

JAN 20 2012

A BILL FOR AN ACT

RELATING TO COMMUNITY PLANNING.

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

1 SECTION 1. Section 171C-2, Hawaii Revised Statutes, is
2 amended by adding a new definition to be appropriately inserted
3 and to read as follows:

4 "Development district" means a land area designated by the
5 corporation in accordance with section 171C-4(a)(21):

6 (1) Where one or more community financed development
7 projects are situated; or

8 (2) That is suitable for development by community financed
9 projects."

10 SECTION 2. Section 171C-4, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) Except as otherwise limited by this chapter, the
13 corporation may:

14 (1) Sue and be sued;

15 (2) Have a seal and alter the same at its pleasure;

16 (3) Make and alter bylaws for its organization and
17 internal management;



- 1 (4) Adopt rules under chapter 91 necessary to effectuate
2 this chapter in connection with its projects,
3 operations, and properties;
- 4 (5) Make and execute contracts and all other instruments
5 necessary or convenient for the exercise of its powers
6 and functions under this chapter;
- 7 (6) Carry out surveys, research, and investigations into
8 technological, business, financial, consumer trends,
9 and other aspects of leisure or recreational land uses
10 in the national and international community;
- 11 (7) Acquire or contract to acquire by grant or purchase:
- 12 (A) All privately owned real property or any interest
13 therein and the improvements thereon, if any,
14 that are determined by the corporation to be
15 necessary or appropriate for its purposes under
16 this chapter, including real property together
17 with improvements, if any, in excess of that
18 needed for such use in cases where small remnants
19 would otherwise be left or where other
20 justifiable cause necessitates the acquisition to
21 protect and preserve the contemplated
22 improvements, or public policy demands the



1 acquisition in connection with such improvements;
2 and

3 (B) Encumbrances, in the form of leases, licenses, or
4 otherwise, needed by the corporation or any state
5 department or agency for public purposes, the
6 disposition of subdivided lots, houselots,
7 apartments or other economic units, or economic
8 development;

9 (8) Own, hold, improve, and rehabilitate any real,
10 personal, or mixed property acquired; and sell,
11 assign, exchange, transfer, convey, lease, or
12 otherwise dispose of, or encumber the same;

13 (9) By itself, or in partnership with qualified persons or
14 other governmental agencies, acquire, construct,
15 reconstruct, rehabilitate, improve, alter, or repair
16 any infrastructure or accessory facilities in
17 connection with any project; own, hold, sell, assign,
18 transfer, convey, exchange, lease, or otherwise
19 dispose of, or encumber any project; and develop or
20 manage, by itself, or in partnership with qualified
21 persons or other governmental agencies, any project
22 that meets the purposes of this chapter;



- 1 (10) In cooperation with any governmental agency, or
2 otherwise through direct investment or coventure with
3 a professional investor or enterprise or any other
4 person, or otherwise, acquire, construct, operate, and
5 maintain public land facilities, including but not
6 limited to leisure, recreational, commercial,
7 residential, time share, hotel, office space, and
8 business facilities, at rates or charges determined by
9 the corporation;
- 10 (11) Assist developmental, recreational, and visitor-
11 industry related enterprises, or projects developed or
12 managed by the corporation, by conducting detailed
13 marketing analysis and developing marketing and
14 promotional strategies to strengthen the position of
15 those enterprises and to better exploit local,
16 national, and international markets;
- 17 (12) Receive, examine, and determine the acceptability of
18 applications of qualified persons for allowances or
19 grants for the development of new recreation and
20 visitor-industry related products, the expansion of
21 established recreation and visitor-industry or land
22 development enterprises, and the altering of existing



