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HAWAII



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

POST OFFICE BOX 621  
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**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the Senate Committee on  
WAYS AND MEANS**

**Wednesday, February 21, 2018  
10:08am  
State Capitol, Conference Room 211**

**In consideration of  
SENATE BILL 3058, SENATE DRAFT 1  
RELATING TO PUBLIC LANDS**

Senate Bill 3058, Senate Draft 1 proposes to establish procedures for designating public redevelopment districts and implementing redevelopment plans. The bill also proposes to establish the Waiakea Peninsula Redevelopment District and associated planning committee and revolving fund. The current version of the measure deletes language in the prior version that would have modified public land lease restrictions under Chapter 171, Hawaii Revised Statutes (HRS), deletes a provision that would have allowed district development plans to supersede all other inconsistent ordinances and rules relating development of public lands in a designated district, and requires a development plan to take into consideration the effects it will have on sea level rise and climate change. **The Department of Land and Natural Resources (Department) offers the following concerns and comments on the measure.**

Under Chapter 171, 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 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 with commercial, industrial, hotel and resort uses. The Department's primary hotel and resort landholding is located on Banyan Drive in Hilo. The Department's main industrial landholdings are located at Sand Island, Oahu, and Kanoiehua Industrial Area in Hilo.

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.<sup>1</sup>

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

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

Plants, and Kitchen and Bath Supply on Wiwoole Street, and the Coca-Cola bottling plant on Holomua Street.

A planning committee formed under the bill would have broad powers, including the power to renew or renegotiate any lease in connection with any project contained in the redevelopment plan on terms and conditions the committee deems advisable. These powers would allow the planning committee to grant extensions of unspecified duration to existing lessees.

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,<sup>2</sup> 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:

***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

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<sup>2</sup> 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/kanoolehua-and-banyan-drive-studies/>

compensation, then appoints a district administrator for the district who is to be compensated. The planning committee may hire additional staff as well. PART III of the measure creates the Waiakea Peninsula Redevelopment District (WPRD) for the Banyan Drive area of Hilo.

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 Kanoiehua 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, Senate Bill 3058, Senate 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 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, 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**

This bill proposes that 50% of the revenues from properties in a development district are to be deposited into a redevelopment revolving fund. PART III of the bill creates such a fund specifically for the WPRD and provides that the moneys in the revolving fund shall be used in the WPRD for the purposes described in PART I 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 Special Land and Development Fund (SLDF), with revenues coming primarily from leases for commercial, industrial, resort, geothermal and other renewable energy projects.

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

***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 21, 2018

### COMMITTEE ON WAYS AND MEANS

Senator Donovan M. Dela Cruz, Chair  
Senator Gilbert S. C. Keith-Agaran, Vice Chair

Aloha,

Chair, Dela Cruz  
Vice Chair, Keith-Agaran  
Committee Members

### **SB 3058 SD1 RELATING TO PUBLIC LANDS**

Hawaii's Thousand Friends opposes SB 3058 SD1 that establishes new procedures for designation public land redevelopment districts; district redevelopment plans, and designated redevelopment district revolving funds.

Creating new planning and decision-making entities outside of present planning processes usurps county home rule i.e. zoning, enforcement of existing ordinances etc. within a Redevelopment District.

The bill is silent on rule making. Will the Planning Committee be required to conduct rule making under Chapter 91?

The bill is silent on whether the Special Management Area (SMA) permitting process for areas designated as a Public Lands Redevelopment District will remain with the county or will be reviewed by the State Office of Planning.

Currently all counties, except Oahu, have a SMAP contested case process and rules, which will be lost if the process and authority goes to the Office of Planning, which has no contested case rules.

While the bill requires 1 public hearing it is silent on where and when in the process the one public hearing will be held.

One public hearing on a proposed redevelopment plan for an area that has gone through an extensive public involvement planning process i.e. General Plans/Development and Sustainable Plans and in some cases Community Plans is unfair to the residents who devoted time and effort into planning for the place where they live and work.

The stated purpose of this bill is to “...identify areas of *commercial, industrial, resort, and hotel* parcels in need of revitalization...” (Emphasis added)

Yet, the definition of public purpose goes beyond the stated purpose by including: development of *house lots* and *farm lots*. Can a Redevelopment District include areas planned and zoned residential and lands designated agriculture?

