 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;
- (2) 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 of the area, including but not limited to the production of agricultural products and the land on which the 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 the land, whether agricultural or nonagricultural in nature, as such purposes or needs exist at the inception of the project or are then contemplated in the immediate future;
- (3) To make and from time to time amend and repeal bylaws and rules, not inconsistent with this chapter, which upon compliance with chapter 91 shall have the force and effect of law, to carry into effect the powers and purposes of the board;
- (4) To make surveys for the purposes of determining the engineering and economic feasibility of each project;
- (5) 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;
- (6) To conduct feasibility studies of the economic potential of the area;
- (7) To determine the probable costs and value of providing water for irrigation in any proposed project;
- (8) To investigate and make surveys of water resources, including the possibility and feasibility of inducing rain by artificial or other means;

- (9) To define and redefine 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 or the consolidation or separation previously effected increased 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 the lands or will reduce the amount of water normally available for distribution to the lands, then the 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 the hearing, right to protest and the procedure relative to protest shall be the same as specified in section -17 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 the action if it were the formation of a project, are filed by owners and lessees of land within the existing projects or projects affected thereby.

The board is empowered, upon petition of land occupiers as provided by section -13, 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.

**§ -6 Further powers.** (a) The board of agriculture shall also have power:

- (1) To establish the total amount of acreage assessments to be levied annually within each project;
- (2) 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 the 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;
- (3) To charge and collect such tolls, fees, and other charges established in connection herewith;
- (4) 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;
- (5) To hold, clear, and improve property;
- (6) To borrow money for any of the purposes hereunder;
- (7) To insure or provide for the insurance of the property or operations of the board against such risks as the board may deem advisable;
- (8) To include in any construction contract let in connection with a project stipulations requiring that the contractor and any sub-contractors 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.

(b) 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.

(c) In making surveys, studies, and investigations, in planning and designing, and in constructing projects and facilities for irrigation, 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.

§ -7 **Issuance of revenue bonds.** The board of agriculture shall have the power to issue revenue bonds, as provided by part III of chapter 39 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 the 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 the 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 39 and shall be the public undertaking, the revenues of which are hereby charged with the payment of the principal and interest of the bonds.

§ -8 **Investment of funds.** The director of finance 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.

§ -9 **Security for funds deposited by board.** The board of agriculture may by resolution provide that all moneys deposited by it shall be secured:

- (1) By any securities by which funds deposited by the director of finance of the State may be legally secured, as provided in section 38-3; or
- (2) 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 the deposits.

§ -10 **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, building and loan

association, savings bank, trust company, or any bank or other financial institution operating under the laws of the State, or for any personal representative, 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 the bonds or interest thereon.

§ -11 **Rate policy; sale of excess water.** The board of agriculture 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 may 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 the 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 the land occupiers and other consumers may from time to time be available.

§ -12 **Lands included within irrigation projects.** Except as otherwise expressly permitted in the 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 of agriculture 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 by 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 the 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 the project if the owner of the land (or the land occupier thereof if other than the owner, in the event that the land occupier is legally chargeable with the acreage assessments) shall object in writing to the 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 the inclusion the University of Hawaii shall be deemed a land occupier within the meaning of this chapter. Lands within the 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. The assessments shall not, however, become a lien upon the lands.

**§ -13 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 of agriculture requesting that the project be organized. Where any of the lands of the petitioners in the proposed area are leased lands, it shall be necessary for the lessor and lessee to join in the 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.

**§ -14 Petition of Hawaiian homes commission for formation of irrigation project, community pastures.** The Hawaiian homes commission may petition the board of agriculture to organize irrigation projects for any of the lands designated as "available lands" in the Hawaiian Homes Commission Act, 1920, whether or not the 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 the lands, no notice need be published nor public hearing held as in section -16 required. Project water may be supplied to community pastures established by the Hawaiian homes commission within any project even though the pastures exceed one hundred acres in area. Before the board commences any irrigation project involving community pastures it shall require agreement from the Hawaiian homes commission that tolls for water supplied to and acreage assessments upon the pastures shall be paid by the commission. Before the board commences 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 the 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.

