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# 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:**

## 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**

#### **[PART I. GENERAL PROVISIONS]**

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

The purpose of this chapter is to create a vehicle and process to make optimal use of public land for the economic, environmental, and social benefit of the people of Hawaii. This chapter establishes a public corporation to administer an appropriate and culturally-sensitive public land development program. The corporation shall coordinate and administer programs to make optimal use of public land, while ensuring that the public land is maintained for the people of Hawaii. The corporation shall identify the public lands that are suitable for development under this chapter, carry on marketing analysis to determine the best revenue-generating programs for the public lands identified, enter into public-private agreements to appropriately develop the public lands identified, and to provide the leadership for the development, financing, improvement, or enhancement of the selected development opportunities.

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

"Board" means the board of ~~{directors of the public land development corporation}~~ land and natural resources.

"Coordinating entrepreneur" means a qualified person capable of organizing, operating, and assuming the risk for enterprises, including securing land and seed capital,

developing or managing commercial or recreational facilities or projects, arranging concession agreements, supplying materials, maintaining equipment and infrastructure, and providing for the processing and marketing of services or products.

"Corporation" means the public land development corporation.

"Coventure" means an investment by the corporation in qualified securities of an enterprise in which a substantial investment is also being made or has been made by a professional investor to provide seed capital to an enterprise. A guarantee by the corporation of qualified securities provided by a professional investor shall be classified as a coventure. An investment made by the corporation, which is a direct investment, may later be classified as a coventure upon an investment by a professional investor.

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

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

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

"Fund" means the Hawaii public lands development revolving fund.

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

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

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

"Project cost" means the total of all costs incurred by the corporation in carrying out all undertakings that it considers reasonable and necessary for the development of a project, including studies; plans; specifications; architectural, engineering, or any other development related services; acquisition of land and any improvement thereon; site preparation and development; construction; reconstruction; rehabilitation; the necessary expenses in administering this chapter; the cost of financing the project; and relocation costs.

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

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

"Qualified security" means any note, stock, treasury stock bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, preorganization certificate of subscription, transferable share, investment contract, certificate of deposit for a security, certificate of interest or participation in a patent or patent application, or in royalty or other payments under such a patent or application, or, in general, any interest or instrument commonly known as a "security" or any certificate for, receipt for, or option, warrant, or right to subscribe to or purchase any of the foregoing.

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

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

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

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

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

**§ -3 Public land development corporation; ~~[board of directors;]~~ established.** (a) There is established the public land development corporation, which shall be a public body corporate and politic and an instrumentality and agency of the State. The corporation shall be headed by ~~[a board of directors]~~ the board. The corporation shall be placed within the department ~~[of land and natural resources]~~ for administrative purposes~~[, but the corporation may later incorporate as a nonprofit corporation if this proves desirable to further its objectives; provided that reorganization as a nonprofit corporation shall not adversely affect the federal tax status of the interest on any bonds issued to finance any project or project facility].~~

~~[(b) The board of directors of the corporation shall consist of eleven voting members, eight of whom shall be appointed by the governor. The terms of the eight members appointed by the governor shall be four years; provided that, commencing on July 1, 2014, the governor shall reduce the terms of those initially appointed so as to provide, as nearly as can be, for the expiration of an equal number of terms at intervals of one year. The eight members shall be selected on the basis of their knowledge, experience, and proven expertise in small and large businesses within the~~

~~development and recreational industries, banking, real estate, finance, promotion, marketing, and management. Of these eight members, one shall be from the city and county of Honolulu, one shall be from the county of Hawaii, one shall be from the county of Maui, one shall be from the county of Kauai, and four shall be appointed at-large. The director of business, economic development, and tourism and the chairperson of the board of land and natural resources, or their designated representatives, shall serve as ex officio, voting members of the board. All members shall continue in office until their respective successors have been appointed and qualified. The board shall annually elect its chairperson from among its members; provided that the chairperson shall not be an ex officio member.~~

~~— (c) The members of the board shall serve without compensation, but shall be reimbursed for actual expenses incurred in the performance of their duties.~~

~~— (d) The board shall appoint an executive director, who shall serve at the pleasure of the board and shall be exempt from chapter 76. The salary of the executive director shall be set by the board.]~~

(b) The first deputy director of the department shall serve as the executive director of the corporation.

