

**ACT 218**

S.B. NO. 833

A Bill for an Act Relating to the Wahiawa Irrigation System.

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

**PART I**

**SECTION 1.** In accordance with section 9 of article VII of the Hawaii State Constitution and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in H.B. No. 300,

H.D. 1, S.D. 1, C.D. 1,<sup>1</sup> and this Act will cause the state general fund expenditure ceiling for fiscal year 2023-2024 to be exceeded by \$1,089,767,367 or 11.0 per cent. This current declaration takes into account general fund appropriations authorized for fiscal year 2023-2024 in H.B. No. 300, H.D. 1, S.D. 1, C.D. 1,<sup>1</sup> and this Act only. The reasons for exceeding the general fund expenditure ceiling are that:

- (1) The appropriations made in this Act are necessary to serve the public interest; and
- (2) The appropriations made in this Act meet the needs addressed by this Act.

## PART II

**SECTION 2.** The legislature finds that the Wahiawa irrigation system is a critical irrigation system providing water to farmers in Wahiawa, Waialua, and Haleiwa on the island of Oahu. Built by the Waialua Sugar Company, the Wahiawa irrigation system was created with a dam and freshwater reservoir fed by the north fork and south fork of the Kaukonahua stream. The dam is essential to agriculture as the water in the reservoir provides irrigation to farmers in Wahiawa, Waialua, and Haleiwa. The reservoir also provides a venue for recreational activities for the surrounding community and the State.

The legislature further finds that Dole Food Company, Inc., has listed the irrigation system for sale for \$20,000,000. The Dole portion of the system includes the Wahiawa reservoir, Wahiawa dam, and ditch system. The spillway, owned by Sustainable Hawaii, LLC, is also an integral component of the irrigation system. Dole has offered to donate its interests to the State of Hawaii in exchange for the State's agreement to repair the spillway to meet and maintain dam safety standards. It is in the interest of the public for the State to acquire the Wahiawa irrigation system and preserve the system for public access and the agriculture industry.

The purpose of this Act is to authorize the department of agriculture, department of land and natural resources, and agribusiness development corporation to acquire the Wahiawa irrigation system, on terms negotiated and agreed upon by the office of the governor, or by eminent domain, and to purchase, repair, and maintain the associated spillway.

## PART III

**SECTION 3.** (a) The office of the governor shall negotiate with Wahiawa Water Company, Inc.; Dole Food Company, Inc.; Sustainable Hawaii, LLC; or any other appropriate owner for the State's fee simple acquisition of the Wahiawa irrigation system.

(b) The department of land and natural resources may acquire from Wahiawa Water Company, Inc., or Dole Food Company, Inc., on terms agreed upon by the office of the governor, the fee simple interest in the Wahiawa irrigation system, including the following parcels:

- (1) TMK (1) 7-3-001-003;
- (2) TMK (1) 7-3-001-019;
- (3) TMK (1) 7-3-006-023;
- (4) TMK (1) 7-3-007-001;
- (5) TMK (1) 7-3-008-001;
- (6) TMK (1) 7-3-010-003;
- (7) TMK (1) 7-3-011-003;
- (8) TMK (1) 7-3-011-006;

- (9) TMK (1) 7-3-011-007;
- (10) TMK (1) 7-3-012-002;
- (11) TMK (1) 7-3-012-006;
- (12) TMK (1) 7-4-001-003; and
- (13) TMK (1) 7-4-012-001.

(c) The department of agriculture may acquire:

- (1) From Dole Food Company, Inc., or the appropriate owner, a fee simple interest in the Wahiawa dam, on terms agreed upon by the office of the governor; and
- (2) From Sustainable Hawaii, LLC, a fee simple interest in the spillway associated with the Wahiawa irrigation system, located at parcel TMK (1) 7-1-012-014; provided that the sale terms shall be conditioned on an appraisal of the property pursuant to section 171-30, Hawaii Revised Statutes.

(d) The agribusiness development corporation may acquire from Dole Food Company, Inc., or the appropriate owner, on terms agreed upon by the office of the governor, the ditch system associated with the Wahiawa irrigation system.

(e) The agribusiness development corporation may acquire from Wahiawa Water Company, Inc.; Dole Food Company, Inc.; or Sustainable Hawaii, LLC; on terms agreed upon by the office of the governor, the fee simple interest in the Wahiawa irrigation system, including the following parcels:

- (1) TMK (1) 7-1-001-013;
- (2) TMK (1) 7-1-001-017;
- (3) TMK (1) 7-1-012-003;
- (4) TMK (1) 7-1-012-004;
- (5) TMK (1) 7-1-012-007;
- (6) TMK (1) 7-3-005-005; and
- (7) TMK (1) 7-3-013-003.

(f) The department of land and natural resources shall not impose administrative fines on the department of agriculture for safety deficiencies at Wahiawa dam or the associated spillway; provided that the department of agriculture shall repair and maintain the Wahiawa dam and spillway and shall ensure the structures meet dam safety standards.

(g) No fines owed by Wahiawa Water Company, Inc.; Dole Food Company, Inc.; or Sustainable Hawaii, LLC; for violations of dam safety standards at Wahiawa dam or the associated spillway shall transfer to the State upon the sale of the property to the State.

**SECTION 4.** Notwithstanding any law to the contrary, all users of water associated with the Wahiawa irrigation system shall pay such rates sufficient to operate and maintain the irrigation system as prescribed by the agribusiness development corporation.

**SECTION 5.** The State may by exercise of eminent domain acquire the Wahiawa dam, the spillway associated with the Wahiawa irrigation system, and the ditch system associated with the Wahiawa irrigation system, including all parcels in this Act.

## PART IV

**SECTION 6.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$5,000,000 or so much thereof as may be necessary for fiscal year 2023-2024 for the department of agriculture to acquire a fee simple

interest in the spillway associated with the Wahiawa irrigation system, located at parcel TMK (1) 7-1-012-014; provided that the sale terms shall be conditioned on an appraisal of the property pursuant to section 171-30, Hawaii Revised Statutes; provided further that if negotiations for the acquisition of the property are unsuccessful, the appropriation shall be used for an eminent domain action to acquire the property; provided further that moneys from the appropriation may be expended for an eminent domain action and its associated costs.

The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

**SECTION 7.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$21,000,000 or so much thereof as may be necessary for fiscal year 2023-2024 for the department of agriculture to repair and expand the spillway associated with the Wahiawa irrigation system and to bring the spillway into compliance with all relevant dam safety requirements; provided that the expenditure of the appropriation is contingent upon the State's acquisition of the property.

The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

## **PART V**

**SECTION 8.** If the transfer of all properties authorized to be acquired by this Act are not filed or recorded with the bureau of conveyances by June 30, 2026, the governor shall notify the legislature and the revisor of statutes by June 30, 2026, that the conveyance was not filed or recorded with the bureau of conveyances, and this Act shall be repealed in its entirety on July 1, 2026.

**SECTION 9.** If the transfer of all properties authorized to be acquired by this Act are filed or recorded with the bureau of conveyances by June 30, 2026, the governor shall notify the legislature and the revisor of statutes by June 30, 2026, that the transfer of all properties authorized to be acquired by this Act were filed or recorded with the bureau of conveyances, and this Act shall not be repealed and the appropriations authorized pursuant to this Act shall not lapse at the end of the fiscal year for which the moneys were appropriated; provided that all moneys that remain unexpended or unencumbered on June 30, 2026, shall lapse.

**SECTION 10.** This Act shall take effect on July 1, 2023.

(Approved July 5, 2023.)

### **Note**

1. Act 164.