

Hawaii PACE Enabling Laws

Haw. Rev. Stat. Ann. §§ 173A-1 to 173A-13
Current through the 2019 Legislative Session

Chapter 173A Acquisition of Resource Value Lands

[§ 173A-1.] Purpose.

The State has provided for the regulation of land use and development throughout the State under the provisions of the land use law, and has provided through that law for the controlled regulation of land use and development of lands which have natural, environmental, recreational, scenic or historic value. However, these lands, though protected by the land use law, may in many instances require placement under public ownership and management in order that they can be made accessible to all of the people of the State. The purpose of this chapter is to provide for the acquisition and management of such lands in those instances in which such acquisition and management are considered necessary by the State.

History: L 1973, c 77, § 1.

§ 173A-2. Definitions.

As used in this chapter:

“Board” means the board of land and natural resources.

“Commission” means the legacy land conservation commission.

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

“Land” means the earth, water, and air, above, below, or on the surface, and includes easements and rights in land, and any improvement on land.

“Land having value as a resource to the State” includes land having natural, environmental, recreational, scenic, cultural, agricultural production, or historic value, and may also include park and trail systems that provide access to any such land.

History: L 1973, c 77, § 2; am L 2005, c 156, § 3; am L 2012, c 82, § 1.

§ 173A-2.4. Legacy land conservation commission.

(a) There is established within the department of land and natural resources a legacy land conservation commission. The commission shall consist of nine members, with at least one member from each of the counties, who shall be appointed in the manner and serve for the term set forth in section 26-34 as follows:

- (1) Four of the members of the commission shall be persons possessing scientific qualifications as evidenced by an academic degree in wildlife or marine biology, botany, forestry, ecology, resource management, biogeography, zoology, or geology;
- (2) One member shall be a person possessing membership in an environmental organization organized in the State;

(3) One member shall be a person possessing membership in a land conservation organization organized in the State;

(4) One member shall be a person possessing membership in a statewide agricultural association; and

(5) One member shall be a person knowledgeable about native Hawaiian culture.

The chairperson of the natural area reserves system commission, or the chairperson's designated representative from the natural area reserves system commission, shall serve as an ex officio voting member. The members of the commission shall elect the chairperson of the commission. The members of the commission shall receive no compensation for their services on the commission but shall be entitled to reimbursement for necessary expenses, including travel expenses, incurred in the discharge of their duties.

(b) Any action taken by the commission shall be by a simple majority of its members. Five members of the commission shall constitute a quorum.

(c) Except as otherwise provided in this chapter, the commission shall be subject to sections 26-34, 26-35, 26-35.5, and 26-36.

(d) The commission may adopt rules pursuant to chapter 91 to carry out its duties.

History: L 2006, c 254, § 1; am L 2012, c 82, § 2.

[§ 173A-2.5.] Responsibilities of the legacy land conservation commission.

The responsibilities of the commission shall include, but not be limited to:

(1) Advising the department and the board on any proposal, public or private, for the acquisition of any interest or rights in land having value as a resource to the State;

(2) Advising the department and the board on any requests for grants from the fund to a qualifying state or county agency or nonprofit land conservation organization for the preservation of lands having value as a resource to the State;

(3) Recommending to the board the acquisition of interests or rights in certain lands having value as a resource to the State; and

(4) Reviewing and adopting rules relating to the criteria it applies in advising the department and the board and making recommendations to the board regarding land acquisitions and grants made pursuant to this chapter.

History: L 2006, c 254, § 1.

[§ 173A-2.6.] Land acquisition priorities.

In advising the department and the board, the commission shall give the following lands priority in its recommendations for acquisitions:

(1) Lands having exceptional value due to the presence of:

(A) Unique aesthetic resources;

(B) Unique and valuable cultural or archaeological resources; or

- (C) Habitats for threatened or endangered species of flora, fauna, or aquatic resources;
- (2) Lands that are in imminent danger of development;
- (3) Lands that are in imminent danger of being modified, changed, or used in a manner to diminish its value;
- (4) Lands providing critical habitats for threatened or endangered species that are in imminent danger of being harmed or negatively impacted;
- (5) Lands containing cultural or archaeological sites or resources that are in danger of theft or destruction; and
- (6) Lands that are unique and productive agricultural lands.

History: L 2006, c 254, § 1.

§ 173A-3. Resource land acquisition plan.