**§ -15 State lands, formation of irrigation project.** The board of agriculture may organize irrigation projects for lands under its control, whether or not the 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 the lands, no notice need be published nor public hearing held as in section -16 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 the lands does not enable the making of acreage assessments sufficient to repay 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.

**§ -16 Consideration of petitions; notice and hearing.** When more than one petition is filed covering portions of the same territory, the board of agriculture may consolidate the petitions. Having received the 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 provided in section -17.

**§ -17 Formation of irrigation project on initiative of board; notice and hearing; protests.** The board of agriculture 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. The 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 withdraws each and every owner's protest; provided that any lessee of any agricultural or pasture lands included within the proposed project, who, by the express terms of the lessee's lease must pay the assessment contemplated hereunder shall be subrogated to all the rights of the owner to protest by filing at the hearing or prior thereto written protest against the proposed project, the 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 the lessor's 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 determines the 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 the smaller acreage shall not be filed.

**§ -18 Approval of legislature, appropriations.** Funds for acquisition or construction of irrigation facilities for each project, established by the board of agriculture under sections -13, -14, -15, and -17, 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 assessments, and other receipts of the board within such period as may be specified in the act making the appropriation.

**§ -19 Administration of irrigation project; acreage assessments; liens.** (a) All irrigation projects established pursuant to this chapter shall be administered by the board of agriculture. 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 agricultural 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 (1) the amount of acreage assessments necessary in that calendar year for acquisition, construction and maintenance of irrigation facilities for each project, and (2) the acreage of agricultural and pasture land of each land occupier within the project.

(b) Upon the certification the director of taxation or the director's 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:

- (1) 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 the director by the board;
- (2) 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 the occupier within the project; and
- (3) 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 the land occupier within the project.

The 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 the 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. The lien may be foreclosed in the same manner as liens for real property taxes and in accordance with sections 246-55 to 246-61. In case of the foreclosure of any homestead land pursuant to such sections the foreclosure sale shall be subject to chapter 171. 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.

(c) Acreage assessments shall be deemed revenues within the meaning of part III of chapter 39 and shall be used for the payment of the principal and interest of any revenue bonds issued hereunder.

(d) Water tolls fixed by the board for each project under 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.

(e) 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.

**§ -20 Furnishing domestic water.** In conjunction with any irrigation project which it has established, and subject to pertinent provisions of law governing the supply, the board of agriculture may establish a system for and

supply water for domestic purposes to residents within and in close proximity to the irrigation project. The system shall be established only if (1) the board determines that it would be advisable and in the public interest to provide the domestic supply; (2) 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, and by a majority of the land occupiers within the irrigation project; and (3) if under normal conditions of water availability, the operation of the system will not prejudice or interfere with the supply of irrigation water to the land occupiers within the project. The board may also subject to the limitations previously set forth in this section, 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 the system.

**§ -21 Repayment of certain state advances.** (a) 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 of agriculture in its irrigation water program, the board may repay the same to the director of finance, 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.

(b) 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.

(c) 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.

**§ -22 Irrigation system revolving fund.** There shall be a special fund to be known as the "irrigation system 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 of agriculture. 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 the expenditures shall be reimbursed to the revolving fund from any funds received by the board for and on account of the project."

**SECTION 2.** The Hawaii Revised Statutes is amended by adding a new chapter under title 11, to be appropriately designated and to read as follows:

## **"CHAPTER IRRIGATION AND WATER UTILIZATION PROJECTS**

**§ -1 Administration of chapter.** The board of agriculture in its irrigation water development program is charged with the administration of this chapter.

