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GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the House Committees on
WATER & LAND
and
OCEAN, MARINE RESOURCES & HAWAIIAN AFFAIRS**

**Wednesday, January 22, 2014
8:30A.M.
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 1507
RELATING TO PUBLIC LAND**

House Bill 1507 proposes to amend the legislative approval requirement for any exchange of public land for private land to require a majority vote in both houses. The Department of Land and Natural Resources (Department) takes no position on this bill. The Department notes that it has sought and received legislative approval for prior land exchanges through resolutions.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
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

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From: mailinglist@capitol.hawaii.gov
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Subject: *Submitted testimony for HB1507 on Jan 22, 2014 08:30AM*

HB1507

Submitted on: 1/20/2014

Testimony for WAL/OMH on Jan 22, 2014 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Julie Nishimura	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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HB1507
RELATING TO PUBLIC LAND
House Committee on Water and Land and
House Committee on Ocean, Marine Resources, & Hawaiian Affairs

January 22, 2013

8:30 a.m.

Room 325

The Administration of the Office of Hawaiian Affairs (OHA) will recommend to the Board of Trustees a position of **SUPPORT WITH AMENDMENTS** for HB1507, which would amend the existing legislative oversight over exchanges of public land for private land to require a majority vote of both houses of the Legislature.

In 2009, the legislature enacted Act 176 (HSL 2009), which settled a decade-long lawsuit brought by OHA over the State of Hawai‘i’s attempt to sell “ceded” lands.¹ The purpose of Act 176 was to “establish a more comprehensive process for the sale of state-owned land, and to reserve a larger oversight role for the legislature to assure that key information about certain sales or exchanges of land is shared with the legislature.”² In recognition of the finality and permanence of the sale of Hawai‘i’s most precious and limited resource, the Legislature established procedural mechanisms to provide transparency and accountability, namely the prior approval of a super majority of the Hawai‘i State Legislature, “before most state-owned land [can] be sold[.]”³ With regards to exchanges, HRS § 171-50 requires that information on the exchange including but not limited to the purpose of the exchange, any development plans for the land exchanged, and a statement of whether the land is considered “ceded” lands be included in a concurrent resolution to be submitted for introduction to the Legislature, with advance notice given to OHA.⁴ However, unlike sales and gifts of public lands, which require a legislative super-majority approval, exchanges are subject to a legislative disapproval process.⁵

¹ On November 4, 1994, OHA filed a lawsuit, OHA v. Hawaii Finance and Development Corporation [later renamed OHA v. Housing and Community Development Corporation of Hawai‘i (HCDCH)], to seek a moratorium on the sale of ceded lands by the State of Hawai‘i in order to implement its policy to protect the ceded lands corpus until the unrelinquished claims of Native Hawaiians are resolved.

² 2009 Haw. Sess. Laws Act 176, § 1.

³ Id.

⁴ Hawai‘i Revised Statutes (HRS) § 171-50(c) (2011), 2009 Haw. Sess. Laws Act 176, § 3.

⁵ Id.

OHA recommends amending HB1507 to broaden the scope of lands covered by HRS § 171-50 to be consistent with scope of lands covered by HRS § 64.7, which articulates the legislative approval process for sales and gifts of state land. Currently HRS § 171-50 appears to apply only to “public lands” as defined by HRS § 171-2, which specifically excludes lands held by certain agencies including the University of Hawai‘i, Hawai‘i Housing Finance and Development Corporation, Aloha Tower Development Corporation, Agribusiness Development Corporation, and High Technology Development Corporation.⁶ Most of the lands excluded from the definition of public lands are explicitly included in HRS § 171-64.7. OHA offers the attached proposed HB1507 HD1, which ensures that lands subject to the Legislature’s sale and gift oversight are also subject to the Legislature’s exchange oversight.

In addition, OHA also respectfully suggests that the committees consider amending HB1507 to require a two-thirds super majority approval of both houses of the Legislature for any exchange of public land for private land to establish consistency with the current legislative oversight process for the sale of public lands. Please note that the attached proposed HD1, page 4 line 1, can be amended to require a “majority” or a “two-thirds” vote of both houses, depending on the will of the committees.

Mahalo for the opportunity to testify on this important measure.

⁶ HRS § 171-2 (2006).

