

ACT 219

S.B. NO. 2473

A Bill for an Act Relating to Economic Development.

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

SECTION 1. The purpose of this Act is to:

- (1) Transfer the administrative attachment of the agribusiness development corporation from the department of agriculture to the department of business, economic development, and tourism;
- (2) Amend the focus, scope, responsibilities, and powers of the agribusiness development corporation;
- (3) Amend the requirements and responsibilities of the board of directors of the agribusiness development corporation;
- (4) Amend the required contents of the Hawaii agribusiness plan; and
- (5) Appropriate funds.

SECTION 2. Section 163D-1, Hawaii Revised Statutes, is amended to read as follows:

“~~§163D-1~~ Findings and purpose. The legislature finds that the downsizing of the sugar and pineapple industries [~~is presenting~~] presented an unprecedented opportunity for the conversion of agriculture into a dynamic growth industry. Within the next decade, [~~seventy-five thousand~~] the State can use public agricultural lands to enhance the local economy, provide employment opportunities, decrease reliance on imported agricultural products, and provide more sources of locally grown food for residents. Thousands of acres of agricultural lands and fifty million gallons per day of irrigation water [~~are expected to be~~] were released by plantations. The downsizing of the sugar and pineapple industries [~~will idle~~] idled and left vacant a valuable inventory of supporting infrastructure including irrigation systems, roads, drainage systems, processing facilities, workshops, and warehouses[-] that are still largely underutilized. The challenge to government and business is to continue 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].~~ Aggressive and dynamic leadership [for the promotion] can play a critically important role in promoting and [development of] developing agricultural enterprises, [and centralized leadership to coordinate] coordinating industry development, [provide] providing industry-wide services, [provide] providing marketing assistance, and [facilitate] facilitating 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 purposes of the corporation shall be to support the production of local agricultural products for local consumption in a manner that is economically and environmentally sustainable while continuing to develop commercial exports of

locally produced agricultural products. To further these purposes, 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.] increase local production of agricultural products for local consumption, reduce the State's reliance on imported agricultural products, and increase access to farmland and related infrastructure for small local farmers and cooperatives."

SECTION 3. Section 163D-2, Hawaii Revised Statutes, is amended by amending the definition of "agriculture" to read as follows:

"Agriculture" means the production for [marketing] consumption within the State 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."

SECTION 4. Section 163D-3, Hawaii Revised Statutes, is amended to read as follows:

"§163D-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] business, economic development, and tourism for administrative purposes, but the corporation may later incorporate as a nonprofit corporation if this proves desirable to further its objectives; provided that [such] reorganization as a nonprofit corporation shall not adversely affect the federal tax status of the interest on any bonds issued to finance any project or project facility.

(b) The board of directors of the corporation shall consist of eleven voting members, of whom eight shall be appointed by the governor. The terms of these eight members shall be four years; provided that, commencing on July 1, 2005, the governor shall reduce the terms of those initially appointed so as to provide, as nearly as can be, for the expiration of an equal number of terms at intervals of one year. The 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, banking, real estate, finance, promotion, marketing, local food production, and management. Of these eight members, one shall be from the city and county of Honolulu, one shall be from the county of Hawaii, one shall be from the county of Maui, one shall be from the county of Kauai, and four shall be appointed at-large. 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 chapter 76. The salary of the executive director shall be set by the board.

(e) The board shall develop and document annual goals and performance measures for the executive director that allow the board to annually evaluate the executive director's work to ensure compliance by the corporation with statutory requirements and achievement of its statutory purposes.

(f) The board shall evaluate and document the evaluation of the executive director's performance annually, or more frequently upon the request of at least four board members, based on annual goals, performance measures, and other relevant criteria.

(g) The board shall document the specific authority delegated to the executive director, including but not limited to the types of access and use of corporation property that the executive director may approve without notice to or approval by the board, and the rent credits and other amendments to board-approved contract terms that the executive director may approve without notice to or approval by the board.

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

SECTION 5. Section 163D-4, Hawaii Revised Statutes, is amended to read as follows:

"§163D-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)~~ (6) 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)]~~ (7) 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)]~~ (8) 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 facili-

ties 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;
- (ii) Diminish or abridge the traditional and customary rights of ahupua'a tenants who inhabited the Hawaiian Islands prior to 1778 under sections 1-1 and 7-1; 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 ~~[[174C]]~~ 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) (9) 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) (10) Coordinate its activities with any federal or state farm credit programs;~~

~~[(14) (11) 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) (12) 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) (13) 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) (14) Accept gifts or grants in any form from any public agency or any other source; and~~

~~[(18) (15) Do all things necessary or proper to carry out the purposes of this chapter.~~