In consultation with the senate president and speaker of the house of representatives, the department shall prepare and, from time to time, revise a plan for the acquisition of land having value as a resource to the State. This plan shall guide the board in acquiring such land in the exercise of its powers under this chapter. In preparing this plan, the department may institute studies relating to the need for such land and shall consider any plan relating to the acquisition of such land that has been prepared by any state or county agency.

History: L 1973, c 77, § 3; am L 2006, c 254, § 2.

§ 173A-4. Authority to acquire and convey; easement required and exemption.

(a) In consultation with the senate president and speaker of the house of representatives, the board may acquire, by purchase, gift, or the exercise of the power of eminent domain as authorized by chapter 101, any land having value as a resource to the State. Such acquisition is hereby declared to be for a public use.

(b) The board may, subject to chapter 171, in consultation with the senate president and speaker of the house of representatives, and with the approval of the governor, sell, lease, or otherwise convey any such land subject to terms and conditions that it deems appropriate and that will ensure that the transferee shall not use the land in a manner that is inconsistent with the purposes for which it was acquired by the board. The terms and conditions shall run with the land and shall be binding on the transferee's heirs, successors, and assigns. The board may seek enforcement of the terms and conditions in any court of appropriate jurisdiction.

(c) The board, in consultation with the senate president and the speaker of the house of representatives, shall require as a condition of the receipt of funds that state and county agencies receiving funds under this chapter provide a conservation easement under chapter 198, or an agricultural easement or deed restriction or covenant to the department of land and natural resources; the department of agriculture; the agribusiness development corporation; an appropriate land conservation organization; or a county, state, or federal natural resource conservation agency, that shall run with the land and be recorded with the land to ensure the long-term protection of land having value as a resource to the State and preserve the interests of the State. The board shall require as a condition of the receipt of funds that it be an owner of a conservation easement.

(d) The board, in consultation with the senate president and the speaker of the house of representatives, shall require as a condition of the receipt of funds that nonprofit land conservation organizations receiving funds under this chapter provide a conservation easement under chapter 198, or an agricultural easement or deed restriction or covenant to the department of land and natural resources; the department of agriculture; the agribusiness development corporation; an appropriate land conservation agency; or an appropriate county, state, or federal natural resource conservation agency, that shall run with the land and be recorded with the land to ensure the long-term protection of land having value as a resource to the State and preserve the interests of the State. The board shall require as a condition of the receipt of funds that it be an owner of a conservation easement.

(e) The board or an appropriate land conservation organization or county, state, or federal agency required to be provided an easement pursuant to this section may grant an exemption for any easement required pursuant to this section.

History: L 1973, c 77, §4; am L 2006, c 254, §3; am L 2008, c 139, §1; am L 2012, c 284, §1; am L 2013, c 38, §4.

[§ 173A-4.5.] Appraisal of land.

(a) Notwithstanding section 171-30, the appraisal of land having value as a resource to the State and acquired by the State under this chapter may be performed as follows:

(1) The board may review, approve, and accept any existing appraisal prepared on behalf of a nonprofit organization if:

(A) The appraisal was completed within one year before the decision by the board to approve the acquisition of land; and

(B) The board finds that the appraisal was performed according to applicable and accepted professional standards for land appraisal; or

(2) The board may contract for an independent appraisal from no more than three disinterested appraisers who shall follow applicable and accepted professional standards for land appraisal.

The board shall submit the appraisal to the attorney general for review and approval before it acquires the land having value as a resource to the State.

(b) No land shall be purchased for a sum greater than the highest value fixed by any appraisal accepted or performed under subsection (a); provided that this limitation shall not apply to any acquisition that is made by condemnation.

(c) After the land having value as a resource to the State has been acquired or the State abandons the acquisition, the appraisal reports shall be made available for inspection and copying by the public.

(d) Anything contained in this section notwithstanding, no appraisal shall be required under this section in the event that any interest in land having value as a resource to the State is donated to the State.

History: L 2007, c 158, § 1.

§ 173A-5. Land conservation fund.

(a) A land conservation fund, hereinafter called "fund", is hereby established.

(b) The proceeds from the sale of any general obligation bonds authorized and issued for purposes of this chapter shall be deposited in or credited to the fund.

(c) Any net proceeds or revenue from the operation, management, sale, lease, or other disposition of land or the improvements on the land acquired or constructed by the board under the provisions of this chapter shall also be deposited in or credited to the fund.

