

HB2398

RELATING TO LAND USE.

Establishes the Honokohau marina development district on the island of Hawaii. (HB2398 HD2)

NEIL ABERCROMBIE
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 Senate Committees on
WATER, LAND, AND HOUSING
and
WAYS AND MEANS**

**Tuesday, April 3, 2012
2:35 P.M.**

State Capitol, Conference Room 225

**In consideration of
HOUSE BILL 2398, HOUSE DRAFT 2
RELATING TO LAND USE**

House Bill 2398, House Draft 2 proposes to establish the Honokohau Marina Development District on the Island of Hawaii. The Department of Land and Natural Resources (Department) does not support this measure.

The Department welcomes all potential developers for fast lands in the Honokohau Small Boat Harbor but due to the current economic climate there is little if any interest in developing the surrounding fast lands within the Harbor. The Department would prefer that the Public Land Development Corporation, administratively attached to the Department, develop the property surrounding the Small Boat Harbor because eighty-five percent of the proceeds would be deposited into the Boating Special Fund.

To effectively run a statewide small boat harbor program, revenue is shared with small boat harbors that will never be able to generate sufficient revenues to support themselves. Transferring the Honokohau Small Boat Harbor, and its revenues, to a specially created, development district, would have a detrimental effect on the Hawaii District Boating Program as it would reduce funding for other small boat harbors and ramps.

WILLIAM J. AILA, JR.
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
KAIHOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

ON THE FOLLOWING MEASURE:

H.B. NO. 2398, H.D. 2, RELATING TO LAND USE.

BEFORE THE:

**SENATE COMMITTEES ON WATER, LAND, AND HOUSING AND ON
WAYS AND MEANS**

DATE: Tuesday, April 3, 2012

TIME: 2:35 p.m.

LOCATION: State Capitol, Room 225

TESTIFIER(S): David M. Louie, Attorney General, or
Lori N. Tanigawa, Deputy Attorney General

Chairs Dela Cruz and Ige and Members of the Committees:

The Department of the Attorney General offers the following comments on this measure.

Proposed section 206E-A of the bill, on page 3, lines 4 to 5, defines the term "Fund" for purposes of the Honokohau Marina Development District to mean the "Honokohau marina development revolving fund." Because the House Committee on Finance deleted the earlier proposed provision that established the Honokohau marina development revolving fund, we recommend that the definition also be deleted.

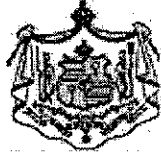
Proposed section 206E-C on page 5, line 13 through page 6, line 3, provides for the appointment of three additional voting members to the Hawaii Community Development Authority from several categories of marine users. Because this appointment provision differs from the existing appointment provision in section 206E-3, Hawaii Revised Statutes, we recommend that the bill also amend subsection (b) of section 206E-3 as follows:

(b) The authority shall consist of thirteen voting members. The director of finance, the director of business, economic development, and tourism, the comptroller, and the director of transportation, or their respective designated representatives shall serve as ex officio, voting members. One member shall be appointed by the governor from a list of not less than three prospective appointees submitted by the president of the senate, and one member shall be appointed by the governor from a list of not less than three prospective appointees submitted by the speaker of the house of representatives. Seven members shall be appointed by the governor for staggered terms pursuant to section 26-34; provided that four members shall be appointed at large and, initially, three members, hereinafter referred to as county members, shall be selected from a list of ten prospective

appointees recommended by the local governing body of the county in which the initial designated district is situated; and provided further that when vacancies occur in any of the three positions for which the members were selected from a list of county recommendations, the governor shall fill such vacancies on the basis of one from a list of four recommendations; two from a list of seven recommendations, or three from a list of ten recommendations. The list of recommendations shall be made by the local governing body of the county. Of the nine members appointed either by the governor from the lists provided by the president of the senate and speaker of the house, at-large by the governor, or as county members recommended by the local governing body of the county in which the initial designated district is situated, at least two members shall represent small businesses and shall be designated as the small business representatives on the board whose purpose, among other things, is to vote on matters before the board that affect small businesses. The small business representatives shall be owners or active managers of a small business with its principal place of operation located within the physical boundaries of the initial designated district. Notwithstanding section 84-14(a), the small business representatives shall not be prohibited from voting on any matter concerning any district under the board's jurisdiction; provided that the matter is not limited to solely benefitting the specific interest of that member and the matter concerns broader interests within the district. If an additional district is designated by the legislature, the total membership of the authority shall be increased as prescribed above by the appointment of three additional members, except as provided for in section 206E-191[-] and section 206E-C. Notwithstanding section 92-15, a majority of all members shall constitute a quorum to do business, and the concurrence of a majority of all members shall be necessary to make any action of the authority valid; except that, on any matter relating solely to a specific community development district, the members representing districts other than that specific community development district shall neither vote, nor shall they be counted to constitute quorum, and concurrence shall be required of a majority of that portion of the authority made up of all ex officio voting members, members at large, and county and district members representing the district for which action is being proposed for such action to be valid. All members shall continue in office until their respective successors have been appointed and qualified. Except as herein provided, no member appointed under this subsection shall be an officer or employee of the State or its political subdivisions.

