

ACT 55

S.B. NO. 1555

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:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
PUBLIC LAND DEVELOPMENT CORPORATION**

§ -1 Findings and purpose. The legislature finds that certain public lands under the jurisdiction of the department of land and natural resources are not used effectively. Public lands in certain areas may serve the State and its people better if managed and developed into suitable recreational and leisure centers where the public can congregate and where visitors to our State can go as part of their holiday experience. However, the department of land and natural resources is hamstrung by its limited mission. Creating a development arm of the department of land and natural resources, similar to the agribusiness development corporation, and placing appropriate public lands into the new corporation's jurisdiction, may help to create these recreation and leisure areas, while also creating revenue-generating opportunities for the new corporation. In turn, revenues generated may be used to offset the regulatory functions of the department of land and natural resources.

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 corporation shall identify the public lands that are suitable for development under this chapter, carry on marketing analysis to determine the best revenue-generating programs for the public lands identified, enter into public-private agreements to appropriately develop the public lands identified,

and provide the leadership for the development, financing, improvement, or enhancement of the selected development opportunities.

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

“Board” means the board of directors of the public land development corporation.

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

“Corporation” means the public land development corporation.

“Coventure” means an investment by the corporation in qualified securities of an enterprise in which a substantial investment is also being made or has been made by a professional investor to provide seed capital to an enterprise. A guarantee by the corporation of qualified securities provided by a professional investor shall be classified as a coventure. An investment made by the corporation, which is a direct investment, may later be classified as a coventure upon an investment by a professional investor.

“Department” means the department of land and natural resources.

“Development rights” means the rights permitted under an ordinance or law relating to permitted uses of a property, the density or intensity of use, and the maximum height and size of improvements thereon.

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

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

“Fund” means the Hawaii public lands development revolving fund.

“Private lender” includes banks, savings and loan associations, mortgage companies, and other qualified companies whose business includes the making of loans in the State.

“Professional investor” means any bank, bank holding company, savings institution, farm credit institution, trust company, insurance company, investment company registered under the federal Investment Company Act of 1940, financial services loan company, pension or profit-sharing trust or other financial institution or institutional buyer, licensee under the federal Small Business Investment Act of 1958, as amended, or any person, partnership, or other entity of whose resources, a substantial amount is dedicated to investing in securities or debt instruments, and whose net worth exceeds \$250,000.

“Project” means a specific undertaking, improvement, or system consisting of work or improvement, including personal property or any interest therein acquired, constructed, reconstructed, rehabilitated, improved, altered, or repaired by the corporation.

“Project cost” means the total of all costs incurred by the corporation in carrying out all undertakings that it considers reasonable and necessary for the development of a project, including studies; plans; specifications; architectural, engineering, or any other development related services; acquisition of land and any improvement thereon; site preparation and development; construction; re-

construction; rehabilitation; the necessary expenses in administering this chapter; the cost of financing the project; and relocation costs.

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

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

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

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

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

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

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

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

§ -3 Public land development corporation; established. (a) There is established the public land development corporation, which shall be a public body corporate and politic and an instrumentality and agency of the State. The corporation shall be headed by the board. The corporation shall be placed within the department for administrative purposes.

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 corporation shall identify the public lands that are suitable for development under this chapter, carry on marketing analysis to determine the best revenue-generating programs for the public lands identified, enter into public-private agreements to appropriately develop the public lands identified, and provide the leadership for the development, financing, improvement, or enhancement of the selected development opportunities. Permissible uses of public land pursuant to this chapter shall include but not be limited to office space; vehicular parking; commercial uses; hotel, residential, and timeshare uses; fueling facilities; storage and repair facilities; and seawater air conditioning plants.

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

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

- (2) The director of finance, or the director's designee;
- (3) The director of business, economic development, and tourism, or the director's designee;
- (4) One member to be appointed by the speaker of the house of representatives; and
- (5) One member to be appointed by the president of the senate;

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

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

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

(d) The board, through its executive director, may appoint officers, agents, and employees; prescribe their duties and qualifications; and fix their salaries, without regard to chapter 76.

