

DAVID Y. IGE
GOVERNOR OF HAWAII



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

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**Testimony of
CARTY S. CHANG
Interim Chairperson**

**Before the House Committee on
WATER & LAND**

**Monday, February 9, 2015
10:00 A.M.
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 1267
RELATING TO PUBLIC LANDS**

House Bill 1267 proposes to authorize the designation of redevelopment districts for commercial, industrial, resort and hotel areas on State lands, and the creation of planning committees to serve as policy-making boards for such districts. **The Department of Land and Natural Resources (Department) opposes this bill for the following reasons.**

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, and is to be attached to the Department for administrative purposes.

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 Hawaii Revised Statutes, (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, and it is therefore unclear whether the expense of maintaining the committee would be partially borne by the Department. 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.

CARTY S. CHANG
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DANIEL S. QUINN
INTERIM FIRST DEPUTY

W. ROY HARDY
ACTING 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

The bill proposes an unnecessary, bureaucratic addition to the Department's operations. The Department already has planning and development staff to assess appropriate uses of land in its inventory. Additionally, the Department has procured consultants for Banyan Drive and the Kanoelehua Industrial Area in Hilo to analyze market trends, and explore options for redevelopment and rehabilitation of specific parcels or areas. After 2013 legislative session, former Governor Abercrombie approved the formation of a Banyan Drive Task Force that has 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 include 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 attend the meetings. This informal task force has worked well and at limited expense to the State.

There are practical problems with the bill

As noted above, House Bill 1267 allows the Department to designate redevelopment districts on public lands. As defined at HRS Section 171-2, public lands exclude lands used as roads and streets. While the State owns some contiguous parcels in both the Banyan Drive area and Kanoelehua Industrial Area in Hilo, it does not own or manage the roads, which often include utility lines and other infrastructure. Accordingly, to the extent the bill seeks to improve infrastructure in a given area, a redevelopment district designated by the Department 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

House Bill 1267 proposes that an 50% of the revenue from properties in a development district are to be deposited into a development revolving fund, and that moneys in the fund shall be used solely to promote the purposes of the bill. The Department and Board of Land and Natural Resources (BLNR) 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 BLNR 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 catastrophe 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 §46-80.5, 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.

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 House Bill 1267.

Under the authority HRS Section 46-80.5, 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.

Existing law allows for lease extensions under certain conditions To the extent House Bill 1267 is intended to facilitate the extension of existing State leases, the Department would point out that Act 219 Session Laws of Hawaii (SLH) 2011 and Act 207 SLH 2011 already provide for the extension of leases under certain conditions. Act 219 allows hotel or resort leases to be extended for an additional term of up to 55 years if the lessee commits to investing at least 50% of the value of existing improvements in renovations to the property. The BLNR has approved two lease extensions under Act 219. Act 207 allows for the extension of commercial, industrial and other leases up to an aggregate term (original term plus extension) of up to 65 years if the lessee requires mortgage financing or self-finances substantial improvements to the property. The BLNR has approved approximately twelve lease extensions under Act 207. All such extensions are at the discretion of the BLNR.

For the reasons above, the Department opposes this bill.

LATE



HB1267
RELATING TO PUBLIC LANDS
House Committee on Water & Land

February 9, 2015

10:00 a.m.

Room 325

The Administration of the Office of Hawaiian Affairs (OHA) will recommend to the Board of Trustees a position of **OPPOSE** for HB1267, which would authorize lease renewal options for all public lands, and allow indefinite lease extensions for leases of certain public lands. Such provisions may result in the indefinite use of public lands by single private lessees, regardless of whether such lands are put to their highest and best use.

The removal of the statutory prohibition on options for renewal of lease terms of all public lands, and the removal of the 65-year cap on lease term extensions for certain public lands, may result in 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 the Admission Act section 5(f), which require 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 trust status of these lands imposes on the BLNR fiduciary obligations of due diligence and undivided loyalty, in making the trust corpus productive and maximizing its benefits for the trust's Native Hawaiian and public beneficiaries. By authorizing options for renewal of lease terms for all public lands, as well as allowing indefinite extensions of lease terms for certain lands, this bill may result in long-term leases that substantially inhibit the BLNR from exploring alternative future uses of trust lands that may provide greater benefits to both Native Hawaiians and the public. In other words, such provisions invite potential violations of the public trust and public land trust, by authorizing leases that foreclose the potential to maximize the financial and intangible benefits derived from the trust corpus.

