
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:

1 PART I

2 PUBLIC LAND DEVELOPMENT CORPORATION

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

6 "CHAPTER

7 PUBLIC LAND DEVELOPMENT CORPORATION

8 § -1 Findings and purpose. The legislature finds that
9 certain public lands under the jurisdiction of the department of
10 land and natural resources are not used effectively. Public
11 lands in certain areas may serve the State and its people better
12 if managed and developed into suitable recreational and leisure
13 centers where the public can congregate and where visitors to
14 our State can go as part of their holiday experience. However,
15 the department of land and natural resources is hamstrung by its
16 limited mission. Creating a development arm of the department
17 of land and natural resources, similar to the agribusiness
18 development corporation, and placing appropriate public lands



1 into the new corporation's jurisdiction, may help to create
2 these recreation and leisure areas, while also creating revenue-
3 generating opportunities for the new corporation. In turn,
4 revenues generated may be used to offset the regulatory
5 functions of the department of land and natural resources.

6 The purpose of this chapter is to create a vehicle and
7 process to make optimal use of public land for the economic,
8 environmental, and social benefit of the people of Hawaii. This
9 chapter establishes a public corporation to administer an
10 appropriate and culturally-sensitive public land development
11 program. The corporation shall coordinate and administer
12 programs to make optimal use of public land, while ensuring that
13 the public land is maintained for the people of Hawaii. The
14 corporation shall:

- 15 (1) Identify the public lands that are suitable for
16 development under this chapter;
- 17 (2) Carry on marketing analysis to determine the best
18 revenue-generating programs for the public lands
19 identified; and
- 20 (3) Enter into public-private agreements to:
 - 21 (A) Appropriately develop the public lands
22 identified; and



1 (B) Provide the leadership for the development,
2 financing, improvement, or enhancement of the
3 selected development opportunities.

4 § -2 Definitions. As used in this chapter, unless the
5 context clearly requires otherwise:

6 "Board" means the board of directors of the public land
7 development corporation.

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

15 "Corporation" means the public land development
16 corporation.

17 "Coventure" means an investment by the corporation in
18 qualified securities of an enterprise in which a substantial
19 investment is also being made or has been made by a professional
20 investor to provide seed capital to an enterprise. A guarantee
21 by the corporation of qualified securities provided by a
22 professional investor shall be classified as a coventure. An

1 investment made by the corporation, which is a direct
2 investment, may later be classified as a coventure upon an
3 investment by a professional investor.

4 "Department" means the department of land and natural
5 resources.

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

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

17 "Fund" means the Hawaii public land development revolving
18 fund.

19 "Private lender" includes banks, savings and loan
20 associations, mortgage companies, and other qualified companies
21 whose business includes the making of loans in the State.



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

11 "Project" means a specific undertaking, improvement, or
12 system consisting of work or improvement, including personal
13 property or any interest therein acquired, constructed,
14 reconstructed, rehabilitated, improved, altered, or repaired by
15 the corporation.

16 "Project cost" means the total of all costs incurred by the
17 corporation in carrying out all undertakings that it considers
18 reasonable and necessary for the development of a project,
19 including studies; plans; specifications; architectural,
20 engineering, or any other development-related services;
21 acquisition of land and any improvement thereon; site
22 preparation and development; construction; reconstruction;



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

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

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

14 "Qualified security" means any note, stock, treasury stock
15 bond, debenture, evidence of indebtedness, certificate of
16 interest or participation in any profit-sharing agreement,
17 preorganization certificate of subscription, transferable share,
18 investment contract, certificate of deposit for a security,
19 certificate of interest or participation in a patent or patent
20 application, or in royalty or other payments under such a patent
21 or application, or, in general, any interest or instrument
22 commonly known as a "security" or any certificate for, receipt



1 for, or option, warrant, or right to subscribe to or purchase
2 any of the foregoing.

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

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

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

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

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

18 § -3 Public land development corporation; established.

19 (a) There is established the public land development
20 corporation, which shall be a public body corporate and politic
21 and an instrumentality and agency of the State. The corporation



1 shall be headed by the board. The corporation shall be placed
2 within the department for administrative purposes.