~~[(e)]~~ (c) The board, through its executive director, may appoint officers, agents, and employees; prescribe their duties and qualifications; and fix their salaries, without regard to chapter 76.

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

- (1) Sue and be sued;
- (2) Have a seal and alter the same at its pleasure;

(3) Make and alter bylaws for its organization and internal management;

(4) Adopt rules under chapter 91 necessary to effectuate this chapter in connection with its projects, operations, and properties;

(5) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;

(6) Carry out surveys, research, and investigations into technological, business, financial, consumer trends, and other aspects of leisure or recreational land uses in the national and international community;

(7) ~~Acquire~~ Subject to section 171-30, acquire or contract to acquire by grant or purchase any real, personal, or mixed-use property or any interest therein for its immediate or future use for the purposes of this chapter; own, hold, improve, and rehabilitate any real, personal, or mixed property acquired; and sell, assign, exchange, transfer, convey, lease, or otherwise dispose of, or encumber the same;

(8) By itself, or in partnership with qualified persons or other governmental agencies, acquire, construct, reconstruct, rehabilitate, improve, alter, or repair any infrastructure or accessory facilities in connection with any project; own, hold, sell, assign, transfer, convey, exchange, lease, or otherwise dispose of, or encumber any project; and develop or manage, by itself, or in partnership with qualified persons or other governmental agencies, any project that meets the purposes of this chapter;

(9) In cooperation with ~~[the department of land and natural resources, pursuant to chapter 171, or other]~~ any



governmental agency, or otherwise through direct investment or coventure with a professional investor or enterprise or any other person, or otherwise, acquire, construct, operate, and maintain public land facilities at rates or charges determined by the corporation;

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

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

(12) Receive, examine, and determine the acceptability of applications of qualified persons for allowances or grants for the development of new recreation and visitor-industry related products, the expansion of established recreation and visitor-industry or land development enterprises, and the altering of existing recreational, visitor-industry related, or land development enterprises;

(13) Coordinate its activities with any federal or state programs;

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

(15) Provide advisory, consultative, training, and educational services, technical assistance, and advice to any person, partnership, or corporation, either public or private, in order to carry out the purposes of this

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

(16) Procure insurance against any loss in connection with its property and other assets and operations in amounts and from insurers as it deems desirable;

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

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

**§ -5 Hawaii public land optimization plan.** (a)

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

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

(2) Protection of culturally-sensitive areas;

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

~~[(4) Strategies to ensure the provision of adequate air and surface transportation services and supporting facilities to support the visitor industry in meeting local, national, and international market needs;]~~

~~[(5)]~~ (4) Proposals to improve the gathering of data and the timely presentation of information on market demands and trends that can be used to plan future projects; and

[~~(6)~~](5) Strategies for federal and state legislative actions that will promote the development and enhancement of Hawaii's public lands.

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

~~§ -6 Subsidiaries; establishment. (a) The corporation may exercise its powers through one or more subsidiary corporations. The corporation, by resolution, may direct any of its members, officers, or employees to organize a subsidiary corporation pursuant to either chapter 414 or chapter 414D; provided that the organization of a subsidiary corporation shall not adversely affect the federal tax status of the interest on any bonds issued to finance any project or project facility. The resolution shall prescribe the purposes for which the subsidiary corporation is established. The subsidiary corporation shall remain a subsidiary of the corporation as long as more than one half of its voting shares are owned or held by the corporation, or a majority of its directors are designated by the corporation; provided that the corporation shall not convey or otherwise dispose of any subsidiary corporation or surrender the right to designate a majority of the directors of any subsidiary corporation if the sale or surrender has an adverse affect on the federal tax status of the interest on any bonds issued to finance any project or project facility. The subsidiary corporation may be operated, maintained, and enhanced at the full discretion of the corporation or its designee.~~

~~—— (b) If the corporation acquires the assets of a private or other corporation, then, notwithstanding any law to the contrary:~~

~~—— (1) Neither the corporation nor any subsidiary corporation vested with the assets shall be subject to chapter 91 with respect to the assets;~~

