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GOVERNOR OF HAWAII



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

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

**Before the House Committee on
FINANCE**

**Thursday, March 3, 2011
3:15 PM
State Capitol, Conference Room 308**

**In consideration of
HOUSE BILL 397, HOUSE DRAFT 2
RELATING LANDS CONTROLLED BY THE STATE**

House Bill 397, House Draft 2, 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 draft copy of the resolution be submitted to the Office of Hawaiian Affairs (OHA) at least three (3) months prior to the convening of a regular or special session of the legislature.

The Department of Land and Natural Resources does not object to this measure but would like to point out that this bill may result in slowing down certain transactions. For example, if staff only first becomes aware of a potential transaction two (2) months prior to the start of a legislative session, then the bill would require the applicant to wait another year for legislative review because the draft resolution would not have met the requirement of at least three (3)-months prior notice to OHA.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
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LAND
STATE PARKS



HB 397, HD 2
RELATING TO LANDS CONTROLLED BY THE STATE
House Committee on Finance

March 3, 2011

3:15 p.m.

Room 308

The Office of Hawaiian Affairs (OHA) strongly **SUPPORTS** HB397 HD2, 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 HD2 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 HD2. Mahalo for the opportunity to testify on this important measure.



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HOUSE BILL 397, HD 2 RELATING TO THE LANDS CONTROLLED BY THE STATE

BEFORE THE HOUSE COMMITTEE ON FINANCE

DATE: Thursday, March 3, 2011
TIME: 3:15 p.m.
PLACE: Conference Room 308

Chairperson Oshiro, Vice-Chairperson Lee and members of the House Committee on Finance. 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. 2, 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.

Section 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

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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.