



LATE

HB 674 HD1 SD1 RELATING TO HAWAIIAN AFFAIRS

Senate Committee on Ways and Means

March 24, 2010

9:30 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) **STRONGLY OPPOSES** HB 674 HD1 SD1.

Our objections center on four issues: 1) the Legislature's attempt to direct the expenditure of public land trust fund resources to fund specific programs, specifically Ho'okulaiwi, Achieving the Dream, and the Hawai'i Institute of Marine Biology; 2) the method of providing funds to these "set aside" programs; 3) the reallocation of trust funds and general funds to these set asides; and 4) the zeroing out of OHA's general fund appropriation for fiscal year 2010-2011. However, OHA's opposition to this bill should *not* be interpreted as a lack of support for the three programs listed above.

We also address below the claims made in a previous committee report on the bill.

The Bill Inappropriately Attempts to Control the Use of OHA Trust Funds

We respectfully submit that by directing OHA's trust fund resources to fund the programs named above through budget provisos, the Legislature is overstepping its bounds and disrespecting the authority and decision-making duties of the OHA Trustees. This is a grave concern. Opinion No. 03-04 of the Department of the Attorney General states on page 2:

The State Constitution expressly makes native Hawaiians the beneficiaries of the § 5(f) trust lands, see Haw. Const. Art XII, § 4, directs the Legislature to quantify the extent of native Hawaiians' interest in ceded land receipts, see Haw. Const. art. XII, § 6, and makes the elected trustees of OHA, not the Legislature, responsible for determining how the native Hawaiians' portion of ceded land receipts are spent to further § 5(f)'s purposes, see Haw. Const. art. XII, §§ 5 and 6. [emphasis added]

Page 8 of the Attorney General's opinion states:

The Constitution limits the Legislature's role to quantifying the extent of the native Hawaiians ceded land interest. Responsibility for "controlling" the native Hawaiians' share and determining how best to use it to better the conditions of native Hawaiians is exclusively that of the trustees of OHA.... [emphasis added]

Underpinning the Attorney General's opinion is, among other things, Article XII, § 5 of the State Constitution, which states that "OHA shall hold title to all the real and personal property now or hereafter set aside or conveyed to it which shall be held in trust for native Hawaiians." In light of the above, we believe that the Legislature lacks authority to direct the expenditure of OHA's trust fund resources as set forth in the bill. Furthermore, the bill does not show respect for the traditional fiduciary roles and responsibilities of a trustee.

The Bill Would Undermine the Rigorous Vetting Process and Level Playing Field for Those Who Seek OHA Funding

Generally, programs that seek funding from OHA go through our rigorous grants review process. Moreover, our grants process ensures that our Board of Trustees retains final approval authority on the expenditure of trust funds. Funding the three programs through specific budget provisos circumvents the OHA vetting process. Furthermore, the preferential treatment afforded to the programs by the bill creates a negative perception that there is no level playing field for programs seeking OHA funding and diminishes the public's confidence in government's ability to allocate resources in a fair, prudent, and effective way.

This bill would set a bad precedent and open the doors for others to lobby the Legislature for funding for their programs through "set asides" in the OHA budget law. Such set asides can be avoided by the entities going through the grant process under Chapter 42F, HRS, or through direct appropriations.

The Bill's Reallocation of OHA Resources Would Harm Existing OHA Programs and Services

Even without the SD1's zeroing out of general funds discussed in the next section of this testimony, the reallocation of OHA's general and trust fund resources to fund the three programs identified above, as set forth in the HD1, would mean a reduction in resources to fund existing programs and services at OHA. This would have a direct negative impact on Native Hawaiian beneficiaries who benefit from these services.

OHA recognizes that Ho'okulaiwi, Achieving the Dream and the Hawai'i Institute of Marine Biology are successful programs that provide positive benefits to the Native Hawaiian community. In fact, from FY 2008 to FY 2010, hundreds of thousands of dollars in OHA's trust fund resources were allocated to the Ho'okulaiwi program. However, approval of the allocation of resources to this program occurred after a thorough review of the funding request in light of all of OHA's priorities and other competing applications for funds.

The following example demonstrates the direct negative impact of this bill. At the direction of the Legislature in Sections 5, 6, and 7 of Act 140, SLH 2009, OHA procured and funded contracts utilizing OHA 175 funds. Should funding be reallocated from OHA 175, funding for these procured contracts would then become "unavailable," threatening the continued existence of these programs and services to OHA's beneficiaries.

Zeroing Out of General Funds for OHA

Zeroing out the FY2011 general fund appropriation would have a large negative impact on our beneficiaries. OHA cannot allocate additional funds from its investment portfolio, as it currently budgets up to its spending limit. The economic downturn has resulted in increased demand for Native Hawaiian services and assistance. The number of inquiries from beneficiaries has increased by almost 30 percent since the start of the economic downturn. State budget cuts will reduce services and programs that support low to moderate income individuals including OHA beneficiaries. As seen in the past, these beneficiaries, or the organizations serving beneficiaries, often turn to OHA to fill the gap.