~~—— (2) Employees retained to operate the assets shall not be subject to chapter 76;~~

~~—— (3) Assets constituting real property interest shall not be subject to chapter 171;~~

~~—— (4) No investment, loan, or use of funds by the corporation or a subsidiary corporation vested with the assets shall be subject to chapter 42F or 103; and~~

~~—— (5) Neither the corporation nor a subsidiary corporation vested with the assets shall constitute a public utility or be subject to the jurisdiction of the public utilities commission under chapter 269.~~

~~—— (c) The corporation may transfer to any subsidiary corporation any moneys, any real, personal, or mixed property, or any project, in order to carry out the purposes of this chapter. Each subsidiary corporation shall have all the powers of the corporation.]~~

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

(b) The corporation may initiate and coordinate the preparation of business and public land development plans

for its projects. The plans shall include a proposal for the organization of the enterprise, a marketing information and strategy, the impact on existing development or visitor-related industries throughout the State, and a recommendation for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any infrastructure or accessory facilities in connection with any project.

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

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

(e) ~~The~~ Subject to section 19, the public land planning activities of the corporation shall be coordinated with the county planning departments and the county land use plans, policies, and ordinances.

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

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

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

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

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

(d) Unless and except as otherwise provided by law, bonds issued to provide funds to finance project facilities shall be secured solely by the real properties benefited or improved and the assessments thereon, or by the revenues derived from the project for which the bonds were issued, including reserve accounts and earnings thereon, insurance

proceeds, and other revenues, or any combination thereof. The bonds may be additionally secured by the pledge or assignment of loans and other agreements or any note or other undertaking, obligation, or property held by the corporation. The bonds shall be issued according to and subject to the rules adopted pursuant to this section. Any other law to the contrary notwithstanding, in assessing real property for project facilities, the corporation shall assess the real property within a project area according to the special benefits conferred upon the real property by the project facilities. These methods may include an assessment on a frontage basis or according to the area of real property within a project area, or any other assessment method that assesses the real property according to the special benefit conferred, or any combination thereof. No assessment levied under this section against real property specially benefited under this chapter shall constitute a tax on real property within the meaning of any law.

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

(1) The methods of establishing assessment areas within a project area;

(2) The method of assessing real properties specially benefited;

(3) The costs to be borne by the corporation, the county in which the project facilities are situated, and the property owners;

(4) The procedures before the corporation relating to the creation of the assessment areas by the owners of real property therein, including provisions for petitions, bids, contracts, bonds, and notices;

(5) Provisions relating to assessments;

(6) Provisions relating to financing, such as bonds, the Hawaii public land development revolving fund, advances from available funds, special funds for the payment of bonds, the payment of principal and interest, and the sale and use of bonds;

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

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

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

(g) All sums collected under this section shall be deposited in the fund established by section ~~-[18]~~17, except that all moneys collected on account of assessments and interests thereon for any specific project facilities financed by the issuance of bonds, shall be set apart in a separate ~~[special fund]~~subaccount and applied solely to the payment of:

(1) The principal and interest on these bonds;

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

(3) The establishment of reserves; and

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

If any surplus remains in any ~~[special fund]~~subaccount after the payment of the bonds chargeable against that ~~[special fund]~~subaccount, the surplus shall be credited to and become a part of the fund. Notwithstanding any other



law to the contrary, moneys in the fund may be used to make up any deficiencies in the [~~special fund.~~]subaccount.

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

~~§ -9~~ § -8 **Approval of projects, plans, and programs.** All public lands optimization projects, public land development plans, and project facility programs developed by the corporation shall be approved by the board [~~of land and natural resources before implementation~~].

~~§ -10~~ § -9 **Bonds.** (a) The corporation, with the approval of the governor, may issue, from time to time, revenue bonds in amounts not exceeding the total amount of bonds authorized to be issued by the legislature for the purpose of constructing, acquiring, remodeling, furnishing, and equipping any project facility, including the acquisition of the site of the facility; or acquiring non-public lands through purchase to sustain and preserve leisure or recreational enterprises within a contiguous geographic area.

