



GOV. MSG. NO. 1158

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

May 20, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

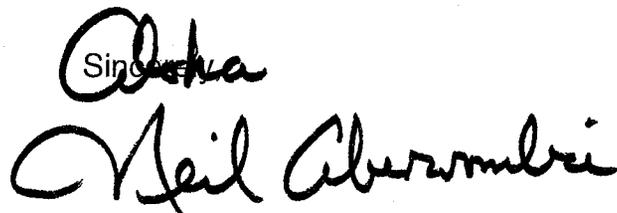
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on May 20, 2011, the following bill was signed into law:

SB1555 SD2 HD2 CD1

RELATING TO THE DEPARTMENT OF LAND
AND NATURAL RESOURCES
Act 055 (11)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

S.B. NO. 1555
S.D. 2
H.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO THE DEPARTMENT OF LAND AND NATURAL RESOURCES.

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

1 SECTION 1. 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 LAND DEVELOPMENT CORPORATION

6 § -1 Findings and purpose. The legislature finds that
7 certain public lands under the jurisdiction of the department of
8 land and natural resources are not used effectively. Public
9 lands in certain areas may serve the State and its people better
10 if managed and developed into suitable recreational and leisure
11 centers where the public can congregate and where visitors to
12 our State can go as part of their holiday experience. However,
13 the department of land and natural resources is hamstrung by its
14 limited mission. Creating a development arm of the department
15 of land and natural resources, similar to the agribusiness
16 development corporation, and placing appropriate public lands
17 into the new corporation's jurisdiction, may help to create
18 these recreation and leisure areas, while also creating revenue-



1 generating opportunities for the new corporation. In turn,
2 revenues generated may be used to offset the regulatory
3 functions of the department of land and natural resources.

4 The purpose of this chapter is to create a vehicle and
5 process to make optimal use of public land for the economic,
6 environmental, and social benefit of the people of Hawaii. This
7 chapter establishes a public corporation to administer an
8 appropriate and culturally-sensitive public land development
9 program. The corporation shall coordinate and administer
10 programs to make optimal use of public land, while ensuring that
11 the public land is maintained for the people of Hawaii. The
12 corporation shall identify the public lands that are suitable
13 for development under this chapter, carry on marketing analysis
14 to determine the best revenue-generating programs for the public
15 lands identified, enter into public-private agreements to
16 appropriately develop the public lands identified, and provide
17 the leadership for the development, financing, improvement, or
18 enhancement of the selected development opportunities.

19 § -2 Definitions. As used in this chapter, unless the
20 context clearly requires otherwise:

21 "Board" means the board of directors of the public land
22 development corporation.



1 "Coordinating entrepreneur" means a qualified person
2 capable of organizing, operating, and assuming the risk for
3 enterprises, including securing land and seed capital,
4 developing or managing commercial or recreational facilities or
5 projects, arranging concession agreements, supplying materials,
6 maintaining equipment and infrastructure, and providing for the
7 processing and marketing of services or products.

8 "Corporation" means the public land development
9 corporation.

10 "Coventure" means an investment by the corporation in
11 qualified securities of an enterprise in which a substantial
12 investment is also being made or has been made by a professional
13 investor to provide seed capital to an enterprise. A guarantee
14 by the corporation of qualified securities provided by a
15 professional investor shall be classified as a coventure. An
16 investment made by the corporation, which is a direct
17 investment, may later be classified as a coventure upon an
18 investment by a professional investor..

19 "Department" means the department of land and natural
20 resources.

21 "Development rights" means the rights permitted under an
22 ordinance or law relating to permitted uses of a property, the



1 density or intensity of use, and the maximum height and size of
2 improvements thereon.

3 "Direct investment" means an investment by the corporation
4 in qualified securities of an enterprise in which no investment
5 is being or has been made by a professional investor to provide
6 seed capital to the enterprise.

7 "Enterprise" means a business with its principal place of
8 business in Hawaii, which is or proposes to be engaged in
9 recreational and commercial area development, development of new
10 value-added products, enhancement of existing recreational or
11 commercial commodities, and the application of existing
12 recreation or commercial areas and appurtenant facilities to
13 productive uses.

14 "Fund" means the Hawaii public lands development revolving
15 fund.

16 "Private lender" includes banks, savings and loan
17 associations, mortgage companies, and other qualified companies
18 whose business includes the making of loans in the State.

19 "Professional investor" means any bank, bank holding
20 company, savings institution, farm credit institution, trust
21 company, insurance company, investment company registered under
22 the federal Investment Company Act of 1940, financial services



1 loan company, pension or profit-sharing trust or other financial
2 institution or institutional buyer, licensee under the federal
3 Small Business Investment Act of 1958, as amended, or any
4 person, partnership, or other entity of whose resources, a
5 substantial amount is dedicated to investing in securities or
6 debt instruments, and whose net worth exceeds \$250,000.

7 "Project" means a specific undertaking, improvement, or
8 system consisting of work or improvement, including personal
9 property or any interest therein acquired, constructed,
10 reconstructed, rehabilitated, improved, altered, or repaired by
11 the corporation.

