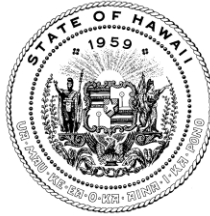


DAVID Y. IGE  
GOVERNOR OF  
HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the Senate Committee on  
WATER AND LAND**

**Monday, March 18, 2019  
1:15 PM  
State Capitol, Conference Room 229**

**In consideration of  
HOUSE BILL 1219, HOUSE DRAFT 1, PROPOSED SENATE DRAFT 1  
RELATING TO PUBLIC LANDS**

House Bill 1219, House Draft 1, Proposed Senate Draft 1 proposes to authorize the designation of areas or regions of public lands classified as commercial, industrial, hotel, apartment, motel or resort use and the establishment and implementation of guidelines for the redevelopment of such areas or regions. Proposed Senate Draft 1 of the measure would amend the prior version of the bill in several significant respects, including changing the requirements for composition of planning committees and qualifications of district administrators; providing that the law designating a redevelopment district shall transfer management of the public lands within the district to the planning committee for the designated district; providing that all rules, policies, procedures, guidelines, leases, contracts, loans, agreements and other materials of the Department of Land and Natural Resources (Department) are to remain in effect until amended or repealed by the committee; establishing the Waiakea Peninsula Redevelopment District and its planning committee; adding a new section to Chapter 171, Hawaii Revised Statutes (HRS), authorizing a local redevelopment agency created pursuant to Section 53-2, HRS, to negotiate a development agreement with a developer for certain projects on public lands within a redevelopment district; and amending Chapter 237, HRS, to exempt the "amount received from the construction of work or improvements of a redevelopment project" from the general excise tax. **The Department of Land and Natural Resources (Department) continues to oppose this measure.**

Under Chapter 171, HRS, the Board of Land and Natural Resources (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

**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  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**LATE**

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, House Draft 1, Proposed Senate Draft 1 seeks to promote the redevelopment of public lands in commercial, industrial, hotel, apartment, motel or resort use. The redevelopment districts would have their own nine-member planning committees 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.

The bill designates the Waiakea Peninsula Redevelopment District in Hilo as a redevelopment district under the measure. This area 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; 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/><sup>1</sup>

- 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, Proposed Senate Draft 1 of the measure includes a provision allowing the planning committees 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 CIP bill before the Legislature this session (House Bill 1259, Senate Draft 1), 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 of the former Uncle Billy's Hotel on Banyan Drive. The Department respectfully requests the Legislature's support

---

<sup>1</sup> 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.

of the CIP bill instead of passing a new law regarding planning committees. The Department has another bill intended to assist with redevelopment in the area, but the bill appears stalled in committee. House Bill 1026 and companion 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. As an alternative to the provisions of Proposed Senate Draft 1 of the current measure, the Department respectfully requests this Committee to consider adopting the language of House Bill 1026 and Senate Bill 1252 as set forth in Addendum 1 following this testimony hereto as the substance of the Proposed Senate Draft 1.

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 in Hilo, the bill would create 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 an unspecified general fund appropriation to the Waiakea Peninsula Redevelopment District revolving fund, and then authorizes an unspecified appropriation out of the fund for fiscal year 2020-2021 for purposes of PART III of the measure. Additional funds would be made available to the planning committee through the Department's lease revenues 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, Proposed Senate Draft 1 of the measure 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.

**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 comprising 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. Proposed Senate Draft 1 of the measure appears to recognize the ability of an agency like BDHRA to assist in the redevelopment of the Banyan Drive area, but goes too far in delegating authority to such an agency without oversight by the Board to negotiate and enter into a development agreement with a developer for commercial, business, or hotel or resort uses on public lands within a redevelopment area. Moreover, the measure does not explain how BDHRA would coordinate with the Waiakea Peninsula Redevelopment District planning committee in formulating a development plan for the area. This could lead to conflicting development goals being established by the planning committee and BDHRA for the same lands.<sup>2</sup> In dealings between the Department and BDHRA to date, it has been understood that BDHRA's role would be to develop a plan for the area and possibly assist in streamlining the County zoning and entitlement process for any redevelopment.

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 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. 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.

---

<sup>2</sup> In an apparent non-sequitur, SECTION 15 of Proposed Senate Draft 1 provides that the measure shall take effect on July 1, 2019 provided that the County of Hawaii repeals BDHRA. It is not clear how BDHRA could negotiate a development agreement under this measure if BDHRA is to be repealed as a condition precedent to the effectiveness of the measure.

