

ACT 361

H.B. NO. 2974

A Bill for an Act Relating to Public Lands.

Be It Enacted by the Legislature of the State of Hawaii:

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

“PART . INDUSTRIAL PARKS

§171- Definitions. For the purposes of this part:

“Eligible lessee” means a person who is:

- (1) Engaged or proposing to engage in a business, of which at least ninety per cent of the gross income is derived from an industrial use; and
- (2) Qualified to lease public lands under this chapter.

“Industrial park” means an area of public lands which is designated an industrial park in accordance with this part.

“Industrial use” means the manufacturing, refining, sorting, processing, storing, maintaining, or repairing of materials, substances, products, or equipment.

“Infrastructure” includes water, drainage, sewer, waste disposal, and waste treatment systems, roads, and street lighting.

§171- Designation of industrial park. A contiguous area of not less than five acres of public lands which is classified as suitable and economically feasible for industrial use may be designated as an industrial park:

- (1) By resolution adopted by the board of land and natural resources, and approved by the legislature by concurrent resolution; or
- (2) By law.

§171- Authority to plan, improve, develop, operate, and maintain industrial parks. The board shall plan, improve, develop, operate, and maintain each industrial park designated pursuant to section 171-. The planning, improving, developing, operation, and maintenance of an industrial park shall be in accordance with this chapter.

§171- Industrial park development. (a) The department may develop an area of public lands as an industrial park. Any development shall commence after designation of the area of public lands as an industrial park in accordance with section 171-. Planning activities for the proposed or potential designation of an industrial park may precede a designation.

(b) At the option of the board, the development of an industrial park shall be exempt from all statutes, ordinances, charter provisions, and rules of any governmental agency relating to planning, zoning, construction standards for subdivision development and improvement of land, and the construction of buildings thereon; provided that:

- (1) The board finds that the industrial park meets the minimum requirements of health and safety;
- (2) The development of the industrial park does not contravene any safety standards or tariffs approved by the public utilities commission for public utilities;
- (3) The legislative body of the county in which the industrial park is proposed to be situated approves the industrial park.
 - (A) The legislative body shall approve or disapprove the industrial park within forty-five days after the department has submitted preliminary plans and specifications for the industrial park to the legislative body. If after the forty-fifth day, an industrial park is not disapproved, it shall be deemed approved by the legislative body.
 - (B) No action shall be prosecuted or maintained against any county, its officials, or employees, on account of actions taken by them in reviewing, approving, or disapproving the plans and specifications.
 - (C) The final plans and specifications for the industrial park shall be deemed approved by the legislative body if the final plans and specifications for the industrial park do not substantially deviate from the preliminary plans and specifications. The determination that the final plans and specifications do not substantially deviate from the preliminary plans and specifications of the industrial park shall rest with the board. The final plans and specifications for the park shall constitute the planning, zoning, building, improvement, construction, and subdivision standards for that industrial park. For the purposes of sections 501-85 and 502-17, the chairperson of the board or the responsible county official may certify maps and plans of land connected with the industrial park as having complied with applicable laws and ordinances relating to consolidation and subdivision of lands, and such maps

and plans shall be accepted for registration or recordation by the land court and registrar; and

- (4) The board shall assume the responsibility of all infrastructure within the industrial park, if the infrastructure developed is exempt from applicable county ordinances, charter provisions, and rules.

(c) If the board does not exercise the option under subsection (b), the board shall develop an industrial park in compliance with the statutes, ordinances, charter provisions, and rules of applicable government agencies.

§171- Joint venture. An industrial park may be developed under section 171- by the department in partnership with a federal agency, county, or private party. The department shall be subject to a partnership agreement executed by the chairperson of the board. At a minimum, the agreement shall provide for:

- (1) A determination by the board that the partnership agreement is for a public purpose;
- (2) Long-term assurance that the public land within the industrial park will be utilized for industrial uses;
- (3) Final approval by the board of the plans and specifications for the industrial park;
- (4) Exclusive authority by the board to issue leases within the industrial park; and
- (5) Conditions to ensure a public benefit from any state funds expended for the industrial park.