**§ -2 Powers.** In addition to any other powers conferred upon the board of agriculture, 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 irrigation and water utilization projects, designed to serve and supply the owners and occupants of lands, and to manage, control, operate, and maintain the projects in accordance with this chapter. It shall also have the power to contract with domestic water users including the counties. 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 a system.

The board shall have power to fix, charge, and collect reasonable water rates for service from the water system to defray the cost of operation, maintenance and replacements of the system. It shall also have the power to acquire by eminent domain, water and water sources either above or underground watersheds, reservoir sites, rights-of-way over lands and property for paths, trails, roads, and landing sites, ditches, tunnels, flumes, reservoirs, and pipelines 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. The power of eminent domain shall be exercised in the manner and under the procedure provided by law.

**§ -3 Funds.** The board of agriculture shall pay all receipts and revenues received by it from the operation of an irrigation and water utilization system into the irrigation system revolving fund established under section -22. The fund shall be used and expended for the following purposes:

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

**§ -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 of agriculture, have a prior right to two-thirds of the water developed for the Molokai irrigation and water utilization project by the tunnel development extending to Waikolu valley and ground water developed west of Waikolu valley, which was planned by the board of land and natural resources as the first stage of the Molokai irrigation project.

**§ -5 Irrigation systems account.** (a) There shall be a special account in the irrigation system revolving fund of the board of agriculture to be known as the "irrigation systems account". The director of finance may make temporary use of any portion or all of the money not immediately needed for construction and operation of an irrigation 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 irrigation systems 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 chapter.

(b) In connection with the construction or operation or maintenance of a 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 a project provided for by this chapter.

(c) 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.

(d) Any provision 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 a 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 the federal funds for the project.

(e) 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 the 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 a 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 the bonds if sold.

**§ -6 Development period.** The board of agriculture shall fix a development period for a project authorized by this chapter 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 -3 will be returned over the full development period.

**§ -7 Construction, when.** No actual construction of the physical features of a project shall be undertaken unless (1) lands or interests in lands deemed by the board of agriculture 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 (2) the board has found (A) 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 (B) that the water rights can be utilized for the purposes of the projects in a manner satisfactory to the board.

**§ -8 Rules.** The board of agriculture may perform any and all acts and make such rules as may be necessary and proper for the purpose of carrying out this chapter, which upon compliance with chapter 91 shall have the force and effect of law."

SECTION 3. Section 174-1, Hawaii Revised Statutes, is amended to read as follows:

**"§174-1 Findings and declaration of necessity.** It is hereby found that it is important to the welfare of the people of Hawaii that the over-all 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] land and water facilities are necessary for the development of the over-all economy of the State.

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

SECTION 4. Section 174-2, Hawaii Revised Statutes, is amended to read as follows:

**"§174-2 Definitions.** The following terms, whenever used and referred to in this chapter, have the following respective meanings, unless a different meaning clearly appears in the context:

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

["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.]

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

["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.]

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

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

"Leased land", "leasehold", and similar 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.

"Project" [or "irrigation project"] means an area, contiguous or non-contiguous, established under 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 this chapter.

"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."

SECTION 5. Section 174-4, Hawaii Revised Statutes, is amended to read as follows:

**"§174-4 Interested members of the board or employees.** No member of the board of land and natural resources or employees of the board shall acquire any interest, direct or indirect, in any land or water facility or project or in any property, included or planned to be included in any facility or project, nor shall any member of the board or employee of the board 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 land or 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 land or water facility or project, the member of the board or employee of the board shall immediately disclose the same in writing to the board and the disclosure shall be entered upon the minutes of the board. The member of the board or employee shall be immediately disqualified from taking any part in the action of the board relative to the land or water facility or project. Failure to so disclose the interest shall constitute misconduct in office."