## **Addendum 1**

SECTION \_\_\_\_. The legislature finds that there are a number of long-term leases of public lands originally entered into in the 1940s that have expired in recent years. Some of these leases were used for hotels, and significant hotel improvements were constructed on the premises during the lease term. In some cases, the leasehold improvements have exceeded their useful life and require costly demolition in the range of \$8-10 million for a single property. However, the lease forms used for these leases did not require the lessee to remove the improvements at the expiration of the lease term. As a result, the demolition cost falls on the State unless the State can pass the cost on to a future lessee who undertakes redevelopment of the land.

The legislature further finds that there are unimproved public lands in the State's inventory that the State desires to develop for resort, commercial, industrial, other business or residential use. However, substantial investments in infrastructure including drainage, sewer, water, electricity, and other utilities will be required to facilitate development of the lands with costs in the tens of millions of dollars. The State desires to pass the infrastructure and other development costs of these lands on to a future lessee of the lands.

The legislature further finds that chapter 171, Hawaii Revised Statutes, limits the amount of rent reduction or waiver that a lessee of public lands can receive for redeveloping or improving public lands to one year's rent for land leased for resort, commercial, industrial or other business use. In many cases, a rent reduction or waiver equal to one year of ground rent would be an insufficient incentive to induce a developer to invest in the demolition of aged improvements on and redevelopment of public land, or in the provision of basic infrastructure necessary to facilitate the further development of unimproved public land.

The purpose of this Act is to authorize the board of land and natural resources to approve rental reductions or waivers for leases that require substantial demolition costs or infrastructure improvement costs in order for the lessee to utilize the premises.

SECTION \_\_. Section 171-6, Hawaii Revised Statutes, is amended to read as follows:

**"§171-6 Powers.** Except as otherwise provided by law, the board of land and natural resources shall have the powers and functions granted to the heads of departments and the board of land and natural resources under chapter 26.

In addition to the foregoing, the board may:

- (1) Adopt a seal;



- (2) Administer oaths;
- (3) Prescribe forms of instruments and documents;
- (4) Adopt rules which, upon compliance with chapter 91, shall have the force and effect of law;
- (5) Set, charge, demand, and collect reasonable fees for the preparation of documents to be issued, for the surveying of public lands, and for the issuing of certified copies of its government records, which fees, when collected, shall be deposited into the state general fund, unless otherwise specified in this chapter;
- (6) Establish additional restrictions, requirements, or conditions, not inconsistent with those prescribed in this chapter, relating to the use of particular land being disposed of, the terms of sale, lease, license, or permit, and the qualifications of any person to draw, bid, or negotiate for public land;
- (7) Reduce or waive the lease rental at the beginning of the lease on any lease of public land to be used for any agricultural or pastoral use, or for resort, commercial, industrial, or other business use where the land being leased requires substantial improvements to be placed thereon; provided that such reduction or waiver shall not exceed two years for

land to be used for any agricultural or pastoral use, or exceed one year for land to be used for resort, commercial, industrial, or other business use; provided further that, if a lease for resort, commercial, industrial, other business or residential purposes requires a lessee 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 board may approve a reduction or waiver of lease rental up to twenty years that shall not exceed the amount of the lessee's total expenditures for demolition or provision of such infrastructure;

- (8) Delegate to the chairperson or employees of the department of land and natural resources, subject to the board's control and responsibility, such powers and duties as may be lawful or proper for the performance of the functions vested in the board;
- (9) Use arbitration under chapter 658A to settle any controversy arising out of any existing or future lease;
- (10) Set, charge, and collect reasonable fees in an amount sufficient to defray the cost of performing or otherwise providing for the inspection of activities

permitted upon the issuance of a land license involving a commercial purpose;

- (11) Appoint masters or hearing officers to conduct public hearings as provided by law and under such conditions as the board by rules shall establish;
- (12) Bring such actions as may be necessary to remove or remedy encroachments upon public lands. Any person causing an encroachment upon public land shall:
  - (A) Be fined not more than \$1,000 a day for the first offense;
  - (B) Be fined not less than \$1,000 nor more than \$4,000 per day upon the second offense and thereafter;
  - (C) If required by the board, restore the land to its original condition if altered and assume the costs thereof;
  - (D) Assume such costs as may result from adverse effects from such restoration; and
  - (E) Be liable for administrative costs incurred by the department and for payment of damages;
- (13) Set, charge, and collect interest and a service charge on delinquent payments due on leases, sales, or other accounts. The rate of interest shall not exceed one per cent a month and the service charge shall not

exceed \$50 a month for each delinquent payment;  
provided that the contract shall state the interest  
rate and the service charge and be signed by the party  
to be charged;