(d) The appropriate percentage identified under section 247-7 of all taxes imposed and collected under chapter 247 shall be deposited in or credited to the fund every fiscal year.

(e) Moneys from any other private or public source may be deposited in or credited to the fund; provided that mandates, regulations, or conditions on these funds do not conflict with the use of the fund under this chapter. Moneys received as a deposit or private contribution shall be deposited, used, and accounted for in accordance with the conditions established by the agency or person making the contribution.

(f) The fund shall be administered and managed by the department.

(g) The acquisition of interests or rights in land having value as a resource to the State for the preservation of the following shall constitute a public purpose for which public funds may be expended or advanced:

- (1) Watershed protection;
- (2) Coastal areas, beaches, and ocean access;
- (3) Habitat protection;
- (4) Cultural and historical sites;
- (5) Recreational and public hunting areas;
- (6) Parks;
- (7) Natural areas;
- (8) Agricultural production; and
- (9) Open spaces and scenic resources.

(h) The fund shall be used for:

- (1) The acquisition of interests or rights in land having value as a resource to the State, whether in fee title or through the establishment of permanent conservation easements under chapter 198 or agricultural easements;
- (2) The payment of any debt service on state financial instruments relating to the acquisition of interests or rights in land having value as a resource to the State;
- (3) Annual administration costs for the fund, not to exceed five per cent of annual fund revenues of the previous year [; and]
- (4) Costs related to the operation, maintenance, and management of lands acquired by way of this fund that are necessary to protect, maintain, or restore resources at risk on these lands, or that provide for greater public access and enjoyment of these lands; provided that the costs related to the operation, maintenance, and management of lands acquired by way of this fund do not exceed five per cent of annual fund revenues of the previous year.

(i) Based on applications from state agencies, counties, and nonprofit land conservation organizations, the department, in consultation with the senate president and speaker of the house of representatives, shall recommend to the board specific parcels of land to be acquired, restricted with conservation

easements, or preserved in similar fashion. The board shall review the selections and approve or reject the selections according to the availability of moneys in the fund. To be eligible for grants from the fund, state and county agencies and nonprofit land conservation organizations shall submit applications to the department that contain:

- (1) Contact information for the project;
- (2) A description of the project;
- (3) The request for funding;
- (4) Cost estimates for acquisition of the interest in the land;
- (5) Location and characteristics of the land;
- (6) The project's public benefits, including but not limited to where public access may be practicable or not practicable and why;
- (7) Results of the applicant's consultation with the staff of the department, the department of agriculture, and the agribusiness development corporation regarding the maximization of public benefits of the project, where practicable; and
- (8) Other similar, related, or relevant information as determined by the department.

(j) For applications approved by the board, the board may acquire land having value as a resource to the State, pursuant to section 173A-4, or the board may award grants from the fund to the qualifying state or county agencies or nonprofit land conservation organizations for the preservation of the real property. Where the recipient of a grant is a county agency or nonprofit land conservation organization, the board shall require additional matching funds of at least twenty-five per cent of the total project costs. Matching funds may be in the form of:

- (1) Direct moneys;
- (2) A combination of public and private funds;
- (3) Land value donation;
- (4) In-kind contributions; or
- (5) Any combination of the above.

(k) Evidence of the matching funds in subsection (j) shall be made available by the qualifying entities prior to distribution of the fund grant.

(l) The board shall:

- (1) Track amounts disbursed from the fund;
- (2) Prepare and submit an annual report to the governor and the legislature at least twenty days prior to the convening of each regular session. The annual report shall include:
 - (A) A summary of all interests or rights in land acquired during the preceding fiscal year;
 - (B) A summary of what value each newly acquired land has as a resource to the State;
 - (C) Proposals for future land acquisitions, including a summary of the resource value that the land may possess;
 - (D) A financial report for the preceding fiscal year; and

(E) Objectives and budget projections for the following fiscal year; and

(3) Make copies of the annual report available to the public.

History: L 1973, c 77, §5; am L 2005, c 156, §4; am L 2006, c 254, §4; am L 2007, c 145, §1; am L 2008, c 139, §2; am L 2009, c 59, §2; am L 2010, c 209, §§3, 5; am L 2012, c 284, §2; am L 2013, c 38, §5.

[§ 173A-6.] Acquisition of land.

