

JAN 20 2012

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# A BILL FOR AN ACT

RELATING TO PUBLIC LANDS.

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

1           SECTION 1. The office of Hawaiian affairs receives a  
2 portion of the revenue derived from the conveyance of certain  
3 land of the public land trust by the department of land and  
4 natural resources to the Hawaii housing finance and development  
5 corporation for the development of housing projects. The  
6 formula to determine the revenue received by the office only  
7 applies to the developments known as the villages of Leali'i,  
8 Maui, and villages of La'i'opua, Hawaii. Moreover, the amount  
9 due to the office is determined by the ambiguous standard of  
10 "the most profitable, probable, and legal use to which the land  
11 can be put."

12           The purpose of this Act is to:

13           (1) Require that the office of Hawaiian affairs receive a  
14 portion of the revenue derived from the conveyance or  
15 transfer of any land of the public land trust by the  
16 department of land and natural resources for  
17 development purposes; and



1 (2) Amend the definition of "fair market value" to take  
2 into consideration the use of the land at the time of  
3 the conveyance.

4 SECTION 2. Section 10-13.6, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 **"§10-13.6 Public land trust conveyed for [the] development**  
7 **[of housing projects].** (a) This section applies to the revenue  
8 derived from land of the public land trust [~~as designated in~~  
9 ~~subsection (e)] that is conveyed or otherwise transferred by the  
10 department of land and natural resources [~~to the Hawaii housing~~  
11 ~~finance and development corporation for the development of~~  
12 ~~housing projects as defined under section 201H-1.] for  
13 development purposes. The amount due to the office shall be  
14 determined by multiplying the fair market value of the land by  
15 twenty per cent. For the purpose of this section[+]~~~~

16 "Fair], "fair market value" means the amount of money that  
17 a purchaser willing but not obliged to buy the land would pay to  
18 an owner willing but not obliged to sell it, taking into  
19 consideration the [~~highest and best]~~ use of the land[~~.]~~ at the  
20 time of conveyance.

21 [~~"Highest and best use" means the most profitable,~~  
22 ~~probable, and legal use to which the land can be put.]~~



1 (b) Fair market value shall be determined on a per acre  
2 basis pursuant to appraisals performed in conformance with the  
3 uniform standards of professional appraisal practice as adopted  
4 by the department of commerce and consumer affairs, not more  
5 than ninety days before the conveyance of the land [~~to the~~  
6 ~~Hawaii housing finance and development corporation~~]. The  
7 appraisals shall be performed by two disinterested appraisers  
8 each of whose services shall be contracted by the department of  
9 land and natural resources and the office, respectively. If the  
10 land is of the public land trust and sugarcane lands, as defined  
11 by article XII, section 1 of the state constitution, the office  
12 and the department of Hawaiian home lands shall contract the  
13 services of one appraiser. The parties shall contract the  
14 services of the appraisers within thirty business days after the  
15 department of land and natural resources gives written notice to  
16 the office, together with the department of Hawaiian home lands  
17 if the land is of the public land trust and sugarcane lands, of  
18 the proposed conveyance of the land [~~to the Hawaii housing~~  
19 ~~finance and development corporation~~].

20 If any party fails or refuses to contract the services of  
21 an appraiser, then the other party may petition the circuit  
22 court in the county where the land is located to appoint the

1 other of the two appraisers. If the two appraisers are unable  
2 to agree on a fair market value, then within thirty days  
3 thereafter, the department of land and natural resources and the  
4 office, together with the department of Hawaiian home lands if  
5 the land is of the public land trust and sugarcane lands, shall  
6 contract for the services of a mutually agreed upon third  
7 appraiser and the decision of the majority of the appraisers  
8 shall be final with respect to determination of the fair market  
9 value of the land. If the department of land and natural  
10 resources and the office, together with the department of  
11 Hawaiian home lands if the land is of the public land trust and  
12 sugarcane lands, are unable to agree on the selection of the  
13 third appraiser, any party may petition the circuit court in the  
14 county where the land is located to appoint the third appraiser.

15 (c) The amount due to the office shall be due and payable  
16 by the State on the date of conveyance of the land [~~to the~~  
17 ~~Hawaii housing finance and development corporation~~]. Payment to  
18 the office may be in the form of public lands [~~or~~], moneys[-],  
19 or by any other terms mutually agreed upon by the State and the  
20 office; provided that, for land developed for residential  
21 purposes, the office may forego receiving moneys in the amount  
22 of twenty per cent of the fair market value and instead choose



1 to receive twenty per cent of the real property developed as  
2 residential dwellings after it is developed. If payment is to  
3 be in the form of public lands, the lands shall be mutually  
4 agreed upon by the department of land and natural resources and  
5 the office, and shall be of value comparable to the amount due  
6 to the office. Any monetary payment shall be an obligation of  
7 the [~~Hawaii housing finance and development corporation.~~] State.  
8 Any portion of that amount that is not paid on the date of  
9 conveyance shall be subject to simple interest annually,  
10 established pursuant to the fifteen year treasury rate at the  
11 time of the conveyance and payable annually by the State to the  
12 office.

13 (d) Twenty per cent of the revenue received [~~by the Hawaii~~  
14 ~~housing finance and development corporation]~~ from commercial,  
15 industrial, or other nonresidential use of the land shall be  
16 paid annually by the State to the office; provided that:

17 (1) The office shall not receive payment under this  
18 subsection until the [~~Hawaii housing finance and~~  
19 ~~development corporation]~~ developer recovers all moneys  
20 previously paid to the office for that portion of land  
21 used for commercial, industrial, or other  
22 nonresidential purposes;



1           (2) If borrowed moneys are used to finance the development  
2           of land for commercial, industrial, or other  
3           nonresidential purposes, annual payments due to the  
4           office under this subsection shall be made pursuant to  
5           the following order of priority:

6           (A) The [~~Hawaii housing finance and development~~  
7           ~~corporation~~] State satisfies as a first priority  
8           the amount computed annually on the pro rata  
9           portion (not the total debt service over the life  
10          of the debt) of its total debt service on the  
11          borrowed moneys;

12          (B) The [~~Hawaii housing finance and development~~  
13          ~~corporation~~] State satisfies as a second priority  
14          its operating expense obligations directly  
15          incurred from the development and operation of  
16          land used for commercial, industrial, or other  
17          nonresidential purposes in an amount not  
18          exceeding one per cent of the revenues for the  
19          project; and

20          (C) After the first and second priorities are  
21          satisfied, the [~~Hawaii housing finance and~~  
22          ~~development corporation~~] State shall make annual



1 payments due to the office under this subsection  
2 from any remaining revenues; and

3 (3) In the event of a sale of land used for commercial,  
4 industrial, or other nonresidential purposes, the  
5 office shall receive twenty per cent of the revenue  
6 received by the [~~Hawaii housing finance and~~  
7 ~~development corporation.~~] State.

8 [~~(c) This section shall only apply to the Hawaii housing~~  
9 ~~finance and development corporation's developments known as the~~  
10 ~~villages of Leali'i, Maui, and villages of La'i'opua, Hawaii.]"~~

11 SECTION 3. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

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

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# S.B. NO. 2327

**Report Title:**

OHA; DLNR; Public Land Trust; Revenue; Fair Market Value

**Description:**

Requires that OHA receive a portion of the revenue derived from the conveyance or transfer of any land of the public land trust by DLNR for development purposes. Amends the definition of fair market value to take into consideration the use of the land at the time of the conveyance.

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