

JAN 21 2016

A BILL FOR AN ACT

RELATING TO THE RIGHT OF FIRST REFUSAL FOR THE DISPOSITION OF
REMNANTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the vast majority of
2 Hawaii's public lands have a complex history as unlawfully
3 seized and "ceded" former national and crown lands of the
4 Hawaiian Kingdom. As the legislature recently reaffirmed in
5 House Concurrent Resolution No. 6, S.D. 1 (2013), after the
6 illegal overthrow of the sovereign Kingdom of Hawaii, "one
7 million eight hundred thousand acres of crown and government
8 lands were . . . ceded to the United States without consent or
9 compensation to the Native Hawaiian people or their sovereign
10 government[-]" The legislature further recognized that "the
11 Native Hawaiian people never relinquished their claims to . . .
12 their national lands throughout the overthrow, occupation,
13 annexation, and admission of Hawai'i into the United States."
14 Given this history, as well as the continuing cultural, social,
15 and economic significance of the 'āina to Native Hawaiians and
16 the people of Hawai'i nei, important procedural safeguards now



1 exist to ensure that any sales of public lands held by the State
2 occur only in the most exigent and appropriate of circumstances.

3 One such safeguard was created through the enactment of Act
4 176, Session Laws of Hawaii 2009. Act 176, which settled a
5 decade-long lawsuit brought by the office of Hawaiian affairs to
6 stop the sale of public, "ceded" lands, established a
7 comprehensive, accountable, and transparent process for the
8 disposition of nearly all public lands. The Act further
9 required the prior approval of a super-majority of the
10 legislature, "before most state-owned land [can] be sold[.]"

11 However, a purportedly narrow exception to Act 176's
12 procedural safeguards exists for lands that qualify as "remnant"
13 lands under section 171-52, Hawaii Revised Statutes. Unlike
14 other public lands, lands found to qualify as "remnants" may be
15 disposed of without legislative approval, and without the
16 procedural steps that would otherwise ensure the level of
17 transparency and accountability deemed appropriate by the
18 legislature.

19 Recently, uncharacteristically broad interpretations of the
20 statutory definition of remnants have led to the disposal of
21 significant parcels of public lands, including public land trust



1 lands and "ceded" lands, without legislative approval or the
2 procedural requirements of Act 176. The dispositions have
3 raised significant concerns for the legislature, the Native
4 Hawaiian community, and the general public.

5 The legislature finds that the complex history of Hawaii's
6 public lands, the State's moral and legal responsibility to
7 maintain these lands in trust for both the Native Hawaiian
8 people and the general public, and the need to ensure some level
9 of accountability and transparency in the permanent alienation
10 of any public and potentially "ceded" lands, all counsel
11 creating an additional safeguard against the inappropriate
12 disposal of lands deemed to be "remnants" by the State. Given
13 the constitutional responsibility of the office of Hawaiian
14 affairs to hold property in trust for Native Hawaiians, granting
15 the office of Hawaiian affairs a right of first refusal to any
16 contemplated disposition of "remnant" lands would constitute
17 such a suitable safeguard.

18 Accordingly, the purpose of this Act is to give the office
19 of Hawaiian affairs the right of first refusal for any
20 disposition of public lands classified as remnants under section
21 171-52, Hawaii Revised Statutes.



1 SECTION 2. Section 171-52, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) Disposition. Remnants or portions thereof may be
4 disposed of by the board of land and natural resources without
5 recourse to public auction in the manner set forth herein. Any
6 remnant or portion thereof to be disposed of shall be first
7 offered for sale to the office of Hawaiian affairs at a
8 reasonable price based on appraised value. The remnant or
9 portion thereof shall be offered to the office of Hawaiian
10 affairs for a reasonable amount of time prior to offering the
11 remnant for sale to any other person or entity; provided that if
12 the office of Hawaiian affairs elects to purchase the remnant,
13 any abutting landowner whose access to a street requires an
14 easement across the remnant shall be offered such an easement
15 for a reasonable amount of time and for a reasonable price based
16 on appraised value, with the price of the remnant to be sold to
17 the office of Hawaiian affairs reduced accordingly. If the
18 office of Hawaiian affairs declines to purchase the remnant or
19 portion thereof to be disposed, the remnant or portion thereof
20 may then be offered for sale to the abutting owner for a
21 reasonable period of time at a reasonable price based on



1 appraised value. [~~In the event that~~] If one abutting landowner
2 lacks access to a street, and [~~such~~] access can be secured by
3 disposition of the remnant, [~~such~~] the remnant shall be first
4 offered for sale to [~~such~~] the abutting owner, or subdivided so
5 as to protect the access of all abutting landowners. If there
6 is more than one abutting owner who is interested in purchasing
7 the remnant, it shall be sold to the one submitting a sealed bid
8 containing the highest offer above the appraised value. If the
9 remnant abuts more than one parcel, the board may subdivide the
10 remnant so that a portion thereof may be sold to each abutting
11 owner at the appraised value; provided that no remnant shall be
12 sold to any abutting owner unless the remnant, when combined or
13 consolidated with the abutting property, shall constitute a lot
14 acceptable to the appropriate agency of the county in which the
15 remnant lies; and provided further that appropriate language
16 shall be included in any document of conveyance of [~~such~~] the
17 remnant to assure use of the remnant in accordance with the
18 applicable ordinances, rules, and regulations of the county
19 concerned."

20 SECTION 3. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



S.B. NO. 2125

1 SECTION 4. This Act shall take effect upon its approval.

2

INTRODUCED BY: *Wm D. M.*
BY REQUEST



S.B. NO. 2125

Report Title:

OHA Package; Disposition of Remnants; Right of First Refusal

Description:

Provides the office of Hawaiian affairs with the right of first refusal for any disposition of public lands classified as remnants.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

