



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 3058, S.D. 2, H.D. 2, RELATING TO PUBLIC LANDS.

**BEFORE THE:**

HOUSE COMMITTEE ON FINANCE

**DATE:** Wednesday, April 4, 2018

**TIME:** 2:30 p.m.

**LOCATION:** State Capitol, Room 308

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

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Chair Luke and Members of the Committee:

The Department of the Attorney General has the following concerns with this bill:

This bill, as revised in H.D. 2, provides for 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 171-41.6, Hawaii Revised Statutes (HRS). Our concerns focus on the issues that the pilot project may be deemed special legislation and that the amendments to section 171-41.6, HRS, are inconsistent with existing laws and violate the public trust.

Special Legislation

We believe that, because the bill creates a pilot redevelopment project only for the public lands within the Kanoelehua Industrial area and Banyan Drive region of Hilo, Hawaii, and does not allow for the project to be expanded to include any other areas, it 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. 2 limits application of this bill to only the Kanoiehua 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.

#### Amendments to Section 171-41.6, HRS

In section 9 of H.D. 2, the bill amends section 171-41.6 that allows current lessees to request a new lease in connection with a request for interest process. The concerns relate to the rent that can be charged for new leases, the required form of the leases, and the required appraisal by the current lessee.

#### Rent

Subsection (f)(3) provides that the terms for any new lease will be determined by the Board and shall establish the rent at the fair market rent based upon the appraised value of the land. Setting the rent at only the fair market value of the land may not capture the true value of the leased property as it does not include the value of the improvements on the land.

The terms of a standard lease issued by the Board provide that improvements constructed by a lessee belong to the lessee until the expiration or termination of the lease. At the expiration or termination of the lease, the improvements become the property of the Board unless the Board elects to have the lessee remove the improvements. Once the Board assumes ownership of the improvements, the Board may thereafter lease the property as improved property, potentially for a higher lease rent than if the property is vacant and unimproved, i.e. rent based only on the value of the land. Setting the rent at the fair market value of the land does not adequately capture the value of leasing the property with improvements. This is potentially a violation of the State's public trust duties.

Under section 5(f) of the Admission Act, the lands granted to the State of Hawai'i, "together with the proceeds from the sale or other disposition of any such lands and the income therefrom, shall be held by said State as a public trust." The public lands trust created by the Admission Act is also recognized in the Hawaii Constitution. Article XII, section 4, provides:

The lands granted to the State of Hawaii by Section 5(b) of the Admission Act and pursuant to Article XVI, Section 7, of the State Constitution, excluding therefrom lands defined as

“available lands” by Section 203 of the Hawaiian Homes Commission Act, 1920, as amended, shall be held by the State as a public trust for native Hawaiians and the general public.

The State is required to deal with the public land trust not just as a manager, but as a trustee of the lands. (“The duties imposed upon the state are the duties of a trustee and not simply the duties of a good business manager.” *In re Water Use Permit Applications*, 94 Hawai‘i 97, 143, 9 P.3d 409, 455 (2000).) The State, as trustee, “must adhere to high fiduciary duties normally owed by a trustee to its beneficiaries.” *Office of Hawaiian Affairs v. Hous. & Cmty. Dev. Corp. of Hawaii*, 117 Hawai‘i 174, 194, 177 P.3d 884, 904 (2008), rev’d and remanded sub nom. *Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163 (2009). The courts have applied the following three specific trust obligations to the State in the discharge of its duties: “(1) the obligation . . . to administer the trust solely in the interest of the beneficiary; (2) the obligation that the trustee deal impartially when there is more than one beneficiary; and (3) the obligation to use reasonable skill and care to make trust property productive.” *Id.*, 117 Hawai‘i at 195, 177 P.3d at 905.

Depending on the improvements that are located on the property, the amended provision could result in a significant difference in the rent that could be charged. The inability of the State to charge rent based on the land and improvements may be seen as inconsistent with the State’s duties as a trustee of the public land trust as the State could be seen as not making the most productive use of the land as possible. The bill might be considered to violate the spirit, if not the letter of, article XII, section 4.

There is a similar concern with subsection (e) that requires that if the lease is auctioned that the upset price will be the current rent. In most cases, the current rent will only reflect the rent for the land itself and does not include the use of the improvements. The bids at the auction may be artificially kept low based on the lower starting point of the current rent.

#### Form of Lease

Subsections (d) and (f) both require that the terms of any lease conform to the requirements of any federal or private lending institution and to the guidelines of the

Federal Department of Housing and Urban Development Rules for Ground Leases for commercial properties (HUD, 4465.1 CHG). For federal or private lending institutions, there is no standard form. The Board could not anticipate the leasing requirements for all lending institutions. In addition, some of the requirements by lending institutions, such as indemnification or provisions on default, conflict with existing statutory provisions.

The HUD rules that are specifically referenced have specific requirements that are contrary to existing laws. These include the requirement that the lease be for the maximum term that the lessor has legal authority for, but not less than fifty years. This removes discretion from the Board to set the terms of the lease. More importantly, the HUD rules do not appear to allow for variable lease payments based on the results of future appraisals. A standard term for leases from DLNR is to allow for periodic rent reopenings based on fair market rental as determined by appraisal. HRS § 171-17(d). Instead, the HUD rules appear to require fixed rental for the entire term of the lease. For leases that are sixty-five years long, a fixed rental rate may not represent fair market rent for the property and may be a breach of the State's public trust duties.

