

ACT 176

H.B. NO. 3625

A Bill for an Act Relating to Government Reorganization.

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

PART I

SECTION 1. The legislature finds that agriculture, for decades, a mainstay of the economy of State, is undergoing a significant period of transition. The downsizing of the sugar and pineapple industries is presenting unprecedented opportunity for the conversion of agriculture into a dynamic growth industry. For the first time in over a century, approximately one hundred thousand acres of arable land are available for the cultivation of diversified crops. Accompanying the release of vast acreages of land by sugarcane and pineapple plantations is the release of over one hundred million gallons of water per day. Agriculture, which according to a recent study contributes \$2,900,000,000 billion to the economic output of the State, is assuming an important role in the economic revitalization of the State. The twin goals of a vital and robust agricultural industry—agricultural self-sufficiency and the development of strong export markets for a diversity of agricultural products—are attainable in the foreseeable future.

The legislature further finds that economic opportunity on the scale presented by this period of transition requires that the State, working in concert with the private sector, do its utmost to protect and preserve in a timely manner infrastructural assets related to agriculture. These assets include irrigation systems, roads, drainage systems, processing facilities, workshops, and warehouses.

The legislature further finds that the development of a global economy imposes a discipline on agricultural enterprises throughout the State—agribusiness corporations, medium and large agricultural operations, and small family farms—to adapt to this new economic reality. The challenge of government and business is to devise new productive uses that are based upon strategies developed from detailed marketing analyses and by monitoring local, national, and international opportunities.

The legislature further finds that an agricultural sector in transition requires aggressive and dynamic leadership for the promotion and development of agricultural enterprises to coordinate industry development, to facilitate investments and co-ventures in viable enterprises, and to provide industry-wide services relating to marketing, transportation, shipping, agricultural processing, safety, and labor unions.

The purpose of this Act is to ensure that the department of agriculture is equipped with adequate powers and resources to enable it to effectively take advantage of these current opportunities. The department 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, and enhancement of agricultural enterprises. Thus equipped, the department will be able to play an instrumental role in carrying out the federal mandate of section 5 (f) of The Admission Act, which stipulates that public lands held by the State of Hawaii as a public trust be used for, among other purposes, “the development of farm and home ownership on as widespread a basis as possible for the making of public improvements,” and the mandate of article XI, section 3, of the State Constitution which states: “The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the avail-

ability of agriculturally suitable lands. The legislature shall provide standards and criteria to accomplish the foregoing.”

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to Title IV to be appropriately designated and to read as follows:

**“CHAPTER
AQUACULTURE ADVISORY COUNCIL**

§ -1 Establishment of the Hawaii aquaculture advisory council; membership. There is established within the department of agriculture the Hawaii aquaculture advisory council, hereinafter referred to as the council, for the purpose of advising the board of agriculture on matters relating to aquaculture and the coordination of aquaculture activities among the various federal, state, and county agencies and private industry. The council shall be composed of thirteen voting members, and no more than ten nonvoting members, as follows:

- (1) Six shall be voting ex officio members to consist of the chairperson of the board of agriculture, the director of business, economic development, and tourism, the chairperson of the board of land and natural resources, the dean of the college of tropical agriculture and human resources, the director of the sea grant college program, and the chairperson of the Hawaiian homes commission; or their designated representatives;
- (2) Six shall be voting members representing state aquaculture producers and private aquaculture consultants and appointed by the governor pursuant to section 26-34;
- (3) One shall be a voting member appointed by the governor pursuant to section 26-34 and selected from the State’s aquaculture support industries such as feed manufacturing, marketing, and aquaculture equipment engineering; and
- (4) There shall be no more than ten nonvoting ex officio members to consist of the respective economic development officers or other officials as designated by the respective mayors of the city and county of Honolulu, the county of Hawaii, the county of Maui, and the county of Kauai, and may include the director of health, the director of the University of Hawaii’s Hawaii institute of marine biology, the director of the aquatic resources division of the department of land and natural resources, the state marine affairs advisor, the administrator of the office of Hawaiian affairs, and any other members deemed appropriate and appointed by the chairperson of the Hawaii aquaculture coordinating council.

