

JAN 24 2013

A BILL FOR AN ACT

RELATING TO PUBLIC LANDS.

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

1 SECTION 1. Act 55, Session Laws of Hawaii 2011 (Act 55),
2 codified as chapter 171C, Hawaii Revised Statutes, created the
3 public land development corporation. Section 171C-1, Hawaii
4 Revised 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 corporation's intentions and development
6 plans. Despite efforts to allay concerns, many individuals and
7 organizations, particularly environmental and Native Hawaiian
8 organizations, have expressed support for legislation to repeal
9 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, the means of achieving this goal requires a greater
20 respect for existing laws and procedures and greater assurance
21 that the corporation is the vehicle that will produce economic,
22 environmental, and social benefit for the people of Hawaii.



1 The purpose of this Act is to repeal chapter 171C, Hawaii
2 Revised Statutes, the public land development corporation.

3 SECTION 2. Chapter 171C, Hawaii Revised Statutes, is
4 repealed.

5 SECTION 3. (a) Any funds appropriated to the department
6 of land and natural resources pursuant to Act 55, Session Laws
7 of Hawaii 2011, that are unexpended and unencumbered as of the
8 effective date of this Act shall be deposited into the land
9 conservation fund established pursuant to section 173A-5, Hawaii
10 Revised Statutes, on the effective date of this Act.

11 (b) The planner and project-related development specialist
12 hired for purposes of Act 55, Session Laws of Hawaii 2011, shall
13 be transferred to the department of land and natural resources
14 without loss of salary, seniority, prior service credit,
15 vacation, sick leave, or other employee benefit or privilege as
16 a consequence of this Act.

17 SECTION 4. Section 171-2, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§171-2 Definition of public lands.** "Public lands" means
20 all lands or interest therein in the State classed as government
21 or crown lands previous to August 15, 1895, or acquired or
22 reserved by the government upon or subsequent to that date by



1 purchase, exchange, escheat, or the exercise of the right of
2 eminent domain, or in any other manner; including lands accreted
3 after May 20, 2003, and not otherwise awarded, submerged lands,
4 and lands beneath tidal waters that are suitable for
5 reclamation, together with reclaimed lands that have been given
6 the status of public lands under this chapter, except:

- 7 (1) Lands designated in section 203 of the Hawaiian Homes
8 Commission Act, 1920, as amended;
- 9 (2) Lands set aside pursuant to law for the use of the
10 United States;
- 11 (3) Lands being used for roads and streets;
- 12 (4) Lands to which the United States relinquished the
13 absolute fee and ownership under section 91 of the
14 Hawaiian Organic Act prior to the admission of Hawaii
15 as a state of the United States unless subsequently
16 placed under the control of the board of land and
17 natural resources and given the status of public lands
18 in accordance with the state constitution, the
19 Hawaiian Homes Commission Act, 1920, as amended, or
20 other laws;
- 21 (5) Lands to which the University of Hawaii holds title;



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



1 (11) Lands to which the high technology development
2 corporation in its corporate capacity holds title[+
3 and

4 ~~(12) Lands which are set aside by the governor to the
5 public land development corporation; lands leased to
6 the public land development corporation by any
7 department or agency of the State; or lands to which
8 the public land development corporation holds title in
9 its corporate capacity].~~

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

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



- 1 (1) Land set aside pursuant to law for the use of the
2 United States;
- 3 (2) Land to which the United States relinquished the
4 absolute fee and ownership under section 91 of the
5 Organic Act prior to the admission of Hawaii as a
6 state of the United States;
- 7 (3) Land to which the University of Hawaii holds title;
- 8 (4) Land to which the Hawaii housing finance and
9 development corporation in its corporate capacity
10 holds title;
- 11 (5) Land to which the department of agriculture holds
12 title by way of foreclosure, voluntary surrender, or
13 otherwise, to recover moneys loaned or to recover
14 debts otherwise owed the department under chapter 167;
- 15 (6) Land that is set aside by the governor to the Aloha
16 Tower development corporation; or land to which the
17 Aloha Tower development corporation holds title in its
18 corporate capacity;
- 19 (7) Land that is set aside by the governor to the
20 agribusiness development corporation; or land to which
21 the agribusiness development corporation in its
22 corporate capacity holds title; and



1 (8) Land to which the high technology development
2 corporation in its corporate capacity holds title[+
3 and

4 ~~(9) Land that is set aside by the governor to the public~~
5 ~~land development corporation or land to which the~~
6 ~~public land development corporation holds title in its~~
7 ~~corporate capacity]."~~

8 SECTION 6. Section 173A-4, Hawaii Revised Statutes, is
9 amended by amending subsections (c) and (d) to read as follows:

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



1 interests of the State. The board shall require as a condition
2 of the receipt of funds that it be an owner of any such
3 conservation easement.