(14) Set, charge, and collect additional rentals for the  
unauthorized use of public lands by a lessee,  
licensee, grantee, or permittee who is in violation of  
any term or condition of a lease, license, easement,  
or revocable permit, retroactive to the date of the  
occurrence of the violation. Such amounts shall be  
considered delinquent payments and shall be subject to  
interest and service charges as provided in paragraph  
(13);

(15) Set, charge, and collect reasonable fines for  
violation of this chapter or any rule adopted  
thereunder. Any person engaging in any prohibited use  
of public lands or conducting any prohibited activity  
on public lands, or violating any of the other  
provisions of this chapter or any rule adopted  
thereunder, for which violation a penalty is not  
otherwise provided, shall be:

(A) Fined not more than \$5,000 per violation for a  
first violation or a violation beyond five years  
of the last violation; provided that, after

written or verbal notification from the department, an additional \$1,000 per day per violation may be assessed for each day in which the violation persists;

- (B) Fined not more than \$10,000 per violation for a second violation within five years of the last violation; provided that, after written or verbal notification from the department, an additional \$2,000 per day per violation may be assessed for each day in which the violation persists;
- (C) Fined not more than \$20,000 per violation for a third or subsequent violation within five years of the last violation; provided that, after written or verbal notification from the department, an additional \$4,000 per day per violation may be assessed for each day in which the violation persists; and
- (D) Liable for administrative costs and expenses incurred by the department and for payment for damages, including but not limited to natural resource damages.

In addition to the fines, administrative costs, and damages provided for hereinabove, for damage to or theft of natural resources, the board may also set,

charge, and collect a fine that, in its discretion, is appropriate considering the value of the natural resource that is damaged or the subject of the theft. In arriving at an appropriate fine, the board may consider the market value of the natural resource damaged or taken and any other factor it deems appropriate, such as the loss of the natural resource to its natural habitat and environment and the cost of restoration or replacement. The remedies provided for in this paragraph are cumulative and in addition to any other remedies allowed by law.

No person shall be sanctioned pursuant to this section for the exercise of native Hawaiian gathering rights and traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawaii state constitution;

- (16) Issue revenue bonds, subject to the approval of the legislature. All revenue bonds shall be issued pursuant to part III of chapter 39, except as provided in this chapter. All revenue bonds shall be issued in the name of the department and not in the name of the State. The final maturity date of the revenue bonds

may be any date not exceeding thirty years from the date of issuance;

- (17) Pledge or assign all or any part of the receipts and revenues of the department. The revenue bonds shall be payable from and secured solely by the revenue derived by the department from the industrial park or parks for which the bonds are issued;
- (18) Reimburse the state general fund for debt service on general obligation bonds or reimbursable general obligation bonds issued by the State for purposes of this chapter;
- (19) Notwithstanding part II of chapter 205A to the contrary, plan, design, construct, operate, and maintain any lands or facilities under the jurisdiction of the division of boating and ocean recreation of the department without the need to obtain a special management area minor permit or special management area use permit; and
- (20) Do any and all things necessary to carry out its purposes and exercise the powers granted in this chapter."

SECTION \_\_. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION \_\_. This Act, upon its approval, shall take effect on July 1, 2019, and shall be repealed on June 30, 2024; provided that section 171-6, Hawaii Revised Statutes, shall be reenacted in the form in which it read on June 30, 2019.





**HB1219 HD1**  
**RELATING TO PUBLIC LANDS**  
Senate Committee on Water and Land

March 18, 2019

1:15 p.m.

Room 229

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on HB1219 HD1, which may eliminate safeguards relating to lease lengths, appraisals, renewal options, lease extensions, and public auction requirements, among others, for designated public lands. As described further below, such provisions may result in the indefinite use of public lands by single private lessees, tie the hands of the state and future generations in ensuring the best use of public lands, fail to ensure an appropriate return for the private use of public lands, and lead to the alienation of public and “ceded” lands to private entities. In addition to addressing such concerns, should the Committee choose to move this measure forward, OHA respectfully requests clarifying language to reaffirm Native Hawaiians’ pro rata share of revenues generated from public land trust lands in designated redevelopment districts.

