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GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the House Committee on
JUDICIARY**

**Thursday, February 17, 2011
2:30 PM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 397, House Draft 1
RELATING LANDS CONTROLLED BY THE STATE**

House Bill 397, House Draft 1, proposes to amend Sections 171-64.7(c) and 171-50 (c), Hawaii Revised Statutes, by requiring more specificity in all concurrent resolutions for the review of proposed sale or gifts of state land and exchanges of public land for private land, including whether the land was classed as government or crown lands prior to August 15, 1895. Additionally, it requires that a copy of the resolution be submitted to the Office of Hawaiian Affairs (OHA) three (3) months prior to the convening of a regular or special session of the legislature.

The Department of Land and Natural Resources has no objections to this measure, however, would like to comment that this proposed legislation will slow down the transaction processes, with the requirement to provide OHA with a copy of the resolution three (3) months prior to any legislation. For example, if staff becomes aware of a potential transaction two (2) months prior to session, that applicant will need to wait another year for legislative review.

WILLIAM J. AILA, JR.
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
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
KAIHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS



STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 QUEEN STREET, SUITE 300
Honolulu, Hawaii 96813
FAX: (808) 587-0600

IN REPLY REFER TO:

Statement of
Karen Seddon
Hawaii Housing Finance and Development Corporation
Before the

HOUSE COMMITTEE ON JUDICIARY

February 17, 2011 at 2:30 p.m.
Room 325, State Capitol

In consideration of
H.B. 397, H.D. 1
RELATING TO LANDS CONTROLLED BY THE STATE.

The HHFDC is able and willing to provide the Office of Hawaiian Affairs (OHA) with additional and advance information on land that we plan to sell or exchange for housing. To enhance implementation of H.B. 397, H.D. 1, we offer the following amendments for the Committee's consideration.

1. We suggest deleting the word "specific" on page 2, line 4 and page 3, line 15.

The bill amends paragraphs 171-50(c)(5) and 171-64.7(c)(5), HRS by adding a requirement for state agencies to provide the "specific purpose" for which land is being exchanged or sold/given. However, the degree of specificity is not clear. For example, does "specific purpose" mean "the development of single or multi-family homes" or "the development of mixed-use housing and commercial space"? Or, does "specific purpose" mean the exact number of housing units, size of units, or type of housing (family vs. elderly) that will be developed?

HHFDC normally issues a Request for Proposals (RFP) for the development of land and would seek legislative authority to sell the land prior to issuing the RFP. While the development concept is known, specific information such as the exact number of housing units, size of units, or housing type would not be available at that time. Because paragraph 171-64.7(c)(6) (or the proposed paragraph 171-50(c)(6)) requires the concurrent resolution to provide a detailed summary of any development plans for the land to be sold or exchanged, we believe the insertion of the adjective "specific" is not necessary and suggest it be deleted.

2. We suggest inserting the word "draft" on page 2, line 14 and page 4, line 3.

H.B. 397, H.D. 1 also requires state departments and agencies to provide OHA with a copy of the resolution three months prior to the convening of a regular or special session to allow OHA to determine whether the land was classed as government or crown lands previous to August 15, 1895, or was acquired by the State in exchange for such lands.

HHFDC is willing and able to provide OHA with advance information on the planned sale or exchange of land. We previously provided OHA with notice of informational briefings that were held pursuant to paragraph 171-64.7(e), as well as supporting information on the land status. However, if development plans change because of public input during the community meeting or other unforeseen reasons, then the concurrent resolution would also have to be changed. If this occurs after the three month advance deadline has passed, a housing project could be stalled for an entire year.

A practical way to address this situation is to provide OHA with a draft resolution. The draft resolution would provide OHA with the best information available at that time while allowing the flexibility to make revisions that may be needed.

Thank you for the opportunity to testify.



HB 397, HD 1
RELATING TO LANDS CONTROLLED BY THE STATE
House Committee on Judiciary

February 17, 2011

2:30 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) strongly **SUPPORTS** HB 397 HD1, which is a bill in OHA's 2011 Legislative Package. This bill requires more timely notice of, and greater specificity in, resolutions for legislative consideration involving anticipated sales, gifts, or exchange of state-controlled lands.