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

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

11 § -4 Powers; generally. Except as otherwise limited by
12 this chapter, the corporation may:

- 13 (1) Sue and be sued;
- 14 (2) Have a seal and alter the same at its pleasure;
- 15 (3) Make and alter bylaws for its organization and
16 internal management;
- 17 (4) Adopt rules under chapter 91 necessary to effectuate
18 this chapter in connection with its projects,
19 operations, and properties;
- 20 (5) Make and execute contracts and all other instruments
21 necessary or convenient for the exercise of its powers
22 and functions under this chapter;



- 1 (6) Carry out surveys, research, and investigations into
2 technological, business, financial, consumer trends,
3 and other aspects of leisure or recreational land uses
4 in the national and international community;
- 5 (7) Subject to section 171-30, acquire or contract to
6 acquire by grant or purchase any real, personal, or
7 mixed-use property or any interest therein for its
8 immediate or future use for the purposes of this
9 chapter; own, hold, improve, and rehabilitate any
10 real, personal, or mixed property acquired; and sell,
11 assign, exchange, transfer, convey, lease, or
12 otherwise dispose of, or encumber the same;
- 13 (8) By itself, or in partnership with qualified persons or
14 other governmental agencies, acquire, construct,
15 reconstruct, rehabilitate, improve, alter, or repair
16 any infrastructure or accessory facilities in
17 connection with any project; own, hold, sell, assign,
18 transfer, convey, exchange, lease, or otherwise
19 dispose of, or encumber any project; and develop or
20 manage, by itself, or in partnership with qualified
21 persons or other governmental agencies, any project
22 that meets the purposes of this chapter;



- 1 (9) In cooperation with any other governmental agency, or
2 otherwise through direct investment or coventure with
3 a professional investor or enterprise or any other
4 person, or otherwise, acquire, construct, operate, and
5 maintain public land facilities at rates or charges
6 determined by the corporation;
- 7 (10) Assist developmental, recreational, and visitor-
8 industry related enterprises, or projects developed or
9 managed by the corporation, by conducting detailed
10 marketing analysis and developing marketing and
11 promotional strategies to strengthen the position of
12 those enterprises and to better exploit local,
13 national, and international markets;
- 14 (11) Carry out specialized programs designed to develop new
15 markets for recreation and visitor-industry-related
16 products;
- 17 (12) Receive, examine, and determine the acceptability of
18 applications of qualified persons for allowances or
19 grants for the development of new recreation and
20 visitor-industry-related products, the expansion of
21 established recreation and visitor-industry or land-
22 development enterprises, and the altering of existing



- 1 recreational, visitor-industry-related, or land-
2 development enterprises;
- 3 (13) Coordinate its activities with any federal or state
4 programs;
- 5 (14) Grant options to purchase any project or to renew any
6 lease entered into by the corporation in connection
7 with any of its projects, on the terms and conditions
8 it deems advisable;
- 9 (15) Provide advisory, consultative, training, and
10 educational services, technical assistance, and advice
11 to any person, partnership, or corporation, either
12 public or private, in order to carry out the purposes
13 of this chapter, and engage the services of
14 consultants on a contractual basis for rendering
15 professional and technical assistance and advice;
- 16 (16) Procure insurance against any loss in connection with
17 its property and other assets and operations in
18 amounts and from insurers as it deems desirable;
- 19 (17) Accept gifts or grants in any form from any public
20 agency or any other source; and
- 21 (18) Do all things necessary or proper to carry out the
22 purposes of this chapter.



1 § -5 Hawaii public land optimization plan. (a) The
2 corporation shall prepare the Hawaii public land optimization
3 plan, which shall define and establish goals, objectives,
4 policies, and priority guidelines for its public land
5 optimization development strategy. The plan shall include:

- 6 (1) An inventory of public lands with suitable adequate
7 development potential that are or will become
8 available that can be used to meet present and future
9 recreational, visitor-industry, or land-development
10 needs;
- 11 (2) Protection of culturally sensitive areas;
- 12 (3) Feasible strategies for the promotion and marketing of
13 any leisure or recreational projects in local,
14 national, and international markets;
- 15 (4) Proposals to improve the gathering of data and the
16 timely presentation of information on market demands
17 and trends that can be used to plan future projects;
18 and
- 19 (5) Strategies for federal and state legislative actions
20 that will promote the development and enhancement of
21 Hawaii's public lands.



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

5 § -6 Public land optimization projects; development
6 plans. (a) The corporation may develop and implement public
7 land optimization projects where appropriate public lands may be
8 developed or managed to create appropriate leisure or
9 recreational areas to create revenue-generating centers or
10 where, through detailed analysis, opportunities exist to exploit
11 potential local, national, and international markets.

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

21 (c) The corporation may enter into cooperative agreements
22 with coordinating entrepreneurs or public agencies when the



1 powers, services, and capabilities of the persons or agencies
2 are deemed necessary and appropriate for the development and
3 implementation of the business and public land-development
4 plans.

5 (d) Notwithstanding any provision of this chapter to the
6 contrary, when leasing corporation-controlled public land, the
7 corporation may contract with a financial institution chartered
8 under chapter 412 or a federal financial institution, as defined
9 under section 412:1-109, that transacts business in this State
10 to provide lease management services. For the purposes of this
11 subsection, "lease management services" includes the collection
12 of lease rent and any other moneys owed to the corporation
13 related to the lease of public land under the corporation's
14 control.

