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GOVERNOR OF
HAWAII



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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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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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
WATER, LAND, & HAWAIIAN AFFAIRS

Friday, February 8, 2019
8:30AM
State Capitol, Conference Room 325

In consideration of
HOUSE BILL 1219
RELATING TO PUBLIC LANDS

House Bill 1219 proposes to authorize the designation of areas or regions of public lands classified as commercial, industrial, resort and hotel, and the establishment and implementation of guidelines for the redevelopment of such areas or regions. The bill further establishes a redevelopment district within the Waiakea Peninsula region of Hilo and sets forth procedures for implementing a redevelopment plan through the Waiakea Peninsula planning committee. The measure would repeal on June 30, 2029. **The Department of Land and Natural Resources (Department) opposes this measure.**

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

House Bill 1219 seeks to promote the redevelopment of public lands in the Waiakea Peninsula area of Hilo. The Waiakea Peninsula redevelopment district would have its own nine-member planning committee to act as the policy-making body for the district. In addition to preparing redevelopment plans for the district, the planning committee would have authority to renew or renegotiate any lease in connection with any project contained in the redevelopment plan for the district. The planning committee would also be empowered to reduce or waive the lease rental on any lease of public land for any project in the district that requires substantial improvements,

provided that the reduction or waiver shall not exceed one year. The measure would further authorize the planning committee to enter into development agreements with a developer for any project contained in a development plan, and specifies the contents of the development plan.

Waiakea Peninsula or Banyan Drive constitutes the Department's primary hotel/resort landholdings on Hawaii Island. The Department has been working with the private sector lessees and permittees to move Banyan Drive buildings on State land into redevelopment in phases. Key state parcels in which the Department is engaged in redevelopment of Banyan Drive include:

- 1) Hilo Hawaiian Hotel: ground lease from the Department; renovated.
- 2) Hilo Bay Café (former Nihon restaurant site): ground lease from the Department; renovated.
- 3) Grand Naniloa Hotel: ground lease from the Department; \$20 million in renovations completed in 2018.
- 4) Golf Course: part of Grand Naniloa ground lease from the Department; requires participation of lessee for redevelopment.
- 5) Uncle Billy's: closed in 2017 by the Board of Land and Natural Resources (Board); under Revocable Permit (RP) to Tower Development, Inc. (TDI), who is an affiliate of the lessee of the Grand Naniloa; 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. Notice of the RFI was additionally published in several newspapers in the State on March 14, 2018 with a response deadline of April 30, 2018. One response (from TDI) was received with a proposal to substantially demolish and reconstruct a branded hotel on the site consisting of approximately 125 guest rooms, fitness room, appropriate back of house spaces and food and beverage venue. TDI additionally proposed to contribute \$1.5 million toward demolition costs (projected by the Department's consultants to exceed \$8 million in total).
- 6) Country Club: under RP; the Department is reviewing for potential issuance of an RFI for tear-down and rebuild or renovate proposals.
- 7) Reed's Bay Resort Hotel: under RP; has some remaining useful life.

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.

- One consultant prepared a market study on tourism to determine if the area could support a new hotel, as well as 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/>¹

¹ This link also includes consultant studies on the Kanoelehua Industrial Area of Hilo. The Department has spent approximately \$138,000 on planning studies for the Kanoelehua Industrial Area.

- Another consultant conducted a much more detailed architectural and engineering study on whether existing improvements on the expired lease premises should be demolished or rehabilitated.
- 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.
- Additionally, the Department procured an engineering consultant to assist in reviewing the renovation plans for the Grand Naniloa Hotel.
- Apart from the fees for consultant services, a significant amount of staff time has been invested in planning for the area including attendance at the BDHRA meetings.

The County of Hawaii (County) and the State have cooperated, and should continue to cooperate, in planning for redevelopment at Banyan Drive.

As noted above, House Bill 1219 includes a provision allowing the planning committee to reduce or waive the lease rental on any lease of public land for any project in the district that requires substantial improvements, provided that the reduction or waiver shall not exceed one year. The Department already has authority under Section 171-6, HRS, to waive up to one year of ground rent for new leases that require substantial improvements. As noted above regarding Uncle Billy's, TDI (the sole responder to the RFI) indicated it would only be able to absorb about \$1.5 million of the State's estimated 8-10 million in demolition costs for the shuttered hotel. The Department has therefore been exploring different ways to promote redevelopment in the Banyan Drive area.

In a separate bill before the Legislature this session (Senate Bill 1142), the Department is requesting a general fund appropriation of \$2 million this fiscal year and \$4 million next fiscal year for demolition of the dilapidated improvements. The Department has another bill this session intended to assist with redevelopment of the area. House Bill 1026 and Senate Bill 1252 would authorize the Board to reduce or waive rent for up to 20 years (but not to exceed the amount of lessee's total expenditures) where lessee is required to expend significant sums to demolish existing improvements or provide basic infrastructure including drainage, sewer, water, electricity and other utilities before it can make productive use of the land. The Department respectfully requests the Legislature's support for these measures instead of creating a planning committee for Waiakea Peninsula.

