

JAN 17 2013

A BILL FOR AN ACT

RELATING TO THE PUBLIC LAND DEVELOPMENT CORPORATION.

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

PART I

SECTION 1. Chapter 171C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§171C- Public-private partnership financing. The corporation may coordinate with the Hawaii strategic development corporation for the provision of seed capital assistance or venture capital assistance by the Hawaii strategic development corporation to an enterprise to further the purposes of this chapter."

SECTION 2. Chapter 171C, Hawaii Revised Statutes, is amended by amending its title to read as follows:

"[+]CHAPTER[+] 171C

~~[PUBLIC LAND DEVELOPMENT CORPORATION]~~

PUBLIC-PRIVATE PARTNERSHIP CORPORATION"

SECTION 3. Sections 171-2, 171-64.7, 171C-2, 171C-3, 173A-4, 173A-5, and 206E-4 are amended by substituting the words "public private partnership corporation" wherever the words



1 "public land development corporation" appears, as the context
2 requires.

3 SECTION 4. Section 171C-4, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) Except as otherwise limited by this chapter, the
6 corporation may:

- 7 (1) Sue and be sued;
- 8 (2) Have a seal and alter the same at its pleasure;
- 9 (3) Make and alter bylaws for its organization and
10 internal management;
- 11 (4) Adopt rules under chapter 91 necessary to effectuate
12 this chapter in connection with its projects,
13 operations, and properties;
- 14 (5) Make and execute contracts and all other instruments
15 necessary or convenient for the exercise of its powers
16 and functions under this chapter;
- 17 (6) Carry out surveys, research, and investigations into
18 technological, business, financial, consumer trends,
19 and other aspects of leisure or recreational land uses
20 in the national and international community;
- 21 (7) Acquire or contract to acquire by grant or purchase:



- 1 (A) All privately owned real property or any interest
- 2 therein and the improvements thereon, if any,
- 3 that are determined by the corporation to be
- 4 necessary or appropriate for its purposes under
- 5 this chapter, including real property together
- 6 with improvements, if any, in excess of that
- 7 needed for such use in cases where small remnants
- 8 would otherwise be left or where other
- 9 justifiable cause necessitates the acquisition to
- 10 protect and preserve the contemplated
- 11 improvements, or public policy demands the
- 12 acquisition in connection with such improvements;
- 13 and
- 14 (B) Encumbrances, in the form of leases, licenses, or
- 15 otherwise, needed by the corporation or any state
- 16 department or agency for public purposes, the
- 17 disposition of subdivided lots, houselots,
- 18 apartments or other economic units, or economic
- 19 development;
- 20 (8) Own, hold, improve, and rehabilitate any real,
- 21 personal, or mixed property acquired; and sell,



1 assign, exchange, transfer, convey, lease, or
2 otherwise dispose of, or encumber the same;
3 (9) By itself, or in partnership with qualified persons or
4 other governmental agencies, acquire, construct,
5 reconstruct, rehabilitate, improve, alter, or repair
6 any infrastructure or accessory facilities in
7 connection with any project; own, hold, sell, assign,
8 transfer, convey, exchange, lease, or otherwise
9 dispose of, or encumber any project; and develop or
10 manage, by itself, or in partnership with qualified
11 persons or other governmental agencies, any project
12 that meets the purposes of this chapter;
13 (10) In cooperation with any governmental agency, [~~or~~
14 ~~otherwise through direct investment or coventure with~~
15 ~~a professional investor or enterprise or any other~~
16 ~~person, or otherwise,~~] acquire, construct, operate,
17 and maintain public land facilities, including but not
18 limited to leisure, recreational, commercial,
19 residential, time share, hotel, office space, and
20 business facilities, at rates or charges determined by
21 the corporation;



- 1 (11) Assist developmental, recreational, and visitor-
2 industry related enterprises, or projects developed or
3 managed by the corporation, by conducting detailed
4 marketing analysis and developing marketing and
5 promotional strategies to strengthen the position of
6 those enterprises and to better exploit local,
7 national, and international markets;
- 8 (12) Receive, examine, and determine the acceptability of
9 applications of qualified persons for allowances or
10 grants for the development of new recreation and
11 visitor-industry related products, the expansion of
12 established recreation and visitor-industry or land
13 development enterprises, and the altering of existing
14 recreational, visitor-industry related, or land
15 development enterprises;
- 16 (13) Coordinate its activities with any federal or state
17 programs;
- 18 (14) Grant options to purchase any project or to renew any
19 lease entered into by the corporation in connection
20 with any of its projects, on the terms and conditions
21 it deems advisable;



