

**HAWAII STATE DEPARTMENT OF LAND AND NATURAL RESOURCES
PUBLIC LAND DEVELOPMENT CORPORATION**

Organizational Summary of Act 55, 2011¹

Purpose

Establishes the Public Lands Development Corporation (PLDC) as a State development corporation attached to the Department of Land and Natural Resources (DLNR) to develop public lands placed under the PLDC jurisdiction, including but not limited to existing open shoreline areas, conservation lands, agricultural lands, and small boat harbors, for commercial purposes to generate revenue for the State.

Establishes a vehicle and process “to make optimal economic, environmental, and social use of public land,” including public recreation and visitor holiday destinations, through an “appropriate² and culturally-sensitive³” public land development program.

Process

PLDC will identify public lands to be developed and maintained, conduct marketing analysis for generating best revenue, will enter into public-private development agreements, and will direct the development and financing of the selected public lands to be developed.

The PLDC shall submit a complete and detailed report of its plans and activities to the governor and the legislature no later than twenty days prior to the convening of each regular session.

State Public Land Optimum Exploitation Plan

The PLDC shall prepare a public land optimization plan which shall define and establish goals, objectives, policies, and priority guidelines for its public land development strategy. The plan shall include:

- An inventory of public lands with the development potential to meet present and future land development desires;
- Protection of culturally-sensitive areas;
- Feasible strategies for the promotion and marketing in local, national, and international markets of any projects, including but not limited to leisure, recreational, commercial, residential, timeshare, hotel, office space, and business projects
- Improved data gathering and timely presentation of information on market demands and trends to plan future projects; and
- Legislative action strategies to promote the development and enhancement of Hawaii's public lands.

The PLDC shall revise the Hawaii plan from time to time and incorporate the plan in its annual report to the governor and the legislature.

Transfer of Public Lands to the PLDC

Notwithstanding chapter 171 or any provision of this statute to the contrary, and subject to the approval of the DLNR board, the DLNR may transfer to the PLDC development rights for lands under its jurisdiction:

- all small boat harbors that have an existing contract or a request for proposal for capital improvements to harbor facilities as of July 1, 2011
- two hundred acres or less, with approval by the DLNR board
- greater than two hundred acres, with approval by the DLNR board and 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
- following the date of transfer;
- lands under the control and management of the DLNR or other public agencies leased by the PLDC from the agency having the control and management of those lands

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.

PLDC Development Plans

The PLDC is authorized to:

- develop and implement public lands projects and facilities to create revenue-generating centers or where, through detailed analysis, opportunities exist to exploit potential local, national, and international markets.

¹ Senate Bill 1555 CD1 introduced by Dela Cruz; enacted by Abercrombie as Act 55, 2011 and HRS 171-C

² Subject to unknown interpretation

³ Remains undefined

initiate and coordinate business plans and public land development, and amend these plans enter into cooperative **agreements with coordinating entrepreneurs or public agencies** contract with a financial institution to **provide “lease management services”** including collection of lease rent and any other moneys owed to the PLDC **related to the lease of public land under PLDC control.** coordinate PLDC public land planning with county planning departments and the county land use plans, policies, and ordinances.

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

Exemption from Lawful Development Requirements

PLDC projects shall be exempt from all statutes, ordinances, charter provisions, and rules of any government agency relating to land use, zoning, and construction standards for subdivisions, development, and improvement of land; the construction, improvement, and sale of homes thereon; and special improvement district assessments or requirements; 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.⁴

Development Scope

PLDC development shall include but not be limited to office space; commercial uses; hotel, residential, and timeshare uses; vehicular parking; fueling facilities; storage and repair facilities; and seawater air conditioning plants.

PLDC "projects" will be specific undertakings, improvements, or systems, **including “personal property or any interest therein acquired,”** constructed, reconstructed, rehabilitated, improved, altered, or repaired.

PLDC project costs incurred will include plans, studies, and other development services; **land acquisition** and site preparation; infrastructure including **roads and streets, utility lines** and service corridors, **water and irrigation systems, sewer systems,** lighting and security systems, and other community facilities; construction or rehabilitation; financing; and relocation costs.

The PLDC may enter into any agreement with the county in which project facilities are located

Project Facilities

The PLDC may identify necessary project facilities within a development area. Whenever the PLDC 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** benefiting from the project facilities.