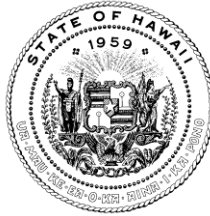
#### Appraisal

Subsection (a) allows the current lessee to submit an appraisal for the land and existing improvements to initiate the request for interest process. Subsection (b)(1) then requires the DLNR to review for compliance the appraisal submitted by the lessee. There are three issues with this situation. First, on the face of the bill, it is not clear what is meant by the term "review for compliance" in subsection (b)(1). It is not clear what standard the appraisal must meet. Second, section 171-17, HRS, provides that appraisals of public lands for sale or lease at public auction are to be performed by a staff appraiser or by a disinterested appraiser contracted by the Board and are then used as the upset price. The amendment to subsection (a) is contrary to the process established in section 171-17. Third, if the current lessee is awarded a new lease, under subsection (f), a new appraisal pursuant to section 171-17 will still have to be done.

To remedy these issues we suggest the following:

1. Subsection (a) - remove the wording requiring the current lessee to provide an appraisal;
2. Subsection (b) - reinstate the wording requiring the Board to conduct an appraisal of the land and improvements and remove the language regarding review of the lessee's appraisal;
3. Subsection (d) - remove the wording requiring the terms of the lease to conform to the requirements of any federal or private lending institution;
4. Subsection (e) - reinstate the wording that would require the upset price to be the greater of the current rent or the fair market value of the land and any improvements; and
5. Subsection (f) - remove the new paragraph (2) and reinstate the wording deleted from the prior paragraph (2) (renumbered as paragraph (3)).

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  
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HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

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  
FINANCE

Wednesday, April 4, 2018  
2:30pm  
State Capitol, Conference Room 308

In consideration of  
SENATE BILL 3058, SENATE DRAFT 2, HOUSE DRAFT 2  
RELATING TO PUBLIC LANDS

Senate Bill 3058, Senate Draft 2, House Draft 2 proposes to establish a ten-year redevelopment district pilot project within the Banyan Drive region and Kanoelehua Industrial Area of Hilo until June 30, 2028, and set forth procedures for implementing redevelopment plans through a planning committee. The bill also proposes to modify public land leasing restrictions relating to leases of any public lands. The Department of Land and Natural Resources (Department) notes that House Draft 2 transfers the decision-making authority for redevelopment projects to the Board of Land and Natural Resources (Board) and makes additional substantive changes. **The Department has serious concerns with most of the provisions of this measure and must therefore oppose it.**

PART I of the measure provides for the establishment of the Banyan Drive region as a redevelopment district and the Kanoelehua Industrial Area as a designated district until June 30, 2028. PART I additionally provides for the establishment of a single planning committee as a policy-making committee for both the Banyan Drive redevelopment district and the Kanoelehua Industrial Area designated district. Section 4 of PART 1 provides for the appointment of a district administrator with the approval of the Board, who shall be the chief executive officer for the pilot projects. This section also requires the planning committee to hold live-streamed meetings. The Department understands there is considerable expense in live-streaming meetings, and recommends a general appropriation for the committee's operations to factor in the cost of live-streaming.

PART I, SECTION 5 provides that the planning committee may make recommendations to the Board regarding the renewal or renegotiation of leases, or the reduction or waiver of lease rents

with the current lessee of any public land lease in the districts. The Department agrees that it is best for the decision-making authority on such matters to remain with the Board. However, the language at subsection 5(7) of PART I then gives the planning committee the power to:

(7) Make and execute all contracts and instruments that are necessary for the exercise of the committee's powers and functions relating to the redevelopment district and the designated district, including the engaging of the services of consultants for the rendering of professional and technical assistance and advice; provided that any contract with a contractor furnishing construction work shall require compliance with the wage and hour requirements of chapter 104, Hawaii Revised Statutes, and shall require the contractor to furnish weekly payroll reports to the committee to ensure compliance; . . . .

If the planning committee's function is to make recommendations to the Board, it is not clear why the committee would need to enter into a contract for the furnishing of construction work; such contracts would be between the Board's lessees and the contractor.

Currently, Chapter 104, HRS, applies to projects built by or for, or funded by, the State or a county, such as government offices, schools, libraries, courthouses and other government facilities. This measure could potentially expand the law to include private projects located on leases of public lands under the jurisdiction of the Department. The Department currently has leases issued to lessees for private operations such as hotels, industrial and warehouse operations and retail centers. Examples of these leases include the Sand Island Industrial Park and West Ridge Mall on Oahu, and the Grand Nanioloa and Hilo Hawaiian hotels and HPM hardware store in Hilo, which are all leases of public lands. If private businesses on public land are going to be subject to this legislation, then perhaps all projects, whether located on public or private land, should be made subject to the law. Otherwise, public lands will be placed at a significant disadvantage in the marketplace for resort, industrial and commercial operations. Business may choose to locate their operations on private land, which will ultimately lead to a reduction in ceded land revenues for the State as well as the Office of Hawaiian Affairs.

Furthermore, this measure could potentially require the Department to have oversight over lessees and sublessees above and beyond any rights afforded to and responsibilities required of landlords. The Department's land management staff would have to ensure that its lessees and any sublessees are complying with labor law requirements.<sup>1</sup> The Department does not even have the expertise or staff to evaluate payroll data for compliance with Chapter 104, HRS.<sup>2</sup>

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1 This could be problematic and require a reorganization and consultation with the union for the land management division because the staff consists of land managers and not labor law specialists. Position descriptions and class specifications may need to be changed, which may make it difficult for current staffers to qualify for the position with the added labor law requirements.

2 With the impact of reduced revenues, it would be very difficult financially for the land management division to afford adding new positions or contracting for labor law specialists.



PART II, SECTION 9 of the measure proposes to amend Section 171-41.6, HRS, relating to new leases. Section 171-41.6, HRS, codifies Act 215 Session Laws of Hawaii (2017) allowing lessees of commercial or industrial lands who are in the last ten years of their lease terms to voluntarily enter into a process to determine interest in future land leases. If no interest is expressed other than by the current lessee, then the lessee would have the ability to directly negotiate a new lease with the Department. The current measure would amend this newly enacted law in a number of significant ways. To begin with, subsection (a) of PART II, Section 9, opens the process up to lessees in the last 20 years of their lease terms, and adds hotel and resort leases to the class of leases eligible for new leases (commercial and industrial leases are eligible under the current law). Subsection (a) additionally allows lessees to contract directly with a qualified, disinterested appraiser for an appraisal of the land and improvements thereon and submit it to the Department to initiate the lease renewal process.