Act 176, Session Laws of Hawaii 2009, established a more comprehensive process for the sale or gift of state-owned land, and reserved a larger oversight role for the Legislature to assure that key information about certain sales, gifts, or exchanges of land is shared with the Legislature and OHA.

A key element in this process involves state departments submitting for consideration, legislative resolutions containing information as to their anticipated land transactions. The law requires that OHA receive a copy of each resolution when it is submitted to the Legislature.

During the 2010 Regular Session, substantial numbers of "Act 176 resolutions" moved through both houses of the Legislature, but OHA's full consideration of the resolutions, in anticipation of legislative hearings, was hindered because of the limited time between OHA's receipt of the resolutions and the Legislature's consideration of the resolutions. Furthermore, the resolutions were not always informative regarding a matter of great interest to OHA: whether the land was formerly crown or government land of the Kingdom of Hawai'i.

HB 397, HD1 is designed to facilitate OHA's review by requiring that the resolutions be transmitted to OHA three months prior to the convening of the Legislature and by requiring additional detail in the resolutions, including an explanation of whether the land was classed as government or crown land previous to August 15, 1895, or was acquired by the State in exchange for such lands. We respectfully suggest that requiring the additional detail could assist the Legislature in considering the potential impact of the transaction to the ceded lands, the public land trust, and other key policy matters.

We urge your Committee to PASS HB 397 HD1. Mahalo for the opportunity to testify on this important measure.



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HOUSE BILL 397, HD 1 RELATING TO THE LANDS CONTROLLED BY THE STATE

BEFORE THE HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, February 17, 2011
TIME: 2:30 p.m.
PLACE: Conference Room 325

Chairperson Keith-Agaran, Vice-Chairperson Rhoads and members of the House Committee on Judiciary. Aloha. My name is Moses Haia and I am the Executive Director of the Native Hawaiian Legal Corporation (NHLC). NHLC is a non-profit, public interest law firm which endeavors to provide low cost legal assistance to Native Hawaiian individuals, families and communities in their individual and collective efforts to preserve their traditional Hawaiian way of life. Thank you for this opportunity to provide testimony in strong support of House Bill 397, H.D. 1, relating to the lands controlled by the state.

The cases undertaken by NHLC and on behalf of native Hawaiians and Hawaiians include assertion of ahupua'a tenants' and kuleana rights; access and water rights; protection and preservation of traditional and customary practices; and the protection of historic sites, including burials. Many of these cases involve resources and/or constitutionally protected rights on or related to state-controlled lands.

Sections 1 of Article XI of the Hawaii Constitution recognizes the application of the public trust doctrine to all of Hawaii's resources including land and requires that the State protect all such resources for the benefit of its people. In Hawaii, this doctrine was originally established to preserve the rights of native tenants during the transition to a western system of private property.

Article XII, section 7 of the Hawaii Constitution recognizes the importance of such rights by placing an affirmative duty on the State and its agencies to preserve and protect traditional and customary native Hawaiian rights and confers upon the State and its agencies a solemn duty to protect these rights and prevent any interference with the exercise of these rights. The exercise of such rights is, in effect, a public trust purpose.

Section 5(f) of the Hawaii Admission Act established a public land trust for, among other things, the betterment of the conditions of native Hawaiians. Pursuant to Article XII, Section 6 of Hawaii's constitution, the Office of Hawaiian Affairs was created in part to "manage and administer the proceeds from the sale or other disposition

Services made possible with major funding from the Office of Hawaiian Affairs.

of the lands, natural resources, minerals and income derived from whatever sources for native Hawaiians and Hawaiians” and to “formulate policy relating to affairs of native Hawaiians and Hawaiians.” The Office of Hawaiian Affairs must therefore ensure that any proposed sale, gift, or exchange of state-controlled lands is in the best interests of native Hawaiians and Hawaiians.

