



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of  
SUZANNE D. CASE  
Chairperson

Before the House Committee on  
WATER & LAND

Friday, February 2, 2018  
9:30am  
State Capitol, Conference Room 325

In consideration of  
HOUSE BILL 2073  
RELATING TO URBAN DEVELOPMENT

House Bill 2073 proposes to amend Chapter 171, Hawaii Revised Statutes (HRS), to allow a local redevelopment agency formed pursuant to Section 53-2, HRS, to contract with a developer for construction of non-residential uses on public lands within a redevelopment area. The bill also proposes to exempt construction under such contracts from the General Excise and Use Taxes. **The Department of Land and Natural Resources (Department) offers the following concerns and comments on the measure.**

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 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 formation) 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.<sup>1</sup> 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.

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.

Furthermore, 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. 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.

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<sup>1</sup> 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/kanoelehua-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. With respect to the former Uncle Billy's Hilo Bay Hotel site, the Board of Land and Natural Resources in 2017 authorized the Department to issue a request for interest (RFI) to determine whether any potential developers are interested in demolishing the hotel, obtaining a new lease for the site and constructing a new hotel thereon, and what terms and conditions a developer would require to undertake such a significant project.

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 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.

DAVID Y. IGE  
GOVERNOR

SHAN S. TSUTSUI  
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA  
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To: The Honorable Ryan I. Yamane  
and Members of the House Committee on Water & Land

Date: Friday, February 2, 2018  
Time: 9:30 A.M.  
Place: Conference Room 325, State Capitol

From: Linda Chu Takayama, Director  
Department of Taxation

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

The Department of Taxation (Department) offers the following comments on H.B. 2073 for the Committee's consideration.

Section 1 of H.B. 2073 authorizes a local redevelopment agency to contract for construction of non-residential uses on public land within a redevelopment area. Sections 2 and 3 of the bill exempts all construction projects that are part of an approved redevelopment plan from general excise and use taxes. The measure is effective on July 1, 2018.

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 expansion of the use of public lands made in Section 1. The Department notes this to avoid the misperception that the proposed tax exemptions are only for projects that use public lands as described in Section 1 of the bill.

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.

Third, the Department recommends amending the proposed general excise tax exemption to ensure amounts exempted are still reflected on tax returns and can therefore be tracked and measured. To do this, the Department requests the proposed new section be amended to read as follows:

**"237-\_\_ Exemption for certified or approved redevelopment projects.** (a) All gross income received from the construction of any work or improvements of a redevelopment project shall be exempt from taxes imposed by this chapter.

(b) "Construction of any work or improvements of a redevelopment project" includes all design, engineering, labor, and material costs associated with the demolition and construction of a redevelopment project that is part of a redevelopment plan adopted by a local redevelopment agency pursuant to chapter 53."

Fourth, in order to better describe the projects that may qualify for the proposed use tax exemption, the Department recommends amending the proposed exemption to read as follows:

"(11) The use of material, parts, or tools imported or purchased by a person licensed under chapter 237, which are used for the construction of any work or improvements of a redevelopment project which qualifies for the exemption in section 237-\_\_\_\_."

Finally, the Department requests that the effective date of the proposed tax exemptions be changed to January 1, 2019 to 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.

**HB-2073**

Submitted on: 1/31/2018 12:41:38 PM

Testimony for WAL on 2/2/2018 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Benton Kealii Pang, Ph.D.	Hawaiian Civic Club of Honolulu	Oppose	No

Comments:

I cannot support this bill without first identifying "public lands" as "ceded lands" and, if so, express written consent from the Office of Hawaiian Affairs.

**HB-2073**

Submitted on: 2/1/2018 1:16:06 PM

Testimony for WAL on 2/2/2018 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Garth Yamanaka		Support	No

Comments:



**LATE**

**HB2073**  
**RELATING TO URBAN REDEVELOPMENT**  
House Committee on Water and Land

February 2, 2018

9:30 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) Beneficiary Advocacy and Empowerment Committee will recommend that the Board of Trustees offer the following **COMMENTS** on HB2073, which would provide exemptions to statutory safeguards in the leasing of public lands for certain redevelopment projects in county-designated redevelopment area.

OHA acknowledges and appreciates that flexibility from statutory requirements for the leasing of public lands may allow for the expedited redevelopment of blighted areas designated as “redevelopment areas” by the various counties. OHA further appreciates the county, executive, and legislative review and approval requirements for the leasehold development agreements that this measure would authorize and exempt from the requirements of HRS Chapter 171. However, OHA notes that such a broad and unqualified exemption from Chapter 171 may unnecessarily invite leasehold development agreements that allow for the private use of public lands for generations at a time, and without a consistent mechanism to ensure sufficient returns and other benefits to Native Hawaiian and other beneficiaries of the public trust and public land trust. Such agreements may inhibit the state’s ability to explore future uses of its public lands, and potentially run afoul of the state’s fiduciary obligations to Native Hawaiians and the public.

For example, without the statutory safeguards for public land leases contained in HRS § 171-36(a), redevelopment agreements may be negotiated to lease public lands to a private entity for generations, if not a century or more. Such long term leases may not only unduly restrict the State and future generations from making sound decisions on the best use of public lands, but may also lead to a sense of entitlement on the part of the lessee, which may and has in the past resulted in the sale and privatization of leased public lands. In addition, without any objective appraisal mechanism for the leasing of public lands – as otherwise required under HRS 171-17 – negotiated development agreements may result public land leases (including leases that extend for generations) that carry nominal rents, or rents that do not provide sufficient or equal benefits to the Native Hawaiian and other beneficiaries of the public trust and public land trust.

Accordingly, should the Committee choose to move this measure forward, OHA respectfully requests amending the language found on page 1, line 13 to read as follows:

“redevelopment agency pursuant to chapter 53; provided that the development agreement shall be subject to section 171-17 and section 171-36.”

Mahalo for the opportunity to provide comments on this measure.



**HB-2073**

Submitted on: 2/2/2018 10:02:20 AM

Testimony for WAL on 2/2/2018 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
De MONT R. D. CONNER	Ho'omanapono Political Action Committee (HPAC)	Comments	Yes

Comments:

We want to provide comments. As beneficiaries pursuant to Section 5(f) of the Admissions act of 1959, we are concerned that there is no mention of OHA in this bill. We just went through hearings regarding OHA's bill seeking the PRO RATA share of the revenues from State agencies such as DLNR. All we have received from DLNR is excuses as to why they don't provide the required monies to OHA. If this bill seeks DLNR enforce particular laws, they should be informed that there is laws regarding monies to be paid to OHA. Mahalo.

**LATE**

**LATE**