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

20 SECTION 7. Section 173A-5, Hawaii Revised Statutes, is
21 amended by amending subsection (i) to read as follows:



1 "(i) Based on applications from state agencies, counties,
2 and nonprofit land conservation organizations, the department,
3 in consultation with the senate president and speaker of the
4 house of representatives, shall recommend to the board specific
5 parcels of land to be acquired, restricted with conservation
6 easements, or preserved in similar fashion. The board shall
7 review the selections and approve or reject the selections
8 according to the availability of moneys in the fund. To be
9 eligible for grants from the fund, state and county agencies and
10 nonprofit land conservation organizations shall submit
11 applications to the department that contain:

- 12 (1) Contact information for the project;
- 13 (2) A description of the project;
- 14 (3) The request for funding;
- 15 (4) Cost estimates for acquisition of the interest in the
16 land;
- 17 (5) Location and characteristics of the land;
- 18 (6) The project's public benefits, including but not
19 limited to where public access may be practicable or
20 not practicable and why;
- 21 (7) Results of the applicant's consultation with the staff
22 of the department, the department of agriculture, and



1 the agribusiness development corporation[, and the
2 ~~public land development corporation~~] regarding the
3 maximization of public benefits of the project, where
4 practicable; and

5 (8) Other similar, related, or relevant information as
6 determined by the department."

7 SECTION 8. Section 206E-4, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "§206E-4 Powers; generally. Except as otherwise limited
10 by this chapter, the authority may:

- 11 (1) Sue and be sued;
- 12 (2) Have a seal and alter the same at pleasure;
- 13 (3) Make and execute contracts and all other instruments
14 necessary or convenient for the exercise of its powers
15 and functions under this chapter;
- 16 (4) Make and alter bylaws for its organization and
17 internal management;
- 18 (5) Make rules with respect to its projects, operations,
19 properties, and facilities, which rules shall be in
20 conformance with chapter 91;
- 21 (6) Through its executive director appoint officers,
22 agents, and employees, prescribe their duties and



1 qualifications, and fix their salaries, without regard
2 to chapter 76;

3 (7) Prepare or cause to be prepared a community
4 development plan for all designated community
5 development districts;

6 (8) Acquire, reacquire, or contract to acquire or
7 reacquire by grant or purchase real, personal, or
8 mixed property or any interest therein; to own, hold,
9 clear, improve, and rehabilitate, and to sell, assign,
10 exchange, transfer, convey, lease, or otherwise
11 dispose of or encumber the same;

12 (9) Acquire or reacquire by condemnation real, personal,
13 or mixed property or any interest therein for public
14 facilities, including but not limited to streets,
15 sidewalks, parks, schools, and other public
16 improvements;

17 (10) By itself, or in partnership with qualified persons,
18 acquire, reacquire, construct, reconstruct,
19 rehabilitate, improve, alter, or repair or provide for
20 the construction, reconstruction, improvement,
21 alteration, or repair of any project; own, hold, sell,
22 assign, transfer, convey, exchange, lease, or



1 otherwise dispose of or encumber any project, and in
2 the case of the sale of any project, accept a purchase
3 money mortgage in connection therewith; and repurchase
4 or otherwise acquire any project which the authority
5 has theretofore sold or otherwise conveyed,
6 transferred, or disposed of;

7 (11) Arrange or contract for the planning, replanning,
8 opening, grading, or closing of streets, roads,
9 roadways, alleys, or other places, or for the
10 furnishing of facilities or for the acquisition of
11 property or property rights or for the furnishing of
12 property or services in connection with a project;

13 (12) Grant options to purchase any project or to renew any
14 lease entered into by it in connection with any of its
15 projects, on such terms and conditions as it deems
16 advisable;

17 (13) Prepare or cause to be prepared plans, specifications,
18 designs, and estimates of costs for the construction,
19 reconstruction, rehabilitation, improvement,
20 alteration, or repair of any project, and from time to
21 time to modify such plans, specifications, designs, or
22 estimates;



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



1 cash payments in lieu of providing reserved housing,
2 except to account for any fractional unit that results
3 after calculating the percentage requirement against
4 residential floor space or total number of units
5 developed. The substituted housing shall be located
6 on the same island as the development project and
7 shall be substantially equal in value to the required
8 reserved housing units that were to be developed on
9 site. The authority shall establish the following
10 priority in the development of reserved housing:

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

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



1 ~~(19) Assist the public land development corporation~~
2 ~~established by section 171C 3 in identifying public~~
3 ~~lands that may be suitable for development, carrying~~
4 ~~on marketing analysis to determine the best revenue-~~
5 ~~generating programs for the public lands identified,~~
6 ~~entering into public private agreements to~~
7 ~~appropriately develop the public lands identified, and~~
8 ~~providing the leadership for the development,~~
9 ~~financing, improvement, or enhancement of the selected~~
10 ~~development opportunities; provided that no assistance~~
11 ~~shall be provided unless the authority authorizes the~~
12 ~~assistance]."~~

13 SECTION 9. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

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

16

INTRODUCED BY:

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S.B. NO. 958

Report Title:

Public Land Development Corporation

Description:

Repeals chapter 171C, HRS, which established the public land development corporation.

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