
A BILL FOR AN ACT

RELATING TO PUBLIC LANDS.

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

PART I

LEASES OF PUBLIC LANDS

SECTION 1. Section 171-36, Hawaii Revised Statutes, is amended to read as follows:

"§171-36 Lease restrictions; generally. (a) Except as otherwise provided, the following restrictions shall apply to all leases:

(1) Options for renewal of terms are prohibited;

(2) No lease shall be for a longer term than sixty-five years, except in the case of a residential leasehold which may provide for an initial term of fifty-five years with the privilege of extension to meet the requirements of the Federal Housing Administration, Federal National Mortgage Association, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, or Veterans Administration requirements; provided that the



1 aggregate of the initial term and extension shall in
2 no event exceed seventy-five years;

3 (3) No lease shall be made for any land under a lease
4 which has more than two years to run;

5 (4) No lease shall be made to any person who is in arrears
6 in the payment of taxes, rents, or other obligations
7 owing the State or any county;

8 (5) No lease shall be transferable or assignable, except
9 by devise, bequest, or intestate succession; provided
10 that with the approval of the board of land and
11 natural resources, the assignment and transfer of a
12 lease or unit thereof may be made in accordance with
13 current industry standards, as determined by the
14 board; provided further that prior to the approval of
15 any assignment of lease, the board shall have the
16 right to review and approve the consideration to be
17 paid by the assignee and may condition its consent to
18 the assignment of the lease on payment by the lessee
19 of a premium based on the amount by which the
20 consideration for the assignment, whether by cash,
21 credit, or otherwise, exceeds the depreciated cost of
22 improvements and trade fixtures being transferred to



1 the assignee; provided further that with respect to
2 state agricultural leases, in the event of foreclosure
3 or sale, the premium, if any, shall be assessed only
4 after the encumbrances of record and any other
5 advances made by the holder of a security interest are
6 paid;

7 (6) The lessee shall not sublet the whole or any part of
8 the demised premises except with the approval of the
9 board; provided that prior to the approval, the board
10 shall have the right to review and approve the rent to
11 be charged to the sublessee; provided further that in
12 the case where the lessee is required to pay rent
13 based on a percentage of its gross receipts, the
14 receipts of the sublessee shall be included as part of
15 the lessee's gross receipts; provided further that the
16 board shall have the right to review and, if
17 necessary, revise the rent of the demised premises
18 based upon the rental rate charged to the sublessee
19 including the percentage rent, if applicable, and
20 provided that the rent may not be revised downward;



- 1 (7) The lease shall be for a specific use or uses and
2 shall not include waste lands, unless it is
3 impractical to provide otherwise;
- 4 (8) Mineral and metallic rights and surface and ground
5 water shall be reserved to the State; and
- 6 (9) No lease of public lands, including submerged lands,
7 nor any extension of any such lease, shall be issued
8 by the State to any person to construct, use, or
9 maintain a sunbathing or swimming pier or to use the
10 lands for such purposes, unless such lease, or any
11 extension thereof, contains provisions permitting the
12 general public to use the pier facilities on the
13 public lands and requiring that a sign or signs be
14 placed on the pier, clearly visible to the public,
15 which indicates the public's right to the use of the
16 pier. The board, at the earliest practicable date,
17 and where legally possible, shall cause all existing
18 leases to be amended to conform to this paragraph.
19 The term "lease", for the purposes of this paragraph,
20 includes month-to-month rental agreements and similar
21 tenancies.



1 (b) The board, from time to time, upon the issuance or
2 during the term of any intensive agricultural, aquaculture,
3 commercial, mariculture, special livestock, pasture, or
4 industrial lease, may:

5 (1) Modify or eliminate any of the restrictions specified
6 in subsection (a);

7 (2) Extend or modify the fixed rental period of the lease;
8 or

9 (3) Extend the term of the lease,
10 to the extent necessary to qualify the lease for mortgage
11 lending or guaranty purposes with any federal mortgage lending
12 agency, to qualify the lessee for any state or private lending
13 institution loan, private loan guaranteed by the State, or any
14 loan in which the State and any private lender participates, or
15 to amortize the cost of substantial improvements to the demised
16 premises that are paid for by the lessee without institutional
17 financing, such extension being based on the economic life of
18 the improvements as determined by the board or an independent
19 appraiser [~~provided that the~~].

