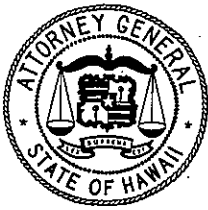


TESTIMONY

SB2771

LATE



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

ON THE FOLLOWING MEASURE:
S.B. NO. 2771, RELATING TO KALAUPAPA.

LATE TESTIMONY

BEFORE THE:
SENATE COMMITTEES ON
WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS AND ON HEALTH

DATE: Monday, February 22, 2010 **TIME:** 2:45 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Mark J. Bennett, Attorney General, or
Susan R. Kern, Deputy Attorney General

Chairs Hee and Ige and Members of the Committees:

The Department of the Attorney General has concerns about the provisions of this bill regarding (1) the transfer of land and management functions to the Department of Hawaiian Home Lands (DHHL); (2) the rights of residents of Kalauapapa settlement; and (3) agreements between the State and the National Park Service (NPS) concerning some of the land proposed to be transferred.

First, the bill proposes to transfer land in Kalawao County and the management of that land from the Departments of Health and of Land and Natural Resources to DHHL without making the land available for the purposes of the Hawaiian Homes Commission Act of 1920 (HHCA). Second, the transfer is to be accomplished "when there is no longer any person receiving care for Hansen's disease at Kalauapapa Settlement[.]" Page 1, lines 17-18, page 2, line 1. Third, the impact of the bill on the agreements currently in place between the State and the NPS is unknown.

The Role of the Department of Hawaiian Home Lands

DHHL was established in order to administer the HHCA and its Hawaiian homelands trust. Hawaii Revised Statutes § 26-17. In keeping with the State's trust obligations under the HHCA,

the proposed transfer of land and management functions should be made separate and distinct from DHHL's administration of the HHCA. The bill, at page 3, lines 4-6, provides that a commissioner of the Hawaiian Homes Commission be elected by commission members to serve as the executive administrator of Kalawao County. This provision would conflict with the State's trust obligations under the HHCA. Thus, the executive administrator of Kalawao should not be one of the Hawaiian Homes Commissioners. Also, the bill does not take into account the provisions at sections 213, 213.5, and 213.6 of the HHCA that limit the uses of state moneys for the trust purposes set out in the HHCA. Under these provisions, no DHHL trust resources or other resources made available to DHHL can be used by DHHL to manage the transferred land, yet the bill requires DHHL to manage Kalawao County after the lands are transferred.

The Rights of Patient Residents

This provision, as currently drafted, interferes with long-standing rights of individuals who were institutionalized for segregation at Kalaupapa. Those patients have the right to receive health care and the right to live at Kalaupapa for the remainder of their lives, and to return to Kalaupapa if they are residing elsewhere. This longstanding right can be preserved by changing the wording at page 1, lines 17-18, and page 2, lines 1-4, to read:

(a) Notwithstanding any law to the contrary, when there is no longer any person eligible to reside at Kalaupapa Settlement, and no person eligible to receive health care and other treatment and services at Kalaupapa Settlement, the department of health and the department of land and natural resources shall

timely execute the transfer to the department of
Hawaiian home lands of:

Agreements with National Park Service

In 1980, Congress established the Kalaupapa National Historic Park. Public Law 96-565. The enabling legislation authorizes cooperative agreements between NPS and owners of property within the park; agreements are in place between the NPS and the Board of Land and Natural Resources, DHHL, the Department of Health, and the Department of Transportation. The effect of the bill on those agreements is unknown.

Recommendation

The Department of the Attorney General therefore recommends that the bill be held for further study of its impact on the various agreements between state agencies and the NPS.

LATE TESTIMONY

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 OF KAULANA H. R. PARK, CHAIRMAN
HAWAIIAN HOMES COMMISSION
TO THE SENATE COMMITTEES ON
WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS &
HEALTH

ON SB 2771 RELATING TO KALAUPAPA

February 22, 2010

Chair Hee, Chair Ige and Members of the Committee:

The Department of Hawaiian Home Lands (DHHL) provides the following comments on this SB 2771 that calls for the transfer of the management responsibilities of Kalaupapa from the Department of Land and Natural Resources to our department on the condition that DHHL transfer the property to the new Native Hawaiian governing entity upon its recognition.

The nature of the 640 acres of land that would be transferred to DHHL is different from our existing trust lands; its management requires a distinct expertise and funding resource that our existing staff and trust funds cannot provide or sustain. Our existing programs and financial obligations would not allow us to expend any significant amount from our trust fund to maintain this parcel.

While we are concerned with the costs of this transfer, we are also concerned with consultation with our beneficiaries now on this issue. At a minimum we would want to consult the existing residents

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of Kalaupapa, and then our beneficiaries on Moloka'i, and statewide. We would also want the opportunity to continue our working relationship with community organizations like Ka 'Ohana O Kalaupapa to properly plan for the future management of Kalaupapa.

Thank you for the opportunity to provide comments on this measure.

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(END)