

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
ON
HOUSE BILL NO. 2103, HD1

February 15, 2012

RELATING TO THE BANK OF THE STATE OF HAWAII

House Bill No. 2103, HD1, establishes a bank of the State of Hawaii. This new bank will develop a program to acquire residential property in situations where the mortgagor is an owner-occupant and the mortgagee is a securitized trust that cannot adequately demonstrate that it is a holder in due course. In addition, among other functions, the bank will accept deposits of public funds, make, purchase, guarantee or hold loans, act as a reserve depository for financial institutions.

The Department supports the intent of the bill, which is to support economic development and the local housing and financial markets. However, we believe that these purposes may be achieved through other programs. There are a number of complexities in operating a bank and the Department recommends that a thorough study and feasibility assessment be performed to ascertain how such a state bank could meet its objectives and determine the costs associated with administering such a bank. The Department is supportive and desirous of participating in whatever concept or discussion can be had between the Legislature and the Executive branch in conceptualizing, planning, coordinating and administering such a program – including, if a bank is the desired option to pursue.

Thank you for the opportunity to submit testimony on this bill.



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

335 MERCHANT STREET, ROOM 310

P.O. Box 541

HONOLULU, HAWAII 96809

Phone Number: 586-2850

Fax Number: 586-2856

www.hawaii.gov/dcca

KEALI'I S. LOPEZ
DIRECTOR

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE

THE TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION OF 2012

Wednesday, February 15, 2012
2:00 p.m.

TESTIMONY ON H.B. 2103, H.D.1
RELATING TO THE BANK OF THE STATE OF HAWAII

TO THE HONORABLE ROBERT N. HERKES, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Iris Ikeda Catalani, Commissioner of Financial Institutions ("Commissioner"). I appreciate the opportunity to provide comments on behalf of the Department of Commerce and Consumer Affairs ("Department") on H.B. 2103, H.D.1, relating to the proposed Bank of the State of Hawaii (the "Bank").

To briefly summarize, proposed H.B. 2103, H.D. 1, creates a Bank of the State of Hawaii for the following purposes: 1) to support economic development by increasing access to capital for businesses and farms within the state; 2) to provide support and stability to the local financial community without competing with it; 3) to provide stability

to the local housing market and reduce the number of wrongful and fraudulent foreclosures; 4) to reduce the costs of banking services for the state; and finally 5) to return profits to the state general fund. A major initiative of the Bank is to create a purchase program for problematic mortgages with the purpose of purchasing residential property at a discount when mortgagees cannot demonstrate the right to collect on a mortgagor's indebtedness or when the mortgagee does not have the right to foreclose on a property. In turn, the Bank is then to turn a profit by either selling or renting these properties.

Accordingly, the Department would like to note that the Legislature is also considering H.B.1840, establishing a task force to review and study the feasibility and cost of establishing a state-owned bank. The Department believes the task force is a more prudent approach before embarking and involving state funds to establish a bank.

However, if the Committee would like to continue this discussion, the Department offers the following comments:

- Board of Directors (page 2): The board is comprised of appointed executives by the governor and as such, each serves at the pleasure of the governor. There may be an unintended consequence when a new governor is elected and the entire board is reappointed, who may also change the members of the advisory board.

- Advisory Board (page 3): The composition of the advisory board seems to indicate this board would be the policy making body of the State along with members of the Board. The advisory board members from the banks or credit unions should be aware of the federal management interlock act, the antitrust laws, and potential conflicts of interest which may prohibit their participation on the advisory board.
- Rulemaking authority (page 9): We are uncertain if the Bank is an agency of the state government or an independent body from the state using state funds. Rulemaking authority is generally established for governmental agencies, while policies are generally established by private businesses.
- Bank examinations (page 10): The Department has several concerns regarding this provision. First, the number of examinations is more than any other state chartered bank. The DFI reviews reports by the state chartered financial institutions (banks and others) quarterly. These quarterly reports are not examinations. The quarterly reports report on the condition of the bank which include data on the loans, deposits, and investments. These quarterly reports must be reviewed timely to provide feedback to financial institutions when more information is required. Examinations take approximately three weeks, and are conducted on-site reviewing in detail the loans, deposits, and investments, any related transaction testing and compliance with federal laws and regulations.

