

ACT 264

S.B. NO. 3045

A Bill for an Act Relating to Agribusiness Development.
Be It Enacted by the Legislature of the State of Hawaii:

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

**“CHAPTER
AGRIBUSINESS DEVELOPMENT CORPORATION**

§ **-1 Findings and purpose.** The legislature finds that the downsizing of the sugar and pineapple industries is presenting an unprecedented opportunity for the conversion of agriculture into a dynamic growth industry. Within the next decade, seventy-five thousand acres of agricultural lands and 50,000,000 gallons per day of irrigation water are expected to be released by plantations. The downsizing of the sugar and pineapple industries will idle a valuable inventory of supporting infrastructure including irrigation systems, roads, drainage systems, processing facilities, workshops, and warehouses. The challenge to government and business is to conserve and convert the arable lands and their associated production infrastructure in a timely manner into new productive uses that are based upon strategies developed from detailed marketing analysis and monitoring of local, national, and international opportunities. Constantly evolving economies require an aggressive and dynamic leadership for the promotion and development of agricultural enterprises, and centralized leadership to coordinate industry development, provide industry-wide services, provide marketing assistance, and facilitate investments and coventures in viable enterprises.

The purpose of this chapter is to create a vehicle and process to make optimal use of agricultural assets for the economic, environmental, and social benefit of the people of Hawaii. This chapter establishes a public corporation to administer an aggressive and dynamic agribusiness development program. The corporation shall coordinate and administer programs to assist agricultural enterprises to facilitate the transition of agricultural infrastructure from plantation operations into other agricultural enterprises, to carry on the marketing analysis to direct agricultural industry evolution, and to provide the leadership for the development, financing, improvement, or enhancement of agricultural enterprises.

§ **-2 Definitions.** As used in this chapter, unless the context clearly requires otherwise:

“Agriculture” means the production for marketing and exporting of plant and animal life on land and within ponds and other bodies of water for food, fiber, and raw materials for value-added products, and any agricultural enterprise or enterprises organized for the production of agricultural materials or value-added products based on detailed marketing analysis and strategies to exploit profitable potentials in local, national, and international markets, including general farming, cane growing, fruit growing, flower growing, aquaculture, growing of timber and forest products, apiary, grazing, dairying, and the production of any form of livestock or poultry, and their appurtenant services and facilities.

“Board” means the board of directors of the agribusiness development corporation.

“Coordinating entrepreneur” means a qualified person capable of organizing, operating, and assuming the risk for enterprises that may include securing land and seed capital, locating farmers, arranging right-to-till agreements, supplying materials, maintaining equipment and infrastructure, and providing for the processing and marketing of products.

“Corporation” means the agribusiness development corporation.

"Coventure" means an investment by the corporation in qualified securities of an enterprise in which a substantial investment is also being made or has been made by a professional investor to provide seed capital to an enterprise. A guarantee by the corporation of qualified securities provided by a professional investor shall be classified as a coventure. An investment made by the corporation, which is a direct investment, may later be classified as a coventure upon an investment by a professional investor.

"Direct investment" means an investment by the corporation in qualified securities of an enterprise in which no investment is being or has been made by a professional investor to provide seed capital to the enterprise.

"Enterprise" means a business with its principal place of business in Hawaii, which is, or proposes to be, engaged in agricultural crop development, development of new value-added products, enhancement of existing agricultural commodities, and the application of existing agricultural appurtenant facilities to productive uses; provided that the majority of whatever the corporation produces shall be produced for export.

"Export crops" means crops whose majority of production shall be for export outside the State or whose majority of the value-added products shall be exported.

"Fund" means the Hawaii agricultural development revolving fund.

"Private lender" includes banks, savings and loan associations, mortgage companies, and other qualified companies whose business includes the making of loans in the State.

"Professional investor" means any bank, bank holding company, savings institution, farm credit institution, trust company, insurance company, investment company registered under the federal Investment Company Act of 1940, financial services loan company, pension or profit-sharing trust or other financial institution or institutional buyer, licensee under the federal Small Business Investment Act of 1958, or any person, partnership, or other entity of whose resources, a substantial amount is dedicated to investing in securities or debt instruments, and whose net worth exceeds \$250,000.

"Project" means a specific undertaking, improvement, or system consisting of work or improvement, including personal property or any interest therein, acquired, constructed, reconstructed, rehabilitated, improved, altered, or repaired by the corporation.