15 (e) Subject to section -19, the public land-planning
16 activities of the corporation shall be coordinated with the
17 planning departments of the counties and the land-use plans,
18 policies, and ordinances of the counties.

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



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

4 § -7 Project facility program. (a) The corporation may
5 develop a project to identify necessary project facilities
6 within a project area.

7 (b) Unless and except as otherwise provided by law,
8 whenever the corporation undertakes, or causes to be undertaken,
9 any project facility as part of a project, the cost of providing
10 the project facilities shall be assessed against the real
11 property in the project area specially benefiting from the
12 project facilities. Subject to the express written consent of
13 the landowners directly affected, the corporation shall
14 determine the properties that will benefit from the project
15 facilities to be undertaken and may establish assessment areas
16 that include the properties specially benefiting from the
17 project facilities. The corporation may issue and sell bonds in
18 amounts as may be authorized by the legislature to provide funds
19 to finance the project facilities. The corporation shall fix
20 the assessments against the real property specially benefited.

21 (c) Unless and except as otherwise provided by law, the
22 corporation may adopt rules pursuant to chapter 91 to establish



1 the method of undertaking and financing project facilities in a
2 project area.

3 (d) Unless and except as otherwise provided by law, bonds
4 issued to provide funds to finance project facilities shall be
5 secured solely by the real properties benefited or improved and
6 the assessments thereon, or by the revenues derived from the
7 project for which the bonds were issued, including reserve
8 accounts and earnings thereon, insurance proceeds, and other
9 revenues, or any combination thereof. The bonds may be
10 additionally secured by the pledge or assignment of loans and
11 other agreements or any note or other undertaking, obligation,
12 or property held by the corporation. The bonds shall be issued
13 according to and subject to the rules adopted pursuant to this
14 section. Any other law to the contrary notwithstanding, in
15 assessing real property for project facilities, the corporation
16 shall assess the real property within a project area according
17 to the special benefits conferred upon the real property by the
18 project facilities. These methods may include an assessment on
19 a frontage basis or according to the area of real property
20 within a project area, or any other assessment method that
21 assesses the real property according to the special benefit
22 conferred, or any combination thereof. No assessment levied



1 under this section against real property specially benefited
2 under this chapter shall constitute a tax on real property
3 within the meaning of any law.

4 (e) The rules adopted pursuant to this section may
5 include:

- 6 (1) The methods of establishing assessment areas within a
7 project area;
- 8 (2) The method of assessing real properties specially
9 benefited;
- 10 (3) The costs to be borne by the corporation, the county
11 in which the project facilities are situated, and the
12 property owners;
- 13 (4) The procedures before the corporation relating to the
14 creation of the assessment areas by the owners of real
15 property therein, including provisions for petitions,
16 bids, contracts, bonds, and notices;
- 17 (5) Provisions relating to assessments;
- 18 (6) Provisions relating to financing, such as bonds, the
19 Hawaii public land development revolving fund,
20 advances from available funds, special funds for the
21 payment of bonds, the payment of principal and
22 interest, and the sale and use of bonds;



1 (7) Provisions relating to funds and the refunding of
2 outstanding debts; and

3 (8) Provisions relating to limitations on time to sue, and
4 other related provisions.

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

9 (g) All sums collected under this section shall be
10 deposited in the fund established by section -17, except that
11 all moneys collected on account of assessments and interests
12 thereon for any specific project facilities financed by the
13 issuance of bonds, shall be set apart in separate subaccounts
14 and applied solely to the payment of:

- 15 (1) The principal and interest on these bonds;
- 16 (2) The cost of administering, operating, and maintaining
17 the program;
- 18 (3) The establishment of reserves; and
- 19 (4) Other purposes as may be authorized in the proceedings
20 providing for the issuance of the bonds.

21 If any surplus remains in any subaccount after the payment
22 of the bonds chargeable against that subaccount, the surplus



1 shall be credited to and become a part of the subaccount.
2 Notwithstanding any other law to the contrary, moneys in the
3 fund may be used to make up any deficiencies in the subaccount.

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

10 § -8 Approval of projects, plans, and programs. All
11 public land optimization projects, public land-development
12 plans, and project facility programs developed by the
13 corporation shall be approved by the board.

14 § -9 Bonds. (a) The corporation, with the approval of
15 the governor, may issue, from time to time, revenue bonds in
16 amounts not exceeding the total amount of bonds authorized to be
17 issued by the legislature for the purpose of constructing,
18 acquiring, remodeling, furnishing, and equipping any project
19 facility, including the acquisition of the site of the facility
20 to sustain and preserve leisure or recreational enterprises
21 within a contiguous geographic area.



