

HB-2641-HD-1

Submitted on: 2/11/2018 2:40:56 PM

Testimony for EDB on 2/14/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jacqui Hoover	Hawaii Island Economic Development Board	Support	No

Comments:

McCully Works

40 Kamehameha Ave.
Hilo, Hi. 96720

Feb 14, 2018

Committee on Economic Development & Business
Chair: Cindy Evans Vice Chair: Jarrett Keohokalole

Aloha Chair Evans,

I write in Strong Support for HB2641, HD1.

This innovative and progressive bill can do so much for modernizing the use of economic public lands throughout the state. It provides a model for any community that has significant state lands affecting their economic future to get involved and work towards the best possible outcome. I'm a farmer and a business owner in Hilo since 1976. With more than 30 businesses and 200 plus employees operating in the warehouses and buildings we now operate I can see the obvious benefits that this bill will provide.

Both the Banyan Drive area as well as the KIAA have had a number of bills submitted to the legislature over the past 20 years to correct long standing deficiencies in their economic use. The County of Hawaii, noting the "blighted" nature of Banyan Drive, reconstituted the Tsunami era Hawaii Redevelopment Authority to deal with this (manmade) disaster. The Banyan Drive HRA has been active for two years now and waits funding to continue with its mission. The proposed public authority herein could replace it, or preferably, work with it, to achieve common goals.

I note that Section 4, (b), (2) of this bill already allows for "Home Rule". The local community will be the source of the decision makers on the proposed policy committee. This will be critical to its future success. I might suggest however that the Mayor of the County affected might also have some input into the committee. At least one, and as many as three, of the members could be selected from an extended list provided to the Governor by the Mayor. Or the Mayor could provide a list to the Senate President and Speaker of the House and some number from that list could be forwarded to the Governor for consideration and appointment.

To date the most effective approach to improving public land leases in terms of economic redevelopment was Act 219, 2011. This session law was specific to hotel and resort leases. Testimony during the 2017 session on HB 1469, the predecessor bill to HB 2641, by DLNR was supportive of the extension approach and referred to Act 219 as successful. This bill seeks to amend HRS 171-36 so that lessees' of other types of uses can make the same investment and improve the value and productivity of these public land leases.

The HD1 version of this bill amended the original version to a “Pilot Project”, with the public authority specific to the Banyan Drive resort area and the K.I.A.A. industrial area of East Hawaii. It’s not clear to me if the amendments to HRS171-36 are meant to be specific only to these areas during this “Pilot Project” time period while under the supervision of this authority.

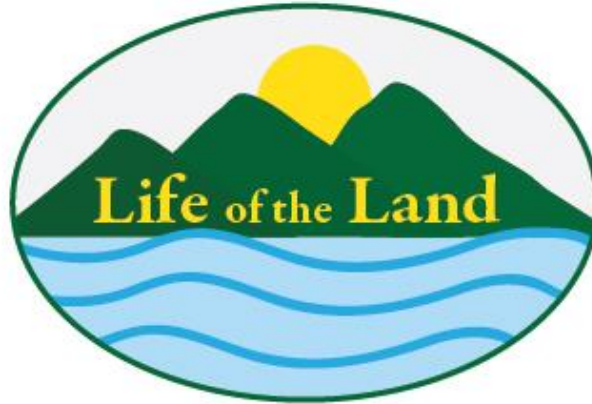
I would suggest that Part II, Section 9 (b) (2) requires some clarification. There are two aspects of the extension discussed in this subsection, the “length” (the additional number of years required to qualify for financing and amortize the improvements) and the “fixed rental period” (the period of known rents, which is a common requirement by lending agencies). The two terms are not synonymous and serve different purposes. The total term must be long enough to accommodate a full mortgage period, commonly 30 years, as well as an additional financing requirement of a period of time after the amortization period, usually 10 years. The “fixed rental period” of 20 years will likely result in lenders limiting the term of the loan to that period of time. With a 30 years amortization of the loan this will result in the lessee having to pay off the balance at that time, which could cause a hardship. The solution would be to change this language to allow for an extension of term, and the fixed rental period within that term, to qualify for a mortgage. I would propose using Federal guidelines contained in H.U.D. 4465.1 CHG as a framework for realistic and prudent policy for economic leases.

