

HB 2073 HD 1

Measure Title:	RELATING TO URBAN REDEVELOPMENT.
Report Title:	Urban Redevelopment; Public Lands; General Excise Tax; Use Tax
Description:	Authorizes a local redevelopment agency to contract with a developer for construction of non-residential uses on public land within the Kanoelehua Industrial Area and Banyan Drive region until 6/30/2028. Exempts construction of works or improvements of a redevelopment project from General Excise and Use Taxes. (HB2073 HD1)
Companion:	
Package:	None
Current Referral:	HOU, WAM
Introducer(s):	NAKASHIMA, AQUINO, CULLEN, LUKE, NISHIMOTO, ONISHI, SAIKI, TODD, WOODSON, YAMANE, Belatti, Evans, Yamashita



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

H.B. NO. 2073, H.D. 1, RELATING TO URBAN DEVELOPMENT.

BEFORE THE:

SENATE COMMITTEE ON HOUSING

DATE: Tuesday, March 20, 2018

TIME: 3:00 p.m.

LOCATION: State Capitol, Room 225

TESTIFIER(S): Russell A. Suzuki, Acting Attorney General, or
Bryan C. Yee, Deputy Attorney General, or
Dawn T. Apuna, Deputy Attorney General

Chair Espero and Members of the Committee:

The Department of the Attorney General provides the following legal concerns with part I of this bill.

The purposes of this bill are to: (1) require the establishment of the Kanoiehua Industrial Area and Banyan Drive region of Hilo, Hawai'i, as a redevelopment district as a 10-year pilot project; (2) allow a local redevelopment agency created pursuant to section 53-2, Hawaii Revised Statutes, to negotiate a development agreement with a developer for commercial, business, hotel, or resort uses on public lands within the redevelopment area; and (3) exempt from general excise and use taxes any construction of work or improvements, or uses of materials, parts, or tools that are used for construction of any work or improvements, of a redevelopment project.

We believe that the creation of a pilot redevelopment project in part I for lands only within the Kanoiehua Industrial Area and Banyan Drive region may be deemed to be special legislation, in violation of article XI, section 5, of the Hawai'i Constitution. The Kanoiehua Industrial Area and Banyan Drive are public land holdings of the Department of Land and Natural Resources.

Article XI, section 5, of the Hawai'i Constitution provides:

The legislative power over the lands owned by or under the control of the State and its political subdivisions shall be exercised only by general laws, except in respect to

transfers to or for the use of the State, or a political subdivision, or any department or agency thereof.

A general law must apply uniformly, and it should apply to a real or potential classification, not limited to a class of one. *Sierra Club v. Dep't of Transportation*, 120 Hawai'i 181, 214, 202 P.3d 1226, 1259 (2009).

Part I of this bill only applies to the Kanoelehua Industrial Area and Banyan Drive region for a 10-year pilot project. The class is not defined generally. Consequently part I does not apply uniformly. Part I of the bill appears to be special legislation and may violate article XI, section 5, of the Hawai'i Constitution.

If this bill moves forward, we recommend applying the tax exemption to a general class of properties, such as those identified under chapter 53, Hawaii Revised Statutes, as redevelopment districts.

We respectfully ask the Committee to consider these comments.

DAVID Y. IGE
GOVERNOR

DOUGLAS S. CHIN
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA
DIRECTOR

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

**STATE OF HAWAII
DEPARTMENT OF TAXATION**

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To: The Honorable Will Espero, Chair
and Members of the Senate Committee on Housing

Date: Tuesday, March 20, 2018
Time: 3:00 P.M.
Place: Conference Room 225, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: H.B. 2073, H.D. 1, Relating to Urban Redevelopment

The Department of Taxation (Department) offers the following comments on H.B. 2073, H.D. 1, for the committee's consideration.

