



GOV. MSG. NO. 841

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 15, 2009

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

Dear Madam President and Members of the Senate:

I am transmitting herewith HB975 HD1 SD1 CD1, without my approval, and with the statement of objections relating to the measure.

HB975 HD1 SD1 CD1

A BILL FOR AN ACT
RELATING TO AGRICULTURAL WATER
SYSTEMS.

Sincerely,



LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 15, 2009

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 975

Honorable Members
Twenty-Fifth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 975, entitled "A Bill for an Act Relating to Agricultural Water Systems."

The purpose of this bill is to allow the Agricultural Development Corporation to accept agricultural water systems as a gift without gubernatorial oversight and without going through the standard prescribed county subdivision requirements.

The Agricultural Development Corporation already has the authority to acquire agricultural water systems pursuant to the requirements of Chapter 163D, Hawaii Revised Statutes. However, this bill raises serious liability and home rule issues that go beyond the current authority of the Corporation.

This proposed legislation allows the owner of a water system to transfer that system to the State after they have completed a metes and bounds survey, but without executing the process of a formal subdivision as required by the counties. Failure to follow subdivision ordinances will mean the parcel being transferred, as well as the balance of the parcel not transferred, will not be formally recognized by the county. The absence of records will hinder the ability of the counties to issue building and related permits, as well as ensure that the parcel has adequate access for fire protection and police purposes, is not prone to environmental hazards, and does not

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contain other features that can affect the surrounding community and adjoining property owners. For these reasons, the counties objected to this legislation.

The bill is silent as to the liabilities the State will be incurring upon acceptance of a gifted agricultural waterway. Many of these systems were built at the beginning of the previous century and require major repairs and renovations to their spillways, drains, flooding outlets, and ditch beds. To shift these responsibilities to the State, without accompanying resources, imposes upon the State significant costs, as well as exposes the State to liabilities should operational hazards occur with these ditches. A study of the Lake Wilson water system found, for example, that operational conditions of the dam and spillway could impose costs of \$6-8 million on State residents.

The Administration recognizes the role that water pays in the success and sustainability of agricultural operations in Hawaii. We also recognize the important role the Agricultural Development Corporation plays in operating a limited number of agricultural water systems. However, to require the State to accept additional systems without adequate protections and by circumventing the counties and the land management procedures they have in place is not prudent public policy and does not work to the benefit of the parties involved.

For the foregoing reasons, I am returning House Bill No. 975 without my approval.

Respectfully,



LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO AGRICULTURAL WATER SYSTEMS.

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

1 SECTION 1. Chapter 163D, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§163D- Agricultural water systems; acquisition. (a)

5 The corporation may acquire or contract to acquire by grant,
6 purchase, or gift the real, personal, or mixed property
7 comprising an agricultural water system to provide water for
8 irrigation of agricultural lands.

9 (b) The owner of an agricultural water system to be
10 acquired pursuant to subsection (a) shall provide a description
11 of the system sufficient to identify the property being
12 acquired, including a map of the land and description of the
13 metes and bounds and other information required for recording
14 under chapter 502. Conveyance of agricultural water system
15 property to the corporation shall be exempt from county
16 subdivision requirements; provided that no additional lots of
17 record are created."



1 SECTION 2. Section 163D-4, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Except as otherwise limited by this chapter, the
4 corporation may:

- 5 (1) Sue and be sued;
- 6 (2) Have a seal and alter the same at its pleasure;
- 7 (3) Make and alter bylaws for its organization and
8 internal management;
- 9 (4) Adopt rules under chapter 91 necessary to effectuate
10 this chapter in connection with its projects,
11 operations, and properties;
- 12 (5) Make and execute contracts and all other instruments
13 necessary or convenient for the exercise of its powers
14 and functions under this chapter;
- 15 (6) Carry out surveys, research, and investigations into
16 technological, business, financial, consumer trends,
17 and other aspects of agricultural production in the
18 national and international community;
- 19 (7) Acquire or contract to acquire by grant, ~~[or]~~
20 purchase, or gift any real, personal, or mixed
21 property or any interest therein for its immediate or
22 future use for the purposes of this chapter; own,



1 hold, improve, and rehabilitate any real, personal, or
2 mixed property acquired, and sell, assign, exchange,
3 transfer, convey, lease, or otherwise dispose of, or
4 encumber the same;

5 (8) By itself, or in partnership with qualified persons,
6 acquire, construct, reconstruct, rehabilitate,
7 improve, alter, or repair any infrastructure or
8 accessory facilities in connection with any project;
9 own, hold, sell, assign, transfer, convey, exchange,
10 lease, or otherwise dispose of, or encumber any
11 project;

