



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:

S.B. NO. 2254, RELATING TO THE HAWAIIAN HOMES COMMISSION.

BEFORE THE:

SENATE COMMITTEE ON HAWAIIAN AFFAIRS

DATE: Friday, January 31, 2014

TIME: 1:30 p.m.

LOCATION: State Capitol, Room

TESTIFIER(S): David M. Louie, Attorney General, or
Craig Y. Iha, Deputy Attorney General

Chair Shimabukuro and Members of the Committee:

The Department of the Attorney General is testifying on this bill to advise the Committee that the bill raises two serious constitutional concerns.

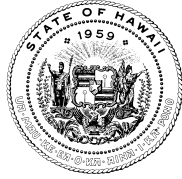
The bill establishes a candidate advisory council composed of members selected by the President of the Senate, the Speaker of the House of Representatives, a private organization called the Sovereign Councils of the Hawaiian Homeland Assembly, and the Hawaiian Homes Commission. The purpose of the advisory council is to provide lists of candidates to the Governor for nomination and appointment to the Hawaiian Homes Commission. The bill also provides that the Chairman of the Hawaiian Homes Commission shall be selected by members of the Commission and not the Governor.

First, the bill may conflict with article V, section 6, of the Hawaii Constitution, which provides: “whenever a board, commission, or other body shall be the head of a principal department of the state government, the members thereof shall be nominated and, by and with the advice and consent of the senate, appointed by the governor.” The Department of Hawaiian Home Lands is a principal department of the state government that is headed by a commission. By limiting the choice of Hawaiian Homes Commission nominees to only those names provided by the candidate advisory council, the bill restricts the Governor’s authority to nominate and appoint the head of a state executive department.

Second, the bill may violate the separation of powers doctrine. “Hawaii’s government is one in which the sovereign power is divided and allocated among three co-equal branches. The doctrine provides that a department may not exercise powers not so constitutionally granted,

which from their essential nature, do not fall within its division of governmental functions, unless such powers are properly incidental to the performance by it of its own appropriate functions.” Hawaii Insurers Council v. Lingle, 120 Haw. 51, 69-70 (2008) (citations and internal quotes omitted). This bill requires the Governor to select nominees from lists provided by the candidate advisory council. The bill also removes the Governor’s authority to appoint the full-time chairman of the Hawaiian Homes Commission. The determination of candidates for nomination to the Hawaiian Homes Commission, which heads the Department of Hawaiian Home Lands, is an executive, not legislative, function. The bill therefore may violate the separation of powers doctrine by: (1) limiting the Governor’s constitutional authority to select the leadership of the Department of Hawaiian Home Lands; and (2) removing the Governor’s authority to appoint the full-time chairman, who oversees the day-to-day operations of the department.

We respectfully request that this bill be held.



**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879
HONOLULU, HAWAII 96805

COMMENTS OF JOBIE M. K. MASAGATANI, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEE ON HAWAIIAN AFFAIRS
ON

SB 2254, RELATING TO THE HAWAIIAN HOMES COMMISSION

January 31, 2014

Chair Shimabukuro, Vice-Chair Hee, and Members of the Committee:

The Department of Hawaiian Home Lands (DHHL) provides comments on this bill which amends the process for appointing members, the process for appointing the chair, and the member requirements of the Hawaiian Homes Commission.

The amendments to the Hawaiian Homes Commission Act proposed in the bill are significant and fundamentally change the dynamic of the Hawaiian Homes Commission. The department's policy for profound changes like this that are pursued administratively (such as amendments to administrative rules) is to conduct statewide beneficiary consultation prior to any decision by the commission. This consultation typically includes community meetings six islands and an opportunity to comment via the department's website. Beneficiary consultation provides all beneficiaries with the opportunity to be informed and to engage in the discussion prior to a final action by the commission. We strongly encourage this committee to engage in a similar process on this measure to provide as many

beneficiaries as possible, who will be most impacted by these changes, the time to understand and consider this bill, and the opportunity to share their testimonies before these amendments are voted on by this committee and the Senate as a whole.

As a matter of information, the level of beneficiary consultation undertaken on any amendment to the Hawaiian Homes Commission Act is one item that is considered by the U. S. Department of Interior as it determines whether consent of the U. S. Congress is required.

The department would also like to highlight two other issues with regard to this bill. First, the bill provides for the possibility that the commission chair may change every year. This turnover will significantly hamper the operations of the department since the chair also serves as the director of the department. Yearly turnover of any department director for any state department would create substantial turmoil within the agency and likely deadlock any programmatic movement forward.

