



GOV. MSG. NO. 923

EXECUTIVE CHAMBERS
HONOLULU

July 9, 2008

LINDA LINGLE
GOVERNOR

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: House Bill No. 2293 HD1 SD2 CD2

On July 8, 2008, House Bill No. 2293, entitled "A Bill for an Act Relating to Agriculture" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to authorize the Agribusiness Development Corporation to purchase agricultural lands owned by the Galbraith Estate and located in Wahiawa. If a purchase agreement is not reached after an unspecified amount of time, the Department of Land and Natural Resources is directed to exercise its power of eminent domain to acquire the property.

It should be noted that the Agribusiness Development Corporation has statutory authority to purchase and lease lands under §163D-4, Hawaii Revised Statute. Use of the former Galbraith Estate lands is already limited to agricultural-related activities, as permissible within the State's Agricultural District.

This bill raises a number of concerns. It sets forth a series of complex options for the possible purchase of the land, including the issuance of revenue bonds, direct appropriations, lump sum payments, installment purchase agreements, or the purchase of U. S. Treasury zero-coupon bonds to finance an installment purchase. It should be noted that the 2009 supplemental budget includes authority to issue \$13 million in general obligation bonds for the acquisition of the Galbraith properties. This amount is likely to be considerably less than what would be needed to purchase the 2,100 acres of Galbraith Estate land in Central Oahu.

Based on the revenue generating capacity of agricultural leases, it is also unlikely that leases on the former Galbraith properties could generate enough of a revenue stream to pay back the revenue bonds. It is also unlikely that the Agribusiness Development Corporation could generate sufficient revenues to meet installment payments on this type of purchase, thus possibly placing the State in a potential default position.

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Part III of the bill stipulates that the Legislature may authorize the Agribusiness Development Corporation to purchase agricultural lands if the bill which enacts the purchase contains: 1) a statement of the value of the interest in land as a resource to the State, 2) a description of the specific parcel of land or agricultural easement proposed to be acquired, 3) the name of the owner of the property, and 4) the estimated costs of acquiring the interest in the land. However, House Bill No. 2293 neither specifies the value of the properties, nor includes the estimated cost of the purchase. Therefore, because the information contained in this bill does not meet the prescribed requisites, this bill technically will not authorize the Agribusiness Development Corporation to purchase the Galbraith Estate parcels identified in part V of the bill.

Additionally, it should be noted that a portion of the said properties lie below Lake Wilson and are part of the Wahaiwa Reservoir system. This reservoir has been officially classified as a "high hazard" reservoir due to the sizable population and property values in the adjoining region. The Department of Agriculture estimates an auxiliary spillway would need to be constructed to improve the safety of the current reservoir and they estimate the cost of this type of undertaking in the \$6-8 million range.

Given the fiscal and legal issues this measure presents, I allowed House Bill No. 2293 to become law as Act 234, effective July 8, 2008, without my signature.

Sincerely,



LINDA LINGLE

A BILL FOR AN ACT

RELATING TO AGRICULTURE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

PART I

SECTION 1. The purpose of this part is to promote fiscal accountability with regard to agricultural land lease agreements between the State and lessees by allowing the agribusiness development corporation to contract with financial institutions to provide lease management services.

SECTION 2. Section 163D-7, Hawaii Revised Statutes, is amended to read as follows:

"~~§~~163D-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



1 organization of the enterprise, a marketing information and
2 strategy, the impact on existing agricultural operations
3 throughout the State, and a recommendation for the construction,
4 reconstruction, rehabilitation, improvement, alteration, or
5 repair of any infrastructure or accessory facilities in
6 connection with any project.

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

13 (d) The corporation may purchase, accept, and maintain
14 permanent conservation easements, or transfer these easements to
15 a qualified land trust in accordance with the federal Natural
16 Resources Conservation Service farm and ranch lands protection
17 program.

18 (e) Notwithstanding any provision of this chapter to the
19 contrary, when leasing corporation-controlled agricultural land,
20 the corporation may contract with a financial institution
21 chartered under chapter 412 or a federal financial institution,
22 as defined under section 412:1-109, that transacts business in



1 this State to provide lease management services. For the
2 purposes of this subsection, "lease management services"
3 includes the collection of lease rent and any other moneys owed
4 to the corporation related to the lease of agricultural land
5 under the corporation's control.

