
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.

4



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. (SD1)

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not legislation or evidence of legislative intent.*

