
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:

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PART I

PUBLIC LAND DEVELOPMENT CORPORATION

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

"CHAPTER

PUBLIC LAND DEVELOPMENT CORPORATION

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



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 costs of the
5 regulatory functions of the department of land and natural
6 resources.

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

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



- 1 (A) Appropriately develop the public lands
2 identified; and
- 3 (B) Provide the leadership for the development,
4 financing, improvement, or enhancement of the
5 selected development opportunities.

6 **§ -2 Definitions.** As used in this chapter, unless the
7 context clearly requires otherwise:

8 "Board" means the board of directors of the public land
9 development corporation.

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

17 "Corporation" means the public land development
18 corporation.

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



1 by the corporation of qualified securities provided by a
2 professional investor shall be classified as a coventure. An
3 investment made by the corporation, which is a direct
4 investment, may later be classified as a coventure upon an
5 investment by a professional investor.

6 "Department" means the department of land and natural
7 resources.

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

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

19 "Fund" means the Hawaii public land development revolving
20 fund.



1 "Private lender" includes banks, savings and loan
2 associations, mortgage companies, and other qualified companies
3 whose business includes the making of loans in the State.

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

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

19 "Project cost" means the total of all costs incurred by the
20 corporation in carrying out all undertakings that it considers
21 reasonable and necessary for the development of a project,
22 including studies; plans; specifications; architectural,



1 engineering, or any other development-related services;
2 acquisition of land and any improvement thereon; site
3 preparation and development; construction; reconstruction;
4 rehabilitation; the necessary expenses in administering this
5 chapter; the cost of financing the project; and relocation
6 costs.

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

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

17 "Qualified security" means any note, stock, treasury stock,
18 bond, debenture, evidence of indebtedness, certificate of
19 interest or participation in any profit-sharing agreement,
20 preorganization certificate of subscription, transferable share,
21 investment contract, certificate of deposit for a security,
22 certificate of interest or participation in a patent or patent



1 application, or in royalty or other payments under such a patent
2 or application, or, in general, any interest or instrument
3 commonly known as a "security" or any certificate for, receipt
4 for, or option, warrant, or right to subscribe to or purchase
5 any of the foregoing.

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

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

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

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

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

21 **§ -3 Public land development corporation; established.**

22 (a) There is established the public land development



1 corporation, which shall be a public body corporate and politic
2 and an instrumentality and agency of the State. The corporation
3 shall be headed by a board. The corporation shall be placed
4 within the department for administrative purposes.

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

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

13 **§ -4 Powers; generally.** Except as otherwise limited by
14 this chapter, the corporation may:

- 15 (1) Sue and be sued;
- 16 (2) Have a seal and alter the same at its pleasure;
- 17 (3) Make and alter bylaws for its organization and
18 internal management;
- 19 (4) Adopt rules under chapter 91 necessary to effectuate
20 this chapter in connection with its projects,
21 operations, and properties;



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



1 manage, by itself, or in partnership with qualified
2 persons or other governmental agencies, any project
3 that meets the purposes of this chapter;

4 (9) In cooperation with any other governmental agency, or
5 otherwise through direct investment or coventure with
6 a professional investor or enterprise or any other
7 person, or otherwise, acquire, construct, operate, and
8 maintain public land facilities at rates or charges
9 determined by the corporation;

10 (10) Assist developmental, recreational, and visitor-
11 industry related enterprises, or projects developed or
12 managed by the corporation, by conducting detailed
13 marketing analysis and developing marketing and
14 promotional strategies to strengthen the position of
15 those enterprises and to better exploit local,
16 national, and international markets;

17 (11) Carry out specialized programs designed to develop new
18 markets for recreation and visitor-industry-related
19 products;

20 (12) Receive, examine, and determine the acceptability of
21 applications of qualified persons for allowances or
22 grants for the development of new recreation and



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



1 (17) Accept gifts or grants in any form from any public
2 agency or any other source; and

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

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

10 (1) An inventory of public lands with suitable adequate
11 development potential that are or will become
12 available that can be used to meet present and future
13 recreational, visitor-industry, or land-development
14 needs;

15 (2) Measures to protect culturally sensitive areas;

16 (3) Feasible strategies for the promotion and marketing of
17 any leisure or recreational projects in local,
18 national, and international markets;

19 (4) Proposals to improve the gathering of data and the
20 timely presentation of information on market demands
21 and trends that can be used to plan future projects;
22 and



1 (5) Strategies for federal and state legislative actions
2 that will promote the development and enhancement of
3 Hawaii's public lands.