Under the existing law, once the lessee notifies the Department of its intention to seek a new lease under Section 171-41.6, HRS, the Department has 180 days to appraise the land and improvements. The current measure would relegate the Department's role to reviewing for compliance the appraisal submitted by the lessee, and there is no provision in the bill addressing the process to be followed in the event the Department disagrees with the lessee's appraised value. The interpretation least favorable to the State is that the Department must accept whatever value is submitted to it. This could result in the issuance of leases at less than fair market rent, which would be a violation of the Board's public trust duties.

Additionally, as proposed under subsection (b) of the current measure, the Department is allowed only 60 days to review lessee's appraisal report and publish a request for interest (RFI) and request for qualifications (RFQ) notice inviting prospective applicants to express interest in leasing the land. Sixty days from the receipt of lessee's request is not a realistic amount of time for the Department to review the appraisal report, prepare a staff report on the request to the Board, schedule the matter for a Board meeting, and publish an RFI/RFQ. Instead, the 180 days provided for under existing law should be preserved.

Another significant change in subsection (c) is that the measure proposes to reduce the time the Department has to determine whether any qualified interested persons responded to the RFI/RFQ. Existing law gives the Department 90 days to conduct the review; the current measure cuts this time to 45 days. When a lessee can commence the new lease process under the measure 20 years prior to lease expiration, it is not clear why the Department's processing time needs to be shortened as drastically as the measure proposes. The unrealistic processing times will either result in the Department immediately falling into non-compliance with law, or will prevent the Department's staff from conducting thorough analyses of the extension requests and responses to RFI/RFQs. Either way, the current measure is not in the State's best interests.

Yet another major change proposed in subsection (d) of the measure is that any new lease negotiated under the bill must conform to the requirements of any federal or private lending institution qualified to do business in the State. Conflicts with other statutory provisions under Chapter 171, HRS, could arise if the federal or private lending institutions insist on options to renew leases, different times to cure lease defaults, or different forms of curing lease defaults than those allowed by law.

Furthermore, the measure apparently gives lessees the right to require the Department to proceed with the auction of a new lease on a parcel on 45 days' notice if a lessee so elects, pursuant to subsection (e). Again, because all land dispositions require Board approval, it is not possible for the Department to process a lessee's request, present a staff report on the request to the Board at a public meeting, process all of the documentation required for a public auction (which requires review and approval of the lease form by the Department of the Attorney General), and conduct the auction within 45 days of a lessee's request.

Another alarming provision in the current version of the measure is that the auction upset rent shall be the current rent under the lease, also pursuant to subsection (e). Most of the Department's leases include rental reopenings at regular intervals, usually every ten years. It is therefore possible that the last reopening of a lease may be up to 10 years prior to the end of the lease term when a new lease would normally be auctioned. Moreover, the last rent reopening of a lease would be based on land only. When the lease expires, ownership of any improvements on the land automatically reverts to the State. The upset rent for a new lease to be sold at auction must be based on the value of the land and improvements. To use a 10-year old valuation for land only as the basis for the upset rent at auction is breach of the Board's fiduciary duty and public trust obligations and not in the State's best interest.

Further, the measure proposes to require new leases to include a provision at subsection f(2) of PART II, SECTION 9, that:

(2) For the purposes of mortgage or finance shall conform substantially to the guidelines of the Federal Department of Housing and Urban Development Rules for Ground Leases for commercial properties (HUD, 4465.1 CHG) or to qualify for any federal or private lending institution qualified to do business in the State; .

...

Some of the required terms under the HUD rules violate current statutory terms such as the HUD requirement that the term of the lease has to be for the maximum term that the lessor has legal authority for, not less than 50 years. This takes discretion away from Board under Chapter 171, HRS. Also, the HUD rules provide that variable lease payments based on the results of future appraisals are not allowed. What is allowed are fixed percentage of gross receipts or net cash flow set at the same rate for the entire term of the lease, or a stated dollar amount that must remain fixed for at least 10 years more than the term of the insured mortgage. As noted above, the Board uses regular rental reopenings under its long-term leases to ensure that the State is receiving market rent for commercial use of public trust assets. Binding the Board to HUD's rules could itself cause the Board to run afoul of its fiduciary duties.

Similar to the concern with the establishment of upset rent at auction, the Department is concerned with the provision of subsection f(3) of the measure directing that the rent for any new lease executed pursuant to the measure shall be based on land only. Because the measure proposes to allow for the issuance of new leases, the State's ownership of improvements at the expiration of existing leases should be recognized and new lease rents should be based on land and improvements. Issuing new leases with rents based on land values only is a windfall to the new lessee and breach of the Board's public trust obligations.

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 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, 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 offer new leases to existing lessees under proper circumstances. The Department believes, however, that giving State lessees broad powers to determine when a new lease should be issued, how long the process should take, and the rent that should be charged for it is not the appropriate solution.

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

***The bill creates an additional layer of bureaucracy in government***

As noted above, the bill provides for the establishment of the Banyan Drive region as a redevelopment district and the Kanoelehua Industrial Area as a designated district. A nine-member planning committee is established as a policy-making board for the districts. The planning committee, who serves without compensation, then appoints a district administrator for the districts 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 Banyan Drive Task Force and the County of Hawaii Banyan Drive Hawaii Redevelopment Agency (BDHRA): 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 sunshine law requirements under Chapter 92, HRS. Further, the committee's actions may be subject to contested case hearings and appeals. 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 (without taking into account the cost of live-streaming planning committee meetings).