12 "Project cost" means the total of all costs incurred by the
13 corporation in carrying out all undertakings that it considers
14 reasonable and necessary for the development of a project,
15 including studies; plans; specifications; architectural,
16 engineering, or any other development related services;
17 acquisition of land and any improvement thereon; site
18 preparation and development; construction; reconstruction;
19 rehabilitation; the necessary expenses in administering this
20 chapter; the cost of financing the project; and relocation
21 costs.



1 "Project facilities" includes improvements, roads and
2 streets, utility and service corridors, utility lines where
3 applicable, water and irrigation systems, lighting systems,
4 security systems, sanitary sewerage systems, and other community
5 facilities where applicable.

6 "Qualified person" means any individual, partnership,
7 corporation, or public agency possessing the competence,
8 expertise, experience, and resources, including financial,
9 personnel, and tangible qualifications, as may be deemed
10 desirable by the corporation in administering this chapter.

11 "Qualified security" means any note, stock, treasury stock
12 bond, debenture, evidence of indebtedness, certificate of
13 interest or participation in any profit-sharing agreement, pre-
14 organization certificate of subscription, transferable share,
15 investment contract, certificate of deposit for a security,
16 certificate of interest or participation in a patent or patent
17 application, or in royalty or other payments under such a patent
18 or application, or, in general, any interest or instrument
19 commonly known as a "security" or any certificate for, receipt
20 for, or option, warrant, or right to subscribe to or purchase
21 any of the foregoing.



1 "Revenue bonds" means bonds, notes, or other evidence of
2 indebtedness of the corporation issued to finance any project
3 facility.

4 "Seed capital" means financing that is provided for the
5 development, refinement, and commercialization of a product or
6 process and other working capital needs.

7 "Trust indenture" means an agreement by and between the
8 corporation and a trustee that sets forth the duties of the
9 trustee with respect to the revenue bonds, the security thereof,
10 and other provisions as may be deemed necessary or convenient by
11 the corporation to secure the revenue bonds.

12 "Trustee" means a national or state bank or trust company,
13 within or outside the State, that enters into a trust indenture.

14 "Value-added" means any activity that increases, by means
15 of development or any other means, the value of public lands.

16 § -3 Public land development corporation; established.

17 (a) There is established the public land development
18 corporation, which shall be a public body corporate and politic
19 and an instrumentality and agency of the State. The corporation
20 shall be headed by the board. The corporation shall be placed
21 within the department for administrative purposes.



1 The corporation shall coordinate and administer programs to
2 make optimal use of public land, while ensuring that the public
3 land is maintained for the people of Hawaii. The corporation
4 shall identify the public lands that are suitable for
5 development under this chapter, carry on marketing analysis to
6 determine the best revenue-generating programs for the public
7 lands identified, enter into public-private agreements to
8 appropriately develop the public lands identified, and provide
9 the leadership for the development, financing, improvement, or
10 enhancement of the selected development opportunities.
11 Permissible uses of public land pursuant to this chapter shall
12 include but not be limited to office space; vehicular parking;
13 commercial uses; hotel, residential, and timeshare uses; fueling
14 facilities; storage and repair facilities; and seawater air
15 conditioning plants.

16 (b) The board of directors of the public land development
17 corporation shall consist of five voting members. The members
18 shall include:

19 (1) The chairperson of the board of land and natural
20 resources, or the first deputy to the chairperson of
21 the board of land and natural resources;

22 (2) The director of finance, or the director's designee;



1 (3) The director of business, economic development, and
2 tourism, or the director's designee;

3 (4) One member to be appointed by the speaker of the house
4 of representatives; and

5 (5) One member to be appointed by the president of the
6 senate;

7 provided that the persons appointed by the speaker of the house
8 of representatives and the president of the senate shall possess
9 sufficient knowledge, experience, and proven expertise in small
10 and large businesses within the development or recreation
11 industries, banking, real estate, finance, promotion, marketing,
12 or management.

13 The term of office of the two voting members appointed by
14 the speaker of the house of representatives and the president of
15 the senate shall be four years each.

16 (c) The board shall appoint an executive director, who
17 shall serve at the pleasure of the board and shall be exempt
18 from chapter 76. The salary of the executive director shall be
19 set by the board.

20 (d) The board, through its executive director, may appoint
21 officers, agents, and employees; prescribe their duties and



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

3 § -4 Powers; generally. (a) Except as otherwise
4 limited by this chapter, the corporation may:

- 5 (1) Sue and be sued;
- 6 (2) Have a seal and alter the same at its pleasure;
- 7 (3) Make and alter bylaws for its organization and
8 internal management;
- 9 (4) Adopt rules under chapter 91 necessary to effectuate
10 this chapter in connection with its projects,
11 operations, and properties;
- 12 (5) Make and execute contracts and all other instruments
13 necessary or convenient for the exercise of its powers
14 and functions under this chapter;
- 15 (6) Carry out surveys, research; and investigations into
16 technological, business, financial, consumer trends,
17 and other aspects of leisure or recreational land uses
18 in the national and international community;
- 19 (7) Acquire or contract to acquire by grant or purchase:
20 (A) All privately owned real property or any interest
21 therein and the improvements thereon, if any,
22 that are determined by the corporation to be



1 necessary or appropriate for its purposes under
2 this chapter, including real property together
3 with improvements, if any, in excess of that
4 needed for such use in cases where small remnants
5 would otherwise be left or where other
6 justifiable cause necessitates the acquisition to
7 protect and preserve the contemplated
8 improvements, or public policy demands the
9 acquisition in connection with such improvements;
10 and

