

S.B. NO. 2734

JAN 25 2010

A BILL FOR AN ACT

RELATING TO INDUSTRIAL PARKS ON PUBLIC LANDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 171-132, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§171-132 Designation of industrial park.** A contiguous
4 area of not less than five acres of public lands which is
5 classified or otherwise determined by the board as suitable and
6 economically feasible for industrial use may be designated as an
7 industrial park:

8 (1) By resolution adopted by the board [~~of land and natural~~
9 ~~resources~~], and approved by the legislature by
10 concurrent resolution; or

11 (2) By law.

12 For purposes of this section, a contiguous area may include
13 existing roadways that would provide access to or within the
14 industrial park."

15 SECTION 2. Section 171-135, Hawaii Revised Statutes, is
16 amended to read as follows:

17 **"§171-135 Joint venture or development agreement.** (a) An

1 industrial park may be developed under section 171-134 by the
2 department in partnership or under a development agreement with a
3 federal agency, county, or private party subject to a partnership
4 or development agreement executed by the chairperson of the
5 board[~~;~~ ~~provided that if the industrial park is to be developed~~
6 ~~in partnership or under a development agreement with a private~~
7 ~~party, the private party shall be selected in accordance with~~
8 ~~section 103D-302 or 103D-303】. At a minimum, the agreement shall
9 provide for:~~

- 10 (1) A determination by the board that the partnership
11 agreement or the development agreement is for a public
12 purpose;
- 13 (2) Long-term assurance that the public land within the
14 industrial park will be utilized for industrial uses;
- 15 (3) Final approval by the board of the plans and
16 specifications for the industrial park;
- 17 (4) Exclusive authority by the board to issue leases or
18 master leases within the industrial park; and
- 19 (5) Conditions to ensure a public benefit from any state
20 funds expended for the industrial park.

1 (b) Notwithstanding any other provision of law to the
2 contrary, a partnership or development agreement entered into
3 pursuant to subsection (a) may provide for:

4 (1) The board to issue master leases within an industrial
5 park by negotiation, without regard to the limitations
6 provided in sections 171-16(c) and 171-59(a), to the
7 entity that developed or will develop the industrial
8 park or the nominee or nominees of the entity that
9 developed or will develop the industrial park; and

10 (2) A master lease with terms and conditions upon which the
11 master lessee may issue tenant subleases within the
12 industrial park without the consent of the board."

13 SECTION 3. Section 171-141, Hawaii Revised Statutes, is
14 amended to read as follows:

15 **"§171-141 Lease for eligible [permittee] tenant in**
16 **industrial park.** (a) Notwithstanding any other provision of law
17 to the contrary:

18 (1) A parcel of the public lands within an industrial park
19 which had been occupied and used under a permit or
20 lease on the day before the date of designation of that
21 industrial park shall be an economic unit in that
22 industrial park. For the purpose of this section:

S.B. NO. 2734

1 (A) "Date of designation" means the effective date of
2 the resolution or law which designates an
3 industrial park; and

4 (B) "Eligible economic unit" means an economic unit
5 referred to under this paragraph;

6 (2) A person with a permit or lease to use an eligible
7 economic unit on the day before the date of designation
8 of that industrial park shall be given first preference
9 to lease that unit after the date of designation if the
10 person is an eligible [~~lessee.~~] tenant. For the
11 purpose of this section, an "eligible [~~permittee~~]
12 tenant" means a person referred to under this
13 paragraph;

14 (3) The board shall issue a lease to an eligible
15 [~~permittee~~] tenant for an eligible economic unit under
16 mutually agreeable terms, conditions, and lease rent.
17 The lease shall be issued through negotiations, without
18 regard to the limitations set forth in section 171-
19 16(c) and section 171-59(a). The terms, conditions,
20 and rent under the lease shall be in conformance with
21 this chapter, and the board shall include lease
22 covenants in each lease for the placement and

1 construction of improvements in accordance with minimum
2 standards established by applicable county building
3 codes;

4 (4) The board shall negotiate in good faith with each
5 eligible [~~permittee.~~] tenant. If the board and
6 eligible [~~permittee~~] tenant cannot agree to a lease
7 within one hundred eighty days from the date of
8 designation, the board shall have no further obligation
9 to negotiate with or issue a lease to the eligible
10 [~~permittee~~] tenant and may issue a lease for the
11 eligible economic unit to another person after the one
12 hundred eighty-day period; provided that any lease for
13 the eligible economic unit issued subsequent to the
14 termination of the one hundred eighty-day period shall
15 not include terms and conditions which are less
16 restrictive, and a lease rent which is less, than the
17 terms, conditions, and lease rent last offered in
18 writing by the eligible [~~permittee~~] tenant and received
19 by the board; and

