



SB 2386
RELATING TO THE NATIVE HAWAIIAN ROLL COMMISSION
Senate Committee on Hawaiian Affairs

January 30, 2012 3:00 p.m. Room 224

The Office of Hawaiian Affairs (OHA) strongly **SUPPORTS** SB2386, which is a bill that clarifies the Native Hawaiian Roll Commission's duty to receive and maintain confidential enrollment documents that verify Native Hawaiian ancestry, connection to the Native Hawaiian community, and age; provides that the commission shall not publish or release any such documents; and classifies such documents and related information as information in which an individual has a significant privacy interest.

As Governor Abercrombie noted when he signed into law Act 195—the measure that recognized Native Hawaiians as the indigenous people of Hawai'i and created the Native Hawaiian Roll Commission—the Roll Commission's work “is an important step for the future of Native Hawaiian self-determination and the ability for Native Hawaiians to decide their own future.” As Governor Abercrombie further observed, the members of the roll assembled by the Commission will help to “determine the course of Hawai'i's indigenous people.”

Given the significance of the Native Hawaiian roll, it is imperative that known impediments to enrollment be eliminated, to ensure that the maximum number of Native Hawaiians have the opportunity to enroll and participate in the momentous process of reconstituting a Native Hawaiian government.

One major impediment to enrollment that can and should be eliminated is the concern of prospective enrollees that highly sensitive documents reflecting their confidential family history, as well as their private personal information about cultural, social and civic participation in the Native Hawaiian community, will be published or released to their detriment.

Prospective enrollees should not be forced to choose between maintaining their family and personal privacy and exercising their civic right to participate in Native Hawaiian governmental processes. Rather, appropriate safeguards, such as those included in SB2386, should be put in place to ensure that prospective enrollees' privacy rights and rights to civic participation can be simultaneously protected.

Therefore, OHA urges the committee to PASS SB2386. Mahalo for the opportunity to testify on this important measure.

NATIVE HAWAIIAN ROLL COMMISSION
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"Kana`iolowalu"

Testimony of Clyde Namu`o
Executive Director, Native Hawaiian Roll Commission
In Favor of S.B. 2386 Relating to the Native Hawaiian Roll Commission
January 30, 2012

Chairperson Galuteria and Members of the Committee:

S.B. 2386 protects the confidentiality of documents submitted by individuals seeking to be included in the Native Hawaiian Roll. The Native Hawaiian Roll Commission believes that this measure is critical to carrying out its mission, and humbly requests your favorable consideration.

Act 195, SLH 2011 created the Native Hawaiian Roll Commission and entrusted it with the preparation of Native Hawaiians who wish "to participate in the organization of the Native Hawaiian governing entity." The law specifies the criteria for persons who would qualify to be on this register, including cultural, social or civic connection to the Native Hawaiian community, and lineal descent from the aboriginal people who occupied and exercised sovereignty in the Hawaiian islands prior to 1778 or of the people who were eligible in 1921 for programs under the Hawaiian Homes Commission Act.

In carrying out its duties, the Commission will receive documents containing information that will be considered private and, in many cases, sensitive to the individuals involved, with the potential of including but not limited to: names of persons from whom lineal descent can be verified; birth, marriage, or death certificates; statements of kama`aina witnesses; contact information; birthdates and other personal identification numbers.

The Commission is aware of and sensitive to the confidentiality and privacy concerns expressed by the Native Hawaiian community in previous registration efforts. It is very important for the community to be assured that information gathered in the process of this important effort not be considered public documents. The names of individuals, as established by law, will be published. However, it is the position of the Commission that any documents used to verify any of the criteria by which a person is deemed qualified to be on the roll should remain private and confidential.

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Testimony of John D. Waihee III
Chairperson, Native Hawaiian Roll Commission
In Favor of S.B. 2386 Relating to the Native Hawaiian Roll Commission
January 30, 2012

Chairperson Galuteria and Members of the Committee:

First of all, please accept my personal apologies for my not being able to be present at this hearing on this matter of great importance to the Native Hawaiian Roll Commission. Unfortunately, I had left for a work trip to the East Coast before knowing about the scheduling of this hearing.

Very early in its deliberations, the Commission was made aware of a significant privacy issue that, if not dealt with, could significantly thwart the mission of enrolling as many Native Hawaiians as possible. If information received or documents kept by the Commission to verify criteria established under the law became available or were disputed to be public documents, then there would be a chilling effect on the registration process. Individuals – rightfully so – would be reluctant to sign up if their private information became available to others.

This Committee and the Commission are very much aware of the historical nature of this process, and the importance to have as few impediments as possible while protecting the integrity of the process. In the furtherance of this mission, we ask for your favorable and timely consideration of S.B. 2386.

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Hawaiian Affairs

From: Cheryl Kakazu Park, Director

Date: January 30, 2012, 3:00 p.m.
State Capitol, Room 224

Re: Testimony on S.B. No. 2386
Relating to the Native Hawaiian Roll Commission

Thank you for the opportunity to submit testimony on S.B. No. 2386.

OIP takes no position on the substance of this bill, which seeks to establish confidentiality for documents submitted to support individuals' status as qualified Native Hawaiians. However, OIP is testifying to point out technical flaws in the way this bill seeks to establish confidentiality for such records.

This bill would both require the Native Hawaiian Roll Commission to keep the records confidential and list them as records that carry a significant privacy interest under the section 92F-14, Hawaii Revised Statutes, part of the Uniform Information Practices Act ("UIPA"). Notably, records listed in section 92F-14 as carrying a significant privacy interest are **not** automatically confidential. Section 92F-14 is not a list of confidential information, but is instead a list of examples of information in which individuals generally have a privacy interest. An agency receiving a general public record request for records including such information must still balance (1) the individual's privacy interest in the information against (2) the public interest in access to the information to ultimately determine whether the records may be withheld under the UIPA's privacy exception. Furthermore, when

the agency is responding to a request by someone else mentioned by name in the records, the privacy exception would not apply at all, so the fact that information was listed in section 92F-14 would not prevent disclosure.