11 (B) Encumbrances, in the form of leases, licenses, or
12 otherwise, needed by the corporation or any state
13 department or agency for public purposes, the
14 disposition of subdivided lots, houselots,
15 apartments or other economic units, or economic
16 development;

17 (8) Own, hold, improve, and rehabilitate any real,
18 personal, or mixed property acquired; and sell,
19 assign, exchange, transfer, convey, lease, or
20 otherwise dispose of, or encumber the same;

21 (9) By itself, or in partnership with qualified persons or
22 other governmental agencies, acquire, construct,



1 reconstruct, rehabilitate, improve, alter, or repair
2 any infrastructure or accessory facilities in
3 connection with any project; own, hold, sell, assign,
4 transfer, convey, exchange, lease, or otherwise
5 dispose of, or encumber any project; and develop or
6 manage, by itself, or in partnership with qualified
7 persons or other governmental agencies, any project
8 that meets the purposes of this chapter;

9 (10) In cooperation with any governmental agency, or
10 otherwise through direct investment or coventure with
11 a professional investor or enterprise or any other
12 person, or otherwise, acquire, construct, operate, and
13 maintain public land facilities, including but not
14 limited to leisure, recreational, commercial,
15 residential, timeshare, hotel, office space, and
16 business facilities, at rates or charges determined by
17 the corporation;

18 (11) Assist developmental, recreational, and visitor-
19 industry related enterprises, or projects developed or
20 managed by the corporation, by conducting detailed
21 marketing analysis and developing marketing and
22 promotional strategies to strengthen the position of



- 1 those enterprises and to better exploit local,
2 national, and international markets;
- 3 (12) Receive, examine, and determine the acceptability of
4 applications of qualified persons for allowances or
5 grants for the development of new recreation and
6 visitor-industry related products, the expansion of
7 established recreation and visitor-industry or land
8 development enterprises, and the altering of existing
9 recreational, visitor-industry related, or land
10 development enterprises;
- 11 (13) Coordinate its activities with any federal or state
12 programs;
- 13 (14) Grant options to purchase any project or to renew any
14 lease entered into by the corporation in connection
15 with any of its projects, on the terms and conditions
16 it deems advisable;
- 17 (15) Provide advisory, consultative, training, and
18 educational services and technical assistance to any
19 person, partnership, or corporation, either public or
20 private, to carry out the purposes of this chapter,
21 and engage the services of consultants on a



- 1 contractual basis for rendering professional and
2 technical assistance and advice;
- 3 (16) Procure insurance against any loss in connection with
4 its property and other assets and operations in
5 amounts and from insurers as it deems desirable;
- 6 (17) Accept gifts or grants in any form from any public
7 agency or any other source;
- 8 (18) Issue bonds to finance the cost of a project and to
9 provide for the security thereof, in the manner and
10 pursuant to the procedure prescribed in this chapter;
- 11 (19) Subject to approval by the department, assume
12 management responsibilities for small boat harbors in
13 accordance with chapter 200 and any rules adopted
14 pursuant thereto for periods not to exceed one year;
- 15 (20) Recommend to the board of land and natural resources
16 the purchase of any privately owned properties that
17 may be appropriate for development; and
- 18 (21) Do all things necessary or proper to carry out the
19 purposes of this chapter.
- 20 (b) Notwithstanding subsection (a) to the contrary, the
21 corporation shall not acquire, contract to acquire by grant or
22 purchase, own, hold, sell, assign, exchange, transfer, convey,



1 lease, or otherwise dispose of, or encumber any real, personal,
2 or mixed property that is owned by the department as of July 1,
3 2011, except as expressly provided in this chapter.

4 (c) The powers conferred herein shall be liberally
5 construed to effectuate the purposes of this chapter.

6 § -5 Hawaii public land optimization plan. (a) The
7 corporation shall prepare the Hawaii public land optimization
8 plan, which shall define and establish goals, objectives,
9 policies, and priority guidelines for its public land
10 optimization development strategy. The plan shall include:

- 11 (1) An inventory of public lands with suitable, adequate
12 development potential that are or will become
13 available that can be used to meet present and future
14 land development needs;
- 15 (2) Protection of culturally-sensitive areas;
- 16 (3) Feasible strategies for the promotion and marketing of
17 any projects, including but not limited to leisure,
18 recreational, commercial, residential, timeshare,
19 hotel, office space, and business projects, in local,
20 national, and international markets;
- 21 (4) Proposals to improve the gathering of data and the
22 timely presentation of information on market demands



1 and trends that can be used to plan future projects;
2 and

3 (5) Strategies for federal and state legislative actions
4 that will promote the development and enhancement of
5 Hawaii's public lands.

6 (b) The corporation shall revise the Hawaii public lands
7 optimization plan from time to time and shall incorporate the
8 plan in its annual report to the governor and the legislature as
9 provided in section -20.

10 § -6 Public lands optimization projects; development
11 plans. (a) The corporation may develop and implement public
12 lands optimization projects where appropriate public lands may
13 be developed or managed to create revenue-generating centers or
14 where, through detailed analysis, opportunities exist to exploit
15 potential local, national, and international markets.

