

ACT 84

S.B. NO. 2319-86

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, as Amended.

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

SECTION 1. The Hawaiian Homes Commission Act, 1920, as amended, is amended by adding a new section to be appropriately designated and to read as follows:

“§ . Development by contract; development by project developer agreement. (a) Notwithstanding any law to the contrary, the department is authorized to enter into and carry out contracts to develop available lands for homestead, commercial, and multi-purpose projects; provided that the department shall not be subject to the requirements of competitive bidding if no state funds are to be used in the development of the project.

(b) Notwithstanding any law to the contrary, the department is authorized to enter into project developer agreements with qualified developers for, or in connection with, any homestead, commercial, or multi-purpose project, or portion of any project; provided that prior to entering into a project developer agreement with a developer, the department shall:

- (1) Set by appraisal the minimum rental of the lands to be disposed of on the basis of the fair market value of the lands;
- (2) Give notice of the proposed disposition in accordance with applicable procedures and requirements of section 171-60(a)(3), Hawaii Revised Statutes;
- (3) Establish reasonable criteria for the selection of the private developer; and

- (4) Determine within forty-five days of the last day for filing applications the applicant or applicants who meet the criteria for selection, and notify all applicants of its determination within seven days of such determination. If only one applicant meets the criteria for selection as the developer, the department then may negotiate the details of the project developer agreement with the developer; provided that the terms of the project developer agreement shall not be less than those proposed by the developer in the application. If two or more applicants meet the criteria for selection, the department shall consider all of the relevant facts of the disposition or contract, the proposals submitted by each applicant, and the experience and financial capability of each applicant and, within forty-five days from the date of selection of the applicants that met the criteria, shall select the applicant who submitted the best proposal. The department then may negotiate the details of the disposition with the developer, including providing benefits to promote native Hawaiian socio-economic advancement; provided that the terms of the project developer agreement shall not be less than those proposed by the developer in the application.

(c) Any project developer agreement entered into pursuant to this section shall include the following terms and conditions, wherever appropriate:

- (1) A requirement that the developer file with the department a good and sufficient bond conditioned upon the full and faithful performance of all the terms, covenants, and conditions of the project developer agreement;
- (2) The use or uses to which the land will be put;
- (3) The dates on which the developer must submit to the department for approval preliminary plans and final plans and specifications for the total development. No construction shall commence until the department has approved the final plans and specifications; provided that construction on an incremental basis may be permitted by the department;
- (4) The date of completion of the total development, including the date of completion of any permitted incremental development;
- (5) The minimum requirements for off-site and on-site improvements that the developer must install, construct, and complete by the date of completion of the total development. The department may permit incremental development and establish the minimum requirements for off-site and on-site improvements that must be installed, constructed, and completed prior to the date of completion of the total development; and
- (6) Any other terms and conditions deemed necessary by the department to protect the interests of the State and the department.

(d) Any project developer agreement entered into pursuant to this section may provide for options for renewal of the term of the project developer agreement; provided that the term of any one project developer agreement shall not exceed sixty-five years; and provided further that any lands disposed of under a project developer agreement shall be subject to withdrawal at any time during the term of the agreement, with reasonable notice; and provided that the rental shall be reduced in proportion to the value of the portion withdrawn and the developer shall be entitled to receive from the department the proportionate value of the developer's permanent improvements so taken in the proportion that they bear to the unexpired term of the agreement, or the developer, in the

alternative, may remove and relocate the developer's improvements to the remainder of the lands occupied by the developer.

(e) The project developer agreement may permit the developer, after the developer has completed construction of any required off-site improvement, to assign or sublease with the department's approval portions of the leased lands in which the construction of any required off-site improvement has been completed to a purchaser or sublessee who shall assume the obligations of the developer relative to the parcel being assigned or subleased, including the construction of any on-site improvement. The department may permit a developer to share in the lease rent from the assigned lease for a fixed period in order to recover costs and profit.

(f) Whenever the department enters into a project developer agreement to develop a homestead project, the department shall provide for the purchase of the completed project or that portion of a completed project developed for disposition to native Hawaiians, and shall dispose of the lands in accordance with this Act; provided that the project developer agreement shall not encumber any existing homestead lease in the project area.

(g) As used in this section, the following words and terms shall have the following meanings unless the context indicates another or different meaning or intent:

"Commercial project" means a project or that portion of a multi-purpose project, including single-family or multiple-family residential, agricultural, pastoral, aquacultural, industrial, business, hotel and resort, or other commercial uses designed and intended to generate revenues as authorized by this Act;

"Developer" means any person, partnership, cooperative, firm, nonprofit or for-profit corporation, or public agency possessing the competence, expertise, experience, and resources, including financial, personal, and tangible resources, required to carry out a project;

"Homestead project" means a project or that portion of a multi-purpose project, including residential, agricultural, pastoral, or aquacultural uses designed and intended for disposition to native Hawaiians under this Act; provided that this term shall also include community facilities for homestead areas.

"Multi-purpose project" means a combination of a commercial project and a homestead project;

"Project" means a specific undertaking to develop, construct, reconstruct, rehabilitate, renovate, or to otherwise improve or enhance land or real property;

"Project developer agreement" means any lease, sublease, conditional leasing agreement, disposition agreement, financing agreement, or other agreement or combination of agreement, entered into under this section by the department, for the purpose of developing one or more projects.

(h) The department is authorized to adopt rules in accordance with chapter 91, Hawaii Revised Statutes, to implement and carry out the purposes of this section."

SECTION 2. The provisions of this amendment are declared to be severable, and if any subsection, sentence, clause, or phrase, or the application thereof to any person or circumstances is held ineffective because there is a requirement of having the consent of the United States to take effect then, that portion only shall take effect upon the granting of consent by the United States and the effectiveness of the remainder of this amendment or the application thereof shall not be affected.

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SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved April 22, 1986.)

Note

1. Edited pursuant to HRS §23G-16.5.