SECTION 6. Section 174-5, Hawaii Revised Statutes, is amended to read as follows:

**"§174-5 Powers. (a)** In addition to all the powers granted to the board of land and natural resources in chapter 171 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:

- (1) To acquire by eminent domain, water and water sources either above or underground, watershed, reservoir sites, rights-of-way over lands and property for paths, trails, roads, and landing sites, ditches, tunnels, flumes, reservoirs, and pipelines 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;
- (2) 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 over-all economic development of the area, including but not limited to [the production of agricultural products and] the land on which the 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 the 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;

- (3) To make and from time to time amend and repeal bylaws[,] and rules [and regulations,] not inconsistent with this chapter, which upon compliance with chapter 91 shall have the force and effect of law, to carry into effect the powers and purposes of the board;
- (4) To make surveys for the purpose of determining the engineering and economic feasibility of each project;
- [(5)] 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;
- (6)] (5) To conduct feasibility studies of the economic potential of the area;
- [(7)] (6) To determine the probable costs and value of providing water [for irrigation or] for economic development in any proposed project;
- [(8)] (7) To investigate and make surveys of water resources, including the possibility and feasibility of inducing rain by artificial or other means;
- [(9)] (8) To define and redefine 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 the lands or will reduce the amount of water normally available for distribution to the lands, then the 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 the hearing, right to protest and the procedure relative to protest shall be the same as specified in section 174-17 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 the 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.

(b) The board is empowered, upon petition of land occupiers as provided by section 174-13, 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."

SECTION 7. Section 174-6, Hawaii Revised Statutes, is amended to read as follows:

"§174-6 Further powers. (a) The board of land and natural resources shall also have power:

- (1) To establish the total amount of acreage assessments to be levied annually within each project;
- (2) 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 the 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;
- (3) To charge and collect such tolls, fees, and other charges established in connection herewith;
- (4) 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;
- (5) To hold, clear, and improve property;
- (6) To borrow money for any of the purposes hereunder;
- (7) To insure or provide for the insurance of the property or operations of the board against such risks as the board may deem advisable;
- (8) To include in any construction contract let in connection with a project stipulations requiring that the contractor and any sub-contractors 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.

(b) In making surveys, studies, and investigations, in 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] a project or projects."

SECTION 8. Section 174-11, Hawaii Revised Statutes, is amended to read as follows:



**“§174-11 Rate policy; sale of excess water.** The board of land and natural resources 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 may 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 the 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 the land occupiers and other consumers may from time to time be available.”

SECTION 9. Section 174-16, Hawaii Revised Statutes, is amended to read as follows:

**“§174-16 Consideration of petitions; notice and hearing.** When more than one petition is filed covering portions of the same territory, the board of land and natural resources may consolidate the petitions. Having received the 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 in section 174-17.”

SECTION 10. Section 174-17, Hawaii Revised Statutes, is amended to read as follows:

**“§174-17 Formation of [irrigation] a project on initiative of board; notice and hearing; protests.** The board of land and natural resources 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. The 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] a 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 withdraws each and every owner's protest; provided that any lessee of any [agricultural or pasture] lands included within the proposed project, who, by the express terms of the lessee's lease must pay the assessment contemplated hereunder shall be subrogated to all the rights of the owner to protest by filing at the hearing or prior thereto written protest against the proposed project, the 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 the lessor's 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 determines the 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 the smaller acreage shall not be filed."

SECTION 11. Section 174-18, Hawaii Revised Statutes, is amended to read as follows:

**"§174-18 Approval of legislature, appropriations.** Funds for acquisition or construction of [irrigation] facilities for each project, established by the board of land and natural resources under sections 174-13[, 174-14, 174-15] and 174-17, 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 assessments, and other receipts of the board within such period as may be specified in the act making the appropriation."

SECTION 12. Section 174-19, Hawaii Revised Statutes, is amended to read as follows:

**"§174-19 Administration of [irrigation] project; acreage assessments; liens.** All [irrigation] projects established pursuant to this chapter shall be administered by the board of land and natural resources. 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 agricultural 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 (1) the amount of acreage assessments necessary in that calendar year for acquisition, construction and maintenance of [irrigation] facilities for each project, and (2) the acreage of [agricultural and pasture land of] each land occupier within the project.