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

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

7 § -10 Revenue bonds; payment and security. (a) The
8 revenue bonds shall be payable from and secured by the real
9 properties specially benefited or improved and the assessments
10 thereon, or by the revenues derived from the project facility
11 for which the revenue bonds were issued, including revenue
12 derived from insurance proceeds and reserve accounts, and
13 earnings thereon.

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

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



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

16 § -11 Revenue bonds; interest rate, price, and sale.

17 (a) The revenue bonds issued pursuant to this chapter shall
18 bear interest at a rate or rates and shall be payable on a date
19 or dates, as the corporation shall determine.

20 (b) The corporation shall include the costs of undertaking
21 the project facility for which the revenue bonds are issued in
22 determining the principal amount of revenue bonds to be issued.



1 In determining the cost of undertaking the project facility, the
2 corporation may include:

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

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

18 § -12 Revenue bonds; investment of proceeds and
19 redemption. Subject to any agreement with the holders of its
20 revenue bonds, the corporation may:

- 21 (1) Invest its moneys not required for immediate use,
22 including proceeds from the sale of revenue bonds, in



1 any investment in accordance with procedures
2 prescribed in a trust indenture; and
3 (2) Purchase its revenue bonds out of any fund or money of
4 the corporation available therefor, and hold, cancel,
5 or resell the revenue bonds.

6 § -13 Revenue bonds; subaccounts. (a) A separate
7 subaccount shall be established for each project facility
8 financed from the proceeds of the revenue bonds secured under
9 the same trust indenture. Each subaccount shall be designated
10 "project facility revenue bond subaccount" and shall bear
11 additional designation as the corporation deems appropriate to
12 properly identify the fund.

13 (b) Notwithstanding any other law to the contrary,
14 including section -17, all revenues, income, and receipts
15 derived from the project facility for which the revenue bonds
16 are issued shall be paid into the project facility revenue bond
17 subaccount established for that project facility and applied as
18 provided in the proceedings authorizing the issuance of the
19 revenue bonds.

20 § -14 Trustee; designation, duties. (a) The
21 corporation shall designate a trustee for each issue of revenue
22 bonds secured under the same trust indenture.



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

- 8 (1) Of undertaking the project facility;
- 9 (2) Of administering and operating the proceedings
10 providing for the issuance of the revenue bonds;
- 11 (3) To pay the principal or interest on these bonds;
- 12 (4) Of the establishment of reserves; and
- 13 (5) To other purposes as may be authorized in the
14 proceedings providing for the issuance of the revenue
15 bonds.

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

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



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

8 (e) Nothing in this chapter shall limit or be construed to
9 limit the powers granted to the director of finance in sections
10 36-3, 39-13, and 39-68(a), to appoint the trustee or others as
11 fiscal agents, paying agents, and registrars for the revenue
12 bonds or to authorize and empower those fiscal agents, paying
13 agents, and registrars to perform the functions referred to in
14 those sections.

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

19 (b) A trust indenture may allow the corporation to pledge
20 and assign to the trustee loans and other agreements related to
21 the project facility, and the rights of the corporation



1 thereunder, including the right to receive revenues thereunder
2 and to enforce the provisions thereof.

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

4 (1) The investment of the proceeds of the revenue bonds,
5 the investment of any reserve for the bonds, the
6 investment of the revenues of the project facility,
7 and the use and application of the earnings from
8 investments; and

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

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



1 § -16 Transfer of public lands. Notwithstanding chapter
2 171 to the contrary, the department may transfer lands under its
3 jurisdiction to the corporation for its use.

4 § -17 Hawaii public land development revolving fund;
5 established; use of corporation funds. (a) There is
6 established the Hawaii public land development revolving fund,
7 to which shall be credited any state appropriations to the fund
8 or other moneys made available to the fund, to be expended as
9 directed by the corporation.

10 (b) The corporation shall hold the fund in an account or
11 accounts separate from other funds. The corporation shall
12 invest and reinvest the fund and the income thereof to:

13 (1) Purchase qualified securities issued by enterprises
14 for the purpose of raising seed capital; provided that
15 the investment shall comply with the requirements of
16 this chapter;

17 (2) Make grants, loans, and provide other monetary forms
18 of assistance necessary to carry out the purposes of
19 this chapter; and

20 (3) Purchase securities as may be lawful investments for
21 fiduciaries in the State.