This measure proposes an unnecessary, bureaucratic addition to the Department's operations. Although a number of properties in the Banyan Drive region 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 with 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. 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 Special Land and Development Fund (SLDF) on consultant services and studies dedicated to the public lands at Banyan Drive.<sup>3</sup>

With respect to 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. The Department has spent approximately \$138,000 on planning studies for the Kanoelehua Industrial Area since 2014.<sup>4</sup>

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3 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.

4 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/kanoelehua-and-banyan-drive-studies/>

In summary, the Department is already actively pursuing redevelopment options for both the Banyan Drive region and Kanoiehua Industrial Area.

**There are practical problems with the bill**

As noted above, Senate Bill 3058, Senate Draft 2, House Draft 2 designates 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 region and Kanoiehua 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, the redevelopment districts will likely not include important infrastructure components. Rather, the districts 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 as may be necessary for Fiscal Year 2018-2019 to carry out the purposes of the bill. In addition to this bill seeking an appropriation of the revenues from the SLDF for the redevelopment areas, there are various other redevelopment agency bills moving this session seeking to take up to 50% of the revenues generated from the Banyan Drive leases. These lands are ceded and the Office of Hawaiian Affairs 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 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) but receive low revenue in return.

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.***

To the extent the bill seeks to redevelop the infrastructure and facilities within designated redevelopment districts, 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.

Harry Kim  
Mayor



Wil Okabe  
Managing Director

Barbara J. Kossow  
Deputy Managing Director

## County of Hawai'i Office of the Mayor

25 Aupuni Street, Suite 2603 • Hilo, Hawai'i 96720 • (808) 961-8211 • Fax (808) 961-6553  
KONA: 74-5044 Ane Keohokālole Hwy., Bldg C • Kailua-Kona, Hawai'i 96740  
(808) 323-4444 • Fax (808) 323-4440

April 3, 2018

Representative Sylvia Luke, Chair  
Committee on Finance  
Hawai'i State Capitol, Room 308  
Honolulu, HI 96813

Representative Ty J.K. Cullen, Vice-Chair  
Committee on Finance  
Hawai'i State Capitol, Room 308  
Honolulu, HI 96813

Dear Chair Luke, Vice-Chair Cullen, and Committee Members:

**Re: SB 3058, SD 2, HD 2 Relating to Waiakea Peninsula and Kanoelehua Industrial Area**  
**Hearing Date: 04/04/2018 –2:30 pm; House Conference Room 308**

Thank you for this opportunity to comment on SB 3058, SD 2, HD 2. We continue to have concerns about Part I of this bill, but hope that it will be approved with further amendments proposed by other stakeholders and be available for consideration in conference. We fully support Part II of SB 3058, SD 2, HD 2.

Part I of SB 3058, SD 2, HD 2 would not be our first choice in resolving the issues surrounding the redevelopment of State land on the Waiakea Peninsula, but it would be a step forward. Our preferred bill, SB 2972, SD 2, HD 1 is also being heard today, and we are hoping that some version of both bills can move forward, giving the community maximum opportunity to consider and weigh in on the various options at the time of conference.

As to the overall issue of the Waiakea Peninsula, we agree that Banyan Drive is underutilized and in disrepair. It is the center of tourism in East Hawai'i, but it is a jewel that is quite tarnished at the present time.

Hawai'i County has taken first steps toward revitalizing the peninsula. The administration, Council, community, and Big Island legislators have found common purpose; the redevelopment area has been defined; the Banyan Drive Hawai'i Redevelopment Agency (BDHRA) is functioning, and a conceptual master plan has been created as a starting point. Now funds are needed to conduct the environmental impact statements necessary to complete the redevelopment plan and move forward.

The Hawai'i County budget is severely strapped, and I have already had to impose increases in our property, fuel, and vehicle weight taxes. Therefore, I am hoping the State will

provide funds for an EIS. We believe that it is just and proper to ask the State to share in the EIS expense, given that the redevelopment area consists almost entirely of State land, but we recognize that the County must do its part as well, to the best of our financial ability.

Part I of SB 3058, SD 2, HD 2 would set up a new bureaucracy that we think is unnecessary and, since it reduces local control, a setback to what has been accomplished so far. That is why we prefer SB 2972, SD 2, HD 1.

SB 2972, SD 2, HD 1 offers a better path forward by building on work already done. On the other hand, we do not want to risk having this Legislature take no action at all. Therefore, we find ourselves in the paradoxical position of also supporting measures, such as SB 3058, SD 2, HD 2 that would direct resources, both statutorily and financially, toward the redevelopment of Banyan Drive while providing some local perspective, however limited, in decision-making.

I should note that in prior testimony, we suggested that SB 3058, SD 2, HD 2 could be improved with the following amendments:

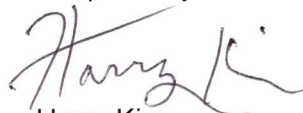
- (1) Changing the makeup of the committee to include appointees by the Mayor (perhaps two or more by Mayor; an equal number fewer by Governor);
- (2) Providing that cultural/historical expertise be included in the makeup of the committee;
- (3) Providing that the new committee coordinate with BDHRA, which was established under HRS, Chapter 53. The work of the two organizations should be compatible and complementary. In fact, it would be best if, like the BDHRA, the committee's actions were subject to Windward Planning Commission review, and Hawai'i County Council adoption of the redevelopment plan;
- (4) Providing that all meetings of the committee be in Hilo, and open to the public;
- (5) Authorizing and requiring that the district or the committee adopt rules; and
- (6) Providing that public hearings be held at least annually during the life of the pilot project.

It appears that the prior House committees have taken some of our concerns into account, and we do appreciate the way the bill has been improved.