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

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

15 (b) The corporation may initiate and coordinate the
16 preparation of business and public land-development plans for
17 its projects. The plans shall include a proposal for the
18 organization of the enterprise; a marketing information and
19 strategy; the impact on existing development or visitor-related
20 industries throughout the State; and a recommendation for the
21 construction, reconstruction, rehabilitation, improvement,



1 alteration, or repair of any infrastructure or accessory
2 facilities in connection with any project.

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

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

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



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

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

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

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



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

5 (d) Unless and except as otherwise provided by law, bonds
6 issued to provide funds to finance project facilities shall be
7 secured solely by the real properties benefited or improved and
8 the assessments thereon, or by the revenues derived from the
9 project for which the bonds were issued, including reserve
10 accounts and earnings thereon, insurance proceeds, and other
11 revenues, or any combination thereof. The bonds may be
12 additionally secured by the pledge or assignment of loans and
13 other agreements or any note or other undertaking, obligation,
14 or property held by the corporation. The bonds shall be issued
15 according to and subject to the rules adopted pursuant to this
16 section. Any other law to the contrary notwithstanding, in
17 assessing real property for project facilities, the corporation
18 shall assess the real property within a project area according
19 to the special benefits conferred upon the real property by the
20 project facilities. These methods may include an assessment on
21 a frontage basis or according to the area of real property
22 within a project area, or any other assessment method that



1 assesses the real property according to the special benefit
2 conferred, or any combination thereof. No assessment levied
3 under this section against real property specially benefited
4 under this chapter shall constitute a tax on real property
5 within the meaning of any law.

6 (e) The rules adopted pursuant to this section may
7 include:

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



1 payment of bonds, the payment of principal and
2 interest, and the sale and use of bonds;

3 (7) Provisions relating to funds and the refunding of
4 outstanding debts; and

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

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

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

17 (1) The principal and interest on these bonds;

18 (2) The cost of administering, operating, and maintaining
19 the program;

20 (3) The establishment of reserves; and

21 (4) Other purposes as may be authorized in the proceedings
22 providing for the issuance of the bonds.



1 If any surplus remains in any subaccount after the payment
2 of the bonds chargeable against that subaccount, the surplus
3 shall be credited to and become a part of the subaccount.

4 Notwithstanding any other law to the contrary, moneys in the
5 fund may be used to make up any deficiencies in the subaccount.

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

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

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



1 to sustain and preserve leisure or recreational enterprises
2 within a contiguous geographic area.

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

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

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

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

20 (c) The revenue bonds may be additionally secured by the
21 pledge or assignment of the loans and other agreements or any



1 note or other undertaking, obligation, or property held by the
2 corporation to secure the loans.

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

18 **§ -11 Revenue bonds; interest rate, price, and sale.**

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



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

4 In determining the cost of undertaking the project facility, the
5 corporation may include:

6 (1) The cost of constructing, acquiring, remodeling,
7 furnishing, and equipping the project facility,
8 including the acquisition of the site of the facility;

9 (2) The cost of purchasing or funding loans or other
10 agreements entered into for the project facility;

11 (3) The costs of studies and surveys;

12 (4) Insurance premiums;

13 (5) Underwriting fees;

14 (6) Financial-consultant, legal, accounting, and marketing
15 services incurred;

16 (7) Reserve-account, trustee, custodian, and rating-agency
17 fees; and

18 (8) Any capitalized interest.

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



1 **§ -12 Revenue bonds; investment of proceeds and**
2 **redemption.** Subject to any agreement with the holders of its
3 revenue bonds, the corporation may:

4 (1) Invest its moneys not required for immediate use,
5 including proceeds from the sale of revenue bonds, in
6 any investment in accordance with procedures
7 prescribed in a trust indenture; and

8 (2) Purchase its revenue bonds out of any fund or money of
9 the corporation available therefor, and hold, cancel,
10 or resell the revenue bonds.

