



GOV. MSG. NO. 1138

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

April 22, 2013

The Honorable Donna Mercado Kim,
President
and Members of the Senate
Twenty-Seventh State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Seventh State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on April 22, 2013, the following bill was signed into law:

HB1133 SD2

RELATING TO PUBLIC LAND
ACT 038 (13)

Aloha
Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

A BILL FOR AN ACT

RELATING TO PUBLIC LAND.

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

1 SECTION 1. Act 55, Session Laws of Hawaii 2011, codified
2 as chapter 171C, Hawaii Revised Statutes, created the public
3 land development corporation. Section 171C-1, Hawaii Revised
4 Statutes, states in pertinent part:

5 "The purpose of this chapter is to create a vehicle and
6 process to make optimal use of public land for the
7 economic, environmental, and social benefit of the people
8 of Hawaii. This chapter establishes a public corporation
9 to administer an appropriate and culturally-sensitive
10 public land development program. The corporation shall
11 coordinate and administer programs to make optimal use of
12 public land, while ensuring that the public land is
13 maintained for the people of Hawaii."

14 The legislature finds that Act 55 has engendered
15 significant public concern and scrutiny due in part to the fact
16 that projects undertaken pursuant to Act 55 are exempt from
17 state and county laws regarding land use, zoning, and
18 construction standards for subdivisions, development, and



1 improvement of land. In addition, concerns have been raised
2 regarding inadequate notice given to the public to testify on
3 the exemption provisions. The exemptions, coupled with the
4 manner in which Act 55 was passed, have led to distrust and
5 uncertainty of the public land development corporation's
6 intentions and development plans. Despite efforts to allay
7 concerns, many individuals and organizations, particularly
8 environmental and native Hawaiian organizations, have expressed
9 support for legislation to repeal Act 55.

10 The legislature further finds that the implementation of
11 Act 55 falls short of "ensuring that the public land is
12 maintained for the people of Hawaii." The intent of the
13 legislature is to ensure that the public lands of Hawaii are
14 used and administered in an equitable and transparent manner
15 that should not necessarily be relegated to administrative
16 decision-making or rule-making on an ad hoc basis. While the
17 optimization of the use of public lands is a meritorious goal
18 with the potential to significantly benefit the people of
19 Hawaii, achieving this goal requires a greater respect for
20 existing laws and procedures and greater assurance that the
21 public land development corporation is the vehicle that will



1 produce economic, environmental, and social benefit for the
2 people of Hawaii.

3 The legislature further finds that the county councils of
4 Kauai and Maui have adopted resolutions urging the legislature
5 to abolish the public land development corporation by repealing
6 chapter 171C, Hawaii Revised Statutes. The Honolulu city
7 council has considered a similar resolution, but has yet to
8 adopt such a resolution.

9 The purpose of this Act is to repeal chapter 171C, Hawaii
10 Revised Statutes, relating to the public land development
11 corporation.

12 SECTION 2. Section 171-2, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§171-2 Definition of public lands. "Public lands" means
15 all lands or interest therein in the State classed as government
16 or crown lands previous to August 15, 1895, or acquired or
17 reserved by the government upon or subsequent to that date by
18 purchase, exchange, escheat, or the exercise of the right of
19 eminent domain, or in any other manner; including lands accreted
20 after May 20, 2003, and not otherwise awarded, submerged lands,
21 and lands beneath tidal waters that are suitable for



1 reclamation, together with reclaimed lands that have been given
2 the status of public lands under this chapter, except:

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

5 (2) Lands set aside pursuant to law for the use of the
6 United States;

7 (3) Lands being used for roads and streets;

8 (4) Lands to which the United States relinquished the
9 absolute fee and ownership under section 91 of the
10 Hawaiian Organic Act prior to the admission of Hawaii
11 as a state of the United States unless subsequently
12 placed under the control of the board of land and
13 natural resources and given the status of public lands
14 in accordance with the state constitution, the
15 Hawaiian Homes Commission Act, 1920, as amended, or
16 other laws;

17 (5) Lands to which the University of Hawaii holds title;

18 (6) Lands to which the Hawaii housing finance and
19 development corporation in its corporate capacity
20 holds title;

21 (7) Lands to which the Hawaii community development
22 authority in its corporate capacity holds title;