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

- (1) Sue and be sued;
- (2) Have a seal and alter the same at its pleasure;
- (3) Make and alter bylaws for its organization and internal management;
- (4) Adopt rules under chapter 91 necessary to effectuate this chapter in connection with its projects, operations, and properties;
- (5) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;
- (6) Carry out surveys, research, and investigations into technological, business, financial, consumer trends, and other aspects of leisure or recreational land uses in the national and international community;
- (7) Acquire or contract to acquire by grant or purchase:
 - (A) All privately owned real property or any interest therein and the improvements thereon, if any, that are determined by the corporation to be necessary or appropriate for its purposes under this chapter, including real property together with improvements, if any, in excess of that needed for such use in cases where small remnants would otherwise be left or where other justifiable cause necessitates the acquisition to protect and preserve the contemplated improvements, or public policy demands the acquisition in connection with such improvements; and
 - (B) Encumbrances, in the form of leases, licenses, or otherwise, needed by the corporation or any state department or agency for public purposes, the disposition of subdivided lots, houselots, apartments or other economic units, or economic development;

- (8) Own, hold, improve, and rehabilitate any real, personal, or mixed property acquired; and sell, assign, exchange, transfer, convey, lease, or otherwise dispose of, or encumber the same;
- (9) By itself, or in partnership with qualified persons or other governmental agencies, acquire, construct, reconstruct, rehabilitate, improve, alter, or repair any infrastructure or accessory facilities in connection with any project; own, hold, sell, assign, transfer, convey, exchange, lease, or otherwise dispose of, or encumber any project; and develop or manage, by itself, or in partnership with qualified persons or other governmental agencies, any project that meets the purposes of this chapter;
- (10) In cooperation with any governmental agency, or otherwise through direct investment or coventure with a professional investor or enterprise or any other person, or otherwise, acquire, construct, operate, and maintain public land facilities, including but not limited to leisure, recreational, commercial, residential, timeshare, hotel, office space, and business facilities, at rates or charges determined by the corporation;
- (11) Assist developmental, recreational, and visitor-industry related enterprises, or projects developed or managed by the corporation, by conducting detailed marketing analysis and developing marketing and promotional strategies to strengthen the position of those enterprises and to better exploit local, national, and international markets;
- (12) Receive, examine, and determine the acceptability of applications of qualified persons for allowances or grants for the development of new recreation and visitor-industry related products, the expansion of established recreation and visitor-industry or land development enterprises, and the altering of existing recreational, visitor-industry related, or land development enterprises;
- (13) Coordinate its activities with any federal or state programs;
- (14) Grant options to purchase any project or to renew any lease entered into by the corporation in connection with any of its projects, on the terms and conditions it deems advisable;
- (15) Provide advisory, consultative, training, and educational services and technical assistance 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;
- (16) Procure insurance against any loss in connection with its property and other assets and operations in amounts and from insurers as it deems desirable;
- (17) Accept gifts or grants in any form from any public agency or any other source;
- (18) Issue bonds to finance the cost of a project and to provide for the security thereof, in the manner and pursuant to the procedure prescribed in this chapter;
- (19) Subject to approval by the department, assume management responsibilities for small boat harbors in accordance with chapter 200 and any rules adopted pursuant thereto for periods not to exceed one year;
- (20) Recommend to the board of land and natural resources the purchase of any privately owned properties that may be appropriate for development; and

(21) Do all things necessary or proper to carry out the purposes of this chapter.

(b) Notwithstanding subsection (a) to the contrary, the corporation shall not acquire, contract to acquire by grant or purchase, own, hold, sell, assign, exchange, transfer, convey, lease, or otherwise dispose of, or encumber any real, personal, or mixed property that is owned by the department as of July 1, 2011, except as expressly provided in this chapter.

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

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

- (1) An inventory of public lands with suitable, adequate development potential that are or will become available that can be used to meet present and future land development needs;
- (2) Protection of culturally-sensitive areas;
- (3) Feasible strategies for the promotion and marketing of any projects, including but not limited to leisure, recreational, commercial, residential, timeshare, hotel, office space, and business projects, in local, national, and international markets;
- (4) Proposals to improve the gathering of data and the timely presentation of information on market demands and trends that can be used to plan future projects; and
- (5) Strategies for federal and state legislative actions that will promote the development and enhancement of Hawaii's public lands.

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

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

(b) The corporation may initiate and coordinate the preparation of business and public land development plans for its projects. The plans shall include a proposal for the organization of the enterprise, a marketing strategy, marketing-related information, the impact on existing development or visitor-related industries throughout the State, and a recommendation for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any infrastructure or accessory facilities in connection with any project.