A BILL FOR AN ACT

RELATING TO PUBLIC LAND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAI'I:

1 SECTION 1. Section 171-50, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " (a) This section applies to all lands or interest
4 therein owned or under the control of state departments and
5 agencies classed as government or crown lands previous to
6 August 15, 1895, or acquired or reserved by the government
7 upon or subsequent to that date by purchase, exchange,
8 escheat, or the exercise of the right of eminent domain, or
9 any other manner, including accreted lands not otherwise
10 awarded, submerged lands, and lands beneath tidal waters
11 that are suitable for reclamation, together with reclaimed
12 lands that have been given the status of public lands under
13 this chapter, including:

14 (1) Land set aside pursuant to law for the use of the
15 United States;

16 (2) Land to which the United States relinquished the
17 absolute fee and ownership under section 91 of the Organic
18 Act prior to the admission of Hawaii as a state of the
19 United States;

1 (3) Land to which the University of Hawaii holds
2 title;

3 (4) Land to which the Hawaii housing finance and
4 development corporation in its corporate capacity holds
5 title;

6 (5) Land to which the department of agriculture holds
7 title by way of foreclosure, voluntary surrender, or
8 otherwise, to recover moneys loaned or to recover debts
9 otherwise owed the department under chapter 167;

10 (6) Land that is set aside by the governor to the
11 Aloha Tower development corporation; or land to which the
12 Aloha Tower development corporation holds title in its
13 corporate capacity;

14 (7) Land that is set aside by the governor to the
15 agribusiness development corporation; or land to which the
16 agribusiness development corporation in its corporate
17 capacity holds title; and

18 (8) Land to which the high technology development
19 corporation in its corporate capacity holds title.

20 [~~a~~] (b) Purpose. No exchange of public land for
21 private land shall be made except for public purposes,
22 including but not limited to (1) consolidation of holdings
23 of public lands; (2) straightening of boundaries of public
24 lands; (3) acquisition of adequate access for landlocked

1 public lands which have development potential; or (4)
2 acquisition of lands suitable for residential use.
3 Exchanges shall be effected without public auction. Public
4 notice of any proposed exchange shall be given in
5 accordance with the applicable provisions set forth in
6 section 171-16(d). All private lands conveyed to the State
7 by way of exchanges shall thereafter become public lands.

8 ~~[(b)]~~ (c) Value. The public land exchanged shall be
9 of substantially equal value to that of the private land.
10 In any exchange, the fair market value of the private land
11 and the public land shall be separately determined by a
12 disinterested qualified appraiser or appraisers and the
13 cost shall be borne equally between the owner and the
14 board. No payment by the State shall be required should
15 the private land exceed the value of the public land, but
16 any difference in value of the public land over the private
17 land shall be paid to the State at the time of the
18 exchange; provided no exchange shall be made should public
19 land exceed one hundred twenty per cent of the value of the
20 private land.

21 ~~[(e)]~~ (d) Legislative ~~[disapproval.]~~ approval. Any
22 exchange of public land for private land shall be subject
23 to ~~[disapproval by the legislature by two-thirds vote of~~
24 ~~either the senate or the house of representatives~~

1 ~~er]~~ approval by ~~majority~~ two-thirds vote of both houses of
2 the legislature in any regular or special session following
3 the date of the board of land and natural resources'
4 approval in principle of the exchange. The state
5 department or agency shall submit for introduction to the
6 legislature a resolution for review of action on any
7 exchange to be consummated by the board wherein exchange
8 deeds will be executed by the parties together with the
9 following information:

10 (1) The specific location and size in square feet or
11 in other precise measure of the parcels of land to be
12 exchanged;

13 (2) The value of the lands to be conveyed by the
14 State and the private party;

15 (3) The name or names of the appraiser or appraisers;

16 (4) The date of the appraisal valuation;

17 (5) The purpose for which the lands are being
18 exchanged;

19 (6) A detailed summary of any development plans for
20 the land to be exchanged; and

21 (7) A statement of whether the land is, or is not,
22 land that was classed as government or crown lands previous
23 to August 15, 1895, or was acquired by the State in

1 exchange for such lands, and a detailed explanation of how
2 the state department or agency made this determination.

3 A copy of the draft resolution shall also be submitted
4 to the office of Hawaiian affairs at least three months
5 prior to the convening of a regular or special session of
6 the legislature to allow the office to determine whether
7 the land was classed as government or crown lands previous
8 to August 15, 1895, or was acquired by the State in
9 exchange for such lands.

10 [~~(d)~~] (e) Exception. Notwithstanding any limitations
11 set forth in this section, the board may exchange public
12 land for Hawaiian homes commission's available land of
13 equal value in order to consolidate its holdings or the
14 holdings of the commission or to effectuate better the
15 purposes of this chapter or of the Hawaiian Homes
16 Commission Act of 1920, as amended."

17 SECTION 2. Statutory material to be repealed is
18 bracketed and stricken. New statutory material is
19 underscored.

20 SECTION 3. This Act shall take effect upon its
21 approval.

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From: mailinglist@capitol.hawaii.gov
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Submitted on: 1/21/2014

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Submitted By	Organization	Testifier Position	Present at Hearing
Leimomi Khan	Individual	Support	Yes

Comments: The introducers of this bill are commended for introducing this legislation to amend the legislative approval requirement for any exchange of public land for private land to require a majority vote of both houses. Even better would be to require a 2/3 vote consistent with the law on sales of public land. The rationale given for that law would also be applicable to this proposal. Mahalo, Leimomi Khan

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