- 1 (8) Lands to which the department of agriculture holds
2 title by way of foreclosure, voluntary surrender, or
3 otherwise, to recover moneys loaned or to recover
4 debts otherwise owed the department under chapter 167;
- 5 (9) Lands that are set aside by the governor to the Aloha
6 Tower development corporation; lands leased to the
7 Aloha Tower development corporation by any department
8 or agency of the State; or lands to which the Aloha
9 Tower development corporation holds title in its
10 corporate capacity;
- 11 (10) Lands that are set aside by the governor to the
12 agribusiness development corporation; lands leased to
13 the agribusiness development corporation by any
14 department or agency of the State; or lands to which
15 the agribusiness development corporation in its
16 corporate capacity holds title; and
- 17 (11) Lands to which the high technology development
18 corporation in its corporate capacity holds title[
19 and
- 20 ~~(12) Lands which are set aside by the governor to the~~
21 ~~public land development corporation; lands leased to~~
22 ~~the public land development corporation by any~~



1 ~~department or agency of the State; or lands to which~~
 2 ~~the public land development corporation holds title in~~
 3 ~~its corporate capacity]."~~

4 SECTION 3. Section 171-64.7, Hawaii Revised Statutes, is
 5 amended by amending subsection (a) to read as follows:

6 "(a) This section applies to all lands or interest therein
 7 owned or under the control of state departments and agencies
 8 classed as government or crown lands previous to August 15,
 9 1895, or acquired or reserved by the government upon or
 10 subsequent to that date by purchase, exchange, escheat, or the
 11 exercise of the right of eminent domain, or any other manner,
 12 including accreted lands not otherwise awarded, submerged lands,
 13 and lands beneath tidal waters [~~which~~] that are suitable for
 14 reclamation, together with reclaimed lands [~~which~~] that have
 15 been given the status of public lands under this chapter,
 16 including:

17 (1) Land set aside pursuant to law for the use of the
 18 United States;

19 (2) Land to which the United States relinquished the
 20 absolute fee and ownership under section 91 of the
 21 Organic Act prior to the admission of Hawaii as a
 22 state of the United States;



- 1 (3) Land to which the University of Hawaii holds title;
- 2 (4) Land to which the Hawaii housing finance and
- 3 development corporation in its corporate capacity
- 4 holds title;
- 5 (5) Land to which the department of agriculture holds
- 6 title by way of foreclosure, voluntary surrender, or
- 7 otherwise, to recover moneys loaned or to recover
- 8 debts otherwise owed the department under chapter 167;
- 9 (6) Land that is set aside by the governor to the Aloha
- 10 Tower development corporation; or land to which the
- 11 Aloha Tower development corporation holds title in its
- 12 corporate capacity;
- 13 (7) Land that is set aside by the governor to the
- 14 agribusiness development corporation; or land to which
- 15 the agribusiness development corporation in its
- 16 corporate capacity holds title; and
- 17 (8) Land to which the high technology development
- 18 corporation in its corporate capacity holds title[-
- 19 and
- 20 ~~(9) Land that is set aside by the governor to the public~~
- 21 ~~land development corporation or land to which the~~



1 ~~public land development corporation holds title in its~~
2 ~~corporate capacity]."~~

3 SECTION 4. Section 173A-4, Hawaii Revised Statutes, is
4 amended by amending subsections (c) and (d) to read as follows:

5 "(c) The board [~~shall~~], in consultation with the senate
6 president and the speaker of the house of representatives, shall
7 require as a condition of the receipt of funds that state and
8 county agencies receiving funds under this chapter provide a
9 conservation easement under chapter 198, or an agricultural
10 easement or deed restriction or covenant to the department of
11 land and natural resources; the department of agriculture; the
12 agribusiness development corporation; [~~the public land~~
13 ~~development corporation,~~] an appropriate land conservation
14 organization; or a county, state, or federal natural resource
15 conservation agency, that shall run with the land and be
16 recorded with the land to ensure the long-term protection of
17 land having value as a resource to the State and preserve the
18 interests of the State. The board shall require as a condition
19 of the receipt of funds that it be an owner of [~~any such~~] a
20 conservation easement.

21 (d) The board [~~shall~~], in consultation with the senate
22 president and the speaker of the house of representatives, shall

1 require as a condition of the receipt of funds that nonprofit
2 land conservation organizations receiving funds under this
3 chapter provide a conservation easement under chapter 198, or an
4 agricultural easement or deed restriction or covenant to the
5 department of land and natural resources; the department of
6 agriculture; the agribusiness development corporation; [~~the~~
7 ~~public land development corporation;~~] an appropriate land
8 conservation agency; or an appropriate county, state, or federal
9 natural resource conservation agency, that shall run with the
10 land and be recorded with the land to ensure the long-term
11 protection of land having value as a resource to the State and
12 preserve the interests of the State. The board shall require as
13 a condition of the receipt of funds that it be an owner of [~~any~~
14 ~~such~~] a conservation easement."