Second, while the inclusion of two members appointed by the Sovereign Councils of the Hawaiian Homelands Assembly (SCHHA) provides an opportunity for beneficiaries to participate in the Candidate Advisory Council, the beneficiary community is significantly broader than the SCHHA membership including several non-SCHHA homestead associations that regularly engage with DHHL, thousands of applicants, eligible successors and native Hawaiians yet to apply.

Thank you for your consideration of our comments.



Association of Hawaiian Civic Clubs

P. O. Box 1135
Honolulu, Hawai`i 96807

SENATE COMMITTEE ON HAWAIIAN AFFAIRS

SENATE BILL 2254 RELATING TO THE HAWAIIAN HOMES COMMISSION

Friday; January 31, 2014; 1:30 pm; Room 224

Aloha Madam Chair Shimabukuro, Vice chair Hee and members of the Senate Committee on Hawaiian Affairs. I am Soulee Stroud, president of the Association of Hawaiian Civic clubs(AHCC) here to testify in support of this bill to change the method by which commissioners of the Department of Hawaiian Homes are chosen.

An email poll of the AHCC Board of Directors was taken and the majority of the Board supported the bill that would convene a candidate advisory council to fashion a list of candidates for the HHL commission.

The advisory council would include seven members as detailed in the bill who would be chosen by the President of the Senate, the Speaker of the House, members of the commission and the Sovereign Councils of the Hawaiian Homeland Assembly.

The Governor would then choose commissioners from the list provided by the advisory council and the commissioners would choose their chairperson from among their members. This method is similar to the way that the judicial selection commission selects judges of Hawaii's State courts.

Comments by the AHCC Board members: *include other organizations besides SCHHA on the advisory council to compile the candidate list; *include the HHL's sibling organization, the Hawaiian Civic Clubs.

Thank you for the opportunity to testify in support of this bill.

Contact: jalna.keala2@hawaiiantel.net

From: mailinglist@capitol.hawaii.gov
To: [HWNTestimony](#)
Cc: souleeiko@gmail.com
Subject: Submitted testimony for SB2254 on Jan 31, 2014 13:30PM
Date: Thursday, January 30, 2014 1:20:56 PM
Attachments: [sb2254selectHHL.doc](#)

SB2254

Submitted on: 1/30/2014

Testimony for HWN on Jan 31, 2014 13:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Soulee L.K.O. Stroud	Association of Hawaiian Civic Clubs	Support	Yes

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov



Auamo I Na Alaka'i (AINA)

“AINA supports all Hawaiian Homestead community organizations in Hawai'i by strengthening their capacity building and discovering opportunities towards self governance through education, training and exploration.”

TESTIMONY ***IN STRONG OPPOSITION TO*** SB 2254 RELATING TO

HAWAIIAN HOMES COMMISSION

SENATE COMMITTEE ON HAWAIIAN AFFAIRS

Chairwoman M. Shimabukuro, Vice Chair C. Hee

Committee Members

NOTICE OF HEARING

Friday, January 31, 2014

1:30 p.m.

Conference Room 224

Hawaii State Capitol

415 South Beretania Street

Madame Chair Shimabukuro and Vice Chair Hee and Committee Members, Aloha!

Please accept this testimony in ***strong opposition to SB 2254***, relating to the Hawaiian Homes Commission. My name is Paul P. Richards elected President of Auamo I Na Alaka'i (AINA) a state not-for-profit organization whose sole purpose, *“supports all Hawaiian Homestead community organizations in Hawai'i by strengthening their capacity building and discovering opportunities towards self governance through education, training and exploration.”* Our organization was founded several years ago as an alternative and option for Hawaiian homestead community associations serving as a resource and providing information and training opportunities in leadership development. As our guiding quotation above states, “self-governance through education, training and exploration” are the common practices we put into place and encourage our fellow constituents to those opportunities. We have selected not to create or form any formal membership roster, payments, dues or fees, but do encourage discussions, forums, workshops and conferences.

We strongly oppose the proposed legislation to amend the current process does not provide any reasonable or appropriate course other than the addition of a “search committee” format for potential



Auamo I Na Alaka'i (AINA)

“AINA supports all Hawaiian Homestead community organizations in Hawai'i by strengthening their capacity building and discovering opportunities towards self governance through education, training and exploration.”

candidates as applicants for the appointment to the Commission. We do not recognize this as a “best practice” solution or option.

We *strongly* oppose the composition of the “candidate advisory council” membership and elimination of the Director as the ninth member being replaced by, “at large” candidate. The limitation of membership on the council sets assumptions of organizations representing the majority; however, this is not the case and should be deleted from the proposal. We request to delete lines 3 and 4 on page 4.