It appears that this bill's intent is to ensure confidentiality for the information in question. If this Committee wishes to do that, then OIP recommends amending the language on bill page 2, lines 20-22, to simply read, "These verification documents shall be confidential." The UIPA does not require disclosure of information that is made confidential by statute in response to either a public records request or a personal records request, so this amendment by itself would be enough to ensure that the information would not be disclosed in response to a record request. OIP further recommends that the Committee delete bill section 3 (beginning on bill page 3, line 11), which seeks to add the information to section 92F-14, as this amendment is not necessary to make the information confidential and could even create an ambiguity as to whether the Legislature intended the information to be disclosed if the public interest in disclosure outweighs the privacy interest.

Thank you for the opportunity to testify.



Vanda Hanakahi, Aha Moku Advisory Committee

TESTIMONY IN SUPPORT

OF SB 2386

RELATING TO NATIVE HAWAIIAN ROLL COMMISSION

Senate Committee on Hawaiian Affairs

Monday, January 30, 2012, 3:00p.m., Rm 224

Aloha Chair Galuteria, Vice Chair Ryan and Members of the Committee;

Thank you for the opportunity to testify in support of SB 2386. On behalf of the Aha Moku Advisory Committee and Councils we believe that while the Commission needs to verify, through certain documents, the validity of individuals to be included in the roll, it is important to also protect the dignity and privacy of those same individuals.

We ask that S.B. 2386 pass as is.

Mahalo nui loa!

Vanda Hanakahi, Chair, Moloka'i

Aha Moku Advisory Committee

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ASSOCIATION OF HAWAIIAN CIVIC CLUB

TESTIMONY OF FIRST VICE PRESIDENT ANNELLE AMARAL

SENATE BILL 2386

RE: TO THE NATIVE HAWAIIAN ROLL COMMISSION

Senate Committee on Hawaiian Affairs

January 30, 2011; 3:00 p.; Room 224

Aloha Chairman Galuteria, Vice Chair Ryan and members of the Senate Hawaiian Affairs Committee. I am Annelle Amaral, First Vice President of the Association of Hawaiian Civic Clubs, representing the manao of sixty clubs in each county of Hawaii and eleven states on the continent.

Allow me add our support for SB 2386 Relating to the Native Hawaiian Roll Commission. The purpose of the bill is to assure that the documents used to verify that an individual is in fact a "qualified Native Hawaiian" desiring to be included in the Native Hawaiian Roll, shall remain confidential and need not be disclosed.

We support the work of the Native Hawaiian Roll Commission to prepare and maintain a roll of "qualified Hawaiians" as defined by Act 195 §10H-3. We understand that Native Hawaiians must submit some documentation to "verify" their claim. SB 2386 seeks to assure that upon receipt of such documents that are used to verify genealogy; these documents are kept as confidential and are deemed to be private information.

The same provision is added to §10H-4, that provides that the roll shall be published and updated, but that the verification documents shall remain confidential, by amending §92F-14. The need for confidentiality is familiar to us as many of our clubs participated and assisted with Operation Ohana and the more recent Kau Inoa registrations.

We support the Commission securing the greatest participation of our Native Hawaiian community in the preparation of a Native Hawaiian Roll. We believe that the disclosure of private documents may discourage our community from participating for fear of identity theft or misuse of verification documents.

Senator Brickwood Galuteria, Chair
Senator Pohai Ryan, Vice Chair
Committee of Hawaiian Affairs

Native Hawaiian Initiatives, Aupuni O Hawaii

Friday, January 27, 2012

Objection to S.B. No. 2386, Relating to the Native Hawaiian Roll Commission

Welina Kakou

Our (n)ative Hawaiian Organization is a grass root effort to address the condition of the (n)ative families, communities, and the aina in which we live to practice our inherent rights. We understood that our elders were the leaders/example of the way of life and who taught and made practice with us/families on the etiquette of Aloha. So when our leader feigns responsibility, there begins a deterioration of our (n)ative Hawaiian condition and we must help our leaders to see and hear our mana'o.

Our first concern is a conflict of interest in the representation of the native peoples of origin and the (N)ative Hawaiians as perpetrated in this bill, we as the Kanaka Maoli, the assigned beneficiary of Public No. 34-67th congress STAT 108 c.42 section 201 (a) (7) states the term "native Hawaiian" means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778, we find the mincing of (N)ative Hawaiians within this inconsistent bill is prejudicial to the (n)ative Hawaiians.

Secondly, We as the "Kanaka Maoli" are voicing a strong objection to this bill, for years our voices have fallen on deaf ears, for too long our objections have gone by the way side, for too long our kupunas has seen the taking of our Aloha used to enrich the few, and for too long our people were seen as a destitute race in the eyes of most people and pushed aside. Our determination is to be counted in the dialogue of decisions and to stop the fraud by a governmental methodology that discriminates in the gathering of names of the (n)ative Hawaiians versus the (N)ative Hawaiians at large.

Finally, with inherence of the native Hawaiian condition, we feel this bill openly manipulates the language of HHCA and its beneficiaries and most of all the people of this state to an irreparable damage to the social/civic fabric from this government that starts with the Native Hawaiian Roll Commission.

Me ka Ha'aha'a
Samson and Bill Brown
Aupuni O Hawaii, Board Members

It is our sincere hope that this Senate Committee will support SB 2386 and move it on to the Senate Judiciary Committee for action. Mahalo for the opportunity to testify today.

Contact: jalna.keala2@hawaiiantel.net