

JAN 18 2013

A BILL FOR AN ACT

RELATING TO THE PUBLIC LAND DEVELOPMENT CORPORATION.

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

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

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

11 "**§171-2 Definition of public lands.** "Public lands" means
12 all lands or interest therein in the State classed as government
13 or crown lands previous to August 15, 1895, or acquired or
14 reserved by the government upon or subsequent to that date by
15 purchase, exchange, escheat, or the exercise of the right of
16 eminent domain, or in any other manner; including lands accreted
17 after May 20, 2003, and not otherwise awarded, submerged lands,
18 and lands beneath tidal waters that are suitable for
19 reclamation, together with reclaimed lands that have been given
20 the status of public lands under this chapter, except:

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



- 1 (2) Lands set aside pursuant to law for the use of the
2 United States;
- 3 (3) Lands being used for roads and streets;
- 4 (4) Lands to which the United States relinquished the
5 absolute fee and ownership under section 91 of the
6 Hawaiian Organic Act prior to the admission of Hawaii
7 as a state of the United States unless subsequently
8 placed under the control of the board of land and
9 natural resources and given the status of public lands
10 in accordance with the state constitution, the
11 Hawaiian Homes Commission Act, 1920, as amended, or
12 other laws;
- 13 (5) Lands to which the University of Hawaii holds title;
- 14 (6) Lands to which the Hawaii housing finance and
15 development corporation in its corporate capacity
16 holds title;
- 17 (7) Lands to which the Hawaii community development
18 authority in its corporate capacity holds title;
- 19 (8) Lands to which the department of agriculture holds
20 title by way of foreclosure, voluntary surrender, or
21 otherwise, to recover moneys loaned or to recover
22 debts otherwise owed the department under chapter 167;



1 (9) Lands that are set aside by the governor to the Aloha
2 Tower development corporation; lands leased to the
3 Aloha Tower development corporation by any department
4 or agency of the State; or lands to which the Aloha
5 Tower development corporation holds title in its
6 corporate capacity;

7 (10) Lands that are set aside by the governor to the
8 agribusiness development corporation; lands leased to
9 the agribusiness development corporation by any
10 department or agency of the State; or lands to which
11 the agribusiness development corporation in its
12 corporate capacity holds title; and

13 (11) Lands to which the high technology development
14 corporation in its corporate capacity holds title[~~+~~
15 and

16 ~~(12) Lands which are set aside by the governor to the~~
17 ~~public land development corporation; lands leased to~~
18 ~~the public land development corporation by any~~
19 ~~department or agency of the State; or lands to which~~
20 ~~the public land development corporation holds title in~~
21 ~~its corporate capacity]."~~



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

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

- 13 (1) Land set aside pursuant to law for the use of the
14 United States;
- 15 (2) Land to which the United States relinquished the
16 absolute fee and ownership under section 91 of the
17 Organic Act prior to the admission of Hawaii as a
18 state of the United States;
- 19 (3) Land to which the University of Hawaii holds title;
- 20 (4) Land to which the Hawaii housing finance and
21 development corporation in its corporate capacity
22 holds title;



1 (5) Land 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 (6) Land that is set aside by the governor to the Aloha
 6 Tower development corporation; or land to which the
 7 Aloha Tower development corporation holds title in its
 8 corporate capacity;

9 (7) Land that is set aside by the governor to the
 10 agribusiness development corporation; or land to which
 11 the agribusiness development corporation in its
 12 corporate capacity holds title; and

13 (8) Land to which the high technology development
 14 corporation in its corporate capacity holds title[+
 15 and

16 ~~(9) Land that is set aside by the governor to the public~~
 17 ~~land development corporation or land to which the~~
 18 ~~public land development corporation holds title in its~~
 19 ~~corporate capacity]."~~

20 SECTION 4. Section 173A-4, Hawaii Revised Statutes, is
 21 amended by amending subsection (c) to read as follows:



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

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

19 "(i) Based on applications from state agencies, counties,
20 and nonprofit land conservation organizations, the department,
21 in consultation with the senate president and speaker of the
22 house of representatives, shall recommend to the board specific



1 parcels of land to be acquired, restricted with conservation
2 easements, or preserved in similar fashion. The board shall
3 review the selections and approve or reject the selections
4 according to the availability of moneys in the fund. To be
5 eligible for grants from the fund, state and county agencies and
6 nonprofit land conservation organizations shall submit
7 applications to the department that contain:

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



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

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

5 "**S206E-4 Powers; generally.** Except as otherwise limited
6 by this chapter, the authority may:

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



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



1 money mortgage in connection therewith; and repurchase
2 or otherwise acquire any project which the authority
3 has theretofore sold or otherwise conveyed,
4 transferred, or disposed of;

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

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

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

21 (14) Provide advisory, consultative, training, and
22 educational services, technical assistance, and advice



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



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

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

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

21 ~~(19) Assist the public land development corporation~~
 22 ~~established by section 171C-3 in identifying public~~



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

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

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

19 (b) Any proceeds generated and deposited into the stadium
20 facilities special fund pursuant to Act 282, Session Laws of
21 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 (c) Any proceeds generated and deposited into the school
 4 facilities special fund pursuant to Act 309, Session Laws of
 5 Hawaii 2012, that are unexpended and unencumbered as of the
 6 effective date of this Act shall be deposited into the general
 7 fund on the effective date of this Act.

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

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

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

17

INTRODUCED BY: *Alan Serr*

S.B. NO. 480

Report Title:

Public Land Development Corporation

Description:

Repeals chapter 171C, HRS, relating to the public land development corporation, and makes conforming amendments.

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

