

SB2104

SB2104



Submit Testimony

Measure Title: RELATING TO THE DEFINITION OF REMNANTS.
Report Title: OHA Package; Public Lands; Remnant Lands
Description: Clarifies that the term "remnant" shall apply only to the categories listed in section 171-52(a), Hawaii Revised Statutes.
Companion: [HB1617](#)
Package: Office of Hawaiian Affairs
Current Referral: WTL, WAM
Introducer(s): KIM (Introduced by request of another party)

Sort by Date		Status Text
1/14/2014	S	Pending Introduction.
1/15/2014	S	Introduced.
1/15/2014	S	Passed First Reading.
1/16/2014	S	Referred to WTL, WAM.
2/5/2014	S	The committee(s) on WTL has scheduled a public hearing on 02-10-14 3:00PM in conference room 225.

NEIL ABERCROMBIE
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 Senate Committee on
WATER AND LAND

Monday, February 10, 2014
3:00 P.M.
State Capitol, Conference Room 225

In consideration of
SENATE BILL 2104
RELATING TO THE DEFINITION OF REMNANTS

Senate Bill 2104 proposes to amend the definition of “remnant” to restrict it to the categories listed in Section 171-52(a), Hawaii Revised Statutes. **The Department of Land and Natural Resources (Department) opposes this bill.**

As presently defined under the statute, the term “‘remnant’ means a parcel of land economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics.” The statute goes on to list two general categories of land that may constitute a remnant: “(1) Land acquired by condemnation which is in excess of the needs for which condemned; (2) Vacated, closed, abandoned, or discontinued road, street or alley or walk, railroad, ditch, or other right-of-way.”

Senate Bill 2104 would change the definition so that only lands that fall within the two general categories above could be considered remnants and sold. In most cases, the remnants that the Board of Land and Natural Resources authorizes to sell fit these categories. However, there are times that it is in the State’s best interest to dispose of lands outside of the categories. One example of this is the situation where private lands were developed at the base of a steep hill, leaving the State with ownership of the hillside and liability for falling rocks and landslides. Such lands are unsuitable for development or utilization, but do not fit within the two general categories in the statute. However, it may be in the best interests of the State to dispose of the land and the liability in such a case. The proposed legislation would prevent the Board from taking such action, and the Department therefore opposes the bill.

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



SB2104
RELATING TO THE DEFINITION OF REMNANTS
Senate Committee on Water and Land

February 10, 2014

3:00 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) **STRONGLY SUPPORTS** SB2104, which is a bill in OHA’s 2014 legislative package. SB2104 would restore transparency, accountability and legislative oversight over the alienation of public lands, including “ceded” lands and public land trust lands, by clarifying which public lands qualify as “remnants” exempt from public auction and legislative approval requirements otherwise applicable to the sale of such lands. SB2104 brings the practice of using the remnants provision to sell public lands inline with the purpose of Act 176 (Reg. Sess. 2009), which settled a decade-long lawsuit brought by OHA over the State of Hawai‘i’s attempt to sell “ceded” lands.¹

As described in the purpose section of this bill, several procedural mechanisms exist in the alienation of public lands. As clearly stated in its preamble, Act 176 was enacted 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.” In recognition of the finality and permanence of the sale of Hawai‘i’s precious and limited land resources, the legislature established procedural mechanisms to provide transparency and accountability, namely the prior approval by a super majority of the Hawai‘i State Legislature, “before **most** state-owned land [can] be sold[.]” Act 176 (Reg. Sess. 2009) (emphasis added). Additionally, a public auction process is also required for the sale of most public lands.

The only exception to these procedural safeguards exists for those lands classified as “remnants,” which are arguably limited to formerly condemned lands that are no longer needed, or abandoned roads, ditches or other similar rights-of-way. HRS § 171-52. In such circumstances, remnants must also be found unsuitable or undesirable for development. If the state determines a parcel of land to be a “remnant,” then it may sell the parcel without going through a public bidding process, and without a super majority approval of the Legislature.

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.

