

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
CARTY S. CHANG
Interim Chairperson**

**Before the Senate Committee on
WAYS AND MEANS**

**Monday, April 6, 2015
9:05 A.M.
State Capitol, Conference Room 211**

**In consideration of
HOUSE BILL 515, HOUSE DRAFT 3, SENATE DRAFT 1
RELATING TO REMNANTS**

House Bill 515, House Draft 3, Senate Draft 1 proposes to more narrowly restrict what parcels of land may be disposed of as a remnant parcel under section 171-52, Hawaii Revised Statutes (HRS), by the Board of Land and Natural Resources ("Board"). The bill proposes to prohibit the disposal of a remnant parcel by the Board if the Board finds that the parcel contains natural or cultural resources necessary for the exercise of native Hawaiian subsistence, cultural, or religious practices pursuant to the Hawaii Constitution; natural resources that should be protected or conserved for the benefit of current or future generations; or public access to public lands, such as beaches, coastal resources, or mountain resources. **The Department of Land and Natural Resources ("Department") offers comments only as to SECTION 1 of the bill that states the purpose of the bill.**

The Department respectfully requests that SECTION 1 be deleted. SECTION 1 of the bill articulates the purpose of the bill. The purpose of the bill is readily apparent from the changes made to section 171-52(b), HRS, in SECTION 2 of the bill. No explanation for the amendment of section 171-52(b), HRS, is necessary in SECTION 1 of the bill. Furthermore, SECTION 1 gives the misleading and unfair impression that the Board's actions are not transparent even though all actions are taken at public meetings that are properly noticed to the public under the Sunshine Law and persons from the public and government are able to testify in writing or orally on each matter under consideration by the Board. SECTION 1 also gives the incorrect impression that the Board has not followed the requirements of the remnants law and Sunshine Law when considering the disposition of remnants. All remnants disposed of by the Board have been done in accordance with section 171-52, HRS, and with notice and opportunity for input by the public and government agencies.

CARTY S. CHANG
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DANIEL S. QUINN
INTERIM FIRST DEPUTY

W. ROY HARDY
ACTING 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

SECTION 1 also appears to set forth a legal interpretation of the Hawaii Constitution's provisions relating to public lands. The language could be read as a legislative declaration of constitutional interpretation, which is not the focus of the bill and is not needed to accomplish the changes to the remnants statute. Whether this declaration of interpretation has legal implications beyond this bill needs to be further explored.



HB515 HD3 SD1
RELATING TO REMNANTS
Senate Committee on Ways and Means

April 6, 2015

9:05 a.m.

Conference Room 211

The Office of Hawaiian Affairs (OHA) Beneficiary Advocacy and Empowerment Committee will recommend to the Board of Trustees a position of **SUPPORT WITH AMENDMENTS** for HB515 HD3 SD1. This measure seeks to 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 may be sold as “remnants” exempt from otherwise applicable public auction and legislative approval requirements.

Act 176, which settled a decade-long lawsuit brought by individual and Native Hawaiians and OHA over the State of Hawai‘i’s attempt to sell “ceded” lands,¹ 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 most precious and limited resource, the Legislature established procedural mechanisms to ensure transparency and accountability in public land sales—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 currently 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.

Unfortunately, in certain cases, the state has 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 culturally significant stream and waterfall in East Maui, and was not formerly condemned lands,

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.

nor an abandoned right-of-way. However, the state nevertheless 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.” OHA expresses serious concern that the greater application of this broad interpretation of “remnants” may substantially undermine the Legislature’s desire to have a “larger oversight role” over public land sales, as envisioned by Act 176.

For example, similar applications of the “remnant” definition, should this trend continue, could allow a significant proportion of the state’s public lands to be classified and sold as “remnants,” due to their “unsuitability” for development. As illustrated in the aforementioned 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 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.

This measure appropriately seeks to prohibit the sale, through the remnants exception, of lands found to contain natural and cultural resources necessary for Native Hawaiian traditional practices, lands found to be potentially beneficial to present or future generations, or lands found to provide access to other public lands. Such guidance as to what lands may be sold without public auction or legislative oversight could restore meaning to the procedural laws that protect our public and ceded lands base. In addition, such a policy upholds the intent of Act 176, which recognizes the importance of the ceded lands to the Native Hawaiian people, respects the claims held by Native Hawaiians to their ancestral lands, and ensures the otherwise high burden of persuasion the Legislature has long required for the permanent alienation of our public lands.