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

compensation, then appoints a district administrator for the district who is to be compensated. The planning committee may hire additional staff as well.

With respect to Banyan Drive, the bill creates a new layer of redevelopment process in addition to the task force and the BDHRA: the Waiakea Peninsula redevelopment district 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 nine 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. 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. The bill makes a one-time appropriation of \$500,000 to the Waiakea Peninsula redevelopment district revolving fund, and then authorizes the committee to use \$300,000 of that per fiscal year. The shortfall 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 to analyze market trends, and explore options for redevelopment and rehabilitation of specific parcels or areas. After the 2013 legislative session, former Governor Abercrombie approved the formation of a Banyan Drive Task Force that met a number of times to discuss many of the issues covered by the bill as they relate to the Banyan Drive area. The task force members included representatives from local businesses, the former executive director of the Big Island Visitors Bureau, the executive director of the 'Imiloa Astronomy Center of Hawaii, and representatives from the Hawaii County Mayor's Office and State legislators also attended the meetings. This informal task force worked well and at limited expense to the State.

There are practical problems with the bill

As noted above, House Bill 1219 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 the Banyan Drive area of 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.

Another problem with the bill is the non-standard lease provisions that it requires the planning committee to include in new leases is issues. The bill provides that leases shall include a rent adjustment clause tied to an inflation-based index, such as the consumer price index, to allow an annual rent adjustment, downward or upward, based on the index. The market value of public land can only be determined by an appraisal report prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). Consumer indexes have very little to do

with land values. To require lease rents to fluctuate with such an index would not be in the State's best interest.

The bill would also require leases to include terms that specify repair and maintenance costs shall be the responsibility of the lessee and "systems and components costs" shall be the responsibility of the Board. The Department typically issues ground leases under which the lessee owns all improvements for the term of the lease. At the end of the lease, the Board has the option to accept the improvements or require their removal at lessee's expense. There is no reason for the State to agree to bear any "systems and components costs" related to a lessee's lease of public land. The inclusion of such a provision in the planning committee's leases is again not in the State's best interest.

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

The bill proposes to deposit 50% of the revenues, income and receipts of the Department from the public lands in the Waiakea Peninsula redevelopment district into the district's revolving fund. In addition to this bill seeking funds from SLDF, there are various other redevelopment agency bills moving this session seeking to take 10% of the revenues generated from the Banyan Drive leases. These lands are ceded and OHA is currently receiving 20% of the revenues and is seeking to increase its share by more than 100% from \$15.1 million to \$35 million annually. Neither this bill nor the 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 nominal 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 Department opposes transferring funds from the SLDF to planning committees formed under this measure for redevelopment purposes.

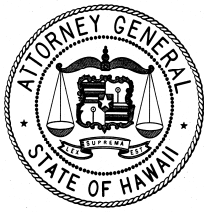
The authority to construct, improve, renovate and revitalize areas within the counties is already authorized under Section 46-80.5 and Chapter 53, HRS.

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.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

H.B. NO. 1219, RELATING TO PUBLIC LANDS.

BEFORE THE:

HOUSE COMMITTEE ON WATER, LAND, & HAWAIIAN AFFAIRS

DATE: Friday, February 8, 2019

TIME: 8:30 a.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Clare E. Connors, Attorney General, or
Linda L.W. Chow, Deputy Attorney General

Chair Yamane and Members of the Committee:

The Department of the Attorney General appreciates the intent of this but provides the following comments and recommended amendments.

This bill authorizes the establishment of public land redevelopment districts for lands classified as commercial and industrial; hotel; apartment; and motel or resort use for purposes of planning, development, or redevelopment because the buildings and infra-structures in the area are dilapidated or have deteriorated due to age or obsolescence. Each district shall have a planning committee that shall be a policy-making committee. The committee shall be responsible for the preparation of a development plan for the approval of the Board of Land and Natural Resources (Board).

Proposed section 171-C, subsection (b), states that the committee shall be a policy-making committee. However, the powers of the committee, as set forth in section 171-D, subsection (a)(4) and (7), include the authority to lease, renew, or renegotiate any lease, or to reduce or waive the lease rental. The power of the committee to actually lease, renew, or renegotiate leases is inconsistent with the establishment of the committee as a policy-making committee.

The renewal or renegotiation of existing leases may also run afoul of existing law. The court in *State v. Kahua Ranch, Ltd.*, 47 Haw. 28, 384 P.2d 581 (1963), made it clear that reformation of leases issued pursuant to public auction is not allowed. The purposes of the statutory requirements of public notice and sale at auction are to

promote transparency and a level playing field for all bidders. Allowing post bid reformation defeats those purposes. *Id.*, at 36-37, 384 P.2d at 587. If any of the leases within the redevelopment areas were originally let by public auction, those leases could not be renegotiated or modified despite the wording in the bill.