Since the goal here is to have the public land lessee reinvest in the property on an active basis, including replacing the building if required, it should be noted that the IRS has a 39-year schedule for depreciation of commercial buildings. Certain qualified leasehold improvements (e.g. tenant improvements for a sublease) may be depreciated for 15 years under current rules.

It should be noted that in the 2017 session HB575 was enacted as Act 215. HB575 initially sought to amend HRS171-36 with the exact same language as Act 219, 2011 but to include commercial and industrial public land leases. This bill was amended in the Senate to require lessees to submit their leases to a future auction process prior to consideration for an extension of their lease. The mechanism finally decided by the Conference committee is HRS171-41.6. and statutorily requires leasehold improvements to become “wasting assets” through various restrictions. Lessee’s that have considered this mechanism have determined that it is ineffective, inefficient and defeats the stated purpose of HB575. The need for corrective action remains if we are to make the best use of urban public lands in need of redevelopment.

Public lands that are not used on an optimal basis are an obvious waste of our resources and statutory language that can correct these deficiencies is sorely needed. This bill could be well utilized to correct these long standing issues.

Mahalo,
Jim McCully



P.O. Box 37158, Honolulu, Hawai`i 96837-0158
Phone: 927-0709 henry.lifeoftheland@gmail.com

COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS

Rep. Cindy Evans, Chair

Rep. Jarrett Keohokalole, Vice Chair

Wednesday, February 14, 2018

9:30am

Conference Room 309

HB 2641, HD1 RELATING TO PUBLIC LANDS

SUPPORT, PROPOSED AMENDMENT

Aloha Chair Evans, Vice Chair Keohokalole, and Members of the Committee

Life of the Land is Hawai`i's own energy, environmental and community action group advocating for the people and `aina for 47 years. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

The original bill was designed to bring back the Public Lands Development Corporation. The revised draft focuses on establishing a ten-year redevelopment district pilot project within the Kanoiehua Industrial Area and Banyan Drive region.

Proposed Amendment: The membership should be expanded by four, to include one environmentalist, one cultural practitioner, and one open space/park expert, and one sea level rise climate expert.

Mahalo,

Henry Curtis
Executive Director

February 09, 2018

COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS

Rep. Cindy Evans, Chair

Rep. Jarrett Keohokalole, Vice Chair

Testimony in Support of HB2641 HD1

Aloha Chair Evans,

Hawaii Planing Mill, Ltd. dba HPM Building Supply will be celebrating its 97th anniversary on August 8, 2018. We have over 330 employees and operate 8 facilities across Hawaii Island, Oahu and Kauai. Today we are a 100% employee-owned company and proud that all our success is returned to the communities we serve. Our roots are in Hilo, where HPM was founded in 1921. Since 1961, we have been a lessee of the State of Hawaii and were a recipient of one of the original “tidal wave” leases. The original 55-year lease term came up in 2016 and we have since been granted a 10-year lease extension which expires in 2026.

We respectfully ask for your support of HB2641 HB1. The opportunity to establish and designate public land redevelopment districts brings forward an effective framework to revitalize our Hilo community. Also important to this bill is the establishment of procedures for designating planning committees, district redevelopment plans, and redevelopment district revolving fund appropriations. We also appreciate that HB2641 amends public land lease restrictions, which will benefit the Kanoiehua industrial area where our primary 5 -acre Hilo customer center exists. This is important to us as this may allow HPM and other companies currently under lease with the DLNR to potentially renew our lease terms and make substantial improvements to our properties and facilities. Most importantly, we have confidence that the comprehensive nature of HB2641 and its mechanisms for funding provide the right ingredients to make meaningful and timely impact and will establish the economic foundation and engine for our future generations of our Hilo community to thrive. Thank you for your support of this bill.

