

JAN 18 2013

S.B. NO. 749

A BILL FOR AN ACT

RELATING TO THE PUBLIC LAND DEVELOPMENT CORPORATION.

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

1 PART I

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

5 "§171C- Public-private partnership financing. The
6 corporation may coordinate with the Hawaii strategic development
7 corporation for the provision of seed capital assistance or
8 venture capital assistance by the Hawaii strategic development
9 corporation to an enterprise to further the purposes of this
10 chapter."

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

13 "[+]CHAPTER[+] 171C

14 [~~PUBLIC LAND DEVELOPMENT CORPORATION~~]

15 PUBLIC-PRIVATE PARTNERSHIP CORPORATION"

16 SECTION 3. Sections 171-2, 171-64.7, 171C-2, 171C-3,
17 173A-4, 173A-5, and 206E-4 are amended by substituting the words
18 "public private partnership corporation" wherever the words



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

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

5 "(b) The board of directors of the public land development
6 corporation shall consist of five voting members[-] and two non-
7 voting members. The voting members shall include:

- 8 (1) The chairperson of the board of land and natural
9 resources, or the first deputy to the chairperson of
10 the board of land and natural resources;
- 11 (2) The director of finance, or the director's designee;
- 12 (3) The director of business, economic development, and
13 tourism, or the director's designee;
- 14 (4) One member to be appointed by the speaker of the house
15 of representatives; and
- 16 (5) One member to be appointed by the president of the
17 senate;

18 provided that the persons appointed by the speaker of the house
19 of representatives and the president of the senate shall possess
20 sufficient knowledge, experience, and proven expertise in small
21 and large businesses within the development or recreation



1 industries, banking, real estate, finance, promotion, marketing,
2 or management.

3 The term of office of the two voting members appointed by
4 the speaker of the house of representatives and the president of
5 the senate shall be four years each.

6 One non-voting member shall be the cultural expert
7 appointed to the Hawaii community development authority by the
8 governor, pursuant to section 206E-3(b)(1), who shall serve as
9 an ex officio member. One non-voting member who shall have
10 substantial experience or expertise in traditional Hawaiian land
11 usage and knowledge of cultural land practices, who shall be
12 appointed in the manner and serve for the term set forth in
13 section 26-34."

14 SECTION 5. Section 171C-4, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

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

- 18 (1) Sue and be sued;
- 19 (2) Have a seal and alter the same at its pleasure;
- 20 (3) Make and alter bylaws for its organization and
21 internal management;



- 1 (4) Adopt rules under chapter 91 necessary to effectuate
2 this chapter in connection with its projects,
3 operations, and properties;
- 4 (5) Make and execute contracts and all other instruments
5 necessary or convenient for the exercise of its powers
6 and functions under this chapter;
- 7 (6) Carry out surveys, research, and investigations into
8 technological, business, financial, consumer trends,
9 and other aspects of leisure or recreational land uses
10 in the national and international community;
- 11 (7) Acquire or contract to acquire by grant or purchase:
 - 12 (A) All privately owned real property or any interest
13 therein and the improvements thereon, if any,
14 that are determined by the corporation to be
15 necessary or appropriate for its purposes under
16 this chapter, including real property together
17 with improvements, if any, in excess of that
18 needed for such use in cases where small remnants
19 would otherwise be left or where other
20 justifiable cause necessitates the acquisition to
21 protect and preserve the contemplated
22 improvements, or public policy demands the



1 acquisition in connection with such improvements;
2 and

3 (B) Encumbrances, in the form of leases, licenses, or
4 otherwise, needed by the corporation or any state
5 department or agency for public purposes, the
6 disposition of subdivided lots, houselots,
7 apartments or other economic units, or economic
8 development;

9 (8) Own, hold, improve, and rehabilitate any real,
10 personal, or mixed property acquired; and sell,
11 assign, exchange, transfer, convey, lease, or
12 otherwise dispose of, or encumber the same;