**I. HB1219 HB1 may authorize leases that violate the State’s fiduciary obligations under the public trust and the public land trust.**

Under Article 11, section 1 of the Hawai’i State Constitution and Chapter 171, Hawai’i Revised Statutes (HRS), the State, through the Board of Land and Natural Resources (BLNR), holds in trust approximately 1.3 million acres of public lands, including the natural and cultural resources they contain, for the benefit of present and future generations. Much of these lands are also subject to the public land trust created by Article 12 of the Hawai’i State Constitution and section 5(f) of the Admission Act, which requires that a portion of revenues derived from public land trust lands be dedicated to OHA, for the purpose of bettering the conditions of Native Hawaiians. The public trust and public land trust status of these lands accordingly imposes upon the BLNR specific fiduciary obligations of due diligence and undivided loyalty, in making the trust corpus productive and maximizing its benefits for trust beneficiaries, including Native Hawaiians and the general public.

**By allowing leases, lease renegotiations, and lease renewals for public and public land trust lands in designated redevelopment districts to be made “notwithstanding any other law to the contrary,” this measure may eliminate important safeguards that help to uphold the BLNR’s fiduciary obligations with respect to such lands.** For example, exempting public land leases in redevelopment districts from the maximum lease length provisions of Chapter 171 may invite century-long leases that substantially inhibit the BLNR from exploring future uses of its trust lands, which may otherwise provide much greater benefits to both Native Hawaiians and the public. Exemptions from Chapter 171’s restrictions on lease renewals and extensions may similarly allow a single private entity to control public lands for generations, again effectively eliminating the BLNR’s ability to carry out its fiduciary duty to maximize the financial and intangible benefits derived from its trust corpus for multiple generations. Exemptions from Chapter 171’s appraisal and public auction requirements may also eliminate important mechanisms ensuring transparency and a fair return for the private use of public lands.

**Accordingly, OHA urges the Committee to ensure that any leases, lease renegotiations, or lease renewals in redevelopment districts comply with all applicable provisions in Chapter 171, or to minimally ensure that such leases, lease renegotiations, and lease renewals are**

**executed in accordance with administrative rules that can ensure a level of transparency and accountability in the disposition of public and public land trust lands.**

**II. Extremely long, multi-generational leases may result in the loss of public and “ceded” lands.**

On a related note, extremely long, multi-generational leases that may be authorized by this measure often lead to a sense of entitlement on the part of lessees that has led and may continue to lead to the alienation of public lands, including “ceded” lands to which Native Hawaiians have never relinquished their claims. **OHA objects to the sale or alienation of “ceded” lands except in limited circumstances, and has significant concerns over any proposal that may facilitate the diminution of the “ceded” lands corpus.** Accordingly, OHA again respectfully urges the Committee to ensure that any leases, lease renegotiations, and lease renewals are subject to maximum aggregate lease terms that do not exceed the limits currently found in Chapter 171, or the length of time necessary to accomplish the intended redevelopment goals, whichever is shorter.

**III. Language regarding the proposed redevelopment district revolving fund’s deposits should account for Native Hawaiians’ pro rata share of the public land trust.**

OHA notes that redevelopment district designation does not excuse the State’s obligations under the public land trust; thus, the revenue generated from public land trust lands in redevelopment districts are subject to Native Hawaiians’ pro rata share.<sup>1</sup> However, this measure’s revolving fund language requires 50 percent of redevelopment district revenues, income, and receipts to be deposited in a redevelopment district revolving fund, “notwithstanding section 171-19”; HRS §171-19, meanwhile, specifically accounts for the transfer of Native Hawaiians’ pro rata share of public land trust revenues to OHA. Accordingly, this revolving fund provision may inadvertently result in the failure to account for and transfer public land trust revenues from redevelopment districts to OHA as required under the public land trust. Accordingly, should the Committee move this measure forward, OHA respectfully requests that the language on page 12, lines 5-7, be amended to read as follows:

“(1) Subject to the Hawaiian Homes Commission Act of 1920, as amended, and section 5(f) of the Admission Act of 1959, fifty per cent of the revenues, income, and receipts of the department from the public lands in the designated district, notwithstanding section 171-19;”

Mahalo for the opportunity to testify on this measure.