20 (5) The board, in lieu of issuing a lease under paragraph
21 (3), may issue a master lease to [~~a corporation~~] an
22 entity whose members or shareholders shall be either

1 eligible [~~permittees~~] tenants or eligible sublessees of
2 the industrial park, through negotiations and without
3 regard to the limitations provided in section 171-16(c)
4 and section 171-59(a). The master lease shall provide
5 for the issuance of subleases to eligible [~~permittees~~]
6 tenants and other sublessees approved by the board, on
7 terms and conditions approved by the board. The terms
8 and conditions of a master lease concerning the
9 authority to sublease shall supersede any contrary term
10 or condition in a development agreement executed prior
11 to the issuance of the master lease; provided that all
12 other terms and conditions of the development agreement
13 shall be incorporated and made a part of the master
14 lease. All terms, conditions, and rents under the
15 master lease and subleases shall be in conformance with
16 this chapter, and the board shall include lease
17 covenants in the master lease and each sublease for the
18 placement and construction of improvements in
19 accordance with minimum standards established by
20 applicable county building codes. The lessee under the
21 master lease shall assume the responsibility of

1 administering and monitoring [~~permittee~~] sublessee
2 compliance with all sublease obligations.

3 (b) It is the intent of the legislature that persons
4 occupying and using under a month-to-month [~~or revocable~~] permit
5 or lease public lands which have been designated as part of an
6 industrial park be given the opportunity to lease the same public
7 lands occupied and used prior to the designation. The
8 application, construction, and interpretation of this section
9 shall reflect this intent."

10 SECTION 4. Section 171-142, Hawaii Revised Statutes, is
11 amended by amending the title and subsection (a) to read as
12 follows:

13 "[~~+~~]**\$171-142**[~~+~~] **Lease for dislocated lessees [~~dislocated by~~**
14 **~~condemnation proceedings~~]**. (a) For purposes of this section:

15 (1) "Dislocated lessee" means any lessee engaged in
16 commercial or industrial uses who has been or will be
17 displaced [~~from~~]:

18 (A) From private property which is acquired by the
19 State or any county for public use by the power of
20 eminent domain or threat thereof; [~~and~~] or

Report Title:

Industrial Parks; Public Lands

Description:

Provides the Department of Land and Natural Resources with flexibility in developing industrial parks in order to address the growing demand in the State for available industrial lands.

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO INDUSTRIAL PARKS ON PUBLIC LANDS.

PURPOSE: To provide the Department with flexibility in developing industrial parks in order to address the growing demand in the State for available industrial lands.

MEANS: Amend sections 171-132, 171-135, 171-141, and 171-142(a), Hawaii Revised Statutes (HRS).

JUSTIFICATION: The Department is taking a more proactive approach to managing public lands, including planning the use of public lands in a more efficient and productive manner. As part of this planning effort, the Department has identified several sites with possible development potential as industrial parks.

There is also a lack of available industrial lands in various areas, e.g., Hilo, Island of Hawaii. Development of industrial parks in those areas will help address the demand, keep lease rents reasonable, and provide options for lessees facing expiring lease terms. The proposed amendments to sections 171-141 and 171-142(a), HRS, also provide lessees facing expiring leases with the ability to directly negotiate new leases for lands within a new industrial park.

Other proposed amendments clarify various provisions, including:

- (1) An industrial park must consist of at least five acres of contiguous lands. The proposed amendment to section 171-132, HRS, clarifies that lands that are bisected by a roadway or roadways may be deemed "contiguous".

- (2) The proposed amendment to section 171-135, HRS, deletes the requirement that a private entity selected to lease and develop an industrial park shall be selected pursuant to chapter 103D, HRS, (Hawaii Public Procurement Code). The leasing of public lands is already governed by chapter 171, HRS, which contains the appropriate procedures for selecting a lessee.

Impact on the public: Would make more public lands available and economically feasible for industrial uses.

Impact on the department and other agencies: Generate additional revenues to the State.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: LNR 101.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.