Act 176, Session Laws of Hawaii 2009, established a more comprehensive process for the sale or gift of state-owned land to ensure that the State of Hawaii, through the Legislature and OHA receive the type of information that will allow each, in light of their respective duties and obligations, to engage in informed decision making with respect to the appropriateness of the proposed sale, gift, or exchange. The bill under consideration seeks to provide OHA and the Legislature with an opportunity to engage in a more reasoned and less hurried analysis of such by requiring that a proposal be provided to OHA well in advance of the convening of the Legislature and contain additional detail, including an explanation of whether the land was classified as government or crown land prior to August 15, 1895, or acquired by the State in exchange for such lands. This additional information will also greatly assist the Legislature’s consideration of the potential impact of the transaction on the ceded lands trust, the public land trust, and other key policy matters.

Mahalo for the opportunity to testify in strong support of this measure.

ASSOCIATION OF HAWAIIAN CIVIC CLUBS

TESTIMONY BY
PRESIDENT SOULEE STROUD

OPPOSE AS AMENDED, HOUSE BILL 397 HD1 **Relating to Lands Controlled by the State**

Before the House Judiciary Committee
February 17, 2011; 2:30 pm; Room 325

Aloha Mr. Chairman Keith-Agaran, Vice Chair Rhoads and members of the Judiciary Committee. I am Soulee Stroud, President of the Association of Hawaiian Civic Clubs here today to support the passage of the original House Bill 397 and opposing the amendments.

The first civic club was founded in 1918 and we continue to thrive with clubs on all islands of the State of Hawaii, 11 states on the continent and the District of Columbia. We now have sixty component clubs participating in those activities that our founders envisioned – historic preservation, education of Native Hawaiian students, protection of traditional culture and advocacy for Hawaiian Home Lands. We have also been very supportive of the Office of Hawaiian Affairs (OHA) since its inception, and partnered with OHA on many occasions.

On January 18 , members of the Board and I met with OHA administrative staff, and received a briefing and summaries of the OHA package.

A few days later, on January 22, 2011 the Board of Directors met in a quarterly meeting that included Board members from all islands and several from the continent. Our agenda included a discussion of the OHA legislative package and the Board was unanimous in its vote to support the entire package.

HB 397 HD1 has been amended to reduce the amount of time that the Office of Hawaiian Affairs is informed of proposed exchanges, sales or gifts of trust lands from six months prior to three months prior to the convening of the next legislative session. We disagree with this amendment.

We believe that if there is to be a reduction in the trust corpus, that OHA as one of the Trustees of these lands has an obligation to research the implications of this reduction and to confer with their beneficiaries on this matter. The change from

six months to three months inhibits appropriate consultation with OHA's beneficiaries, who are located not just statewide, but nationwide as well. Further, the reduction in time undermines the very principles of openness and transparency in governmental deliberations. We urge the committee to return to the original language of the bill.

The Committee report also notes that "this bill would affect not only OHA but also the Department of Agriculture, University of Hawaii, Agribusiness Development Corporation, and High Technology Development Corporation as holders of title to public lands." We are not clear what the purpose is served by this Legislative "notice", since none of these agencies or organizations hold that sacred and public trust responsibility as do the Legislature and OHA .

It is important that the State monitor the reduction of the public corpus, as the State has the responsibility of a public trust to its citizens. Similarly, the Office of Hawaiian Affairs has as its mission, the "betterment of conditions of Native Hawaiians". This mission is funded, in part, by a twenty per cent, pro rata share of the income derived from the public land trust. OHA therefore, must be maka'ala about the sale or transfer of the public corpus by agencies of the State.

Additionally, this bill provides, in part, the specific size, purpose, and plans for the public lands that are being exchanged. It also requires a statement of whether the land in question is land classified as government prior to 1895 or acquired by the State later. It is important to OHA and its beneficiaries to monitor the transfer of "crown" lands or the government lands of 1895....and to distinguish them from lands recently acquired and transferred.

We support all mechanisms that shall keep the Office of Hawaiian Affairs informed of the trust corpus. In addition, we expect that OHA will consult and confer with us, the beneficiaries of the trust lands should there be an effort to reduce the corpus. This is the kuleana of OHA to its beneficiaries. We do not support any reduction of that kuleana. We therefore urge this committee to return to the original language of HB 397.