What is the intended duration of the Waiakea Redevelopment District? Will the Redevelopment District be permanent and replace county planning or will the District be temporary until its redevelopment goals are met?

We need to be careful that urgency or desperation does not usurp public processes that are in place to protect the public interest. We see no inherent value in changing the present governance. In fact, there are pitfalls. Accordingly we are opposed to the bill.



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SENATE COMMITTEE ON WAYS AND MEANS  
Wednesday, February 21, 2018, 10:08 AM, Conference Room 211  
Senate Bill 3058, SD 1 Relating to Public Lands

### TESTIMONY

Chair Dela Cruz and Committee Members:

The League of Women Voters strongly opposes SB 3058, SD 1, which establishes procedures for designation of public land redevelopment districts and unaccountable “committees” with authority to negotiate/renegotiate non-bid long-term leases to existing lessees, earmark use of public lease revenues, and waive public collection of lease revenues within redevelopment districts.

We support public planning for redevelopment of public lands and transparent, competitive procedures for the **BLNR** to award long-term commercial leases on public lands. We oppose SB 3058, SD 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



# McCully Works

40 Kamehameha Ave.

Hilo, Hi. 96720

Feb 15, 2018

SB3058 - SUPPORT

Committee on Ways and Means, Feb 21, 2018

Chair Donovan Delacruz

Aloha Chair and members of the Committee

I note that this bill allows for the local community to be the decision makers on the proposed policy committee and that will be critical to it's future success throughout the state. I might suggest that the committee could better reflect a communities interests by assuring that at least one member of the committee be knowledgeable or experienced in cultural matters that may be unique or special to the area, when applicable. Banyan Drive is a perfect example of where this might be an appropriate consideration.

In addition I note that the bill promotes working closely with the County wherein the district is located. It may be appropriate to consider a list of nominees from that County's Mayor for selection by the Governor when determining who will serve on the committee. While the County will always be represented on an '*ex officio*' basis by it's Planning Director it may be also appropriate for the Mayor to have nominated at least one voting member.

The need for meaningful statutory reform of HRS171 is an ongoing issue. This bill was moved from the previous committee without any means for addressing the underlying problem, an antiquated statutory framework restricting the rational use of economic public lands. There is a clear need for the revising of our statutory controls on public lands that are in the Urban land use district and have zoning for hotel, commercial, or industrial uses. Modern requirements by lenders, investors, developers, and business users are not being met. Current laws were enacted when Hawaii was an Agricultural economy. There will be no meaningful redevelopment of public lands to their "highest and best use" without changing the underlying laws that control state leases.

SB 3058 provides a means for any community that has significant state lands affecting their economic future to get involved and work towards the best possible outcome. I've been a farmer and small business owner here in Hilo since 1976. I'm still farming but also now provide logistical support to more than 30 businesses with 200 plus employees. This bill can benefit all of them as it brings widespread benefits to our community.

Mahalo,

**Required parameters are missing or incorrect.**

**SB-3058-SD-1**

Submitted on: 2/18/2018 1:56:28 AM

Testimony for WAM on 2/21/2018 10:08:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Shannon Rudolph	Individual	Oppose	No

Comments:

**Strongly oppose.**

**While I understand the issues of the Banyan Drive & Kanoelehua Industrial Areas need to be resolved, I don't think this bill is the right vehicle to fix the issues.**

**I see the Attorney General, DLNR, and the Dept. of Budget & Finance also see a multitude of problems with the companion bill, HB2641 - and I can't see any difference between the House bill and SB3058.**

**Even though the locations in question involve a much smaller area, (and as of yet, no one has slipped in unrelated Mauna Kea leases) I see many of the same problems with both bills as were heard with the public's outrage over the PLDC. Mini PLDCs are not acceptable nor beneficial to the general public either.**

**Both SB3058 & it's companion, HB2641, have too many unanswered questions and too many ways for both to 'go off the rails' - Please vote no on SB3058.**

**SB-3058-SD-1**

Submitted on: 2/18/2018 2:33:49 PM

Testimony for WAM on 2/21/2018 10:08:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marion McHenry	Individual	Oppose	No

Comments:

I would testify in person, but I live on Kauai. I strongly oppose this bill. This bill is an attempt for a 'mini PLDC', where there is little public oversight or participation and too many unanswered questions. \*The League of Women Voters, Life of the Land, Hawaii's Thousand Friends, Kahea, The State Attorney General, DLNR, and the Dept. of Budget & Finance have all testified against, or pointed out the multitude of problems with SB3058's Companion Bill - HB2641 - and I can't see any difference between the two bills other than the areas involved.