- 1 recreational, visitor-industry related, or land
2 development enterprises;
- 3 (13) Coordinate its activities with any federal or state
4 programs;
- 5 (14) Grant options to purchase any project or to renew any
6 lease entered into by the corporation in connection
7 with any of its projects, on the terms and conditions
8 it deems advisable;
- 9 (15) Provide advisory, consultative, training, and
10 educational services and technical assistance to any
11 person, partnership, or corporation, either public or
12 private, to carry out the purposes of this chapter,
13 and engage the services of consultants on a
14 contractual basis for rendering professional and
15 technical assistance and advice;
- 16 (16) Procure insurance against any loss in connection with
17 its property and other assets and operations in
18 amounts and from insurers as it deems desirable;
- 19 (17) Accept gifts or grants in any form from any public
20 agency or any other source;



1 (18) Issue bonds to finance the cost of a project and to
2 provide for the security thereof, in the manner and
3 pursuant to the procedure prescribed in this chapter;

4 (19) Subject to approval by the department, assume
5 management responsibilities for small boat harbors in
6 accordance with chapter 200 and any rules adopted
7 pursuant thereto for periods not to exceed one year;

8 (20) Recommend to the board of land and natural resources
9 the purchase of any privately owned properties that
10 may be appropriate for development; ~~[and]~~

11 (21) Designate development districts; and

12 ~~[(21)]~~ (22) Do all things necessary or proper to carry out
13 the purposes of this chapter."

14 SECTION 3. Section 171C-10, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) The revenue bonds shall be payable from and secured
17 by the improvements to real properties specially benefited or
18 improved and the assessments thereon, or by ~~[the]~~:

19 (1) The revenues derived from the project facility for
20 which the revenue bonds were issued, including revenue
21 derived from insurance proceeds and reserve accounts,
22 and earnings thereon~~[-]~~; or



1 (2) General excise tax revenues allocated to the
2 corporation pursuant to section 237-31; provided that
3 payment is made in accordance with section 171C-
4 17(c)."

5 SECTION 4. Section 171C-17, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "[~~§~~171C-17~~]~~ Hawaii public land development revolving
8 fund; established; use of corporation funds. (a) There is
9 established the Hawaii public land development revolving fund,
10 to which shall be credited any state appropriations to the fund,
11 any sums collected as a result of bonds issued pursuant to this
12 chapter, any revenues generated from the facilities, general
13 excise tax revenues allocated to the corporation under section
14 237-31, or other moneys made available to the fund, to be
15 expended as directed by the corporation.

16 (b) Notwithstanding any provision of this chapter to the
17 contrary, revenues, income, and receipts derived from the
18 project facilities shall be set apart in a separate subaccount
19 and applied solely for the following purposes:

20 (1) The principal and interest on the bonds;

21 (2) The cost of administering, operating, and maintaining
22 the project not to exceed fifteen per cent of the sums



1 collected, net of principal and interest payments, on
2 account of assessments and interest for any specific
3 project facility;

4 (3) The establishment of program reserves not to exceed
5 eighty-five per cent of the sums collected, net of
6 principal and interest payments, on account of
7 assessments and interest for any specific project
8 facility; provided that accumulated reserves shall be
9 credited to and become a part of the special land and
10 development fund, established under section 171-19,
11 except in the case of a specific project facility that
12 is situated in part or wholly within a small boat
13 harbor, in which case those accumulated reserves
14 attributable to the portions of the facility situated
15 in the small boat harbor shall be credited to and
16 become a part of the boating special fund, established
17 under section 248-8; and

18 (4) Other purposes as may be authorized in the proceedings
19 providing for the issuance of the bonds.

20 If any surplus remains in any subaccount after the payment of
21 the bonds chargeable against that subaccount, the surplus shall
22 be credited to and become a part of the Hawaii public land

1 development revolving fund, except as provided in paragraph (3).
2 Notwithstanding any other law to the contrary, moneys in the
3 fund may be used to make up any deficiencies in the subaccount.

4 (c) A separate subaccount shall be established for each
5 development district designated by the corporation. Each
6 subaccount shall be designated "development district subaccount"
7 and shall bear additional designations as the corporation deems
8 appropriate to properly identify the fund.