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



1 (10) In cooperation with any governmental agency, [~~or~~
2 ~~otherwise through direct investment or coventure with~~
3 ~~a professional investor or enterprise or any other~~
4 ~~person, or otherwise,~~] acquire, construct, operate,
5 and maintain public land facilities, including but not
6 limited to leisure, recreational, commercial,
7 residential, time share, hotel, office space, and
8 business facilities, at rates or charges determined by
9 the corporation;

10 (11) 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 (12) Receive, examine, and determine the acceptability of
18 applications of qualified persons for allowances or
19 grants for the development of new recreation and
20 visitor-industry related products, the expansion of
21 established recreation and visitor-industry or land
22 development enterprises, and the altering of existing



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



- 1 (18) Issue bonds to finance the cost of a project and to
- 2 provide for the security thereof, in the manner and
- 3 pursuant to the procedure prescribed in this chapter;
- 4 (19) Subject to approval by the department, assume
- 5 management responsibilities for small boat harbors in
- 6 accordance with chapter 200 and any rules adopted
- 7 pursuant thereto for periods not to exceed one year;
- 8 (20) Recommend to the board of land and natural resources
- 9 the purchase of any privately owned properties that
- 10 may be appropriate for development; and
- 11 (21) Do all things necessary or proper to carry out the
- 12 purposes of this chapter."

13 SECTION 6. Section 171C-6, Hawaii Revised Statutes, is
 14 amended as follows:

- 15 1. By amending subsection (e) to read:
- 16 "(e) The public land planning activities of the
- 17 corporation shall be coordinated with: the county planning
- 18 departments [~~and the~~]; county land use plans, policies, and
- 19 ordinances[~~-~~]; and, where appropriate, the land use commission
- 20 or the Hawaii community development authority."
- 21 2. By amending subsection (g) to read:



1 "(g) Prior to implementing any plan, the corporation shall
2 submit the proposed plan and any amendments thereto to the
3 landowner or landowners who transferred development rights to
4 any public land affected by the proposed plan. Any undertaking
5 by the corporation pursuant to this chapter shall be with the
6 prior, express written consent of the landowner or landowners
7 directly affected[-] and shall be subject to any land use
8 limitations or restrictions required by the landowner or
9 landowners."

10 SECTION 7. Section 171C-17, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§171C-17 Hawaii public land development revolving fund;**
13 **established; use of corporation funds.** (a) There is
14 established the Hawaii public land development revolving fund,
15 to which shall be credited any state appropriations to the fund,
16 any sums collected as a result of bonds issued pursuant to this
17 chapter, any revenues generated from the facilities, except as
18 provided in sections 171C-17.5 and 171C-21, or other moneys made
19 available to the fund, to be expended as directed by the
20 corporation.

21 (b) Notwithstanding any provision of this chapter to the
22 contrary, revenues, income, and receipts derived from the



1 project facilities shall be set apart in a separate subaccount
2 and applied solely for the following purposes:

3 (1) The principal and interest on the bonds;
4 (2) The cost of administering, operating, and maintaining
5 the project not to exceed fifteen per cent of the sums
6 collected, net of principal and interest payments, on
7 account of assessments and interest for any specific
8 project facility;

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



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

3 If any surplus remains in any subaccount after the payment of
4 the bonds chargeable against that subaccount, the surplus shall
5 be credited to and become a part of the Hawaii public land
6 development revolving fund, except as provided in paragraph (3).
7 Notwithstanding any other law to the contrary, moneys in the
8 fund may be used to make up any deficiencies in the subaccount.

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

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

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

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



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

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

7 ~~(1) Receiving:~~

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

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

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

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

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



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



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

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

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



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

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

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

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



1 ~~investment of the corporation in the enterprise, a~~
2 ~~greater percentage of those securities may be owned by~~
3 ~~the corporation; and~~
4 ~~(3) Not more than fifty per cent of the assets of the~~
5 ~~corporation shall be invested in direct investments at~~
6 ~~any time.] "~~

7 SECTION 8. Section 171C-19, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "[+]§171C-19[+] **Exemption from requirements.** (a)
10 Notwithstanding section 171-42 and except as otherwise noted in
11 this chapter, projects pursuant to this chapter shall be exempt
12 from all statutes, ordinances, charter provisions, and rules of
13 any government agency relating to special improvement district
14 assessments or requirements; land use, zoning, and construction
15 standards for subdivisions, development, and improvement of
16 land; and the construction, improvement, and sale of homes
17 thereon; provided that the public land planning activities of
18 the corporation shall be coordinated with the county planning
19 departments and the county land use plans, policies, and
20 ordinances.