For [F]purposes[F] of this section, "small business" means a business which is independently owned and which is not dominant in its field of operation.

We respectfully recommend that the Committee make the suggested amendments.



Kona Hawaiian Civic Club
"Serving the Kona Community for 50 years"

73-1432 Kahaulani Road
Kailua-Kona HI 96740

April 2, 2012

Testimony by the Kona Hawaiian Civic Club in STRONG OPPOSITION to House Bill 2398HD2, Relating to Land Use

Welina mai Chairmen Dela Cruz and Ige and members of the joint Senate Water, Land, and Housing and Ways and Means Committees

We remain strongly opposed to this proposed legislation, despite well-intended amendments, for the following reasons:

1. The Governor addressed the Kona-Kohala Chamber of Commerce this past Thursday, March 29th, and announced that he was freeing up millions in Capital Improvement Project dollars for the Honokohau Small Boat Harbor. Unfortunately, this coincides with Kona state Representative Denny Coffman's amendment on February 13th to allow the three individuals appointed by the Governor to avoid the State Procurement Code in the first three years of Honokohau Harbor Development District ("HMDD"). The state's procurement law is meant to maximize best value, increased economy, ensure fair and equitable treatment of all persons, foster broad-based competition, safeguard the maintenance of a procurement system of quality and integrity, increase public confidence, and protect against abusive practices. It is designed to prevent corruption, so why are the Governor and Representative Coffman so eager to remove transparency when entering into CIP contracts, especially when there already are a number of exemptions, such as disbursement of grant funds, that would apply to the new authority?
2. In our testimony of March 14th to the Water, Land, and Housing Committee, we pointed out that the President of the Hawai'i Fishing and Boating Association was involved in the creation of this bill, yet there was no mention of the legislation on that organization's website. As of the time of the writing of this testimony, there still is no mention of HB2398 HD2 on that organization's website. Again we ask, are the fisherman in our community and others who use the Honokohau Small Boat Harbor aware of this legislation and the impacts that it may have on this public harbor?
3. The House Finance Committee report on HB2398 HD1 states that the committee amended the measure by: "deleting the requirement that of the three additional members appointed to the Hawai'i Community Development District representing the Honokohau Marina

Development District, the member that represents Kaloko Honokohau National Historical Park must also be a cultural practitioner.” Article XII, Section 4 “PUBLIC TRUST” of the state constitution states: “The lands granted to the State of Hawaii by Section 5(b) of the Admission Act and pursuant to Article XVI, Section 7, of the State Constitution, excluding therefrom lands defined as "available lands" by Section 203 of the Hawaiian Homes Commission Act, 1920, as amended, shall be held by the State as a public trust for native Hawaiians and the general public.” Further, Article XII, Section 7 “TRADITIONAL AND CUSTOMARY RIGHTS” states, “The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.” The language in the House Finance Committee reports indicates the committee violated the state constitution and that HB2398 HD2 itself may be unconstitutional.