Mahalo,



Robert M. Fujimoto, Chairman of the Board Emeritus



Michael K. Fujimoto, Chairman and Chief Executive Officer



Jason R. Fujimoto, President & Chief Operating Officer

McCully Works

40 Kamehameha Ave.
Hilo, Hi. 96720

Feb 14, 2018

Committee on Economic Development & Business
Chair: Cindy Evans Vice Chair: Jarrett Keohokalole

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Mahalo,
Jim McCully



 | 808-733-7060

 | 808-737-4977

 | 1259 A'ala Street, Suite 300
Honolulu, HI 96817

February 14, 2018

The Honorable Cindy Evans, Chair

House Committee on Economic Development and Business
State Capitol, Room 309
Honolulu, Hawaii 96813

RE: House Bill 2641, HD1, Relating to Public Lands

HEARING: Wednesday, February 14, 2018, at 9:30 a.m.

Aloha Chair Evans, Vice Chair Keohokalole, and Members of the Committee,

I am Ken Hiraki, Director of Government Affairs, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its almost 9,500 members. HAR supports HB 2641, HD1, which establishes a ten-year redevelopment district pilot project within the Kanoelehua Industrial Area and Banyan Drive region until June 30, 2028. This measure also modifies public land lease restrictions and appropriates funds.

The State currently leases state land to many entities for commercial, industrial, hotel and resort purposes. Unfortunately, lessees have virtually no economic incentive to invest in the property over the last 10 to 15 years, knowing their lease will expire. In turn, with uncertainty of one's lease extension, it has led to public lands that are underused and deteriorating.

Many of the circumstances that faced the State of Hawai'i and the City & County of Honolulu when the future of Kaka'ako was at risk can be related to the issues of the Waiakea Peninsula (Banyan Drive) and Kanoelehua Industrial Area. Existing regulations and state policies do not address the needs of the Hilo businesses operating on Public Lands resulting in a less-than-thriving commercial zone.

This measure will encourage revitalization of public lands. As a result, from a taxation perspective, this measure will enhance the revenue generating potential of these properties, including increases in the Transient Accommodations Tax from revitalized hotel and resort areas.

Mahalo for the opportunity to testify in support of this measure.





49 South Hotel Street, Room 314 | Honolulu, HI 96813
www.lwv-hawaii.com | 808.531.7448 | voters@lwv-hawaii.com

HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS
Wednesday, February 14, 2018, 9:30 AM, Conference Room 309
House Bill 2641, HD 1, Relating to Public Lands

TESTIMONY

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

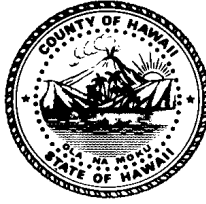
Chair Evans and Committee Members:

The League of Women Voters strongly opposes HB 2641, HD 1, which establishes procedures for designation of public land redevelopment districts and unaccountable “committees” with authority to negotiate non-bid long-term leases to existing lessees, override unspecified public land use “ordinances and rules”, and waive public collection of lease revenues within redevelopment districts.

We support public planning for redevelopment of public lands and transparent, and competitive procedures for award of long-term commercial leases on public lands. We oppose HB 2641, HD 1, because this bill contains provisions which would encourage existing commercial lessees of public lands to “play politics” to gain special unfair treatment.

Thank you for the opportunity to submit testimony

From the office of -
Council Member
District 3



Office: (808) 961-8396
Fax: (808) 961-8912
Email: sue.leeloy@hawaiicounty.gov

SUSAN L.K. LEE LOY

25 Aupuni Street, Hilo, Hawai'i 96720

The Honorable Cindy Evans, Chair
And members of the Committee on Economic Development and Business

February 13, 2018

Dear Chair Evans and EDB Committee Members,

I thank you for the opportunity to provide testimony in support of HB 2641, as amended to HD1. I represent on the Hawai'i County Council the district that includes both the Kanoelehua Industrial Area and the parcels along historic Banyan Drive.

