

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 1444, RELATING TO HAWAIIAN HOME LANDS.

BEFORE THE:

HOUSE COMMITTEES ON WATER & LAND AND ON
OCEAN, MARINE RESOURCES, AND HAWAIIAN AFFAIRS,

DATE: Friday, February 1, 2013 **TIME:** 8:00 a.m.

LOCATION: State Capitol, Room 325

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

Chairs Evans and Hanohano and Members of the Committees:

The Department of the Attorney General opposes the passage of this bill.

H.B. No. 1444 amends section 203 of the Hawaiian Homes Commission Act, 1920, as amended (HHCA), the section of the HHCA that describes the lands of the State of Hawaii that comprise the "available lands" that the Department of Hawaiian Home Lands (DHHL) is responsible for managing and controlling under section 204 of the HHCA. More specifically, the bill provides that "[a]ll submerged lands contiguous to the available lands . . . shall be designated 'available lands,'" and directs all state agencies whose "jurisdiction" extends to submerged lands contiguous to "available lands" to work together to among other things, transfer title, rights, powers, functions, or duties as may be appropriate and necessary, to implement the intent of the bill.

This bill should be held for several reasons. First, we cannot assume that the interests of Hawaii with respect to the submerged lands surrounding our island state will necessarily coincide and not be competing with the interests of the federal government, or other governments in the region, if not the world. Given this, it is critical that the State's interests in the submerged lands be defined and furthered with reference to the State as a whole, that policies as to how the lands are governed and used be developed from that perspective, and that there be single point control over title to and stewardship of the lands. Decisions affecting one portion or aspect of the submerged lands need to be made with reference to all of the State's submerged lands. Similarly, the State has to have the benefit of information and knowledge about all of the

State's submerged lands, when differences between the State and other jurisdictions and governments arise. It is not in the State's interest for the submerged lands to be held and managed in any manner other than as a unified whole. These objectives are consistent with article XI, section 6, of the State Constitution which provides in pertinent part:

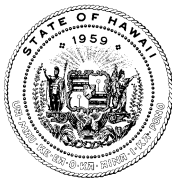
Marine Resources

The State shall have the power to manage and control the marine, seabed and other resources located within the boundaries of the State, including the archipelagic waters of the State, and reserves to itself all such rights outside state boundaries not specifically limited by federal or international law.

Second, DHHL can preserve traditional native aquacultural practices without obtaining title and exclusive jurisdiction, to the submerged lands that the bill directs are to be "designated 'available lands.'" Section 171-11 authorizes the Governor, with the prior approval of the Board of Land & Natural Resources, to set aside public lands, which includes submerged lands, to any state department or agency for public purpose. Setting aside shoreline and ocean resources for the programs DHHL wishes to implement to preserve native aquacultural practices would clearly qualify as a public purpose under section 171-11.

Third, as the provisions of article XI, section 6 also intimate, issues for which the law is still being developed will have to be addressed and determined before the submerged lands could be divided into discrete parts for purposes of transferring title and jurisdiction to DHHL. The law is not settled as to what the boundaries for "[a]ll submerged lands contiguous to the available lands," would be, and it may not be in the State's interest to delimit those boundaries to enable an intrastate transfer, when the law as to that very issue is in flux.

There are probably other practical and economic reasons for this bill to be held. From this Department's perspective, however, these three reasons alone counsel against the requested transfer.



STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

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TESTIMONY OF JOBIE M. K. MASAGATANI, CHAIRMAN DESIGNATE
HAWAIIAN HOMES COMMISSION
BEFORE THE HOUSE COMMITTEE ON WATER & LAND AND
OCEAN, MARINE RESOURCES & HAWAIIAN AFFAIRS
IN SUPPORT OF

HB 1444, RELATING TO HAWAIIAN HOME LANDS

February 1, 2013

Chair Evans, Chair Hanohano, and Members of the Committee:

The Department of Hawaiian Home Lands (DHHL) supports this legislation that asserts our department's jurisdiction over submerged lands contiguous to our existing available lands.

Inclusion of these submerged lands adds a significant asset to the Hawaiian Home Lands trust, and these assets have potential to grow resources for program. Our only reservation with this legislation is the unknown cost of managing these additional lands.

Thank you for this opportunity to testify.