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# A BILL FOR AN ACT

RELATING TO HAWAIIAN AFFAIRS.

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

1           SECTION 1. The legislature finds that the State of Hawaii  
2 is currently dealing with a financial crisis. As a result of  
3 the recent economic downturn, state and county governments have  
4 had to reduce or eliminate various public services. All  
5 eighteen of the state principal departments, including the  
6 Department of Education and University of Hawaii, are  
7 underfunded and understaffed. In the wake of this shortfall in  
8 revenue, the State is also faced with growing debt and unfunded  
9 pension and welfare obligations in the billions of dollars.

10           Adding to this already challenging situation is the recent  
11 decision of the Hawaii Supreme Court, which held in *Nelson v.*  
12 *Hawaiian Homes Commission*, 127 Haw. 185 (2012), that the State  
13 must provide "sufficient funds" to cover the administrative and  
14 operational expenses of the department of Hawaiian home lands.  
15 This obligation, currently about \$15,000,000 per year, not only  
16 runs in perpetuity but also requires a back payment.

17           The department of Hawaiian home lands is also facing a  
18 fiscal crisis. The \$600,000,000 settlement awarded to the



1 department of Hawaiian home lands in 1995 was largely spent by  
2 the prior administration, and this award will likely be  
3 completely diminished in about two years.

4 The purpose of this Act is to create an innovative approach  
5 to:

- 6 (1) Provide a settlement vehicle, regarding the *Nelson*  
7 decision, between the State and the department of  
8 Hawaiian home lands that would ensure that "sufficient  
9 funds" are provided by the State to the department of  
10 Hawaiian home lands;
- 11 (2) Generate much needed revenues for the general fund and  
12 the department of Hawaiian home lands;
- 13 (3) Create a vehicle to obtain revenue that will not  
14 require the State or the department of Hawaiian home  
15 lands to bear up-front costs; and
- 16 (4) Utilize lands and assets that are not Hawaiian home  
17 land trust lands to generate revenue.

18 In summary, this Act authorizes the department of Hawaiian  
19 home lands to enter into public-private partnerships for  
20 projects that will create revenue to provide the "sufficient  
21 funds" that the State must provide to the department of Hawaiian  
22 home lands.



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

4 "CHAPTER

5 PUBLIC-PRIVATE PARTNERSHIP FOR THE BENEFIT

6 OF HAWAIIAN HOME LANDS

7 § -1 Definitions. As used in this chapter, unless the  
8 context clearly requires otherwise:

9 "Applicant" means any individual or private entity who  
10 seeks to enter into a public-private partnership under this  
11 chapter.

12 "Department" means the department of Hawaiian home lands.

13 "Individual" means a natural person.

14 "Private entity" means any company, corporation, limited  
15 liability company, partnership, or sole proprietorship that has  
16 no officer, director, shareholder, or managerial employee that  
17 is an employee of the State.

18 "Qualifier" means an affiliate, affiliated company,  
19 officer, director, or managerial employee of an applicant, or a  
20 person who holds greater than a five per cent direct or indirect  
21 interest in an applicant.



1           §   -2 Authority for department of Hawaiian home lands to  
2 enter into public-private partnerships. (a) Notwithstanding  
3 any law to the contrary, the department of Hawaiian home lands,  
4 by using the request for proposals process or by direct  
5 negotiation, may enter into an agreement with a private entity  
6 or individual for the private development, management, and  
7 operation of any land or the private development, management,  
8 and operation of any enterprise.

9           (b) The department of Hawaiian home lands may enter into  
10 public-private partnerships in the following areas:

11           (1) The lease, development, management, and operation of  
12 any lands that will result in revenue for the  
13 department;

14           (2) The development, management, and operation of an  
15 enterprise that will result in revenue for the  
16 department;

17           (3) The development of any concept proposed by an  
18 applicant that would result in revenue for the  
19 department, even if the concept requires legislative  
20 changes to existing statutes or regulations; and

21           (4) Any other area that may result in revenue for the  
22 department.



1           §   -3   Criteria for selection of private entity or  
2 individual. The following criteria shall be considered for all  
3 applicants that seek to enter into a public-private partnership  
4 with the department:

- 5           (1) The applicant's history of success in either the  
6               development of land or the management and operation of  
7               a private enterprise;
- 8           (2) The applicant's history of, or a bona fide plan for,  
9               community involvement or investment in the project  
10              proposed by the applicant;
- 11          (3) The applicant's financial ability to fund the  
12               development of the land or private enterprise;  
13               maintain adequate liability and casualty insurance;  
14               and provide an adequate surety bond;
- 15          (4) Sufficient data identifying the applicant's sources  
16               and adequacy of capital to develop, construct,  
17               operate, and maintain the land development or  
18               enterprise;
- 19          (5) The applicant's adequacy of capital to develop,  
20               construct, operate, and maintain, for the duration of  
21               the project, the proposed development or enterprise in  
22               accordance with the requirements of this chapter; and



1 also to pay off its secured and unsecured debts in  
2 accordance with any financing agreements and other  
3 contractual obligations;

4 (6) The extent to which the applicant or any of its  
5 qualifiers have developed land or operated an entity  
6 in either:

7 (A) A metropolitan area in a tropical climate that  
8 has an oceanfront beach; or

9 (B) A rural area in a tropical climate.

10 Tropical climate means an area that is classified as a  
11 tropical climate on the Köppen climate classification;  
12 and

13 (7) The caliber of the applicant's development or private  
14 enterprise, including the amount of economic benefit  
15 to the community, anticipated or actual number of  
16 employees, compliance with federal and state  
17 affirmative action guidelines, and projected or actual  
18 gross receipts.

19 § -4 **Fee charged to applicant.** The department shall be  
20 authorized to assess each applicant a nonrefundable application  
21 fee in an amount to be determined by the department that shall  
22 be paid to the department at the time of application. The



1 purpose of the nonrefundable fee is to defray the costs  
2 associated with the department's review of the proposal."

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

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**Report Title:**

Hawaiian Affairs; Public-Private Partnership; Department of  
Hawaiian Home Lands

**Description:**

Authorizes the department of Hawaiian home lands to enter into  
public-private partnership agreements with any individual or  
private entity to create revenue for the department.  
(Proposed SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is  
not legislation or evidence of legislative intent.*

