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From: oneheart1@hawaiiantel.net
Sent: Tuesday, February 12, 2013 11:00 PM
To: Rep. Cindy Evans; Rep. Nicole Lowen; Rep. Denny Coffman; Rep. Ty Cullen; Rep. Faye Hanohano; Rep. Derek Kawakami; Rep. Chris Kalani Lee; Rep. Richard Fale; Rep. Cynthia Thielen
Subject: Strong opposition to HB 1255
Attachments: HB1255testimony021313.jpg; HB2398HD2WLHWAM040212.doc

Aloha kakahiaka,

Please see attached late testimony from the Kona Hawaiian Civic Club.

Mahalo,
Charles Flaherty
Chair, Government Relations Committee
Kona Hawaiian Civic Club



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