- 1 (15) Provide advisory, consultative, training, and
2 educational services and technical assistance to any
3 person, partnership, or corporation, either public or
4 private, to carry out the purposes of this chapter,
5 and engage the services of consultants on a
6 contractual basis for rendering professional and
7 technical assistance and advice;
- 8 (16) Procure insurance against any loss in connection with
9 its property and other assets and operations in
10 amounts and from insurers as it deems desirable;
- 11 (17) Accept gifts or grants in any form from any public
12 agency or any other source;
- 13 (18) Issue bonds to finance the cost of a project and to
14 provide for the security thereof, in the manner and
15 pursuant to the procedure prescribed in this chapter;
- 16 (19) Subject to approval by the department, assume
17 management responsibilities for small boat harbors in
18 accordance with chapter 200 and any rules adopted
19 pursuant thereto for periods not to exceed one year;
- 20 (20) Recommend to the board of land and natural resources
21 the purchase of any privately owned properties that
22 may be appropriate for development; and



1 (21) Do all things necessary or proper to carry out the
2 purposes of this chapter."

3 SECTION 5. Section 171C-6, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending subsection (e) to read:

6 "(e) The public land planning activities of the
7 corporation shall be coordinated with: the county planning
8 departments [~~and the~~]; county land use plans, policies, and
9 ordinances[-]; and, where appropriate, the land use commission
10 or a cultural expert from the Hawaii community development
11 authority."

12 2. By amending subsection (g) to read:

13 "(g) Prior to implementing any plan, the corporation shall
14 submit the proposed plan and any amendments thereto to the
15 landowner or landowners who transferred development rights to
16 any public land affected by the proposed plan. Any undertaking
17 by the corporation pursuant to this chapter shall be with the
18 prior, express written consent of the landowner or landowners
19 directly affected[-] and shall be subject to any land use
20 limitations or restrictions required by the landowner or
21 landowners."



1 SECTION 6. Section 171C-17, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§171C-17 Hawaii public land development revolving fund;
4 established; use of corporation funds. (a) There is
5 established the Hawaii public land development revolving fund,
6 to which shall be credited any state appropriations to the fund,
7 any sums collected as a result of bonds issued pursuant to this
8 chapter, any revenues generated from the facilities, except as
9 provided in sections 171C-17.5 and 171C-21, or other moneys made
10 available to the fund, to be expended as directed by the
11 corporation.

12 (b) Notwithstanding any provision of this chapter to the
13 contrary, revenues, income, and receipts derived from the
14 project facilities shall be set apart in a separate subaccount
15 and applied solely for the following purposes:

- 16 (1) The principal and interest on the bonds;
- 17 (2) The cost of administering, operating, and maintaining
18 the project not to exceed fifteen per cent of the sums
19 collected, net of principal and interest payments, on
20 account of assessments and interest for any specific
21 project facility;



1 (3) The establishment of program reserves not to exceed
2 eighty-five per cent of the sums collected, net of
3 principal and interest payments, on account of
4 assessments and interest for any specific project
5 facility; provided that accumulated reserves shall be
6 credited to and become a part of the special land and
7 development fund, established under section 171-19,
8 except in the case of a specific project facility that
9 is situated in part or wholly within a small boat
10 harbor, in which case those accumulated reserves
11 attributable to the portions of the facility situated
12 in the small boat harbor shall be credited to and
13 become a part of the boating special fund, established
14 under section 248-8; and

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

17 If any surplus remains in any subaccount after the payment of
18 the bonds chargeable against that subaccount, the surplus shall
19 be credited to and become a part of the Hawaii public land
20 development revolving fund, except as provided in paragraph (3).