Part II of SB 3058, SD 2, HD 2 would amend Chapter 171 by modifying public land lease restrictions in ways we believe are reasonable and workable. Others testifying on this bill may suggest other improvements which we hope you will take into consideration, but otherwise we believe Part II is very positive, and urge a favorable vote on it.

Thank you for bearing with this rather long testimony.

Respectfully submitted,



Harry Kim  
Mayor, County of Hawai'i



**SB-3058-HD-2**

Submitted on: 4/3/2018 11:39:49 AM

Testimony for FIN on 4/4/2018 2:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jacqui Hoover	Hawaii Leeward Planning Conference	Support	Yes

Comments:



House Committee on Finance  
2:30 p.m., Wednesday, 04 April 2018  
State Capitol, Conference Room 308  
415 South Beretania Street  
Honolulu, HI 96813

Re: SB3058 Relating to Public Lands

Aloha Chairs Wakai and Rhoads, Vice Chairs Taniguchi and Gabbard, and Members of Committees:

My name is Jacqui Hoover and I have the privilege of serving as Executive Director and Chief Operating Officer of the Hawaii Island Economic Development Board (HIED) and concurrently as President of Hawaii Leeward Planning Conference (HLPC). Please accept this testimony on behalf of HIEDB, a private, member-based 501(c)3 organization incorporated in 1984 to help strengthen and diversify Hawaii Island's economy.

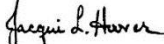
The Banyan Drive area provides important and unique multi-culture and historical sites, and recreation for residents and visitors alike; is a critical visitor destination; and important socio-economic engine for Hawaii Island. Over the years, an outdated lease process has made it difficult to address aging, neglected infrastructure, and commit resources needed for modernization to ensure the area's viability. Similarly, the Kanoiehua Industrial Area serves as an important area for Hawaii Island's socio-economic well-being and like Banyan Drive, is challenged with a lease process and policies that hinder maximizing opportunity and public benefit. The existing lease process is also out of sync with long-term business and finance requirements.

SB 3058 offers an opportunity for modernization and simultaneously, a vehicle for residents, businesses and both private and public stakeholders on Hawai'i Island to participate in determining how to maximize social and economic opportunities presented by State lands such as Banyan Drive and Kanoiehua.

In speaking in support of SB3058, I wish to share a very personal perspective as someone born and raised on Hawai'i Island, educated in Hilo through high school and spent time in both subject areas including jobs as a high school student and during breaks home from college. After securing education and spending earlier career years on the continental U.S. and abroad, "Kama'aina Come Home" was a mantra I embraced and dreamed of being one such lucky Kama'aina.

I testify in support of SB3058 with gratitude to have been able to return home to live, work and raise my family. Beyond correcting lease processes, beyond nostalgia and personal connection, let us remember that public lands are valuable resources that provide opportunities that support multiple, long-term socio-economic benefits for community health and well-being, including and not limited to, sustainable public-private collaborations.

Mahalo for this opportunity to speak in support of SB3058.

  
Jacqui L. Hoover  
Executive Director/COO

117 Keawe St. #107, Hilo, HI 96720-2811  
Phone: (808) 935-2180 Fax: (808) 935-2187



## HAWAII REGIONAL COUNCIL OF CARPENTERS

April 3, 2018

Committee on Finance  
Representative Sylvia Luke, Chair  
Representative Ty Cullen, Vice Chair  
State Capitol

### Statement of the Hawaii Regional Council of Carpenters

Dear Chair Luke, Vice Chair Cullen and Members of the Committee on Finance:

The Hawaii Regional Council of Carpenters, representing nearly 7,000 members across the state, supports SB 3058 and we offer the following comments.

The lack of management of Banyan Drive has led to the dilapidation, deterioration and obsolescence of East Hawaii's prime hotel, commercial and resort lands. This has resulted in the loss of jobs in tourism, places for visitors and kama'aina to stay when visiting East Hawaii, and millions in economic activity never realized.

For East Hawaii's construction industry the lack of management has led to a lawless environment; which attracts bad developers who hire unscrupulous contractors that will fraudulently hire workers for less than the going rate. They commit fraud when they misclassify employees as independent contractors to avoid paying taxes, benefits, or providing basic coverage. This lawless environment invites other problems onto a job site such as unlicensed activity, unsafe conditions, human trafficking and drug use.

In establishing this 10 year pilot project for the Waieka Peninsula we strongly urge this committee to protect the interests of workers and taxpayers by ensuring that Chapter 104 is included in the bill's language for the Banyan Drive area, also referred to as the "Redevelopment District".

#### STATE HEADQUARTERS & BUSINESS OFFICES

**OAHU:** 1311 Houghtailing Street, Honolulu, Hawaii 96817-2712 • Ph. (808) 847-5761 Fax (808) 841-0300

**HILO OFFICE:** 525 Kilauea Avenue, Room 205, Hilo, Hawaii 96720-3050 • Ph. (808) 935-8575 Fax (808) 935-8576

**KONA OFFICE:** 75-126 Lunapule Road, Kailua-Kona, Hawaii 96740-2106 • Ph. (808) 329-7355 Fax (808) 326-9376

**MAUI OFFICE:** 330 Hookahi Street, Wailuku, Maui 96793-1449 • Ph. (808) 242-6891 Fax (808) 242-5961

**KAUAI OFFICE:** Kuhio Medical Ctr. Bldg., 3-3295 Kuhio Hwy., Suite 201, Lihue, Kauai 96766-1040 • Ph. (808) 245-8511 Fax (808) 245-8911

April 2, 2018

HOUSE COMMITTEE ON FINANCE

Representative Sylvia Luke, Chair

Representative Ty J.K. Cullen, Vice Chair

## Testimony in Support of SB 3058 SD2 HD2

Aloha Chair Luke, Vice Chair Cullen and Committee Members,

Thank you, for another opportunity to voice our support for **SB 3058 SD2 HD2** as amended.