If the purpose of this measure is to extend provisions provided for in Act 219, Session Laws of Hawai'i 2011, which is scheduled to sunset on December 31, 2015, there are much more restrictive ways to do so. Act 219 limits the terms of any extension for hotel or resort leases to an 55 additional years, which would allow for leases as long as 120 years (HRS 171-36 allows for leases up to 65 years). In contrast, HB1267 would allow for indefinite leases of public land for hotels and resorts as well as for intensive agriculture, aquaculture, commercial, mariculture, special livestock, pasture, or industrial leases. Furthermore, and perhaps even more alarming, HB1267 would open up all leases of public

lands to lease renewal options. This is unnecessary if the purpose of HB1267 is to allow for renewals for hotel or resort leases, as the Chapter 171-36(b) already authorizes the BLNR to include lease renewal options in limited circumstances.

Notably, leases that extend beyond the current statutory limitations, as authorized by this measure, may now exceed the length of multiple generations, and may unduly restrict future generations of Native Hawaiians and land managers in their ability to make sound decisions on the best use of these lands. Moreover, such long-term leases often lead to a sense of entitlement on the part of the lessee, which may and has in the past resulted in the alienation of leased public land.

Regarding the proposed redevelopment district provisions on HB1267, the purpose behind amending the definition of “public purpose” in HRS Chapter 171 to include “redevelopment of public lands” is unclear and unnecessary for the purposes of this measure.

Finally, OHA notes and appreciates that the designated district redevelopment plans, envisioned by HB1267, does not exempt redevelopment districts from state land use planning laws or the environmental review process. Native Hawaiians rely on these important processes to recognize and enforce their constitutional rights.

Therefore, OHA urges the Committee to **HOLD** HB1267. Mahalo for the opportunity to testify.



LATE

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February 9, 2015

HEARING BEFORE THE
HOUSE COMMITTEE ON WATER & LAND

TESTIMONY ON HB 1267
RELATING TO PUBLIC LANDS

Room 325
10:00 AM

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

I am Christopher Manfredi, President of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,932 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interests of our diverse agricultural community.

The Hawaii Farm Bureau strongly supports HB 1267.

Unlike the situation in most other states, many of Hawaii's farmers depend on leased land for their livelihoods. This bill is important for Hawaii's agriculture to thrive.

Article XI of Hawaii's Constitution states, "The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands." DLNR's current lease policies are inconsistent with these mandates. HFBF therefore urges you to support Hawaii's leasehold farmers and ranchers by passing HB 1267.

Thank you for this opportunity to provide our testimony on this important matter.



Hawai'i Island Chamber of Commerce

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6 February 2015

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Hearing Date: Monday, February 9, 2015
Time: 10:00AM
Place: Conference Room 325, State Capitol
415 South Beretania Street

TESTIMONY IN SUPPORT OF HB 1267 RELATING TO PUBLIC LANDS

To Whom it May Concern:

My name is Chuck Erskine and I am the President of the Hawaii Island Chamber of Commerce. With a membership of more than 270 businesses, professionals and college students represented by more than 600 members, the Chamber serves as an important voice of business in Hawai'i. The Chamber **strongly supports** the improvement of areas of public lands that have become dilapidated, obsolete, or have deteriorated over time in the public interest and constitutes a valid public purpose.

We ask you to support the authorization of the designation of development districts, comprising areas of regions of public lands classified as commercial, industrial, resort, or hotel, and the establishment and implementation of guidelines for the redevelopment of the areas of the regions. We urge your support in order to revitalize and improve areas of significant economic, social, and well-being value to the communities they reside in.

We urge you to pass HB 1267. Thank you.

Sincerely,

Chuck Erskine, President