Generally, DFI takes another three to four weeks to analyze and issue a report to the bank. If DFI is required to examine the Bank every quarter, it will need at least ten additional examiners to complete this examination. DFI currently has ten examiners to examine annually approximately 25 institutions. In addition, DFI uses three licensing examiners to review the quarterly reports from the financial institutions.

Second, the results of the examination are subject to confidentiality rules by the federal government. The results are only shared with the board of directors and with specific management of the bank as they have the specialized knowledge to understand the complexities of the examination results. The results are not shared with the general staff of any institution, as general staff may misinterpret any findings of the institution and may inadvertently start a run on the bank or cause mistrust or uncertainty in the bank. In addition, section 92F-13(4), HRS, states protection for government records that are protected from disclosure pursuant to state or federal law. The release of the information to the public may frustrate a legitimate government function (exception Section 92F-13(3), HRS).

- Timeline for review of application (page 15): The timeline proposed in the bill for the review of the application is not sufficient. There are several components in reviewing an application by a borrower. First, the borrower must submit an

application. Second, under federal regulations, a lender has three days after the borrower submits an application, to send disclosures about the projected cost of financing the loan product. The lender then has 30 days to determine whether it has sufficient information from the borrower to underwrite the loan and if not, it must allow the borrower to provide the additional information. When the lender receives all information required to underwrite the loan, it has 30 days to complete the analysis and inform the borrower whether it can make the loan and terms of the loan or whether it will deny the loan and the reasons for the denial. The Department is concerned that the timeline for the review of the application may be unrealistic.

- Timeline: Some of the provisions in the proposal are different from the terms of the recent multi-state settlement agreement. The differences in the timeline may be confusing for the mortgage servicers to comply with as well as for the state bank employees to determine if the servicer is in compliance.

In conclusion, we suggest that the Legislature consider H.B. 1840 to study the establishment of a state bank.

Thank you for the opportunity to provide these comments on House Bill 2103, H.D. 1.

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: House Committee on Consumer Protection & Commerce
From: Cheryl Kakazu Park, Director
Date: February 15, 2012, 2 p.m.
State Capitol, Conference Room 325
Re: Testimony on H.B. No. 2103, H.D. 1
Relating to the Bank of the State of Hawaii

Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices ("OIP") takes no position on the purpose and substance of this bill, but recommends an amendment to the bill's proposed confidentiality provision for certain state bank records.

OIP administers and interprets the State's public records law, the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA). The UIPA requires that all government records are available for public inspection and copying, but provides exceptions to this public disclosure mandate. One exception is for government records that are protected from disclosure "pursuant to state or federal law." HRS section 92F-13(4) (1993).

This bill proposes a new HRS subsection -12(a) that would create a new state law making certain bank records confidential, including "(2) Internal or interagency memoranda or letters that would not be available by law to a party other than in litigation with the bank." OIP finds this specific description of records to be confusing and difficult to interpret for purposes of determining whether such records would be exempt from public disclosure under the UIPA's exception for

records protected pursuant to state law. The wording of this particular confidentiality provision is confusing because it is not clear which of these purposes it is actually intended to achieve: (1) simply make confidential any memoranda or letters that fall within an exception to disclosure under the UIPA, HRS chapter 92F, and, thus, are already not required by law to be made available; (2) make confidential only memoranda or letters for which an existing law specifically makes the records unavailable "to a party other than in litigation with the bank;" or (3) make memoranda and letters confidential to the same extent as similar private bank records. Therefore, OIP recommends that your Committee amend this bill by specifying in paragraph (2) which of these purposes, or any other, is to be effectuated with regards to protecting internal or interagency memoranda or letters.