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

18 (b) Notwithstanding any other law to the contrary,
19 including section -17, all revenues, income, and receipts
20 derived from the project facility for which the revenue bonds
21 are issued shall be paid into the project facility revenue bond
22 subaccount established for that project facility and applied as



1 provided in the proceedings authorizing the issuance of the
2 revenue bonds.

3 **§ -14 Trustee; designation, duties.** (a) The
4 corporation shall designate a trustee for each issue of revenue
5 bonds secured under the same trust indenture.

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

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



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

4 (1) The payment of the principal of and interest on the
5 revenue bonds; and

6 (2) The purchase, registration, transfer, exchange, and
7 redemption of the bonds.

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

15 (e) Nothing in this chapter shall limit or be construed to
16 limit the powers granted to the director of finance in sections
17 36-3, 39-13, and 39-68(a), to appoint the trustee or others as
18 fiscal agents, paying agents, and registrars for the revenue
19 bonds or to authorize and empower those fiscal agents, paying
20 agents, and registrars to perform the functions referred to in
21 those sections.



1 **§ -15 Trust indenture.** (a) A trust indenture may
2 contain covenants and provisions authorized by part III of
3 chapter 39, and as may be deemed necessary or convenient by the
4 corporation for the purposes of this chapter.

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

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

11 (1) The investment of the proceeds of the revenue bonds,
12 the investment of any reserve for the bonds, the
13 investment of the revenues of the project facility,
14 and the use and application of the earnings from
15 investments; and

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



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

6 § -16 **Transfer of public lands.** Notwithstanding chapter
7 171 to the contrary, the department may transfer lands under its
8 jurisdiction to the corporation for its use.

9 § -17 **Hawaii public land development revolving fund;**
10 **established; use of corporation funds.** (a) There is
11 established the Hawaii public land development revolving fund,
12 to which shall be credited any state appropriations to the fund
13 or other moneys made available to the fund, to be expended as
14 directed by the corporation.

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

18 (1) Purchase qualified securities issued by enterprises
19 for the purpose of raising seed capital; provided that
20 the investment shall comply with the requirements of
21 this chapter;



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

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

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

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

12 (1) Receiving:

13 (A) An application from the enterprise containing a
14 business plan, which is consistent with the
15 business and public land-development plan,
16 including a description of the enterprise and its
17 management, product, and market;

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

20 (C) A statement of the potential economic impact of
21 the enterprise, including the number, location,
22 and types of jobs expected to be created; and



- 1 (D) Any other information as the corporation shall
2 require;
- 3 (2) Determining, based upon the application submitted,
4 that:
- 5 (A) The proceeds of the investment will be used only
6 to cover the seed-capital needs of the
7 enterprise, except as authorized in this section;
- 8 (B) The enterprise has a reasonable chance of
9 success;
- 10 (C) The enterprise has the reasonable potential to
11 create employment within the State and offers
12 employment opportunities to residents;
- 13 (D) The coordinating entrepreneur and other founders
14 of the enterprise have already made or are
15 prepared to make a substantial financial and time
16 commitment to the enterprise;
- 17 (E) The securities to be purchased are qualified
18 securities;
- 19 (F) There is a reasonable possibility that the
20 corporation will recoup at least its initial
21 investment; and



1 (G) Binding commitments have been made to the
2 corporation by the enterprise for adequate
3 reporting of financial data to the corporation,
4 which shall include a requirement for an annual
5 or other periodic audit of the books of the
6 enterprise, and for control by the corporation
7 that it considers prudent over the management of
8 the enterprise, to protect the investment of the
9 corporation, including membership on the board of
10 directors of the enterprise, ownership of voting
11 stock, input in management decisions, and the
12 right of access to the financial and other
13 records of the enterprise;

14 and

15 (3) Entering into a binding agreement with the enterprise
16 concerning the manner of payback by the enterprise of
17 the funds advanced, granted, loaned, or received from
18 the corporation. The manner of payback may include
19 the payment of dividends, returns from the public sale
20 of corporate securities or products, royalties, and
21 other methods of payback acceptable to the
22 corporation. In determining the manner of payback,



1 the corporation shall establish a rate of return or
2 rate of interest to be paid on any investment, loan,
3 or grant of corporation funds under this section.