16 (b) The corporation may initiate and coordinate the
17 preparation of business and public land development plans for
18 its projects. The plans shall include a proposal for the
19 organization of the enterprise, a marketing strategy, marketing-
20 related information, the impact on existing development or
21 visitor-related industries throughout the State, and a
22 recommendation for the construction, reconstruction,



1 rehabilitation, improvement, alteration, or repair of any
2 infrastructure or accessory facilities in connection with any
3 project.

4 (c) The corporation may enter into cooperative agreements
5 with coordinating entrepreneurs or public agencies when the
6 powers, services, and capabilities of the persons or agencies
7 are deemed necessary and appropriate for the development and
8 implementation of the business and public land development
9 plans.

10 (d) Notwithstanding any provision of this chapter to the
11 contrary, when leasing corporation-controlled public land, the
12 corporation may contract with a financial institution chartered
13 under chapter 412 or a federal financial institution, as defined
14 under section 412:1-109, that transacts business in this State
15 to provide lease management services. For the purposes of this
16 subsection, "lease management services" includes the collection
17 of lease rent and any other moneys owed to the corporation
18 related to the lease of public land under the corporation's
19 control.

20 (e) The public land planning activities of the corporation
21 shall be coordinated with the county planning departments and
22 the county land use plans, policies, and ordinances.



1 (f) The corporation may amend the business and public land
2 development plans as may be necessary or appropriate.

3 (g) Any undertaking by the corporation pursuant to this
4 chapter shall be with the express written consent of the
5 landowner or landowners directly affected.

6 § -7 Project facility program. (a) The corporation may
7 develop a project to identify necessary project facilities
8 within a project area.

9 (b) Unless and except as otherwise provided by law,
10 whenever the corporation undertakes, or causes to be undertaken,
11 any project facility as part of a project, the cost of providing
12 the project facilities shall be assessed against the real
13 property in the project area specially benefiting from the
14 project facilities. Subject to the express written consent of
15 the landowners directly affected, the corporation shall
16 determine the properties that will benefit from the project
17 facilities to be undertaken and may establish assessment areas
18 that include the properties specially benefiting from the
19 project facilities. The corporation shall fix the assessments
20 against the real property specially benefited.

21 (c) Unless and except as otherwise provided by law, the
22 corporation may adopt rules pursuant to chapter 91 to establish



1 the method of undertaking and financing project facilities in a
2 project area.

3 (d) Any other law to the contrary notwithstanding, in
4 assessing real property for project facilities, the corporation
5 shall assess the real property within a project area according
6 to the special benefits conferred upon the real property by the
7 project facilities. These methods may include an assessment on
8 a frontage basis or according to the area of real property
9 within a project area, or any other assessment method that
10 assesses the real property according to the special benefit
11 conferred, or any combination thereof. No assessment levied
12 under this section against real property specially benefited
13 under this chapter shall constitute a tax on real property
14 within the meaning of any law.

15 (e) Any other provisions to the contrary notwithstanding,
16 the corporation, at its discretion, may enter into any agreement
17 with the county in which project facilities are located, to
18 implement the purposes of this section.

19 (f) If all or a part of the project facilities to be
20 financed through bonds by the corporation may be dedicated to
21 the county in which the project facilities are to be located,
22 the corporation shall ensure that the project facilities or



1 applicable portions thereof are designed and constructed to meet
2 county requirements.

3 § -8 Approval of projects, plans, and programs. All
4 public lands optimization projects, public land development
5 plans, and project facility programs developed by the
6 corporation shall be approved by the board.

7 § -9 Bonds. (a) The corporation, with the approval of
8 the governor, may issue, from time to time, revenue bonds in
9 amounts not exceeding the total amount of bonds authorized to be
10 issued by the legislature for the purpose of constructing,
11 acquiring, remodeling, furnishing, and equipping any project
12 facility, including the acquisition of the site of the facility;
13 or acquiring non-public lands through purchase to sustain and
14 preserve leisure or recreational enterprises within a contiguous
15 geographic area.

16 (b) All revenue bonds shall be issued pursuant to part III
17 of chapter 39, except as provided in this chapter.

18 (c) The revenue bonds shall be issued in the name of the
19 corporation and not in the name of the State. The final
20 maturity date of the revenue bonds may be any date not exceeding
21 thirty years from the date of issuance.



1 § -10 Revenue bonds; payment and security. (a) The
2 revenue bonds shall be payable from and secured by the
3 improvements to real properties specially benefited or improved
4 and the assessments thereon, or by the revenues derived from the
5 project facility for which the revenue bonds were issued,
6 including revenue derived from insurance proceeds and reserve
7 accounts, and earnings thereon.

8 (b) The corporation may pledge revenues derived from the
9 project facility financed from the proceeds of the revenue bonds
10 to the punctual payment of the principal, interest, and
11 redemption premiums, if any, on the revenue bonds.

12 (c) The revenue bonds may be additionally secured by the
13 pledge or assignment of the loans and other agreements or any
14 note or other undertaking, obligation, or property held by the
15 corporation to secure the loans.