To better effectuate the intent of this bill, and to ensure that lands are not sold as remnants simply due to the lack of affirmative findings that they have the listed characteristics otherwise prohibiting their sale as such, OHA recommends that page 2, line 9, be amended to read as follows:

(2) Unless the board finds that the parcel does not contain:

Accordingly, OHA urges the Committee to **PASS WITH AMENDMENTS** HB515 HD3 SD1. Mahalo nui for the opportunity to testify on this measure.



**Department of Land and Natural Resources
Aha Moku Advisory Committee
State of Hawaii
Post Office Box 621
Honolulu, Hawaii 96809**

Testimony of
Leslie Kuloloio, Chair
Aha Moku Advisory Committee (AMAC)

Before the Senate Committee on
Ways and Means

Monday, April 6, 2015
9:05 A.M.
State Capitol, Conference Room 211

**In Support of
House Bill 515 HD 3 SD1
Relating to Remnants**

House Bill 515 HD3 SD1 clarifies the definition of the term “remnant” for purposes relating to the disposition of public lands. It prohibits disposition as a remnant of land that contains resources necessary for the exercise of native Hawaiian subsistence, cultural, or religious practices; resources that should be protected or conserved; or public access to public lands.

The Aha Moku Advisory Committee (AMAC) supports this measure. However, we do agree with the Department of Land and Natural Resources (DLNR) that Section 1 of SD1 is not necessary.

The AMAC works with moku and ahupua’a communities through the Aha Moku System (System), a traditional land and ocean management system that dates from the 9th century and has been restored by the kupuna practitioners of each island. Through this System, generational resource knowledge and methodology is shared with the site-specific communities of an ahupua’a as well as with the DLNR to whom the AMAC is attached. One of our mandates is to advise the Chair of the Board of Land and Natural Resources (BLNR) on issues related to natural and cultural resources (§171-4.5).

In the moku system, as practiced by the AMAC, the native Hawaiian resource practitioners who have the generational knowledge of the land and ocean resources of specific sites within an ahupua’a have been working with the DLNR divisions in identifying and perpetuating the natural and cultural assets of these sites – often bringing forth empirical resource and cultural knowledge of an area.

The lawful definition of “remnant” per §171-52 means a parcel of land economically or physically unsuitable or desirable for development or use as a separate unit because of location, size, shape, or other characteristics. There has been no definition or allowance for Hawaiian cultural or subsistence use on remnant lands– most likely because the Remnant definition was put into law in 1981 when the perception and knowledge of Hawaiian use of public lands was not known or protected to the extent that it is now. However, in the past two years, as the AMAC has had the opportunity to work with the DLNR divisions and the BLNR, we have found that the Board has consistently followed the existing requirements of the remnants law and Sunshine law when



**Department of Land and Natural Resources
Aha Moku Advisory Committee
State of Hawaii
Post Office Box 621
Honolulu, Hawaii 96809**

considering the disposition of remnants. They have been consistent and open with notice and opportunity for input by the public and government agencies.

With the amendments stated in SD1, with the deletion of Section 1, the Aha Moku is confident that the BLNR will rule on the disposition of remnant lands fairly and consider native Hawaiian practices on any remnant parcel for the following two reasons:

- 1) The BLNR has always followed the existing requirements of the remnants law and Sunshine law and they will continue to do so if the amendments to Section 2 are approved; and,
- 2) The makeup of the BLNR is defined in §171-4 to include “(c) at least one member of the board shall have demonstrated expertise in native Hawaiian traditional and customary practices, as evidenced by: 1) a college degree in a relevant field, such as Hawaiian studies, native Hawaiian law, native Hawaiian traditional and customary practices, or related subject area; 2) work history that demonstrates an appropriate level of knowledge in native Hawaiian traditional and customary practices; or 3) substantial experience as a native Hawaiian traditional and customary practitioner”.

We believe that the clarification of the definition of “remnant” as stated in Section 2 of SD1 adequately addresses the concerns of native Hawaiian cultural and resource practitioners and support this measure.