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

5 (c) The corporation shall purchase qualified securities
6 issued by an enterprise only after:

7 (1) Receiving:

8 (A) An application from the enterprise containing a
9 business plan, which is consistent with the
10 business and public land-development plan,
11 including a description of the enterprise and its
12 management, product, and market;

13 (B) A statement of the amount, timing, and projected
14 use of the capital required;

15 (C) A statement of the potential economic impact of
16 the enterprise, including the number, location,
17 and types of jobs expected to be created; and

18 (D) Any other information as the corporation shall
19 require;

20 (2) Determining, based upon the application submitted,
21 that:



- 1 (A) The proceeds of the investment will be used only
2 to cover the seed-capital needs of the
3 enterprise, except as authorized in this section;
- 4 (B) The enterprise has a reasonable chance of
5 success;
- 6 (C) The enterprise has the reasonable potential to
7 create employment within the State and offers
8 employment opportunities to residents;
- 9 (D) The coordinating entrepreneur and other founders
10 of the enterprise have already made or are
11 prepared to make a substantial financial and time
12 commitment to the enterprise;
- 13 (E) The securities to be purchased are qualified
14 securities;
- 15 (F) There is a reasonable possibility that the
16 corporation will recoup at least its initial
17 investment; and
- 18 (G) Binding commitments have been made to the
19 corporation by the enterprise for adequate
20 reporting of financial data to the corporation,
21 which shall include a requirement for an annual
22 or other periodic audit of the books of the



1 enterprise, and for control by the corporation
2 that it considers prudent over the management of
3 the enterprise, in order to protect the
4 investment of the corporation, including
5 membership on the board of directors of the
6 enterprise, ownership of voting stock, input in
7 management decisions, and the right of access to
8 the financial and other records of the
9 enterprise; and

10 (3) Entering into a binding agreement with the enterprise
11 concerning the manner of payback by the enterprise of
12 the funds advanced, granted, loaned, or received from
13 the corporation. The manner of payback may include
14 the payment of dividends, returns from the public sale
15 of corporate securities or products, royalties, and
16 other methods of payback acceptable to the
17 corporation. In determining the manner of payback,
18 the corporation shall establish a rate of return or
19 rate of interest to be paid on any investment, loan,
20 or grant of corporation funds under this section.

21 (d) If the corporation makes a direct investment, it shall
22 also find that a reasonable effort has been made to find a



1 professional investor to make an investment in the enterprise as
2 a coventure and that the effort was unsuccessful. The findings,
3 when made by the corporation, shall be conclusive.

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

7 (1) Not more than \$500,000 shall be invested in the
8 securities of any one enterprise, except that more
9 than a total of \$500,000 may be invested in the
10 securities of any one enterprise if the corporation
11 finds, after its initial investment, that additional
12 investments in that enterprise are required to protect
13 the initial investment of the corporation, and the
14 other findings set forth in subsection (d) and this
15 subsection are made as to the additional investment;

16 (2) The corporation shall not own securities representing
17 more than forty-nine per cent of the voting stock of
18 any one enterprise at the time of purchase by the
19 corporation after giving effect to the conversion of
20 all outstanding convertible securities of the
21 enterprise, except that if a severe financial
22 difficulty of the enterprise occurs, threatening the



1 investment of the corporation in the enterprise, a
2 greater percentage of those securities may be owned by
3 the corporation; and

4 (3) Not more than fifty per cent of the assets of the
5 corporation shall be invested in direct investments at
6 any time.

7 (f) No investment, loan, grant, or use of corporate funds
8 for the purposes of this chapter shall be subject to chapter
9 42F.

10 § -18 Exemption from taxation. The corporation shall
11 not be required to pay state taxes of any kind.

12 § -19 Exemption from county requirements.
13 Notwithstanding section 171-42 and except as otherwise provided
14 in this chapter, the corporation shall not be required to comply
15 with otherwise applicable county zoning, subdivision, and
16 permitting requirements.

17 § -20 Annual report. The corporation shall submit to
18 the governor and the legislature, no later than twenty days
19 prior to the convening of each regular session, a complete and
20 detailed report of its plans and activities."

21 SECTION 2. There is appropriated out of the general
22 revenues of the State of Hawaii the sum of \$ or so much



1 thereof as may be necessary for fiscal year 2011-2012 and the
2 same sum or so much thereof as may be necessary for fiscal year
3 2012-2013 for:

4 (1) The establishment and operation of the public land
5 development corporation; and

6 (2) The funding for two staff positions as follows:

7 (A) A planner; and

8 (B) A project-development specialist.

