

DEPARTMENT OF ENVIRONMENTAL SERVICES
CITY AND COUNTY OF HONOLULU

1000 ULUOHIA STREET, SUITE 308, KAPOLEI, HAWAII 96707
TELEPHONE: (808) 768-3486 • FAX: (808) 768-3487 • WEBSITE: <http://envhonolulu.org>



KIRK CALDWELL
MAYOR

LORI M.K. KAHIKINA, P.E.
DIRECTOR

TIMOTHY A. HOUGHTON
DEPUTY DIRECTOR

ROSS S. TANIMOTO, P.E.
DEPUTY DIRECTOR

IN REPLY REFER TO:
WAS 14-41

March 24, 2014

The Honorable David Y. Ige, Chair
and Members of the Committee on
Ways and Means
State Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Ige and Members:

Subject: House Bill 866, HD2, SD1, Relating to Sewer Systems
Servicing on Hawaiian Home Lands

The City and County of Honolulu's Department of Environmental Services (ENV) has significant concerns regarding House Bill (HB) 866, House Draft (HD) 2, Senate Draft (SD) 1, Relating to Sewer Systems Servicing on Hawaiian Home Lands and strongly opposes the bill in its current form. ENV opposed this bill during the 2013 Legislative Session and there has been no change to the bill since that time.

HB 866, HD2, SD1, essentially has two objectionable components:

First, HB 866, HD2, purports to confirm that sewer systems existing on the effective date of the bill "that the counties developed, constructed, operated, improved, or maintained, or for which the counties otherwise have obligations to operate, improve, repair, maintain, or replace," including those facilities on Hawaiian home lands, are owned by the counties. Here, it is unclear that the Legislature may transfer ownership as suggested in the bill just by a declaratory statement. *See, e.g.,* Dep't of the Attorney General, Opinion No. 86-15 (June 10, 1986) ("Hawaiian Home Lands are not transferable by state legislation, pursuant to sections 2 and 3 of article XII [designated as article XI in 1965] of the Hawaii State Constitution."). ENV accepts responsibility to operate and maintain sewer lines that are currently owned by the City and County of Honolulu and for sewer systems which the City and County of Honolulu operates and maintains pursuant to intergovernmental agreements. However, while an intergovernmental agreement may provide for certain responsibilities to operate and maintain a system, an intergovernmental agreement does not transfer ownership.

Second, HB 866, HD2, SD1, would mandate that the City and County of Honolulu accept ownership, through dedication or license, of sewer lines within Hawaiian Home Lands upon demand by the Department of Hawaiian Home Lands, provided that the sewer lines and other sewerage facilities are in substantial compliance with environmental laws and regulations pertaining to the dedication or license of the sewers to the counties at the time of construction. This provision fails to address the fact that most such lines and facilities on Oahu are up to seventy years old and, without maintenance, are no longer in their original condition. Further, it is inappropriate for the Department of Hawaiian Home Lands to simply transfer such assets to the City. Many of the sewer lines and facilities on Hawaiian Home Lands and owned by the Department of Hawaiian Home Lands were not built to City standards and/or have not been routinely maintained during their lives. Indeed, it is highly questionable whether the subject sewer lines and facilities are in serviceable condition and/or good working order. The City has indicated for many years its willingness to take responsibility for these lines provided that they are brought up to current City standards and repaired prior to such a transfer in operation and maintenance responsibility. It is not appropriate for other City sewer rate payers to accept the burden of upgrading Hawaiian Home Lands sewer systems when that has long been the responsibility of the owner, the Department of Hawaiian Home Lands. We would apply this same standard to any other developer.

The Department of Hawaiian Homelands has indicated that the sewer system on Hawaiian Homelands in the Papakolea area of Oahu was licensed to the City and County of Honolulu. However, our records indicate that while the City may have been involved in construction of the initial phase of these sewers in 1940, the City has not been involved in or responsible for maintenance of the system since the early 1980s, and the City may not have an easement/license to access the entire system. Moreover, the City is not aware of a document mandating ongoing maintenance of the Papakolea sewer system by the City.

Although the City has historically collected and continues to collect City sewer service charges from lessees of Hawaiian Home Lands, such service charges pay only for operation and maintenance of the City-owned sewer lines that transmit wastewater to the City's wastewater treatment plants and for the treatment and disposal of that wastewater. The sewer service charges collected from lessees of Hawaiian Home Lands do not include or contemplate the costs to "operate, improve, repair, maintain, and replace" the existing sewer systems servicing Hawaiian Home Lands on Oahu.

Indeed, HB 866, HD2, SD1, in its current form purports to mandate the counties to "operate, improve, repair, maintain and replace" the Department of Hawaiian Homelands' sewer system while failing to address or provide the funding for such a program, in contravention to Article 8 of the Hawaii State Constitution. Moreover, Section 46-45 of the Hawaii Revised Statutes prohibits the City from expending any funds or incurring any liabilities or obligations that have not been appropriated. If passed, HB 866, HD2, SD1, would impose liabilities, obligations, and penalties on the City and the other counties into the future, without appropriation, contrary to § 46-45.

The Honorable David Y. Ige, Chair
and Members
March 24, 2014
Page 3

We urge the committee not to pass HB 866, HD2, SD1, in its current form and to not place the burden of upgrading sewer systems within Hawaiian Home Lands on other City rate payers.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Lori M.K. Kahikina". The signature is fluid and cursive, with a large initial "L" and "M".

Lori M.K. Kahikina, P.E.
Director



HB866 HD2 SD1
RELATING TO SEWER SYSTEMS SERVICING ON HAWAIIAN HOME LANDS
Senate Committee on Ways and Means

March 25, 2014

9:10 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB866 HD2 SD1, which requires counties to accept the dedication of sewer systems servicing Hawaiian home lands.

Communities such as Papakōlea suffer from poorly working sewer systems and unhealthy conditions because the City and County of Honolulu has not accepted dedication of their sewage infrastructure. This is of concern for two reasons.

First, dysfunctional sewers will pose a public health risk. Second, future developments by the Department of Hawaiian Home Lands will be hindered because the department will have to take on even more infrastructure costs. In short, the management of sewers is properly handled by the experts, our county governments.

Therefore, OHA urges the Committee to **PASS** HB866 HD2 SD1. Mahalo for the opportunity to testify on this important measure.