"Project cost" means the total of all costs incurred by the corporation in carrying out all undertakings that it considers reasonable and necessary for the development of a project, including, but not limited to: studies; plans; specifications; architectural, engineering, or any other development related services; acquisition of land and any improvement thereon; site preparation and development; construction; reconstruction; rehabilitation; the necessary expenses in administering this chapter; and the cost of financing the project; and relocation costs.

"Project facilities" includes roads and streets, utility and service corridors, utility lines where applicable, water and irrigation systems, lighting systems, security systems, sanitary sewerage systems, and other community facilities where applicable.

"Qualified person" includes any individual, partnership, corporation, or public agency possessing the competence, expertise, experience, and resources, including financial, personnel, and tangible qualifications, as may be deemed desirable by the corporation in administering this chapter.

"Qualified security" means any note, stock, treasury stock bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, preorganization certificate of subscription, transferable share, investment contract, certificate of deposit for a security, certificate of interest or participation in a patent or patent application, or in royalty or other payments under such a patent or application, or, in general, any interest or instrument commonly known as a "security" or any certificate for, receipt for, or option, warrant, or right to subscribe to or purchase any of the foregoing.

"Revenue bonds" means bonds, notes, or other evidence of indebtedness of the corporation issued to finance any project facility.

"Right-to-till agreement" means a contract with a farmer assigning the farmer to a particular parcel or parcels with conditions set to specify the crop or crops that are to be grown, when the crops are to be grown, and how the crops are to be grown.

"Seed capital" means financing that is provided for the development, refinement, and commercialization of a product or process and other working capital needs.

"Trust indenture" means an agreement by and between the corporation and a trustee that sets forth the duties of the trustee with respect to the revenue bonds, the security thereof, and other provisions as may be deemed necessary or convenient by the corporation to secure the revenue bonds.

"Trustee" means a national or state bank or trust company, within or outside the State, that enters into a trust indenture.

"Value-added" means any activity that increases, by means of processing or any other means, the value of raw agricultural materials.

§ -3 Agribusiness development corporation; board of directors; established. (a) There is established the agribusiness development corporation, which shall be a public body corporate and politic and an instrumentality and agency of the State. The corporation shall be headed by a board of directors. The corporation shall be placed within the department of agriculture for administrative purposes, but the corporation may later incorporate as a nonprofit corporation if this proves desirable to further its objectives.

(b) The board of directors of the corporation shall consist of eleven voting members, of whom eight shall be appointed by the governor for staggered terms. These eight members shall be selected on the basis of their knowledge, experience, and proven expertise in small and large businesses within the agricultural industry, agricultural economics, finance, marketing, and management. Of these eight members, four shall be selected by the senate president and four shall be selected by the speaker of the house of representatives; provided that two shall be from the city and county of Honolulu, two shall be from the county of Hawaii, two shall be from the county of Maui, and two shall be from the county of Kauai. The director of business, economic development, and tourism; the chairperson of the board of agriculture; and the chairperson of the board of land and natural resources, or their designated representatives, shall be ex officio, voting members of the board. All members shall continue in office until their respective successors have been appointed and qualified. The board shall annually elect its chairperson from among its members provided that the chairperson shall not be an ex-officio member.

(c) The members of the board shall serve without compensation, but shall be reimbursed for actual expenses incurred in the performance of their duties.

(d) The board shall appoint an executive director, who shall serve at the pleasure of the board and shall be exempt from chapters 76 and 77. The salary of the executive director shall be set by the board.

(e) The board, through its executive director, may appoint officers, agents, and employees; prescribe their duties and qualifications; and fix their salaries, without regard to chapters 76 and 77.