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



1 (c) The corporation shall hold the fund in an account or
2 accounts separate from other funds. [~~Except as otherwise~~
3 ~~provided in subsection (b), the corporation shall invest and~~
4 ~~reinvest the fund and the income thereof to:~~

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

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

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

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

18 [~~(d) The corporation shall purchase qualified securities~~
19 ~~issued by an enterprise only after:~~

20 ~~(1) Receiving:~~

21 ~~(A) An application from the enterprise containing a~~
22 ~~business plan, which is consistent with the~~



- 1 ~~business and public land development plan,~~
- 2 ~~including a description of the enterprise and its~~
- 3 ~~management, product, and market;~~
- 4 ~~(B) A statement of the amount, timing, and projected~~
- 5 ~~use of the capital required;~~
- 6 ~~(C) A statement of the potential economic impact of~~
- 7 ~~the enterprise, including the number, location,~~
- 8 ~~and types of jobs expected to be created; and~~
- 9 ~~(D) Any other information as the corporation shall~~
- 10 ~~require;~~
- 11 ~~(2) Determining, based upon the application submitted,~~
- 12 ~~that:~~
- 13 ~~(A) The proceeds of the investment will be used only~~
- 14 ~~to cover the seed capital needs of the~~
- 15 ~~enterprise, except as authorized in this section;~~
- 16 ~~(B) The enterprise has a reasonable chance of~~
- 17 ~~success;~~
- 18 ~~(C) The enterprise has the reasonable potential to~~
- 19 ~~create employment within the State and offers~~
- 20 ~~employment opportunities to residents;~~
- 21 ~~(D) The coordinating entrepreneur and other founders~~
- 22 ~~of the enterprise have already made or are~~



1 ~~prepared to make a substantial financial and time~~
2 ~~commitment to the enterprise;~~
3 ~~(E) The securities to be purchased are qualified~~
4 ~~securities;~~
5 ~~(F) There is a reasonable possibility that the~~
6 ~~corporation will recoup at least its initial~~
7 ~~investment; and~~
8 ~~(G) Binding commitments have been made to the~~
9 ~~corporation by the enterprise for adequate~~
10 ~~reporting of financial data to the corporation,~~
11 ~~which shall include a requirement for an annual~~
12 ~~or other periodic audit of the books of the~~
13 ~~enterprise, and for control by the corporation~~
14 ~~that it considers prudent over the management of~~
15 ~~the enterprise, in order to protect the~~
16 ~~investment of the corporation, including~~
17 ~~membership on the board of directors of the~~
18 ~~enterprise, ownership of voting stock, input in~~
19 ~~management decisions, and the right of access to~~
20 ~~the financial and other records of the~~
21 ~~enterprise; and~~



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

12 ~~(c) If the corporation makes a direct investment, it shall~~
13 ~~also find that a reasonable effort has been made to find a~~
14 ~~professional investor to make an investment in the enterprise as~~
15 ~~a coventure, and that the effort was unsuccessful. The~~
16 ~~findings, when made by the corporation, shall be conclusive.~~

17 ~~(f) The corporation shall make investments in qualified~~
18 ~~securities issued by an enterprise in accordance with the~~
19 ~~following limits:~~

20 ~~(1) Not more than \$500,000 shall be invested in the~~
21 ~~securities of any one enterprise, except that more~~
22 ~~than a total of \$500,000 may be invested in the~~



1 ~~securities of any one enterprise if the corporation~~
2 ~~finds, after its initial investment, that additional~~
3 ~~investments in that enterprise are required to protect~~
4 ~~the initial investment of the corporation, and the~~
5 ~~other findings set forth in subsection (d) and this~~
6 ~~subsection are made as to the additional investment;~~
7 ~~(2) The corporation shall not own securities representing~~
8 ~~more than forty nine per cent of the voting stock of~~
9 ~~any one enterprise at the time of purchase by the~~
10 ~~corporation after giving effect to the conversion of~~
11 ~~all outstanding convertible securities of the~~
12 ~~enterprise, except that if a severe financial~~
13 ~~difficulty of the enterprise occurs, threatening the~~
14 ~~investment of the corporation in the enterprise, a~~
15 ~~greater percentage of those securities may be owned by~~
16 ~~the corporation; and~~
17 ~~(3) Not more than fifty per cent of the assets of the~~
18 ~~corporation shall be invested in direct investments at~~
19 ~~any time.] "~~

20 SECTION 7. Section 171C-19, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "~~§~~171C-19~~§~~ **Exemption from requirements.** (a)
2 Notwithstanding section 171-42 and except as otherwise in this
3 chapter, projects pursuant to this chapter shall be exempt from
4 all statutes, ordinances, charter provisions, and rules of any
5 government agency relating to special improvement district
6 assessments or requirements; land use, zoning, and construction
7 standards for subdivisions, development, and improvement of
8 land; and the construction, improvement, and sale of homes
9 thereon; provided that the public land planning activities of
10 the corporation shall be coordinated with the county planning
11 departments and the county land use plans, policies, and
12 ordinances.