9 Notwithstanding any provision of this chapter to the
10 contrary, general excise tax revenues allocated to the
11 corporation under section 237-31 shall be set apart in the
12 subaccount established for the development district where the
13 revenue was collected and applied solely for the payment of
14 principal and interest on bonds associated with projects located
15 in the respective development district.

16 If any surplus remains in any subaccount after the payment
17 of the bonds chargeable against that subaccount, the surplus
18 shall be credited to and become a part of the Hawaii public land
19 development revolving fund.

20 ~~[(e)]~~ (d) The corporation shall hold the fund in an
21 account or accounts separate from other funds. Except as
22 otherwise provided in ~~[subsection]~~ subsections (b) ~~[7]~~ and (c),



1 the corporation shall invest and reinvest the fund and the
2 income thereof to:

3 (1) Purchase qualified securities issued by enterprises
4 for the purpose of raising seed capital; provided that
5 the investment shall comply with the requirements of
6 this chapter;

7 (2) Make grants, loans, and provide other monetary forms
8 of assistance necessary to carry out the purposes of
9 this chapter; and

10 (3) Purchase securities as may be lawful investments for
11 fiduciaries in the State.

12 All appropriations, grants, contractual reimbursements, and
13 other funds not designated for this purpose may be used to pay
14 for the proper general expenses and to carry out the purposes of
15 the corporation.

16 [~~d~~] (e) The corporation shall purchase qualified
17 securities issued by an enterprise only after:

18 (1) Receiving:

19 (A) An application from the enterprise containing a
20 business plan, which is consistent with the
21 business and public land development plan,



1 including a description of the enterprise and its
2 management, product, and market;

3 (B) A statement of the amount, timing, and projected
4 use of the capital required;

5 (C) A statement of the potential economic impact of
6 the enterprise, including the number, location,
7 and types of jobs expected to be created; and

8 (D) Any other information as the corporation shall
9 require;

10 (2) Determining, based upon the application submitted,
11 that:

12 (A) The proceeds of the investment will be used only
13 to cover the seed capital needs of the
14 enterprise, except as authorized in this section;

15 (B) The enterprise has a reasonable chance of
16 success;

17 (C) The enterprise has the reasonable potential to
18 create employment within the State and offers
19 employment opportunities to residents;

20 (D) The coordinating entrepreneur and other founders
21 of the enterprise have already made or are



1 prepared to make a substantial financial and time
2 commitment to the enterprise;
3 (E) The securities to be purchased are qualified
4 securities;
5 (F) There is a reasonable possibility that the
6 corporation will recoup at least its initial
7 investment; and
8 (G) Binding commitments have been made to the
9 corporation by the enterprise for adequate
10 reporting of financial data to the corporation,
11 which shall include a requirement for an annual
12 or other periodic audit of the books of the
13 enterprise, and for control by the corporation
14 that it considers prudent over the management of
15 the enterprise, in order to protect the
16 investment of the corporation, including
17 membership on the board of directors of the
18 enterprise, ownership of voting stock, input in
19 management decisions, and the right of access to
20 the financial and other records of the
21 enterprise; and



1 (3) Entering into a binding agreement with the enterprise
2 concerning the manner of payback by the enterprise of
3 the funds advanced, granted, loaned, or received from
4 the corporation. The manner of payback may include
5 the payment of dividends, returns from the public sale
6 of corporate securities or products, royalties, and
7 other methods of payback acceptable to the
8 corporation. In determining the manner of payback the
9 corporation shall establish a rate of return or rate
10 of interest to be paid on any investment, loan, or
11 grant of corporation funds under this section.

12 [~~(e)~~] (f) If the corporation makes a direct investment, it
13 shall also find that a reasonable effort has been made to find a
14 professional investor to make an investment in the enterprise as
15 a coventure, and that the effort was unsuccessful. The
16 findings, when made by the corporation, shall be conclusive.

