



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

H.B. No. 1971, RELATING TO THE DEPARTMENT OF HAWAIIAN HOME LANDS.

BEFORE THE:

House Committee on Hawaiian Affairs

DATE: Wednesday, January 27, 2010 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Mark J. Bennett, Attorney General, or
Lisa Oshiro, Deputy Attorney General

Chair Carroll and Members of the Committee:

The Attorney General takes no position as to whether a portion of the receipts from the lands commonly referred to as "ceded lands" should be spent by the Department of Hawaiian Home Lands to promote farm and home ownership. We testify only to urge that the following drafting deficiencies be corrected before further consideration is given to passing this bill.

First, amending section 26-17, Hawaii Revised Statutes, rather than the Hawaiian Homes Commission Act to assign an additional, substantive responsibility to the Department of Hawaiian Home Lands is inappropriate. Part I of chapter 26, Hawaii Revised Statutes, which includes section 26-17, describes the organization of the State's executive branch, generally. The functions and responsibilities of the Hawaiian Homes Commission and the Department of Hawaiian Home Lands (DHHL) are set out in the Hawaiian Homes Commission Act and, as required by the Admission Act, the act was made, and has been a part of the State Constitution since 1959. The additional responsibility this bill assigns to the DHHL, should be assigned by amending the Hawaiian Homes Commission Act, not section 26-17.

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Second, relying on a percentage "of all funds derived from the public land trust" without identifying to which receipts from the public land trust the percentage is to be applied, or how the total receipts from the public land trust is to be computed, is not specific enough under the Hawaii Supreme Court's decision in OHA v. Yamasaki, 69 Haw. 154, 737 P.2d 446 (1988). In that case, the court held that a nearly similarly worded phrase to prescribe how much money the Office of Hawaiian Affairs was to spend to better the condition of native Hawaiians, see Haw. Rev. Stat. § 10-13.5 (1980), was not specific enough to be enforceable.

Third, the bill's references to sections 10-3 and 171-8, Hawaii Revised Statutes, are ambiguous. If the reference to section 10-3, Hawaii Revised Statutes, is included to particularize to what "all funds derived from" refers because what is intended is that five percent of what OHA receives from the public land trust to better the condition of native Hawaiians be spent by DHHL for the development of farm and home ownership, then the bill should be revised to say that directly without referring to either statute section. On the other hand, if the statute sections are included simply to describe what "the public land trust" is, then the references should be consolidated and inserted immediately after the reference to the "public land trust," e.g., "Five per cent of all funds derived from the public land trust described in sections 10-3(1) and 171-18 shall be expended"

Finally, even if this bill included a clear means for quantifying the amount of money DHHL is to spend for the development of farm and home ownership, nothing describes how DHHL is to get the money it is directed to spend for that purpose. The bill does not acknowledge that receipts from the

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use of public land trust lands are collected by more than a dozen state departments and agencies, or that OHA has received a share of those receipts after 2001 only because Executive Order No. 03-03 previously established and Act 178, Session Laws of Hawaii 2006, currently provides a process for transferring a portion of those receipts to OHA before the receipts are deposited into the general fund, or a special fund that has been established to hold them. To achieve its stated purpose, the bill must include a process for getting receipts from the public land trust to DHHL so the money can be spent to develop farm and home ownership.

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Kale Gumapac, Alaka'i
Kanaka Council Moku O Keawe
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SUPPORT

Committee on Hawaiian Affairs
January 27, 2010 9:30 am

HB 1971

Aloha Kakou,

The Kanaka Council Moku O Keawe strongly supports HB 1971. It is important that DHHL is provided the opportunity with this revenue source so this agency can meet their obligations to the Hawaiian people. I am on the waiting list and born on DHHL lands in Waimanalo. I have witnessed the delays and continuous excuses as to why people on the waiting list are still there. It is time that the State of Hawaii provides a permanent funding mechanism for DHHL.

Mahalo nui loa,
Kale Gumapac
Alaka'i