

**"CHAPTER 163D
AGRIBUSINESS DEVELOPMENT CORPORATION**

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"[PART I. GENERAL PROVISIONS]

Note

Part designation added by revisor.

[\$163D-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 fifty million 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. [L 1994, c 264, pt of §1]

" **[\$163D-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.

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

"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.

"Value-added" means any activity that increases, by means of processing or any other means, the value of raw agricultural materials. [L 1994, c 264, pt of §1]

" **§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 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, 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, through its executive director, may appoint officers, agents, and employees; prescribe their duties and qualifications; and fix their salaries, without regard to chapter 76. [L 1994, c 264, pt of §1; am L 1998, c 111, §5 and c 176, §5; am L 1999, c 117, §§1, 3, 6(1); am L 2000, c 253, §150; am L 2001, c 213, §§2, 3; am L 2003, c 91, §§1 to 3; am L 2004, c 29, §2]

Attorney General Opinions

Subsection (b) is constitutional, with regard to the use of the phrase "appointed and qualified" to describe when a successor's appointment terminates a holdover member's position. Att. Gen. Op. 16-3.

" **§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) 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;
 - (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) 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. [L 1994, c 264, pt of §1; am L 1999, c 117, §2]

" **[\$163D-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 163D-19. [L 1994, c 264, pt of §1]

" **§163D-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 414 or chapter 414D; provided that the organization of a subsidiary corporation shall not adversely affect the federal tax status of the interest on any bonds issued to finance any project or project facility. The resolution shall prescribe the purposes for which the subsidiary corporation is established. The subsidiary corporation shall remain a subsidiary of the corporation as long as more than one-half of its voting shares are owned or held by

the corporation, or a majority of its directors are designated by the corporation; provided that the corporation shall not convey or otherwise dispose of any subsidiary corporation or surrender the right to designate a majority of the directors of any subsidiary corporation if the sale or surrender has an adverse affect on the federal tax status of the interest on any bonds issued to finance any project or project facility. The subsidiary corporation may be operated, maintained, and enhanced at the full discretion of the corporation or its designee.

(b) If the corporation acquires the assets of a private or other corporation, then, notwithstanding any law to the contrary:

- (1) Neither the corporation nor any subsidiary corporation vested with the assets shall be subject to chapter 91 with respect to the assets;
- (2) Employees retained to operate the assets shall not be subject to chapter 76;
- (3) Assets constituting real property interest shall not be subject to chapter 171;
- (4) No investment, loan, or use of funds by the corporation or a subsidiary corporation vested with the assets shall be subject to chapter 42F or 103; and
- (5) Neither the corporation nor a subsidiary corporation vested with the assets shall constitute a public utility or be subject to the jurisdiction of the public utilities commission under chapter 269.

(c) The corporation may transfer to any subsidiary corporation any moneys, 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. [L 1994, c 264, pt of §1; am L 1998, c 111, §6; am L 2000, c 253, §150; am L 2002, c 40, §4; am L 2004, c 216, §18]

" **§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 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 corporation may purchase, accept, and maintain permanent conservation easements, or transfer these easements to a qualified land trust in accordance with the federal Natural Resources Conservation Service farm and ranch lands protection program.

(e) Notwithstanding any provision of this chapter to the contrary, when leasing corporation-controlled agricultural land, the corporation may contract with a financial institution chartered under chapter 412 or a federal financial institution, as defined under section 412:1-109, that transacts business in this State to provide lease management services. For the purposes of this subsection, "lease management services" includes the collection of lease rent and any other moneys owed to the corporation related to the lease of agricultural land under the corporation's control.

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

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

(h) Any undertaking by the corporation pursuant to this chapter shall be with the express written consent of the landowner or landowners directly affected. [L 1994, c 264, pt of §1; am L 2008, c 234, §2]

" **§163D-8 Project facility program.** (a) The corporation may develop a project to identify necessary project facilities within a project area.

(b) Unless and except as otherwise provided by law, 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) Unless and except as otherwise provided by law, the corporation may adopt rules pursuant to chapter 91 to establish the method of undertaking and financing project facilities in a project area.

(d) Unless and except as otherwise provided by law, 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 163D-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. [L 1994, c 264, pt of §1; am L 1998, c 111, §7]

" **[§163D-8.5 Approval of projects, plans, and programs.]**
All agricultural projects, agricultural development plans, and project facility programs developed by the corporation must be approved by the board of agriculture before implementation. [L 1994, c 264, §7]

" **§163D-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; acquiring agricultural lands through purchase to sustain and preserve viable agricultural enterprises within a contiguous geographic area; or acquiring agricultural lands for the protection of agricultural lands, public land banking, or the promotion of farm ownership and diversified agriculture.

