

JAN 25 2017

A BILL FOR AN ACT

RELATING TO PUBLIC LANDS.

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

1 SECTION 1. The legislature finds that among the classes of
2 public lands managed by the department of land and natural
3 resources are commercial, industrial, hotel, and resort lands.
4 The legislature further finds that because of restrictions
5 imposed by various land management policies, there is little
6 incentive for lessees of various parcels to make improvements to
7 the leased parcels. This has resulted in dilapidation,
8 deterioration, and obsolescence of the properties, which reduces
9 the revenue-generating potential of the parcels.

10 The purpose of this Act is to identify areas of commercial,
11 industrial, resort, and hotel parcels in need of revitalization
12 and to establish guidelines for the redevelopment of those
13 parcels.

14 SECTION 2. Chapter 171, Hawaii Revised Statutes, is
15 amended by adding a new part to be appropriately designated and
16 to read as follows:

17 "PART . PUBLIC LANDS REDEVELOPMENT



1 §171-A Findings; purpose. (a) The legislature finds
2 that:

3 (1) Because of the policies guiding the management of
4 public lands with commercial, industrial, hotel, and
5 resort uses, there has been little incentive for the
6 lessees of those properties to make major investments
7 in improvements to their infrastructure, resulting in
8 the deterioration of infrastructure and facilities;

9 (2) The lack of improvement to property in many of these
10 areas has resulted in dilapidation, deterioration,
11 age, or obsolescence of the buildings and structures
12 in those areas; and

13 (3) The department has the responsibility of planning for
14 the disposition of commercial, industrial, hotel, and
15 resort classes of public lands to determine:

16 (A) Specific use or uses;

17 (B) Minimum size of parcels;

18 (C) Required building construction or improvements;

19 and

20 (D) Lease terms and requirements.



1 (b) The purpose of this part is to authorize the
2 designation of areas or regions of public lands classified as
3 commercial, industrial, hotel, and resort, and the establishment
4 and implementation of guidelines for the redevelopment of the
5 areas or regions that will:

6 (1) Define the policies for the management of public lands
7 in the designated area;

8 (2) Establish a plan for the designated area, including
9 district-wide improvements, that is coordinated with
10 state and county land use and planning policies; and

11 (3) Implement asset and property management concepts that
12 can optimize income from the properties and evolve in
13 response to changing principles of property
14 administration.

15 (c) The legislature finds that the rejuvenation of areas
16 of public lands that have become dilapidated, obsolete, or have
17 deteriorated over time is in the public interest and constitutes
18 a valid public purpose.

19 §171-B Definitions. As used in this part:



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1 "Planning committee" or "committee" means the policy-making
2 committee established for a redevelopment district pursuant to
3 section 171-D.

4 "Public facilities" include streets and highways, storm
5 drainage systems, water systems, street lighting systems, off-
6 street parking facilities, and sanitary sewerage systems.

7 "Redevelopment district" or "designated district" means an
8 area of public lands designated for redevelopment pursuant to
9 section 171-C.

10 **§171-C Designation of redevelopment district; boundaries.**

11 (a) The legislature shall designate redevelopment districts by
12 statute for any area of public lands designated as an industrial
13 park pursuant to section 171-132 or classified as commercial,
14 industrial, hotel, or resort use pursuant to section 171-10 if
15 the legislaure determines that there is a need for planning,
16 development, or redevelopment because the buildings and infra-
17 structures in the area are dilapidated or have deteriorated due
18 to age or obsolescence.

19 (b) The designation shall describe the boundaries of the
20 redevelopment district.



1 §171-D Planning committee; district administrator; repeal.

2 (a) Upon the designation of a redevelopment district pursuant
3 to section 171-C, a planning committee for the designated
4 district shall be established and placed in the department for
5 administrative purposes.

6 (b) The committee shall be a policy-making committee for
7 the designated district and shall consist of nine members. The
8 members shall consist of:

9 (1) The chairperson of the board of land and natural
10 resources and the director of planning of the county
11 in which the designated district is located, or their
12 designated representatives who shall be ex-officio,
13 voting members of the committee; and

14 (2) Seven public, voting members appointed by the governor
15 pursuant to section 26-34; provided that of the
16 members appointed pursuant to this paragraph:

17 (A) Three members shall be selected from a list of
18 six names submitted by the mayor of the county in
19 which the designated district is located; and

20 (B) All seven members shall be residents of the
21 county in which the designated district is



1 located and shall be selected on the basis of
2 their knowledge, experience, and expertise in:

3 (i) Management of small or large businesses;

4 (ii) Economics, banking, investment, or finance;

5 (iii) Real estate development;

6 (iv) Real estate management;

7 (v) Marketing; or

8 (vi) Hotel and resort management.