We realize and do not want to overburden this Senate Committee on Hawaiian Affairs with a detailed contrast and comparison analysis; however, we do agree to “strongly oppose” SB 2254. If requested or needed by the Committee, we will be more than happy to provide our detailed testimony - analysis concerning SB 2254.

Finally, the Department of Hawaiian Home Lands (DHHL) since the establishment as an agency of the State and the fulfillment of the State's obligation in relation to the Admissions Act has performed and continue to provide a high level of service by the limited funding it receives. In respect to its administration and the Commission, and like all public and private institutions the ongoing policies and procedures help to better define, evaluate and ensures compliance to the Act. We appreciate the opportunity to submit this testimony and offer our contact information should you have any questions or concerns.

Mahalo nui loa,

Paul P. Richards
President

<Signature>

Josiah “Uncle Black” Ho’ohuli
Vice-President

<Signature>

Shirley Swinney
Secretary

From: mailinglist@capitol.hawaii.gov
To: [HWNTestimony](#)
Cc: paul_28827@msn.com
Subject: Submitted testimony for SB2254 on Jan 31, 2014 13:30PM
Date: Thursday, January 30, 2014 10:15:35 AM
Attachments: [AINA Testimony 013114 SB 2254.pdf](#)

SB2254

Submitted on: 1/30/2014

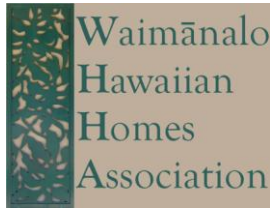
Testimony for HWN on Jan 31, 2014 13:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Paul P Richards	Auamo I Na Alaka'i (AINA)	Oppose	No

Comments: We strongly oppose this bill and ask for your consideration. Mahalo again for allowing us to submit our testimony.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov



P.O. Box 353, Waimānalo, Hawaii 96795-0353

TESTIMONY *IN STRONG OPPOSITION TO* SB 2254 RELATING TO
HAWAIIAN HOMES COMMISSION
SENATE COMMITTEE ON HAWAIIAN AFFAIRS

Chairwoman M. Shimabukuro, Vice Chair C. Hee and Committee Members

NOTICE OF HEARING

Friday, January 31, 2014
1:30 p.m.
Conference Room 224
Hawaii State Capitol
415 South Beretania Street

Madame Chair Shimabukuro and Vice Chair Hee and Committee Members, Aloha!

My name is Paul P. Richards, President of the Waimanalo Hawaiian Homes Association (WHHA) and its subsidiary, Na Kuhio ‘Ike (NKI) representing 740 households in Waimanalo.

Please accept this testimony in *strong opposition to SB 2254*, relating to the Hawaiian Homes Commission and the creation of a candidate advisory council. After careful consideration and numerous discussions concerning the Commission selection and its process our Association, its leadership and general membership feel the current process in place meets the beneficiaries needs. They do recognize a high need for improvement regarding each “Commissioner,” attitude, commitment and protocol, but the selection process is at this time fully supported and protects the “trust.”

We appreciate the opportunity to submit this testimony and offer our contact information should you have any questions or concerns.

Mahalo nui loa,

A handwritten signature in black ink, appearing to read "Paul P. Richards".

Paul P. Richards

From: mailinglist@capitol.hawaii.gov
To: [HWNTestimony](#)
Cc: paul_28827@msn.com
Subject: Submitted testimony for SB2254 on Jan 31, 2014 13:30PM
Date: Thursday, January 30, 2014 10:23:09 AM
Attachments: [WHHA Testimony 013114 SB 2254.pdf](#)

SB2254

Submitted on: 1/30/2014

Testimony for HWN on Jan 31, 2014 13:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Paul P Richards	Waimanalo Hawaiian Homes Association	Oppose	No

Comments: Mahalo for allowing us to submit our testimony in which we strongly oppose this bill.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: josiah hoohuli <eleelekupuna@gmail.com>
Sent: Thursday, January 30, 2014 8:38 PM
To: HWNTestimony
Subject: SB 2254, Releating to Hawaiian Homes Commission

Aloha,

Please accept this testimony in strong opposition to SB 2254, relating to the Hawaiian Homes Commission.

My name is Josiah "Black" Hoohuli resident of the Nanakuli Homestead, elected President of the newly formed Ahupua`a o Nanakuli Homestead, a state not-for-profit organization whose sole purpose is to provide a venue for lessees of the Nanakuli Hawaiian homestead community to participate while building leadership and capacity building opportunities.

I strongly oppose the proposal legislation to amend the current process, this proposal does not provide any reason(s) or justification to alter the present protocol.

The membership of the council does not in any way fully represent the Hawaiian homestead communities statewide, for this reason, I propose that lines 3 and 4 on page 4 be deleted.

Mahalo nui loa,
Josiah "Black" Hoohuli