

ACT 38

H.B. NO. 1133

A Bill for an Act Relating to Public Land.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 55, Session Laws of Hawaii 2011, codified as chapter 171C, Hawaii Revised Statutes, created the public land development corporation. Section 171C-1, Hawaii Revised Statutes, states in pertinent part:

“The purpose of this chapter is to create a vehicle and process to make optimal use of public land for the economic, environmental, and social benefit of the people of Hawaii. This chapter establishes a public corporation to administer an appropriate and culturally-sensitive public land development program. The corporation shall coordinate and administer

programs to make optimal use of public land, while ensuring that the public land is maintained for the people of Hawaii.”

The legislature finds that Act 55 has engendered significant public concern and scrutiny due in part to the fact that projects undertaken pursuant to Act 55 are exempt from state and county laws regarding land use, zoning, and construction standards for subdivisions, development, and improvement of land. In addition, concerns have been raised regarding inadequate notice given to the public to testify on the exemption provisions. The exemptions, coupled with the manner in which Act 55 was passed, have led to distrust and uncertainty of the public land development corporation’s intentions and development plans. Despite efforts to allay concerns, many individuals and organizations, particularly environmental and native Hawaiian organizations, have expressed support for legislation to repeal Act 55.

The legislature further finds that the implementation of Act 55 falls short of “ensuring that the public land is maintained for the people of Hawaii.” The intent of the legislature is to ensure that the public lands of Hawaii are used and administered in an equitable and transparent manner that should not necessarily be relegated to administrative decision-making or rule-making on an ad hoc basis. While the optimization of the use of public lands is a meritorious goal with the potential to significantly benefit the people of Hawaii, achieving this goal requires a greater respect for existing laws and procedures and greater assurance that the public land development corporation is the vehicle that will produce economic, environmental, and social benefit for the people of Hawaii.

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

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

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

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

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

- (6) Lands to which the Hawaii housing finance and development corporation in its corporate capacity holds title;
- (7) Lands to which the Hawaii community development authority in its corporate capacity holds title;
- (8) Lands to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167;
- (9) Lands that are set aside by the governor to the Aloha Tower development corporation; lands leased to the Aloha Tower development corporation by any department or agency of the State; or lands to which the Aloha Tower development corporation holds title in its corporate capacity;
- (10) Lands that are set aside by the governor to the agribusiness development corporation; lands leased to the agribusiness development corporation by any department or agency of the State; or lands to which the agribusiness development corporation in its corporate capacity holds title; and
- (11) Lands to which the high technology development corporation in its corporate capacity holds title; and
- (12) ~~Lands which are set aside by the governor to the public land development corporation; lands leased to the public land development corporation by any department or agency of the State; or lands to which the public land development corporation holds title in its corporate capacity].~~

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

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

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

- (8) Land to which the high technology development corporation in its corporate capacity holds title; ~~and~~
- (9) ~~Land that is set aside by the governor to the public land development corporation or land to which the public land development corporation holds title in its corporate capacity]."~~

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

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

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

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

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

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

- ment corporation[, and the public land development corporation] regarding the maximization of public benefits of the project, where practicable; and
- (8) Other similar, related, or relevant information as determined by the department.”