This bill will help to establish more meaningful guidelines and processes for both the State and the lessees on public lands. We feel this is vitally important to maintaining stable economic conditions, not just in the Hilo area, but throughout Hawaii.

The opportunity to establish and designate public land redevelopment districts brings forward an effective framework to revitalize our Hilo community. While not perfect, this bill and the pilot period allows for fine-tuning the process to allow for success and that is in the best interest of all.

We have confidence that the comprehensive nature of **SB 3058 SD2 HD2** as written has provided most of the needed elements to make a meaningful and timely impact and will establish the economic foundation needed for this community, and others, to thrive.

We humbly ask for your support and thank you for your consideration.

Mahalo,



Robert M. Fujimoto, Chairman of the Board Emeritus



Michael K. Fujimoto, Chairman and Chief Executive Officer



Jason R. Fujimoto, President & Chief Operating Officer

**SB-3058-HD-2**

Submitted on: 4/3/2018 9:48:43 AM

Testimony for FIN on 4/4/2018 2:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lynn Kubousek	AOAO Country Club Hawaii	Support	No

Comments:

**SB-3058-HD-2**

Submitted on: 4/3/2018 10:44:53 AM

Testimony for FIN on 4/4/2018 2:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
joseph bork	AOAO country Club Hawaii	Support	No

Comments:

As current president of the board of the AOA Country Club Hawaii, the organization currently in possession of the Operating Permit for the property at 121 Banyan dr., I offer support for this bill SB3058.

We absolutely need local input and management of the Banyan dr. area, and other leased state properties in the area. The miopic DLNR policies the last 15 years have prevented rational local reinvestment needed to maintain and improve the properties; thereby leading to the deplorable conditions that have recently existed. During the last 3 years, working under the vagaries and insecurity of a "revocable month to month operating permit"; the AOA CCH has managed to halt the downward spiral of financial indebtedness, and deteriorating physical conditions of the building. In fact, we have raised over \$700,000 that has gone toward paying back old inherited debt, and making substantial improvements to the long term infrastructure of the building. The future looks bright for Hilo and these areas. With participation from the local stakeholders, we will ensure that the area serves, not only the state, and the international tourist communities, but Hilo and the local communities.



49 South Hotel Street, Room 314 | Honolulu, HI 96813  
[www.lwv-hawaii.com](http://www.lwv-hawaii.com) | 808.531.7448 | [voters@lwv-hawaii.com](mailto:voters@lwv-hawaii.com)

HOUSE COMMITTEE ON FINANCE  
Wednesday, April 4, 2018, 2:30 PM, Conference Room 308  
Senate Bill 3058, SD 2, HD 2 Relating to Public Lands

### TESTIMONY

Chair Luke and Committee Members:

The League of Women Voters of Hawaii supports public planning for appropriate development and redevelopment of public lands and uniform, transparent, competitive statewide procedures for the **BLNR** to award commercial leases for appropriate uses of public lands. However, we oppose SB 3058, SD 2, HD 2 because this bill would authorize an unaccountable “committee” to adopt “redevelopment plans” and “rules” that would override unspecified land use plans, ordinances, and rules for the Kanoiehua “development area” and Banyan Drive “redevelopment area”. We believe this would encourage existing lessees of affected public lands to “play politics” to gain special unfair treatment.

Thank you for the opportunity to submit testimony.

**SB-3058-HD-2**

Submitted on: 4/3/2018 9:36:49 AM

Testimony for FIN on 4/4/2018 2:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Grif Frost	Individual	Support	No

Comments:



**SB-3058-HD-2**

Submitted on: 4/3/2018 9:38:34 AM

Testimony for FIN on 4/4/2018 2:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
connie jacobson	Individual	Support	No

Comments:

I am in strong support of SB3058

**SB-3058-HD-2**

Submitted on: 4/3/2018 9:54:44 AM

Testimony for FIN on 4/4/2018 2:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Leonard Kubousek	Individual	Support	No

Comments:

**SB-3058-HD-2**

Submitted on: 4/3/2018 9:56:57 AM

Testimony for FIN on 4/4/2018 2:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lanny Dyer	Individual	Support	No

Comments:

I whole heartedly support the bill.

# McCully Works

40 Kamehameha Ave.

Hilo, Hi. 96720

Feb 15, 2018

SB3058 – SUPPORT (with amendments)

April 4, 2018

House Committee on Finance

Chair Sylvia Luke Vice-Chair Ty Cullen

Aloha Chair Luke and members of the Committee

I note that SB3058 has been significantly amended since introduction. The Senate Committees ETT/WTL made modifications to the sections of the bill that establish and control new public authorities to oversee public land redevelopment. The committee also removed sections that would modify public land lease restrictions. The House committees saw fit to further amend the bill, reducing the powers of the committee, inserting prevailing wage language (Ch. 104) and including various approaches towards statutory reform.

This committee has already heard and amended HB 2641, HD2, the companion bill to SB3058 as originally written. The benefits HB 2641, HD2 would bring to urban public lands are well understood by this committee. I would recommend SB3058 be amended by this committee similarly to that bill. The ideal bill to support redevelopment of Banyan Drive and the revitalization of the K.I.A.A. district would be to return the powers of the authority to the HD2 version of HB2641 and to include both statutory approaches that SB3058 has had amended in the HD1 and HD2 versions.

In regards to the “prevailing wage” issue, I would like to propose that it be restricted to redevelopment districts that rely on public funds to finance studies, infrastructure, or facilities. If the subsequent private developments have relied on public financing in order to provide sufficient improvements for their investments then the public's interests are served through this requirement.

Significant portions of our state's economy operate on public land leases in urban areas. The Banyan Drive and the Kanoelehua Industrial Area in my community of Hilo are two significant examples. Since there are few or no replacement sites given our limited zoned lands bills such as SB3058 (as originally written) and HB2641, HD2 are critical to our state's future. A thriving economy provides jobs, benefits to the community at large, and a better future for all of our children. SB3058 can help....if properly amended.

