

ACT 111

H.B. NO. 2990

A Bill for an Act Relating to Agriculture.

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

PART I.

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with article VII, section 9, of the Constitution of the State of Hawaii.

SECTION 2. Water belongs to the people and the State should be the steward in managing and ensuring the allocation of this resource for the highest and best use in the public interest. The legislature finds that it is important that we protect our natural environment by ensuring adequate instream flow of water. The legislature also finds that since agriculture, as one of the State's most important industries, is an essential component of Hawaii's economic base, assurance of an adequate water supply is critical to the continued development of diversified agriculture on the island of Oahu and is vital to the State's efforts to revitalize the economy.

The legislature declares that it is not its intent to displace existing small farming enterprises which presently supply the local market with farm products. Rather, the legislature believes that the acquisition of the Waiahole water system will help to expand opportunities for agricultural endeavors, thereby facilitating the development of viable agricultural exports while concurrently reducing the State's dependency on imported agricultural products.

The purpose of this Act is to provide the necessary statutory authorization and appropriations to allow the agribusiness development corporation to acquire, administer, operate, maintain, and improve the Waiahole water system to ensure the continuation and expansion of diversified agriculture on the island of Oahu and protect the Pearl Harbor aquifer.

The legislature finds and declares that the acquisition, administration, operation, maintenance, and improvement of the Waiahole water system is in the public interest and will serve the public health, safety, and welfare of the people of the State.

PART II.

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

**“§163D- 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 42D, 42F, 103, or 103D.”

SECTION 4. Chapter 343, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§343- Waiahole water system; exemption.** The purchase of the assets of the Waiahole water system shall be specifically exempt from the requirements of chapter 343.”

SECTION 5. Section 163D-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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.”

SECTION 6. Section 163D-6, Hawaii Revised Statutes, is amended to read as follows:

**“[§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 415 or chapter 415B[.]; 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 [be a subsidiary corporation] remain a subsidiary of the corporation as long as more than [half] 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 chapters 76 and 77;

- (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 42D, 42F, 103, or 103D; 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.

[ (b) ] (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.”

SECTION 7. Section 163D-8, Hawaii Revised Statutes, is amended by amending subsections (b), (c), and (d) to read as follows:

“(b) [Whenever] 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) [The] 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) [Bonds] 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.”

SECTION 8. Section 163D-17, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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.”

PART III.

SECTION 9. Declaration of findings with respect to the general obligation bonds authorized by this Act. Pursuant to the clause in section 13 of article VII of the State Constitution which states: "Effective July 1, 1980, the legislature shall include a declaration of findings in every general law authorizing the issuance of general obligation bonds that the total amount of principal and interest, estimated for such bonds and for all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance," the legislature finds and declares as follows:

- (1) Limitation on general obligation debt. The debt limit of the State is set forth in section 13 of article VII of the State Constitution, which states in part: "General obligation bonds may be issued by the State; provided that such bonds at the time of issuance would not cause the total amount of principal and interest payable in the current or any future fiscal year, whichever is higher, on the bonds and on all outstanding general obligation bonds to exceed: a sum equal to twenty per cent of the average of the general fund revenues of the State in the three fiscal years immediately preceding the issuance until June 30, 1982; and thereafter, a sum equal to eighteen and one-half per cent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance." Article VII, section 13, also provides that in determining the power of the State to issue general obligation bonds, certain bonds are excludable, including "reimbursable general obligation bonds issued for a public undertaking, improvement or system but only to the extent that reimbursements to the general fund are in fact made from the net revenue, or net user tax receipts, or combination of both, as determined for the immediately preceding fiscal year" and bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor, but only to the extent the principal amount of the bonds does not exceed seven per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under said article VII, section 13.
- (2) Actual and estimated debt limits. The limits on principal and interest of general obligation bonds issued by the State, actual for fiscal year 1997-1998 and estimated for each fiscal year from 1998-1999 to 2000-2001, are as follows:

<u>Fiscal Year</u>	<u>Net General Fund Revenues</u>	<u>Debt Limit</u>
1994-1995	\$2,932,879,814	
1995-1996	\$3,136,543,568	
1996-1997	\$3,115,264,737	
1997-1998	\$3,081,838,000	\$566,389,101
1998-1999	\$3,097,393,000	\$575,574,855
1999-2000	\$3,123,869,000	\$573,160,570
2000-2001	(Not Applicable)	\$573,672,667