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

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

- (1) Sue and be sued;
- (2) Have a seal and alter the same at pleasure;
- (3) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;
- (4) Make and alter bylaws for its organization and internal management;
- (5) Make rules with respect to its projects, operations, properties, and facilities, which rules shall be in conformance with chapter 91;
- (6) Through its executive director appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapter 76;
- (7) Prepare or cause to be prepared a community development plan for all designated community development districts;
- (8) Acquire, reacquire, or contract to acquire or reacquire by grant or purchase real, personal, or mixed property or any interest therein; to own, hold, clear, improve, and rehabilitate, and to sell, assign, exchange, transfer, convey, lease, or otherwise dispose of or encumber the same;
- (9) Acquire or reacquire by condemnation real, personal, or mixed property or any interest therein for public facilities, including but not limited to streets, sidewalks, parks, schools, and other public improvements;
- (10) By itself, or in partnership with qualified persons, acquire, reacquire, construct, reconstruct, rehabilitate, improve, alter, or repair or provide for the construction, reconstruction, improvement, alteration, or repair of any project; own, hold, sell, assign, transfer, convey, exchange, lease, or otherwise dispose of or encumber any project, and in the case of the sale of any project, accept a purchase money mortgage in connection therewith; and repurchase or otherwise acquire any project [which] that the authority has theretofore sold or otherwise conveyed, transferred, or disposed of;
- (11) Arrange or contract for the planning, replanning, opening, grading, or closing of streets, roads, roadways, alleys, or other places, or for the furnishing of facilities or for the acquisition of property or property rights or for the furnishing of property or services in connection with a project;
- (12) Grant options to purchase any project or to renew any lease entered into by it in connection with any of its projects, on [such] terms and conditions as it deems advisable;
- (13) Prepare or cause to be prepared plans, specifications, designs, and estimates of costs for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project, and from

time to time to modify [such] the plans, specifications, designs, or estimates;

- (14) Provide advisory, consultative, training, and educational services, technical assistance, and advice to any person, partnership, or corporation, either public or private, to carry out the purposes of this chapter, and engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;
- (15) Procure insurance against any loss in connection with its property and other assets and operations in [such] amounts and from [such] insurers as it deems desirable;
- (16) Contract for and accept gifts or grants in any form from any public agency or from any other source;
- (17) Do any and all things necessary to carry out its purposes and exercise the powers given and granted in this chapter; and
- (18) Allow satisfaction of any affordable housing requirements imposed by the authority upon any proposed development project through the construction of reserved housing, as defined in section 206E-101, by a person on land located outside the geographic boundaries of the authority's jurisdiction; provided that the authority shall not permit any person to make cash payments in lieu of providing reserved housing, except to account for any fractional unit that results after calculating the percentage requirement against residential floor space or total number of units developed. The substituted housing shall be located on the same island as the development project and shall be substantially equal in value to the required reserved housing units that were to be developed on site. The authority shall establish the following priority in the development of reserved housing:
 - (A) Within the community development district;
 - (B) Within areas immediately surrounding the community development district;
 - (C) Areas within the central urban core;
 - (D) In outlying areas within the same island as the development project.

The Hawaii community development authority shall adopt rules relating to the approval of reserved housing that are developed outside of a community development district. The rules shall include, but are not limited to, the establishment of guidelines to ensure compliance with the above priorities; and

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

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

SECTION 8. Act 117, Session Laws of Hawaii 2012, is amended by amending section 2 to read as follows:

“SECTION 2. The department of public safety, in cooperation with Ohana Ho‘opakele and other restorative justice groups, is directed to prepare a plan for the creation of a pu‘uhonua, or wellness center, on lands owned or controlled by the State. ~~[The public land development corporation shall assist in determining an appropriate site for the center; provided that the site formerly used as the Kulani correctional facility on the island of Hawaii shall be given preference, unless another site will provide a greater possibility of success.]~~

The department of public safety shall submit a report to the legislature on its plan, findings, and recommendations, including the factors used in determining site selection, and any budget requests necessary to achieve the purposes of this Act, no later than twenty days prior to the convening of the regular session of 2013.”

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

(b) Any proceeds generated and deposited into the stadium facilities special fund pursuant to Act 282, Session Laws of Hawaii 2012, that are unexpended and unencumbered as of the effective date of this Act shall be deposited into the general fund on the effective date of this Act.

(c) Any proceeds generated and deposited into the school facilities special fund pursuant to Act 309, Session Laws of Hawaii 2012, that are unexpended and unencumbered as of the effective date of this Act shall be deposited into the general fund on the effective date of this Act.

(d) All records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal and real property heretofore made, used, acquired, or held by the public land development corporation shall be transferred to the department of land and natural resources.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval.

(Approved April 22, 2013.)