

ACT 317

S.B. NO. 2638

A Bill for an Act Relating to the Department of Hawaiian Home Lands.

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

SECTION 1. Chapter 171, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§171- Sugarcane lands conveyed for the development of housing projects.** (a) This section applies to the amount to which the department of

Hawaiian home lands is entitled pursuant to Article XII, Section 1 of the State Constitution from land previously cultivated as sugarcane land under any provision of law which is conveyed by the department to the housing finance and development corporation for the development of housing projects as defined under section 201E-2. The amount to which the department of Hawaiian home lands is entitled shall be determined by multiplying the fair market value of the land by thirty per cent. For the purpose of this section, “fair market value” means the amount of money which a purchaser willing but not obliged to buy the land would pay to an owner willing but not obliged to sell it, taking into consideration the highest and best use of the land. For the purpose of this section, “highest and best use” means the most profitable, probable, and legal use to which the land can be put.

(b) Fair market value shall be determined on a per acre basis pursuant to appraisals performed in conformance with the uniform standards of professional appraisal practice as adopted by the department of commerce and consumer affairs, not more than ninety days before the conveyance of the land to the housing finance and development corporation. The appraisals shall be performed by two disinterested appraisers each of whose services shall be contracted by the department and the department of Hawaiian home lands, respectively. If the land is of sugarcane lands and the public land trust, as defined in section 10-2, the department of Hawaiian home lands and the office of Hawaiian affairs shall contract the services of one appraiser. The parties shall contract the services of the two appraisers within thirty days after the department gives written notice to the department of Hawaiian home lands, together with the office of Hawaiian affairs if the land is of sugarcane lands and the public land trust, of the proposed conveyance of the land to the housing finance and development corporation.

If any party fails or refuses to contract the services of an appraiser, then the other party may petition the presiding judge of the circuit court of the State in the county where the land is located to appoint the other of the two appraisers. If the two appraisers are unable to agree on a fair market value, then within thirty

days thereafter, the department and the department of Hawaiian home lands, together with the office of Hawaiian affairs if the land is of sugarcane lands and the public land trust, shall contract for the services of a mutually selected third appraiser and the decision of the majority of the appraisers shall be final with respect to determination of the fair market value. If the department and the department of Hawaiian home lands, together with the office of Hawaiian affairs if the land is of sugarcane lands and the public land trust, are unable to agree on the selection of the third appraiser, any party may petition the presiding judge of the circuit court of the State in the county where the land is located to appoint the third appraiser.

(c) The amount due to the department of Hawaiian home lands shall be due and payable by the State on the date of conveyance of the land to the housing finance and development corporation. Payment to the department of Hawaiian home lands may be in the form of public lands or moneys. If payment is to be made in the form of public lands, the lands shall be mutually agreed upon by the department of land and natural resources and the department of Hawaiian home lands, and shall be of value comparable to the amount due to the department of Hawaiian home lands. Any monetary payment shall be an obligation of the housing finance and development corporation. Any portion of that amount that is not paid on the date of conveyance shall be subject to simple interest annually, established pursuant to the fifteen year treasury rate at the time of the conveyance and payable annually by the State to the department of Hawaiian home lands.

(d) Thirty per cent of the revenue received by the housing finance and development corporation from commercial, industrial, or other non-residential land shall be paid annually to the department of Hawaiian home lands, provided that:

- (1) The department of Hawaiian home lands shall not receive payment under this subsection until the housing finance and development corporation recovers all moneys previously paid to the department of Hawaiian home lands for that portion of land used for commercial, industrial, or other non-residential purposes;
- (2) If borrowed moneys are used to finance the development of land for commercial, industrial, or other non-residential purposes, annual payments due to the department of Hawaiian home lands under this subsection shall be made pursuant to the following order of priority:
  - (A) The housing finance and development corporation satisfies as a first priority the amount computed annually on the pro rata portion (not the total debt service over the life of the debt) of its total debt service on the borrowed moneys;
  - (B) The housing finance and development corporation satisfies as a second priority its operating expense obligations (directly incurred from the development and operating of land used for commercial, industrial, or other non-residential purposes) in an amount not exceeding one per cent of revenues;
  - (C) After the first and second priorities are satisfied, the housing finance and development corporation shall make annual payments due to the department of Hawaiian home lands under this subsection from any remaining revenues; and
- (3) In the event of a sale of land used for commercial, industrial, or other non-residential purposes, the department of Hawaiian home lands shall receive thirty per cent of the revenue received by the housing finance and development corporation."

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SECTION 2. This Act shall apply only to the housing finance and development corporation's developments known as Kealakehe and Lahaina.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved July 1, 1992.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.