



TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2011

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ON THE FOLLOWING MEASURE:

H.B. NO. 377, H.D. 2, S.D. 1, RELATING TO PUBLIC LANDS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Thursday, March 31, 2011 TIME: 9:45 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): David M. Louie, Attorney General, or  
Charleen M. Aina, Deputy Attorney General

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Chair Hee and Members of the Committee:

The Attorney General takes no position on whether this measure should be enacted.

We testify only to recommend that Part III, section 3 of the bill be revised. Part III of the bill appears to be the entirety of what the Senate earlier approved and transmitted to the House of Representatives as S.B. No. 2, S.D.2, Relating to the Public Land.

With respect to part III of the bill, we recommend that the Committee delete the first four paragraphs of section 3, on pages 3-4, because these paragraphs could erroneously imply that the State is not presently fulfilling its responsibilities under section 5(f) of the Admission Act, and article XII, section 4, of the State Constitution. The paragraphs could also erroneously imply that the Office of Hawaiian Affairs has not received, what the Legislature has determined, is the portion of the receipts from the ceded lands that it is to expend to better the conditions of native Hawaiians under article XII, section 6, of the State Constitution.<sup>1</sup>

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<sup>1</sup>In addition, the second paragraph of section 1, on page 1, lines 12-16, is incorrect to the extent it asserts that "the State's trust obligation in regards to the land, and the office of Hawaiian affairs, as representative of

Part III of the bill in section 7, on page 11, lines 21-22 requires that the computerized inventory and information system be completed and operational by December 31, 2013. We note that two years may not be sufficient time for the Department of Land and Natural Resources to complete the system.

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native Hawaiian beneficiaries' right to receive twenty per cent of the income and proceeds from the public land trust."

In 2006, the Legislature enacted Act 178, which replaced section 10-13.5's "twenty per cent" with the requirement that OHA annually receive \$15,100,000 of the ceded lands receipts. Section 2 of the act provided:

Notwithstanding the provisions of chapter 10, Hawaii Revised Statutes, including section 10-13.5, Hawaii Revised Statutes, and until further action is taken by the Legislature for this purpose, the income and proceeds from the pro rata portion of the public land trust under article XII, section 6 of the state constitution for expenditure by the office of Hawaiian affairs for the betterment of the conditions of native Hawaiians for each fiscal year beginning with fiscal year 2005-2006 shall be \$15,100,000.

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



**LATE TESTIMONY**  
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  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**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 Committee on  
**JUDICIARY AND LABOR**

Thursday, March 31, 2011  
9:45 AM  
State Capitol, Conference Room 016

In consideration of  
**HOUSE BILL 377, HOUSE DRAFT 2, SENATE DRAFT 1**  
**RELATING TO PUBLIC LANDS**

House Bill 377, House Draft 2, Senate Draft 1 combined three separate and previously distinct bills into one, and divides it into three parts. The Department of Land and Natural Resources (Department) discusses each part separately.

**Part I, Fishponds**

House Bill 377, House Draft 2, Senate Draft 1 proposes in PART I to provide state lease preferences for the reconstruction, restoration, repair, or use of Hawaiian fishponds. The Department supports the general intent of this bill, however, is not in a position to implement the mandate to adopt rules at this time as required in PART I of this bill. An alternative suggestion would be to give the Board of Land and Natural Resources the discretion (in lieu of mandating) to adopt rules if it becomes necessary in order to implement this part of the bill. Accordingly, the Department respectfully suggests this bill be amended by replacing "shall" with "may" in relationship to the adoption of any rules in PART I.

The Department continues to face severe budget cutbacks. The Department's general fund appropriations and special fund revenues have dropped significantly over the last several years, and the Department lost more than 10% of its positions over the past two years. The bill imposes duties that would require a substantial amount of staff time and funding. The Department simply does not have the resources and staffing necessary to undertake the additional duties that would be required under this bill.

## **Part II, Coconut Island**

House Bill 377, House Draft 2, Senate Draft 1 proposes in PART II to authorize exemptions from state and county permits for the Hawaii marine laboratory refuge for repair and maintenance of its facilities on the island of Moku-o-loe (Coconut island). Given the immediate need for repair and maintenance of facilities at Coconut Island, the Department does not oppose the five (5) year exemption from obtaining permits issued by the Department as proposed in PART II of this measure.