(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. [L 1994, c 264, pt of §1; am L 2008, c 234, §7]

" **[\$163D-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. [L 1994, c 264, pt of §1]

" **[\$163D-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.
[L 1994, c 264, pt of §1]

" **[\$163D-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. [L 1994, c 264, pt of §1]

" **[\$163D-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 [163D-17], 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. [L 1994, c 264, pt of §1]

" **[§163D-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 [163D-13], 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. [L 1994, c 264, pt of §1]

" **[§163D-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. [L 1994, c 264, pt of §1]

" **§163D-15.5 Waiahole water system revolving fund.** (a) There is established within the state treasury a revolving fund to be known as the Waiahole water system revolving fund, which shall be administered by the corporation and into which shall be deposited all revenues from assessments, tolls, appropriations made by the legislature to the fund, interest on investments attributable to the Waiahole water system, and other income, receipts, and revenues received by the corporation from the operation of the Waiahole water system. Moneys in the Waiahole water system revolving fund shall be expended by the corporation for the acquisition, planning, design, improvement, construction, equipping, furnishing, administering, operating, and maintaining of the Waiahole water system and any other purpose deemed necessary by the corporation for the purpose of acquiring and operating the Waiahole water system. The corporation may utilize contributions of money, labor, materials, and property that may be otherwise available from any person or instrumentality.

(b) No expenditure, use, or transfer of funds from the Waiahole water system revolving fund by the corporation shall be subject to chapter 42F or 103. [L 1998, c 111, §3; am L 2004, c 216, §19]

Note

Acquisition of Waiahole water system shall not affect the powers and authority of the commission on water resource management or its powers to modify water allocations. L 1998, c 111, §15.

" **§163D-15.6 Commitment and preservation of agricultural leases.** (a) The agribusiness development corporation shall work toward obtaining commitments from landowners in the leeward and central districts of Oahu that their agricultural leases shall be for a duration of twenty or more years and shall not be amended or revoked to allow for a nonagricultural use of the land; provided that for lands in central Oahu acquired under Act 234, Session Laws of Hawaii 2008, the agricultural leases shall be for no more than fifty-five years.

(b) To further ensure the preservation of agriculture in the leeward and central districts of Oahu, the agribusiness development corporation shall monitor the agricultural leases of lands using the water from the Waiahole water system. In the event of any proposed amendment or revocation of any lease, the corporation shall do all things within its powers under this chapter to protect and defend the interests of the agricultural leaseholders to ensure the continuation of agricultural use for those lands. [L 1998, c 111, §16; am L 2008, c 234, §4]

" **[§163D-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. [L 1994, c 264, pt of §1]

" **§163D-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 to the fund 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 42F. [L 1994, c 264, pt of §1; am L 1997, c 190, §6; am L 1998, c 111, §8; am L 2004, c 216, §20]

" **[\$163D-18] Exemption from taxation.** The corporation shall not be required to pay state taxes of any kind. [L 1994, c 264, pt of §1]

" **[\$163D-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. [L 1994, c 264, pt of §1]

"[PART II. ACQUISITION OF IMPORTANT AGRICULTURAL LANDS]

Note

Part designation added by revisor.

Cross References

Acquisition of resource value lands, see chapter 173A.
Legacy land conservation commission, see §§173A-2.4 to 2.6.

[\$163D-31] Acquisitions of important agricultural lands authorized by the legislature. (a) The legislature may authorize the corporation to acquire agricultural lands for the protection of agricultural lands, public land banking, or the promotion of farm ownership and diversified agriculture.

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

- (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.

(c) The landowner shall receive payment for the interest in the land in a lump sum, through an installment purchase agreement as determined pursuant to section 163D-32, or from revenues derived from the issuance of revenue bonds pursuant to section 163D-9. [L 2008, c 234, pt of §6]

Note

Acquisition of certain agricultural lands owned by the Galbraith Estate; department of land and natural resources powers, etc. L 2008, c 234, §§8 to 10.

" **[\$163D-32] Acquisitions; payment.** (a) If the landowner agrees to the sale of the interest in lands pursuant to section 163D-31, the landowner and the corporation shall agree on whether the landowner shall receive payment for the interest in a lump sum or through an installment purchase agreement pursuant to section 163D-33.

(b) The corporation may make payments from moneys appropriated by the legislature. [L 2008, c 234, pt of §6]

" **[\$163D-33] Installment purchase agreements; interest payment.** (a) The legislature may authorize the corporation to negotiate installment purchase agreements for the acquisition of specific parcels of land for the protection of agricultural lands, public land banking, or the promotion of farm ownership and diversified agriculture. The installment purchase agreements shall be structured pursuant to the requirements of the Internal Revenue Code of 1986, as amended, to defer recognition of capital gain until all of the purchase price is paid. The agreement shall include provisions for the periodic payment of a portion of the purchase price with the remainder of the purchase price paid at the end of the term of the agreement. The legislature shall authorize the purchase of United States Treasury zero coupon bonds for the installment purchase agreement with a maturity date equal to the term of the agreement.

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

(c) The corporation shall make semi-annual interest payments on the outstanding balance of the installment purchase agreement purchase price. [L 2008, c 234, pt of §6]