Section 1 of H.B. 2073, H.D. 1, establishes the Kanoiehua Industrial Area and Banyan Drive region as a redevelopment district until June 30, 2018. Section 1 also authorizes a local redevelopment agency to negotiate a development agreement for the area. Sections 2 and 3 of the bill exempt all construction projects that are part of an approved redevelopment plan from general excise and use taxes. The bill has a defective effective date of July 1, 2050.

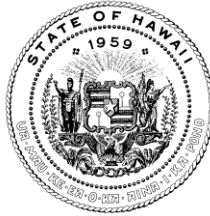
First, the Department notes that the general excise and use tax exemptions proposed in Sections 2 and 3 of this bill are broader than the development authorized by Section 1. The Department notes this only to avoid the misperception that the proposed tax exemptions are only for redevelopment projects that are within the established redevelopment district.

Second, the Department notes that the tax exemption proposed in this bill is similar to the exemption for construction of certain housing projects at Hawaii Revised Statutes (HRS) section 237-29. This exemption is limited to projects described in HRS chapter 201H and certified as qualified projects by the Hawaii Housing and Finance Development Corporation. This structure provides greater certainty of the projects that qualify for the exemption. As written, the bill requires a similar level of certification. The bill allows the tax exemption only for projects that are part of a redevelopment plan approved by a local redevelopment agency. The Department recommends maintaining this structure.

Finally, the Department requests that if this measure is moved forward that the effective date of the proposed tax exemptions be changed to January 1, 2019 at the earliest. This will allow the Department time to coordinate with the local redevelopment agencies, make necessary changes to forms and instructions, and update the Department's computer system.

Thank you for the opportunity to provide comments.

DAVID Y. IGE
GOVERNOR OF
HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
SUZANNE D. CASE
Chairperson

Before the Senate Committee on
HOUSING

Tuesday, March 20, 2018
3:00pm
State Capitol, Conference Room 225

In consideration of
HOUSE BILL 2073, HOUSE DRAFT 1
RELATING TO URBAN DEVELOPMENT

House Bill 2073, House Draft 1 proposes to establish the Kanoelehua Industrial Area and Banyan Drive region of Hilo as a redevelopment district and authorize a redevelopment agency created pursuant to Section 53-2, Hawaii Revised Statutes (HRS), to contract with a developer for construction of non-residential uses on public lands within the district. The measure also proposes to exempt construction under such contracts from the General Excise and Use Taxes. House Draft 1 would implement the measure as a 10-year pilot project instead of making a permanent amendment to Chapter 171, HRS. **The Department of Land and Natural Resources (Department) opposes the appropriation of funding from the Special Land and Development Fund (SLDF) to the redevelopment agency and offers comments on the status of Banyan Drive redevelopment and leases in the Kanoelehua Industrial Area.**

The Department is currently aware of one redevelopment agency in the State formed under Section 53-2, HRS – the Banyan Drive Hawaii Redevelopment Agency (BDHRA). House Bill 2073, House Draft 1, would give redevelopment agencies like BDHRA the authority (subject to the prior approvals of the applicable county and the Governor, and the authorization of the legislature by concurrent resolution) to negotiate a development agreement with a developer for commercial, business, or hotel or resort uses on public lands within a redevelopment area pursuant to a redevelopment plan adopted by the agency. The measure additionally states that the development agreement is to provide for the leasehold disposition of the land to include a number of items listed in the bill.

The Department has been working with BDHRA, and (prior to BDHRA's creation) with the Banyan Drive Task Force formed under former Governor Abercrombie, for a number of years on