16 (d) Any pledge made by the corporation shall create a
17 perfected security interest in the revenues, moneys, or property
18 so pledged and thereafter received by the corporation, from and
19 after the time that the financing statement with respect to the
20 revenues, moneys, or property so pledged and thereafter received
21 are filed with the bureau of conveyances. Upon the filing, the
22 revenues, moneys, or property so pledged and thereafter received



1 by the corporation shall immediately be subject to a lien of any
2 pledge without any physical delivery thereof or having claims of
3 any kind in tort, contract, or otherwise against the
4 corporation, irrespective of whether the parties have notice
5 thereof. This section shall apply to any financing statement
6 heretofore or hereafter filed with the bureau of conveyances
7 with respect to any pledge made to secure revenue bonds issued
8 under this chapter.

9 § -11 Revenue bonds; interest rate, price, and sale.

10 (a) The revenue bonds issued pursuant to this chapter shall
11 bear interest at a rate or rates and shall be payable on a date
12 or dates, as the corporation shall determine.

13 (b) The corporation shall include the costs of undertaking
14 the project facility for which the revenue bonds are issued in
15 determining the principal amount of revenue bonds to be issued.
16 In determining the cost of undertaking the project facility, the
17 corporation may include:

- 18 (1) The cost of constructing, acquiring, remodeling,
19 furnishing, and equipping the project facility,
20 including the acquisition of the site of the facility;
- 21 (2) The cost of purchasing or funding loans or other
22 agreements entered into for the project facility;



- 1 (3) The costs of studies and surveys;
- 2 (4) Insurance premiums;
- 3 (5) Underwriting fees;
- 4 (6) Financial consultant, legal, accounting, and marketing
- 5 services incurred;
- 6 (7) Reserve account, trustee, custodian, and rating agency
- 7 fees; and
- 8 (8) Any capitalized interest.

9 (c) The revenue bonds may be sold at public or private
 10 sale, and for a price as may be determined by the corporation.

11 § -12 Revenue bonds; investment of proceeds and
 12 redemption. Subject to any agreement with the holders of its
 13 revenue bonds, the corporation may:

- 14 (1) Invest its moneys not required for immediate use,
 15 including proceeds from the sale of revenue bonds, in
 16 any investment in accordance with procedures
 17 prescribed in a trust indenture; and
- 18 (2) Purchase its revenue bonds out of any fund or money of
 19 the corporation available therefor, and hold, cancel,
 20 or resell the revenue bonds.

21 § -13 Revenue bonds; subaccounts. A separate subaccount
 22 shall be established for each project facility financed from the



1 proceeds of the revenue bonds secured under the same trust
2 indenture. Each subaccount shall be designated "project
3 facility revenue bond subaccount" and shall bear additional
4 designation as the corporation deems appropriate to properly
5 identify the fund.

6 § -14 Trustee; designation, duties. (a) The
7 corporation shall designate a trustee for each issue of revenue
8 bonds secured under the same trust indenture.

9 (b) The trustee shall be authorized by the corporation to
10 hold and administer the project facility revenue bond subaccount
11 established pursuant to section -13, to receive and receipt
12 for, hold, and administer the revenues derived by the
13 corporation from the project facility for which the revenue
14 bonds were issued, and to apply these revenues to the payment of
15 the cost of:

- 16 (1) Undertaking the project facility;
- 17 (2) Administering and operating the proceedings providing
18 for the issuance of the revenue bonds;
- 19 (3) The principal or interest on these bonds;
- 20 (4) The establishment of reserves; and
- 21 (5) Other purposes as may be authorized in the proceedings
22 providing for the issuance of the revenue bonds.



1 (c) Notwithstanding section 39-68 to the contrary, the
2 director of finance may appoint the trustee to serve as fiscal
3 agent for:

4 (1) The payment of the principal of and interest on the
5 revenue bonds; and

6 (2) The purchase, registration, transfer, exchange, and
7 redemption of the bonds.

8 (d) The trustee shall perform additional functions with
9 respect to the payment, purchase, registration, transfer,
10 exchange, and redemption of the bonds, as the director of
11 finance may deem necessary, advisable, or expeditious, including
12 the holding of the revenue bonds and coupons that have been paid
13 and the supervision of the destruction thereof in accordance
14 with applicable law.

15 (e) Nothing in this chapter shall limit or be construed to
16 limit the powers granted to the director of finance in sections
17 36-3, 39-13, and 39-68(a), to appoint the trustee or others as
18 fiscal agents, paying agents, and registrars for the revenue
19 bonds or to authorize and empower those fiscal agents, paying
20 agents, and registrars to perform the functions referred to in
21 those sections.



1 § -15 Trust indenture. (a) A trust indenture may
2 contain covenants and provisions authorized by part III of
3 chapter 39, and as may be deemed necessary or convenient by the
4 corporation for the purposes of this chapter.

5 (b) A trust indenture may allow the corporation to pledge
6 and assign to the trustee loans and other agreements related to
7 the project facility, and the rights of the corporation
8 thereunder, including the right to receive revenues thereunder
9 and to enforce the provisions thereof.

10 (c) A trust indenture shall also contain provisions as to:

11 (1) The investment of the proceeds of the revenue bonds,
12 the investment of any reserve for the bonds, the
13 investment of the revenues of the project facility,
14 and the use and application of the earnings from
15 investments; and

16 (2) The terms and conditions upon which the holders of the
17 revenue bonds or any portion of them or any trustee
18 thereof may institute proceedings for the foreclosure
19 of any loan or other agreement or any note or other
20 undertaking, obligation, or property securing the
21 payment of the bonds and the use and application of
22 the moneys derived from the foreclosure.