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

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

~~§ -11~~ § -10 **Revenue bonds; payment and security.** (a) The revenue bonds shall be payable from and secured by the real properties specially benefited or

improved and the assessments thereon, or by the revenues derived from the project facility for which the revenue bonds were issued, including revenue derived from insurance proceeds and reserve accounts, and earnings thereon.

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

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

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

**[~~§ -12~~]§ -11 Revenue bonds; interest rate, price, and sale.** (a) The revenue bonds issued pursuant to this chapter shall bear interest at a rate or rates and shall be

payable on a date or dates, as the corporation shall determine.

(b) The corporation shall include the costs of undertaking the project facility for which the revenue bonds are issued in determining the principal amount of revenue bonds to be issued. In determining the cost of undertaking the project facility, the corporation may include:

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

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

(3) The costs of studies and surveys;

(4) Insurance premiums;

(5) Underwriting fees;

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

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

(8) Any capitalized interest.

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

**[~~§~~ -13]§ -12 Revenue bonds; investment of proceeds, and redemption.** Subject to any agreement with the holders of its revenue bonds, the corporation may:

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

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

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

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

**~~§ -15~~ § -14 Trustee; designation, duties.** (a) The corporation shall designate a trustee for each issue of revenue bonds secured under the same trust indenture.

(b) The trustee shall be authorized by the corporation to hold and administer the project facility revenue bond ~~special fund~~ subaccount established pursuant to section ~~-14,~~ 13, to receive and receipt for, hold, and administer the revenues derived by the corporation from the project facility for which the revenue bonds were issued, and to apply these revenues to the payment of the cost:

(1) Of undertaking the project facility;

(2) Of administering and operating the proceedings providing for the issuance of the revenue bonds;

(3) To pay the principal or interest on these bonds;

(4) Of the establishment of reserves; and

(5) To other purposes as may be authorized in the proceedings providing for the issuance of the revenue bonds.

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

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

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

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

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

~~§ 16~~ § 15 **Trust indenture.** (a) A trust indenture may contain covenants and provisions authorized by part III of chapter 39, and as may be deemed necessary

or convenient by the corporation for the purposes of this chapter.

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

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

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

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

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

~~[\$ -17]~~ § -16 ~~[Use]~~ Transfer of public lands ~~[+ acquisition of state lands]~~. (a) ~~Notwithstanding chapter 171 to the contrary,~~ the department of land and natural resources may transfer lands under its jurisdiction to the corporation for its use.

~~[(b) If state lands under the control and management of other public agencies are required by the corporation~~

~~for its purposes, the agency having the control and management of those required lands, upon request by the corporation and with the approval of the governor, may lease the lands to the corporation upon terms and conditions as may be agreed to by the parties.~~

~~(c) Notwithstanding subsection (b) to the contrary, no public lands shall be leased to the corporation if the lease would impair any covenant between the State or any county, or any department or board thereof, and the holders of bonds issued by the State or the county, department, or board.~~

~~[§ -18]~~ § -17 **Hawaii public land development revolving fund; established; use of corporation funds.**

(a) There is established the Hawaii public land development revolving fund, to which shall be credited any state appropriations to the fund or other moneys made available to the fund, to be expended as directed by the corporation.

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

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

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

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

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

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

(1) Receiving:

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

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

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

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

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

(A) The proceeds of the investment will be used only to cover the seed capital needs of the enterprise, except as authorized in this section;

(B) The enterprise has a reasonable chance of success;

(C) The enterprise has the reasonable potential to create employment within the State and offers employment opportunities to residents;

(D) The coordinating entrepreneur and other founders of the enterprise have already made or are prepared to make a substantial financial and time commitment to the enterprise;



(E) The securities to be purchased are qualified securities;

(F) There is reasonable possibility that the corporation will recoup at least its initial investment; and

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

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

(d) If the corporation makes a direct investment, it shall also find that a reasonable effort has been made to find a professional investor to make an investment in the enterprise as a coventure, and that the effort was

unsuccessful. The findings, when made by the corporation, shall be conclusive.