Alternatively, OIP recommends that your Committee simply delete this paragraph (2) from the new confidentiality section -12 proposed in this bill. Rather than create an ambiguity in the law, paragraph (2) can be deleted because it only proposes to protect internal and interagency records that "would not be available by law" and the UIPA already contains exceptions that may protect such records from disclosure. For example, OIP has concluded in its advisory opinions that the UIPA's "frustration of a legitimate government function" exception (HRS Sec. 92F-13(3)) applies to internal and interagency memoranda when these records fall within the "deliberative process privilege." Another exception recognized under the UIPA is for government records that are protected from disclosure when so ordered by a state or federal court. HRS 92F-13 (4). A third UIPA exception that could apply to internal and interagency memorandum is for government records pertaining to the prosecution or defense of any judicial or quasi-judicial action to which the state or any county is or may be a party, to the extent that such records would not be discoverable. HRS Sec. 92F-13(2).

House Committee on Consumer
Protection & Commerce
February 15, 2012
Page 3 of 3

Thank you for considering OIP's opportunity and suggested amendment.

**LAW OFFICE OF GEORGE J. ZWEIBEL
45-3590A Mamane Street
Honoka'a, Hawaii 96727
(808) 775-1087**

House Committee on Consumer Protection & Commerce

**Hearing: Wednesday, February 15, 2012, 2:00 p.m.
Conference Room 325, State Capitol, 415 South Beretania Street**

IN SUPPORT OF HB 2103, HD1

Chairs Herkes and Keith-Agaran, Vice Chairs, and Committee Members:

My name is George Zweibel. I am a Hawaii Island attorney and have for many years represented mortgage borrowers living on Oahu, Hawaii, Kauai and Maui. Earlier, I was a regional director and staff attorney at the Federal Trade Commission enforcing consumer credit laws as well as a legal aid consumer lawyer. I have served on the Legislature's Mortgage Foreclosure Task Force since its inception in 2010.

HB 2103, HD1 would establish the bank of the State of Hawaii and a purchase program for distressed residential properties encumbered by problematic mortgages, including provisions for selling the property back to the former owner in certain circumstances.

The foreclosure crisis in our state is far from over. On the contrary, mortgagees' decision to stop doing nonjudicial foreclosures (when as many as 100 a day were being advertised in the Star-Advertiser in late 2010) due to their perceived liability risk following enactment of Act 48, has created a huge backlog of foreclosures waiting to happen. The increase in judicial foreclosures is modest compared to the number of foreclosures yet to come. Ongoing efforts to implement effective foreclosure mediation (dispute resolution) programs in both judicial and nonjudicial foreclosures are critical in avoiding the unnecessary loss of homes as well as addressing the courts' growing foreclosure backlog. HB 2103, HD1 would complement those efforts and help address the continuing problem of mortgagees' failure to prove they have the right to collect or to foreclose.

Given the nature of the distressed property purchase program contemplated by HB 2103, HD1, I respectfully recommend increasing the size of the advisory board of directors to add as members at least one consumer representative with expertise in consumer credit and one owner-occupant of mortgaged property. This would ensure input from the people most affected by the program.

Even if a state-owned bank is not established, the substantive provisions of § - 13 should be enacted through some other mechanism to help prevent foreclosures and to keep more borrowers in their homes.

Thank you for your consideration of my testimony.

Presentation To
Committees On Consumer Protection & Commerce and Judiciary
Wednesday, February 15, 2012, at 2:00 p.m.
Testimony on Bill H.B. 2103, HD1

In Opposition

TO: The Honorable Robert N. Herkes & Gilbert S.C. Keith-Agaran, Chairs
The Honorable Ryan I. Yamane & Karl Rhoads, Vice Chairs
Members of the Committees

My name is Gary Y. Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying in opposition to HB 2103, HD1. HBA is the trade association representing FDIC insured depository institutions operating branches in Hawaii.

HB 2103, HD1 proposes to establish the Bank of the State of Hawaii and to buy troubled residential mortgages where mortgagees lack adequate legal standing to collect on the mortgage loans.