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

(d) Notwithstanding any provision of this chapter to the contrary, when leasing corporation-controlled public land, the corporation may contract with a financial institution chartered under chapter 412 or a federal financial institution, as defined under section 412:1-109, that transacts business in this State to provide lease management services. For the purposes of this subsection, "lease management services" includes the collection of lease rent and any other moneys

owed to the corporation related to the lease of public land under the corporation's control.

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

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

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

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

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

(c) Unless and except as otherwise provided by law, the corporation may adopt rules pursuant to chapter 91 to establish the method of undertaking and financing project facilities in a project area.

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

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

(f) If all or a part of the project facilities to be financed through bonds by the corporation may be dedicated to the county in which the project facilities are to be located, the corporation shall ensure that the project facilities or applicable portions thereof are designed and constructed to meet county requirements.

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

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

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

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

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

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

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

(d) Any pledge made by the corporation shall create a perfected security interest in the revenues, moneys, or property so pledged and thereafter received by the corporation, from and after the time that the financing statement with respect to the revenues, moneys, or property so pledged and thereafter received are filed with the bureau of conveyances. Upon the filing, the revenues, moneys, or property so pledged and thereafter received by the corporation shall immediately be subject to a lien of any pledge without any physical delivery thereof or having claims of any kind in tort, contract, or otherwise against the corporation, irrespective of whether the parties have notice thereof. This section shall apply to any financing statement heretofore or hereafter filed with the bureau of conveyances with respect to any pledge made to secure revenue bonds issued under this chapter.

§ -11 Revenue bonds; interest rate, price, and sale. (a) The revenue bonds issued pursuant to this chapter shall bear interest at a rate or rates and shall be payable on a date or dates, as the corporation shall determine.

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

- (1) The cost of constructing, acquiring, remodeling, furnishing, and equipping the project facility, including the acquisition of the site of the facility;
- (2) The cost of purchasing or funding loans or other agreements entered into for the project facility;
- (3) The costs of studies and surveys;
- (4) Insurance premiums;
- (5) Underwriting fees;
- (6) Financial consultant, legal, accounting, and marketing services incurred;
- (7) Reserve account, trustee, custodian, and rating agency fees; and
- (8) Any capitalized interest.

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

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

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

§ -13 Revenue bonds; subaccounts. A separate subaccount shall be established for each project facility financed from the proceeds of the revenue bonds secured under the same trust indenture. Each subaccount shall be designated "project facility revenue bond subaccount" and shall bear additional designation as the corporation deems appropriate to properly identify the fund.

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

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

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

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

- (1) The payment of the principal of and interest on the revenue bonds; and
- (2) The purchase, registration, transfer, exchange, and redemption of the bonds.

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

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

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

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

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

- (1) The investment of the proceeds of the revenue bonds, the investment of any reserve for the bonds, the investment of the revenues of

the project facility, and the use and application of the earnings from investments; and

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

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

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

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

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

(B) Contract executed by the department that is in force and effect,

on the effective date of this section that relates to the development or redevelopment of submerged or fast lands of a small boat harbor under the control of the department, if the public land corporation is not fully operational by July 1, 2011, the department shall continue to execute its responsibilities relating to negotiating or executing a contract for any such request for proposal or managing any existing contract until the corporation is able to assume the negotiating, oversight, and management responsibilities relating to the existing contract or request for proposal, as the case may be, or until June 30, 2013, whichever occurs first;

- (2) If the property to be developed is two hundred acres or less and the board of land and natural resources approves the transfer of development rights appurtenant to the property to be developed, the development rights shall be transferred to the corporation;
- (3) If the property to be developed is greater than two hundred acres and the board of land and natural resources approves the transfer of development rights appurtenant to the property to be developed, the development rights shall be transferred to the corporation, subject to disapproval by the legislature by two-thirds vote of either the senate or the house of representatives or by majority vote of both houses in any regular or special session next following the date of transfer; and
- (4) The size of any property to be developed shall be deemed to be conclusively determined by the state surveyor, as established in section 26-6.

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

(c) Notwithstanding subsection (b) to the contrary, no public lands shall be leased to the corporation if the lease would impair any covenant between the State or any county, or any department or board thereof, and the holders of bonds issued by the State or the county, or any department or board thereof.