§ -4 Powers; generally. (a) Except as otherwise limited by this chapter, the corporation may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at its pleasure;
- (3) Make and alter bylaws for its organization and internal management;
- (4) Adopt rules under chapter 91 necessary to effectuate this chapter in connection with its projects, operations, and properties;
- (5) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;
- (6) Carry out surveys, research, and investigations into technological, business, financial, consumer trends, and other aspects of agricultural production in the national and international community;
- (7) Acquire or contract to acquire by grant or purchase any real, personal, or mixed property or any interest therein for its immediate or future use for the purposes of this chapter; own, hold, improve, and rehabilitate any real, personal, or mixed property acquired, and sell, assign, exchange, transfer, convey, lease, or otherwise dispose of, or encumber the same;
- (8) By itself, or in partnership with qualified persons, acquire, construct, reconstruct, rehabilitate, improve, alter, or repair any infrastructure or accessory facilities in connection with any project; own, hold, sell, assign, transfer, convey, exchange, lease, or otherwise dispose of, or encumber any project;
- (9) In cooperation with the department of agriculture, pursuant to chapter 167, or otherwise through direct investment or coventure with a professional investor or enterprise or any other person, or otherwise, to acquire, construct, operate, and maintain water facilities for conveying, distributing, and transmitting water for irrigation and agricultural uses at rates or charges determined by the corporation; provided that:
 - (A) This chapter shall not be construed to permit or allow the department of agriculture or any agribusiness development corporation to:
 - (i) Amend or modify rights or entitlements to water as provided for by Article XI, section 7, of the Constitution of the State of Hawaii, or the Hawaiian Homes Commission Act, 1920, as amended, and chapter 168, Hawaii Revised Statutes;
 - (ii) Diminish or abridge the traditional and customary rights of ahupua'a tenants who inhabited the Hawaiian islands prior to 1778 under chapter 7, section 7-1, and chapter 1, section 1-1, Hawaii Revised Statutes; and
 - (iii) Impair, abridge, or terminate the legal rights or interests to water and its uses, whether by lease, easement, or

other means, which are possessed or held by organizations whose primary purpose is to benefit people of Hawaiian ancestry;

and

- (B) All usage of water shall be in accordance with chapter 74c¹ and other applicable laws in the State;
- (10) Assist agricultural enterprises by conducting detailed marketing analysis and developing marketing and promotional strategies to strengthen the position of those enterprises and to better exploit local, national, and international markets;
- (11) Carry out specialized programs designed to develop new markets for Hawaii agricultural products;
- (12) Receive, examine, and determine the acceptability of applications of qualified persons for allowances or grants for the development of new crops and agricultural products, the expansion of established agricultural enterprises, and the altering of existing agricultural enterprises;
- (13) Coordinate its activities with any federal or state farm credit programs;
- (14) Grant options to purchase any project or to renew any lease entered into by it in connection with any of its projects, on the terms and conditions it deems advisable;
- (15) Provide advisory, consultative, training, and educational services, technical assistance, and advice to any person, partnership, or corporation, either public or private, in order to carry out the purposes of this chapter, and engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;
- (16) Procure insurance against any loss in connection with its property and other assets and operations in such amounts and from such insurers as it deems desirable;
- (17) Accept gifts or grants in any form from any public agency or any other source; and
- (18) Do all things necessary or proper to carry out the purposes of this chapter.

(b) The corporation shall develop, promote, assist, and market export crops and other crops for local markets approved by the board of agriculture.

§ -5 Hawaii agribusiness plan. (a) The corporation shall prepare the Hawaii agribusiness plan which shall define and establish goals, objectives, policies, and priority guidelines for its agribusiness development strategy. The plan shall include but not be limited to:

- (1) An inventory of agricultural lands with suitable adequate water resources that are or will become available due to the downsizing of the sugar and pineapple industries that can be used to meet present and future agricultural production needs;
- (2) An inventory of agricultural infrastructure that will be abandoned by sugar and pineapple industries such as irrigation systems, drainage systems, processing facilities, and other accessory facilities;
- (3) An analysis of imported agricultural products and the potential for increasing local production to replace imported products in a manner that complements existing local producers and increases Hawaii's agricultural self-sufficiency;

- (4) Alternatives in the establishment of sound financial programs to promote the development of diversified agriculture;
- (5) Feasible strategies for the promotion, marketing, and distribution of Hawaii agricultural products in local, national, and international markets;
- (6) Programs to promote and facilitate the absorbing of displaced agricultural workers into alternative agricultural enterprises;
- (7) Strategies to insure the provision of adequate air and surface transportation services and supporting facilities to support the agricultural industry in meeting local, national, and international market needs;
- (8) Proposals to improve the gathering of data and the timely presentation of information on market demands and trends that can be used to plan future harvests and production; and
- (9) Strategies for federal and state legislative actions that will promote the development and enhancement of Hawaii's agricultural industries.