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

11 PART II

12 REHABILITATION OF ALA WAI BOAT HARBOR

13 SECTION 3. The department of land and natural resources,
14 through its division of boating and ocean recreation, operates
15 and manages 21 harbors; 50 boat ramps; 2,122 moorings and
16 berths; and 19 piers spread throughout the various counties of
17 the State. The legislature finds that these ocean-recreation
18 facilities, in light of the present demand, are in short supply
19 and, in most cases where they exist, are in dire need of long-
20 overdue repair and maintenance. Some facilities are in such
21 need of repair and replacement that they cannot be used and pose
22 hazards to public safety.



1 One of these facilities, the Ala Wai boat harbor, requires
2 badly needed repair and replacement of floating docks; however,
3 the need for further maintenance remains unfulfilled. In spite
4 of its needs, the Ala Wai boat harbor includes certain assets
5 within its facilities that are underused and, if properly
6 developed, can potentially generate revenues that can benefit
7 not only its continued improvement and maintenance but also the
8 rest of the facilities now operated by the division of boating
9 and ocean recreation.

10 The legislature finds that the State cannot afford to let
11 the value of small boat harbors continue to decline.

12 The purpose of this part is to:

- 13 (1) Allow the limited issuance of commercial use permits
14 for vessels with assigned moorings in Ala Wai and
15 Keehi harbors;
- 16 (2) Provide for future moorage fees to be established by
17 appraisal by a State-licensed appraiser; and
- 18 (3) Direct the department of land and natural resources to
19 use the request-for-proposals process to enter into a
20 public-private partnership for the development of
21 portions of Ala Wai boat harbor facilities that are



1 presently underused to maximize the revenue potential
2 from such facilities.

3 SECTION 4. Section 200-2.5, Hawaii Revised Statutes, is
4 amended by amending subsections (b) and (c) to read as follows:

5 "(b) The permissible uses under any lease disposed of
6 under this section shall be consistent with the purpose for
7 which the land was set aside by the governor pursuant to section
8 171-11. Permissible uses may include any use that will
9 complement or support the ocean-recreation or maritime
10 activities of state boating facilities.

11 (c) Disposition of public lands of state boating
12 facilities constructed, maintained, and operated in accordance
13 with this chapter shall not exceed a maximum term of [~~fifty-~~
14 ~~five]~~ sixty-five years."

15 SECTION 5. Section 200-8, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "~~[+] §200-8 [+] Boating program; payment of costs. The cost~~
18 of administering a comprehensive statewide boating program,
19 including~~[7]~~ but not limited to~~[7]~~ the cost of:

20 (1) Operating, maintaining, and managing all boating
21 facilities under the control of the department;

22 (2) Improving boating safety;



1 (3) Operating a vessel registration and boating casualty
2 investigation and reporting system; and
3 (4) Other boating program activities,
4 shall be paid from the boating special fund[-]; provided that
5 any fees collected from state small boat harbors shall only be
6 expended on costs related to the operation, upkeep, maintenance,
7 and improvement of state small boat harbors. The amortization
8 (principal and interest) of the costs of capital improvements
9 for boating facilities appropriated after July 1, 1975,
10 including[-] but not limited to[-] berths, slips, ramps, related
11 accommodations, general navigation channels, breakwaters, aids
12 to navigation, and other harbor structures, may be paid from the
13 boating special fund or from general revenues as the legislature
14 may authorize in each situation. Revenues provided in this
15 chapter for the boating special fund shall be at least
16 sufficient to pay the special fund costs established in this
17 section."

18 SECTION 6. Section 200-9, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§200-9 Purpose and use of state small boat harbors. (a)
21 State small boat harbors are constructed, maintained, and
22 operated for the purposes of:



- 1 (1) Recreational boating activities;
- 2 (2) Landing of fish; and
- 3 (3) Commercial vessel activities.

4 For the purpose of this section, "recreational boating
5 activities" means the ~~[utilization]~~ use of watercraft for
6 sports, hobbies, or pleasure, and "commercial vessel activities"
7 means the ~~[utilization]~~ use of vessels for activities or
8 services provided on a fee basis. To implement these purposes,
9 only vessels in good material and operating condition that are
10 regularly navigated beyond the confines of the small boat
11 harbor~~[-]~~ and ~~[which]~~ that are used for recreational activities,
12 the landing of fish, or commercial vessel activities shall be
13 permitted to moor, anchor, or berth at ~~[such]~~ a state small boat
14 harbor or use any of its facilities.