6 [~~d~~] (f) The agricultural planning activities of the
7 corporation shall be coordinated with the county planning
8 departments and the county land use plans, policies, and
9 ordinances.

10 [~~e~~] (g) The corporation may amend the business and
11 agricultural development plans as may be necessary.

12 [~~f~~] (h) Any undertaking by the corporation pursuant to
13 this chapter shall be with the express written consent of the
14 landowner or landowners directly affected."

15 **PART II**

16 SECTION 3. The purpose of this part is to ensure the long-
17 term availability of lands suitable for agricultural activities
18 by authorizing the agribusiness development corporation to lease
19 lands acquired under this Act for up to fifty-five years.

20 SECTION 4. Section 163D-15.6, Hawaii Revised Statutes, is
21 amended to read as follows:

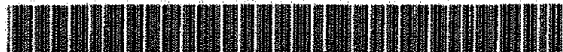


1 "~~[f]~~§163D-15.6 Commitment and preservation of agricultural
2 leases.~~[f]~~ (a) The agribusiness development corporation shall
3 work toward obtaining commitments from landowners in the leeward
4 and central districts of Oahu that their agricultural leases
5 shall be for a duration of twenty or more years~~[r]~~ and shall not
6 be amended or revoked [~~in order~~] to allow for a nonagricultural
7 use of ~~[such]~~ the land~~[r]~~; provided that for lands in central
8 Oahu acquired under Act _____, Session Laws of Hawaii 2008, the
9 agricultural leases shall be for no more than fifty-five years.

10 (b) To further ensure the preservation of agriculture in
11 the leeward and central districts of Oahu, the agribusiness
12 development corporation shall monitor the agricultural leases of
13 lands [~~utilizing~~] using the water from the Waiahole water
14 system. In the event of any proposed amendment or revocation of
15 any ~~[such]~~ lease, the corporation shall do all things within its
16 powers under ~~[f]~~this chapter~~[f]~~ to protect and defend the
17 interests of the agricultural leaseholders to ensure the
18 continuation of agricultural use for those lands."

19 **PART III**

20 SECTION 5. The purpose of this part is to comply with
21 article XI, sections 3, 4, and 10 of the state constitution,
22 relating to the protection of agricultural lands, public land



1 banking, and the promotion of farm ownership and diversified
2 agriculture, by establishing a process to ensure that certain
3 agricultural lands on the island of Oahu and owned by the
4 Galbraith Estate:

- 5 (1) Remain available for agricultural use;
- 6 (2) Are properly managed to ensure their continued
7 economic viability while being used for agriculture;
8 and
- 9 (3) Are managed in a manner that is sensitive to and
10 consistent with the needs of farmers in the Waialua
11 area.

12 The legislature finds that this part is in accordance with
13 article XI, sections 3, 4, and 10 of the state constitution, is
14 in the public interest, and will preserve agricultural
15 activities in the area and a lifestyle that benefits the
16 community at large.

17 SECTION 6. Chapter 163D, Hawaii Revised Statutes, is
18 amended by adding three new sections to be appropriately
19 designated and to read as follows:

20 "§163D-A Acquisitions of important agricultural lands
21 authorized by the legislature. (a) The legislature may
22 authorize the corporation to acquire agricultural lands for the



1 protection of agricultural lands, public land banking, or the
2 promotion of farm ownership and diversified agriculture.

3 (b) The acquisition shall be authorized by a bill enacted
4 into law and shall contain:

5 (1) A statement of the value of the interest in land as a
6 resource to the State;

7 (2) A description of the specific parcel of land or
8 agricultural easement proposed to be acquired;

9 (3) The name of the owner of the property; and

10 (4) The estimated costs of acquiring the interest in the
11 land.

12 (c) The landowner shall receive payment for the interest
13 in the land in a lump sum, through an installment purchase
14 agreement as determined pursuant to section 163D-B, or from
15 revenues derived from the issuance of revenue bonds pursuant to
16 section 163D-9.