1 (d) A trust indenture may also contain provisions deemed
2 necessary or desirable by the corporation to obtain or permit,
3 by grant, interest, subsidy, or otherwise, the participation of
4 the federal government in the financing of the costs of
5 undertaking the project facility.

6 § -16 Transfer of public lands. (a) Notwithstanding
7 chapter 171 or any provision of this chapter to the contrary,
8 the department may transfer, subject to the approval of the
9 board of land and natural resources, development rights for
10 lands under its jurisdiction to the corporation for purposes of
11 this chapter; provided that:

12 (1) Development rights for all small boat harbors that
13 have an existing contract in force and effect relating
14 to a lease or development agreement, or a request for
15 proposal that has been advertised or is under
16 negotiation for capital improvements to harbor
17 facilities as of July 1, 2011, shall be transferred to
18 the corporation on July 1, 2011; provided that with
19 regard to any:

20 (A) Request for proposal that has been issued for
21 which a contract has not been executed; or



1 (B) Contract executed by the department that is in
2 force and effect,
3 on the effective date of this section that relates to
4 the development or redevelopment of submerged or fast
5 lands of a small boat harbor under the control of the
6 department, if the public land corporation is not
7 fully operational by July 1, 2011, the department
8 shall continue to execute its responsibilities
9 relating to negotiating or executing a contract for
10 any such request for proposal or managing any existing
11 contract until the corporation is able to assume the
12 negotiating, oversight, and management
13 responsibilities relating to the existing contract or
14 request for proposal, as the case may be, or until
15 June 30, 2013, whichever occurs first;

16 (2) If the property to be developed is two hundred acres
17 or less and the board of land and natural resources
18 approves the transfer of development rights
19 appurtenant to the property to be developed, the
20 development rights shall be transferred to the
21 corporation;



1 (3) If the property to be developed is greater than two
2 hundred acres and the board of land and natural
3 resources approves the transfer of development rights
4 appurtenant to the property to be developed, the
5 development rights shall be transferred to the
6 corporation, subject to disapproval by the legislature
7 by two-thirds vote of either the senate or the house
8 of representatives or by majority vote of both houses
9 in any regular or special session next following the
10 date of transfer; and

11 (4) The size of any property to be developed shall be
12 deemed to be conclusively determined by the state
13 surveyor, as established in section 26-6.

14 (b) If the corporation finds that state lands under the
15 control and management of the department or other public
16 agencies are suitable for its purposes under this chapter, the
17 corporation may lease the lands from the agency having the
18 control and management of those lands, upon such terms and
19 conditions as may be agreed to by the parties.

20 (c) Notwithstanding subsection (b) to the contrary, no
21 public lands shall be leased to the corporation if the lease
22 would impair any covenant between the State or any county, or



1 any department or board thereof, and the holders of bonds issued
2 by the State or the county, or any department or board thereof.

3 § -17 Hawaii public land development revolving fund;
4 established; use of corporation funds. (a) There is
5 established the Hawaii public land development revolving fund,
6 to which shall be credited any state appropriations to the fund,
7 any sums collected as a result of bonds issued pursuant to this
8 chapter, any revenues generated from the facilities, or other
9 moneys made available to the fund, to be expended as directed by
10 the corporation.

11 (b) Notwithstanding any provision of this chapter to the
12 contrary, revenues, income, and receipts derived from the
13 project facilities shall be set apart in a separate subaccount
14 and applied solely for the following purposes:

- 15 (1) The principal and interest on the bonds;
- 16 (2) The cost of administering, operating, and maintaining
17 the project not to exceed fifteen per cent of the sums
18 collected, net of principal and interest payments, on
19 account of assessments and interest for any specific
20 project facility;
- 21 (3) The establishment of program reserves not to exceed
22 eighty-five per cent of the sums collected, net of



1 principal and interest payments, on account of
2 assessments and interest for any specific project
3 facility; provided that accumulated reserves shall be
4 credited to and become a part of the special land and
5 development fund, established under section 171-19,
6 except in the case of a specific project facility that
7 is situated in part or wholly within a small boat
8 harbor, in which case those accumulated reserves
9 attributable to the portions of the facility situated
10 in the small boat harbor shall be credited to and
11 become a part of the boating special fund, established
12 under section 248-8; and

13 (4) Other purposes as may be authorized in the proceedings
14 providing for the issuance of the bonds.

15 If any surplus remains in any subaccount after the payment of
16 the bonds chargeable against that subaccount, the surplus shall
17 be credited to and become a part of the Hawaii public land
18 development revolving fund, except as provided in paragraph (3).
19 Notwithstanding any other law to the contrary, moneys in the
20 fund may be used to make up any deficiencies in the subaccount.

21 (c) The corporation shall hold the fund in an account or
22 accounts separate from other funds. Except as otherwise



1 provided in subsection (b), the corporation shall invest and
2 reinvest the fund and the income thereof to:

3 (1) Purchase qualified securities issued by enterprises
4 for the purpose of raising seed capital; provided that
5 the investment shall comply with the requirements of
6 this chapter;

7 (2) Make grants, loans, and provide other monetary forms
8 of assistance necessary to carry out the purposes of
9 this chapter; and

10 (3) Purchase securities as may be lawful investments for
11 fiduciaries in the State.