plans for the redevelopment of Banyan Drive area in Hilo. Although some of the state-owned properties on Banyan Drive are in poor condition, the Department points out that the Hilo Hawaiian Hotel, the Hilo Bay Café (former Nihon Restaurant site), and the Grand Naniloa Hotel are State leasehold properties that are in good condition, with Naniloa currently wrapping up a \$20 million renovation. The long-term leases for Uncle Billy's Hilo Bay Hotel (more recently the Pagoda Hilo Bay Hotel, which was closed in June 2017), Country Club Condominium (which is now a residential apartment building – not a condominium), and Reed's Bay Resort Hotel all expired in 2016 and have been converted to month-to-month revocable permits. No new leases for these sites have issued yet because, as noted above, the Department has been working with BDHRA to develop a long-term plan for the area. Once a long-term plan for Banyan Drive is settled on, the Department can issue new long-term resort leases for these properties, if that is what BDHRA ultimately supports. On March 7, 2018, the Department posted a request for interest (RFI) on its website as well as on the website of the State Procurement Office regarding the potential demolition of existing structures and reconstruction of a hotel on the former Hilo Bay Hotel site. The RFI was published in several newspapers in the State on March 14, 2018. Since 2014, the Department has spent approximately \$524,500 from the SLDF on consultant services and studies dedicated to the public lands at Banyan Drive.¹

The Department has worked cooperatively with BDHRA, and Department representatives have attended all the BDHRA meetings held to date. The Department has expressed to BDHRA that the Department is willing to present any viable proposal for the use of the public lands in the area to the Board of Land and Natural Resources (Board) for consideration. In this process, BDHRA's role has always been contemplated as that of a planner and not itself issuing leases to developers. In the Department's view, BDHRA is not adequately staffed or funded to act as a land manager.

With respect to the Kanoiehua Industrial Area, many of the leases of public lands in that area were issued in a two or three year period following the 1960 tsunami for terms of 55 years. Most of the lessees in this area applied for ten-year extensions of their lease terms under Section 171-36(b), HRS, which requires the lessee to make substantial improvements to the premises to qualify for a lease extension. Although some of the leasehold improvements are not in good condition, a number of them are well maintained, such as HPM Building Supply, Bank of Hawaii and Big Island Toyota on Kanoiehua Avenue, Central Supply on Makaala Street, Paradise Plants, and Kitchen and Bath Supply on Wiwoole Street, and the Coca-Cola bottling plant on

¹ The Department procured a consultant to conduct a number of studies to facilitate planning for Banyan Drive including a market study on tourism to determine if the area could support a new hotel, and studies on sea level rise, the viability of master leasing multiple parcels in the area, and the remaining useful life of existing structures on expiring lease premises. These studies are publicly available on the Department's website at <http://dlnr.hawaii.gov/ld/kanoiehua-and-banyan-drive-studies/>. Another consultant, Erskine Architects, conducted a much more detailed architectural and engineering study on whether existing improvements on the expired lease premises should be demolished or rehabilitated. Yet another consultant recently completed a study on the cost of securing the necessary permitting for demolishing the improvements on the expired leases and completing the demolition.

Holomua Street. The Department has spent approximately \$138,000 on planning studies for the Kanoiehua Industrial Area since 2014.²

The Department is additionally concerned with the fiscal impacts of the bill. Although the measure is not clear on this point, the Department presumes that if the redevelopment agency issues leases of public lands, it would also collect the rents on those leases. In addition to this bill seeking the revenues from the Banyan Drive and Kanoiehua Industrial Area leases, there are various other redevelopment agency bills moving this session seeking to take from 10% to 50% of the revenues generated from the Banyan Drive and the Kanoiehua Industrial Area leases. These lands are ceded and OHA is currently receiving 20% of the revenues and is seeking to increase its share by more than 100% from \$15.1 million to \$35 million annually. Neither this bill nor the other redevelopment agency bills relieve the Department of the lease management duties. Therefore, if these measures were all to pass and become law, the Department would be left in the very unfortunate situation of having to manage all of those leases (bill, collect, inspect, procure and pay for professionals for rental and reopening valuations, and paying for rental mediation and arbitration costs) but receive very little or no revenue in return, after expenses.

The Department and the Board are responsible for managing approximately 1.3 million acres of public lands comprised of sensitive natural, cultural and recreational resources. The Department's responsibilities include managing and maintaining the State's coastal lands and waters, water resources, conservation and forestry lands, historical sites, small boat harbors, parks, and recreational facilities; performing public safety duties (e.g., flood and rockfall prevention); issuing and managing leases of public lands (agriculture, pasture, commercial, industrial, and resort leases); maintaining unencumbered public lands; and enforcing the Department's rules/regulations.