Although the committee is given the power to lease, renew, renegotiate, or waive lease rents for leases within the designated district, there is no provision in the bill that transfers any of the leases in the designated district to the committee. Until and unless the public lands or the leases are transferred to the committee, the committee would have no authority to lease land or to amend the terms of any lease within a district. The lessor, for many of the leases in the designated district, would still be the Board. That fact is recognized, in part, by section 171-F.

Section 171-F states that all leases issued by the committee shall contain certain terms. However, this section makes repeated references to the Board in connection with these leases. It is not clear what respective roles the committee and the Board will play in leasing public land within the districts.

The above concerns would be addressed by the deletion of section 171-D, subsection (a)(4) and (7), and section 171-F.

For the above reasons, we respectfully ask that this bill be amended or deferred.

DAVID Y. IGE
GOVERNOR



RODERICK K. BECKER
DIRECTOR

ROBERT YU
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

**STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE**

P.O. BOX 150
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY

TESTIMONY BY RODERICK K. BECKER
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON WATER, LAND, AND HAWAIIAN AFFAIRS
ON
HOUSE BILL NO. 1219

**February 8, 2019
8:30 a.m.
Room 325**

LATE

RELATING TO PUBLIC LANDS

House Bill (H.B.) No. 1219: establishes a framework to identify areas of public lands that are classified as commercial, industrial, resort, and hotel parcels in need of revitalization; provides for redevelopment of the parcels; creates a nine-member planning committee for each redevelopment district to provide policy direction and prepare a redevelopment plan; establishes a revolving fund for each redevelopment district that would generate revenues through 50% of the income, revenues and receipts from the public lands in the redevelopment district, legislative appropriations, and grants, gifts, and other funds; creates the Waiakea Peninsula Redevelopment District on the island of Hawaii, the Waiakea Peninsula Redevelopment District Planning Committee, and the Waiakea Peninsula Redevelopment District Revolving Fund; and appropriates \$500,000 in general funds for FY 20 for deposit into the revolving fund, and \$300,000 in revolving funds for FY 20 and FY 21 for redevelopment of the Waiakea Peninsula District.

As a matter of general policy, the department does not support the creation of any revolving fund which does not meet the requirements of Section 37-52.4 of the HRS. Revolving funds should: 1) serve a need as demonstrated by the purpose, scope of work and an explanation why the program cannot be implemented successfully under the general fund appropriation process; 2) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries or a clear link between the program and the sources of revenue; 3) provide an appropriate means of financing for the program or activity; and 4) demonstrate the capacity to be financially self-sustaining. In regards to H.B. No. 1219, it is difficult to determine whether the proposed source of revenues will be self-sustaining for each revolving fund that is created.

The department notes that diverting half of the revenue, income, and receipts from public lands in each designated redevelopment district from the Special Land and Development Fund (SLDF) will leave less excess moneys in the SLDF at the end of each fiscal year to lapse to the credit of the State general fund (pursuant to Section 171-19, HRS).

Thank you for your consideration of our comments.

HB-1219

Submitted on: 2/7/2019 10:28:08 AM

Testimony for WLH on 2/8/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
andy levin	county of hawaii, Mayor's office	Comments	No

Comments:

Thank you for this opportunity to comment on HB 1219, as it would impact the Waiakea Peninsula in Hilo, Hawaii.

Simply stated, we support any legislation that will help the revitalization of Banyan Drive and the rest of the Waiakea Peninsula. Virtually everyone familiar with this area agrees that it 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 the 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.

Although there may be paths forward, other than HB1219, that build on work already done, we do not want to risk having this Legislature take no action at all. Therefore, we will support any measure that direct resources, both statutorily and financially, toward the redevelopment of Banyan Drive while providing some local perspective in decision-making.

We suggest that HB1219 should 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; reduce the Governor's appointees by an equal number);

1. Providing that local cultural/historical expertise be included in the makeup of the committee (we do not think that non-specific expertise is sufficient);

1. 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;

1. Providing that all meetings of the committee be in Hilo, and open to the public;

1. Authorizing and requiring that the district or the committee adopt rules; and

1. Providing that public hearings be held at least annually during the life of the pilot project.

I hope you will act favorably on an amended version of HB 1219, and move it along for further discussion.

Respectfully submitted,

Mayor Harry Kim



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

HOUSE COMMITTEE ON WATER, LAND, AND HAWAIIAN AFFAIRS
Friday, February 8, 2019, 8:30 AM, Conference Room 325
House Bill 1219, Relating to Public Lands

TESTIMONY

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

Chair Yamane and Committee Members:

The League of Women Voters of Hawaii opposes HB 1219 which establishes procedures for designation of “redevelopment districts” for public lands and unaccountable “planning committees” with authority to negotiate leases and development agreements, 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 award of long-term commercial leases on public lands. We oppose HB 1219 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