17 [~~(f)~~] (g) The corporation shall make investments in
18 qualified securities issued by an enterprise in accordance with
19 the following limits:

20 (1) Not more than \$500,000 shall be invested in the
21 securities of any one enterprise, except that more
22 than a total of \$500,000 may be invested in the



1 securities of any one enterprise if the corporation
2 finds, after its initial investment, that additional
3 investments in that enterprise are required to protect
4 the initial investment of the corporation, and the
5 other findings set forth in subsection (d) and this
6 subsection are made as to the additional investment;

7 (2) The corporation shall not own securities representing
8 more than forty-nine per cent of the voting stock of
9 any one enterprise at the time of purchase by the
10 corporation after giving effect to the conversion of
11 all outstanding convertible securities of the
12 enterprise, except that if a severe financial
13 difficulty of the enterprise occurs, threatening the
14 investment of the corporation in the enterprise, a
15 greater percentage of those securities may be owned by
16 the corporation; and

17 (3) Not more than fifty per cent of the assets of the
18 corporation shall be invested in direct investments at
19 any time.

20 [~~g~~] (h) No investment, loan, grant, or use of corporate
21 funds for the purposes of this chapter shall be subject to
22 chapter 42F."



1 SECTION 5. Section 237-31, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§237-31 Remittances. All remittances of taxes imposed by
4 this chapter shall be made by money, bank draft, check,
5 cashier's check, money order, or certificate of deposit to the
6 office of the department of taxation to which the return was
7 transmitted. The department shall issue its receipts therefor
8 to the taxpayer and shall pay the moneys into the state treasury
9 as a state realization, to be kept and accounted for as provided
10 by law; provided that:

11 (1) The sum from all general excise tax revenues realized
12 by the State that represents the difference between
13 \$45,000,000 and the proceeds from the sale of any
14 general obligation bonds authorized for that fiscal
15 year for the purposes of the state educational
16 facilities improvement special fund shall be deposited
17 in the state treasury in each fiscal year to the
18 credit of the state educational facilities improvement
19 special fund;

20 (2) A sum, not to exceed \$5,000,000, from all general
21 excise tax revenues realized by the State shall be
22 deposited in the state treasury in each fiscal year to



1 the credit of the compound interest bond reserve fund;
2 [and]

3 (3) A sum from all general excise tax revenues realized by
4 the State that is equal to one-half of the total
5 amount of funds appropriated or transferred out of the
6 hurricane reserve trust fund under sections 4 and 5 of
7 Act 62, Session Laws of Hawaii 2011, shall be
8 deposited into the hurricane reserve trust fund in
9 fiscal year 2013-2014 and in fiscal year 2014-2015;
10 provided that the deposit required in each fiscal year
11 shall be made by October 1 of that fiscal year~~[-]~~; and

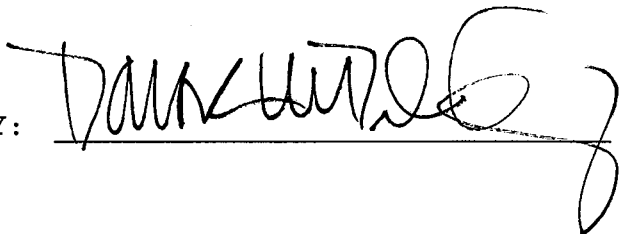
12 (4) _____ per cent of all general excise tax revenues
13 realized by the State from a development district
14 designated by the public land development corporation
15 pursuant to section 171C-4(a)(21) shall be deposited
16 into the subaccount of the Hawaii public land
17 development revolving fund established for the
18 development district under section 171C-17(c)."

19 SECTION 6. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



1 SECTION 7. This Act, upon its approval, shall apply to
2 taxable years beginning after December 31, 2011.

3

INTRODUCED BY: 

S.B. NO. 2366

Report Title:

Public Land Development Corporation; Development Districts;
General Excise Tax

Description:

Authorizes the public land development corporation to designate development districts. Allocates a percentage of general excise tax revenues collected in a development district to be used by the public land development corporation to pay principal and interest on bonds associated with projects located in the development district.

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