## **Part III, Land Inventory System.**

House Bill 377, House Draft 2, Senate Draft 1 proposes in PART III to require the Department to initiate and coordinate all efforts to establish a public lands information system; requires all state agencies to report to the Department each parcel of land to which it holds title, the disposition of each parcel to which the agency holds title or is acquiring title, and any inaccuracies in reports to the Department; requires the Department to submit a progress report to the legislature; and appropriates funds to create and maintain a comprehensive statewide public land trust inventory database and to provide funding for one staff position for a database and application developer.

The Department is in support of this III as long as SECTION 8 is amended to add back the \$300,000 appropriation<sup>1</sup> that is necessary to implement this part bill. The Department offers SECTION 8 to read in its entirety as follows:

"There is appropriated out of the general revenues of the State of Hawaii the sum of \$ 300,000.00 or so much thereof as may be necessary for fiscal year 2011-2012 and the same sum or so much thereof as may be necessary for fiscal year 2012-2013 for the establishment and maintenance of a computerized, comprehensive statewide public land trust inventory database and funding for one staff position for a database and application developer; provided that no funds appropriated shall be expended unless matched on a dollar-for-dollar basis by the office of Hawaiian affairs and paid to the department. The sums appropriated shall be expended by the department of land and natural resources for the purposes of this part."

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<sup>1</sup> The genesis of this PART III on the Land Inventory System is Senate Bill 2, Senate Draft 1, wherein the Senate Water, Land and Housing Committee worked with the Department in crafting language that, although ambitious, is doable by the Department with the minimum required \$300,000 appropriation.



**HB 377 HD2 SD1**

**RELATING TO PUBLIC LANDS**

Senate Committee on Judiciary and Labor

March 31, 2011

9:45 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) offers the following **comments** on HB377 HD2 SD1. While the original intent of this measure was to allow for state lease preferences for the restoration and use of Hawaiian fishponds, it has been significantly amended from its previous version to include provisions that OHA has concerns with.

OHA supported HB377 HD2, which would have provided state lease preferences for the restoration and use of Hawaiian fishponds. This language is now contained in Part I of HB377 HD2 SD1. The permitting and approval processes for fishpond restoration are cumbersome and have hindered efforts to revive these cultural treasures. Providing lease preferences to fishpond restoration would help streamline the process.

However, OHA is concerned with Part III of HB377 HD2 SD1, which seeks to facilitate the establishment of a comprehensive information system for inventorying and maintaining information about the lands of the public land trust described in section 5(f) of the Admission Act and article XII, section 4 of the state constitution.

First, OHA values an accurate inventory of public lands and their disposition as a foundation for successful management of the public land trust. Current databases are useful but do not provide a complete and accurate picture.

Second, this provision in the bill would require the Department of Land and Natural Resources (DLNR) to conduct many tasks regarding the inventory that may already have been performed by the State Auditor pursuant to Act 125, Session Laws of Hawaii 2000. Although the State is far from having a comprehensive and accurate inventory, the Auditor took the first steps, including the issuance of her report entitled *Establishment of a Public Land Trust Information System, Phase One* (March 2001). That report concluded among other things that a geographic information system (GIS) is the preferred method to develop an information system.

Third, OHA appreciates that HB377 HD2 SD1 provides the opportunity for all state agencies, including OHA, to work with DLNR in the development of the proposed information system. We look forward to participating in this effort.

Fourth, however, we have grave concerns regarding the bill's funding mechanism, a mechanism that would bar any general fund appropriation made by the bill from being expended unless matched dollar-for-dollar by OHA. In light of recent deliberations and discussions among OHA Trustees, we must respectfully inform your committee that if this funding mechanism becomes law, OHA, exercising its lawful discretion, will not match all or any part of the appropriation. The State, as trustee of the public land trust, should be responsible for funding the public land trust database. We hope that your committee will not interpret our position on this matter as a lack of belief in the importance of a complete and accurate database, for such is not the case.

Mahalo for the opportunity to testify on this important measure.



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

LATE TESTIMONY

Written Testimony Presented Before the  
Senate Committee on Judiciary and Labor  
Thursday, March 31, 2011 at 9:45 a.m.

by

Virginia S. Hinshaw, Chancellor

and

Jo-Ann Leong, Director

Hawai'i Institute of Marine Biology

School of Ocean & Earth Science & Technology

University of Hawai'i at Mānoa

HB 377, HD2, SD1 Relating to Public Lands.