20 (c) The approval of any extension pursuant to subsection

21 (b) shall be subject to the following:



- 1 (1) The demised premises have been used substantially for
2 the purpose for which they were originally leased;
- 3 (2) The aggregate of the initial term and any extension
4 granted shall not be for more than [~~fifty-five~~
5 sixty-five years;
- 6 (3) In the event of a reopening, the rental for any
7 ensuing period shall be the fair market rental at the
8 time of reopening;
- 9 (4) Any federal or private lending institution shall be
10 qualified to do business in the State;
- 11 (5) Proceeds of any mortgage or loan shall be used solely
12 for the operations or improvements on the demised
13 premises;
- 14 (6) Where improvements are financed by the lessee, the
15 lessee shall submit receipts of expenditures within a
16 time period specified by the board, otherwise the
17 lease extension shall be canceled; and
- 18 (7) The rules of the board, setting forth any additional
19 terms and conditions, which shall ensure and promote
20 the purposes of the demised lands.
- 21 [~~(e)~~] (d) The board at any time during the term of any
22 intensive agricultural, aquaculture, or mariculture lease and



1 when justified by sound economic practices or other
2 circumstances, may permit an alternative agricultural,
3 aquaculture, or mariculture use or uses for any portion or
4 portions of the land demised. As a condition to permitting
5 alternative uses, the board may require ~~such~~ other
6 modifications, including rental adjustments or changes in the
7 lease as may be necessary to effect or accommodate the
8 alternative use or uses. An alternative use or uses may be
9 allowed by the board upon:

- 10 (1) The application of the lessee;
- 11 (2) Consent of each holder of record having a security
12 interest in the leasehold; and
- 13 (3) A finding by the board that the alternative use or
14 uses are in the public interest.

15 ~~(d)~~ (e) The board, from time to time, during the term of
16 any agriculture, intensive agriculture, aquaculture, commercial,
17 mariculture, special livestock, pasture, or industrial lease,
18 may modify or eliminate any of the ~~[+]~~restrictions~~[+]~~ specified
19 in subsection (a), extend or modify the fixed rental period of
20 the lease, or extend the term of the lease upon a showing of
21 significant economic hardship directly caused by:



- 1 (1) State disaster, pursuant to chapter 209, including
2 seismic or tidal wave, tsunami, hurricane, volcanic
3 eruption, typhoon, earthquake, flood, or severe
4 drought; or
- 5 (2) A taking of a portion of the area of the lease by
6 government action by eminent domain, withdrawal, or
7 conservation easement; provided that the portion taken
8 shall not be less than ten per cent of the entire
9 leased area unless otherwise approved by the board;
10 and provided that the board determines that the lessee
11 will not be adequately compensated pursuant to the
12 lease provisions.
- 13 [~~e~~] (f) The approval of any extension granted pursuant
14 to subsection [~~d~~] (e) shall be subject to the following:
- 15 (1) The demised premises [~~has~~] have been used
16 substantially for the purposes for which they were
17 originally leased;
- 18 (2) The aggregate of the initial term and any extension
19 granted shall not be for more than [~~fifty-five~~] sixty-
20 five years;
- 21 (3) The rental shall not be less than the rental for the
22 preceding term;



1 (4) The rules of the board, setting forth any additional
2 terms and conditions which shall ensure and promote
3 the purposes of the demised lands; and

4 (5) The length of the extension shall not exceed a
5 reasonable length of time for the purpose of providing
6 relief and shall in no case exceed five years."