(b) The corporation shall revise the Hawaii agribusiness plan from time to time and shall incorporate the plan in its annual report to the governor and the legislature as provided in section -19.

§ -6 Subsidiaries; establishment. (a) The corporation may exercise its powers through one or more subsidiary corporations. The corporation, by resolution, may direct any of its members, officers, or employees to organize a subsidiary corporation pursuant to either chapter 415 or chapter 415B. The resolution shall prescribe the purposes for which the subsidiary corporation is established. The corporation shall be a subsidiary corporation as long as more than half of its voting shares are owned or held by the corporation, or a majority of its directors are designated by the corporation.

(b) The corporation may transfer to any subsidiary corporation any monies; any real, personal, or mixed property; or any project, in order to carry out the purposes of this chapter. Each subsidiary corporation shall have all the powers of the corporation.

§ -7 Agricultural projects; agricultural development plans. (a) The corporation may develop and implement agricultural projects where large tracts of agricultural land have been or will be taken out of productive agriculture or where, through detailed analysis, opportunities exist to exploit potential local, national, and international markets.

(b) The corporation may initiate and coordinate the preparation of business and agricultural development plans for its projects. The plans shall include a proposal for the organization of the enterprise, a marketing information and strategy, the impact on existing agricultural operations throughout the State, and a recommendation for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any infrastructure or accessory facilities in connection with any project.

(c) The corporation may enter into cooperative agreements with coordinating entrepreneurs or public agencies when the powers, services, and capabilities of the persons or agencies are deemed necessary and appropriate for the development and implementation of the business and agricultural development plans.

(d) The agricultural planning activities of the corporation shall be coordinated with the county planning departments and the county land use plans, policies, and ordinances.

(e) The corporation may amend the business and agricultural development plans as may be necessary.

(f) Any undertaking by the corporation pursuant to this chapter shall be with the express written consent of the landowner or landowners directly affected.

§ -8 Project facility program. (a) The corporation may develop a project to identify necessary project facilities within a project area.

(b) Whenever the corporation undertakes, or causes to be undertaken, any project facility as part of a project, the cost of providing the project facilities shall be assessed against the real property in the project area specially benefiting from the project facilities. Subject to the express written consent of the landowners directly affected, the corporation shall determine the properties that will benefit from the project facilities to be undertaken and may establish assessment areas that include the properties specially benefiting from the project facilities. The corporation may issue and sell bonds in such amounts as may be authorized by the legislature to provide funds to finance the project facilities. The corporation shall fix the assessments against the real property specially benefited.

(c) The corporation may adopt rules pursuant to chapter 91 to establish the method of undertaking and financing project facilities in a project area.

(d) Bonds issued to provide funds to finance project facilities shall be secured solely by the real properties benefited or improved and the assessments thereon, or by the revenues derived from the project for which the bonds were issued, including reserve accounts and earnings thereon, insurance proceeds, and other revenues, or any combination thereof. The bonds may be additionally secured by the pledge or assignment of loans and other agreements or any note or other undertaking, obligation, or property held by the corporation. The bonds shall be issued according to and subject to the rules adopted pursuant to this section. Any other law to the contrary notwithstanding, in assessing real property for project facilities, the corporation shall assess the real property within a project area according to the special benefits conferred upon the real property by the project facilities. These methods may include assessment on a frontage basis or according to the area of real property within a project area, or any other assessment method that assesses the real property according to the special benefit conferred, or any combination thereof. No such assessment levies against real property specially benefited under this chapter shall constitute a tax on real property within the meaning of any law.

(e) The rules adopted pursuant to this section may include, but are not limited to:

- (1) The methods of establishing assessment areas within a project area;
 - (2) The method of assessing real properties specially benefited;
 - (3) The costs to be borne by the corporation, the county in which the project facilities are situated, and the property owners;
 - (4) The procedures before the corporation relating to the creation of the assessment areas by the owners of real property therein, including provisions for petitions, bids, contracts, bonds, and notices;
 - (5) Provisions relating to assessments;
 - (6) Provisions relating to financing, such as bonds, the Hawaii agricultural development revolving fund, advances from available funds, special funds for the payment of bonds, the payment of principal and interest, and the sale and use of bonds;
 - (7) Provisions relating to funds and the refunding of outstanding debts;
- and

- (8) Provisions relating to limitations on time to sue, and other related provisions.