Aloha Senator Clayton Hee, Senator Maile Shimabukuro, and Members of the Committee. I thank you for the opportunity to testify in support of HB 377, HD2, SD1.

My name is Jo-Ann Leong and I am the Director of the Hawai'i Institute of Marine Biology. I submit this testimony in support of HB377, HD2, SD1 that temporarily exempts the University of Hawai'i from permitting requirements for the repair and maintenance of the facilities of the Hawai'i Marine Laboratory Refuge. The bill calls for amendments to Hawai'i Revised Statutes 187A-12 and 188-36.

Background:

Moku o Lo'e, more widely known as Coconut Island, is located in southern Kāne'ohe Bay on the island of O'ahu and is home to the world-renowned research facilities of the Hawai'i Institute of Marine Biology (HIMB), a research institute within the School of Ocean & Earth Science & Technology at the University of Hawai'i at Mānoa. The island itself provides a unique living laboratory surrounded by 64 acres of coral reef designated by the State of Hawai'i as a Hawai'i marine laboratory refuge. Approximately 28 acres in size, Moku o Lo'e is also designated as a Conservation District, requiring unique security and grounds maintenance efforts far greater than most organized units on the main campus of University of Hawai'i. HIMB is supported solely by state funds and competitively obtained extramural grant dollars. We support our security personnel and groundskeeper personnel on return of indirect costs from grant dollars.

### Regarding permitting for repair and maintenance

Permit processes related to repair and maintenance of HIMB facilities and infrastructure have become increasingly prohibitive and have begun to adversely impact our ability to conduct important work in the service of the State and the university, particularly when the repairs and funding for them are time-sensitive. Permitting regulations are arduous

for projects which range from the benign to complex. For example, simple invasive plant species removal to allow for native planting projects by community service or school groups require HIMB to prepare detailed landscaping plans before seeking authorization from DLNR, which is costly and time consuming to prepare, and can then take weeks to months for agency response.

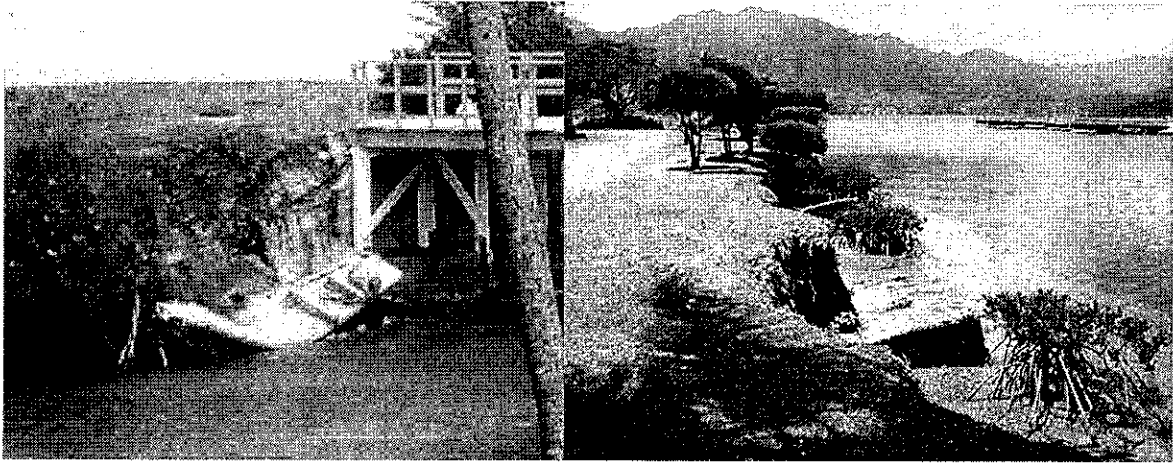
On the other end of the spectrum, permitting to allow for repairs of existing structures, renovations and a new lab took approximately 13 years to obtain and over \$600,000 in consulting fees. The effort and financial resources HIMB faculty must invest in these permitting processes have detrimentally affected our ability to execute the important scientific research we do in service of the state. Further it can and has put funding for CIP in jeopardy because such funding generally does not have infinite timelines that can be put on hold until permits are obtained.