A review of remnant sales over the last five years indicates that remnants have almost invariably been limited to formerly condemned lands, or abandoned ditches, roads or similar rights-of-way. However, the state has recently used a selectively broad interpretation of the remnant definition to sell multiple parcels, including a five-acre parcel of ceded, public land trust lands, without public auction or legislative approval. This parcel of land included a stream and waterfall in East Maui, and was not condemned lands, nor an abandoned right-of-way. However, the state determined this parcel to be a remnant based solely on a finding that it was “unsuitable for development.” In a subsequent decision, a seven-acre parcel of non-ceded, non-public land trust, undeveloped lands was also approved for sale as a “remnant”; again, the only criterion applied was that this land was considered “unsuitable for development.” These broad interpretations effectively eliminate the legislature’s desire to have a “larger oversight role[,]” as envisioned by Act 176.

Similar applications of the “remnant” definition, should this trend continue, could allow a significant proportion of the state’s public lands to be classified as “remnants,” due to their “unsuitability for development.” As illustrated in the recent land sales, such a trend would undermine the procedural mechanisms used to safeguard our limited land assets, and open the door for our public lands base to be gradually diminished through land sales without the opportunity for meaningful public scrutiny or financial accountability. Further remnant sales may also impact the state’s commitments to a reconciliation process with Native Hawaiians and the health and well-being of the Native Hawaiian people, which is intrinsically tied to their connection and attachment to the ‘āina.

By clarifying that “remnants” should either constitute formerly condemned lands or abandoned rights-of-way, as already suggested by statutory language and the past practices of the state, this bill will better ensure the transparency and accountability mechanisms that otherwise govern the disposal of public lands, avoid future conflicts and misunderstandings, and prevent sales of convenience that may chip away at our very finite public lands corpus. It also serves to respect what **U.S. Congress, the State of Hawai’i (via its administration, legislature, and judiciary) and OHA all recognize—that the “ceded lands were illegally taken from the native Hawaiian monarchy[,]” and “once any ceded lands are alienated [], they will be gone forever[.]”**

Therefore, OHA urges the committee to **PASS** SB2104. Mahalo for the opportunity to testify on this important measure.

HAWAIIAN AFFAIRS CAUCUS

Democratic Party of Hawaii

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February 5, 2014

LEGISLATIVE TESTIMONY

IN SUPPORT OF

SB2104, RELATING TO THE DEFINITION OF REMNANTS

Hearing, Monday, February 10, 2014, 3:00 p.m., Room 225

Senator Malama Solomon, Chair
Senator Brickwood Galuteria, Vice-Chair
Members of the Committee on Water and Land

Aloha mai kākou

The Hawaiian Affairs Caucus of the Democratic Party of Hawai‘i **strongly supports** SB2104 that clarifies the term “remnant” in order to prevent improper characterization of certain public land parcels. The legislature has taken many steps to ensure that the public lands of this State are protected from improper alienation, however, it seems that the term “remnant” has been left to broad interpretation, thus creating a “loophole” of sorts.

Clarification of this ambiguous definition is necessary in order to prevent improper classification and alienation of public lands.

Mahalo for the opportunity to testify.

Respectfully

/s/ Davis Price

DAVIS PRICE
Chair
Hawaiian Affairs Caucus

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February 9, 2014

**LEGISLATIVE TESTIMONY
IN SUPPORT OF
SB2104, RELATING TO THE DEFINITION OF REMNANTS
Hearing, Monday, February 10, 2014, 3:00 p.m., Room 225**

Senator Malama Solomon, Chair
Senator Brickwood Galuteria, Vice-Chair
Members of the Committee on Water and Land

Aloha mai kākou

I write in support of SB2104, to clarify the term “remnant” that shall apply only to the categories listed in section 171-61(a), Hawaii Revised Statutes.

The revision to HRS171-52(a), Definition, to change the word “may” to “shall” in the 4th line will help to close the loop to better define the intent of the law as concerns the disposition of remnants on state public lands.

Mahalo for the opportunity to testify.

Respectfully

/s/ Leimomi Khan by on-line testimony

LEIMOMI KHAN