§171- Disposition of public lands within industrial park. The board shall dispose of economic units within an industrial park only by lease to eligible lessees or lessees engaged in commercial uses as provided under paragraph (1)(B). The leases shall be issued by the board in accordance with this chapter, subject to the following:

- (1) Only industrial uses shall be allowed on the public lands leased; provided that:
 - (A) The eligible lessee may be allowed to engage in nonindustrial uses and activities ancillary and necessary to the eligible lessee's industrial use; and
 - (B) The board may lease public lands within the industrial park for commercial uses if the uses are necessary or desirable to serve other lessees in the industrial park or their employees;
- (2) Each eligible lessee shall derive a substantial portion of the eligible lessee's total annual gross income from the eligible lessee's activities within the industrial park;
- (3) Each eligible lessee shall be subject to a development plan formulated pursuant to section 171-41 and make the improvements to the leased public lands required under the development plan; and
- (4) Each eligible lessee shall pay all assessments for improvements of infrastructure or other public or common facilities within the industrial park, if the board requires the improvements or assessments as conditions of the lease.

§171- Preference. Preference for a lease of public lands within an industrial park shall be given to an eligible lessee who is a small business. For the purpose of this section, "small business" means the same as "small business concern" under section 210-1.

§171- Industrial park special fund. (a) There is established within the treasury of the State the industrial park special fund. The proceeds of the special fund shall be used for the following purposes:

- (1) Planning, design, improvement, construction, land acquisition, and equipment necessary for the development or maintenance of industrial parks;
- (2) Constructing, operating, maintaining, and improving infrastructure and other public or common facilities within industrial parks; and
- (3) Any other purpose deemed necessary by the board for the purpose of planning, improving, developing, operating, and maintaining industrial parks.
- (b) The following shall be deposited into the special fund:
 - (1) Appropriations by the legislature to the special fund;
 - (2) Lease rents collected from eligible lessees of public lands within industrial parks;
 - (3) Assessments collected from eligible lessees of public lands within industrial parks which are charged by the board pursuant to conditions in the leases; and
 - (4) Interest earned or accrued on moneys in the special fund.

§171- Acquisition. The board may acquire by exchange, direct purchase, or eminent domain, lands to which private persons or other public agencies hold title for designation as or inclusion in an industrial park. The acquisition of lands shall be in accordance with this chapter.

§171- Rules. The board may adopt rules in accordance with chapter 91 in order to effectuate the purposes of this part.

§171- Lease for eligible permittee in industrial park. (a) Notwithstanding any other provision of law to the contrary:

- (1) A parcel of the public lands within an industrial park which had been occupied and used under a permit on the day before the date of designation of that industrial park shall be an economic unit in that industrial park. For the purpose of this section:
 - (A) "Date of designation" means the effective date of the resolution or law which designates an industrial park; and
 - (B) "Eligible economic unit" means an economic unit referred to under this paragraph;
- (2) A person with a permit to use an eligible economic unit on the day before the date of designation of that industrial park shall be given first preference to lease that unit after the date of designation if the person is an eligible lessee. For the purpose of this section, an "eligible permittee" means a person referred to under this paragraph;
- (3) The board shall issue a lease to an eligible permittee for an eligible economic unit under mutually agreeable terms, conditions, and lease rent. The lease shall be issued through negotiations, without regard to the limitations set forth in section 171-16(c) and section 171-59(a). The terms, conditions, and rent under the lease shall be in conformance with this chapter, and the board shall include lease covenants in each lease for the placement and construction of improvements in accordance with minimum standards established by applicable county building codes; and
- (4) The board shall negotiate in good faith with each eligible permittee. If the board and eligible permittee cannot agree to a lease within one hundred eighty days from the date of designation, the board shall have no further obligation to negotiate with or issue a lease to the eligible permittee and may issue a lease for the eligible economic unit to another

person after the one hundred eighty-day period; provided that any lease for the eligible economic unit issued subsequent to the termination of the one hundred eighty-day period shall not include terms and conditions which are less restrictive, and a lease rent which is less, than the terms, conditions, and lease rent last offered in writing by the eligible permittee and received by the board.