7 **PART II**

8 **WILDLIFE ON PUBLIC LANDS**

9 SECTION 2. Section 197-1, Hawaii Revised Statutes, is
10 amended by amending the definition of "wildlife" to read as
11 follows:

12 "Wildlife" means any non-domesticated member of the animal
13 kingdom, including game birds and mammals designated by law or
14 rules for hunting, whether reared in captivity or not, and
15 includes any part, product, egg or offspring thereof, except
16 aquatic life as defined in this section[-]; provided that
17 "wildlife" shall include certain mammals, including but not
18 limited to wild pigs, deer, and rabbits, that are obtained after
19 being reared."

20 SECTION 3. Section 197-3, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 limited mission. Creating a development arm of the department
2 of land and natural resources, similar to the agribusiness
3 development corporation, and placing appropriate public lands
4 into the new corporation's jurisdiction, may help to create
5 these recreation and leisure areas, while also creating revenue-
6 generating opportunities for the new corporation. In turn,
7 revenues generated may be used to offset the regulatory
8 functions of the department of land and natural resources.

9 The purpose of this chapter is to create a vehicle and
10 process to make optimal use of public land for the economic,
11 environmental, and social benefit of the people of Hawaii. This
12 chapter establishes a public corporation to administer an
13 appropriate and culturally-sensitive public land development
14 program. The corporation shall coordinate and administer
15 programs to make optimal use of public land, while ensuring that
16 the public land is maintained for the people of Hawaii. The
17 corporation shall identify the public lands that are suitable
18 for development under this chapter, carry on marketing analysis
19 to determine the best revenue-generating programs for the public
20 lands identified, enter into public-private agreements to
21 appropriately develop the public lands identified, and provide



1 the leadership for the development, financing, improvement, or
2 enhancement of the selected development opportunities.

3 § -2 **Definitions.** As used in this chapter, unless the
4 context clearly requires otherwise:

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

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

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

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



1 investment, may later be classified as a coventure upon an
2 investment by a professional investor.

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

5 "Development rights" means the rights permitted under an
6 ordinance or law relating to permitted uses of a property, the
7 density or intensity of use, and the maximum height and size of
8 improvements thereon.

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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

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

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

21 § -3 Public land development corporation; established.

22 (a) There is established the public land development



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

5 (b) The board of directors of the public land development
6 corporation shall consist of five voting members. The members
7 of the task force 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 nominated and, by and with the advice
15 and consent of the senate, appointed by the governor
16 from a list of three persons submitted by the speaker
17 of the house of representatives; and
- 18 (5) One member to be nominated and, by and with the advice
19 and consent of the senate, appointed by the governor
20 from a list of three persons submitted by the
21 president of the senate;



1 provided that the persons nominated by the speaker of the house
2 of representatives and the president of the senate shall possess
3 sufficient knowledge, experience, and proven expertise in small
4 and large businesses within the development and recreation
5 industries, banking, real estate, finance, promotion, marketing,
6 and management.

7 The terms of office of the two voting members whose
8 appointment is subject to the advice and consent of the senate
9 shall be as provided in section 26-34.

10 (c) The board shall appoint an executive director, who
11 shall serve at the pleasure of the board and shall be exempt
12 from chapter 76. The salary of the executive director shall be
13 set by the board.

14 (d) The board, through its executive director, may appoint
15 officers, agents, and employees; prescribe their duties and
16 qualifications; and fix their salaries, without regard to
17 chapter 76.

18 § -4 Powers; generally. (a) Except as otherwise
19 limited by this chapter, the corporation may:

20 (1) Sue and be sued;

21 (2) Have a seal and alter the same at its pleasure;



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



1 protect and preserve the contemplated
 2 improvements, or public policy demands the
 3 acquisition in connection with such improvements;
 4 and

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

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

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



1 persons or other governmental agencies, any project
2 that meets the purposes of this chapter;