While some of the issues have already been addressed by the CDUA and SMA and we have finally received a letter of understanding that we negotiated with DLNR regarding a number of proposed projects, there are many important issues and projects such as critical pier, seawall and shore protection repairs that are not covered by these permits. Additionally the island is continually eroding and shore facilities, labs and other structures are deteriorating and unsafe. We are unable to proceed because permitting requirements are excessively lengthy and adversely impact funding processes. The attached photos show the severity of some of the conditions.

#### **Support of the intent of HB 377 HS2 SD1**

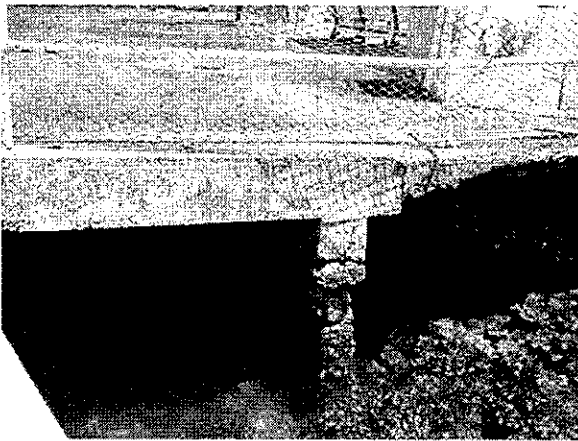
Regarding permitting exemptions, HIMB is always working to overcome the limitations of funding to maintain our research facilities and to do this within the state's regulatory framework. We would like to emphasize that HIMB serves its own interest in making sure Moku o Lo'e's resources are protected and we seek this legislation to ensure that we can meet these obligations to the state and the university. The bill has been amended to provide a time limited exemption that would allow us to address some of the most pressing repair and maintenance issues that need immediate attention, for example falling sea walls and piers, repairs to the existing lab structures and buildings, failing bridges and roads, etc.





Fallen seawall, inner lagoon

Eroding seawall inner channel



Pier support columns are eroded and unsafe

Jeannine Johnson, Legislative Sub-Committee Chair

## **Kuli'ou'ou / Kalani Iki Neighborhood Board #2**

5648 Pia Street, Honolulu, Hawai'i 96821

Phone: 373-2874 (h) / 537-7261 (w)

March 30, 2011

COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

Re: **HB377 HD2 SD1** Relating to Public Lands

Hrg: Thursday, March 31, 2011 at 9:45 am in Conf. Room 016

Aloha mai kākou,

Under Section 2-14-125 of the Neighborhood Board Plan, I have been appointed as a Delegate with responsibilities to represent the **Kuli'ou'ou / Kalani Iki Neighborhood Board #2** on matters approved by the Board. As Committee Chair of the **Kuli'ou'ou / Kalani Iki Neighborhood Board #2** Legislative Sub-Committee, I am pleased to inform you **Neighborhood Board #2 supports Part 1** of HB377HD2 SD1 which provides preference for the reconstruction, restoration, repair, or use of Hawaiian fishponds under chapter 183B, when issuing leases for state land suitable for Hawaiian fishponds. **Neighborhood Board #2** represents over 6,000 households, with a population of almost 20,000 people (State of Hawaii Data Book 2002) in East Honolulu.

Before Westerners arrived in Hawai'i, native Hawaiians lived a life of self-subsistence and harmony with the land and sea. Native Hawaiians understood that by caring for the land and sea, they too, would be cared for by the land and sea. A great example of this is a native Hawaiian fishpond (loko i'a or loko kuapā) which were first built around the fifteenth century. Hawaiians built 488 fishponds statewide, however only about 60 fishponds remain recognizable today. O'ahu alone had 97 fishponds, but only six accessible ponds remain today. Thirteen fishponds have been restored statewide, with six ponds currently in use: three on Moloka'i, one on the island of Hawai'i, and two on O'ahu.

Currently, the Maunalua Fishpond Heritage Center is working to stop the sale of two remaining fishponds at auction by the Department of Transportation and obtain the leases. They are Kanewai Fishpond, a royal pond assessed to have the properties that make it eligible for listing on the National Historic Register, and Kalauha'iha'i (Lucas Spring and Fishpond) reported to be the location of a summer home of Kamehameha I and where Queen Ka'ahumanu was said to have renounced the ancient kapu system at the Kalauha'iha'i Assembly. Kalauha'iha'i refers to the scattering of the leaves and breaking of the ancient kapu.