(f) Any other provisions to the contrary notwithstanding, the corporation, at its discretion, may enter into any agreement with the county in which project facilities are located, to implement the purposes of this section.

(g) All sums collected under this section shall be deposited in the fund established by section -17, except that all moneys collected on account of assessments and interests thereon for any specific project facilities financed by the issuance of bonds, shall be set apart in a separate special fund and applied solely to the payment of:

- (1) The principal and interest on these bonds;
- (2) The cost of administering, operating, and maintaining the program;
- (3) The establishment of reserves; and
- (4) Other purposes as may be authorized in the proceedings providing for the issuance of the bonds.

If any surplus remains in any special fund after the payment of the bonds chargeable against that special fund, the surplus shall be credited to and become a part of the fund. Notwithstanding any other law to the contrary, moneys in the fund may be used to make up any deficiencies in the special fund.

(h) If the project facilities to be financed through bonds by the corporation may be dedicated to the county in which the project facilities are to be located, the corporation shall ensure that the project facilities are designed and constructed to meet county requirements.

§ -9 **Bonds.** (a) The corporation, with the approval of the governor, may issue from time to time revenue bonds in amounts not exceeding the total amount of bonds authorized to be issued by the legislature for the purpose of constructing, acquiring, remodeling, furnishing, and equipping any project facility, including the acquisition of the site thereof.

(b) All revenue bonds shall be issued pursuant to part III of chapter 39, except as provided in this chapter.

(c) The revenue bonds shall be issued in the name of the corporation and not in the name of the State. The final maturity date of the revenue bonds may be any date not exceeding thirty years from the date of issuance.

§ -10 **Revenue bonds; payment and security.** (a) The revenue bonds shall be payable from and secured by the real properties benefited or improved and the assessments thereon, or by the revenues derived from the project facility for which the revenue bonds were issued, including revenue derived from insurance proceeds and reserve accounts, and earnings thereon.

(b) The corporation may pledge revenues derived from the project facility financed from the proceeds of the revenue bonds to the punctual payment of the principal, interest, and redemption premiums, if any, on the revenue bonds.

(c) The revenue bonds may be additionally secured by the pledge or assignment of the loans and other agreements or any note or other undertaking, obligation, or property held by the corporation to secure the loans.

(d) Any pledge made by the corporation shall create a perfected security interest in the revenues, moneys, or property so pledged and thereafter received by the corporation from and after the time that the financing statement with respect to the revenues, moneys, or property so pledged and thereafter received are filed with the bureau of conveyances. Upon this filing, the revenues, moneys, or property so pledged and thereafter received by the corporation shall immediately be subject to a lien of any such pledge without any physical delivery thereof

or having claims of any kind in tort, contract, or otherwise against the corporation, irrespective of whether the parties have notice thereof. This section shall apply to any financing statement heretofore or hereafter filed with the bureau of conveyances with respect to any pledge made to secure revenue bonds issued under this chapter.

§ -11 Revenue bonds; interest rate, price, and sale. (a) The revenue bonds issued pursuant to this chapter shall bear interest at such rate or rates and shall be payable on such date or dates, as the corporation shall determine.

(b) The corporation shall include the costs of undertaking the project facility for which the revenue bonds are issued in determining the principal amount of revenue bonds to be issued. In determining the cost of undertaking the project facility, the corporation may include:

- (1) The cost of constructing, acquiring, remodeling, furnishing, and equipping the project facility, including the acquisition of the site thereof;
- (2) The cost of purchasing or funding loans or other agreements entered into for the project facility;
- (3) The costs of studies and surveys;
- (4) Insurance premiums;
- (5) Underwriting fees;
- (6) Financial consultant, legal, accounting, and marketing services incurred;
- (7) Reserve account, trustee, custodian, and rating agency fees; and
- (8) Any capitalized interest.

(c) The revenue bonds may be sold at public or private sale, and for a price as may be determined by the corporation.

§ -12 Revenue bonds; investment of proceeds, and redemption. Subject to any agreement with the holders of its revenue bonds, the corporation may:

- (1) Invest its moneys not required for immediate use, including proceeds from the sale of revenue bonds, in any investment in accordance with procedures prescribed in a trust indenture; and
- (2) Purchase its revenue bonds out of any fund or money of the corporation available therefor, and hold, cancel, or resell the revenue bonds.

