



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SEVENTH LEGISLATURE, 2013**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 1361, S.D. 2, RELATING TO BANYAN DRIVE.

**BEFORE THE:**

HOUSE COMMITTEE ON WATER AND LAND

**DATE:** Monday, March 18, 2013

**TIME:** 8:35 a.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Donna Kalama, Deputy Attorney General

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Chair Evans and Members of the Committee:

The Attorney General brings several concerns to your attention.

The bill requires the Department of Land and Natural Resources (DLNR) to enter into negotiations with the county of Hawaii for the lease of certain identified properties located near or adjacent to Banyan Drive to the county and defines those lands for purposes of the bill as “subject public land.” The bill further provides that “subject public land” includes land adjacent to the identified properties that is within the Banyan Drive right-of-way and held by the State in fee simple. Any lease negotiated by the DLNR and the county is subject to approval by the Board of Land and Natural Resources and the County of Hawaii’s appropriate officer or body. The lease to be negotiated shall have a certain term of years not yet specified in the bill, and the lease rent charged to the county shall be \$1 per year. A percentage of gross revenues derived by the county from any sublease or rental of or concession on the subject public land, or sale, lease, rental, or other disposition of property or services on or flowing from the subject public land is to be transmitted by the county to the State Director of Finance on a quarterly basis, who shall deposit the transmitted revenues into the Special Land and Development Fund established by section 171-19, Hawaii Revised Statutes.

We have been informed that at least some of the subject public land is ceded lands. Under section 5(f) of the Admissions Act, proceeds from the sale or other disposition of section 5(f) lands and the income therefrom must be retained or used for one of the five trust purposes specified in section 5(f). The bill states that an as-yet unidentified percentage of gross revenues derived by the county from the lease or other disposition of the subject public land is to be

deposited into the Special Land and Development Fund. Consistent with the trust responsibilities, the percentage of gross revenues to be deposited in the Special Land and Development Fund must be an amount at least equal to the fair market rental value of the section 5(f) lands.

We also have concerns whether this bill meets the requirements of article III, section 14, of the Hawaii Constitution, which provides that “[e]ach law shall embrace but one subject, which shall be expressed in its title.” The title of this bill is “Banyan Drive.” The subject public land described in section 2 of the bill refers in large part to properties “located near or adjacent to Banyan drive.” Thus, the content of this bill is not expressed in its title and may violate article III, section 14, of the Hawaii Constitution.

The Legislature may wish to amend the bill to address the stated concerns.

**lowen1-Kyli**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 18, 2013 9:41 AM  
**To:** waltestimony  
**Cc:** lrogers@hhsc.org  
**Subject:** \*Submitted testimony for SB1361 on Mar 18, 2013 08:35AM\*

**SB1361**

Submitted on: 3/18/2013

Testimony for WAL on Mar 18, 2013 08:35AM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b>            | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|--------------------------------|---------------------------|---------------------------|
| Lori Rogers         | Hilo Medical Center Foundation | Support                   | No                        |

Comments:

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