Recognizing the important cultural significance these fishponds represent, at its November 6, 2008 meeting, **Neighborhood Board #2** voted to support preventing any

governmental entity from selling culturally significant Native Hawaiian treasurers such as fishponds. Giving preference to developers of Hawaiian fishponds when issuing leases for state land suitable for Hawaiian fishponds will safeguard our last remaining fishponds for future generations.

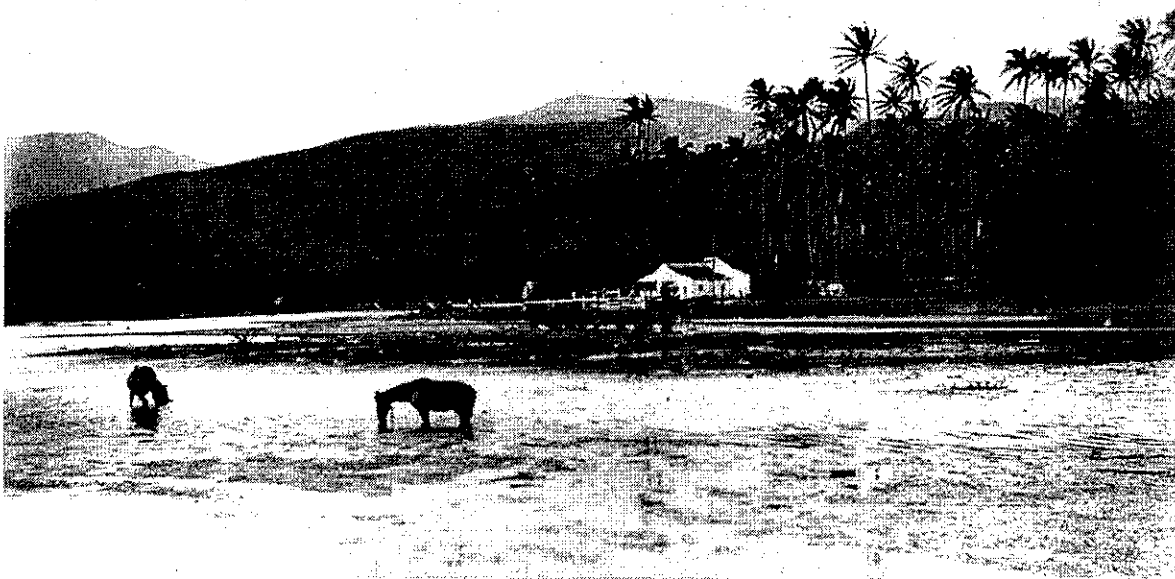
Your support of HB377 is respectfully requested.

'O au iho nō me ke aloha,



Jeannine Johnson, Legislative Sub-Committee Chair  
**Kuli'ou'ou / Kalani Iki Neighborhood Board #2**  
5648 Pia Street, Honolulu, HI 96821  
Phone: 373-2874 / 537-7261 (work)  
Email: [jeannine@hawaii.rr.com](mailto:jeannine@hawaii.rr.com)

Horse drinking fresh water from a  
spring; Niu, Oahu,  
Hawaii/Mitchell/1886  
Bishop Museum Coll



**LATE TESTIMONY**

In Support- HB 377 Relating to Hawaiian Fishpond Lease Preference

Committee: JDL

Room: 325

Hearing Date: 3/30/2011 9:45

Aloha Senator Hee and Committee Members,

I wanted to thank you for hearing the fishpond bill HB377. The bill gives preference to those using Hawaiian fishponds for their intended purpose and streamlines the State application approval process. We are in support of the HD1 form of this bill and ask that the bill be passed in this form. This bill builds on last year's successful effort to protect government owned Hawaiian fishponds from sale. Now our communities need to access these ponds. Working fishponds increase the abundance of fish, strengthen communities and provide outstanding educational opportunities. They also benefit the State by safeguarding water resources like springs which often feed into fishponds.

This bill is long overdue. We have few historic fishponds left and this will help reverse the trend of fishponds being ruined from neglect.

Mahalo for your consideration,

Chris Cramer

Chris Cramer

President

Maunalua Fishpond Heritage Center 501(c)(3)

P.O. Box 240204

Honolulu, HI 96824-0204

[maunaluafishpondheritage.com](http://maunaluafishpondheritage.com)