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

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

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



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



- 1 (17) Procure insurance against any loss in connection with
- 2 its property and other assets and operations in
- 3 amounts and from insurers as it deems desirable;
- 4 (18) Accept gifts or grants in any form from any public
- 5 agency or any other source;
- 6 (19) Issue bonds to finance the cost of a project and to
- 7 provide for the security thereof, in the manner and
- 8 pursuant to the procedure prescribed in this chapter;
- 9 (20) Notwithstanding chapter 200 to the contrary, issue
- 10 commercial use permits for vessels with assigned
- 11 moorings in state small boat harbors; establish
- 12 moorage fees; assess and collect utility fees,
- 13 including electrical and water charges, and common
- 14 area maintenance fees; provided that any fees
- 15 collected within small boat harbors shall be expended
- 16 only for costs related to the operation, upkeep,
- 17 maintenance, and improvement of the small boat
- 18 harbors;
- 19 (21) Recommend to the board of land and natural resources
- 20 the purchase of any privately owned properties that
- 21 are appropriate for development; and



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

3 (b) Notwithstanding subsection (a) to the contrary, the
4 corporation shall not acquire, contract to acquire by grant or
5 purchase, own, hold, sell, assign, exchange, transfer, convey,
6 lease, or otherwise dispose of, or encumber any real, personal,
7 or mixed property that is owned by the department as of July 1,
8 2011, except as expressly provided in this chapter.

9 (c) The powers conferred herein shall be liberally
10 construed to effectuate the purposes of this chapter.

11 § -5 **Hawaii public land optimization plan.** (a) The
12 corporation shall prepare the Hawaii public land optimization
13 plan, which shall define and establish goals, objectives,
14 policies, and priority guidelines for its public land
15 optimization development strategy. The plan shall include:

16 (1) An inventory of public lands with suitable, adequate
17 development potential that are or will become
18 available that can be used to meet present and future
19 land development needs;

20 (2) Protection of culturally-sensitive areas;

21 (3) Feasible strategies for the promotion and marketing of
22 any projects, including but not limited to leisure,



1 recreational, residential, timeshare, hotel, office
2 space, and business projects, in local, national, and
3 international markets;

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

8 (5) Strategies for federal and state legislative actions
9 that will promote the development and enhancement of
10 Hawaii's public lands.

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

15 § -6 Public lands optimization projects; development
16 plans. (a) The corporation may develop and implement public
17 lands optimization projects where appropriate public lands may
18 be developed or managed to create revenue-generating centers or
19 where, through detailed analysis, opportunities exist to exploit
20 potential local, national, and international markets.

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



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

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

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



1 related to the lease of public land under the corporation's
2 control.

3 (e) The public land planning activities of the corporation
4 shall be coordinated with the county planning departments and
5 the county land use plans, policies, and ordinances.

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

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

11 § -7 **Project facility program.** (a) The corporation may
12 develop a project to identify necessary project facilities
13 within a project area.

14 (b) Unless and except as otherwise provided by law,
15 whenever the corporation undertakes, or causes to be undertaken,
16 any project facility as part of a project, the cost of providing
17 the project facilities shall be assessed against the real
18 property in the project area specially benefiting from the
19 project facilities. Subject to the express written consent of
20 the landowners directly affected, the corporation shall
21 determine the properties that will benefit from the project
22 facilities to be undertaken and may establish assessment areas



1 that include the properties specially benefiting from the
2 project facilities. The corporation may issue and sell bonds in
3 amounts as shall be authorized by the legislature to provide
4 funds to finance the project facilities. The corporation shall
5 fix the assessments against the real property specially
6 benefited.