12 All appropriations, grants, contractual reimbursements, and
13 other funds not designated for this purpose may be used to pay
14 for the proper general expenses and to carry out the purposes of
15 the corporation.

16 (d) The corporation shall purchase qualified securities
17 issued by an enterprise only after:

18 (1) Receiving:

19 (A) An application from the enterprise containing a
20 business plan, which is consistent with the
21 business and public land development plan,



- 1 including a description of the enterprise and its
- 2 management, product, and market;
- 3 (B) A statement of the amount, timing, and projected
- 4 use of the capital required;
- 5 (C) A statement of the potential economic impact of
- 6 the enterprise, including the number, location,
- 7 and types of jobs expected to be created; and
- 8 (D) Any other information as the corporation shall
- 9 require;
- 10 (2) Determining, based upon the application submitted,
- 11 that:
- 12 (A) The proceeds of the investment will be used only
- 13 to cover the seed capital needs of the
- 14 enterprise, except as authorized in this section;
- 15 (B) The enterprise has a reasonable chance of
- 16 success;
- 17 (C) The enterprise has the reasonable potential to
- 18 create employment within the State and offers
- 19 employment opportunities to residents;
- 20 (D) The coordinating entrepreneur and other founders
- 21 of the enterprise have already made or are



1 prepared to make a substantial financial and time
2 commitment to the enterprise;

3 (E) The securities to be purchased are qualified
4 securities;

5 (F) There is a reasonable possibility that the
6 corporation will recoup at least its initial
7 investment; and

8 (G) Binding commitments have been made to the
9 corporation by the enterprise for adequate
10 reporting of financial data to the corporation,
11 which shall include a requirement for an annual
12 or other periodic audit of the books of the
13 enterprise, and for control by the corporation
14 that it considers prudent over the management of
15 the enterprise, in order to protect the
16 investment of the corporation, including
17 membership on the board of directors of the
18 enterprise, ownership of voting stock, input in
19 management decisions, and the right of access to
20 the financial and other records of the
21 enterprise; and



1 (3) Entering into a binding agreement with the enterprise
2 concerning the manner of payback by the enterprise of
3 the funds advanced, granted, loaned, or received from
4 the corporation. The manner of payback may include
5 the payment of dividends, returns from the public sale
6 of corporate securities or products, royalties, and
7 other methods of payback acceptable to the
8 corporation. In determining the manner of payback the
9 corporation shall establish a rate of return or rate
10 of interest to be paid on any investment, loan, or
11 grant of corporation funds under this section.

12 (e) If the corporation makes a direct investment, it shall
13 also find that a reasonable effort has been made to find a
14 professional investor to make an investment in the enterprise as
15 a coventure, and that the effort was unsuccessful. The
16 findings, when made by the corporation, shall be conclusive.

17 (f) The corporation shall make investments in qualified
18 securities issued by an enterprise in accordance with the
19 following limits:

20 (1) Not more than \$500,000 shall be invested in the
21 securities of any one enterprise, except that more
22 than a total of \$500,000 may be invested in the



1 securities of any one enterprise if the corporation
2 finds, after its initial investment, that additional
3 investments in that enterprise are required to protect
4 the initial investment of the corporation, and the
5 other findings set forth in subsection (d) and this
6 subsection are made as to the additional investment;

7 (2) The corporation shall not own securities representing
8 more than forty-nine per cent of the voting stock of
9 any one enterprise at the time of purchase by the
10 corporation after giving effect to the conversion of
11 all outstanding convertible securities of the
12 enterprise, except that if a severe financial
13 difficulty of the enterprise occurs, threatening the
14 investment of the corporation in the enterprise, a
15 greater percentage of those securities may be owned by
16 the corporation; and

17 (3) Not more than fifty per cent of the assets of the
18 corporation shall be invested in direct investments at
19 any time.

20 (g) No investment, loan, grant, or use of corporate funds
21 for the purposes of this chapter shall be subject to chapter
22 42F.



1 § -18 Exemption from taxation. The corporation shall
2 not be required to pay state taxes of any kind.

3 § -19 Exemption from requirements. Notwithstanding
4 section 171-42 and except as otherwise noted in this chapter,
5 projects pursuant to this chapter shall be exempt from all
6 statutes, ordinances, charter provisions, and rules of any
7 government agency relating to special improvement district
8 assessments or requirements; land use, zoning, and construction
9 standards for subdivisions, development, and improvement of
10 land; and the construction, improvement, and sale of homes
11 thereon; provided that the public land planning activities of
12 the corporation shall be coordinated with the county planning
13 departments and the county land use plans, policies, and
14 ordinances.

15 § -20 Annual report. The corporation shall submit to
16 the governor and the legislature, no later than twenty days
17 prior to the convening of each regular session, a complete and
18 detailed report of its plans and activities."

