



SB215 SD1
RELATING TO ECONOMIC DEVELOPMENT
 Senate Committee on Education and
 Senate Committee on Ways and Means

March 1, 2013

9:00 a.m.

Room 211

The administration of the Office of Hawaiian Affairs (OHA) offers the following comments on SB215 SD1, which would establish the Public Private Partnership Authority (PPPA) to administer appropriate and culturally-sensitive projects and require the implementation of specific pilot projects.

OHA notes and appreciates that some of the concerns it has raised over the past two years with regards to the PLDC have been addressed in this measure. Specifically OHA notes that SB215 SD1:

- Does not authorize the broad land use and zoning exemptions provided to the PLDC;
- Appears to anticipate that the public lands will not be transferred in fee to the PPPA (If that is the intent, this committee may want to incorporate language that specifically states that public agencies may not transfer public lands in fee simple to the authority); and
- Appears to provide for an appropriate project implementation process by requiring the PPPA to provide project plans to a public agency prior to obtaining consent and by respecting the counties' authority over their zoning and permitting processes (Despite this the language of §-5 of this measure may need further clarification with regards to whether the public agency would continue to have oversight after consent, when a public agency is "affected by the proposed projects," etc.).

OHA notes, however, that the establishment of the PPPA may raise other concerns. While OHA is still gathering information and researching the potential impacts of SB215 SD1, the following provisions of the bill appear to raise concerns:

- **The composition of the PPPA Board.** OHA applauds the inclusion of a member of the aha moku council that serves the moku in which a project is anticipated to occur. This board member, however, would only be advisory. The intrinsic value of public lands to Native Hawaiians and the larger public, as well as the enormous socioeconomic benefits provided by our undeveloped public land base, counsel the inclusion of additional **voting** members. These additional voting members would better ensure transparency in PPPA board decisions, and provide necessary

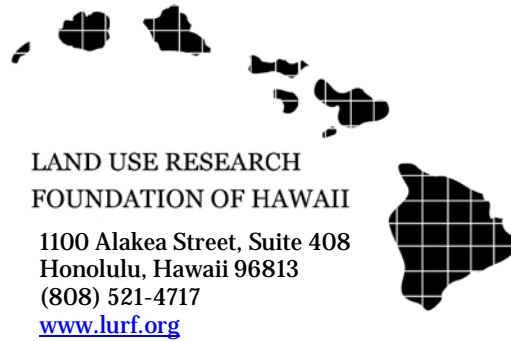
checks and balances in the potential long-term commitment of our public lands for development projects. OHA points to SB405, a bill in OHA's 2013 legislative package, which would have added two seats to the PLDC – one for OHA's administrator, or the administrator's designee, and another for an individual with expertise in sustainable planning and natural resource management. The majority of Hawai'i's public lands were "ceded" to the United States as a result of the unlawful overthrow of the Kingdom of Hawai'i, and these additional voting members would help the state to carry out its mission to develop a culturally sensitive land development program, and to maintain its legal and moral commitments to reconciliation and reparatory justice for the Native Hawaiian people.

- **The transfer of management rights.** SB215 SD1 authorizes public agencies to transfer management rights for projects to the PPPA notwithstanding HRS Ch. 171. It then authorizes the PPPA to lease properties from or agree to manage properties of a public agency. OHA notes that, to the extent that the transfer of management rights to a project involves the management of public lands, as defined under HRS Ch. 171, the lease, license, set aside and other disposition provisions should be applicable. HRS Ch. 171 provides a complete statutory scheme for governing the fiduciary duties of the State of Hawai'i for managing and disposing of its most valuable resources – its public lands – which are held in trust for native Hawaiians and the public. "The overall purpose of this chapter [HRS 171] and particularly of those sections dealing with the lease of public lands is to preserve the assets of the State and to provide" guidance to the State "in the management of these assets."¹ OHA's administration objects to the provision authorizing the transfer of management rights", to the extent that the provision seeks to empower the PPPA to bypass HRS Ch. 171.
- **Public Land Trust Revenue.** In order to give the PPPA appropriate and sufficient guidance in carrying out its duties and commitments to the Native Hawaiian people, this bill should clarify that the PPPA must comply with OHA's right to the constitutionally-mandated pro-rata portion of public land trust revenues. OHA notes that the proposed SD1 of SB215 attempted to clarify the same. OHA points to SB405, a bill in OHA's 2013 legislative package, which includes the following language: Notwithstanding any provision of this chapter to the contrary, the corporation shall be subject to Act 178, Session Laws of Hawai'i 2006, or any other law that provides for the office of Hawaiian affairs' pro rata portion of the public land trust, pursuant to article XII, section 6 of the state constitution, and section 10-3.
- **The PLDC still exists.** At this time there are two measures moving in both houses of the Hawai'i State Legislature that would repeal the law that created the Public Land Development Corporation. Until the issue of the PLDC's continued existence is resolved, this measure may be premature.