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

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

(2) The corporation shall not own securities representing more than forty-nine per cent of the voting stock of any one enterprise at the time of purchase by the corporation after giving effect to the conversion of all outstanding convertible securities of the enterprise, except that if a severe financial difficulty of the enterprise occurs, threatening the investment of the corporation in the enterprise, a greater percentage of those securities may be owned by the corporation; and

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

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

~~§ 19~~ **§ 18 Exemption from taxation.** The corporation shall not be required to pay state taxes of any kind.

§ -19 Exemption from county requirements.

Notwithstanding section 171-42 and except as otherwise noted in this chapter, the corporation shall not be required to comply with otherwise applicable county or city and county zoning, subdivision and permitting requirements.

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

~~[PART II. ACQUISITION OF APPROPRIATE PUBLIC LANDS~~

~~§ -31 Acquisitions of appropriate public lands authorized by the legislature. (a) The legislature may authorize the corporation to acquire non-public lands for the purposes of this chapter.~~

~~(b) The acquisition shall be authorized by a bill enacted into law and shall contain:~~

~~(1) A statement of the value of the interest in land as a resource to the State;~~

~~(2) A description of the specific parcel of land or easement proposed to be acquired;~~

~~(3) The name of the owner of the property; and~~

~~(4) The estimated costs of acquiring the interest in the land.~~

~~(c) The landowner shall receive payment for the interest in the land in a lump sum, through an installment purchase agreement as determined pursuant to section 32, or from revenues derived from the issuance of revenue bonds pursuant to section 32.~~

~~§ -32 Acquisitions; payment. (a) If the landowner agrees to the sale of the interest in lands pursuant to section 31, the landowner and the corporation shall agree on whether the landowner shall receive payment for~~

~~the interest in a lump sum or through an installment purchase agreement pursuant to section —33.~~

~~—(b) The corporation may make payments from moneys appropriated by the legislature.~~

~~—§ —33 **Installment purchase agreements; interest payment.**~~

~~(a) The legislature may authorize the corporation to negotiate installment purchase agreements for the acquisition of specific parcels of land for the purposes of this chapter. The installment purchase agreements shall be structured pursuant to the requirements of the Internal Revenue Code, to defer recognition of capital gain until all of the purchase price is paid. The agreement shall include provisions for the periodic payment of a portion of the purchase price with the remainder of the purchase price paid at the end of the term of the agreement. The legislature shall authorize the purchase of United States Treasury zero coupon bonds for the installment purchase agreement with a maturity date equal to the term of the agreement.~~

~~—(b) The interest rate paid on the installment purchase agreement shall be not less than the interest rate on the zero coupon bonds at the closing of the agreement or eight per cent, whichever is higher.~~

~~—(c) The corporation shall make semi-annual interest payments on the outstanding balance of the installment purchase agreement purchase price." ]~~

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \_\_\_\_\_ or so much thereof as may be necessary for fiscal year 2011-2012 and the same sum or so much thereof as may be necessary for fiscal year 2012-2013 for the establishment and operation

of the public land development corporation and funding for two staff positions for a planner and project development specialist.

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

## **PART II**

### **REHABILITATION OF THE ALA WAI SMALL BOAT HARBOR**

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

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

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

The purpose of this part is to:

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

(2) Provide for future mooring fees to be established by appraisal by a state-licensed appraiser; and

(3) Direct 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 small boat harbor facilities that are presently under-used to maximize the revenue potential from its facilities.

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

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

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

~~[SECTION 4.]~~ SECTION 5. Section 200-8, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) Operating, maintaining, and managing all boating facilities under the control of the department;
- (2) Improving boating safety;
- (3) Operating a vessel registration and boating casualty investigation and reporting system; and
- (4) Other boating program activities,

shall be paid from the boating special fund~~[ ]~~; provided that any fees collected from state small boat harbors shall only be expended on costs related to the operation, upkeep, maintenance, and improvement of state small boat harbors. The amortization (principal and interest) of the costs of capital improvements for boating facilities appropriated after July 1, 1975, including~~[ ]~~ but not limited to~~[ ]~~ berths, slips, ramps, related accommodations, general navigation channels, breakwaters, aids to navigation, and other harbor structures, may be paid from the boating special fund or from general revenues as the legislature may authorize in each situation. Revenues provided in this chapter for the boating special fund shall be at least sufficient to pay the special fund costs established in this section."