(b) It is the intent of the legislature that persons occupying and using under a month-to-month or revocable permit public lands which have been designated as part of an industrial park be given the opportunity to lease the same public lands occupied and used prior to the designation. The application, construction, and interpretation of this section shall reflect this intent."

SECTION 2. Section 171-1, Hawaii Revised Statutes, is amended by amending the definition of "public purpose" to read as follows:

" "Public purpose", as used in this chapter, unless the context clearly indicates otherwise, includes but shall not be limited to all public uses, the straightening of boundaries of public lands, acquisition of access to landlocked public lands, the consolidation of the holdings of public lands, development of houselots, farmlots, and industrial [subdivisions.] parks."

SECTION 3. Section 171-19, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is created in the department of land and natural resources a special fund to be designated as the "special land and development fund". Subject to the provisions contained in the Hawaiian Homes Commission Act of 1920, as amended, and in section 5(f) of the Admission Act of 1959, and except as provided under section 171- for the industrial park special fund, all proceeds of sale of public lands, including interest on deferred payments, and all rents from leases, licenses, and permits derived from public lands shall be set apart in the fund and shall be used only as authorized by the legislature, except that, without such prior legislative authority, the board of land and natural resources may use the fund for the following purposes:

- (1) To reimburse the general fund of the State for advancements heretofore or hereafter made therefrom, which are required to be reimbursed from the proceeds of sales, leases, licenses, or permits derived from public lands;
- (2) For the incidental maintenance of all lands under the control and management of the board, including [the repair of] repairs or improvements, thereon, not to exceed \$200,000 in any fiscal year;
- (3) To repurchase any land, including improvements thereon, in the exercise by the board of any right of repurchase specifically reserved in any patent, deed, lease, or other documents or as provided by law;
- (4) For the payment of all appraisal fees; provided that all such reimbursable fees collected by the board shall be deposited in the fund;
- (5) For the payment of publication notices as required under this chapter; provided that all or a portion of the expenditures may be charged to the purchaser or lessee of public lands or any interest therein under rules adopted by the board;
- (6) For the planning and construction of roads and trails along state rights-of-way not to exceed \$5,000 in any fiscal year; and

- (7) For the payment to private land developer or developers who have contracted with the board for development of public lands under section 171-60.”

SECTION 4. Section 171-41, Hawaii Revised Statutes, is amended to read as follows:

“§171-41 Commercial, industrial, and other business uses. (a) Leases for commercial, industrial, and other business uses shall be made only pursuant to a development plan which provides for careful placement of complementary enterprises consistent with county zoning requirements[.]; except that development plans for leases of parcels in industrial parks developed under section 171- (b) shall provide for careful placement of complementary enterprises consistent with the final plans and specifications under section 171- (b). Where a disposition for any such use is made without advance parcelization, the board shall make adequate provisions for the compatibility of the proposed enterprises with any existing surrounding private developments. The board, wherever possible, shall control the landscaping and architecture of the enterprises and protect the public against the creation of nuisances of smoke, soot, irritating odors and gases, and harmful wastes.

(b) The board may sell public land in fee simple for commercial, industrial, or other business uses with the prior approval of the governor and subject to disapproval by two-thirds vote of either the senate or the house of representatives or by majority vote of both in any regular or special session next following the date of disposition; provided the above restrictions shall not apply to any sale of land initially acquired for highway purposes with participating federal funds and which land is later found to be in excess of the need for highway purposes.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 14, 1988.)