Forming a state-owned bank is a complex and potentially costly process and **deserves thorough analysis** to determine whether there is truly a legitimate unfulfilled need. Legislators must ask if it **can be accomplished without risking the public's money and if it can be operated in a safe and sound manner.**

We are not aware of any detailed business plan that addresses any of these issues or that speaks to the future success of such a bank. This should be especially important considering the state's fragile economic climate and the state's lack of prior experience in operating a for-profit business, especially a bank. **Without proper vetting and consideration, the state could be burdened with more costly bureaucracy, not to mention the cost to set up the initial banking infrastructure.**

With this in mind, HBA has a number of concerns:

- **Start Up Time and Diversion of Funds:** It could easily take a couple years before the State Bank is operational, thus paying for all costs during the start up and diverting unknown amounts of taxpayer funds for a speculative venture. This will divert funds away from cash-short programs that benefit the public at large. This is asking for use of taxpayer funds to pursue a business idea without concrete justification.
- **Unknown Funding Source:** What is the source of funding to start the bank and carry the bank until it makes a profit, if ever.
- **State Liability:** The State would incur liability to guarantee the public deposits. This could impact the State's bond rating and potentially lower the State Bond rating as a guarantor of the State Bank public deposits.
- **Policy Conflict:** There could also be a potential public policy conflict of the Bank's mission of doing social good instead running a sound bank for profit. The potential exists for politics to influence lending policies that lead to lower quality loans with increased likelihood of nonpayment.
- **Tying Up Public Funds:** Public deposits are intended to pay for current operating expenses. Turning them into loans that would be repaid over a number of years will impact the availability of these funds to pay for current operating expenses. It is critical to the well being of any bank to match assets and liabilities. It is a fundamental error to match short-term assets (operating income) with long-term liabilities (30-year mortgages). Unlike a bank that has short term and long-term assets as well as short term and long term

borrowing sources, a State Bank will only have short-term assets and thus buying long-term assets would not be in the best interest of the State.

- **Unfair Competition:** There is the potential for unfair competition from a State Bank over Hawaii banks since it would enjoy a Hawaii tax-free status and not have to comply with costly and burdensome federal regulations.

In regard to the proposal to buy troubled mortgages there are several specific issues:

- **Bailing out Toxic Lenders:** In those instances where the State Bank may buy trouble mortgages where lender ownership cannot be clearly established is essentially bailing out toxic lenders
- **Defective Mortgage Titles:** This uses public taxpayer money to buy a loan that the state will not be able to prove it owns. The rationale for this is not clear since the eligibility to buy is a loan the foreclosing entity cannot prove it owns. Therefore, automatically, the state cannot prove its ownership as well since the chain of title is suspect.
- **Making Sub-Prime Mortgages:** Making and holding sub-prime mortgages in the bank where troubled borrowers were previously denied a loan modification, due, in part, to not having income necessary to make lower payments. As been demonstrated in the current housing crises, sub-prime mortgages increase the risk of default and also places the State in a difficult position of possibility foreclosing on these troubled borrowers.

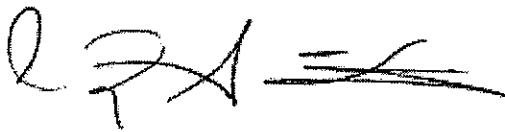
HBA suggests that there may be alternative ways to address these matters:

- **Existing Loan Programs:** If legislators desire to quickly address niche needs like the distressed property program, loans to small businesses and farmers that may not meet the qualifying requirements from a financial institution, then a quicker solution exists. The Legislature can use existing loan programs and government agencies as a faster and more effective way to meet gaps in capital markets than establishing an entirely new organization.
- **Control State Loss:** Using existing state programs and agencies will control losses by minimizing start up expenses, cap the dollar amount of potential losses by funding a pre-determined amount to the loan fund and using existing state resources instead of creating an unnecessary bureaucracy.