The PLDC may enter into any agreement with the county in which project facilities are located. Project facilities financed through bonds by the PLDC may be dedicated to the county in which they are located and constructed to meet county requirements.

The PLDC may obtain the participation of the federal government in financing the costs of undertaking project facilities.

Property Assessments

The cost of providing project facilities as part of a PLDC development project shall be assessed against the real property in the project area benefiting from the project facilities.

Subject to the express written consent of the landowners directly affected, the PLDC 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
fix the assessments against the real property specially benefited.

PLDC Structure

⁴ State statutes supersede county ordinances thus county such regulations could be subject to change to “coordinate” and comply with PLDC purposes

PLDC board will be comprised of **five (5) politically-appointed voting members**: the directors of the Department of Land and Natural Resources, Department of Business, Economic Development and Tourism and Department of Finance; and one member each appointed for a **four-year term** by the Speaker of the House and President of the Senate with knowledge of **development or recreation industries, banking, real estate, finance, promotion, marketing, or management**.

PLDC board will appoint an **executive director**, and through the executive director may appoint officers, agents, and employees; prescribe their duties and qualifications; and fix their salaries.

Hawaii Community Development Authority (HCDA) Reinforcement

The HCDA may authorize and provide its assistance to the PLDC by:

identifying public lands that may be suitable for development,
conducting marketing analysis to determine the best revenue generation for the public lands identified, entering into public-private agreements to develop the public lands identified
guiding the development, financing, improvement, or enhancement of the selected development

PLDC Powers.

The powers shall be liberally construed to effectuate the purposes of this statute:

Make and alter PLDC organizational and internal management bylaws

Adopt rules under chapter 91 necessary to effectuate PLDC operations, projects, and properties;

Make and execute contracts and all other instruments necessary **or convenient** for the exercise of PLDC powers and functions

Conduct surveys, research, and investigations into technological, business, financial, consumer trends, and other aspects of national and international leisure or recreational land uses;

Acquire or contract to acquire:

- **all privately owned real property** or any interest therein and improvements thereon **determined by the PLDC to be necessary or appropriate for its purposes, including real property ... in excess of that needed for such use** ... where other justifiable cause necessitates acquisition for the contemplated improvements

- **encumbrances..** needed by the corporation or any state department or agency for **economic development, disposition of subdivided lots, houselots, apartments or other economic units,** or public purposes;

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;

By itself, or in partnership with qualified persons or other governmental agencies:

- develop or manage any project that meets the purposes of this statute;

- own, hold, **sell, assign, transfer, convey, exchange, lease, or otherwise dispose of, or encumber any project;**⁵

- acquire, construct, reconstruct, rehabilitate, improve, alter, or repair any infrastructure or accessory facilities in connection with any project;

In cooperation with any governmental agency, **or otherwise** through direct investment or **co-venture** 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;**⁶

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;**

Receive, examine, and determine the acceptability of applications of qualified persons for allowances or grants for

- **expansion of established recreation and visitor-industry or land development enterprises**

- development of **new recreation and visitor-industry related products,**

- altering of existing recreational, visitor-industry related, or land development enterprises;

Coordinate its activities with any federal or state programs;

Grant options to purchase any project or to renew any lease entered into by the PLDC in connection with any of its projects, on the terms and conditions it deems advisable;

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 statute, and **engage the services of consultants on a contractual basis** for rendering professional and technical assistance and advice;

⁵ Enables any co-venture or enterprise partnering with the PLDC to **sell, assign, exchange, transfer, convey, lease, or otherwise dispose of, or encumber public lands**

⁶ Note HCDA Kewalo Basin proposal to relinquish \$1.3 million annual operating profit to a private company for a \$222,000 annual lease for 50 years and improvements to the presently commercial harbor for private purposes, when low long-term interest rates (Fed 30 bonds under 1.5 % are available and HCDA could finance \$25,000,000 at 5% for 50 years with the current profits and dramatically increase HCDA profits and taxpayer relief for public facilities development.