**SB-3058-SD-1**

Submitted on: 2/19/2018 10:13:01 AM

Testimony for WAM on 2/21/2018 10:08:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Richard Reed	Individual	Oppose	No

Comments:

In consideration of ongoing tsunami risk and the uncertainty of how rapid raising sea level will proceed, it is counter productive to invest more public money in shorelline or lower than 10' elevation locations. While the State should continue to harvest what value we can from past investments it would only be inviting massive liibilities in future maintenance to build more improvements now. This is especially obvious now when our Nation is doing so little to slow global warming.

**SB-3058-SD-1**

Submitted on: 2/19/2018 3:11:40 PM

Testimony for WAM on 2/21/2018 10:08:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Thorne Abbott	Individual	Oppose	No

Comments:

**SB-3058-SD-1**

Submitted on: 2/19/2018 3:17:54 PM

Testimony for WAM on 2/21/2018 10:08:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Bill Smith	Individual	Oppose	No

Comments:

Banyan Drive redevelopment in the County of Hawai`i needs help, but it does not make sense to extend that particular need outward into the state as a whole, with general terms that are not appropriate in every situation.

**SB-3058-SD-1**

Submitted on: 2/19/2018 4:14:47 PM

Testimony for WAM on 2/21/2018 10:08:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Robin Kaye	Individual	Oppose	No

Comments:

**SB-3058-SD-1**

Submitted on: 2/19/2018 7:12:26 PM

Testimony for WAM on 2/21/2018 10:08:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Toni Withington	Individual	Oppose	No

Comments:

Here we go, another PDLC. I oppose this PDLC because it limits public comment, eliminates contested cases and puts into the hands of developers and realtors and finance people the decision-making that should be made in the full light of day by the County planning department and the people. Don't mess with the process. It works. Stop giving yourself intrusions into the County's planning process. No more PLDCs. Vote this out.



**SB-3058-SD-1**

Submitted on: 2/19/2018 7:47:01 PM

Testimony for WAM on 2/21/2018 10:08:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Tom Burton	Individual	Support	No

Comments:

**SB-3058-SD-1**

Submitted on: 2/19/2018 9:18:32 PM

Testimony for WAM on 2/21/2018 10:08:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Scott Foster	Individual	Oppose	No

Comments:

Submitted by Scott Foster, Communications Director, Hawaii Advocates For Consumer Rights

**SB-3058-SD-1**

Submitted on: 2/19/2018 10:23:57 PM

Testimony for WAM on 2/21/2018 10:08:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Joan Gannon	Individual	Oppose	No

Comments:

To: WAM Committee

re: SB 3058 hearing on 2/21/18 at 10 am room211

I do not support this bill. I think money could be put to better use sence due to climate change the sea is raising and new buildings will be flooded quickly. Thank you for your consideration

Joan Gannon Chair Precinct 6 District 5 Hawaii Island

D. Piilani Kaopuiki  
838 Hauoli Street  
Honolulu, Hawaii 96826

SENATE COMMITTEE ON WAYS AND MEANS

Wednesday, February 21, 2018, 10:08 AM, Conference Room 211  
SB 3058 SD1, Relating to Public Lands

TESTIMONY

Chair Dela Cruz and Committee Members

**I oppose SB 3058 SD1** which establishes procedures for designating public land redevelopment districts, planning committees, district redevelopment plans, and designated redevelopment district revolving funds. Establishes powers and duties of planning committees.

This bill is silent on whether the Special Management Area (SMA) permitting process for areas designated as a Public Lands Redevelopment District will be submitted to land are viewed by the State Office Of Planning or where each county will retain the SMA permitting process.

There should be a requirement for a cultural specialist for the district on the committee. Who speaks for the land and not only for commerce?

Consideration of climate change and rising sea levels should be a part of all new land management plans and structural planning. This is simply accepting the ongoing climate changes occurring worldwide.

The designated district planning committee can ignore any other law to the contrary and approve any lease it desires.

Only one public hearing on a proposed redevelopment plan. That is an unfair restriction for the community.

Mahalo for the opportunity to submit.