9 (c) The committee shall elect its chairperson from among
10 its public, voting members.

11 (d) The members of the committee shall serve without
12 compensation but shall be reimbursed for reasonable expenses,
13 including travel expenses, incurred in the performance of their
14 duties.

15 (e) The committee shall appoint a district administrator,
16 who shall be the chief executive officer for the designated
17 district. The district administrator shall have experience and
18 expertise in engineering, planning, architecture, real estate,
19 or law. The committee shall set the district administrator's
20 duties, responsibilities, holidays, vacations, leaves, hours of
21 work, and working conditions. The committee shall set the



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1 salary of the district administrator, who shall serve at the
2 pleasure of the committee and shall be exempt from chapter 76.

3 (f) The committee shall be dissolved on June 30 of the
4 tenth year following the effective date of the Act establishing
5 the designated district.

6 **§171-E Planning committee; powers and duties; generally.**

7 The committee shall have the powers and duties related to its
8 functions in the designated district that are delegated to the
9 committee by the board. In addition, the committee may:

- 10 (1) Through its district administrator, appoint staff and
11 employees, prescribe their duties and qualifications,
12 and fix their salaries, without regard to chapter 76;
- 13 (2) Through its district administrator, allocate space or
14 spaces that are to be occupied by the committee and
15 appropriate staff, and purchase necessary supplies,
16 equipment, or furniture;
- 17 (3) Prepare a redevelopment plan for the designated
18 district;
- 19 (4) Notwithstanding any other law to the contrary, renew
20 or renegotiate any lease in connection with any
21 project contained in the redevelopment plan for the



1 designated district, on terms and conditions as the
2 committee deems advisable;

3 (5) Prepare or cause to be prepared plans, design
4 criteria, landscaping, and estimates of costs for the
5 construction, rehabilitation, or repair of any project
6 contained in the redevelopment plan for the designated
7 district, and from time to time to modify the plans or
8 estimates;

9 (6) Conduct studies in conjunction with county and state
10 agencies necessary to determine the appropriate
11 activities for redevelopment in the designated
12 district;

13 (7) Reduce or waive the lease rental on any lease of
14 public land for any project in the designated district
15 that requires substantial improvements; provided that
16 the reduction or waiver shall not exceed one year in
17 duration;

18 (8) Make and execute all contracts and instruments that
19 are necessary for the exercise of the committee's
20 powers and functions relating to the designated
21 district, including the engaging of the services of



1 consultants for the rendering of professional and
2 technical assistance and advice;

3 (9) Enter into a redevelopment agreement with a developer
4 or developers for any project contained in the
5 redevelopment plan; provided that the redevelopment
6 agreement shall contain:

7 (A) The location, area, and size of the parcel to be
8 redeveloped;

9 (B) The use or uses to which the parcel shall be put
10 in conformance with the redevelopment plan, and
11 with applicable state and county laws and
12 ordinances;

13 (C) The period of time for the construction and
14 completion of the redevelopment; and

15 (D) Other terms and conditions that the committee
16 deems necessary;

17 (10) Work closely and communicate with the county
18 government to coordinate the execution of the
19 designated district's planning, incremental projects,
20 work schedules, public works, and budget; and



1 (11) Do any and all things necessary to carry out the
2 committee's purposes and exercise the powers
3 established pursuant to this part.

4 **§171-F District redevelopment plan.** (a) The committee
5 shall prepare a redevelopment plan for the designated district,
6 including district development policies, the district
7 improvement program, necessary public facilities, and the
8 development guidelines and rules for the designated district.
9 In carrying out its planning activities, the committee shall
10 comply with applicable state and county statutes, ordinances,
11 and rules.