15 (b) Vessels used for purposes of recreational boating
16 activities ~~[which]~~ that are also the principal habitation of the
17 owners shall occupy no more than one hundred twenty-nine berths
18 at Ala Wai boat harbor and thirty-five berths at Keehi boat
19 harbor, which is equal to fifteen per cent of the respective
20 total moorage space that was available as of July 1, 1976, at
21 the Ala Wai and Keehi boat harbors. ~~[Notwithstanding the~~
22 ~~purposes of small boat harbors, moorage for commercial vessels~~



1 ~~and commercial vessel activities is not permitted in the Ala Wai~~
2 ~~and Keehi boat harbors, provided that]~~

3 (c) The total number of valid commercial use permits that
4 may be issued for vessels assigned mooring in Ala Wai boat
5 harbor shall not exceed fifteen per cent of the total berths and
6 shall not exceed thirty-five per cent of the total berths at
7 Keehi boat harbor; provided that at Ala Wai boat harbor, vessels
8 issued commercial use permits shall:

9 (1) Not exceed sixty-five feet in length;

10 (2) Occupy not more than fifty-six berths located along
11 the row of berths furthestmost mauka or adjacent to
12 Holomoana street, with the remainder located
13 throughout Ala Wai boat harbor, with a priority
14 assigned to row seven hundred and row eight hundred;

15 (3) Be phased-in in a manner that does not displace any
16 existing recreational boater or existing catamaran
17 operator; and

18 (4) Include commercial catamarans, for which valid
19 commercial use permits or existing registration
20 certificates have been issued by the department
21 [which] that allow the catamarans to operate upon
22 Waikiki shore waters for hire [~~, may be permitted to~~



1 ~~moor in Ala Wai boat harbor at facilities leased for~~
2 ~~commercial purposes].~~

3 The department shall allow a sole proprietor of a catamaran
4 operating with a valid commercial use permit or existing
5 registration certificate, issued by the department, for a
6 commercial catamaran to land its commercial catamaran on Waikiki
7 beach and to operate upon Waikiki shore waters for hire, to
8 transfer the ownership of the vessel from personal ownership to
9 corporate or other business ownership without terminating the
10 right to operate under the commercial use permit or existing
11 registration certificate. The existing commercial use permit or
12 existing registration certificate shall be reissued in a timely
13 manner in the name of the transferee corporation or other
14 business entity. No valid commercial use permit or existing
15 registration certificate issued to an owner of a commercial
16 catamaran operating in the Waikiki area shall be denied or
17 revoked without a prior hearing held in accordance with chapter
18 91.

19 [(e)] (d) Notwithstanding any limitations on commercial
20 permits for Maui county small boat facilities, vessels engaging
21 in inter-island ferry service within Maui county shall be
22 afforded preferential consideration for ferry landings,



1 including the issuance of a commercial operating permit and the
2 waiver of any applicable fees, at Maui county small boat
3 facilities; provided that:

4 (1) The vessel operator has been issued a certificate of
5 public convenience and necessity for the purpose of
6 engaging in inter-island ferry service that includes a
7 route within Maui county;

8 (2) The design and performance characteristics of the
9 vessel will permit safe navigation within the harbor
10 entrance channel and safe docking within Maui county
11 small boat facilities;

12 (3) The vessel operations will not result in unreasonable
13 interference with the use of Maui county small boat
14 facilities by other vessels; and

15 (4) All preferential consideration and waivers, including
16 any commercial permits issued under this section,
17 shall cease upon the vessel operator's termination of
18 inter-island ferry service within Maui county.

19 [~~(d)~~] (e) The chairperson may adopt rules pursuant to
20 chapter 91 to further implement this section."

21 SECTION 7. Section 200-10, Hawaii Revised Statutes, is
22 amended by amending subsection (c) to read as follows:



1 "(c) The permittee shall pay moorage fees to the
2 department for the use permit that shall be based on[7] but not
3 limited to[7] the use of the vessel, its effect on the harbor,
4 use of facilities, and the cost of administering this mooring
5 program; and, furthermore:

6 (1) [Moorage] Except for commercial maritime activities
7 where there is a tariff established by the department
8 of transportation, moorage fees shall be established
9 by appraisal by a State-licensed appraiser approved by
10 the department and shall be higher for
11 nonresidents[7]. The moorage fees shall be set by
12 appraisal categories schedule A and schedule B, to be
13 determined by the department, and may be increased
14 annually by the department to reflect a cost-of-living
15 index increase;

16 (2) For commercial maritime activities where there is a
17 tariff established by the harbors division of the
18 department of transportation, the department may adopt
19 the published tariff of the harbors division of the
20 department of transportation, or establish the fee by
21 appraisal by a State-licensed appraiser approved by
22 the department; and