---

<sup>1</sup> The Hawai‘i Admission Act and the State Constitution established the public land trust for the betterment of the conditions of native Hawaiians and for the general public. The Hawai‘i Constitution entrusts OHA with the responsibility to manage and administer funds derived from the public land trust, and state law sets specifies that 20% of all funds from the Trust should be set aside for expenditure by OHA.

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)

TESTIMONY BY RODERICK K. BECKER  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE SENATE COMMITTEE ON WATER AND LAND  
ON  
HOUSE BILL NO. 1219, H.D. 1, PROPOSED S.D. 1

**March 18, 2019**  
**1:15 p.m.**  
**Room 229**

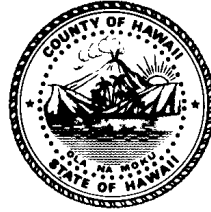
RELATING TO PUBLIC LANDS

House Bill (H.B.) No. 1219, H.D. 1, Proposed S.D. 1: 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; authorizes a local redevelopment agency to contract with a developer for construction of non-residential projects within a redevelopment area; 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 an unspecified sum of general funds for FY 20 for deposit into the revolving fund, and an unspecified sum of 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, H.D. 1, Proposed S.D. 1, it is difficult to determine whether the proposed source of revenues will be self-sustaining for each revolving fund that is created.

Thank you for your consideration of our comments.

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

March 18, 2019

Senator Kaiali'i Kahele, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair  
Committee on Water and Land



Dear Chair Kahele, Vice Chair Keith-Agaran, and Committee Members:

### RE: **HB 1219, HD1 Proposed SD1 Relating to Public Lands**

Thank you for this opportunity to comment on a proposed amended version of HB 1219, HD1, as it would impact the Waiakea Peninsula in Hilo, Hawai'i.

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 peninsula consists almost entirely of State land.

Although there may be paths forward, other than this bill, which 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 directs resources, both statutorily and financially, toward the redevelopment of Banyan Drive while providing some local perspective in decision-making.

We suggest that the proposed amended version of HB 1219, HD1 be improved with the following additional amendments (which are geared to the proposed Waiakea district specifically, but which should perhaps apply to all districts created in the future, except for item #3):

- (1) Provide that the makeup of the committee include appointees by the Mayor (perhaps two or more);
- (2) Provide that district-specific cultural/historical expertise be included in the makeup of the committee;

March 18, 2019

Page 2

(3) Provide 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) Provide that all meetings of the committee be in or near the district, and open to the public;

(5) Authorize and require that the district or the committee adopt rules; and

(6) Provide that public hearings be held at least annually during the life of the project.

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

Respectfully Submitted,

A handwritten signature in black ink that reads "Harry Kim". The signature is written in a cursive, flowing style.

Harry Kim  
MAYOR



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 WATER AND LAND  
Monday, March 18, 2019, 1:15 pm, Conference Room 229  
House Bill 1219, HD 1, Proposed SD 1 Relating to Public Lands

### **TESTIMONY**

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

Chair Kahele and Committee Members:

The League of Women Voters of Hawaii opposes HB 1219, HD 1, Proposed SD 1 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, HD 1, Proposed 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



March 16, 2019

Senator Kai Kahele, Chair  
Senate Water and Land Committee  
Hawaii State Legislature

**Comments on HB1219 HD1 SD1**

Dear Senator Kahele and Members of the Senate Water and Land Committee:

The Kohala Coast Resort Association appreciates the Legislature's intent to support redevelopment of the Banyan Drive Area with the establishment of the Waiakea Peninsula Redevelopment District. A healthy and vibrant tourism economy on both sides of the island of Hawaii is important to the economic future of our island as a whole.

We believe that a strong inventory of visitor accommodations in Hilo will improve our visitors' overall experience, hopefully leading to a longer length of stay, and a better of appreciation of the diverse opportunities our island has to offer. We also believe that a strong accommodations sector in Hilo will continue to help airlines consider direct service to our island, through either the Ellison Onizuka Kona International Airport at Keahole or the Hilo International Airport.

We concur with many of the points addressed in the County of Hawaii's testimony, and further ask that you seek a representative from the hotel sector to serve on this important committee, so that everyone has a chance to understand the corporate perspective in decision making about long-term land use and leases.