12 (b) The committee shall prepare a redevelopment plan for
13 the designated district that:

14 (1) Establishes, if applicable, areas principally for:

15 (A) Commercial activities;

16 (B) Processing, construction, manufacturing,
17 transportation, wholesaling, storage and similar
18 industrial activities;

19 (C) Resort and hotel activities, including uses that
20 provide facilities and services for visitors; or



- 1 (D) Public facilities and recreational facilities;
2 with detailed standards for height, bulk, size,
3 and location of buildings;
- 4 (2) Includes a district-wide improvement program for
5 necessary district-wide public facilities within the
6 designated district;
- 7 (3) Includes plans, specifications, and estimates of the
8 costs for the development, construction,
9 reconstruction, or improvement of any project in the
10 designated district; provided that the committee may
11 from time to time modify the plans, specifications, or
12 estimates;
- 13 (4) If possible, identifies specific uses for areas in the
14 designated district and the required parceling of land
15 into minimum size areas related to the specific uses;
- 16 (5) Determines the lease rental that should be established
17 for the specific uses and the terms and conditions of
18 the leases; and
- 19 (6) Establishes interim development controls to be
20 implemented during the transition to the execution of
21 the provisions of the redevelopment plan, such as



1 recommending the holdover of a lessee pursuant to
2 section 171-40 or issuance of permits pursuant to
3 section 171-55 to existing lessees upon the expiration
4 of their lease terms.

5 (c) The district redevelopment plan may provide for the
6 withdrawal or taking for public purposes of the public land or
7 portion of the public land under a lease. The rental shall be
8 reduced in proportion to the value of the portion of the
9 premises condemned, and the lessee shall be entitled to receive
10 the proportionate value of the permanent improvements legally
11 made to or constructed upon the land by the lessee taken in the
12 proportion that it bears to the unexpired term of the lease.

13 (d) The committee shall hold a public hearing on a
14 proposed redevelopment plan for the designated district, and
15 shall consider the comments received and incorporate any
16 revisions to the plan that may be necessary.

17 (e) Two years after the date it is established, the
18 committee shall submit a report to the board with the
19 redevelopment plan recommended by the committee along with
20 recommendations for appropriations by the legislature, the
21 authorization of bonds, or both, to implement the redevelopment



1 plan in a timely manner. The board shall submit the report to
2 the governor and the legislature, not later than twenty days
3 prior to the convening of the 2020 regular session, with a
4 request for the required appropriations, bond authorization, or
5 both.

6 (f) The designated district redevelopment plan shall
7 supersede all other inconsistent ordinances and rules relating
8 to the use, planning, development, and construction on public
9 land in the designated district.

10 **§171-G Designated redevelopment district revolving fund.**

11 (a) A separate revolving fund shall be established for each
12 redevelopment district designated pursuant to section 171-C,
13 into which shall be deposited:

14 (1) Fifty per cent of the revenues, income, and receipts
15 of the department from the public lands in the
16 designated district, notwithstanding section 171-19;

17 (2) Moneys appropriated by the legislature to the
18 revolving fund; and

19 (3) Any gifts, grants, and other funds accepted by the
20 department.



1 Each revolving fund shall bear the name used by the legislature
2 in designating the redevelopment district.

3 (b) Moneys in the designated redevelopment district
4 revolving fund shall be used in the designated district for the
5 purposes of this part; provided that no expenditure shall be
6 made from the fund and no obligation shall be incurred against
7 the fund in excess of the amount standing to the credit of the
8 fund."

9 SECTION 3. Section 171-1, Hawaii Revised Statutes, is
10 amended by amending the definition of "public purpose" to read
11 as follows:

12 ""Public purpose", as used in this chapter, unless the
13 context clearly indicates otherwise, includes but shall not be
14 limited to all public uses, the straightening of boundaries of
15 public lands, acquisition of access to landlocked public lands,
16 the consolidation of the holdings of public lands, development
17 of houselots, farmlots, [~~and~~] industrial parks[-], and the
18 redevelopment of public lands pursuant to part _____."

19 SECTION 4. Section 171-35, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§171-35 Lease provisions; generally. Every lease issued
2 by the board of land and natural resources shall contain:

3 (1) The specific use or uses to which the land is to be
4 employed;

5 (2) The exact commencement and termination dates for the
6 lease, and the term and type of notice required to
7 exercise any renewal option, if applicable;

8 ~~[-(2)]~~ (3) The improvements required; provided that a
9 minimum reasonable time be allowed for the completion
10 of the improvements;

11 ~~[-(3)]~~ (4) Restrictions against alienation as set forth in
12 section 171-36;

13 ~~[-(4)]~~ (5) The rent, as established by the board or at
14 public auction, which shall be payable not more than
15 one year in advance, in monthly, quarterly,
16 semiannual, or annual payments;

17 ~~[-(5)]~~ (6) Where applicable, adequate protection of forests,
18 watershed areas, game management areas, wildlife
19 sanctuaries, and public hunting areas, reservation of
20 rights-of-way and access to other public lands, public



1 hunting areas, game management areas, or public
2 beaches, and prevention of nuisance and waste; and
3 ~~[(6)]~~ (7) ~~[Such]~~ Any other terms and conditions as the
4 board deems advisable to more nearly effectuate the
5 purposes of the state constitution and of this
6 chapter."