12 (9) In cooperation with the department of agriculture,
13 pursuant to chapter 167, or otherwise through direct
14 investment or coventure with a professional investor
15 or enterprise or any other person, or otherwise, to
16 acquire, construct, operate, and maintain water
17 facilities for conveying, distributing, and
18 transmitting water for irrigation and agricultural
19 uses at rates or charges determined by the
20 corporation; provided that:



1 (A) This chapter shall not be construed to permit or
2 allow the department of agriculture or any
3 agribusiness development corporation to:
4 (i) Amend or modify rights or entitlements to
5 water as provided for by article XI, section
6 7, of the Hawaii Constitution [~~of the State~~
7 ~~of Hawaii~~], or the Hawaiian Homes Commission
8 Act, 1920, as amended, and chapter 168;
9 (ii) Diminish or abridge the traditional and
10 customary rights of ahupua'a tenants who
11 inhabited the Hawaiian [~~Islands~~] islands
12 prior to 1778 under sections 1-1 and 7-1;
13 and
14 (iii) Impair, abridge, or terminate the legal
15 rights or interests to water and its uses,
16 whether by lease, easement, or other means,
17 [~~which~~] that are possessed or held by
18 organizations whose primary purpose is to
19 benefit people of Hawaiian ancestry; [~~and~~]
20 and



- 1 (B) All usage of water shall be in accordance with
2 chapter [+]174C[+] and other applicable laws in
3 the [~~State,~~] state;
- 4 (10) Assist agricultural enterprises by conducting detailed
5 marketing analysis and developing marketing and
6 promotional strategies to strengthen the position of
7 those enterprises and to better exploit local,
8 national, and international markets;
- 9 (11) Carry out specialized programs designed to develop new
10 markets for Hawaii agricultural products;
- 11 (12) Receive, examine, and determine the acceptability of
12 applications of qualified persons for allowances or
13 grants for the development of new crops and
14 agricultural products, the expansion of established
15 agricultural enterprises, and the altering of existing
16 agricultural enterprises;
- 17 (13) Coordinate its activities with any federal or state
18 farm credit programs;
- 19 (14) Grant options to purchase any project or to renew any
20 lease entered into by it in connection with any of its
21 projects, on the terms and conditions it deems
22 advisable;



- 1 (15) Provide advisory, consultative, training, and
2 educational services, technical assistance, and advice
3 to any person, partnership, or corporation, either
4 public or private, [~~in order~~] to carry out the
5 purposes of this chapter, and engage the services of
6 consultants on a contractual basis for rendering
7 professional and technical assistance and advice;
- 8 (16) Procure insurance against any loss in connection with
9 its property and other assets and operations in [~~such~~]
10 amounts and from [~~such~~] insurers as it deems
11 desirable;
- 12 (17) Accept gifts or grants in any form from any public
13 agency or any other source; and
- 14 (18) Do all things necessary or proper to carry out the
15 purposes of this chapter."

16 SECTION 3. Section 484-3, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) Unless the method of disposition is adopted for the
19 purpose of evasion of this chapter, or unless the subdivider
20 files in writing with the director that this chapter shall apply
21 to the subdivider's subdivision, this chapter shall not apply to
22 offers or dispositions of an interest in land:



- 1 (1) By a purchaser of subdivided lands for the purchaser's
2 own account in a single or isolated transaction;
- 3 (2) If fewer than twenty separate lots, parcels, units, or
4 interests in subdivided lands are offered by a person
5 in a period of twelve months;
- 6 (3) Where the division of lands is a leasehold
7 agricultural lot within state agricultural districts
8 on which no dwelling structures are constructed as
9 provided in section 205-4.5(f);
- 10 (4) Where real, personal, or mixed property comprising an
11 agricultural water system providing water for
12 irrigation of agricultural lands is to be conveyed to
13 the agribusiness development corporation;
- 14 [~~4~~] (5) On which there is a residential, commercial, or
15 industrial building, or as to which there is a legal
16 obligation on the part of the seller to construct a
17 building on the land within two years from the date of
18 disposition; provided that the obligation to construct
19 shall not be, directly or indirectly, transferred to
20 or otherwise imposed upon the purchaser;
- 21 [~~5~~] (6) To persons who are engaged in, and are duly
22 licensed to engage in, the business of construction of



1 buildings for resale, or to persons who acquire an
2 interest in subdivided lands for the purpose of
3 engaging, and do engage in, and are duly licensed to
4 engage in, the business of construction of buildings
5 for resale;

6 [~~6~~] (7) Pursuant to court order;

7 [~~7~~] (8) By any government or government agency;

8 [~~8~~] (9) As cemetery lots or interests;

9 [~~9~~] (10) Registered as a condominium property regime
10 pursuant to chapter 514A or 514B; or

11 [~~10~~] (11) Registered as a time share plan pursuant to
12 chapter 514E."

13 SECTION 4. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 5. This Act shall take effect upon its approval.