- 1 ~~[(2)]~~ (3) An application fee shall be collected when
2 applying for moorage in state small boat harbors and
3 shall thereafter be collected annually when the
4 application is renewed. The application fee shall be:
5 (A) Set by the department; and
6 (B) Not less than \$100 for nonresidents;
- 7 ~~[(3)]~~ (4) If a recreational vessel is used as a place of
8 principal habitation, the permittee shall pay, in
9 addition to the moorage fee, a liveaboard fee that
10 shall be calculated at a rate of:
11 (A) \$5.20 a foot of vessel length a month if the
12 permittee is a state resident; and
13 (B) \$7.80 a foot of vessel length a month if the
14 permittee is a nonresident;
- 15 provided that the liveaboard fees established by this
16 paragraph may be increased by the department at the
17 rate of the annual cost-of-living index, but not more
18 than five per cent in any one year, beginning
19 ~~[January]~~ July 1 of each year; ~~[and~~
- 20 ~~+(4)]~~ (5) If a vessel is used for commercial purposes from
21 its permitted mooring, the permittee shall pay, in
22 lieu of the moorage and liveaboard fee, a fee based on



1 three per cent of the gross revenues derived from the
2 use of the vessel or two times the moorage fee
3 assessed for a recreational vessel of the same size,
4 whichever is greater[-]; and

5 (6) The department is authorized to assess and collect
6 utility fees, including electrical and water charges,
7 and common-area maintenance fees in small boat
8 harbors."

9 SECTION 7. (a) Pursuant to section 200-2.5, Hawaii
10 Revised Statutes, the department of land and natural resources
11 is directed to lease certain fast lands at Ala Wai boat harbor
12 using the request-for-proposals process for the public-private
13 development, management, and operation of areas of Ala Wai boat
14 harbor.

15 (b) The permissible uses under this lease shall include:

16 (1) A minimum of not less than one hundred twenty berths
17 for vessels; provided that:

18 (A) Not more than forty berths shall be available for
19 vessels used for purposes of recreational boating
20 activities that are also the principal habitation
21 of the owners;



- 1 (B) Not more than thirty berths, including those
- 2 allowed pursuant to section 200-9(b), Hawaii
- 3 Revised Statutes, shall be available for vessels
- 4 issued commercial use permits; and
- 5 (C) All berths provided under this paragraph shall be
- 6 made available to the public pursuant to the
- 7 rules of the department of land and natural
- 8 resources, with moorage fees to be determined by
- 9 the developer;
- 10 (2) Office space, including a minimum of square
- 11 feet for use by the division of boating and ocean
- 12 recreation;
- 13 (3) Vehicular parking, including a minimum of
- 14 parking stalls for use by the division of
- 15 boating and ocean recreation and for public metered
- 16 parking;
- 17 (4) Commercial uses, including but not limited to
- 18 restaurants, retail shops, marine-supplies shops, and
- 19 sundry stores, all made available to the public;
- 20 (5) Residential, hotel, and timeshare uses; provided that
- 21 the use is consistent with neighboring parcels with a



1 developable height limit of three hundred fifty feet
2 and a maximum floor-area ratio of four;

3 (6) The development of a seawater air conditioning
4 district cooling facility designed to support the
5 visitor industry in Waikiki in the vicinity of Ala Wai
6 boat harbor;

7 (7) Vessel fueling facilities;

8 (8) Vessel haul-out and repair facilities; and

9 (9) Vessel haul-out and storage facilities.

10 (c) The lease shall not exceed a maximum term of
11 sixty-five years and shall provide for:

12 (1) A minimum lease rent that is the greater of a
13 commercially acceptable percentage of the gross
14 receipts of the lessee from the developed leased
15 premises or a fair return on the fair market value of
16 the vacant leased premises, as determined by appraisal
17 by a State-licensed appraiser approved by the
18 department, with reasonable periodic step-ups in the
19 minimum lease rent over the term of the lease; and

20 (2) A three-year development period with a fixed reduced
21 lease rent.



1 (d) Notwithstanding chapter 171 and section 190D-33,
2 Hawaii Revised Statutes, all revenues from the lease shall be
3 deposited in the boating special fund established pursuant to
4 section 248-8, Hawaii Revised Statutes.

5 PART III

6 MISCELLANEOUS PROVISIONS

7 SECTION 8. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 9. This Act shall take effect on July 1, 2050.



Report Title:

DLNR; Public Land Development Corporation; Ala Wai Boat Harbor

Description:

Establishes the Public Land Development Corporation to administer an appropriate and culturally-sensitive public land development program. Allows the limited issuance of commercial use permits for vessels with assigned moorings in Ala Wai and Keehi boat harbors. Provides for future moorage fees to be established by appraisal by a State-licensed appraiser. Directs the Department of Land and Natural Resources to use the request-for-proposals process to enter into a public-private partnership for the development of portions of Ala Wai Boat Harbor facilities that are presently underused to maximize the revenue potential from such facilities. Effective July 1, 2050.

(SB1555 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