15 SECTION 5. Section 173A-5, Hawaii Revised Statutes, is
16 amended by amending subsection (i) to read as follows:

17 "(i) Based on applications from state agencies, counties,
18 and nonprofit land conservation organizations, the department,
19 in consultation with the senate president and speaker of the
20 house of representatives, shall recommend to the board specific
21 parcels of land to be acquired, restricted with conservation
22 easements, or preserved in similar fashion. The board shall



1 review the selections and approve or reject the selections
2 according to the availability of moneys in the fund. To be
3 eligible for grants from the fund, state and county agencies and
4 nonprofit land conservation organizations shall submit
5 applications to the department that contain:

- 6 (1) Contact information for the project;
- 7 (2) A description of the project;
- 8 (3) The request for funding;
- 9 (4) Cost estimates for acquisition of the interest in the
10 land;
- 11 (5) Location and characteristics of the land;
- 12 (6) The project's public benefits, including but not
13 limited to where public access may be practicable or
14 not practicable and why;
- 15 (7) Results of the applicant's consultation with the staff
16 of the department, the department of agriculture, and
17 the agribusiness development corporation[, ~~and the~~
18 ~~public land development corporation~~] regarding the
19 maximization of public benefits of the project, where
20 practicable; and
- 21 (8) Other similar, related, or relevant information as
22 determined by the department."



1 SECTION 6. Section 206E-4, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§206E-4 Powers; generally. Except as otherwise limited
4 by this chapter, the authority may:

- 5 (1) Sue and be sued;
- 6 (2) Have a seal and alter the same at pleasure;
- 7 (3) Make and execute contracts and all other instruments
8 necessary or convenient for the exercise of its powers
9 and functions under this chapter;
- 10 (4) Make and alter bylaws for its organization and
11 internal management;
- 12 (5) Make rules with respect to its projects, operations,
13 properties, and facilities, which rules shall be in
14 conformance with chapter 91;
- 15 (6) Through its executive director appoint officers,
16 agents, and employees, prescribe their duties and
17 qualifications, and fix their salaries, without regard
18 to chapter 76;
- 19 (7) Prepare or cause to be prepared a community
20 development plan for all designated community
21 development districts;



- 1 (8) Acquire, reacquire, or contract to acquire or
2 reacquire by grant or purchase real, personal, or
3 mixed property or any interest therein; to own, hold,
4 clear, improve, and rehabilitate, and to sell, assign,
5 exchange, transfer, convey, lease, or otherwise
6 dispose of or encumber the same;
- 7 (9) Acquire or reacquire by condemnation real, personal,
8 or mixed property or any interest therein for public
9 facilities, including but not limited to streets,
10 sidewalks, parks, schools, and other public
11 improvements;
- 12 (10) By itself, or in partnership with qualified persons,
13 acquire, reacquire, construct, reconstruct,
14 rehabilitate, improve, alter, or repair or provide for
15 the construction, reconstruction, improvement,
16 alteration, or repair of any project; own, hold, sell,
17 assign, transfer, convey, exchange, lease, or
18 otherwise dispose of or encumber any project, and in
19 the case of the sale of any project, accept a purchase
20 money mortgage in connection therewith; and repurchase
21 or otherwise acquire any project [~~which~~] that the



- 1 authority has theretofore sold or otherwise conveyed,
2 transferred, or disposed of;
- 3 (11) Arrange or contract for the planning, replanning,
4 opening, grading, or closing of streets, roads,
5 roadways, alleys, or other places, or for the
6 furnishing of facilities or for the acquisition of
7 property or property rights or for the furnishing of
8 property or services in connection with a project;
- 9 (12) Grant options to purchase any project or to renew any
10 lease entered into by it in connection with any of its
11 projects, on [~~such~~] terms and conditions as it deems
12 advisable;
- 13 (13) Prepare or cause to be prepared plans, specifications,
14 designs, and estimates of costs for the construction,
15 reconstruction, rehabilitation, improvement,
16 alteration, or repair of any project, and from time to
17 time to modify [~~such~~] the plans, specifications,
18 designs, or estimates;
- 19 (14) Provide advisory, consultative, training, and
20 educational services, technical assistance, and advice
21 to any person, partnership, or corporation, either
22 public or private, to carry out the purposes of this