4. There has been one news story about this legislation in Kona’s local newspapers, but the article did not provide any details. Therefore, most people in the Kona community who would be most impacted by this legislation know very little about it or its impacts on our community.
5. HB2398 HD2 requires only three individuals appointed by the Governor to constitute the membership of the authority. As such, it is not representative of the local community and users of Honokohau Small Boat Harbor. Further, it excludes all environmental interests as well as cultural practitioners, while making the one cultural practitioner representative a minority vote relative to the business interests represented by marina business owners and operators and harbor boat tenants. We believe this is in conflict with Article XII of the state constitution.
6. HB2398 HD2 provides no reasonable assurance that HMDD revenues, income, and other receipts and deposits will be sufficient for the operation, repair and maintenance, and capital improvement of the HMDD. No documentation, plan, or prospectus has been presented to your committee to allow you to perform due diligence as to whether the HMDD is financially feasible and viable in the short- and long-term.
7. While the area of the proposed HMDD has been reduced, it remains directly adjacent to the Kaloko-Honokohau National Historical Park (“Park”) and Queen Ka’ahumanu Highway. The Park has been struggling to create a buffer from the extensive commercial development that has been approved on its boundaries, yet the Park is not included as a voting member of the authority.
8. In addition, during the initial Kona Community Development Plan process, 109 meetings were held throughout the community. The comments from those meetings were overwhelmingly in favor of no additional development between Queen Ka’ahumanu Highway and the shoreline north of Kailua-Kona village.
9. HB2398 HD2 requires consultation with various persons and entities. However, such consultation in no way provide reasonable assurance that the HMDD will comply with the requests of the consulted parties or to address their concerns.
10. The proposed HMDD remains within the area designated as “Open” by the County of Hawai’i General Plan. This area was down-zoned from “Urban Expansion” to “Open” as a result of a lawsuit settlement with Native Hawaiians, which was approved by both the county Leeward Planning Commission and the Hawai’i County Council. The proposed HMDD

would create urban development within this Open designated area and, therefore, would be in violation of the county General Plan.

11. HB 2398 states that “Hawaiian archaeological, historic, and cultural sites” and “Endangered species of flora and fauna”...”shall be preserved and protected to the extent feasible”. The largest freshwater outflow on the West Hawai’i coastline exits from the shoreline at Honokohau. Damage to constitutionally-protected cultural and environmental resources constitutes “irreparable harm” which provides the basis for a court injunction against any activity which causes such irreparable harm.

Because of the reasons listed above, we remain strongly opposed to HB 2398 HD2 to create a Honokohau Marina Development Authority.

This legislation was thrown together only 10 days before the deadline to submit. It is not the result of deliberative community involvement or process.

Again, the Kona Hawaiian Civic Club has committed to work with the interests at Honokohua Harbor and throughout the local community to achieve optimal legislation for community-based management of this extremely sensitive area for the next legislative session.

Sincerely,
Maurice Kahawaii, President

~~Dane Wicke~~

From: mailinglist@capitol.hawaii.gov
Sent: Monday, April 02, 2012 12:16 PM
To: WLH Testimony
Cc: hanohano3-Kahikina
Subject: Testimony for HB2398 on 4/3/2012 2:35:00 PM

Testimony for WLH/WAM 4/3/2012 2:35:00 PM HB2398

Conference room: 225
Testifier position: Oppose
Testifier will be present: No
Submitted by: Kahikina Kaawaloa
Organization: Individual
E-mail: hanohano3@capitol.hawaii.gov
Submitted on: 4/2/2012

Comments:

Relating to Land Use -- Honokohau marina development OPPOSE Greetings to the Chairs and Members of the WLH and WAM.

If bathrooms have need of cleaning, or paint; if rubbish containers need emptying; or a program of regular maintenance and repair work needs doing at the harbor, --- then a capital improvements appropriation is in order --- to the Department of Land & Natural Resources. Honokohau is designated as a small boat harbor. It has been such since the first blast into the rock and shoreline interior. There was no natural harbor in the area, but nevermind. Ignore the Hawaiians who advised against creating the harbor. Kailua and Keauhou are the natural bays that harbor boats to the south. Kawaihae Harbor and small boat harbor are to the north. Honokohau harbor is a mistake --- in location, in engineering judgment Please do not compound the error by allowing a select few to do a land grab with harbor, and other people's money. To add to this grab, the bill throws in an exemption from procurement, to be helpful to "...economically beneficial enterprise."

According to the committee report, a purpose of this bill is .eliminating the current water pollution that is spreading..." The pollution is caused by harbor use and activity. To think that a harbor needs to be a marina facility the success of which is, and i quote from the bill, page two, "...contingent upon the use of the property for complementary, supportive, marina-related services, facilities, and activities.", and that all this will eliminate pollution --- is contradictory and delusional.. However, the excuse is provided with the words ". ..to the extent feasible..." (HB 2398, HD 1) What is most important here is the enduring true value of the ama of the ahupua'a of Honokohau and Kaloko cultural values dependent upon cultural resources, intertwined and expressed in the cultural landscape, which you will not see with redevelopment/marina development. The Kaloko-Honokohau National Historical Park has a mandate of preservation, protection, conservation, and restoration of cultural resources and practices, which become living values. The harbor not only abouts the Park, portions are within the boundaries of the Park. The perspective for the use of this area, must come from the perspective of the unique cultural landscape of this ama. Thank you Chairs and Committee, for the opportunity to make these remarks. I do so at the request of my kupuna.

~