The Waiākea Peninsula provides some of Hilo's most scenic vistas, and the huge banyan trees that line it bear witness to the visitors of the past – people like President Franklin D. Roosevelt, Amelia Earhart, Cecil B. DeMille, and Babe Ruth, to name a few. But to look upon it today is to see a shadow of what it was, or what it could become. Both the Waiākea Peninsula and the Kanoelehua Industrial Area are economic drivers for all of East Hawai'i Island. The recent renovations to the Grand Naniloa Hotel and their positive impacts to the Hilo economy are a reminder of what is possible – but we need the State, as landowner, to continue engaging with the County and its Banyan Drive Hawai'i Redevelopment Agency for coordinated improvements to redevelop and improve both areas identified in the pilot project.

Although we cannot yet see what the redevelopment district planning committee will propose as its master plan, the possibilities are endless, and I look forward to seeing what it can do.

Again, I thank you for the opportunity to provide testimony in support of HB 2641, HD1, and I ask for your approval.

Aloha Piha,

A handwritten signature in black ink, appearing to read "Sue Lee Loy".

Sue Lee Loy
Council Member, District 3

DAVID Y. IGE
GOVERNOR OF
HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
ECONOMIC DEVELOPMENT & BUSINESS**

**Wednesday, February 14, 2018
9:30am
State Capitol, Conference Room 309**

**In consideration of
HOUSE BILL 2641, HOUSE DRAFT 1
RELATING TO PUBLIC LANDS**

House Bill 2641, House Draft 1, proposes to establish a ten-year redevelopment district pilot project within the Kanoiehua Industrial Area and Banyan Drive region of Hilo until June 30, 2018, and set forth procedures for implementing redevelopment plans. The bill also modifies public land leasing restrictions relating to leases of any public lands. **The Department of Land and Natural Resources (Department) offers the following concerns and comments on the measure.**

Under Chapter 171, Hawaii Revised Statutes (HRS), the Board of Land and Natural Resource (Board) is authorized to issue leases up to a maximum term of 65 years. Section 171-32, HRS, provides that it is the policy of the State to issue leases by public auction. As the preamble to this bill indicates, at the end of their lease terms, lessees have little incentive to invest in improvements to their leasehold properties because the leases cannot be extended further. Rather, new leases of the lands must be issued pursuant to the public auction process. As a result, the properties frequently fall into disrepair.

In 2015, the Legislative Reference Bureau (LRB) issued Report No. 2, Commercial Leasing of Public Lands: State Policies Regarding Leases Near End of Term. LRB identified those states with maximum lease terms and reviewed how these states' leasing practices dealt with end of the term leases. LRB concluded its report in stating:

While some states have policies that generally address the maintenance and improvement of leased public lands, these policies appear to arise when a lease agreement is initially drafted and entered into, or within the context of

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
LAND
STATE PARKS

negotiations for a lease renewal, rather than during the last few years of an existing lease. In comparison, commercial leases of public lands in Hawaii include a general covenant that requires lessees to maintain the property. The Bureau offers no conclusions regarding which, if any, of the policies employed by the other states represents practices that should be incorporated into the commercial leasing of public lands in Hawaii.

PART I of the bill seeks to promote the redevelopment of public lands in the Kanoelehua Industrial Area and Banyan Drive area of Hilo under a ten-year pilot project. Each area or district would have its own nine-member planning committee to act as the policy-making body for the district. In addition to preparing redevelopment plans for the designated districts, the planning committee would have authority to renew or renegotiate any lease in connection with any project contained in the redevelopment plan for the designated district.

Kanoelehua Industrial Area and Banyan Drive are the Department's primary industrial and hotel/resort landholdings on Hawaii Island, respectively. Regarding the Kanoelehua 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 Kanoelehua Avenue, Central Supply on Makaala Street, Paradise Plants, and Kitchen and Bath Supply on Wiwoole Street, and the Coca-Cola bottling plant on Holomua Street.

With respect to Banyan Drive, although a number of properties 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 (later 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 the Department has been working the County of Hawaii Banyan Drive Hawaii Redevelopment Agency (BDHRA), and prior to that the Banyan Drive Task Force, 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.¹

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/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.