Mahalo,

James McCully

**SB-3058-HD-2**

Submitted on: 4/3/2018 12:11:31 PM

Testimony for FIN on 4/4/2018 2:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Stephen Ueda	Individual	Support	No

Comments:

**SB-3058-HD-2**

Submitted on: 4/3/2018 12:11:49 PM

Testimony for FIN on 4/4/2018 2:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jennifer Zelko	Individual	Support	No

Comments:

**The Bill in its original form served the needs of the Hilo Community.**

**Thank you.**

**SB-3058-HD-2**

Submitted on: 4/3/2018 2:02:58 PM

Testimony for FIN on 4/4/2018 2:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Gordon Takaki	Individual	Support	No

Comments:

I am in support of this bill.

**SB-3058-HD-2**

Submitted on: 4/3/2018 2:11:09 PM

Testimony for FIN on 4/4/2018 2:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Glen Kagamida	Individual	Support	No

Comments:

I am writing in SUPPORT. Please ammend to include the statutory provisions in HD1 and HD2, as well as returning the powers to the committee originally proposed in the SD1 version. In addition please remove "prevailing wage" requirements.

Mahalo!



**LATE**

**SB-3058-HD-2**

Submitted on: 4/3/2018 2:41:31 PM

Testimony for FIN on 4/4/2018 2:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	the Oahu County Committee on Legislative Priorities of the Democratic Party of Hawai'i	Support	No

Comments:

Testimony of  
Christopher Delaunay, Government Relations Manager  
Pacific Resource Partnership

**LATE**

HOUSE OF REPRESENTATIVES  
THE TWENTY-NINTH LEGISLATURE  
REGULAR SESSION OF 2018

COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS

Representative Sylvia Luke, Chair  
Representative Ty J.K. Cullen, Vice Chair

Wednesday, April 4, 2018  
2:30 p.m.  
State Capitol  
Conference Room 308

Aloha Chair Luke, Vice Chair Cullen and Members of the Committee:

Pacific Resource Partnership (PRP) **supports SB 3058, HD2 with an amendment.**

We respectfully recommend that SB 3058 HD2 be amended to require redevelopment agreements specific to the “redevelopment district” to contain language that would require a developer or developers of the redevelopment to comply with the wage and hour requirements of chapter 104, Hawaii Revised Statutes (HRS). We believe that this chapter 104, HRS requirement should also apply to redevelopment agreements for privately funded redevelopment projects on public lands leased from the State within the “redevelopment district”.

We believe that our recommended amendment will not exceed the scope of chapter 104, HRS for the following reasons:

- 1) The definition of “public work” under Section 12-22-1, HAR allows for construction work to be undertaken not only through the use of public funds, but also through the use of public land.<sup>1</sup>

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<sup>1</sup> **Section 12-22-1, Hawaii Administrative Rules** defines a “public work” as:  
Any building, structure, road, or real property, the construction of which is undertaken:  
(A) By authority of; and  
(B) Through the use of funds, grants, loans, bonds, land, or other resources of the State or any county, board, bureau, authority, commission, or other agency or instrumentality thereof, to serve the interest of the general public, regardless of whether title thereof is held by a state or county agency. . .” (emphasis added).



**(Continued From Page 1)**

Privately funded projects on public lands leased from the State within the “redevelopment district” would satisfy this condition since these types of projects will be undertaken through the use of land owned and leased from the State.

- 2) The “public work” definition under Section 12-22-1, HAR also requires that the public resource “serve the interest of the general public”.<sup>2</sup> SB 3058 HD2 provides a public interest statement, which is to “make optimal the use of public lands for the economic, environmental, and social benefit of the people of Hawaii.” Our proposed amendment should satisfy the purpose of this measure by generating direct economic and social benefits for the local people of Hawaii in a number of ways:
  - a) A chapter 104, HRS requirement for construction projects within the “redevelopment district” will discourage contractors from competing based on driving down wages and cheapening the quality of construction, which could lead to a less-skilled and less-productive workforce and to shoddy construction practices and unsafe buildings and infrastructure on public lands;
  - b) A chapter 104, HRS requirement along with its proper enforcement should attract law-abiding contractors to the “redevelopment district” who are likely to comply with wage and hour and occupational health and safety laws; and
  - c) A chapter 104, HRS requirement will ensure that skilled workers on the job are paid a “living wage” in Hawaii, which will not only bring economic and personal security to Hawaii’s families and communities, but it also brings more money to the State’s economy.

Thank you for allowing us to express our opinion on SB 3058, HD2, and we respectfully request your favorable consideration.

About PRP

*Pacific Resource Partnership (PRP) is a not-for-profit organization that represents the Hawaii Regional Council of Carpenters, the largest construction union in the state, and more than 240 of Hawaii’s top contractors. Through this unique partnership, PRP has become an influential voice for responsible construction and an advocate for creating a stronger, more sustainable Hawaii in a way that promotes a vibrant economy, creates jobs and enhances the quality of life for all residents.*

---


<sup>2</sup> **Section 12-22-1, Hawaii Administrative Rules** defines a “public work” as:

Any building, structure, road, or real property, the construction of which is undertaken:


(A) By authority of; and

(B) Through the use of funds, grants, loans, bonds, land, or other resources of the State or any county, board, bureau, authority, commission, or other agency or instrumentality thereof, to serve the interest of the general public, regardless of whether title thereof is held by a state or county agency. . .” (emphasis added).



 | 808-733-7060

 | 808-737-4977

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

April 4, 2018

**The Honorable Sylvia Luke, Chair**  
House Committee on Finance  
State Capitol, Room 308  
Honolulu, Hawaii 96813

**LATE**

**RE: Senate Bill 3058, SD2, HD2, Relating to Public Lands**

**HEARING: Wednesday, April 4, 2018, at 2:30 p.m.**

Aloha Chair Luke, Vice Chair Cullen, 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 over 9,500 members. HAR **supports** Senate Bill 3058, SD2, HD2, which establishes a ten-year redevelopment district and designated district pilot projects within the Kanoiehua Industrial Area and Banyan Drive region until June 30, 2028. Modifies public land lease restrictions. 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 Kanoiehua 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.

