

ACT 318

S.B. NO. 2485

A Bill for an Act Relating to the Office of Hawaiian Affairs.

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

SECTION 1. Chapter 10, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§10- Public land trust conveyed for the development of housing projects. (a) This section applies to the revenue derived from any land of the public land trust which is conveyed by the department of land and natural resources to the housing finance and development corporation for the development of housing projects as defined under section 201E-2. The amount due to the office shall be determined by multiplying the fair market value of the land by twenty 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 of land and natural resources and the office, respectively. If the land is of the public land trust and sugarcane lands, as defined by Article XII, Section 1 of the State Constitution, the office and the department of Hawaiian home lands shall contract the services of one appraiser. The parties shall contract the services of the appraisers within thirty working days after the department of land and natural resources gives written notice to the office, together with the department of Hawaiian home lands if the land is of the public land trust and sugarcane lands, 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 of land and natural resources and the office, together with the department of Hawaiian home lands if the land is of the public land trust and sugarcane lands, 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 of land and natural resources and the office, together with the department of Hawaiian home lands if the land is of the public land trust and sugarcane lands, 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 office 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 office may be in the form of public lands or moneys. If payment is to be in the form of public lands, the lands shall be mutually agreed upon by the department of land and natural resources and the office, and shall be of value comparable to the amount due to the office. 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 office.

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

- (1) The office shall not receive payment under this subsection until the housing finance and development corporation recovers all moneys previously paid to the office 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 office 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 the revenues for the project;
 - (C) After the first and second priorities are satisfied, the housing finance and development corporation shall make annual payments due to the office 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 office shall receive twenty per cent of the revenue received by the housing finance and development corporation."

SECTION 2. Section 10-2, Hawaii Revised Statutes, is amended by amending the definition of "revenue" to read as follows:

""Revenue" means all proceeds, fees, charges, rents, or other income, or any portion thereof, derived from any sale, lease, license, permit, or other similar proprietary disposition, permitted use, or activity, that is situated upon and results from the actual use of lands comprising the public land trust, and including any penalties or levies exacted as a result of a violation of the terms of any proprietary disposition, but excluding any income, proceeds, fees, charges, or other moneys derived through the exercise of sovereign functions and powers including:

- (1) Taxes;
- (2) Regulatory or licensing fees;
- (3) Fines, penalties, or levies;
- (4) Registration fees;
- (5) Moneys received by any public educational institution, including the University of Hawaii, and the community college system, from its educational programs and ancillary services, such as tuition, registration fees, meals, books, grants, or scholarships;
- (6) Interagency and intra-agency administrative fees or assessments;
- (7) Moneys derived from or provided in support of penal institutions and programs;
- (8) Grants, carry-overs, and pass-throughs;
- (9) Federal moneys, including federal-aid, grants, subsidies, and contracts;
- (10) Moneys collected from the sale or dissemination of government publications; [and]
- (11) Department of defense proceeds on state-improved lands[.]; and
- (12) Moneys derived from the development of housing projects as defined under section 201E-2 after the conveyance of the public land trust to the housing finance and development corporation except as provided under section 10-_____."

SECTION 3. There shall be established an advisory commission on the compensation for the members of the board of trustees for the office of Hawaiian affairs. The commission shall be composed of seven members appointed by the governor pursuant to section 26-34, Hawaii Revised Statutes. The members shall serve without compensation, but shall be entitled to reimbursement for necessary expenses while in the discharge of their duties and responsibilities. The commission shall terminate upon the convening of the regular legislative session of 1993, unless extended by the legislature. The commission shall study and make recommendations on the matter of compensation for the members of the board of trustees for the office of Hawaiian affairs, including, but not limited to whether compensation for the members should be in the form of an annual salary and who should determine the amount of the salary or other form of compensation. The commission shall submit a report of its findings and recommendations to the legislature at least twenty days prior to the convening of the regular session of 1993.

SECTION 4. Sections 1 and 2 of this Act shall apply only to the housing finance and development corporation's developments known as Kealakehe and Lahaina.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.
(Approved July 1, 1992.)

Note

1. Edited pursuant to HRS §23G-16.5.