PART II of the bill proposes to amend Chapter 171, HRS, to allow the Board to extend existing leases for an unlimited number of years in exchange for the lessee making substantial improvements to existing improvements or constructing new improvements under an approved development agreement.²

In the past, the Department has generally opposed legislative bills that proposed to allow existing lessees to acquire new lease terms on leases that are scheduled to expire soon, following instead general public policy to promote fairness in competition in access to public property. One reason for the Department's position was the statutory policy mentioned above favoring issuance of leases by public auction. Another reason was to preserve the State's legal right to the remaining value of the improvements after the lease term; when leases expire, the lessees' improvements on the land revert to State ownership pursuant to the express terms of the lease, unless the State directs the lessee to remove the improvements. Assuming the improvements have some remaining useful life, the State is then in a position to auction leases of improved properties at potentially greater rents than the State would receive for a ground lease alone,³ which amounts can in turn be applied to public purposes.

The Department recognizes that a prior legislative act providing for extensions of resort leases did have a beneficial effect on one State lease on Banyan Drive. The lessee of Hilo Hawaiian Hotel property took advantage of Act 219 Session Laws of Hawaii (2011) to extend its lease from 2031 to 2068, making substantial improvements to the property pursuant to a development agreement negotiated between the State and the lessee. However, even Act 219 included a limit on the duration of a lease extension – the aggregate of the remaining lease term and any extension could not exceed 55 years.

The Department thus acknowledges different public policy benefits from different approaches. Based on this, the Department now takes a neutral stance on legislative proposals to extend existing leases. The Department believes, however, that indefinite extensions of leases that preclude the public from ever having an opportunity to bid on a lease at auction are not the appropriate solution.

In addition, the Department identifies the following issues with respect to this measure:

2 Although the bill places a cap of 20 years on extensions of the "fixed rental period" of leases, "fixed rental period" needs to be clearly distinguished from the "lease term." The Department interprets "fixed rental period" to mean the period of time for which the rent under a lease is known prior to the next rent reopening. Most of the Department's leases have rent reopenings at 10-year intervals. Public auction leases occasionally have longer fixed rental periods initially, especially when the successful bidder is required to construct new improvements. "Lease term" refers to the total lease duration from commencement to expiration. The bill seems to conflate these two concepts.

3 The Department also 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/>

The bill creates an additional layer of bureaucracy in government

The bill provides that the Legislature may designate an area of public lands as a redevelopment district. Upon such designation, a nine-member planning committee is to be established as a policy-making board for the district. The planning committee, who serves without compensation, then appoints a district administrator for the district who is to be compensated. The planning committee may hire additional staff as well.

With respect to Banyan Drive, the bill creates a new layer of redevelopment process in addition to the task force and the BDHRA: the WPRD and a planning committee to serve as a policy-making board for the district. In addition to the administrator, the planning committee would likely require a secretary and perhaps more staff for proper administration, as well as office equipment, supplies, and travel expenses for the eleven committee members. There will be added expense for the committee to comply with HRS Chapter 92's sunshine law requirements. Further, the committee's actions may be subject to contested case hearings and appeals. The bill provides for a general appropriation in an unspecified amount to carry out the purposes of the measure. A conservative budget for such a planning committee, including payroll, fringe benefits, hearing officer fees, and other costs and expenses, would be \$500,000 annually. If the appropriation is set an amount lower than that figure, then the difference would apparently be covered by the Department's revenues from leases in the designated district.

The bill proposes an unnecessary, bureaucratic addition to the Department's operations. As explained above, the Department has been working with the BDHRA regarding plans for the Banyan Drive area. Additionally, as mentioned above, the Department has procured consultants for Banyan Drive and the Kanoelehua Industrial Area in Hilo to analyze market trends, and explore options for redevelopment and rehabilitation of specific parcels or areas. After 2013 legislative session, former Governor Abercrombie approved the formation of a Banyan Drive Task Force that met a number of times to discuss many of the issues covered by the bill as they relate to the Banyan Drive area. The task force members included representatives from local businesses, the former executive director of the Big Island Visitors Bureau, the executive director of the 'Imiloa Astronomy Center of Hawaii, and representatives from the Hawaii County Mayor's Office and State legislators also attended the meetings. This informal task force worked well and at limited expense to the State.