Recommendation

It is recommended that an in depth analysis of the feasibility of such a high risk and potentially costly venture be done before considering creating a State Owned Bank. Therefore, HB 1840, that proposes to create a Task Force to study the feasibility of creating a State Owned Bank, is a more prudent and responsible action to undertake before risking public funds without proper justification.

Thank you for this opportunity to testify.



Gary Fujitani
Executive Director



LEGAL AID
SOCIETY OF HAWAI'I

Telephone: (808) 536-4302 • Fax: (808) 527-8088
Mailing Address: P.O. Box 37375 • Honolulu, Hawaii 96837-0375
924 Bethel Street • Honolulu, Hawaii 96813

Calvin Pang, Esq.
President, Board of Directors

M. Nalani Fujimori Kaina, Esq.
Executive Director

The Honorable Robert N. Herkes, Chair
The Honorable Ryan I. Yamane Vice Chair
House Committee on Consumer Protection & Commerce

The Honorable Gilbert S.C. Keith-Agaran, Chair
The Honorable Karl Rhoads, Vice-Chair
House Committee on Judiciary

Hearing : Wednesday, February 15, 2012, 2:00 p.m.
State Capitol, Conference Room 325

In Support of the Intent of HB 2103, HD1 Relating to the Bank of the State of Hawai'i

Chair and Members of the Committees:

My name is Madeleine Young, representing the Legal Aid Society of Hawai'i ("LASH"). I am advocating for our clients who include the working poor, seniors, citizens with English as a second language, disabled, and other low and moderate income families who are consumers, including families facing default and foreclosure on their homes. I provide bankruptcy services as a staff attorney in Legal Aid's Consumer Unit. Specifically, I teach a clinic to show individual consumer debtors how to prepare and file their own petition for chapter 7 bankruptcy relief, as well as provide full representation to Legal Aid clients in bankruptcy matters. I give counsel and advice to clients on protected income sources, exempt assets, and settlement options regarding their consumer debts. I also provide legal services to clients regarding mortgage default and foreclosure matters, wage garnishment avoidance, fair debt collection practices, debt collection defense, as well as student loan, tax debt, and other consumer debt problems.

We are testifying in support of the intent of HB 2103, HD1 as it would strengthen protections for borrowers in the State of Hawai'i.

HB 2103, HD1 would establish the bank of the State of Hawai'i and a purchase program for distressed residential properties encumbered by problematic mortgages, including provisions for selling the property back to the former owner in certain circumstances. HB 2103, HD1 would also establish an advisory board consisting of representatives of the State's

financial, business, agricultural, housing and public labor sectors, including two officers of banks or credit unions incorporated in the State.

LASH respectfully recommends increasing the size of the advisory board of directors to add as members at least one consumer representative with expertise in consumer credit and one owner-occupant of mortgaged property. This would ensure input from the people most affected by the program.

LASH supports the substantive provisions of § -13 regarding the establishment of the purchase program for distressed residential properties, and the intent of HB 2103, HD1 to provide stability to the local housing market and reduce the number of wrongful and fraudulent foreclosures by establishing a short-sale program for owner-occupant borrowers in Hawai'i, in situations where the mortgagee cannot adequately demonstrate its right to collect on the borrower's indebtedness, or prove that the mortgagee has legal authority to foreclose on a property. As an approved housing counselor under chapter 667, LASH also supports the intent of HB 2103, HD1 to afford borrowers the opportunity to buy back a subject property from the bank of the State of Hawai'i.

Conclusion:

The Legal Aid Society of Hawai'i supports the intent of HB 2103, HD1 and its efforts to strengthen protections for borrowers in the State of Hawai'i by establishing the bank of the State of Hawai'i and giving the state-owned and operated bank the power to establish a short-sale program directed at helping owner-occupant borrowers facing foreclosure. Thank you for the opportunity to testify.