For fiscal years 1997-1998, 1998-1999, 1999-2000, and 2000-2001, respectively, the debt limits are derived by multiplying the average of the net general fund revenues for the three preceding fiscal years by eighteen and one-half per cent. The net general fund revenues for fiscal years 1994-1995, 1995-1996, and 1996-1997 are actual, as certified by

the director of finance in the Statement of the Debt Limit of the State of Hawaii as of July 1, 1997, dated November 26, 1997. The net general fund revenues for fiscal years 1997-1998 to 1999-2000 are estimates, based on general fund revenue estimates made on March 10, 1998, by the council on revenues, the body assigned by article VII, section 7, of the State Constitution to make such estimates, and based on estimates made by the department of budget and finance of those receipts which cannot be included as general fund revenues for the purpose of calculating the debt limit, all of which estimates the legislature finds to be reasonable.

- (3) Principal and interest on outstanding bonds applicable to the debt limit. (A) According to the department of budget and finance, the total amount of principal and interest on outstanding general obligation bonds, after the exclusions permitted by article VII, section 13, of the State Constitution, for determining the power of the State to issue general obligation bonds within the debt limit as of April 1, 1998, is as follows for fiscal year 1998-1999 to fiscal year 2004-2005:

Fiscal Year	Principal and Interest
1998-1999	\$344,173,243
1999-2000	\$336,848,486
2000-2001	\$335,404,470
2001-2002	\$350,902,266
2002-2003	\$394,565,388
2003-2004	\$350,375,491
2004-2005	\$345,284,497

The department of budget and finance further reports that the amount of principal and interest on outstanding bonds applicable to the debt limit generally continues to decline each year from fiscal year 2005-2006 to fiscal year 2017-2018 when the final installment of \$44,962,638 shall be due and payable. (B) The department of budget and finance further reports that the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$181,000,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to article VII, section 13, of the State Constitution.

- (4) Amount of authorized and unissued general obligation bonds and guaranties and proposed bonds and guaranties. (A) As calculated from the state comptroller's bond fund report as of February 28, 1998, adjusted for:
- (i) Appropriations to be funded with general obligation bonds and reimbursable general obligation bonds as provided in Act 328, Session Laws of Hawaii 1997 (General Appropriations Act of 1997), to be expended in fiscal year 1998-1999;
  - (ii) Appropriations to be funded by reimbursable general obligation bonds as provided in Act 222, Session Laws of Hawaii 1997 (Relating to Hawaii Hurricane Relief Fund Bonds), to be expended in the fiscal year 1998-1999;
  - (iii) Appropriations to be funded by general obligation bonds as provided in Act 155, Session Laws of Hawaii 1997 (the Judiciary Appropriations Act of 1997);

- (iv) The issuance of \$300,000,000 in general obligation bonds of 1998, Series CR; and
  - (v) House Bill No. 2790,<sup>1</sup> Relating to the Hawaii Community Development Authority, for \$19,000,000, the total amount of authorized but unissued general obligation bonds, is \$1,287,276,308. The amount of general obligation bonds proposed in this Act is \$9,700,000. The total amount of general obligation bonds previously authorized and unissued and the general obligation bonds proposed in this Act is \$1,296,976,308. (B) As reported by the department of budget and finance, the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$181,000,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to article VII, section 13, of the State Constitution.
- (5) Proposed general obligation bond issuance. As reported in the budget for fiscal years 1997-1998, 1998-1999, 1999-2000, and 2000-2001, the State proposes to issue \$200,000,000 during the remainder of fiscal year 1997-1998, \$400,000,000 during the first half of fiscal year 1998-1999, \$300,000,000 during the second half of fiscal year 1998-1999, and \$100,000,000 semiannually in each of fiscal years 1999-2000 and 2000-2001. It has been the practice of the State to issue twenty-year serial bonds with principal repayments beginning the third year, and interest payments commencing six months from the date of issuance and being paid semiannually thereafter. As reported by the department of budget and finance, the bonds will be maturing in substantially equal annual installments of principal and interest. It is assumed that this practice will be applied to the bonds which are proposed to be issued.
- (6) Sufficiency of proposed general obligation bond issuance to meet the requirements of authorized and unissued bonds, as adjusted, and bonds proposed in this Act. From the schedule reported in paragraph (5), the total amount of general obligation bonds which the State proposes to issue during fiscal years 1997-1998 to 1999-2000 is \$1,100,000,000. An additional \$200,000,000 is proposed to be issued in fiscal year 2000-2001. The total amount of \$1,100,000,000 which is proposed to be issued through fiscal year 1999-2000 is sufficient to meet the requirements of the authorized and unissued bonds, as adjusted, and the bonds authorized by this Act, the total amount of which is \$1,296,976,308, as reported in paragraph (4), except for \$196,976,308. It is assumed that the appropriations to which an additional \$196,976,308 in bond issuance needs to be applied will have been encumbered as of June 30, 2000. The \$200,000,000 which is proposed to be issued in fiscal year 2000-2001 will be sufficient to meet the requirements of the June 30, 2000, encumbrances in the amount of \$196,976,308. The amount of assumed encumbrances as of June 30, 2000, is reasonable and conservative, based upon an inspection of June 30 encumbrances of the general obligation bond fund as reported by the state comptroller. Thus, taking into account the amount of previously authorized and unissued bonds and bonds proposed in this Act versus the amount of bonds which is proposed to be issued by June 30, 2000, and the amount of June 30, 2000, encumbrances versus the amount of bonds which is proposed to be issued in the fiscal year 2000-2001, the legislature finds that in the aggregate, the amount of bonds is sufficient to meet these requirements.