There are practical problems with the bill

As noted above, House Bill 2641, House Draft 1, allows the Legislature to designate redevelopment districts on public lands. As defined in Section 171-2, HRS, public lands exclude lands used as roads and streets. While the State owns some contiguous parcels in both the Banyan Drive area and Kanoelehua Industrial Area in Hilo, it does not own or manage the roads, which often include utility lines and other infrastructure. Accordingly, to the extent the bill seeks to improve infrastructure in a given area, a redevelopment district designated by the Legislature would likely not include important infrastructure components. Rather, the district would be confined to the particular parcels under the Department's management.

The Department relies on the revenues from leases of public lands to fulfill its fiduciary duties

The bill proposes to appropriate an undetermined amount from the Special Land and Development Fund (SLDF) as may be necessary for fiscal year 2018-2019 to carry out the purposes of the bill. 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 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.

The authority to construct, improve, renovate and revitalize areas within the counties is already authorized under Section 46-80.5 and Chapter 53, HRS.

The bill seeks to redevelop the infrastructure and facilities within designated redevelopment districts. However, the bill is unnecessary because there are already existing laws and ordinances that provide the process and financing to make such improvements, as evidenced by the County of Hawaii's creation of BDHRA under Chapter 53, HRS.

Section 46-80.5, HRS, authorizes the various counties to enact ordinances to create special improvement districts for the purpose of providing and financing such improvements, services, and facilities within the special improvement district as the applicable county council determines necessary or desirable to restore or promote business activity in the special improvement district. This is the same purpose sought by this bill.

Under the authority of Section 46-80.5, HRS, the County of Hawaii, as an example, enacted Chapter 12 of the Hawaii County Code, which authorizes the County of Hawaii to create improvement districts to construct new, or improve existing infrastructure and facilities, including roadways and utility infrastructure and improvements. It should also be noted that the responsibilities for maintaining such improvements within the proposed redevelopment districts are already vested with the County of Hawaii. Most, if not all, of the public roadways and

utility infrastructure within any potentially designated district boundaries have been dedicated to the County.

Thank you for the opportunity to comment on this measure.



Hawaii's Thousand Friends

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February 14, 2018

COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS

Rep. City Evans, Chair

Rep. Jarrett Keohokalole, Vice Chair

Chair Evans

Vice Chair Keohokalole

Committee Members

HB 2641 RELATING TO PUBLIC LANDS

Hawaii's Thousand Friends opposes HB 2641 that creates a ten-year redevelopment district pilot project within the Kanoiehua Industrial Area and Banyan Drive region on Hawai'i Island.

What are the problems that require the creation of a 10-year Redevelopment District Pilot Project to solve?

HB 2641 is unclear about following state and county ordinances, rules and laws.

Section 4 (B) "The use or uses ...shall be put in conformance ...with applicable state and county laws and ordinances.

Section 6 "In carrying out its planning activities, the committee shall comply with applicable state and county statutes, ordinances and rules."

Section 6 (f) states, "*The designated district redevelopment plan shall supersede all other inconsistent ordinances and rules relating to the use, planning, development, and construction on public land in the designated district.*" (Emphasis added)

Will the Redevelopment District adhere to state and county statutes, ordinances and rules or is the Redevelopment District exempt from existing state and county planning laws, ordinances and rules?

Will the Redevelopment District planning committee follow Chapter 91 rule making?

If the planning committee can reduce or waive lease rental on any lease of public land for any project in the designated district what are the funding mechanisms to administer the Redevelopment District?

Since the Redevelopment District planning committee will have control of the Redevelopment District which entity will pay for *district-wide improvements* to public facilities?

If public land lessees within the Redevelopment District have to apply to the Board of Land and Natural Resources for a lease or lease extension what is the purpose of creating this pilot project?