§ -13 Revenue bonds; special funds. (a) A separate special fund shall be established for each project facility financed from the proceeds of the revenue bonds secured under the same trust indenture. Each fund shall be designated "project facility revenue bond special fund" and shall bear additional designation as the corporation deems appropriate to properly identify the fund.

(b) Notwithstanding any other law to the contrary, including section 15, all revenues, income, and receipts derived from the project facility for which the revenue bonds are issued shall be paid into the project facility revenue bond fund established for that project facility and applied as provided in the proceedings authorizing the issuance of the revenue bonds.

§ -14 Trustee; designation, duties. (a) The corporation shall designate a trustee for each issue of revenue bonds secured under the same trust indenture.

(b) The trustee shall be authorized by the corporation to hold and administer the project facility revenue bond special fund established pursuant to

section -11, to receive and receipt for, hold, and administer the revenues derived by the corporation from the project facility for which the revenue bonds were issued, and to apply these revenues to the payment of the cost:

- (1) Of undertaking the project facility;
- (2) Of administering and operating the proceedings providing for the issuance of the revenue bonds;
- (3) To pay the principal or interest on these bonds;
- (4) To the establishment of reserves; and
- (5) To other purposes as may be authorized in the proceedings providing for the issuance of the revenue bonds.

(c) Notwithstanding section 39-68 to the contrary, the director of finance may appoint the trustee to serve as fiscal agent for:

- (1) The payment of the principal of and interest on the revenue bonds; and
- (2) The purchase, registration, transfer, exchange, and redemption of the bonds.

(d) The trustee shall perform additional functions with respect to the payment, purchase, registration, transfer, exchange, and redemption of the bonds, as the director of finance may deem necessary, advisable, or expeditious, including the holding of the revenue bonds and coupons that have been paid and the supervision of the destruction thereof in accordance with applicable law.

(e) Nothing in this chapter shall limit or be construed to limit the powers granted to the director of finance in sections 36-3, 39-13, and 39-68(a), to appoint the trustee or others as fiscal agents, paying agents, and registrars for the revenue bonds or to authorize and empower those fiscal agents, paying agents, and registrars to perform the functions referred to in those sections.

§ -15 Trust indenture. (a) A trust indenture may contain covenants and provisions authorized by part III of chapter 39, and as may be deemed necessary or convenient by the corporation for the purposes of this chapter.

(b) A trust indenture may allow the corporation to pledge and assign to the trustee loans and other agreements related to the project facility, and the rights of the corporation thereunder, including the right to receive revenues thereunder and to enforce the provision thereof.

(c) A trust indenture shall also contain provisions as to:

- (1) The investment of the proceeds of the revenue bonds, the investment of any reserve for the bonds, the investment of the revenues of the project facility, and the use and application of the earnings from investments; and
- (2) The terms and conditions upon which the holders of the revenue bonds or any portion of them or any trustee thereof may institute proceedings for the foreclosure of any loan or other agreement or any note or other undertaking, obligation, or property securing the payment of the bonds and the use and application of the moneys derived from the foreclosure.

(d) A trust indenture may also contain provisions deemed necessary or desirable by the corporation to obtain or permit, by grant, interest, subsidy, or otherwise, the participation of the federal government in the financing of the costs of undertaking the project facility.

§ -16 Use of public lands; acquisition of state lands. (a) Notwithstanding chapter 171 to the contrary, the governor may transfer lands located within a project area to the corporation for its use.

(b) If state lands under the control and management of other public agencies are required by the corporation for its purposes, the agency having the control and management of those required lands, upon request by the corporation and with the approval of the governor, may lease the lands to the corporation upon such terms and conditions as may be agreed to by the parties.

(c) Notwithstanding subsection (b) to the contrary, no public lands shall be leased to the corporation if the lease would impair any covenant between the State or any county, or any department or board thereof, and the holders of bonds issued by the State or the county, department, or board.

§ -17 Hawaii agricultural development revolving fund; established; use of corporation funds. (a) There is established the Hawaii agricultural development revolving fund, to which shall be credited any state appropriations or other moneys made available to the fund, to be expended as directed by the corporation.

