

TESTIMONY
HB901, HD2



Association of Hawaiian Civic Clubs
P. O. Box 1135
Honolulu, Hawai'i 96807

**TESTIMONY OF LEIMOMI KHAN, PRESIDENT
IN SUPPORT OF**

HB 901, H.D. 2 – Relating to the Office of Hawaiian Affairs

Committee on Water, Land, Agriculture, and Hawaiian Affairs
Committee on Judiciary and Government Operations

Hearing date, time and place:
Friday, March 20, 2:45 p.m., Conference Room 229

Aloha Chairpersons Hee and Taniguchi, Vice Chairs, Tokuda and Takamine, and members of the Water, Land, Agriculture and Hawaiian Affairs Committee, and Judiciary and Government Operations Committee, respectively.

Thank you for this opportunity to testify in support of HB 901, H.D.2, which is a bill for an Act relating to the Office of Hawaiian Affairs, and whose primary purpose is “to allow the State to most effectively and responsibly make progress toward meeting part of its constitutional obligation to native Hawaiians by addressing the additional amount of income and proceeds that the office of Hawaiian affairs is to receive from the public trust pursuant to article XII, sections 4 and 6, of the Hawaii Constitution, for the period from November 7, 1978, to July 1, 2008...”

The Association of Hawaiian Civic Clubs continues to support HB901, in its current form, H.D.2. The Bill is very clear about the State’s obligation to transmit to the Office of Hawaiian Affairs a part of the income and proceeds from the public land trust for both the past and the future. With regard to the past, for the period November 7, 1978 and July 1, 2008, the legislature will convey resources to the Office of Hawaiian Affairs in two phases; the first by the conveyance of real estate as described in this Bill (certain parcels of Kaka’ako Community Development District); and the second, by other real property in fee simple as identified in an act to be passed by the legislature in 2010. For the future, the legislature finds that the public interest is best served by the legislature’s deferring temporarily a re-examination of what amount of income and proceeds from the lands in public trust should be provided to the Office of Hawaiian Affairs annually beginning on July 1, 2008, and provides that for the time being, the annual amount will continue to be set by Act 178, Session Laws of Hawaii, i.e., beginning with fiscal year 2005-2006, \$15,100,000.

At its annual conventions, in 2007 and in 2008, the Association of Hawaiian Civic Clubs voted to adopt resolutions, “Encouraging the Office of Hawaiian Affairs, the Executive Branch, and the Legislature to Reach an Agreement to Resolve the Past Due Income and Proceeds from the Public Land Trust Due to OHA for the Betterment of Conditions of Native Hawaiians, and for the Legislature to Pass Such an Agreement Into Law.” In so doing, the delegates to these conventions noted that the Office of Hawaiian Affairs has, for more than 30 years, attempted to litigate and negotiate payment of those revenues, but has never been fully paid, and the lack of a full, fair, timely, and just payment of said revenues has inevitably impacted OHA’s ability to fulfill its purpose and mission. Further, delegates noted, that after three Hawai‘i Supreme Court decisions, the Court has repeatedly said that it is the Legislature’s duty, power, and obligation to determine what constitutes OHA’s pro rata portion. Accordingly, we are pleased that some progress is being made to resolve the past due income and proceeds from the Public Land Trust due to OHA for the betterment of conditions of Native Hawaiians.

We urge you to adopt House Bill 901 H.D.2.

HISTORIC HAWAII FOUNDATION

VIA EMAIL: WTLTestimony@capitol.hawaii.gov

To: Senator Clayton Hee, Chair
Senator Jill N. Tokuda, Vice Chair
Committee on Water, Land, Agriculture and Hawaiian Affairs

Senator Brian T. Taniguchi, Chair
Senator Dwight Y. Takamine, Vice Chair
Committee on Judiciary and Government Operations

From: Kiersten Faulkner *Kiersten Faulkner*
Executive Director, Historic Hawai'i Foundation

Committee Date: Friday, March 20, 2009
2:45 p.m.
Room 229

Subject: Support for HB901 HD2, Relating to the Office of Hawaiian Affairs

On behalf of Historic Hawai'i Foundation (HHF), I am writing in support of HB901 HD2, which would address the amount of income and proceeds that OHA is to receive from the public land trust for the period from November 1978 to July 2008.

Since 1974, Historic Hawai'i Foundation has been a statewide leader for historic preservation. HHF works to preserve the unique architectural and cultural heritage of Hawai'i and believes that historic preservation is an important element in the present and future quality of life, environmental sustainability and economic vitality of the state.

Historic Hawai'i Foundation is one of the beneficiaries of OHA's grant program. In 2008, a substantial grant to HHF was used to initiate the Preservation Resource Center, which provides technical assistance to stewards of cultural and historic properties. It specifically supports a circuit rider program to provide increased services to the neighbor islands and rural areas, as well as information services and technical assistance to homeowners, caretakers, businesses and public agencies with responsibilities for historic resources. In the first five months of the program, the field services include over 350 individual contacts in support of cultural resources.