KCRA is a collection of master-planned resorts and hotels situated north of the Ellison Onizuka Kona International Airport at Keahole which represents more than 3,500 hotel and timeshare accommodations and an equal number of resort residential units. This is approximately 35 percent of the accommodations available on the Island of Hawai'i. KCRA member properties annually pay more than \$20 million in TAT and \$20 million in GET.

Sincerely,

A handwritten signature in black ink that reads "Stephanie P. Donoho". The signature is written in a cursive, flowing style.

Stephanie Donoho  
Administrative Director



March 18, 2019

COMMITTEE ON WATER and LAND

Senator Kaiali'i Kahele, Chair

Senator Gilbert Keith-Agaran, Vice Chair

**LATE**

## Testimony in Support of HB1219 HD1

Aloha Senators Kahele & Keith-Agaran,

HPM Building Supply supports of **HB1219 HD1** which would allow the establishment and implementation of guidelines for the redevelopment of certain areas or regions and establishing funds for the Waiakea Peninsula Redevelopment District Revolving Fund. We do so for the many reasons we've stated over the past year.

The area is vital to Hilo's economic stability and the well-being of the many people who work and stay in the area. The economic health of this area directly translates to the health of the community and contributes to the overall wellbeing of the State.

We humbly ask for your support of **HB1219 HD1** and thank you.

Mahalo,



Robert M. Fujimoto, Chairman of the Board Emeritus



Michael K. Fujimoto, Chairman and Chief Executive Officer



Jason R. Fujimoto, President & Chief Operating Officer

McCully Works  
40 Kamehameha Ave.  
Hilo, Hi. 96720

March 14, 2019

HB1219, SD1 (Proposed)

Testimony in SUPPORT



Senate Committee: Water & Land  
Chair Sen: Kai Kahele  
Vice Chair: Gil Keith-Agaran

I'm a business owner in Hilo since 1976. I can see the obvious benefits that HB 1219 can provide to the county of Hawaii and by it's establishment of guidelines to allow for designated redevelopment areas throughout the state. This bill seeks to provide a mechanism for economic public lands with existing improvements within the Urban District to be redeveloped under a new authority. I support this wholeheartedly.

In terms of the bills Part III, designating the Waiakea peninsula to be the first designated district in the State I can think of no area in more dire need than our Banyan Drive hotel district. Over the past 20+ years I have observed that the public lands and the improvements thereon abutting Banyan Drive have been in the latter stages of their leases and fallen into economic obsolescence. These "wasting assets" are to the detriment of the business owners, their customers, the general welfare of our community, and finally the state of Hawaii at large. The two largest of the hotels, the Hilo Hawaiian and the Grand Naniloa have been able to renew or extend their leases through legislative means that are unfortunately no longer available.

Therefore it is incumbent upon the legislature to provide a means for the rational redevelopment of the remainder of the public lands under lease. This bill can accomplish this goal. The Banyan Drive Hawaii Redevelopment Authority (BDHRA) , while well intentioned, has lacked the requisite funding to move forward on this pressing need. While the BDHRA has unique powers and capabilities without funding it is unable to accomplish its mandate, the redevelopment of state lands. The BDHRA's replacement with this proposed new authority would provide the basis for state funding and retaining the states control of the public lands. Of potential concern is the wording of Sec. 15 which calls for the establishment of this act on July 1, 2019 subject to the repeal of the BDHRA. It would seem that HRS 53-82 Abolition of Existing Agency would control this process and Sec. 15 should allow for sufficient time for this to occur.

Please support HB1219, SD1 (Proposed)

Mahalo,

James McCully

**HB-1219-HD-1**

Submitted on: 3/15/2019 7:52:50 PM

Testimony for WTL on 3/18/2019 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
alan nagakura	Individual	Support	No

Comments:

**HB-1219-HD-1**

Submitted on: 3/18/2019 5:39:21 AM

Testimony for WTL on 3/18/2019 1:15:00 PM



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

Comments:

I am in strong support of HB1219. I was born and raised in Hilo and because of the policies guiding the management of public lands with commercial, industrial, resort, and hotel uses, there has been little incentive for lessees to make major improvements to their infrastructure, resulting in the deterioration of infrastructure and facilities. The lack of improvements in many of these areas has resulted in dilapidation, deterioration, or obsolescence of the buildings and structures.

Please vote in favor of HB1219 and help to fix the areas that can help drive our economy.

Thank you!

Jennifer Zelko-Schlueter