¹ *Big Island Small Ranchers Ass'n v. State*, 60 Haw. 228, 588 P.2d 430 (Hawaii, 1978).

- **Public-Private Partnerships may raise additional concerns.** This includes the potential loss of state revenues, the loss of public interest considerations and accountability, and the loss of quality jobs for local residents. As has been demonstrated in Hawai'i and in other jurisdictions, the privatization of public assets has the potential to result in substantial lost revenue opportunities for public agencies. Often, privatization takes the form of a one-time infusion of private monies in exchange for a long-term lease of revenue-generating assets. This has the potential to result in significant lost revenue opportunities in the long term. With regards to loss of public interest considerations, as indicated here and on the continent, while the privatization of public assets may help to increase the efficiency of public projects and developments, private entities have a very difficult time addressing additional public interest considerations that are not firmly linked to revenue generation. These other considerations may include access for fishing, gathering, and recreation, all of which are an important part of Native Hawaiian and local culture. Privatization of public assets, particularly through long-term leases or contracts, can also have the unintended consequence of diminishing public and government accountability over the use and maintenance of such assets. Without adequate lease protections, public agencies may be reduced to a "middleman" position where they have limited ability to address public concerns absent expensive contract or lease renegotiations. Finally, while public state agencies traditionally employ local residents, larger national or multi-national corporations with the capital to engage in public private partnerships may tend to outsource or hire individuals who are not permanent residents. OHA understands that these issues may be addressed by appropriate and transparent planning.
- **PPPA's adoption of rules is purely discretionary.** While Part II of this measure would require the PPPA to initiate specific pilot projects after the adoption of rules, the PPPA is not required to do so. Unlike other public-private partnership measures that moved through the legislative session, the scope of projects and lands that the PPPA may impact appears to be quite broad. The PLDC's discretion to adopt administrative rules was a point of contention for many community members, and this committee may want to avoid similar contention by mandating the adoption of administrative rules pursuant to Chapter 91 and setting forth the scope of this requirement.

Mahalo for the opportunity to testify on this important measure.



March 1, 2013

Senator Jill N. Tokuda, Chair
Senator Michelle N. Kidani, Vice Chair
Senate Committee on Education

Senator David Y. Ige, Chair
Senator Michelle N. Kidani, Vice Chair
Senate Committee on Ways and Means

Comments in Support of SB 215, S.D. 1 Relating to Economic Development (Establishes the public-private partnership authority [“PPPA”] and Stadium Facilities Special Fund.)

Friday, March 1, 2013, 9:00 a.m., in Conference Room 211

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF’s mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii’s significant natural and cultural resources, and public health and safety.

LURF appreciates the opportunity to provide **comments in support of the intent** of this measure.

SB 215, SD1. This bill establishes the PPPA; establishes a PPP special fund and stadium facilities special fund; requires the PPPA to initiate pilot projects; and appropriates an unspecified sum for the PPPA.

LURF’s Position. LURF supports the intent of the measure, as it includes a number of issues which could support the success of public-private partnerships in Hawaii and principles of responsible planning and development, including, but not limited to the following:

- The establishment of the PPPA within the Department of Business, Economic Development and Tourism;
- Clarification that the PPA is intended to facilitate cooperation among state agencies and the public section, not to develop properties;
- The appointment of a PPPA member from the Aha Moku Committee of the moku in which the proposed project is sited;

- Compliance with county ordinances, land use and permitting requirements, unless waived by the county by ordinance or memorandum of agreement;
- The establishment of special funds for public-private partnership projects and the Aloha Stadium;
- Compliance with state laws;
- The initiation of pilot projects, including film production facilities and a main-street project in Wahiawa and authorizes county-initiated projects for educational purposes or to stimulate economic development and job creation; and
- Makes an unspecified appropriation.

Notwithstanding our support for the intent of this measure, however, we would recommend that once established, the PPPA, the various state and county agencies, and private stakeholders continue to work together to implement the proposals made in this bill.

Thank you for the opportunity to present testimony regarding this matter.