HB 2641 seems to be all about making “improvements” yet the types of improvements envisioned are not defined. Statements such as “...lessee to make substantial improvements to the existing improvements or to construct new improvements” are unclear and subjective. Improvements can be almost anything - additions to or enhancements of raw land or a building, drains, sewers, sidewalks, streets, trees, etc.

HB 2641 HD1 deletes the current 65 years limit on use of public land in exchange for a “lessee to make substantial improvements to the existing improvements or to construct new improvements.”

Does Section 9 (2) mean that if a lessee has a 65-year lease that in exchange for some sort of improvement BLNR can grant a lease for an additional 20 years on public land thus making the lease good for 85 years? At what point in the leasing process does public land stop being public land – 85 years, 95 years, 100-years?

We oppose this exclusive legislation that gives current lessees of public lands in the Kanoelehua Industrial Area and Banyan Drive region special and inequitable treatment.



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

ON THE FOLLOWING MEASURE:

H.B. NO. 2641, RELATING TO PUBLIC LANDS.

BEFORE THE:

HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT AND BUSINESS

DATE: Wednesday, February 14, 2018 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): Russell A. Suzuki, Acting Attorney General, or
Linda L.W. Chow, Deputy Attorney General

Chair Evans and Members of the Committee:

The Department of the Attorney General has the following comments on this bill.

This bill, as revised in H.D. 1, establishes a ten-year pilot project for the redevelopment of the Kanoelehua Industrial Area and the Banyan Drive region of Hilo, Hawaii. The bill establishes procedures for the creation of a planning committee and redevelopment plans for the identified areas. The bill also amends section 171-36, Hawaii Revised Statutes (HRS).

We believe that the amendment of the bill to create a pilot redevelopment project for the public lands only within the Kanoelehua Industrial area and Banyan Drive region of Hilo, Hawaii, may be deemed to be special legislation, in violation of article XI, section 5, of the Hawai'i Constitution.

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.

Because the bill is clearly an attempt to exercise legislative power over lands owned or under the control of the State, the next issue is whether this bill, if passed, would be a general law or a special law.

The most recent case on this issue is *Sierra Club v. Dept. of Transportation of State of Hawai'i*, 120 Hawai'i 181, 202 P.3d 1226 (2009), as amended (May 13, 2009) ("Sierra Club"). In that decision, the court adopted a two-step analysis to determine if a law was special legislation.

The first step is to determine "whether the classification adopted by the legislature is a real or potential class, or whether it is logically and factually limited to a class of one and thus illusory." *Sierra Club*, 120 Hawai'i at 203-04, 202 P.3d at 1248-49. A class is not illusory if it had potential future applicability and could include other members in the future. *Sierra Club*, 120 Hawai'i at 204, 202 P.3d at 1249. The actual probability of other members joining the class must be considered in determining whether a class is illusory. *Id.*, at 214, 202 P.3d at 1259.

The second step of the analysis requires determination of whether the class was reasonable. *Id.* To be reasonable, the classification must be based on some distinguishing peculiarity and must reasonably relate to the purpose of the statute. *In re Interrogatory Propounded by Governor Roy Romer on House Bill 91S-1005*, 814 P.2d 875, 887 (Colo. 1991).

The classification in section 1 of H.D. 1 limits application of this bill to only the Kanoelehua Industrial Area and Banyan Drive region. The class, as defined, is limited only to the two named areas. There are no provisions for other redevelopment areas to be created or for other areas to be included in the future. The pilot project will also expire in ten years, providing a limited opportunity for other areas to be included. Part I of the bill, that creates the classification, appears to be special legislation and may violate article XI, section 5, of the Hawai'i Constitution.

By contrast, we believe that the original form of the bill that allowed for the designation of redevelopment districts by the Legislature, and the creation of redevelopment planning committees for those districts, was not special legislation. Under that version of the bill, even though only one redevelopment district was being designated under the bill, other redevelopment districts could be created in the future.