To properly perform these fiduciary duties, the Board determined that the Department should utilize a portion of the lands it manages to generate revenues to support the Department's operations and management of public lands/programs. Annual lease revenues currently support the Special Land and Development Fund (SLDF), with revenues coming primarily from leases for commercial, industrial, resort, geothermal and other renewable energy projects.

The SLDF is a critical and increasingly important funding source for various divisions within the Department to deal with emergency response to natural catastrophes such as fire, rockfall, flood or earthquake and hazard investigation and mitigation. The SLDF also is critical for staff support of various programs and funding conservation projects on all state lands. It has also become an important source of state match for federally funded endangered species and invasive species initiatives that otherwise would not go forward. Diverting lease revenues from the

² The Department examined the possibility consolidating smaller parcels in this area to put out to lease at auction as larger lots. The Department's consultant conducted a market study on the demand for industrial parcels in Hilo, a lot consolidation analysis, and a master lease analysis of multiple parcels. These studies are also publicly available on the Department's website at <http://dlnr.hawaii.gov/ld/kanoiehua-and-banyan-drive-studies/>

Banyan Drive area to BDHRA or another redevelopment agency could negatively impact the Department's operations.

Thank you for the opportunity to comment on this measure.

Harry Kim
Mayor



Wil Okabe
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawai'i
Office of the Mayor

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March 16, 2018

Senator Will Espero, Chair
Committee on Housing
Hawai'i State Capitol, Room 225
Honolulu, HI 96813

Dear Chair Espero and Committee Members:

Re: HB 2073, HD 1 Relating to Urban Redevelopment
Hearing Date: 03-20-18 – 3:00 pm; Conference Room 225

Thank you for this opportunity to support HB 2073, HD 1, as it relates to the Waiiaka Peninsula and Kanoelehua Industrial Area. We appreciate this bill especially because it recognizes the significant step that was taken in establishing the Banyan Drive Hawai'i Redevelopment Agency (BDHRA), which continues its positive efforts in a government-community partnership.

In addition to the comments from my Planning Department, we ask that you consider clarifying the scope of this bill. As written, the exemption may only apply to redevelopment work specifically undertaken by a redevelopment agency via a development agreement. Therefore, it may exclude any construction work performed by a lessee, and there does not seem to be any reason to be so narrow. We hope that the language can be amended to make clear that if a lessee undertakes work that is compatible with the redevelopment agency's plans, such work would be covered by the exemption.

We are in favor of this bill because it supports redevelopment of the Kanoelehua Industrial Area and Banyan Drive. However, revitalization of these areas also depends on legislative support of an EIS (through SB 2972); addressing State leases that will expire (via SB 3058/HB 2641); and expanding the authority of counties to use land-based financing (by way of SB 3057). We ask for your positive consideration of those measures too, as the legislative session progresses, or even their incorporation into HB 2073, HD 1.

Respectfully submitted,

Harry Kim
Mayor, County of Hawai'i

HB-2073-HD-1

Submitted on: 3/14/2018 1:55:25 PM

Testimony for HOU on 3/20/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
James McCully	Individual	Support	No

Comments:

Aloha Chair Espero

I offer Strong Support for HB2073. The BDHRA is a viable authority that is capable of immediately commissioning studies that are critical for the timely redevelopment of the Banyan Drive area.

In regards to the allocation request from funds currently designated to be deposited into the Special Lands Development Fund (SLDF) this is a reasonable use of these funds. If you review the enabling legislation for the SLDF, which is HRS171-19 (a)(2) it reads;

*(2) for the **planning, development**, management, operations, or maintenance of all lands and improvements under the control and management of the board... "*

The activities emphasized above are a prioritized use for these funds. Logically, they are generated through the income from the underlying leases, the very leases that require redevelopment. This is a classic "bootstrap" scenario and deserves your support

Mahalo

James McCully