The primary purpose of the OHA general funds received from the State of Hawai'i is to provide support and assistance to Native Hawaiians in the areas of:

1. ***Social services*** to OHA beneficiaries to: include information and referral services, case management and counseling, establishment of individual development accounts, financial literacy, and financial assistance. Referral services include those relating to education assistance, employment and income security, individual and family care, health needs, housing, legal services, genealogy research, business assistance, and general information.
2. ***Legal services and legal representation*** to OHA beneficiaries for: the assertion and defense of quiet title actions; assistance with ahupua'a and kuleana tenant rights, including rights of access and rights to water, land title assistance, including review of title and genealogy, preservation of traditional and customary practices, protection of culturally significant places, and preservation of Native Hawaiian land trust entitlements.
3. ***Educational enrichment programs*** for Native Hawaiian children in grades K through 12 to: optimize learning for Hawaiian students, develop a stronger interest in learning, connect learning and education to one's Hawaiian identity, and explore possible educational, career and academic goals the students may not have considered.

If the OHA FY2011 general legislative funding amount is reduced, Native Hawaiians will be impacted in the following ways:

- A reduction in the legislative appropriation would negatively impact a vast majority of programs and services in the highest need areas including, but not limited to: 1) homelessness; 2) medically uninsured/underinsured; 3) mental health; 4) substance abuse; 5) domestic violence; and 6) chronic disease.

- There would be a significant reduction in services and beneficiary assistance including, but not limited to: 1) reduction in funding to emergency financial assistance programs, 2) reduction and potential elimination of case management services which assist beneficiaries to access community resources, 3) budget cuts leading to loss of clinicians providing mental health and substance abuse counseling and support, and 4) loss of health monitoring/navigation programs that assist those with chronic disease to get needed medical care.
- Important programs such as providing legal services to the Native Hawaiian community, currently provided by the Native Hawaiian Legal Corporation (NHLIC), will be severely impacted which would lead to a reduction in staff attorneys and critical support staff (paralegals, legal clerks, etc.) and thus a reduction in available legal services to the Native Hawaiian community.

Response to Comments Made by a Previous Committee

We respond as follows to certain comments made in Standing Committee Report No. 2818 of the Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs on an earlier version of this bill:

COMMITTEE CLAIM: "So there can be no misunderstanding, section 9A constitutes and proposes that fifty percent of the OHA trust funds match fifty percent of the Hawaiian Home Lands trust funds. OHA's interpretation that section 9A of this measure consists of all OHA trust funds is incorrect."

OHA RESPONSE: OHA never stated that the funding in the proposed Section 9A consists entirely of OHA trust funds. We continue to contend that the bill would overstep the Legislature's bounds and disrespect the authority and decision-making duties of the OHA Trustees by reallocating trust funds previously designated for other purposes. The Legislature's reallocation of trust funds would severely impact the OHA budget as these funds have already been committed for FY2010 and FY2011.

COMMITTEE CLAIM: "The Committee also acknowledges and agrees with an Attorney General Opinion that recognizes OHA's discretion over its own trust funds. However, there is nothing in this measure that compels OHA to spend its trust funds; and furthermore, your Committee notes that OHA trust funds in section 9A of this measure are matched with non-OHA funds held by the Department of Hawaiian Home Lands."

OHA RESPONSE: OHA continues to believe that the bill inappropriately seeks to direct how OHA spends its trust funds.

COMMITTEE CLAIM: "Another unfortunate OHA misconception concerns the Legislature's general fund appropriation to OHA in this proposal. Sections 7 to 9 of Act 140, Session Laws of Hawaii 2009, clearly follow section 10-14.6, Hawaii Revised Statutes, which provides that the Legislature shall appropriate any general fund portion of the OHA budget and any

matching special fund appropriations. If OHA elects not to use the Legislature's general fund appropriation, then OHA does not have to match the general funds with its own trust funds."

OHA RESPONSE: OHA does not misconceive the bill's provisions.

COMMITTEE CLAIM: *"Your Committee has discovered inconsistencies and concerns over OHA's spending of the Legislature's general fund appropriation for its operating expenses. These concerns include a miscellaneous expenditure of approximately \$450,000 in 2009-2010 and \$468,266 in 2010-2011. OHA's non-disclosure of the specific use of these taxpayers' funds is troubling and unacceptable. Further, your Committee has also been informed that OHA deleted 167.5 and created 153.5 new positions as part of their new reorganization. Your Committee is concerned over the deletion of 62 positions that are funded by general funds and wants to know whether these positions have been replaced. Your Committee believes that in light of OHA's trust fund portfolio value of \$352,000,000, expenditures paid by general funds including but not limited to rent and insurance costs should be paid by OHA trust funds and not general funds. Therefore, your Committee will continue to review the general fund appropriations requested by OHA as this measure moves forward."*

OHA RESPONSE: The alleged inconsistencies are a result of OHA breaking down the funding for the Educational Enrichment Programs (as awarded to the University of Hawaii at Hilo for Nā Pua No'ēau) within OHA175 as follows:

- FY 2010: Other Miscellaneous Expenses of approximately **\$450,000**:
FY 2010 funding totaling \$596,668* ($\$147,303 + \underline{\$449,365} = \$596,668$)
- FY 2011: Other Miscellaneous Expenses of **\$468,266**:
FY 2011 funding totaling \$615,570* ($\$147,304 + \underline{\$468,266} = \$615,570$)

*According to Section 6 of Act 140, Session Laws of Hawaii 2009

OHA did not delete 167.5 positions, but reduced the number of positions and re-described positions to include the 62 general funded positions. The functions of the 62 general funded positions have not significantly changed and in most cases the position title remained unchanged.

Based on the objections made in this testimony, we ask that your Committee hold this bill. Thank you for the opportunity to testify.