Hawaii Farm Bureau
F E D E R A T I O N

2343 Rose Street • Honolulu, Hawaii 96819
Phone: (808) 848-2074 • Neighbor-Islands: (800) 482-1272
Fax: (808) 848-1921 • Email: info@hfbf.org
www.hfbf.org

Wednesday, February 15, 2012
2:00 am
Conference Room 325
House Committee on Consumer Protection and Commerce
Testimony on HB 2103 HD1

RELATING TO THE BANK OF THE STATE OF HAWAII

Aloha Chair Herkes, Vice Chair Yamane, and Members of the Committee,

I am Brian Miyamoto, Chief Operating Officer and Government Affairs Liaison for the Hawaii Farm Bureau Federation (HFBF). Organized since 1948, the HFBF is comprised of 1,800 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interests of our diverse agricultural community.

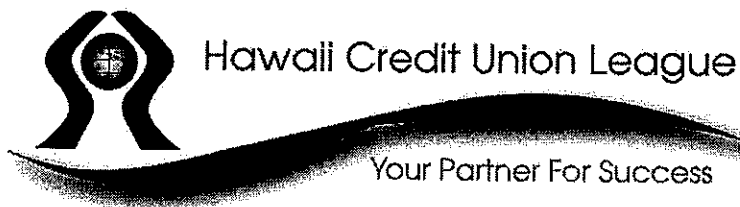
HFBF supports the intent of HB 2103 HD1, which would establish the Bank of the State of Hawaii to, among other things, "support economic development by increasing access to capital for businesses and farms within the State." The lack of sufficient capital for agribusiness ventures is one of the many impediments to the expansion of agriculture and aquaculture in Hawaii; any funding that could be provided by the proposed bank would certainly be welcome. Although we are not experts in this area, we offer the following thoughts.

The establishment of a state-owned bank will have a major impact not only on the funding available for agriculture, but on many other areas of Hawaii's economy as well as on the State's own financial resources. The study of the feasibility of a state-owned bank for Massachusetts, cited in testimony by DCCA's Division of Financial Institutions, raises at least the following concerns that should be addressed prior to further discussion.

- How much will it cost to set up the bank, and where will the necessary funds come from?
- Can the State lend large amounts of capital without exposing itself to the risk of losses?
- Can the bank perform its functions without competing with local financial institutions, as required by the bill's text?
- What will the bank's impact be on existing State economic development programs such as HDOA's agricultural loan program?
- Will the mortgage purchase program described in the bill leave the State with a backlog of residential property?

Another bill being considered this year, HB 1840 HD1, would create a task force to study the feasibility of establishing a state-owned bank. HFBF believes it would be prudent to undertake such a study before a state-owned bank is established.

Thank you for your support of Hawaii's farmers and ranchers. I can be reached at (808) 848-2074, if you have any questions.



1654 South King Street
Honolulu, Hawaii 96826-2097
Telephone: (808) 941.0556
Fax: (808) 945.0019
Web site: www.hcul.org
Email: info@hcul.org



Testimony to the House Committee on Consumer Protection and Commerce
Wednesday, February 15, 2012

Testimony in opposition to HB 2103 HD1, Relating to the Bank of the State of Hawaii

To: The Honorable Robert Herkes, Chair
The Honorable Ryan Yamane, Vice-Chair
Members of the Consumer Protection and Commerce

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 81 Hawaii credit unions, representing approximately 811,000 credit union members across the state.

We are in opposition to HB 2103 HD1, which would establish the Bank of the State of Hawaii, and would authorize it to buy troubled residential mortgages where the mortgagee is a securitized trust that cannot demonstrate it is a holder in due course.

Our main concern is simply that funds being deposited into a state bank would be insured by the state itself. Without the benefit of being insured by a separate entity like the National Credit Union Administration (which insures and oversees all credit unions in the State of Hawaii), the state would be in an extremely precarious situation in the event of any financial difficulty within the bank, and within the state. Coupled with the notion of purchasing troubled mortgages, this would be an extremely dangerous concept, which would place taxpayer money at enormous risk.

Thank you for the opportunity to testify.