13 (b) Projects pursuant to this chapter shall comply with
14 chapter 6E, relating to historic preservation, and with section
15 171-64.7, relating to legislative approval for the sale or
16 gifting of certain lands."

17 SECTION 8. Section 171C-20, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "~~§~~171C-20~~§~~ ~~[Annual report.]~~ **Reports and evaluation.**

20 (a) The corporation shall submit ~~[to the governor and the~~
21 ~~legislature, no later than twenty days prior to the convening of~~

1 ~~each regular session,]~~ a complete and detailed report of its
2 plans and activities[-], as follows:

3 (1) To the governor and legislature, no later than twenty
4 days prior to the convening of each regular session;
5 and

6 (2) To the legislature, no later than sixty days after the
7 submission of the report specified in paragraph (1).

8 (b) The board shall submit to the governor and the
9 legislature, no later than twenty days prior to the convening of
10 each regular session, an evaluation of the executive director
11 appointed pursuant to section 171C-3."

12 **PART II**

13 SECTION 9. After the adoption of rules pursuant to section
14 171C-4(4), Hawaii Revised Statutes, the public land development
15 corporation shall initiate a pilot project pursuant to chapter
16 171C, Hawaii Revised Statutes, for the development of state
17 lands in Wahiawa, city and county of Honolulu, identified as tax
18 map keys 74004071, 74004001, 74006012, and 74004070. The
19 government entities involved in the implementation of this pilot
20 project shall include the department of accounting and general
21 services, the department of education, and the judiciary.



1 SECTION 10. The public land development corporation shall
2 include in its annual report to the governor and the legislature
3 a detailed report on the status of the pilot project.

4 The public land development corporation shall notify the
5 governor and the legislature upon the completion of the pilot
6 project and, within ninety days of the pilot project's
7 completion, submit a report to the governor and the legislature
8 containing a review and evaluation of the project and any
9 recommendations to improve the effectiveness of chapter 171C,
10 Hawaii Revised Statutes.

11 SECTION 11. Until the completion of the pilot project
12 identified in this part, the public land development corporation
13 shall neither plan, develop, or implement any projects other
14 than the pilot project nor enter into any agreements or
15 contracts related to the planning, development, or
16 implementation of any projects other than the pilot project.

17 **PART III**

18 SECTION 12. This Act does not affect rights and duties
19 that matured, penalties that were incurred, and proceedings that
20 were begun before its effective date.

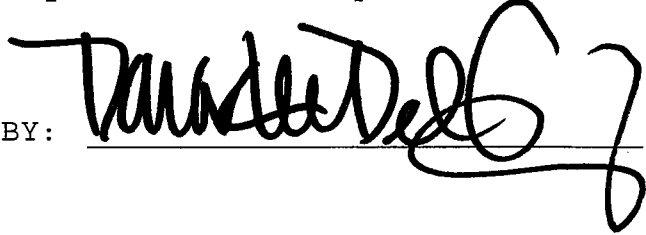
21 SECTION 13. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.



1 SECTION 14. This Act shall take effect upon its approval;
2 provided that part II shall be repealed on January 1, 2016.

3

INTRODUCED BY:





S.B. NO. 45

Report Title:

Public Land Development Corporation; Public-Private Partnership Corporation; Public Lands; Development Plans and Projects; Investments; Financing; Land Use Commission; Hawaii Community Development Authority; Land Use; Historic Preservation; Ceded Land; Pilot Project

Description:

Changes references from the public land development corporation to the public private partnership corporation. Amends the process and requirements for the development and implementation of development plans. Revises the corporation's investment and financing authority. Requires coordination with the Hawaii Community Development Authority and the Land Use Commission where appropriate. Revises the corporation's reporting requirements. Requires the Public Land Development Corporation to initiate a pilot project after the adoption of rules. Prohibits the Public Land Development Corporation from planning, developing or implementing any projects other than the pilot project until the pilot project has been completed. Requires the Public Land Development Corporation to include a report on the status of the pilot project in its annual report and requires the Public Land Development Corporation to provide a report to the governor and legislature evaluating the pilot project upon its completion. Pilot project repeals on 1/1/16.

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