- 1 chapter, and engage the services of consultants on a
2 contractual basis for rendering professional and
3 technical assistance and advice;
- 4 (15) Procure insurance against any loss in connection with
5 its property and other assets and operations in [~~such~~]
6 amounts and from [~~such~~] insurers as it deems
7 desirable;
- 8 (16) Contract for and accept gifts or grants in any form
9 from any public agency or from any other source;
- 10 (17) Do any and all things necessary to carry out its
11 purposes and exercise the powers given and granted in
12 this chapter; and
- 13 (18) Allow satisfaction of any affordable housing
14 requirements imposed by the authority upon any
15 proposed development project through the construction
16 of reserved housing, as defined in section 206E-101;
17 by a person on land located outside the geographic
18 boundaries of the authority's jurisdiction; provided
19 that the authority shall not permit any person to make
20 cash payments in lieu of providing reserved housing,
21 except to account for any fractional unit that results
22 after calculating the percentage requirement against



1 residential floor space or total number of units
2 developed. The substituted housing shall be located
3 on the same island as the development project and
4 shall be substantially equal in value to the required
5 reserved housing units that were to be developed on
6 site. The authority shall establish the following
7 priority in the development of reserved housing:

- 8 (A) Within the community development district;
9 (B) Within areas immediately surrounding the
10 community development district;
11 (C) Areas within the central urban core;
12 (D) In outlying areas within the same island as the
13 development project.

14 The Hawaii community development authority shall
15 adopt rules relating to the approval of reserved
16 housing that are developed outside of a community
17 development district. The rules shall include, but
18 are not limited to, the establishment of guidelines to
19 ensure compliance with the above priorities [7] and

20 ~~(19) Assist the public land development corporation~~
21 ~~established by section 171C-3 in identifying public~~
22 ~~lands that may be suitable for development, carrying~~



1 ~~on marketing analysis to determine the best revenue-~~
2 ~~generating programs for the public lands identified,~~
3 ~~entering into public-private agreements to~~
4 ~~appropriately develop the public lands identified, and~~
5 ~~providing the leadership for the development,~~
6 ~~financing, improvement, or enhancement of the selected~~
7 ~~development opportunities; provided that no assistance~~
8 ~~shall be provided unless the authority authorizes the~~
9 ~~assistance]."~~

10 SECTION 7. Chapter 171C, Hawaii Revised Statutes, is
11 repealed.

12 SECTION 8. Act 117, Session Laws of Hawaii 2012, is
13 amended by amending section 2 to read as follows:

14 "SECTION 2. The department of public safety, in
15 cooperation with Ohana Ho'opakele and other restorative justice
16 groups, is directed to prepare a plan for the creation of a
17 pu'uhonua, or wellness center, on lands owned or controlled by
18 the State. ~~[The public land development corporation shall~~
19 ~~assist in determining an appropriate site for the center,~~
20 ~~provided that the site formerly used as the Kulani correctional~~
21 ~~facility on the island of Hawaii shall be given preference,~~



1 ~~unless another site will provide a greater possibility of~~
2 ~~success.]~~

3 The department of public safety shall submit a report to
4 the legislature on its plan, findings, and recommendations,
5 including the factors used in determining site selection, and
6 any budget requests necessary to achieve the purposes of this
7 Act, no later than twenty days prior to the convening of the
8 regular session of 2013."

9 SECTION 9. (a) Any funds appropriated to the department
10 of land and natural resources pursuant to Act 55, Session Laws
11 of Hawaii 2011, that are unexpended and unencumbered as of the
12 effective date of this Act shall be deposited into the land
13 conservation fund established pursuant to section 173A-5, Hawaii
14 Revised Statutes, on the effective date of this Act.

15 (b) Any proceeds generated and deposited into the stadium
16 facilities special fund pursuant to Act 282, Session Laws of
17 Hawaii 2012, that are unexpended and unencumbered as of the
18 effective date of this Act shall be deposited into the general
19 fund on the effective date of this Act.

20 (c) Any proceeds generated and deposited into the school
21 facilities special fund pursuant to Act 309, Session Laws of
22 Hawaii 2012, that are unexpended and unencumbered as of the



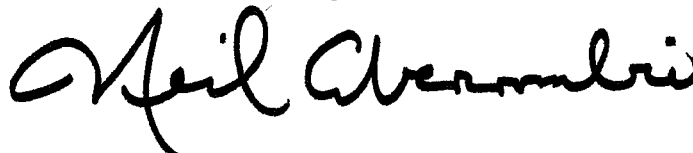
1 effective date of this Act shall be deposited into the general
2 fund on the effective date of this Act.

3 (d) All records, equipment, machines, files, supplies,
4 contracts, books, papers, documents, maps, and other personal
5 and real property heretofore made, used, acquired, or held by
6 the public land development corporation shall be transferred to
7 the department of land and natural resources.

8 SECTION 10. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 11. This Act shall take effect upon its approval.

APPROVED this 22 day of APR, 2013



GOVERNOR OF THE STATE OF HAWAII