Upon the certification the director of taxation or the director's 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:

- (1) By 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 the director by the board[;].
- [(2) 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 the occupier within the project; and
- (3) 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 the land occupier within the project.]

The 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 the 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. The lien may be foreclosed in the same manner as liens for real property taxes and in accordance with sections 246-55 to 246-61. In case of the foreclosure of any homestead land pursuant to such sections the foreclosure sale shall be subject to chapter 171. 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 39 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 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 13. Section 174-20, Hawaii Revised Statutes, is amended to read as follows:

**"§174-20 Furnishing domestic water.** In conjunction with any [irrigation] project which it has established, and subject to pertinent provisions of law governing the supply, the board of land and natural resources may establish a system for and supply water for domestic purposes to residents within and in close proximity to the [irrigation] project. The system shall be established only if (1) the board determines that it would be advisable and in the public interest to provide the domestic supply; (2) 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, and by a majority of the land occupiers within the [irrigation] project; and (3) if under normal conditions of water availability, the operation of the system will not prejudice or interfere with the supply of [irrigation] water to the land occupiers within the project. The board may also subject to the limitations previously set forth in this section, 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 the system."

SECTION 14. Section 174-21, Hawaii Revised Statutes, is amended to read as follows:

**"§174-21 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 of land and natural resources in its water program, the board may repay the same to the director of finance, 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 15. Section 174-22, Hawaii Revised Statutes, is amended to read as follows:

**"§174-22 [Water] Land and water development revolving fund.** There shall be a special fund to be known as the "land and 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 of land and natural resources. In the event any moneys are expended therefrom for engineering surveys, economic studies, plans, and other expenses directly attributable to any land or water project, or for the establishment of any land or water project, the amount of the expenditures shall be reimbursed to the revolving fund from any funds received by the board for and on account of the project."

SECTION 16. Section 174-12, Hawaii Revised Statutes, is repealed.

SECTION 17. Section 174-14, Hawaii Revised Statutes, is repealed.

SECTION 18. Section 174-15, Hawaii Revised Statutes, is repealed.

SECTION 19. Chapter 175, Hawaii Revised Statutes is repealed.

SECTION 20. There is established in the department of agriculture the position of engineering program manager in accordance with chapters 76 and 77, Hawaii Revised Statutes; provided that of the general fund appropriation for general administration for agriculture (AGR 192), the sum of \$31,848 shall be used for this purpose. The engineering program manager shall act as manager of the irrigation water development program, shall have such qualifications as the board of agriculture may deem necessary, and shall perform the duties set forth by the board. All rights, powers, functions, and duties of the board of land and natural resources relating to the Molokai irrigation system, the Waimanalo irrigation system, and the Lalamilo irrigation system are transferred to the board of agriculture.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

An officer or employee of the State who does not have tenure and who may be transferred or appointed to a civil service position as a consequence of this Act shall become a civil service employee without the loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided that such officer or employee possesses the minimum qualifications for the position to which transferred or appointed.

In the event that an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

**SECTION 21.** All appropriations, assets contained in revolving funds, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property, and all water facilities, including real property together with all improvements to the same, heretofore made, constructed, used, acquired, or held by the board of land and natural resources relating to the functions transferred to the board of agriculture shall be transferred with the functions to which they relate.

**SECTION 22.** Statutory material to be repealed is bracketed. New statutory material is underscored<sup>1</sup>.

**SECTION 23.** This Act shall take effect two years from the effective date of enactment of a state water code; provided that the department of agriculture and the department of land and natural resources shall begin to prepare the necessary regulation and organizational support to implement sections 20 and 21 of this Act upon its passage.

(Approved June 25, 1987.)

**Note**

1. Edited pursuant to HRS §23G-16.5.