



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

ON THE FOLLOWING MEASURE:

H.B. NO. 2561, RELATING TO LANDS CONTROLLED BY THE STATE.

BEFORE THE:

House Committee on Water, Land, and Ocean Resources

DATE: Monday, February 1, 2010 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Mark J. Bennett, Attorney General

Chair Ito and Members of the Committee:

The Department of the Attorney General supports this measure.

The purpose of the measure is to restore the law relating to the sale or gifting of public lands that are not ceded lands to its pre-July 13, 2009, or pre-Act 176, Session Laws of Hawaii 2009, status, so that only sales or gifts of ceded lands must be pre-cleared pursuant to the pre-gift or pre-sale public notice, public meeting, and legislative oversight process now prescribed in section 171-64.7, Hawaii Revised Statutes.

Act 176 was enacted in the wake of the United States Supreme Court's decision in OHA v. HFDC, ___ U.S. ___, 129 S. Ct. 1436 (2009), to allow the Legislature to oversee the fee simple transfers of most of the land owned by the State or its agencies, and to exercise that function with knowledge and information provided by both the public and the state departments and agencies selling or giving the land to others.

Act 176 has extended the time state agencies like the Hawaii Housing Finance and Development Corporation have had to spend performing their statutorily assigned responsibilities. The corporation administers the State's affordable housing and lease to fee conversion programs. Sales of land are a key aspect of both programs. The lease conversion program uses the

State's ability to condemn, to obtain and subsequently sell the fee simple interest in that land to its former lessee. The affordable housing program exists to sell land in fee, and, from time to time, is required to sell land held as security to liquidate delinquent loans that the program is charged by statute to make in order to make affordable housing more widely available to the public. Act 176 has lengthened the time that other agencies that make loans secured by an interest in land must spend liquidating loans in order to replenish their loan funds.

Act 176 has also extended the time required to complete capital improvement projects that require land dedications to satisfy federal funding requirements, or participate in joint ventures with the counties or private developers.

For other state agencies, including the Department of Land and Natural Resources, Act 176's more extensive pre-sale or pre-gift screening process has delayed, and in some instances increased, the cost of satisfying obligations to sell land that were binding on the State prior to its July 13, 2009 effective date.

Passage of this bill will reduce the operational difficulties that many of the state agencies that are required to sell or convey non-ceded land to others in fee simple have encountered since Act 176 was enacted, without diminishing the purpose for which it was enacted, or affected ceded lands. In the fall of 2009, the Administration informed the Office of Hawaiian Affairs of its intent to introduce this bill, and the Office of Hawaiian Affairs did not then voice any objection (but no commitment was sought or made with regard to the Office of Hawaiian Affairs' ultimate position).

LINDA LINGLE
Governor



SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512

TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON WATER, LAND & OCEAN RESOURCES
MONDAY, FEBRUARY 1, 2010
9:30 A.M.
ROOM 325

HOUSE BILL NO. 2561
RELATING TO LANDS CONTROLLED BY THE STATE

Chairperson Ito and Members of the Committee:

Thank you for the opportunity to comment on House Bill No. 2561. The department supports this bill, which restores the law regarding non-ceded lands that are controlled by the State, to what it was prior to the passage of Act 176, session Laws of Hawaii 2009. The bill's intent is to limit the legislative approval process to state-owned lands that were government or crown lands prior to August 15, 1895 which was the primary intent and impetus for Act 176. Legislative oversight and approval for sale or gift lands held by the Department of Agriculture or the Agribusiness Development Corporation makes the process lengthy, cumbersome and more costly.

The required process for legislative oversight and approval may result in the State not receiving full market price or having additional expenses, reducing its net gain on the sale of land. Sale of land by the Department will not likely be completed in a timely manner and may result in a lower sales price as the Department may need to wait months to get approval to sell the land. In some cases the Department's costs may be higher as the delays in the sale may require the hiring of property managers to oversee and maintain the properties. In addition, the review process requires that an appraisal be obtained which may not be warranted in all cases.

The situation which is most likely to raise this concern is when property is acquired as a result of a loan default.