The historic and cultural sites of Hawai'i are irreplaceable. It takes many people working together to ensure that the historic places we use and enjoy today will be here for future generations. To ensure that the special places of Hawai'i are preserved, used and enjoyed, all people need to work together to protect the heritage and physical legacy of the Islands.

The Office of Hawaiian Affairs has demonstrated leadership in perpetuating the cultural sites of the Islands for the benefit of the Hawaiian people and for the community at large. By resolving outstanding claims, OHA will be able to have greater certainty and resources to provide for its beneficiaries. By ending a long-unsettled issue, all parties will be able to turn their time, energy and attention to the betterment of Hawai'i.



To: **Committee on Water, Land, Agriculture, and Hawaiian affairs**
Senator Clayton Hee, Chair Senator Jill N. Tokuda, Vice Chair
Committee on Judiciary and Government Operations
Senator Brian Taniguchi, Chair Senator Dwight Y. Takamine, Vice Chair

Date: Friday, March 20, 2009
Time: 2:45 pm
Place: Conference Room 229, State Capitol

Reg: **Testimony in Opposition as written to HB 901, HD2**

Aloha,

My name is Ron Iwami and I represent the Friends of Kewalo Basin Park Association (Friends). Our mission is to: *Protect and Preserve Kewalo Basin Park and its surrounding areas and waters to ensure that the recreational user will continue to have access and the ability to enjoy the park for future generations to come.*

Back in 2006, we were instrumental in the Save Our Kaka'ako People Movement which resulted in the passage of HRS 206E-31.5; Act 317. In simple terms, it prohibits the Hawaii Community Development Authority (HCDA) from selling public lands and prohibits any type of residential development in Kaka'ako Makai.

Another result of this People Movement, was the establishment of the Community Planning Advisory Council (CPAC) of Kaka'ako Makai in April 2007. This group is made up of the general public and other stakeholders of the area and its mission is to meaningfully participate in the development, acceptance, and implementation of any future plans for the development of Kaka'ako Makai. I am currently the Vice Chair of this Council. After 2 years of meetings, CPAC recently submitted to HCDA the Vision and Guiding Principles document for Kaka'ako Makai. This public input process is ongoing.

With this brief history in mind; *Friends* would like to humbly ask that Kaka'ako Makai lands be eliminated from this bill.

If this is not possible, *Friends* recommend adding provisions to this bill which directs OHA to abide by the same prohibitions as stated in HRS 206E-31.5; Act 317. In addition, OHA shall utilize the Vision and Guiding Principles Document and work with the CPAC to develop the lands in Kaka'ako Makai.

These provisions will ensure:

- 1) that the public land will not be sold
- 2) that the land will be kept public by not allowing private residential development
- 3) that the Public Input Process for developing this land is preserved

The People have worked too hard and long to preserve and protect this last public oceanfront land in Honolulu for public use. The intent of HRS 206E -31.5; Act 317 should be a condition of the land no matter who owns it.

Mahalo and have a Nice Day.

Ron Iwami
Manoa Valley



HB 901, HD 2
RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS

Senate Committee on Water, Land, Agriculture, and Hawaiian
Affairs

Senate Committee on Judiciary and Government Operations

March 20, 2009
Room 229

2:45 p.m.

Aloha Chairs Hee and Taniguchi, Vice Chairs Tokuda and Takamine, and Members. This testimony is presented on behalf of Chair Apoliona and the OHA Board of Trustees. **OHA supports with amendments House Bill No. 901, HD 2** Relating to the Office of Hawaiian Affairs.

The purpose of this bill is to allow the State to most effectively and responsibly make progress toward meeting part of its constitutional obligation to Native Hawaiians pursuant to sections 4 and 6 of Article XII of the State Constitution by addressing the additional amount of income and proceeds that OHA is to receive from the public land trust for the period from November 7, 1978 to July 1, 2008. The bill would accomplish this by conveying to OHA in fee simple certain parcels of real property in Kaka'ako Makai in Honolulu. The bill says that in 2010, additional (yet-to-be-determined) real property will be conveyed to OHA.

The original version of HB 901 and this HD 2 have provided the opportunity for the Legislature to take a major step in resolving an issue that has remained incompletely addressed for three decades and that the Hawai'i Supreme Court has ruled is primarily the responsibility of the Legislature. Appropriate legislative action would help fulfill the State's solemn obligation to Native Hawaiians.

Background

The original version of HB 901 was based on the results of negotiations in 2007 and 2008 between OHA and the State Administration, and of extensive beneficiary and legislative feedback from 2008, when other related legislation was introduced. OHA held over 45 meetings in the community and spent several months addressing comments received from those meetings. For example, to address concerns raised by the community, the

original HB 901, as with this HD 2, did not resolve future claims and instead continued the annual payments of \$15.1 million to OHA. Also in response to concerns, OHA is funding and has contracted for a full real-estate due-diligence investigation on the lands specified in the original HB 901 and in this HD 2. Due diligence involves the careful examination and consideration of many complex and varied aspects of a proposed real estate acquisition and is a primary critical step in the process of determining whether the acquisition would meet OHA's strategic goals. OHA's due diligence on the lands specified in the original HB 901 is intended to include, for example, real estate appraisals, title reports, legal review (e.g. lease abstracts, land use entitlements, building code conformance), property surveys, and environmental studies, all of which take considerable time to compile and analyze.

