

LATE



SB3066

RELATING TO THE PUBLIC-PRIVATE FINANCE INITIATIVE

Senate Committee on Economic Development, Government Operations and Housing
Senate Committee on Water and Land

February 10, 2014

3:20 p.m.

Room 016

The Office of Hawaiian Affairs (OHA) submits the following **COMMENTS** for SB3066, which would establish the Public-Private Finance Initiative (PPIA) to administer appropriate and culturally-sensitive projects and require the implementation of a specific pilot project on state lands in Wahiawā.

OHA appreciates the intent to provide economic, environmental, and social benefits to the public and notes that SB3066 specifically addresses concerns raised by OHA over the past two years over public private partnerships:

- Does not authorize the broad land use and zoning exemptions;
- Appears to anticipate that the public lands will not be transferred in fee to the PPIA (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 a more appropriate project implementation process by requiring the PPIA, prior to implementing a project, to submit a proposed plan to and obtain the prior approval of any public agency affected.

OHA notes, however, that the establishment of the PPIA may raise other concerns. OHA requests reconsideration of the following provisions:

- **The composition of the PPIA Board.** OHA supports the inclusion of the aha moku committee member from the moku in which the project is sited on the PPIA board. This aha moku member, however, would only be advisory and non-voting. 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 lands base, counsel granting the aha moku representative with voting privileges. Particularly given the fact that members of the governor's cabinet have a controlling number of votes on the proposed PPIA board, granting the aha moku member voting privileges and providing for additional voting members, independent from the governor, would better ensure transparency in PPIA board decisions, and provide necessary checks and balances in the potential long-term commitment of our public lands for development projects.

- **The transfer of management rights.** SB3066 authorizes public agencies to transfer management rights for projects to the PPIA notwithstanding the comprehensive transparency and accountability processes provided for under Hawai'i Revised Statutes (HRS) Chapter 171. OHA maintains that, to the extent that the transfer of management rights to a project involves the management of public lands, the lease, license, set aside and other disposition provisions of chapter 171 should be retained. Chapter 171 provides a complete statutory scheme governing how the state should manage and dispose of its most valuable resources – our public lands – which are held in trust for Native Hawaiians and the public. As the Hawai'i Supreme Court has explained, “[t]he 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 guide the state “in the management of these assets.”¹ OHA therefore believes that the interests of both Native Hawaiians and the state would be best served by retaining the well-established guidance and land disposition processes outlined in HRS Ch. 171.
- **Public Land Trust Revenue.** In order to give the PPIA appropriate and sufficient guidance in fulfilling its duties and commitments to the Native Hawaiian people, this bill should clarify that to the extent that lands of the contemplated pilot project may be public land trust lands, the PPIA must comply with OHA's right to the constitutionally-mandated pro-rata portion of public land trust revenues. OHA offers the following language to address this issue: “Notwithstanding any provision of this chapter to the contrary, the initiative 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.”
- **Public-Private Partnerships.** Public private partnerships in concept may raise additional concerns that the committee may wish to consider. These include the potential loss of state revenues, the loss of public interest considerations and accountability and the potential loss of quality jobs for local residents. 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.

Mahalo for the opportunity to testify on this important measure.

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