Should this bill go forward, we have the following comments on some technical issues in the bill. Under section 26-35(a)(8), HRS, when a board or commission is

placed within a department for administrative purposes, the head of the department shall not have the power to supervise or control the board or commission in the exercise of its functions, duties, and powers. However, section 5 of the bill provides that the committee shall have the powers and duties that are delegated to the committee by the Board of Land and Natural Resources (Board). The Board may only delegate its powers and duties to the chairperson or employees of the DLNR that are subject to the Board's control and responsibility. HRS section 171-6(8). The Board cannot delegate its powers and duties to the committee.

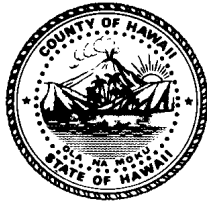
A second issue is that the proposed section 4, subsection (b), states that the committee shall be a policy-making committee. However, the powers of the committee, as set forth in section 5, subsection (4), includes the authority to renew or renegotiate any lease in connection with any project contained in the redevelopment plan for the designated district, on terms and conditions as the committee deems advisable, without the need to comply with any other provisions contained in chapter 171, HRS. The power of the committee to actually renew or renegotiate leases is inconsistent with the establishment of the committee as a policy-making committee.

A third issue is based both on section 5, paragraph (4), and section 9, which allow for the renegotiation or modification of existing leases. The court in *State v. Kahua Ranch, Ltd.*, 47 Haw. 28, 384 P.2d 581 (1963), made it clear that reformation of leases issued pursuant to public auction is not allowed as it would defeat the very purpose of the statutory requirements of public notice and sale at auction. *Id.*, at 36-37, 384 P.2d at 587. If any of the leases within the redevelopment areas were originally let by public auction, those leases could not be renegotiated or modified despite the wording in the bill.

Lastly, although the committee has the power to renew or renegotiate leases within the designated district, there is no provision in the bill that transfers any of the leases in the designated district to the committee. Until and unless the leases are transferred to the committee, the committee would have no authority to amend the terms of the lease. The lessor, for many of the leases in the designated district, would still be the Board. The committee cannot amend a lease to which it is not a party.

For the above reasons, we respectfully ask the Committee to hold this bill.

Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

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February 13, 2018

Testimony by
MICHAEL YEE
Director, County of Hawai'i Planning Department
before the
COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS
Wednesday, February 14, 2018, 9:30 AM
State Capitol, Conference Room 309
in consideration of
HB 2641, HD1
Relating to Public Lands

The County of Hawai'i Planning Department supports legislation aimed at resolving issues with expiring State leases in the Banyan Drive and surrounding area. It is critical to any future economic revitalization of the area that State-owned properties provide lease terms that support investment and development.

HB-2641-HD-1

Submitted on: 2/13/2018 6:56:39 PM

Testimony for EDB on 2/14/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rodrigo Romo	Individual	Support	No

Comments:

Aloha Chair Evans and Vice Chair Keohokalole:

Thank you for the opportunity to present testimony in support of HB2641. Areas like Banyan drive in Hilo should be the most attractive areas in town, its location and its natural beauty are second to none. Yet, the conditions of the location, the lack of maintenance or improvements to its infrastructure have it a lamentable situation.

I hope you will support this bill.

Mahalo

HB-2641-HD-1

Submitted on: 2/14/2018 6:33:22 AM

Testimony for EDB on 2/14/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ashley Kierkiewicz	Individual	Support	No

Comments:

Aloha, Chair Evans, Vice-Chair Keohokalole and Members of the House Economic Development & Business Committee:

I write in **support** of HB 2641 HD1, relating to public lands.

The bill would establish a 10-year Pilot Project for the redevelopment of Kanoelehua Industrial Area and the Banyan Drive region. Take a drive or a stroll through these areas and there's no question investment in these areas is more than critical; it's absolutely necessary.

I suggest updating the mix of the policy-making planning committee members to include individuals with knowledge, expertise and experience in cultural and environmental factors, who would provide much needed perspective on important issues.

Don't continue to let State land and property continue to sit idle, waste and deteriorate. Resolve to address the issues.