7 SECTION 5. Section 171-36, Hawaii Revised Statutes, is
8 amended as follows:

9 1. By amending subsections (a) and (b) to read:

10 "(a) Except as otherwise provided, the following
11 restrictions shall apply to all leases:

12 ~~[(1)] Options for renewal of terms are prohibited;~~

13 ~~-(2)]~~ (1) No lease shall be for a longer term than sixty-
14 five years, except in the case of a residential
15 leasehold which may provide for an initial term of
16 fifty-five years with the privilege of extension to
17 meet the requirements of the Federal Housing
18 Administration, Federal National Mortgage Association,
19 Federal Land Bank of Berkeley, Federal Intermediate
20 Credit Bank of Berkeley, Berkeley Bank for
21 Cooperatives, or Veterans Administration requirements;



1 ~~[provided that the aggregate of the initial term and~~
2 ~~extension shall in 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)]~~ (2) No lease shall be made to any person who is in
6 arrears in the payment of taxes, rents, or other
7 obligations owing the State or any county;
8 ~~[(5)]~~ (3) No lease shall be transferable or assignable,
9 except by devise, bequest, or intestate succession;
10 provided that with the approval of the board of land
11 and natural resources, the assignment and transfer of
12 a 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]~~ may review and approve the consideration to
17 be paid by the assignee and may condition its consent
18 to the assignment of the lease on payment by the
19 lessee 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



1 improvements and trade fixtures being transferred to
2 the assignee; provided further that with respect to
3 state agricultural leases, [~~in the event of~~] if a
4 foreclosure or sale[~~7~~] occurs, the premium, if any,
5 shall be assessed only after the encumbrances of
6 record and any other advances made by the holder of a
7 security interest are paid;

8 [~~6~~] (4) The lessee shall not sublet the whole or any part
9 of the demised premises except with the approval of
10 the board; provided that prior to the approval, the
11 board [~~shall have the right to~~] may review and approve
12 the rent to be charged to the sublessee; provided
13 further that in the case where the lessee is required
14 to pay rent based on a percentage of its gross
15 receipts, the receipts of the sublessee shall be
16 included as part of the lessee's gross receipts;
17 provided further that the board [~~shall have the right~~
18 ~~to~~] may review and, if necessary, revise the rent of
19 the demised premises based upon the rental rate
20 charged to the sublessee including the percentage



1 rent, if applicable, and provided that the rent may
2 not be revised downward;

3 ~~[(7)]~~ (5) The lease shall be for a specific use or uses and
4 shall not include waste lands, unless it is
5 impractical to provide otherwise;

6 ~~[(8)]~~ (6) Mineral and metallic rights and surface and
7 ground water shall be reserved to the State; and

8 ~~[(9)]~~ (7) No lease of public lands, including submerged
9 lands, nor any extension of any ~~[such]~~ lease, shall be
10 issued by the State to any person to construct, use,
11 or maintain a sunbathing or swimming pier or to use
12 the lands for ~~[such]~~ these purposes, unless ~~[such]~~ the
13 lease, or any extension thereof, contains provisions
14 permitting the general public to use the pier
15 facilities on the public lands and requiring that a
16 sign or signs be placed on the pier, clearly visible
17 to the public, which indicates the public's right to
18 the use of the pier. The board, at the earliest
19 practicable date, and where legally possible, shall
20 cause all existing leases to be amended to conform to
21 this paragraph. The term "lease", for the purposes of



1 this paragraph, includes month-to-month rental
2 agreements and similar tenancies.

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

7 (1) Modify or eliminate any of the restrictions specified
8 in subsection (a);

9 (2) Extend or modify the fixed rental period of the
10 lease [~~;~~ ~~provided that the aggregate of the initial~~
11 ~~term and any extension granted shall not exceed sixty-~~
12 ~~five years;~~] upon approval by the board of a
13 development agreement proposed by the lessee to make
14 substantial improvements to the existing improvements
15 or to construct new improvements; or

16 (3) Extend the term of the lease,
17 to the extent necessary to qualify the lease for mortgage
18 lending or guaranty purposes with any federal mortgage lending
19 agency, to qualify the lessee for any state or private lending
20 institution loan, private loan guaranteed by the State, or any
21 loan in which the State and any private lender participates, or