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

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

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

21 (2) The corporation shall not own securities representing
22 more than forty-nine per cent of the voting stock of



1 any one enterprise at the time of purchase by the
2 corporation after giving effect to the conversion of
3 all outstanding convertible securities of the
4 enterprise, except that if a severe financial
5 difficulty of the enterprise occurs, threatening the
6 investment of the corporation in the enterprise, a
7 greater percentage of those securities may be owned by
8 the corporation; and

9 (3) Not more than fifty per cent of the assets of the
10 corporation shall be invested in direct investments at
11 any time.

12 (f) No investment, loan, grant, or use of corporate funds
13 for the purposes of this chapter shall be subject to chapter
14 42F.

15 **§ -18 Exemption from taxation.** The corporation shall
16 not be required to pay state taxes of any kind.

17 **§ -19 Exemption from county requirements.**

18 Notwithstanding section 171-42 and except as otherwise provided
19 in this chapter, the corporation shall not be required to comply
20 with otherwise applicable county zoning, subdivision, and
21 permitting requirements.



1 § -20 Annual report. The corporation shall submit to
2 the governor and the legislature, no later than twenty days
3 prior to the convening of each regular session, a complete and
4 detailed report of its plans and activities."

5 SECTION 2. There is appropriated out of the general
6 revenues of the State of Hawaii the sum of \$ or so much
7 thereof as may be necessary for fiscal year 2011-2012 and the
8 same sum or so much thereof as may be necessary for fiscal year
9 2012-2013 for:

- 10 (1) The establishment and operation of the public land
11 development corporation; and
12 (2) The funding for two staff positions as follows:
13 (A) A planner; and
14 (B) A project-development specialist.

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

17 PART II

18 REHABILITATION OF ALA WAI BOAT HARBOR

19 SECTION 3. The department of land and natural resources,
20 through its division of boating and ocean recreation, operates
21 and manages twenty-one harbors; fifty boat ramps; 2,122 moorings
22 and berths; and nineteen piers spread throughout the various



1 counties of the State. The legislature finds that these ocean-
2 recreation facilities, in light of the present demand, are in
3 short supply and, in most cases where they exist, are in dire
4 need of long-overdue repair and maintenance. Some facilities
5 are in such need of repair and replacement that they cannot be
6 used and pose hazards to public safety.

7 One of these facilities, the Ala Wai boat harbor, badly
8 needs repair and replacement of floating docks. However, the
9 need for further maintenance remains unfulfilled. In spite of
10 its problems, the Ala Wai boat harbor includes certain assets
11 within its facilities that are underused and, if properly
12 developed, can potentially generate revenue that can fund not
13 only its continued improvement and maintenance but also the rest
14 of the facilities now operated by the division of boating and
15 ocean recreation.

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

18 The purpose of this part is to:

- 19 (1) Allow the limited issuance of commercial use permits
20 for vessels with assigned moorings in Ala Wai and
21 Keehi harbors;



- 1 (2) Provide for future moorage fees to be established by
2 appraisal by a State-licensed appraiser; and
- 3 (3) Direct the department of land and natural resources to
4 use the request-for-proposals process to enter into a
5 public-private partnership for the development of
6 portions of Ala Wai boat harbor facilities that are
7 presently underused to maximize the revenue potential
8 from such facilities.

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

11 "(b) The permissible uses under any lease disposed of
12 under this section shall be consistent with the purpose for
13 which the land was set aside by the governor pursuant to section
14 171-11. Permissible uses may include any use that will
15 complement or support the ocean-recreation or maritime
16 activities of state boating facilities.

