

S.B. NO. 2676

JAN 25 2010

A BILL FOR AN ACT

RELATING TO THE ALOHA TOWER DEVELOPMENT CORPORATION.

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

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

4 SECTION 2. The purpose of this Act is to provide
5 sufficient moneys to the Aloha Tower development corporation to
6 pay for the settlement of a claim with Kenneth H. Hughes, Inc.,
7 by making an emergency appropriation to increase its spending
8 ceiling by \$900,000 from \$1,628,940 to \$2,528,940 for fiscal
9 year 2009-2010.

10 The amount due under the settlement agreement (Kenneth H.
11 Hughes, Inc. v. Aloha Tower Development, Corp., Civil No. 09-
12 00277 DAE-BMK, USDC) is \$1,550,000.

13 The Aloha Tower fund has sufficient moneys to pay for the
14 emergency appropriation.

15 SECTION 3. There is appropriated out of the Aloha Tower
16 fund the sum of \$900,000, or so much thereof as may be necessary
17 for fiscal year 2009-2010, for the purposes of this Act.

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1 The sum appropriated shall be expended by the Aloha Tower
2 development corporation.

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

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INTRODUCED BY:



6

BY REQUEST

Report Title:

Aloha Tower Development Corporation; Appropriation

Description:

Approves settlement between Aloha Tower Development Corporation and Kenneth H. Hughes, Inc. and increases budget ceiling appropriation from Aloha Tower Fund.

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JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT RELATING TO THE ALOHA TOWER DEVELOPMENT CORPORATION.

PURPOSE: The purpose of this bill is to approve a one-time \$1,550,000 settlement payment by the Aloha Tower Development Corporation (ATDC) to Kenneth H. Hughes, Inc. (Hughes) to resolve a dispute between the two parties arising from a 2004 development agreement. The dispute was the subject of arbitration proceedings between the parties, and the settlement agreement was entered into record before the U.S. District Court on November 13, 2009. The bill also increases ATDC's fiscal year 2009-2010 budget appropriation by \$900,000 to provide the necessary budget for ATDC to make the one-time payment from the Aloha Tower Fund.

MEANS: Appropriate Aloha Tower Fund money.

JUSTIFICATION: After completing an 18-month long arbitration proceeding and an additional six months of motions and hearings before the U.S. District Court, ATDC and Hughes reached a settlement agreement to resolve all disputes arising from a 2004 development agreement between the two parties to develop Piers 5 and 6 within the Aloha Tower Project Area. The settlement agreement, which was entered into record before the U.S. District Court, requires ATDC to make a \$1,550,000 one-time payment to Hughes. In return, the legal precedent set in this case will be vacated, eliminating the need to continue ATDC's appeal of the Arbitration Award and Order Confirming the Arbitration Award before the U.S. Court of Appeals for the Ninth Circuit. The Department of the Attorney General was instrumental in negotiating the settlement agreement and fully supports the settlement.

Impact on the public: While general funds will not be used to make the one-time payment, the Aloha Tower Fund is still a state resource that is earmarked for means to fulfill ATDC's mission. Additionally, by resolving the dispute with Hughes, ATDC is no longer bound by the development agreement to develop Piers 5 and 6 with Hughes and can move forward with other development concepts for the Aloha Tower Project Area.

Impact on the department and other agencies: The negative legal precedent concerning State of Hawaii contracts with arbitration provisions and the State's "Sovereign Immunity" has been vacated. The Department of the Attorney General does not need to expend further time and resources pursuing an appeal to vacate the aforementioned legal precedent.

GENERAL FUND: None.

OTHER FUNDS: Aloha Tower Fund.

PBS PROGRAM
DESIGNATION: BED-151.

OTHER AFFECTED
AGENCIES: Department of the Attorney General.

EFFECTIVE DATE: Upon approval.