19 SECTION 2. Section 206E-4, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "§206E-4 Powers; generally. Except as otherwise limited
22 by this chapter, the authority may:



- 1 (1) Sue and be sued;
- 2 (2) Have a seal and alter the same at pleasure;
- 3 (3) Make and execute contracts and all other instruments
4 necessary or convenient for the exercise of its powers
5 and functions under this chapter;
- 6 (4) Make and alter bylaws for its organization and
7 internal management;
- 8 (5) Make rules with respect to its projects, operations,
9 properties, and facilities, which rules shall be in
10 conformance with chapter 91;
- 11 (6) Through its executive director appoint officers,
12 agents, and employees, prescribe their duties and
13 qualifications, and fix their salaries, without regard
14 to chapter 76;
- 15 (7) Prepare or cause to be prepared a community
16 development plan for all designated community
17 development districts;
- 18 (8) Acquire, reacquire, or contract to acquire or
19 reacquire by grant or purchase real, personal, or
20 mixed property or any interest therein; to own, hold,
21 clear, improve, and rehabilitate, and to sell, assign,



- 1 exchange, transfer, convey, lease, or otherwise
2 dispose of or encumber the same;
- 3 (9) Acquire or reacquire by condemnation real, personal,
4 or mixed property or any interest therein for public
5 facilities, including but not limited to streets,
6 sidewalks, parks, schools, and other public
7 improvements;
- 8 (10) By itself, or in partnership with qualified persons,
9 acquire, reacquire, construct, reconstruct,
10 rehabilitate, improve, alter, or repair or provide for
11 the construction, reconstruction, improvement,
12 alteration, or repair of any project; own, hold, sell,
13 assign, transfer, convey, exchange, lease, or
14 otherwise dispose of or encumber any project, and in
15 the case of the sale of any project, accept a purchase
16 money mortgage in connection therewith; and repurchase
17 or otherwise acquire any project which the authority
18 has theretofore sold or otherwise conveyed,
19 transferred, or disposed of;
- 20 (11) Arrange or contract for the planning, replanning,
21 opening, grading, or closing of streets, roads,
22 roadways, alleys, or other places, or for the



1 furnishing of facilities or for the acquisition of
2 property or property rights or for the furnishing of
3 property or services in connection with a project;
4 (12) Grant options to purchase any project or to renew any
5 lease entered into by it in connection with any of its
6 projects, on such terms and conditions as it deems
7 advisable;
8 (13) Prepare or cause to be prepared plans, specifications,
9 designs, and estimates of costs for the construction,
10 reconstruction, rehabilitation, improvement,
11 alteration, or repair of any project, and from time to
12 time to modify such plans, specifications, designs, or
13 estimates;
14 (14) Provide advisory, consultative, training, and
15 educational services, technical assistance, and advice
16 to any person, partnership, or corporation, either
17 public or private, to carry out the purposes of this
18 chapter, and engage the services of consultants on a
19 contractual basis for rendering professional and
20 technical assistance and advice;



- 1 (15) Procure insurance against any loss in connection with
2 its property and other assets and operations in such
3 amounts and from such insurers as it deems desirable;
- 4 (16) Contract for and accept gifts or grants in any form
5 from any public agency or from any other source;
- 6 (17) Do any and all things necessary to carry out its
7 purposes and exercise the powers given and granted in
8 this chapter; [~~and~~]
- 9 (18) Allow satisfaction of any affordable housing
10 requirements imposed by the authority upon any
11 proposed development project through the construction
12 of reserved housing, as defined in section 206E-101,
13 by a person on land located outside the geographic
14 boundaries of the authority's jurisdiction; provided
15 that the authority shall not permit any person to make
16 cash payments in lieu of providing reserved housing,
17 except to account for any fractional unit that results
18 after calculating the percentage requirement against
19 residential floor space or total number of units
20 developed. The substituted housing shall be located
21 on the same island as the development project and
22 shall be substantially equal in value to the required



1 reserved housing units that were to be developed on
2 site. The authority shall establish the following
3 priority in the development of reserved housing:

- 4 (A) Within the community development district;
- 5 (B) Within areas immediately surrounding the
6 community development district;
- 7 (C) Areas within the central urban core;
- 8 (D) In outlying areas within the same island as the
9 development project.

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

16 (19) Assist the public land development corporation
 17 established by section -3 in identifying public
 18 lands that may be suitable for development, carrying
 19 on marketing analysis to determine the best revenue-
 20 generating programs for the public lands identified,
 21 entering into public-private agreements to
 22 appropriately develop the public lands identified, and



1 providing the leadership for the development,
2 financing, improvement, or enhancement of the selected
3 development opportunities; provided that no assistance
4 shall be provided unless the authority authorizes the
5 assistance."

6 SECTION 3. There is appropriated out of the land
7 conservation fund established pursuant to section 173A-5, Hawaii
8 Revised Statutes, the sum of \$135,500 or so much thereof as may
9 be necessary for fiscal year 2011-2012 and the same sum or so
10 much thereof as may be necessary for fiscal year 2012-2013 for:

- 11 (1) The establishment and operation of the public land
12 development corporation; and
- 13 (2) The funding for three staff positions as follows:
 - 14 (A) Executive director of the corporation;
 - 15 (B) A planner; and
 - 16 (C) A project-development specialist.

17 The sums appropriated shall be expended by the department
18 of land and natural resources for the purposes of this Act.

19 SECTION 4. If any provision of this Act, or the
20 application thereof to any person or circumstance is held
21 invalid, the invalidity does not affect other provisions or
22 applications of the Act, which can be given effect without the



1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 5. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 6. This Act shall take effect on July 1, 2011.

APPROVED this 20 day of MAY, 2011



GOVERNOR OF THE STATE OF HAWAII