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

11 (d) Unless and except as otherwise provided by law, bonds
12 issued to provide funds to finance project facilities shall be
13 secured solely by the real properties benefited or improved and
14 the assessments thereon, or by the revenues derived from the
15 project for which the bonds were issued, including reserve
16 accounts and earnings thereon, insurance proceeds, and other
17 revenues, or any combination thereof. The bonds may be
18 additionally secured by the pledge or assignment of loans and
19 other agreements or any note or other undertaking, obligation,
20 or property held by the corporation. The bonds shall be issued
21 according to and subject to the rules adopted pursuant to this
22 section. Any other law to the contrary notwithstanding, in



1 assessing real property for project facilities, the corporation
2 shall assess the real property within a project area according
3 to the special benefits conferred upon the real property by the
4 project facilities. These methods may include an assessment on
5 a frontage basis or according to the area of real property
6 within a project area, or any other assessment method that
7 assesses the real property according to the special benefit
8 conferred, or any combination thereof. No assessment levied
9 under this section against real property specially benefited
10 under this chapter shall constitute a tax on real property
11 within the meaning of any law.

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

- 14 (1) The methods of establishing assessment areas within a
15 project area;
- 16 (2) The method of assessing real properties specially
17 benefited;
- 18 (3) The costs to be borne by the corporation, the county
19 in which the project facilities are situated, and the
20 property owners;
- 21 (4) The procedures before the corporation relating to the
22 creation of the assessment areas by the owners of real



1 property therein, including provisions for petitions,
2 bids, contracts, bonds, and notices;

3 (5) Provisions relating to assessments;

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

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

11 (8) Provisions relating to limitations on time to sue, and
12 other related provisions; and

13 (9) Provisions enabling the corporation to implement any
14 other purpose of the corporation.

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

19 (g) All sums collected under this section shall be
20 deposited in the Hawaii public land development revolving fund
21 established by section -17; provided that all moneys
22 collected on account of assessments and interest thereon for any



1 specific project facilities financed by the issuance of bonds
2 shall be set apart in a separate subaccount and applied solely
3 for the following purposes:

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

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



1 become a part of the boating special fund, established
2 under section 248-8; and

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

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

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

17 § -8 **Approval of projects, plans, and programs.** All
18 public lands optimization projects, public land development
19 plans, and project facility programs developed by the
20 corporation shall be approved by the board.

21 § -9 **Bonds.** (a) The corporation, with the approval of
22 the governor, may issue, from time to time, revenue bonds in



1 amounts not exceeding the total amount of bonds authorized to be
2 issued by the legislature for the purpose of constructing,
3 acquiring, remodeling, furnishing, and equipping any project
4 facility, including the acquisition of the site of the facility;
5 or acquiring non-public lands through purchase to sustain and
6 preserve leisure or recreational enterprises within a contiguous
7 geographic area.

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

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

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

21 (b) The corporation may pledge revenues derived from the
22 project facility financed from the proceeds of the revenue bonds



1 to the punctual payment of the principal, interest, and
2 redemption premiums, if any, on the revenue bonds.

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

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



1 § -11 Revenue bonds; interest rate, price, and sale.

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

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

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



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

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

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

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

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

20 (b) Notwithstanding any other law to the contrary,
21 including section -17, all revenues, income, and receipts
22 derived from the project facility for which the revenue bonds



1 are issued shall be paid into the project facility revenue bond
2 subaccount established for that project facility and applied as
3 provided in the proceedings authorizing the issuance of the
4 revenue bonds.

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

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

- 15 (1) Undertaking the project facility;
- 16 (2) Administering and operating the proceedings providing
17 for the issuance of the revenue bonds;
- 18 (3) The principal or interest on these bonds;
- 19 (4) The establishment of reserves; and
- 20 (5) Other purposes as may be authorized in the proceedings
21 providing for the issuance of the revenue bonds.



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

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

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

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

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



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

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

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

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

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



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

6 § -16 **Transfer of public lands.** (a) Notwithstanding
7 chapter 171 or any provision of this chapter to the contrary,
8 the department may transfer, subject to the approval of the
9 board of land and natural resources, development rights for
10 lands under its jurisdiction to the corporation for purposes of
11 this chapter; provided that:

12 (1) Development rights for all small boat harbors that
13 have open contractual obligations for capital
14 improvements to harbor facilities as of July 1, 2011,
15 shall be transferred to the corporation on July 1,
16 2011;