1065 Ahua Street  
Honolulu, HI 96819  
Phone: 808-833-1681 FAX: 839-4167  
Email: [info@gcahawaii.org](mailto:info@gcahawaii.org)  
Website: [www.gcahawaii.org](http://www.gcahawaii.org)



# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

April 4, 2018

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE TY CULLEN, VICE CHAIR,  
HOUSE COMMITTEE ON FINANCE

SUBJECT: **COMMENTS TO S.B. 3058 SD2, HD2, RELATING TO PUBLIC LANDS.**  
Establishes ten-year redevelopment district and designated district pilot projects within the Kanoelehua Industrial Area and Banyan Drive region until 6/30/2028. Modifies public land lease restrictions. Appropriates funds. (SB3058 HD2)

HEARING

DATE: Wednesday, April 4, 2018  
TIME: 2:30 p.m.  
PLACE: Conference Room 308

**LATE**

Dear Chair Luke, Vice Chair Cullen, and Members,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over hundred five hundred general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

S.B. 3058, SD2, HD2 proposes to provide for a special designation of public lands on the Big Island that may be classified as commercial, industrial, resort and hotel use by establishing a ten year pilot project for the redevelopment of Kanoelehua Industrial Area and Banyan Drive region. This concept would be in place to allow incentives for current and future lessees to improve their parcels and avoid disrepair toward the end of their lease term.

While GCA supports the intent of this measure which could incentivize the revitalization of this area and encourage lessees to improve their leased lands – the GCA has concerns regarding Section 5 of the bill which suggests that for any contract with a contractor furnishing construction work “shall require compliance with the wage and hour requirements of chapter 104, Hawaii Revised Statutes, and shall require the contractor to furnish weekly payroll reports to the Committee to ensure compliance.” This provision proposes an overreach of original intent of Chapter 104, HRS in requiring that the prevailing wage rates be paid for projects that are fully funded by private monies. There are a number of questions that must be asked: How will current lessees feel about this measure – and how could this bill will affect them? What would this “committee” do with the weekly submissions of certified payroll and whether such expansion of the law comports with the intent of the original for enactment of this statute? How will this prevailing wage rate mandate affect small business and a lessee's potential to improve a parcel, and a project's overall cost?

Furthermore, compliance with Chapter 104, HRS requires a weekly submission of payroll for the general contractor and subcontractors in every craft or trade, and any non-compliance result include significant penalties. This law would require that any construction improvement over \$200,000 would be subject to these Chapter 104 requirements. See attached Hawaii Department of Labor and Industrial Relations Chapter 104 weekly certified payroll requirements.

S.B. 3058, SD2, HD2 would unfairly expand the application of prevailing wage rates for laborers and mechanics, also known as “Little Davis Bacon” to include construction projects on public lands regardless of whether the work is paid from public funds, and projects for which public lands are used as security for financing. Additionally, any work done on weekends or state holidays could be subject to overtime that may be equal to double or triple the cost of prevailing wage rates due to the passage of [Act 165 \(2015\)](#). Will these leaseholders be subject to same?


GCA understands that this bill has a limited reach and is only applicable to the Banyan Drive and Kanoelehua District for a short time period to address the redevelopment of an important area in Hilo that could increase economic viability. While GCA’s concerns remain consistent with the applicability of Chapter 104, HRS and prevailing wage law – we understand that proponents of the prevailing wage law are attempting to address what purports to be a problem in this limited market.


While GCA agrees that the prevailing wage should be paid when applicable, GCA has concerns that this proposal exceeds the original intent of the prevailing wage law. Compliance with Wage laws are in effect and should be enforced, however the applicability of Chapter 104, HRS to purely privately financed projects is an overreach of the intent of the law as originally passed.

Thank you for the opportunity share our comments.



 | 808-733-7060

 | 808-737-4977

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

April 4, 2018

**The Honorable Sylvia Luke, Chair**  
House Committee on Finance  
State Capitol, Room 308  
Honolulu, Hawaii 96813

**LATE**

**RE: Senate Bill 3058, SD2, HD2, Relating to Public Lands**

**HEARING: Wednesday, April 4, 2018, at 2:30 p.m.**

Aloha Chair Luke, Vice Chair Cullen, 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 over 9,500 members. HAR **supports** Senate Bill 3058, SD2, HD2, which establishes a ten-year redevelopment district and designated district pilot projects within the Kanoiehua Industrial Area and Banyan Drive region until June 30, 2028. Modifies public land lease restrictions. 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 Kanoiehua 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.

**LATE**

**SB-3058-HD-2**

Submitted on: 4/4/2018 2:13:46 PM

Testimony for FIN on 4/4/2018 2:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
JCCIH GAC	Japanese Chamber of Commerce & Industry of Hawai'i	Support	No

Comments:

Aloha,

Since introduction, SB3058 has evolved significantly.

The committee has already heard and passed SB3058's companion bill – HD2641 HD2. We suggest that the powers of the redevelopment authority for Banyan Drive and KIAA and statutory approaches, as currently stated in SB3058, be amended to be more similar in language to that of its house companion bill.

Regarding the "prevailing wage," we suggest this be limited to redevelopment districts that rely on public funds for studies as well as the development/maintenance of facilities and infrastructure.

Mahalo,  
Steve Ueda  
JCCIH Government Affairs Chair