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

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



1 "~~§~~200-8~~§~~ Boating program; payment of costs. The cost
2 of administering a comprehensive statewide boating program,
3 including, ~~[but not limited to,]~~ the cost of:

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

6 (2) Improving boating safety;

7 (3) Operating a vessel registration and boating casualty
8 investigation and reporting system; and

9 (4) Other boating program activities,

10 shall be paid from the boating special fund. The amortization
11 (principal and interest) of the costs of capital improvements
12 for boating facilities appropriated after July 1, 1975,
13 including, ~~[but not limited to,]~~ berths, slips, ramps, related
14 accommodations, general navigation channels, breakwaters, aids
15 to navigation, and other harbor structures, may be paid from the
16 boating special fund or from general revenues as the legislature
17 may authorize in each situation. Revenues provided in this
18 chapter for the boating special fund shall be at least
19 sufficient to pay the special fund costs established in this
20 section."

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



1 **"§200-9 Purpose and use of state small boat harbors. (a)**

2 State small boat harbors are constructed, maintained, and
3 operated for the purposes of:

4 (1) Recreational boating activities;

5 (2) Landing of fish; and

6 (3) Commercial vessel activities.

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

18 (b) Vessels used for purposes of recreational boating
19 activities [~~which~~] that are also the principal habitation of the
20 owners shall occupy no more than one hundred twenty-nine berths
21 at Ala Wai boat harbor and thirty-five berths at Keehi boat
22 harbor, which is equal to fifteen per cent of the respective



1 total moorage space that was available as of July 1, 1976, at
2 the Ala Wai and Keehi boat harbors. [~~Notwithstanding the~~
3 ~~purposes of small boat harbors, moorage for commercial vessels~~
4 ~~and commercial vessel activities is not permitted in the Ala Wai~~
5 ~~and Keehi boat harbors; provided that]~~

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

- 12 (1) Not exceed sixty-five feet in length;
13 (2) Occupy not more than fifty-six berths located along
14 the row of berths furthestmost mauka or adjacent to
15 Holomoana street, with the remainder located
16 throughout Ala Wai boat harbor, with a priority
17 assigned to row seven hundred and row eight hundred;
18 (3) Be phased-in in a manner that does not displace any
19 existing recreational boater or existing catamaran
20 operator; and
21 (4) Include commercial catamarans, for which valid
22 commercial use permits or existing registration



1 certificates have been issued by the department
2 [~~which~~] that allow the catamarans to operate upon
3 Waikiki shore waters for hire[, ~~may be permitted to~~
4 ~~moor in Ala Wai boat harbor at facilities leased for~~
5 ~~commercial purposes~~].

6 The department shall allow a sole proprietor of a catamaran
7 operating with a valid commercial use permit or existing
8 registration certificate, issued by the department, for a
9 commercial catamaran to land its commercial catamaran on Waikiki
10 beach and to operate upon Waikiki shore waters for hire, to
11 transfer the ownership of the vessel from personal ownership to
12 corporate or other business ownership without terminating the
13 right to operate under the commercial use permit or existing
14 registration certificate. The existing commercial use permit or
15 existing registration certificate shall be reissued in a timely
16 manner in the name of the transferee corporation or other
17 business entity. No valid commercial use permit or existing
18 registration certificate issued to an owner of a commercial
19 catamaran operating in the Waikiki area shall be denied or
20 revoked without a prior hearing held in accordance with chapter
21 91.



1 [~~(e)~~] (d) Notwithstanding any limitations on commercial
2 permits for Maui county small boat facilities, vessels engaging
3 in [~~inter-island~~] interisland ferry service within Maui county
4 shall be afforded preferential consideration for ferry landings,
5 including the issuance of a commercial operating permit and the
6 waiver of any applicable fees, at Maui county small boat
7 facilities; provided that:

8 (1) The vessel operator has been issued a certificate of
9 public convenience and necessity for the purpose of
10 engaging in [~~inter-island~~] interisland ferry service
11 that includes a route within Maui county;

12 (2) The design and performance characteristics of the
13 vessel will permit safe navigation within the harbor
14 entrance channel and safe docking within Maui county
15 small boat facilities;

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

19 (4) All preferential consideration and waivers, including
20 any commercial permits issued under this section,
21 shall cease upon the vessel operator's termination of



1 ~~[inter-island]~~ interisland ferry service within Maui
2 county.