17 (2) If the property to be developed is two hundred acres
18 or less and the board of land and natural resources
19 approves the transfer of development rights
20 appurtenant to the property to be developed, the
21 development rights shall be transferred to the
22 corporation;



1 (3) If the property to be developed is greater than two
2 hundred acres and the board of land and natural
3 resources approves the transfer of development rights
4 appurtenant to the property to be developed, the
5 development rights shall be transferred to the
6 corporation, subject to disapproval by the legislature
7 by two-thirds vote of either the senate or the house
8 of representatives or by majority vote of both houses
9 in any regular or special session next following the
10 date of transfer; and

11 (4) The size of any property to be developed shall be
12 deemed to be conclusively determined by the state
13 surveyor, as established in section 26-6.

14 (b) If the corporation finds that state lands under the
15 control and management of the department or other public
16 agencies are suitable for its purposes under this chapter, the
17 corporation may lease the lands from the agency having the
18 control and management of those lands, upon such terms and
19 conditions as may be agreed to by the parties.

20 (c) Notwithstanding subsection (b) to the contrary, no
21 public lands shall be leased to the corporation if the lease
22 would impair any covenant between the State or any county, or



1 any department or board thereof, and the holders of bonds issued
2 by the State or the county, or any department or board thereof.

3 § -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 revenues generated from the facilities, or other moneys made
8 available to the fund, to be expended as directed by the
9 corporation.

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

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

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

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



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

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

7 (1) Receiving:

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

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

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

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

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



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



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

10 (3) Entering into a binding agreement with the enterprise
11 concerning the manner of payback by the enterprise of
12 the funds advanced, granted, loaned, or received from
13 the corporation. The manner of payback may include
14 the payment of dividends, returns from the public sale
15 of corporate securities or products, royalties, and
16 other methods of payback acceptable to the
17 corporation. In determining the manner of payback 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 (d) If the corporation makes a direct investment, it shall
22 also find that a reasonable effort has been made to find a



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

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

- 7 (1) Not more than \$500,000 shall be invested in the
8 securities of any one enterprise, except that more
9 than a total of \$500,000 may be invested in the
10 securities of any one enterprise if the corporation
11 finds, after its initial investment, that additional
12 investments in that enterprise are required to protect
13 the initial investment of the corporation, and the
14 other findings set forth in subsection (d) and this
15 subsection are made as to the additional investment;
- 16 (2) The corporation shall not own securities representing
17 more than forty-nine per cent of the voting stock of
18 any one enterprise at the time of purchase by the
19 corporation after giving effect to the conversion of
20 all outstanding convertible securities of the
21 enterprise, except that if a severe financial
22 difficulty of the enterprise occurs, threatening the



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

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

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

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

12 § -19 Exemption from requirements. Notwithstanding
13 section 171-42 and except as otherwise noted in this chapter,
14 any project shall be exempt from all statutes, ordinances,
15 charter provisions, and rules of any government agency relating
16 to zoning and construction standards for subdivisions,
17 development, and improvement of land and the construction,
18 improvement, and sale of homes thereon; provided that the public
19 land planning activities of the corporation shall be coordinated
20 with the county planning departments and the county land use
21 plans, policies, and ordinances.



1 Hawaii Revised Statutes, shall remain in full force and effect
2 until amended or repealed by the public land development
3 corporation established by this Act.

4 SECTION 7. If any provision of this Act, or the
5 application thereof to any person or circumstance is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act, which can be given effect without the
8 invalid provision or application, and to this end the provisions
9 of this Act are severable.

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

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

13



Report Title:

Public Lands; Leases; Wildlife; Public Land Development Corporation

Description:

Restricts the rental period of certain leases granted by BLNR to not more than 65 years. Amends the definition of "wildlife" in chapter 197, Hawaii Revised Statutes. Prohibits the introduction of wildlife on state lands by any persons without the authorization of the department of land and natural resources. Establishes a public corporation to administer an appropriate and culturally-sensitive public land development program. Effective 7/1/2050. (SD2)

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