

JAN 23 2014

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# A BILL FOR AN ACT

RELATING TO ECONOMIC DEVELOPMENT.

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

1           SECTION 1. The legislature finds that the recent decision  
2 of the Hawaii Supreme Court, which held in *Nelson v. Hawaiian*  
3 *Homes Commission*, 127 Haw. 185 (2012), that the State must  
4 provide "sufficient funds" to cover the administrative and  
5 operational expenses of the department of Hawaiian home lands.  
6 This obligation, currently about \$15,000,000 per year, not only  
7 runs in perpetuity but also requires a back payment.

8           The department of Hawaiian home lands is also facing a  
9 fiscal crisis. The \$600,000,000 settlement awarded to the  
10 department of Hawaiian home lands in 1995 was largely spent by  
11 the prior administration, and this award will likely be  
12 completely diminished in about two years.

13           The purpose of this Act is to create an innovative approach  
14 to:

15           (1) Provide a settlement vehicle, regarding the *Nelson*  
16 decision, between the State and the department of  
17 Hawaiian home lands that would ensure that "sufficient



- 1 funds" are provided by the State to the department of
- 2 Hawaiian home lands;
- 3 (2) Generate much needed revenues for the general fund and
- 4 the department of Hawaiian home lands;
- 5 (3) Create a vehicle to obtain revenue that will not
- 6 require the State or the department of Hawaiian home
- 7 lands to bear up-front costs; and
- 8 (4) Utilize lands and assets that are not Hawaiian home
- 9 lands trust lands to generate revenue.

10 This Act authorizes the department of Hawaiian home lands  
11 to enter into public-private partnerships for projects that will  
12 create revenue to provide the "sufficient funds" that the State  
13 must provide to the department of Hawaiian home lands.

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

17 **"CHAPTER**

18 **PUBLIC-PRIVATE PARTNERSHIP FOR THE BENEFIT**

19 **OF HAWAIIAN HOME LANDS**

20 **§ -1 Definitions.** As used in this chapter, unless the  
21 context clearly requires otherwise:



1 "Applicant" means any individual or private entity who  
2 seeks to enter into a public-private partnership under this  
3 chapter.

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

5 "Individual" means a natural person.

6 "Private entity" means any company, corporation, limited  
7 liability company, partnership, or sole proprietorship that has  
8 no officer, director, shareholder, or managerial employee that  
9 is an employee of the State.

10 "Qualifier" means an affiliate, affiliated company,  
11 officer, director, or managerial employee of an applicant, or a  
12 person who holds greater than a five per cent direct or indirect  
13 interest in an applicant.

14 **§ -2 Authority for department of Hawaiian home lands to**  
15 **enter into public-private partnerships.** (a) Notwithstanding  
16 any law to the contrary, the department of Hawaiian home lands,  
17 by using the request for proposals process or by direct  
18 negotiation, may enter into an agreement with a private entity  
19 or individual for the private development, management, and  
20 operation of any land or the private development, management,  
21 and operation of any enterprise.



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

3 (1) The lease, development, management, and operation of  
4 any lands that will result in revenue for the  
5 department;

6 (2) The development, management, and operation of an  
7 enterprise that will result in revenue for the  
8 department;

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

13 (4) Any other area that may result in revenue for the  
14 department.

15 **§ -3 Criteria for selection of private entity or**

16 **individual.** The following criteria shall be considered for all  
17 applicants that seek to enter into a public-private partnership  
18 with the department:

19 (1) The applicant's history of success in either the  
20 development of land or the management and operation of  
21 a private enterprise;



- 1       (2) The applicant's history of, or a bona fide plan for,  
2           community involvement or investment in the project  
3           proposed by the applicant;
- 4       (3) The applicant's financial ability to fund the  
5           development of the land or private enterprise;  
6           maintain adequate liability and casualty insurance;  
7           and provide an adequate surety bond;
- 8       (4) Sufficient data identifying the applicant's sources  
9           and adequacy of capital to develop, construct,  
10          operate, and maintain the land development or  
11          enterprise;
- 12      (5) The applicant's adequacy of capital to develop,  
13          construct, operate, and maintain, for the duration of  
14          the project, the proposed development or enterprise in  
15          accordance with the requirements of this chapter and  
16          to pay off its secured and unsecured debts in  
17          accordance with any financing agreements and other  
18          contractual obligations; and
- 19      (6) The caliber of the applicant's development or private  
20          enterprise, including the amount of economic benefit  
21          to the community, anticipated or actual number of  
22          employees, compliance with federal and state



1 affirmative action guidelines, and projected or actual  
2 gross receipts.

3 § -4 Fee charged to applicant. The department shall be  
4 authorized to assess each applicant a nonrefundable application  
5 fee in an amount to be determined by the department that shall  
6 be paid to the department at the time of application and used to  
7 defray the costs associated with the department's review of the  
8 proposal."

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

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F. Alan Gosh

INTRODUCED BY:

Maldonado

Daniel DeLo

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Robert White

Michelle Sedani

april



# S.B. NO. 2951

**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.

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