The HD 2 contains a provision in Section 6 that requires that the property conveyances made under the bill shall be deemed income and proceeds from the public land trust. This is important to ensure that the payments and transfers are counted towards the State's constitutional obligation under Article XII, section 6, to provide OHA with a pro rata share of the public land trust revenues.

While a detailed historical narrative of the issue of land trust revenues would not be appropriate in this testimony, kindly note the following:

- Following many years of relatively small transfers to OHA, Act 304, Session Laws of Hawaii 1990, sought to establish how the State would carry out its state constitutional and statutory mandate to dedicate 20 percent of public land trust revenues to OHA's activities.
- Act 35, Session Laws of Hawaii 1993, appropriated \$136.5 million in general obligation bond funds to OHA as a settlement of undisputed claims to that point in time.
- Act 329, Session Laws of Hawaii 1997, established OHA's pro rata share to be \$15.1 million for each of the fiscal years 1997-1998 and 1998-1999.
- In 2001, the Hawaii Supreme Court ruled that Act 304 was invalid due to a conflict between one of its technical provisions and federal law.
- Act 34, Session Laws of Hawaii 2003, required the transfer of several million dollars to OHA to help

continue the revenue stream following the court ruling against Act 304.

- Executive Order No. 03-03 set forth Governor Lingle's procedure for continuing the revenue stream.
- Act 178, Session Laws of Hawaii 2006, included an interim provision setting OHA's annual amount of land trust revenues at \$15.1 million and providing a lump sum payment of \$17.5 million for certain amounts that the Legislature determined were underpaid between July 1, 2001 through June 30, 2005.

Following the passage of Act 178, OHA resumed negotiations with the Attorney General over remaining unresolved issues. In the course of those negotiations, the parties agreed on the sum of \$200 million as being owed.

Requested Amendments in the HD 2

OHA recommends that the HD 2 be amended as follows:

- In Section 1 of the HD2, insert \$200 million in two currently blank spaces, specifically the space for stating the specific dollar value that would represent the Legislature's re-examination and final determination of the resources that should be provided to OHA for the period between November 7, 1978 and July 1, 2008, and the space for stating the value of the resources that will be provided to OHA in two phases. In previous negotiations, OHA and the Attorney General agreed that \$200 million was the amount owed.
- In Section 1 of the HD2, insert \$92,719,415 in the currently blank space for stating the City and County of Honolulu tax-assessed value of the Kaka'ako property for 2007-2008, and insert \$107,280,585 in the currently blank space for stating the value of the resources that would be conveyed to OHA in the form of real property through legislation in 2010.
- In Section 10 of the HD2, instead of saying that the Act shall take effect on July 1, 2020, except that section 3 shall take effect on July 1, 2014, say that the Act shall take effect on July 1, 2009, except that section 3 shall take effect on July 1, 2014.

Additional Comments

We wish to comment on certain other matters of concern. When the Attorney General suggested that the debt to OHA could be

satisfied by a combination of land and money, OHA agreed with that suggestion and undertook to establish internal programs and staffing to marshal and manage any such real property that OHA would receive, either in these negotiations or otherwise. OHA engaged Dr. Stephen Roulac, an internationally known real estate consultant, to assist us. Dr. Roulac interviewed all of the OHA Trustees in order to understand how OHA's real estate management capacities could be maximized. His final report was adopted by the Board of Trustees on June 6, 2007.

Some people have been circulating a draft of a preliminary report by Dr. Roulac to attempt to show that OHA's Trustees and staff are incapable of managing real estate. That is a misuse of the document. Dr. Roulac's preliminary draft report is being erroneously called an audit. In actuality, it was merely a review of the then-existing capacities of OHA as a basis for developing the final strategy. It was not an audit.

The preliminary document led to the Board's adoption of OHA's "Real Estate Vision, Mission, and Strategy Policy" on June 6, 2007, which contains clear guidelines designed to enable OHA to competently manage real properties that it receives, however they may be received. As a result, OHA has strengthened the organization and capacity of its land management function to enable the Trustees to effectively hold and manage certain property. Particular to the original HB 901, the Trustees proposed selections of land based on approved criteria derived from our long-term real estate asset allocation. The lands proposed for acquisition by OHA in the original bill and in this HD 2 are consistent with those Board-adopted criteria and will serve to promote OHA's mission of the betterment of the conditions of Native Hawaiians.

We thank you for taking all of these points into consideration. The issue is complex, but when all the small points are stripped away, and thirty years of struggle to address this issue are examined, one key truth remains: it is ultimately the Legislature's task to resolve the issue. We urge your Committee to respond favorably to this bill by moving it forward with the amendments that we have proposed in this testimony.

Mahalo for the opportunity to testify.

TESTIMONY
HB901, HD2
(END)