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

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

- (1) The principal and interest on the bonds;
- (2) The cost of administering, operating, and maintaining the project not to exceed fifteen per cent of the sums collected, net of principal and interest payments, on account of assessments and interest for any specific project facility;
- (3) The establishment of program reserves not to exceed eighty-five per cent of the sums collected, net of principal and interest payments, on account of assessments and interest for any specific project facility; provided that accumulated reserves shall be credited to and become a part of the special land and development fund, established under section 171-19, except in the case of a specific project facility that is situated in part or wholly within a small boat harbor, in which case those accumulated reserves attributable to the portions of the facility situated in the small boat harbor shall be credited to and become a part of the boating special fund, established under section 248-8; and
- (4) Other purposes as may be authorized in the proceedings providing for the issuance of the bonds.

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

(c) The corporation shall hold the fund in an account or accounts separate from other funds. Except as otherwise provided in subsection (b), the corporation shall invest and reinvest the fund and the income thereof to:

- (1) Purchase qualified securities issued by enterprises for the purpose of raising seed capital; provided that the investment shall comply with the requirements of this chapter;
- (2) Make grants, loans, and provide other monetary forms of assistance necessary to carry out the purposes of this chapter; and
- (3) Purchase securities as may be lawful investments for fiduciaries in the State.

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

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

- (1) Receiving:
 - (A) An application from the enterprise containing a business plan, which is consistent with the business and public land development plan, including a description of the enterprise and its management, product, and market;
 - (B) A statement of the amount, timing, and projected use of the capital required;
 - (C) A statement of the potential economic impact of the enterprise, including the number, location, and types of jobs expected to be created; and
 - (D) Any other information as the corporation shall require;
- (2) Determining, based upon the application submitted, that:
 - (A) The proceeds of the investment will be used only to cover the seed capital needs of the enterprise, except as authorized in this section;
 - (B) The enterprise has a reasonable chance of success;
 - (C) The enterprise has the reasonable potential to create employment within the State and offers employment opportunities to residents;
 - (D) The coordinating entrepreneur and other founders of the enterprise have already made or are prepared to make a substantial financial and time commitment to the enterprise;
 - (E) The securities to be purchased are qualified securities;
 - (F) There is a reasonable possibility that the corporation will recoup at least its initial investment; and
 - (G) Binding commitments have been made to the corporation by the enterprise for adequate reporting of financial data to the corporation, which shall include a requirement for an annual or other periodic audit of the books of the enterprise, and for control by the corporation that it considers prudent over the management of the enterprise, in order to protect the investment of the corporation, including membership on the board of directors of the enterprise, ownership of voting stock, input in management decisions, and the right of access to the financial and other records of the enterprise; and
- (3) Entering into a binding agreement with the enterprise concerning the manner of payback by the enterprise of the funds advanced, granted, loaned, or received from the corporation. The manner of payback may include the payment of dividends, returns from the public sale of corporate securities or products, royalties, and other methods of payback acceptable to the corporation. In determining the manner of payback the corporation shall establish a rate of return or rate of interest to be paid on any investment, loan, or grant of corporation funds under this section.

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

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

- (1) Not more than \$500,000 shall be invested in the securities of any one enterprise, except that more than a total of \$500,000 may be invested in the securities of any one enterprise if the corporation finds, after its initial investment, that additional investments in that enterprise are required to protect the initial investment of the corporation, and the other findings set forth in subsection (d) and this subsection are made as to the additional investment;
 - (2) The corporation shall not own securities representing more than forty-nine per cent of the voting stock of any one enterprise at the time of purchase by the corporation after giving effect to the conversion of all outstanding convertible securities of the enterprise, except that if a severe financial difficulty of the enterprise occurs, threatening the investment of the corporation in the enterprise, a greater percentage of those securities may be owned by the corporation; and
 - (3) Not more than fifty per cent of the assets of the corporation shall be invested in direct investments at any time.
- (g) No investment, loan, grant, or use of corporate funds for the purposes of this chapter shall be subject to chapter 42F.

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

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

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

SECTION 2. 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 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 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 -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 3. There is appropriated out of the land conservation fund established pursuant to section 173A-5, Hawaii Revised Statutes, the sum of \$135,500 or so much thereof as may be necessary for fiscal year 2011-2012 and the same sum or so much thereof as may be necessary for fiscal year 2012-2013 for:

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

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

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

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

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

(Approved May 20, 2011.)