(b) The corporation shall hold the fund in an account or accounts separate from other funds. The corporation shall invest and reinvest the fund and the income thereof to:

- (1) Purchase qualified securities issued by enterprises for the purpose of raising seed capital; provided that the investment shall comply with the requirements of this chapter;
- (2) Make grants, loans, and provide other monetary forms of assistance necessary to carry out the purposes of this chapter; and
- (3) Purchase securities as may be lawful investments for fiduciaries in the State.

All appropriations, grants, contractual reimbursements, and other funds not designated for this purpose may be used to pay for the proper general expenses and to carry out the purposes of the corporation.

(c) The corporation shall purchase qualified securities issued by an enterprise only after:

- (1) Receiving:
 - (A) An application from the enterprise containing a business plan, which is consistent with the business and agricultural development plan, including a description of the enterprise and its management, product, and market;
 - (B) A statement of the amount, timing, and projected use of the capital required;
 - (C) A statement of the potential economic impact of the enterprise, including the number, location, and types of jobs expected to be created; and
 - (D) Any other information as the corporation shall require;
- (2) Determining, based upon the application submitted, that:
 - (A) The proceeds of the investment will be used only to cover the seed capital needs of the enterprise, except as authorized in this section;
 - (B) The enterprise has a reasonable chance of success;
 - (C) The enterprise has the reasonable potential to create employment within the State and offers employment opportunities to residents;
 - (D) The coordinating entrepreneur and other founders of the enterprise have already made or are prepared to make a substantial financial and time commitment to the enterprise;

- (E) The securities to be purchased are qualified securities;
- (F) There is reasonable possibility that the corporation will recoup at least its initial investment; and
- (G) Binding commitments have been made to the corporation by the enterprise for adequate reporting of financial data to the corporation, which shall include a requirement for an annual or other periodic audit of the books of the enterprise, and for control by the corporation that it considers prudent over the management of the enterprise, in order to protect the investment of the corporation, including membership on the board of directors of the enterprise, ownership of voting stock, input in management decisions, and the right of access to the financial and other records of the enterprise;

and

- (3) Entering into a binding agreement with the enterprise concerning the manner of payback by the enterprise of the funds advanced, granted, loaned, or received from the corporation. The manner of payback may include the payment of dividends, returns from the public sale of corporate securities or products, royalties, and other methods of payback acceptable to the corporation. In determining the manner of payback the corporation shall establish a rate of return or rate of interest to be paid on any investment, loan, or grant of corporation funds under this section.

(d) If the corporation makes a direct investment, it shall also find that a reasonable effort has been made to find a professional investor to make an investment in the enterprise as a coventure, and that the effort was unsuccessful. The findings, when made by the corporation, shall be conclusive.

(e) The corporation shall not make investments in qualified securities issued by an enterprise in excess of the following limits:

- (1) Not more than \$500,000 shall be invested in the securities of any one enterprise, except that more than a total of \$500,000 may be invested in the securities of any one enterprise, if the corporation finds, after its initial investment, that additional investments in that enterprise are required to protect the initial investment of the corporation, and the other findings set forth in subsections (d) and (e) are made as to the additional investment;
- (2) The corporation shall not own securities representing more than forty-nine per cent of the voting stock of any one enterprise at the time of purchase by the corporation after giving effect to the conversion of all outstanding convertible securities of the enterprise, except that in the event of severe financial difficulty of the enterprise, threatening the investment of the corporation in the enterprise, a greater percentage of those securities may be owned by the corporation; and
- (3) Not more than fifty per cent of the assets of the corporation shall be invested in direct investments at any time.

(f) No investment, loan, grant, or use of corporate funds for the purposes of this chapter shall be subject to chapter 42D or 103D.

§ -18 Exemption from taxation. The corporation shall not be required to pay state taxes of any kind.

§ -19 **Annual report.** The corporation shall submit to the governor and the legislature, no later than twenty days prior to the convening of each regular session, a complete and detailed report of its plans and activities."