The board shall prepare an annual program for the purchase or acquisition by eminent domain of land having value as a resource to the State.

History: L 1973, c 77, § 6.

[§ 173A-7.] Administration and management.

The board shall, subject to chapter 171, administer, maintain, and manage any land acquired under the provisions of this chapter, may charge such fees for the use of any such land as it considers to be reasonable, and may construct on such land any improvement which it deems to be necessary to carry out the purposes of this chapter. The board may adopt and from time to time amend regulations implementing the provisions of this chapter.

History: L 1973, c 77, § 7.

[§ 173A-8.] Development of land acquired by the board.

On the land acquired under this chapter the board may undertake any development which is consistent with the land use law and all other laws applicable to the land and development.

For purposes of this section, “development” includes (1) any building or mining operation; (2) any material change in use, intensity of use, or appearance of any structure or land; or (3) the division of land into two or more parcels.

History: L 1973, c 77, § 8.

§ 173A-9. Grants to state agencies, counties, and nonprofit land conservation organizations.

After consultation with the senate president and speaker of the house of representatives, and subject to the approval of the governor, the board may make grants to state agencies, counties, and nonprofit land conservation organizations from available funds for the purchase or acquisition of interests or rights in land having value as a resource to the State, whether in fee title or through the purchase of permanent conservation easements under chapter 198, and approved for purchase or acquisition by the board, or for the operation, maintenance, and management of lands acquired under this chapter that are necessary to protect, maintain, or restore resources at risk on these lands, or that provide for greater public access and enjoyment of these lands. Any land so acquired by any state agency or county may be sold, leased, or otherwise disposed of, subject to chapter 171, with the prior written approval of the board. Any land acquired by any nonprofit land conservation organization under this chapter may be sold, leased, or otherwise disposed of with the prior written approval of the board. Any permanent conservation easement established under this section that includes partnership with a federal land conservation program may be transferred only as provided by rules of the federal program.

History: L 1973, c 77, §9; am L 2005, c 156, §5; am L 2006, c 254, §5; am L 2008, c 139, §3.

§ 173A-10. Proceeds of sale, lease, or other disposition.

Whenever any such land is sold by any state agency, county, or nonprofit land conservation organization, that portion of the net proceeds (sale price less actual expenses of sale) of such sale equal to the proportion that the grant by the State bears to the original cost of the land or other property shall be paid to the State. In the event any such land or other property is leased, rented, or otherwise disposed of, that portion of the rental or proceeds equal to the proportion that the grant by the State bears to the original cost of the land or other property shall be paid to the State. Any proceeds received by the State pursuant to this section that were originally paid out of the fund pursuant to section 173A-9 shall be redeposited in or credited to the fund. This section shall not apply to rents of property protected by permanent conservation easements established by grants from the fund.

History: L 1973, c 77, § 10; am L 2005, c 156, § 6.

[§ 173A-11.] General powers.

In carrying out its functions under this chapter the board may do all things necessary, useful, and convenient in connection with the acquisition, administration, maintenance, and management of lands having value as a resource to the State, subject to all applicable laws, and may provide any necessary assistance to any county in the acquisition of land having value as a resource to the State. The authority to acquire land which is conferred by this chapter is in addition and supplemental to any authority to acquire land which is conferred on the board by any other chapter.

History: L 1973, c 77, § 11.

[§ 173A-12.] Federal and other grants.

The board and any county may comply with any condition, regulation, restriction, or requirement imposed by the United States or any other governmental agency, or by any person in any program providing grants or other funds for the acquisition of land having value as a resource to the State.

History: L 1973, c 77, § 12.

§ 173A-13. Payment of debt service on the Turtle Bay reimbursable general obligation bonds.

Notwithstanding any laws to the contrary:

- (1) Beginning July 1, 2015, a nonprofit land conservation organization shall file an application annually with the board requesting \$1,500,000 from the land conservation fund to be used for the reimbursement of debt service on the Turtle Bay reimbursable general obligation bonds until the bonds are fully amortized;
- (2) The board shall not require the nonprofit land conservation organization that is the recipient of a grant for the payment of debt service on the Turtle Bay reimbursable general obligation bonds to provide any additional matching funds; and
- (3) Moneys awarded for the payment of debt service on the Turtle Bay reimbursable general obligation bonds shall be deposited into the Turtle Bay conservation easement special fund.

History: L 2015, c 121, § 3.

https://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0173A/