Thank you for your consideration of our testimony.

For further information please contact our Government Relations Chair, Jalna Keala at jalna.keala2@hawaiiantel.net www.aohcc.org



O`ahu Council
Association of Hawaiian Civic Clubs
P. O. Box 37874
Honolulu, HI 96837-1122

February 17, 2011
House Judiciary Committee Hearing

TESTIMONY IN SUPPORT OF H.B. 397, H.D. 1
Relating to Lands Controlled by the State

Aloha mai kakou. My name is Mahealani Cypher, president of the O`ahu Council, Association of Hawaiian Civic Clubs. Our Council's membership is comprised of 26 Hawaiian civic clubs located on the island of O`ahu.

We are in strong support of House Bill 397, House Draft 1, which would require better documentation and advance review by the Office of Hawaiian Affairs (OHA) prior to the Legislature's consideration of concurrent resolutions that propose exchanges, sales or gifts of state land.

We believe it is important that this Legislature – and the State of Hawai`i – conduct a proper due-diligence in determining which lands should be separated from the inventory of public lands, to ensure that such lands do not properly fall into the category of "Ceded Lands" which are held in trust for the native Hawaiian people.

It is equally important that OHA establish an efficient and thorough review process, utilizing all available technology and resources, to provide recommendations to the Legislature regarding any lands targeted for discharge.

We urge your support for this bill.

Mahalo for this opportunity to offer our mana`o.

Mahealani Cypher

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Email: malamapono@aol.com



KO`OLAUPOKO HAWAIIAN CIVIC CLUB

February 16, 2011

To: Rep. Gilbert S.C. Keith-Agaran, Chair
And Members
House Committee on Judiciary

From: Alice P. Hewett, President

Subject: Support for H.B. 397, H.D. 1 – Relating to Lands Controlled by the State

Aloha. The Ko'olaupoko Hawaiian Civic Club offers our support for H.B. 397, H.D. 1, to give the Office of Hawaiian Affairs time to review proposed exchanges, sales or gifts of state lands, and requires more specificity in concurrent resolutions calling for such actions.

This is the honorable, pono thing to do, and we thank you for considering this important legislation. We urge expeditious passage of this bill and subsequent adoption by the full House of Representatives.

Mahalo nui loa.

Alice P. Hewett

P. O. Box 664
Kaneohe, HI 96744
Ph. (808) 235-8111
koolaupokohcc.org

Testimony for HB397 on 2/17/2011 2:30:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Wednesday, February 16, 2011 1:09 PM

To: JUDtestimony

Cc: bisaki@gmail.com

Testimony for JUD 2/17/2011 2:30:00 PM HB397

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Bianca Isaki

Organization: Individual

Address:

Phone:

E-mail: bisaki@gmail.com

Submitted on: 2/16/2011

Comments:

Although I object to the state's assumption that it has the authority to sell ceded lands, this measure seems to be an at least minimum safeguard against sales that could be more erroneous than not. For that reason, I support the bill.

Testimony for HB397 on 2/17/2011 2:30:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Wednesday, February 16, 2011 1:39 PM

To: JUDtestimony

Cc: haaheok@hawaii.edu

Testimony for JUD 2/17/2011 2:30:00 PM HB397

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Haaheo Kahoochalahala

Organization: Individual

Address:

Phone:

E-mail: haaheok@hawaii.edu

Submitted on: 2/16/2011

Comments:

JUDtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 16, 2011 2:05 PM
To: JUDtestimony
Cc: jkeoho@gmail.com
Subject: Testimony for HB397 on 2/17/2011 2:30:00 PM

Testimony for JUD 2/17/2011 2:30:00 PM HB397

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Jarrett Keohokalole
Organization: Individual
Address:
Phone:
E-mail: jkeoho@gmail.com
Submitted on: 2/16/2011

Comments:

JUDtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 16, 2011 2:13 PM
To: JUDtestimony
Cc: adamroversi@gmail.com
Subject: Testimony for HB397 on 2/17/2011 2:30:00 PM

Testimony for JUD 2/17/2011 2:30:00 PM HB397

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Adam Roversi
Organization: Individual
Address:
Phone:
E-mail: adamroversi@gmail.com
Submitted on: 2/16/2011

Comments:

I strongly support the additional requirements and restrictions on the sale of public lands that are imposed by HB 397.

JUDtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 16, 2011 2:28 PM
To: JUDtestimony
Cc: alexak@hawaii.edu
Subject: Testimony for HB397 on 2/17/2011 2:30:00 PM

Testimony for JUD 2/17/2011 2:30:00 PM HB397

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Alexa Zen
Organization: Individual
Address:
Phone:
E-mail: alexak@hawaii.edu
Submitted on: 2/16/2011

Comments:

JUDtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 16, 2011 3:34 PM
To: JUDtestimony
Cc: laoki@hawaii.edu
Subject: Testimony for HB397 on 2/17/2011 2:30:00 PM

Testimony for JUD 2/17/2011 2:30:00 PM HB397

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Lianne Aoki
Organization: Individual
Address:
Phone:
E-mail: laoki@hawaii.edu
Submitted on: 2/16/2011

Comments:

LEIALOHA "ROCKY" KALUHIWA

P. O. Box 4870

Kaneohe, HI 96744

Ph. 286-7955

February 16, 2011

To: Rep. Gilbert S.C. Keith-Agaran, -Chair/And Members
House Committee on Judiciary

From: Leialoha Kaluhiwa *Leialoha Kaluhiwa*
Kupa`aina, He`eia Ahupua`a

Subject: Testimony in Support – H.B. 397, H.D.1
– Relating to Lands Controlled by the State

I am in support of House Bill 397, House Draft 1, which would require more specifics in any resolutions that would involve divesting state lands, and provide time for OHA to review the documents before the legislature acts on these proposals.

I feel that the public lands should never be sold, because once land is sold, we can never get it back. These lands should be leased for its best use, and percentage from profits going back into our state system. This way, we will always have these lands in perpetuity and, if any lease agreement is broken, we can always retrieve it and keep it in its best use for the betterment of our State.

The Crown lands should always be kept under the Office of Hawaiian Affairs and leased or used to its best ability to generate funds to support the native Hawaiians, or to protect our wahi kapu, or sacred places.

Anyway, no one knows for sure which is ceded lands, so we need this bill to help us with more clarification.

Mahalo.

Melody Kapilialoha MacKenzie, Esq.
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H.B. 397, H.D. 1
RELATING TO LANDS CONTROLLED BY THE STATE

House Committee on the Judiciary
Hearing on Thursday, February 17, 2011, at 2:30 p.m.

Chair Keith-Agaran and members of the Committee on the Judiciary:

I submit this testimony in **support** of H.B. 397, H.D. 1, which would provide more specificity and information in the resolutions submitted to the Legislature for the exchange or alienation of state controlled public lands. I am an associate professor at the William S. Richardson School of Law and director of Ka Huli Ao Center for Excellence in Native Hawaiian Law. I submit this testimony, however, in my personal capacity as a private citizen and as an attorney who has worked, litigated, and written on Native Hawaiian legal questions, including the public land trust, for many years.

One of the most troubling issues related to the public land trust for the Native Hawaiian community, and indeed our greater community, has been the lack of a detailed and accurate inventory of the lands. Without this information, it is difficult for the community to provide rational and meaningful input when the Legislature considers exchanging or alienating the trust lands. Thus, amending Act 176 (codified in sections 171-50(c) and 171-64.7 of Hawai'i Revised Statutes) as outlined in H.B. 397, H.D. 1, makes great sense and is good public policy.

After a year of experience with the mechanism established in Act 176, this bill seeks to improve that process by identifying specific information that should be disclosed by state agencies and departments in order to ensure that the Legislature, the Office of Hawaiian Affairs, the Native Hawaiian community, and the general public, are fully informed. This bill will give the Legislature the critical information it needs to make important decisions on the public land trust and other state controlled lands, and will provide greater transparency in government decision-making. Most importantly, this will help to ensure that the Legislature is fully implementing the State's trust responsibilities related to the public land trust.

Mahalo for this opportunity to submit testimony on this important bill.