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

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

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

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



1 (2) For commercial maritime activities where there is a
2 tariff established by the harbors division of the
3 department of transportation, the department may adopt
4 the published tariff of the harbors division of the
5 department of transportation, or establish the fee by
6 appraisal by a State-licensed appraiser approved by
7 the department; and

8 [~~+2~~] (3) An application fee shall be collected when
9 applying for moorage in state small boat harbors and
10 shall thereafter be collected annually when the
11 application is renewed. The application fee shall be:

12 (A) Set by the department; and

13 (B) Not less than \$100 for nonresidents;

14 [~~+3~~] (4) If a recreational vessel is used as a place of
15 principal habitation, the permittee shall pay, in
16 addition to the moorage fee, a liveaboard fee that
17 shall be calculated at a rate of:

18 (A) \$5.20 a foot of vessel length a month if the
19 permittee is a state resident; and

20 (B) \$7.80 a foot of vessel length a month if the
21 permittee is a nonresident;



1 provided that the liveaboard fees established by this
2 paragraph may be increased by the department at the
3 rate of the annual cost-of-living index, but not more
4 than five per cent in any one year, beginning
5 ~~[January]~~ July 1 of each year; ~~[and~~

6 ~~(4)]~~ (5) If a vessel is used for commercial purposes from
7 its permitted mooring, the permittee shall pay, in
8 lieu of the moorage and liveaboard fee, a fee based on
9 three per cent of the gross revenues derived from the
10 use of the vessel or two times the moorage fee
11 assessed for a recreational vessel of the same size,
12 whichever is greater~~[-]~~; and

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

17 SECTION 8. (a) Pursuant to section 200-2.5, Hawaii
18 Revised Statutes, the department of land and natural resources
19 is directed to lease certain fast lands at Ala Wai boat harbor
20 using the request-for-proposals process for the public-private
21 development, management, and operation of areas of Ala Wai boat
22 harbor.



- 1 (b) The permissible uses under this lease shall include:
- 2 (1) A minimum of not less than one hundred twenty berths
- 3 for vessels; provided that:
- 4 (A) Not more than forty berths shall be available for
- 5 vessels used for purposes of recreational boating
- 6 activities that are also the principal habitation
- 7 of the owners;
- 8 (B) Not more than thirty berths, including those
- 9 allowed pursuant to section 200-9(b), Hawaii
- 10 Revised Statutes, shall be available for vessels
- 11 issued commercial use permits; and
- 12 (C) All berths provided under this paragraph shall be
- 13 made available to the public pursuant to the
- 14 rules of the department of land and natural
- 15 resources, with moorage fees to be determined by
- 16 the developer;
- 17 (2) Office space, including a minimum of square
- 18 feet for use by the division of boating and ocean
- 19 recreation;
- 20 (3) Vehicular parking, including a minimum of
- 21 parking stalls for use by the division of



1 boating and ocean recreation and for public metered
2 parking;

3 (4) Commercial uses, including [~~but not limited to~~]
4 restaurants, retail shops, marine-supplies shops, and
5 sundry stores, all made available to the public;

6 (5) Residential, hotel, and timeshare uses; provided that
7 the use is consistent with neighboring parcels with a
8 developable height limit of three hundred fifty feet
9 and a maximum floor-area ratio of four;

10 (6) The development of a seawater air conditioning
11 district cooling facility designed to support the
12 visitor industry in Waikiki in the vicinity of Ala Wai
13 boat harbor;

14 (7) Vessel fueling facilities;

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

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

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

19 (1) A minimum lease rent that is the greater of a
20 commercially acceptable percentage of the gross
21 receipts of the lessee from the developed leased
22 premises or a fair return on the fair market value of



1 the vacant leased premises, as determined by appraisal
2 by a State-licensed appraiser approved by the
3 department, with reasonable periodic step-ups in the
4 minimum lease rent over the term of the lease; and

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

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

11 PART III

12 MISCELLANEOUS PROVISIONS

13 SECTION 9. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 10. This Act shall take effect on July 1, 2030.



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, 2030.

(SB1555 HD2)

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