21 (b) All projects pursuant to this chapter shall comply
22 with the following:



- 1 (1) Chapter 6E, relating to historic preservation;
- 2 (2) Section 10-13.5, relating to ceded land revenues;
- 3 (3) Chapter 92, relating to the sunshine law;
- 4 (4) Chapter 104, relating to wage and hours;
- 5 (5) Section 171-64.7, relating to legislative approval for
- 6 the sale or gifting of certain lands;
- 7 (6) Chapter 343, relating to environmental impact
- 8 statements;
- 9 (7) Chapter 444, relating to contractors; and
- 10 (8) Customary and traditional gathering rights and
- 11 practices to the extent feasible pursuant to the state
- 12 constitution and relevant statutes."

13 SECTION 9. Section 171C-20, Hawaii Revised Statutes, is
 14 amended to read as follows:

15 "[+]§171C-20[+] ~~[Annual report.]~~ Reports and evaluation.

16 (a) The corporation shall submit [to the governor and the
 17 legislature, no later than twenty days prior to the convening of
 18 each regular session,] a complete and detailed report of its
 19 plans and activities[-], as follows:

- 20 (1) To the governor and legislature, no later than twenty
- 21 days prior to the convening of each regular session;
- 22 and

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

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

7 **PART II**

8 SECTION 10. After the adoption of rules pursuant to
9 section 171C-4(4), Hawaii Revised Statutes, the public land
10 development corporation shall initiate a pilot project pursuant
11 to chapter 171C, Hawaii Revised Statutes, for the development of
12 state lands in Wahiawa, city and county of Honolulu, identified
13 as tax map keys 74004071, 74004001, 74006012, and 74004070. The
14 government entities involved in the implementation of this pilot
15 project shall include the department of accounting and general
16 services, the department of education, and the judiciary.

17 SECTION 11. The public land development corporation shall
18 include in its annual report to the governor and the legislature
19 a detailed report on the status of the pilot project.

20 The public land development corporation shall notify the
21 governor and the legislature upon the completion of the pilot
22 project and, within ninety days of the pilot project's



1 completion, submit a report to the governor and the legislature
2 containing a review and evaluation of the project and any
3 recommendations to improve the effectiveness of chapter 171C,
4 Hawaii Revised Statutes.

5 SECTION 12. Until the completion of the pilot project
6 identified in this part, the public land development corporation
7 shall neither plan, develop, or implement any projects other
8 than the pilot project nor enter into any agreements or
9 contracts related to the planning, development, or
10 implementation of any projects other than the pilot project.

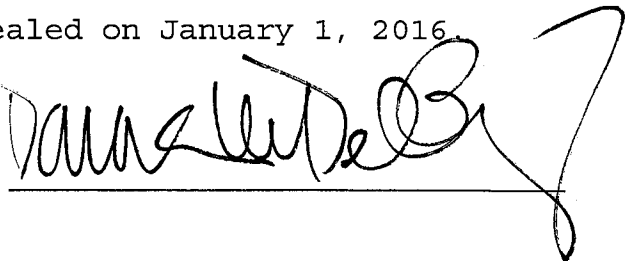
11 PART III

12 SECTION 13. This Act does not affect rights and duties
13 that matured, penalties that were incurred, and proceedings that
14 were begun before its effective date.

15 SECTION 14. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 15. This Act shall take effect upon its approval;
18 provided that part II shall be repealed on January 1, 2016.

19 INTRODUCED BY:



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. Adds two non-voting members to the board of directors. Amends the process and requirements for the development and implementation of development plans. Revises the corporation's investment and financing authority. Requires the corporation to comply with chapters 6E, 92, 104, 343, and 444, HRS; sections 10-3.5 and 171-64.7, HRS; and native Hawaiian gathering rights. 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.