- (7) Bonds excludable in determining the power of the State to issue bonds. As noted in paragraph (1), certain bonds are excludable in determining the power of the State to issue general obligation bonds. (A) General obligation reimbursable bonds can be excluded under certain conditions. It is not possible to make a conclusive determination as to the amount of reimbursable bonds which are excludable from the amount of each proposed bond issued because:
- (i) It is not known exactly when projects for which reimbursable bonds have been authorized in prior acts and in this Act will be implemented and will require the application of proceeds from a particular bond issue; and
  - (ii) Not all reimbursable general obligation bonds may qualify for exclusion. However, the legislature notes that with respect to the principal and interest on outstanding general obligation bonds, as reported in this section, the average proportion of principal and interest which is excludable each year from calculation against the debt limit is 7.03 per cent for the ten years from fiscal year 1998-1999 to fiscal year 2007-2008. For the purpose of this declaration, the assumption is made that five per cent of each bond issue will be excludable from the debt limit, an assumption which the legislature finds to be reasonable and conservative. (B) Bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor can be excluded but only to the extent the principal amount of such guaranties does not exceed seven per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under subparagraph (A) of paragraph (7) and provided that the State shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State as provided by law. According to the department of budget and finance and the assumptions presented herein, the total principal amount of outstanding general obligation bonds and general obligation bonds proposed to be issued, which are not otherwise excluded under article VII, section 13, of the State Constitution for fiscal years 1997-1998, 1998-1999, 1999-2000, and 2000-2001 are as follows:

Fiscal year	Total amount of General Obligation Bonds not otherwise excluded by section 13 of article VII of the State Constitution
1997-1998	\$3,360,473,997
1998-1999	\$3,848,824,276
1999-2000	\$3,850,967,163
2000-2001	\$3,830,302,703

Based on the foregoing and based on the assumption that the full amount of a guaranty is immediately due and payable when the guaranty changes from a contingent liability to an actual liability, the aggregate principal amount of the portion of the outstanding guaranties and the guaranties proposed to be incurred, which does not exceed seven per cent of the average amount set forth in the last column of the above table and for which reserve funds have been or will have been

established as heretofore provided, can be excluded in determining the power of the State to issue general obligation bonds. As it is not possible to predict with a reasonable degree of certainty when a guaranty will change from a contingent liability to an actual liability, it is assumed in conformity with fiscal conservatism and prudence, that all guaranties not otherwise excluded pursuant to article VII, section 13, of the State Constitution will become due and payable in the same fiscal year in which the greatest amount of principal and interest on general obligation bonds, after exclusions, occurs. Thus, based on these assumptions and on the determination in paragraph (8), the aggregate amount of the portion of the outstanding guaranties, which must be included in determining the power of the State to issue general obligation bonds, is \$0.

- (8) Determination whether the debt limit will be exceeded at the time of issuance. From the foregoing and on the assumption that all of the bonds identified in paragraph (5) will be issued at an interest rate of 6.5 per cent, it can be determined from the following schedule that the bonds which are proposed to be issued, which include all authorized and unissued bonds previously authorized, as adjusted, general obligation bonds and instruments of indebtedness under which the State incurs a contingent liability as a guarantor authorized in this Act, will not cause the debt limit to be exceeded at the time of the issuance:

Time of Issuance and Amount to be Counted Against Debt Limit	Debt Limit at Time of Issuance	Greatest Amount and Year of Highest Principal and Interest on Bonds and Guaranties
Remainder FY 1997-1998		
\$190,000,000	\$566,389,101	\$412,776,638 (2002-2003)
1st half FY 1998-1999		
\$380,000,000	\$575,574,855	\$448,770,738 (2002-2003)
2nd half FY 1998-1999		
\$285,000,000	\$575,574,855	\$476,090,013 (2002-2003)
1st half FY 1999-2000		
\$95,000,000	\$573,160,570	\$485,093,163 (2002-2003)
2nd half FY 1999-2000		
\$95,000,000	\$573,160,570	\$494,197,713 (2002-2003)
1st half FY 2000-2001		
\$95,000,000	\$573,672,667	\$503,207,488 (2002-2003)
2nd half FY 2000-2001		
\$95,000,000	\$573,672,667	\$512,312,488 (2002-2003)

- (9) Overall and concluding finding. From the facts, estimates, and assumptions stated in this declaration of findings, the conclusion is reached that the total amount of principal and interest estimated for the general obligation bonds authorized in this Act, and for all bonds authorized and unissued, and calculated for all bonds issued and outstanding, and all guaranties, will not cause the debt limit to be exceeded at the time of issuance.

SECTION 10. The legislature finds the bases for the declaration of findings set forth in this Act reasonable. The assumptions set forth in this Act with respect to the principal amount of general obligation bonds which will be issued, the amount of



principal and interest on reimbursable general obligation bonds which are assumed to be excludable, and the assumed maturity structure shall not be deemed to be binding, it being the understanding of the legislature that these matters must remain subject to substantial flexibility.

**SECTION 11.** Authorization for issuance of general obligation bonds. General obligation bonds may be issued as provided by law in an amount that may be necessary to finance the project authorized herein, and designated to be financed from the general obligation bond fund with debt service cost to be paid from special funds; provided that the sum total of general obligation bonds issued shall not exceed \$9,700,000.

Any law to the contrary notwithstanding, general obligation bonds may be issued from time to time in accordance with section 39-16, Hawaii Revised Statutes, in a principal amount as may be required to refund any general obligation bonds of the State of Hawaii heretofore or hereafter issued pursuant to law.

#### **PART IV.**

**SECTION 12.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$550,000 or so much thereof as may be necessary for fiscal year 1998-1999 to be deposited into the Waiahole water system revolving fund for the operation and maintenance of the Waiahole water system.

**SECTION 13.** There is appropriated out of the Waiahole water system revolving fund the sum of \$550,000 or so much thereof as may be necessary for fiscal year 1998-1999 for the operation and maintenance of the Waiahole water system. The sum appropriated shall be expended by the agribusiness development corporation for the purposes of this Act.

**SECTION 14.** The director of finance is authorized to issue reimbursable general obligation bonds in the sum of \$9,700,000, or so much thereof as may be necessary, and the sum of \$8,500,000 in reimbursable general obligation bond fund or so much thereof as may be necessary, is appropriated for fiscal year 1997-1998 and the sum of \$1,200,000 in reimbursable general obligation bond funds or so much thereof as may be necessary is appropriated for fiscal year 1998-1999 to finance the cost of acquisition, planning, design, improvement, construction, equipping, furnishing, administration, and operation and maintenance of the Waiahole water system.

The Waiahole water system, upon acquisition of all of the assets thereof, shall be and constitute a public undertaking, improvement or system from which revenues may be derived for the payment of principal and interest on the reimbursable general obligation bonds authorized by this section as reimbursement to the general fund, and the corporation shall reimburse the general fund in accordance with a schedule determined by the director of finance, with the approval of the governor, as may be in the best interest of the State.

The sums appropriated by this section shall be expended by the agribusiness development corporation for the purposes of this section; provided that any unexpended or unencumbered balance of the moneys appropriated by this section as of the close of business on June 30, 2000, shall lapse.

#### **PART V.**

**SECTION 15.** Nothing in this Act shall be construed to affect the powers and authority of the commission on water resource management under chapter 174C, Hawaii Revised Statutes, nor its inherent power to modify any water allocations.

PART VI.

SECTION 16. (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 in order to allow for a nonagricultural use of such land.

(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 utilizing the water from the Waiahole water system. In the event of any proposed amendment or revocation of any such lease, the corporation shall do all things within its powers under chapter 163D, Hawaii Revised Statutes, to protect and defend the interests of the agricultural leaseholders to ensure the continuation of agricultural use for those lands.

SECTION 17. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 18. In printing this Act, the revisor of statutes shall substitute in section 9, the corresponding Act number for the bill identified therein.

SECTION 19. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 20. This Act shall take effect upon its approval.

(Approved June 5, 1998.)

Notes

1. Did not pass Legislature.
2. Edited pursuant to HRS §23G-16.5.