The chairperson of the board of agriculture shall serve as the chairperson of the council. All members of the council shall serve without compensation but shall be entitled to reimbursement for necessary expenses while attending meetings and while in the discharge of duties and responsibilities of the council.

§ -2 Powers and duties. The council shall advise the board of agriculture on matters relating to aquaculture development to include:

- (1) Proposing and preparing programmatic aquaculture development plans and policies which, upon approval of the board, shall serve as a guide for aquaculture development in the State;
- (2) Coordinating, evaluating, and monitoring all state aquaculture activities as they relate to the federal and county governments, public and

- private organizations and commercial enterprises, and the implementation of state aquaculture policies and plans;
- (3) Monitoring and supporting, as appropriate, state agency and private sector requests for federal grants and technical assistance;
 - (4) Promoting communication between private industry and government agencies, including consideration of problems, permit requirements, land availability, and availability of technical and financial assistance;
 - (5) Developing programs and projects to promote optimal development of aquaculture, including the development of criteria to measure program effectiveness; and
 - (6) Performing any other services that may be required by the governor, the legislature, and the board.

§ -3 **Annual report.** The Hawaii aquaculture advisory council shall submit an annual report on its implementation of this chapter to the governor, the board of agriculture, and the legislature prior to each regular session.

§ -4 **Personnel.** The department of agriculture shall provide staff support for the council to perform its duties and responsibilities.

§ -5 **State and county agency cooperation.** The council may request and shall receive from any department, division, board, bureau, commission, or agency of the State or any political subdivision thereof any assistance and data that it deems necessary or desirable to carry out its powers and duties.”

SECTION 3. Chapter 141, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§141- **Aquaculture program.** (a) There is established within the department an aquaculture program that shall:

- (1) Maintain cognizance of actions taken by industry and by federal, state, county, and private agencies in activities relating to aquaculture, and promote and support worthwhile aquaculture activities;
- (2) Serve as an information clearinghouse for aquaculture activities;
- (3) Coordinate development projects to investigate and solve biological and technical problems involved in raising selected species with commercial potential;
- (4) Actively seek federal funding for aquaculture activities;
- (5) Undertake activities required to develop and expand the aquaculture industry; and
- (6) Perform such other functions and activities as may be assigned by law.

(b) The chairperson of the board may employ temporary staff exempt from chapters 76 and 77.”

SECTION 4. Section 26-16, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) The board may delegate to the chairperson such duties, powers, and authority, or so much thereof, as may be lawful or proper for the performance of the functions vested in the board.

The chairperson of the board shall serve in a full-time capacity. The chairperson shall, in that capacity[, perform such]:

- (1) Perform such duties[,] and exercise such powers and authority, or so much thereof, as may be delegated to the chairperson by the board[.]; and
- (2) Identify problems related to agriculture and the appropriate state agencies and departments needed to solve the problem. With the approval of the governor, the designated agencies shall provide any necessary assistance to the chairperson until the problem is resolved.
- (c) The department shall [promote]:
 - (1) Promote the conservation, development, and utilization of agricultural resources in the State; [assist]
 - (2) Assist the farmers of the State and any others engaged in agriculture by research projects, dissemination of information, crop and livestock reporting service, market news service, and any other means of improving the well-being of those engaged in agriculture and increasing the productivity of the lands[, and administer];
 - (3) Administer the programs of the State relating to animal husbandry, entomology, farm credit, development and promotion of agricultural products and markets, and the establishment and enforcement of the rules on the grading and labeling of agricultural products[.]; and
 - (4) Administer the aquaculture program under section 141- .”

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

“(b) [The board of directors of the corporation shall consist of eleven voting members, of whom eight shall be appointed by the governor for staggered terms. These 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, finance, marketing, and management. Of these eight members, four shall be selected by the senate president and four shall be selected by the speaker of the house of representatives; provided that two shall be from the city and county of Honolulu, two shall be from the county of Hawaii, two shall be from the county of Maui, and two shall be from the county of Kauai. 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.] The board of directors of the corporation shall consist of the members of the board of agriculture.”

