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# A BILL FOR AN ACT

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RELATING TO THE AGRIBUSINESS DEVELOPMENT CORPORATION.

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

1           SECTION 1. The legislature finds that the State's  
2 long-term food security and agricultural resilience depend upon  
3 the availability of land and water resources that can support  
4 diversified, sustainable agricultural production. When the  
5 agribusiness development corporation (corporation) was  
6 established in 1994 by Act 264, Session Laws of Hawaii 1994, and  
7 codified as chapter 163D, Hawaii Revised Statutes, the  
8 legislature envisioned that the State's transition from  
9 plantation agriculture would release approximately seventy-five  
10 thousand acres of agricultural lands and fifty million gallons  
11 of irrigation water per day for reuse by diversified  
12 agriculture.

13           However, three decades later, the full potential of these  
14 resources has not been realized. The consolidation of  
15 agricultural parcels, rehabilitation of irrigation systems, and  
16 establishment of modern agricultural infrastructure remain  
17 incomplete due to complex land ownership patterns, dormant



1 assets, and inadequate coordination among state agencies. The  
2 lack of a clear mechanism for the State to assemble  
3 strategically located agricultural lands and critical  
4 infrastructure has impeded Hawaii's ability to achieve food  
5 self-sufficiency and reduce dependence on imported foods.

6 The legislature further finds that the corporation was  
7 created to facilitate the conversion of former plantation lands  
8 and water systems to diversified agricultural use, coordinate  
9 the development of agricultural infrastructure, and assist local  
10 producers in overcoming structural barriers to agricultural  
11 growth. Yet, despite its broad authority to acquire and manage  
12 lands, the corporation presently lacks explicit statutory  
13 authority to acquire lands or easements by condemnation for  
14 public agricultural purposes, even in situations where voluntary  
15 acquisition is impracticable or contrary to the public interest.

16 The legislature recognizes that the power of eminent domain  
17 is an extraordinary authority that must be exercised only for a  
18 demonstrable public use, subject to the constitutional  
19 guarantees of just compensation and due process, and with full  
20 regard for the State's obligations under article XI, section 7,  
21 of the Hawaii State Constitution to protect, control, and



1 regulate the use of the State's water resources for the benefit  
2 of its people. The legislature further acknowledges that lands  
3 and water systems are integral to Native Hawaiian customary and  
4 traditional rights, and to the rights of beneficiaries under the  
5 Hawaiian Homes Commission Act of 1920.

6 The legislative intent of the authority established by this  
7 Act is not to promote private commercial gain, nor to displace  
8 existing public uses of land without compelling justification  
9 and legislative review. Rather, the legislature seeks to  
10 restore coherence and capacity to the State's agricultural  
11 infrastructure policy, enabling the public sector to acquire and  
12 manage essential agricultural resources for the long-term  
13 benefit of the State's people, environment, and economy.

14 Accordingly, the purpose of this Act is to authorize the  
15 agribusiness development corporation to acquire real property or  
16 any interest therein by condemnation, pursuant to chapter 101,  
17 Hawaii Revised Statutes, solely for legitimate public  
18 agricultural uses, such as the establishment or preservation of  
19 irrigation systems, reservoirs, processing and distribution  
20 facilities, and other infrastructure that directly supports  
21 local agricultural producers and food-security initiatives.



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

"(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) 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,



1 convey, lease, or otherwise dispose of, or encumber  
2 the same;

3 (7) Acquire by condemnation pursuant to chapter 101 any  
4 real property, including fixtures and improvements, or  
5 any interest in real property, for the purposes of  
6 this chapter; provided that the corporation makes a  
7 determination that the property is necessary for the  
8 corporation's immediate or future use.

9 Notwithstanding any other law to the contrary, any  
10 real property acquired by condemnation shall not  
11 thereafter be transferred or taken for any other  
12 public use without the consent of the corporation;

13 [~~7~~] (8) By itself, or in partnership with qualified  
14 persons, acquire, construct, reconstruct,  
15 rehabilitate, improve, alter, or repair any  
16 infrastructure or accessory facilities in connection  
17 with any project; own, hold, sell, assign, transfer,  
18 convey, exchange, lease, or otherwise dispose of, or  
19 encumber any project;

20 [~~8~~] (9) In cooperation with the department of agriculture  
21 and biosecurity, pursuant to chapter 167, or otherwise



1 through direct investment or coventure with a  
2 professional investor or enterprise or any other  
3 person, or otherwise, to acquire, construct, operate,  
4 and maintain water facilities for conveying,  
5 distributing, and transmitting water for irrigation  
6 and agricultural uses at rates or charges determined  
7 by the corporation; provided that:

8 (A) This chapter shall not be construed to permit or  
9 allow the department of agriculture and  
10 biosecurity or ~~[any]~~ agribusiness development  
11 corporation to:

12 (i) Amend or modify rights or entitlements to  
13 water as provided for by article XI, section  
14 7, of the Constitution of the State of  
15 Hawaii, or the Hawaiian Homes Commission  
16 Act, 1920, as amended, and chapter 168;

17 (ii) Diminish or abridge the traditional and  
18 customary rights of ahupua'a tenants who  
19 inhabited the Hawaiian Islands ~~[prior to]~~  
20 before 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~~ that 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;

~~[(9)]~~ (10) 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;

~~[(10)]~~ (11) Coordinate its activities with any federal or state farm credit programs;

~~[(11)]~~ (12) 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;



1        [~~(12)~~] (13) 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 purposes  
5                    of this chapter, and engage the services of  
6                    consultants on a contractual basis for rendering  
7                    professional and technical assistance and advice;

8        [~~(13)~~] (14) Procure insurance against any loss in connection  
9                    with its property and other assets and operations in  
10                    [~~such~~] amounts and from [~~such~~] insurers as it deems  
11                    desirable;

12        [~~(14)~~] (15) Accept gifts or grants in any form from any  
13                    public agency or any other source; and

14        [~~(15)~~] (16) Do all things necessary or proper to carry out  
15                    the purposes of this chapter."

16                SECTION 3. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.





# S.B. NO. 2169

1 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: *Keith M. Porter*



# S.B. NO. 2169

**Report Title:**

ADC; Real Property; Condemnation; Eminent Domain; Public Use

**Description:**

Authorizes the Agribusiness Development Corporation to acquire by condemnation any real property or interest in real property, under certain conditions. Prohibits any real property acquired by the Corporation by condemnation from subsequently being transferred or taken for any other public use without the Corporation's consent.

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