The Department's lands that were acquired as result of loan default are normally sold to replenish the agriculture loan fund and the required legislative oversight and approval may result in funding delays for future loans.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Water, Land & Ocean Resources
February 1, 2010 at 9:30am
by
Howard Todo
Vice President for Budget & Finance/CFO, University of Hawai'i

HB 2561 – Relating to Lands Controlled by the State

Chair Ito, Vice Chair Har, and Members of the House Committee on Water, Land & Ocean Resources:

The University of Hawaii System supports the passage of HB 2561. This measure would allow the University to be more flexible and proceed in a timely and efficient manner to take advantage of opportunities to raise revenues from the sale of certain non-ceded state lands, as market conditions and needs may warrant, without the lengthy legislative review and approval process currently required under Act 176, Session Laws of Hawaii 2009.

Thank you for the opportunity to testify.



February 1, 2010

The Honorable Ken Ito, Chair
Committee on Water, Land and Ocean Resources
State House of Representatives
State Capitol, Room 325
Honolulu, Hawaii 96813

Dear Chair Ito and Members:

Subject: House Bill No. HB 2561 Relating to Lands Controlled by the State

My name is Jim Tollefson, President of the Chamber of Commerce of Hawaii. The Chamber of Commerce of Hawaii works on behalf of its members and the entire business community to:

- Improve the state's economic climate
- Help businesses thrive

The Chamber supports H.B. No. 2561.

The bill proposes to amend Chapter 171-64.7 HRS regarding Legislative Approval of the Sale or Gift of lands. The proposed amendment is intended to correct Act 176 (SLH 2009—SB 1677) which established a more comprehensive process for the sale of state-owned land, and to reserve a larger oversight role for the legislature.

We understand that the original intent was focused on oversight of the state's ceded lands; however, the language in Act 176 included both ceded and non-ceded lands. The ceded lands are the lands that comprise the State's public land trust. Non-ceded lands are not included in the trust. Most of the non-ceded lands are formerly privately owned lands that were acquired by the territory or the state for specific public purposes such as education, transportation and housing. These lands are managed as public lands but do not have the public trust designation as say the former crown lands that are part of the public land trust. Elevating these non-ceded lands to trust status would frustrate the ability of the managing agencies to conduct real normal real estate transactions for their respective public purposes.

We support the clarification to Act 176 sought in this bill.

Thank you for this opportunity to express our views.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

94-487 Akoki Street
Waipahu, Hawaii 96797
February 1, 2010

The Honorable Ken Ito, Chair
Committee on Water, Land and Ocean Resources
State House of Representatives
State Capitol, Room 325
Honolulu, Hawaii 96813

Dear Chair Ito and Members:

Subject: House Bill No. HB 2561 Relating to Lands Controlled by the State

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-HAWAII supports H.B. No. 2561.

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We support the clarification to Act 176 sought in this bill.
Thank you for this opportunity to express our views.

Karen Y. Nakamura



HB 2561 RELATING TO LANDS CONTROLLED BY THE STATE

Committee on Water, Land and Ocean Resources

February 1, 2010
Room 325

9:30 am

The Office of Hawaiian Affairs offers the following comments on House Bill 2561.

The bill appears to be contrary to the Settlement Agreement executed in 2009 among several parties, including OHA and the State of Hawai`i, in a lawsuit of many years' duration in which OHA and individual plaintiffs sought to halt the efforts of a state agency, the Housing and Community Development Corporation of Hawaii, to sell certain ceded land. Originally entitled *Office of Hawaiian Affairs, et al. v. Housing and Community Development Corporation of Hawaii et al.*, the lawsuit eventually made its way to the United States Supreme Court. The settlement, signed in May 2009 by Attorney General Mark Bennett on behalf of the State of Hawai`i, was conditioned on Senate Bill 1677, Conference Draft 1 (2009) becoming law. The bill became law, as Act 176, SLH 2009. Attorney General Bennett subsequently raised with OHA's Chief Executive Officer the possibility of amendments to Act 176.

Because this bill seeks to amend Act 176, the very law that was integral to the Settlement Agreement, OHA Administration needs to bring the matter to the OHA Board of Trustees for consideration at its next meeting, on February 4, 2010. Any position taken on the bill by the Board at that meeting will be communicated in writing to your Committee.

Thank you for the opportunity to testify.