1 to amortize the cost of substantial improvements to the demised
2 premises that are paid for by the lessee without institutional
3 financing, [~~such~~] the extension being based on the economic life
4 of the improvements as determined by the board or an independent
5 appraiser; provided that the approval of any extension shall be
6 subject to the following:

7 (1) The demised premises have been used substantially for
8 the purpose for which they were originally leased;

9 [~~(2)~~] ~~The aggregate of the initial term and any extension~~
10 ~~granted shall not be for more than sixty five years;~~

11 ~~(3)~~] (2) [~~In the event of~~] If a reopening~~[7]~~ occurs, the
12 rental for any ensuing period shall be the fair market
13 rental at the time of reopening;

14 [~~(4)~~] (3) Any federal or private lending institution shall
15 be qualified to do business in the State;

16 [~~(5)~~] (4) Proceeds of any mortgage or loan shall be used
17 solely for the operations or improvements on the
18 demised premises;

19 [~~(6)~~] (5) Where improvements are financed by the lessee,
20 the lessee shall submit receipts of expenditures



1 within a time period specified by the board, otherwise
2 the lease extension shall be canceled; and

3 ~~[(7)]~~ (6) The rules of the board, setting forth any
4 additional terms and conditions, which shall ensure
5 and promote the purposes of the demised lands."

6 2. By amending subsections (d) and (e) to read:

7 "(d) The board, from time to time, during the term of any
8 agriculture, intensive agriculture, aquaculture, commercial,
9 mariculture, special livestock, pasture, hotel, resort, or
10 industrial lease, may modify or eliminate any of the
11 [+]restrictions[+] specified in subsection (a), extend or modify
12 the fixed rental period of the lease, or extend the term of the
13 lease upon a showing of significant economic hardship directly
14 caused by:

15 (1) State disaster, pursuant to chapter 209, including
16 seismic or tidal wave, tsunami, hurricane, volcanic
17 eruption, typhoon, earthquake, flood, or severe
18 drought; or

19 (2) A taking of a portion of the area of the lease by
20 government action by eminent domain, withdrawal, or
21 conservation easement; provided that the portion taken



1 shall not be less than ten per cent of the entire
 2 leased area unless otherwise approved by the board;
 3 and provided that the board determines that the lessee
 4 will not be adequately compensated pursuant to the
 5 lease provisions.

6 (e) The approval of any extension granted pursuant to
 7 subsection (d) shall be subject to the following:

8 (1) The demised premises has been used substantially for
 9 the purposes for which they were originally leased;

10 ~~[-(2)- The aggregate of the initial term and any extension~~
 11 ~~granted shall not be for more than fifty five years;~~

12 ~~-(3)]~~ (2) The rental shall not be less than the rental for
 13 the preceding term;

14 ~~[-(4)]~~ (3) The rules of the board, setting forth any
 15 additional terms and conditions which shall ensure and
 16 promote the purposes of the demised lands; and

17 ~~[-(5)]~~ (4) The length of the extension shall not exceed a
 18 reasonable length of time for the purpose of providing
 19 relief ~~[and shall in no case exceed five years]."~~

20 SECTION 6. There is appropriated out of the general
 21 revenues of the State of Hawaii the sum of \$ or so much



1 thereof as may be necessary for fiscal year 2017-2018 and the
2 same sum or so much thereof as may be necessary for fiscal year
3 2018-2019 to carry out the purposes of this Act.

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

6 SECTION 7. In codifying the new part added by section 2 of
7 this Act, the revisor of statutes shall substitute appropriate
8 section numbers for the letters used in designating the new
9 sections in this Act.

10 SECTION 8. If any provision of this Act, or the
11 application thereof to any person or circumstance, is held
12 invalid, the invalidity does not affect other provisions or
13 applications of the Act that can be given effect without the
14 invalid provision or application, and to this end the provisions
15 of this Act are severable.

16 SECTION 9. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.



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1 SECTION 10. This Act shall take effect on July 1, 2017.

2 INTRODUCED BY: *Thomas J. Hoage*

Randy H. Baker
Clarence W. Fishburn
[Signature]

[Signature]
[Signature]

[Signature]



S.B. NO. 1185

Report Title:

Public Lands; Redevelopment; Redevelopment Districts; Boundaries; Planning Committees; Powers and Duties; District Redevelopment Plans; Designated Redevelopment District Revolving Funds; Establishment; Lease Restrictions; Appropriations

Description:

Establishes procedures for designating public land redevelopment districts, planning committees, district redevelopment plans, and designated redevelopment district revolving funds. Establishes powers and duties of planning committees. Modifies public land lease restrictions. Appropriates funds.

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