SECTION 6. Chapter¹ 171-2, Hawaii Revised Statutes, is amended to read as follows:

“§171-2 **Definition of public lands.** “Public lands” means all lands or interest therein in the State classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or in any other manner; including submerged lands, and lands beneath tidal waters which are suitable for reclamation, together with reclaimed lands which have been given the status of public lands under this chapter, except:

- (1) Lands designated in section 203 of the Hawaiian Homes Commission Act, 1920, as amended;

- (2) Lands set aside pursuant to law for the use of the United States;
- (3) Lands being used for roads and streets;
- (4) Lands to which the United States relinquished the absolute fee and ownership under section 91 of the Hawaiian Organic Act prior to the admission of Hawaii as a state of the United States unless subsequently placed under the control of the board of land and natural resources and given the status of public lands in accordance with the State Constitution, the Hawaiian Homes Commission Act, 1920, as amended, or other laws;
- (5) Lands to which the University of Hawaii holds title;
- (6) Lands to which the housing and community development corporation of Hawaii in its corporate capacity holds title;
- (7) Lands to which the Hawaii community development authority in its corporate capacity holds title;
- (8) Lands to which the agribusiness development corporation in its corporate capacity holds title;
- [(8)]¹ (9) Lands to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned; and
- [(9)]¹ (10) Lands which are set aside by the governor to the Aloha Tower development corporation; lands leased to the Aloha Tower development corporation by any department or agency of the State; or lands to which the Aloha Tower development corporation holds title in its corporate capacity.”

SECTION 7. Section 187A-2, Hawaii Revised Statutes, is amended to read as follows:

“**§187A-2 Powers and duties of department.** The department shall:

- (1) Manage and administer the aquatic life[,] and aquatic resources[, and aquaculture programs] of the State;
- (2) Establish and maintain aquatic life propagating station or stations;
- (3) Establish, manage, and regulate public fishing areas, artificial reefs, fish aggregating devices, marine life conservation districts, shoreline fishery management areas, refuges, and other areas pursuant to title 12;
- (4) Subject to this title, import aquatic life for the purpose of propagating and disseminating the same in the State and the waters subject to its jurisdiction;
- (5) Distribute, free of charge, as the department deems to be in the public interest, aquatic life, for the purpose of increasing the food supply of the State; provided that when, in the discretion of the department, the public interest shall not be materially interfered with by so doing, the department may propagate and furnish aquatic life to private parties, upon such reasonable terms, conditions, and prices determined by the department;
- (6) Gather and compile information and statistics concerning the habitat and character of, and increase and decrease in, aquatic resources in the State, including the care and propagation of aquatic resources for protective, productive, and aesthetic purposes, and other useful information, which the department deems proper;
- (7) Enforce all laws relating to the protecting, taking, killing, propagating, or increasing of aquatic life within the State and the waters subject to its jurisdiction; and

- (8) Formulate and from time to time recommend to the governor and legislature such additional legislation necessary or desirable to implement the objectives of title 12.”

SECTION 8. Section 201-3, Hawaii Revised Statutes, is amended to read as follows:

“§201-3 Specific research and promotional functions of the department.

Without prejudice to its general functions and duties the department of business, economic development, and tourism shall have specific functions in the following areas:

- [(1)] Agricultural development. The department shall:
- (A) Conduct surveys and feasibility studies to determine the need for and value of additional research in the production of agricultural commodities, and the processing and marketing of agricultural food products;
 - (B) Promote an informational program directed to the consuming public both in Hawaii and in the mainland United States relative to the qualities of agricultural commodities produced in Hawaii and in the maximum utilization of same, including processed agricultural food products; and
 - (C) Make grants to and contracts with appropriate agencies, firms, or individuals for surveys, studies, research, and promotion.