SECTION 2. Section 269-1, Hawaii Revised Statutes, is amended by amending the definition of "public utility" to read:

"“Public utility” includes every person who may own, control, operate, or manage as owner, lessee, trustee, receiver, or otherwise, whether under a franchise, charter, license, articles of association, or otherwise, any plant or equipment, or any part thereof, directly or indirectly for public use, for the transportation of passengers or freight, or the conveyance or transmission of telecommunications messages, or the furnishing of facilities for the transmission of intelligence by electricity by land or water or air within the State, or between points within the State, or for the production, conveyance, transmission, delivery, or furnishing of light, power, heat, cold, water, gas, or oil, or for the storage or warehousing of goods, or the disposal of sewage; provided that the term:

- (1) [Includes] Shall include any person[,], insofar as that person owns or operates a private sewer company or sewer facility;
- (2) Shall not include any person insofar as that person owns or operates an aerial transportation enterprise;
- (3) Shall not include persons owning or operating taxicabs, as defined in this section;
- (4) Shall not include common carriers transporting only freight on the public highways, unless operating within localities or along routes or between points [which] that the public utilities commission finds to be inadequately serviced without regulation under this chapter;
- (5) Shall not include persons engaged in the business of warehousing or storage unless the commission finds that regulation thereof is necessary in the public interest;
- (6) Shall not include [the]:
 - (A) The business of any carrier by water to the extent that the carrier enters into private contracts for towage, salvage, hauling, or carriage between points within the State and the carriage is not pursuant to either an established schedule or an undertaking to perform carriage services on behalf of the public generally[, and also shall not include the]; and
 - (B) The business of any carrier by water, substantially engaged in interstate or foreign commerce, transporting passengers on luxury cruises between points within the State or on luxury round-trip cruises returning to the point of departure;
- (7) Shall not include any person who [(A) controls,];
 - (A) Controls, operates, or manages plants or facilities for the production, transmission, or furnishing of power primarily or entirely from nonfossil fuel sources[, and (B) provides,]; and
 - (B) Provides, sells, or transmits all of that power, except such power as is used in its own internal operations, directly to a public utility for transmission to the public; [and]
- (8) Shall not include a telecommunications provider only to the extent determined by the commission pursuant to section 269-16.9[.]; and
- (9) Shall not include any person who controls, operates, or manages plan or facilities developed pursuant to chapter 167 for conveying,

distributing, and transmitting water for irrigation and such other purposes that shall be held for public use and purpose.

In the event the application of this chapter is ordered by the commission in any case provided in paragraphs (4), (5), [and] (8), and (9), the business of any public utility that presents evidence of bona fide operation on the date of the commencement of the proceedings resulting in the order shall be presumed to be necessary to public convenience and necessity, but any certificate issued under this proviso shall nevertheless be subject to such terms and conditions as the commission may prescribe, as provided in [section] sections 269-16.9 and 269-20 [and section 269-16.9].”

SECTION 3. Chapter 147, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . MARKETING ORDER REVOLVING FUND

§147- Marketing order revolving fund. There is established a revolving fund for use by the department of agriculture in providing inspection services for federal marketing order programs. Moneys in the fund may be expended for materials, salaries, equipment, training, and other costs related to providing inspection services. Moneys derived from the inspection services provided shall be deposited in the fund. Marketing order inspectors hired under this chapter shall be exempt from chapters 76 and 77.”

SECTION 4. Section 211F-1, Hawaii Revised Statutes, is amended by amending the definition of “economic development project” to read:

““Economic development project” means an endeavor related to industrial[,] or commercial[, or agricultural] enterprise. [Economic] An economic development project shall not include tourism-related service businesses, nor that portion of an endeavor devoted to the sale of goods at retail, except that, as used in relation to the corporation procuring insurance for a transaction entered into by a depository institution, and as used in relation to an investment by the corporation in a minority-owned business, an economic development project may include that portion of an endeavor devoted to the sale of goods at retail. The term shall not include that portion of an endeavor devoted to the construction of housing.”

SECTION 5. Chapters 153 and 163, Hawaii Revised Statutes, are repealed.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000, or so much thereof as may be necessary for fiscal year 1994-1995, to carry out the purposes of this Act, including the hiring of necessary staff.

The sum appropriated shall be expended by the department of agriculture.

SECTION 7. All agricultural projects, agricultural development plans, and project facility programs developed by the corporation must be approved by the board of agriculture before implementation.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 1994; provided that the chairperson of the board of agriculture shall transfer to the credit of the state general fund, all unexpended or unencumbered balances remaining in the Hawaii agricultural products revolving fund, section 153-3, Hawaii Revised Statutes, prior to June 30, 1994.

(Approved June 30, 1994.)

Note

1. So in original.