(b) The corporation shall develop, promote, assist, and market agricultural products for local consumption, and shall promote and assist in commercial export ~~[crops and other crops for local markets.] of agricultural products.~~"

SECTION 6. Section 163D-5, Hawaii Revised Statutes, is amended to read as follows:

~~“[§163D-5]~~ **Hawaii agribusiness plan.** (a) The corporation shall prepare and post on its website 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]~~; provided that the inventory of agricultural lands under this paragraph shall be agricultural lands within the purview of the corporation that can be used to meet present and future agricultural production needs;
- (2) An inventory of available 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;], that are controlled by the corporation; and~~
- ~~[(9)]~~ (3) Strategies for federal [and], state [legislative], county, and community stakeholder actions that will promote the development and enhancement of Hawaii's agricultural industries.

(b) The Hawaii agribusiness plan goals shall have specific one-year, five-year, and ten-year objectives and measurable outcomes that prioritize local food production from the corporation's leases or licenses. The objectives and outcomes shall include annual performance goals and measures that the corporation shall be evaluated on annually.

(c) The Hawaii agribusiness plan shall also include metrics, timeframes, and budget expectations as part of the corporation's agribusiness development strategy.

~~[(b)]~~ (d) The corporation shall ~~[revise]~~ update the Hawaii agribusiness plan ~~[from time to time]~~ no later than July 1, 2023, and every five years thereafter, and shall incorporate the plan in its annual report to the governor and the legislature as provided in section 163D-19.”

SECTION 7. Section 163D-8.5, Hawaii Revised Statutes, is repealed.

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2022-2023 for a consultant to assist the agribusiness development corporation in preparing and finalizing the Hawaii agribusiness plan under section 163D-5, Hawaii Revised Statutes, including the facilitation of community stakeholder involvement.

The sum appropriated shall be expended by the agribusiness development corporation for the purposes of this Act.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of \$90,000 or so much thereof as may be necessary for fiscal year 2022-2023 for one full-time equivalent (1.0 FTE) permanent accountant V position to provide accounting and other fiscal support services to the agribusiness development corporation.

The sum appropriated shall be expended by the agribusiness development corporation for the purposes of this Act.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2022-2023 for security guard services to address trespassing, abandonment of vehicles on agribusiness development corporation land, and other security issues on vacant land of the agribusiness development corporation; provided that once agribusiness development corporation land is leased, security costs for the property shall be funded by agricultural cooperative association dues of property tenants.

The sum appropriated shall be expended by the agribusiness development corporation for the purposes of this Act.

SECTION 11. All rights, powers, functions, and duties of the department of agriculture relating to the agribusiness development corporation are transferred to the department of business, economic development, and tourism.

SECTION 12. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the department of agriculture relating to the functions transferred to the department of business, economic development, and tourism shall be transferred with the functions to which they relate.

SECTION 13. All employees who occupy civil service positions and whose functions are transferred to the department of business, economic development, and tourism by this Act shall retain their civil service status, whether permanent or temporary. Employees shall be transferred without loss of salary, seniority (except as prescribed by applicable collective bargaining agreements), retention points, prior service credit, any vacation and sick leave credits previously earned, and other rights, benefits, and privileges, in accordance with state personnel laws and this Act; provided that the employees possess the minimum qualifications and public employment requirements for the class or position to which transferred or appointed, as applicable; provided further that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

Any employee who, prior to this Act, is exempt from civil service and is transferred as a consequence of this Act may retain the employee's exempt status, but shall not be appointed to a civil service position as a consequence

of this Act. An exempt employee who is transferred by this Act shall not suffer any loss of prior service credit, vacation or sick leave credits previously earned, or other employee benefits or privileges as a consequence of this Act; provided that the employees possess legal and public employment requirements for the position to which transferred or appointed, as applicable; provided further that subsequent changes in status may be made pursuant to applicable employment and compensation laws.

SECTION 14. All rules, policies, procedures, guidelines, and other material adopted or developed by the department of agriculture to implement provisions of the Hawaii Revised Statutes that are reenacted or made applicable to the department of business, economic development, and tourism by this Act shall remain in full force and effect until amended or repealed by the department of business, economic development, and tourism pursuant to chapter 91, Hawaii Revised Statutes. In the interim, every reference to the department of agriculture, board of agriculture, or chairperson of the board of agriculture in those rules, policies, procedures, guidelines, and other material is amended to refer to the department of business, economic development, and tourism or director of business, economic development, and tourism, as appropriate.

SECTION 15. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 16. This Act shall take effect on July 1, 2022.

(Approved June 27, 2022.)

Note

1. Edited pursuant to HRS §23G-16.5.