~~[SECTION 5.]~~ SECTION 2. Section 200-9, Hawaii Revised Statutes, is amended to read as follows:

**"§200-9 Purpose and use of state small boat harbors.**

(a) State small boat harbors are constructed, maintained, and operated for the purposes of:

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

For the purpose of this section, "recreational boating activities" means the ~~[utilization]~~ use of watercraft for sports, hobbies, or pleasure, and "commercial vessel

activities" means the ~~[utilization]~~ use of vessels for activities or services provided on a fee basis. To implement these purposes, only vessels in good material and operating condition that are regularly navigated beyond the confines of the small boat harbor~~[r]~~ and ~~[which]~~ that are used for recreational activities, the landing of fish, or commercial vessel activities shall be permitted to moor, anchor, or berth at ~~[such]~~ a state small boat harbor or use any of its facilities.

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

~~[Notwithstanding the purposes of small boat harbors, moorage for commercial vessels and commercial vessel activities is not permitted in the Ala Wai and Keehi boat harbors; provided that]~~

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

- (1) Not exceed sixty-five feet in length;
- (2) Occupy not more than fifty-six berths located along the row of berths furthestmost mauka or adjacent to Holomua street, with the remainder located throughout the



Ala Wai boat harbor, with a priority assigned to row seven hundred and row eight hundred;

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

(4) Include commercial catamarans, for which valid commercial use permits or existing registration certificates have been issued by the department [which] that allow the catamarans to operate upon Waikiki shore waters for hire[~~, may be permitted to moor in Ala Wai boat harbor at facilities leased for commercial purposes].~~

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

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

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

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

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

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

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

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

~~[SECTION 6.]~~ SECTION 2. Section 200-10, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

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

(1) ~~[Moorage]~~ Except for commercial maritime activities where there is a tariff established by the department of transportation, moorage fees shall be established by appraisal by a state-licensed appraiser

approved by the department and shall be higher for nonresidents[+]. The mooring fees shall be set by appraisal categories schedule A and schedule B, to be determined by the department, and may be increased annually by the department, to reflect a cost-of-living index increase;

(2) For commercial maritime activities where there is a tariff established by the department of transportation, harbors division, the department may adopt the published tariff of the department of transportation, harbors division, or establish the fee by appraisal by a state licensed appraiser approved by the department; and

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

- (A) Set by the department; and
- (B) Not less than \$100 for nonresidents;

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

- (A) \$5.20 a foot of vessel length a month if the permittee is a state resident; and
- (B) \$7.80 a foot of vessel length a month if the permittee is a nonresident;

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

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

(6) In addition, the department is authorized to assess and collect utility fees, including electrical and water charges, and common area maintenance fees in small boat harbors."

~~[SECTION 7.]~~ SECTION 2. (a) Pursuant to section 200-2.5, Hawaii Revised Statutes, the department of land and natural resources is directed to lease certain fast lands at the Ala Wai harbor using the request for proposals process for the public-private development, management, and operation of areas of Ala Wai harbor.

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

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

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

(B) Not more than thirty berths, including those allowed pursuant to section 200-9(b), Hawaii Revised Statutes, shall be available for vessels issued commercial use permits; and

(C) All berths provided under this paragraph shall be made available to the public pursuant to

department of land and natural resources rules, with moorage fees to be determined by the developer;

(2) Office space, including a minimum of square feet for division of boating and ocean recreation use;

(3) Vehicular parking, including a minimum of parking stalls for division of boating and ocean recreation use and for public metered parking;

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

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

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

(7) Vessel fueling facilities;

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

(9) Vessel haul-out and storage facilities.

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

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

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

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

### **PART III**

#### **MISCELLANEOUS PROVISIONS**

~~[SECTION 8.]~~ SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

~~[SECTION 9.]~~ SECTION 10. This Act shall take effect on July 1, 2050.

**Report Title:**

DLNR; Public Land Development Corporation; Ala Wai Boat Harbors

**Description:**

Establishes a public 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 harbors; provides for future mooring fees to be established by appraisal by a state-licensed appraiser; and 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 small boat harbor facilities that are presently under-used to maximize the revenue potential from its facilities. Effective 7/1/2050. (PROPOSED SD23)

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