Procure insurance against any loss in connection with its property and other assets and operations in amounts and from insurers as it deems desirable;
Accept gifts or grants in any form from any public agency or any other source;
Issue bonds to finance the cost of a project and to provide security
Recommend to the DLNR board the “purchase of any privately owned properties that may be appropriate for development”

Notwithstanding the above to the contrary, the PLDC 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 DLNR as of July 1, 2011, **except as expressly provided in this statute.**

Exemption from Taxation

The PLDC shall not be required to pay state taxes of any kind.⁷

Public – Private Partnerships, Co-Ventures and Financing

"Coordinating entrepreneurs" will assume the financing, development, management and marketing of commercial or recreational "enterprise" facilities, projects and infrastructure, and

value-added products, activities or commodities that increase the value of public lands, through "development rights" permitted by state statute or county zoning ordinance relating to permitted uses, density or intensity of use, and the maximum development height and size.

"Professional investors" and "private lenders" including commercial banks and mortgage institutions, credit unions, insurance companies, venture capital groups or other "institutional buyers" will provide development capital. If not provided, the PLDC will make a "direct investment" for development with public (taxpayer) capital from a revolving fund.

PLDC public lands development financing will be through **revenue bonds or "qualified securities"** including any note, stock, treasury stock bond, certificate of deposit, debenture, trust indenture, evidence of indebtedness, certificate of interest, profit-sharing agreement, transferable share, investment contract, or other evidence of indebtedness issued to finance any project facility.

Revenue bonds will be issued in the name of the PLDC for the purposes of:
constructing, acquiring, remodeling, furnishing, and equipping any project facility, including the acquisition of the facility site
acquiring non-public lands through purchase to sustain leisure or recreational enterprises within a contiguous geographic area.

Revenue bonds shall be payable from
assessments on real properties benefitting from the improvements
revenues derived from the project facility for which the revenue bonds were issued

The PLDC shall include the costs of the undertaking for which the revenue bonds are issued in determining the principal amount of revenue bonds to be issued.

The PLDC shall purchase qualified securities only after:

Receiving:

- 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;
- a statement of the amount, timing, and projected use of the capital required;
- a statement of the potential economic impact of the enterprise, including the number, location, and types of jobs expected to be created
- any other information required by the PLDC

Determining, based upon the application submitted, that:

- the proceeds of the investment will be used only to cover the seed capital needs of the enterprise, except as authorized in this section;
- the enterprise has a reasonable chance of success
- the enterprise has the reasonable potential to create employment within the State and offers employment opportunities to residents
- 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
- the securities to be purchased are qualified securities;

⁷ Would such exemptions from any State taxes also carry over and apply to PLDC partners and enterprises engaged in PLDC co-ventures?

- there is a reasonable possibility that the PLDC will **recoup at least its initial investment**
 - binding commitments have been made to the PLDC by the enterprise for adequate reporting of financial data to the corporation and for prudent control by the PLDC over the management of the enterprise to protect PLDC investment, 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
- 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.

If the corporation makes a direct investment, it shall also conclusively find that a reasonable effort has been made to find a professional investor to make an investment in the enterprise as a **co-venture**, and that the effort was unsuccessful.

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

- not more than \$500,000 shall be invested in the securities of any one enterprise, **except if the PLDC finds, after its initial investment, that additional investments in that enterprise are required to protect the initial investment**
- the PLDC 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 PLDC, except if a severe financial difficulty of the enterprise threatens the PLDC investment in the enterprise
- not more than fifty per cent of PLDC assets shall be invested in direct investments at any time.

PLDC Revolving Fund

The PLDC revolving fund shall be credited with

- any state appropriations
- any sums collected from bonds issued
- any revenues generated from the facilities
- any other moneys made available to the fund to be expended as directed by the corporation.

PLDC revenues, income, and receipts derived from the project facilities shall be set apart in a separate subaccount and applied to the following:

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

Any subaccount surplus shall become part of the PLDC revolving fund, and may be used to make up any deficiencies in the subaccount. The PLDC shall invest and reinvest the fund income to:

- purchase qualified securities issued by enterprises to raise seed capital
 - purchase securities for fiduciary investments
 - make grants, loans, and provide other monetary forms of assistance necessary to carry out PLDC purposes
- No investment, loan, grant, or use of corporate funds for PLDC purposes shall be subject to HRS 42F (grants and subsidies applications, standards for award, contracts, allotment, monitoring and evaluation, and release by the governor).

All appropriations, grants, contractual reimbursements, and other funds not designated for this purpose may be used to pay for PLDC general expenses and purposes.