With respect to agricultural development, the department’s activities shall be consistent with the policies, programs, and activities of the board of agriculture and the agribusiness development corporation;

- [(2)] (1) Industrial development. The department shall determine through technical and economic surveys the profit potential of new or expanded industrial undertakings; develop through research projects and other means new and improved industrial products and processes; promote studies and surveys to determine consumer preference as to design and quality and to determine the best methods of packaging, transporting, and marketing the State’s industrial products; disseminate information to assist the present industries of the State, to attract new industries to the State, and to encourage capital investment in present and new industries in the State; assist associations of producers and distributors of industrial products to introduce such products to consumers; and make such grants or contracts as may be necessary or advisable to accomplish the foregoing;
- [(3)] (2) Land development. The department shall encourage the most productive use of all land in the State in accordance with a general plan developed by the department; encourage the improvement of land tenure practices on leased private lands; promote an informational program directed to landowners, producers of agricultural and industrial commodities, and the general public regarding the most efficient and most productive use of the lands in the State; and make such grants or contracts as may be necessary or advisable to accomplish the foregoing;
- [(4)] (3) Credit development. The department shall conduct a continuing study of agricultural and industrial credit needs; encourage the development of additional private and public credit sources for agricultural and industrial enterprises; promote an informational program to acquaint financial institutions with agricultural and industrial credit needs and the potential for agricultural and industrial expansion, and inform

producers of agricultural and industrial products as to the manner in which to qualify for loans; and make such grants or contracts as may be necessary or advisable to accomplish the foregoing; and

- [5] (4) Promotion. The department shall disseminate information developed for or by the department pertaining to economic development to assist present industry in the State, attract new industry and investments to the State, and assist new and emerging industry with good growth potential or prospects in jobs, exports, and new products. The industrial and economic promotional activities of the department may include the use of literature, advertising, demonstrations, displays, market testing, lectures, travel, motion picture and slide films, and such other promotional and publicity devices as may be appropriate.

The department shall be the central agency to coordinate film permit activities in the State.”

SECTION 9. Section 187A-3, Hawaii Revised Statutes, is repealed.

SECTION 10. Chapter 189G, Hawaii Revised Statutes, is repealed.

SECTION 11. All rights, powers, functions, and duties of the aquaculture program of the department of land and natural resources are transferred to the department of agriculture.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

If an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

SECTION 12. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personnel property heretofore made, used, acquired, or held by the aquaculture program of the department of land and natural resources relating to the functions transferred to the department of agriculture shall be transferred with the functions to which they relate.

PART II

SECTION 13. The purpose of this part is to amend the funding mechanism for the financial services assistance program of the department of business, economic development, and tourism by making the capital loan revolving fund the primary source of revenue for the program.

SECTION 14. Section 201C-3, Hawaii Revised Statutes, is amended to read as follows:

“§201C-3 Financial assistance program; source of funds. (a) All moneys to carry out the purposes of the financial services assistance program under this chapter shall be allocated by the legislature through appropriations out of the [state general fund.] Hawaii capital loan revolving fund established pursuant to section 210-3. The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to effectuate the purposes of this section.

(b) All moneys received in repayment of loan principal, payment of interest, or fees, under this chapter shall be deposited to the credit of [state general fund.] Hawaii capital loan revolving fund established pursuant to section 210-3.”

SECTION 15. Section 210-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established the Hawaii capital loan revolving fund into which shall be deposited all moneys received as repayment of loans and interest payments as provided in this chapter. The department may utilize a portion of the moneys contained in the Hawaii capital loan revolving fund for programs associated with administering the fund and its mandated purpose. The department may transfer moneys from the Hawaii capital loan revolving fund established by this section to either the state disaster revolving loan fund established by section 209-34, or the Hawaii innovation development fund established by section 211E-2, and moneys from these three funds shall be disbursed by the department or the director pursuant to chapters 209, 210, and 211E, respectively. The department or the director may transfer moneys from the state disaster revolving loan fund and the Hawaii innovation development fund to the Hawaii capital loan revolving fund for disbursement pursuant to this chapter.”

PART III

SECTION 16. It is the intent of this Act to neither jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to persons with which it has existing contracts or the holder of any bond issued by the State or by any such agency, and to the extent, and only to the extent necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefor to the legislature at its next session thereafter for review by that body. The rules under this Act shall meet the federal requirements that are a necessary condition to the receipt for federal funds by the State.

SECTION 17. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this 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. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 19. This Act shall take effect on July 1, 1998; provided that section 5 shall take effect on July 1, 1999.

(Approved July 15, 1998.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.