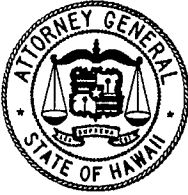


**HB921**

**HD1 SD1**



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

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 921, H.D. 1, S.D. 1, RELATING TO PUBLIC LANDS.

**BEFORE THE:**

Senate Committees on Judiciary and Government Operations  
and on Ways and Means

**DATE:** Wednesday, March 31, 2010      **TIME:** 9:30 a.m.

**LOCATION:** State Capitol, Room 211

**TESTIFIER(S):** WRITTEN COMMENTS ONLY. For more information, call  
Charleen Aina, Deputy Attorney General, at 586-0618.

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Chairs Taniguchi and Kim and Members of the Committees:

The Department of the Attorney General opposes the passage of part II of this bill.

Contrary to article XII, section 6 of the State Constitution, the urgings of the Hawaii Supreme Court in OHA v. State, 96 Haw. 388, 31 P.3d 901 (2001), and Act 178, Session Laws of Hawaii 2006, part II of this bill amends section 171-18, Hawaii Revised Statutes, to require all proceeds and income from the sale, lease, or other disposition of ceded lands to be deposited into the public land trust fund and used "solely for the acquisition of [additional] lands" which are to be used for the five purposes set out in section 5(f) of the Admission Act.

Until at least January 1, 2015, part II also bars the State from disposing of the fee simple title to ceded lands under almost all circumstances.

We oppose passage of part II of the bill because the amendments it makes to section 171-18 are highly likely to prompt suits against the State for violations of the Admission Act and article XII, section 6 of the State Constitution, as well as breach of the public trust, from both native Hawaiians

and persons who understand that the members the general public are also beneficiaries of the public trust.

The first of part II's amendments impliedly repeals Act 178, and totally frustrates the intent of the delegates to the 1978 Constitutional Convention that the Office of Hawaiian Affairs receive a share of the public trust's income and proceeds to better the conditions of native Hawaiians.

The nearly categorical bar to sales of ceded lands for nearly five years irrespective of the need to preserve or protect the public trust's assets, or advance one or more of its purposes, risks claims that the State as trustee is shirking its fiduciary duties, particularly when Act 176's process for assessing land dispositions on a case-by-case basis is still available.

The Department respectfully requests that the Committees excise all of part II from this bill if they are inclined to report this bill to the floor of the Senate.

LINDA LINGLE  
GOVERNOR  
STATE OF HAWAII



KAULANA H. R. PARK  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION  
ANITA S. WONG  
DEPUTY TO THE CHAIRMAN  
ROBERT J. HALL  
EXECUTIVE ASSISTANT

**STATE OF HAWAII**  
**DEPARTMENT OF HAWAIIAN HOME LANDS**

P.O. BOX 1879  
HONOLULU, HAWAII 96805

COMMENTS FROM KAULANA H. R. PARK, CHAIRMAN  
HAWAIIAN HOMES COMMISSION  
TO THE SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS &  
COMMITTEE ON WAYS AND MEANS

ON HB 921 HD 1 SD 1 RELATING TO PUBLIC LANDS

March 31, 2010

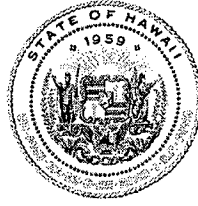
Chair Taniguchi, Chair Kim and Members of the Committees:

The Department of Hawaiian Home Lands supports the intent of Part I of HB 921 HD 1 SD 1. Over the past three sessions, we have testified in strong support of legislation that allows DHHL to extend its commercial leases beyond the current lease cap of 65 years. In the past few weeks, DHHL has worked with members of the Senate, House and beneficiary community to craft language that ensures a win-win for DHHL and our beneficiaries and is pushing HB 2923 forward. HB 2923 is our priority.

DHHL has no comments or position on Part II or Part III of HB 921.

Mahalo for this opportunity to testify.

LINDA LINGLE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
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**LAURA H. THIELEN**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**RUSSELL Y. TSUJI**  
FIRST DEPUTY

**KEN C. KAWAHARA**  
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

**Testimony of  
LAURA H. THIELEN  
Chairperson**

**Before the Senate Committees on  
JUDICIARY AND GOVERNMENT OPERATIONS  
and  
WAYS AND MEANS**

**Wednesday, March 31, 2010  
9:30 AM  
State Capitol, Conference Room 211**

**In consideration of  
HOUSE BILL 921, HOUSE DRAFT 1, SENATE DRAFT 1  
RELATING TO PUBLIC LANDS**

House Bill 921, House Draft 1, Senate Draft 1, as currently drafted: (1) Permits the Department of Hawaiian Home Lands to negotiate lease terms beyond sixty-five years, and provides a right of first refusal to previous lessees; and (2) Prohibits the sale or transfer of ceded lands until the unrelinquished claims of the native Hawaiian people are resolved or reconciliation between the State and the native Hawaiian people is no longer supported, whichever occurs first; except in the following circumstances: disposing of remnants, providing easements to public utilities and government agencies as provided by law, land exchanges as provided by law, dispositions that are a part of the ceded lands negotiations between the Office of Hawaiian Affairs (OHA) and the State, dispositions after December 31, 2014, that are approved by a 2/3 vote of both houses of the Legislature, or when a compelling state interest for the disposition is established. The decision-making notice however has indicated that the Committees will consider restoring the language of the House Draft 1 version of this measure which proposed to allow 999-year homestead lease to be assigned to land trusts created for the purposes of managing and holding the homestead leasehold estate for the benefit of the lessee and lessee's family members. The Department of Land and Natural Resources (Department) does not support restoring the language of the House Draft 1, and instead recommends other amendments.

The Department notes that even if this bill were to pass with the language of the House Draft 1 intact, designating beneficiaries in the trust still requires agreement from all affected family members. Majority of the conflicts within the family centers on the respective share of interest

for each family member, and their legitimate status of being an heir of the deceased homestead lessee. Pursuant to Section 171-100, Hawaii Revised Statutes (HRS), the OHA may establish a successor determination program to help the families under homestead leases, including an arbitration program. The Department believes Section 171-100, HRS, is capable of addressing the issue of successorship of a homestead lease under its provisions. Setting up a land trust to hold the leasehold interest of a homestead lease cannot relieve the conflict among family members, thus the Department finds the language in the House Draft 1 not necessary and opposes that change.

Whether or not the language of the House Draft 1 is restored, the Department strongly recommends that the bill be amended to expand the exceptions to the prohibition of sales or transfers of ceded lands by allowing easements to nongovernmental entities or persons for access or the resolution of encroachments on state lands. Kuleana lots and other landlocked parcels are entitled to reasonable access and often times require such access over state lands. Additionally, encroachments on state lands, particularly in the coastal areas, are commonplace and in need of expeditious resolution to address or avoid liability concerns for the State. In many instances, it is in the best interest of the State and the general public to resolve encroachments through the issuance of an easement rather than removal. As such, the Department respectfully urges that the recommended changes be incorporated into the bill.