17 **§163D-B Acquisitions; payment.** (a) If the landowner
18 agrees to the sale of the interest in lands pursuant to section
19 163D-A, the landowner and the corporation shall agree on whether
20 the landowner shall receive payment for the interest in a lump
21 sum or through an installment purchase agreement pursuant to
22 section 163D-C.



1 (b) The corporation may make payments from moneys
2 appropriated by the legislature.

3 **§163D-C Installment purchase agreements; interest payment.**

4 (a) The legislature may authorize the corporation to negotiate
5 installment purchase agreements for the acquisition of specific
6 parcels of land for the protection of agricultural lands, public
7 land banking, or the promotion of farm ownership and diversified
8 agriculture. The installment purchase agreements shall be
9 structured pursuant to the requirements of the Internal Revenue
10 Code of 1986, as amended, to defer recognition of capital gain
11 until all of the purchase price is paid. The agreement shall
12 include provisions for the periodic payment of a portion of the
13 purchase price with the remainder of the purchase price paid at
14 the end of the term of the agreement. The legislature shall
15 authorize the purchase of United States Treasury zero coupon
16 bonds for the installment purchase agreement with a maturity
17 date equal to the term of the agreement.

18 (b) The interest rate paid on the installment purchase
19 agreement shall be not less than the interest rate on the zero
20 coupon bonds at the closing of the agreement or eight per cent,
21 whichever is higher.



1 262), tax map keys 6-5-002:10, 6-5-002:25, 6-5-002:26,
2 7-1-001:01, 7-1-001:02, 7-1-001:03, 7-1-001:05, 7-1-001:06,
3 7-1-001:07, 7-1-001:08, 7-1-001:12, 7-1-001:13, 7-1-001:17,
4 7-1-001:20, 7-1-001:21, 7-1-001:022, 7-1-001:23, 7-1-001:24,
5 7-1-001:25, 7-1-001:26, 7-1-001:27, 7-1-001:29, 7-1-001:32, and
6 any other lands owned by the Galbraith Estate.

7 (b) The legislature finds that the lands identified in
8 subsection (a) contain soil qualities and growing conditions
9 that support agricultural production of food, fiber, or fuel and
10 energy producing crops and have sufficient quantities of water
11 to support viable agricultural production and to meet the
12 requirements for the protection of agricultural lands, public
13 land banking, or the promotion of farm ownership and diversified
14 agriculture.

15 (c) The agribusiness development corporation shall work
16 with a negotiating team to review and make recommendations
17 regarding any potential transactions. The negotiating team
18 shall consist of a representative appointed by each of the
19 following persons or entities:

- 20 (1) The president of the senate;
- 21 (2) The speaker of the house of representatives;
- 22 (3) The department of agriculture; and



1 (4) Other relevant partners.

2 SECTION 9. If an agreement to acquire the property
3 identified in section 8 of this Act is not reached within a
4 reasonable time as determined by the department of land and
5 natural resources, the department of land and natural resources
6 shall exercise its power of eminent domain to acquire the
7 property. For purposes of this Act, condemnation of the
8 property shall not be subject to legislative disapproval;
9 provided that the cost of acquiring the lands described in this
10 Act does not exceed the amount of funds appropriated or
11 authorized pursuant to section 10 of this Act and the
12 Supplemental Appropriations Act of 2008.

13 SECTION 10. Any moneys made available by appropriation
14 through the Supplemental Appropriations Act of 2008, whether
15 through general funds, revenues derived from the issuance of
16 general obligation bonds, or other sources shall be expended to
17 the extent necessary by the agribusiness development corporation
18 for the purpose of purchasing agricultural lands located on the
19 island of Oahu and owned by the Galbraith Estate (Land Court
20 Application 262).

21 SECTION 11. In codifying this Act, the revisor of statutes
22 shall insert the appropriate number of this Act in section 4 and



1 in codifying the new sections in section 6 of this Act, the
2 revisor of statutes shall substitute appropriate section numbers
3 for the letters used in designating the new sections in this
4 Act.

5 SECTION 12. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 13. This Act shall take effect on July 1, 2008.

APPROVED this day of , 2008

GOVERNOR OF THE STATE OF HAWAII

