

# Testimony for SB 2125

DAVID Y. IGE  
GOVERNOR OF HAWAII



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

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**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the Senate Committee on  
HAWAIIAN AFFAIRS**

**Friday, January 29, 2016  
1:15 PM  
State Capitol, Conference Room 016**

**In consideration of  
SENATE BILL 2125  
RELATING TO THE RIGHT OF FIRST REFUSAL FOR THE DISPOSITION OF  
REMNANTS**

Senate Bill 2125 proposes to provide the Office of Hawaiian Affairs (“OHA”) with the right of first refusal for any disposition of public lands classified as remnants. **The Department of Land and Natural Resources (Department) does not oppose the concept of providing OHA with a right of first refusal related to potential remnant sales, but offers the following comments for consideration by the committee.**

The Department does not oppose providing OHA with the right of refusal to purchase parcels determined by the Board of Land and Natural Resources (“BLNR”) to be a remnant pursuant Section 171-52, Hawaii Revised Statutes (“HRS”). However, the Department requests the following revision to the proposed amendment to subsection (c) of Section 171-52 for the purpose of clarity and consistency with other provisions of Chapter 171, HRS:

The remnant or portion thereof shall be offered to the office of Hawaiian affairs for a reasonable amount of time prior to offering the remnant for sale to any other person or entity; provided that if the office of Hawaiian affairs elects to purchase the remnant, any abutting landowner whose access to a street requires an easement across the remnant shall be offered such an easement pursuant to Section 171-13, for a reasonable amount of time, ~~and for a reasonable price based on appraised value,~~ with the price of the remnant to be sold to the office of Hawaiian affairs reduced accordingly.

**SUZANNE D. CASE**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**KEKOA KALUHIWA**  
FIRST DEPUTY

**JEFFREY T. PEARSON P.E.**  
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

Additionally, while the Department supports the revision proposed by this measure, the Department takes umbrage with certain remarks contained in the measure's preamble. The Department notes that all dispositions of remnant parcels are conducted in compliance with the provisions of Section 171-52, HRS. All remnant dispositions are approved by the BLNR in an open, sun-shined public meeting, and are subsequently reviewed by the Department of the Attorney General and reported to the Legislature prior to each session. Furthermore, the Legislature specifically exempted parcels deemed to be remnants from Act 176, Session Laws of Hawaii 2009. Therefore, we find the language in SECTION 1 of the bill to be unfair, vague, and unnecessarily implies wrongdoing on the part of the United States government and the State of Hawaii, and written much like a complaint in a lawsuit. As such, we respectfully ask that all of SECTION 1 of the bill be deleted in its entirety as being unnecessarily inflammatory.



## SB2125

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

Senate Committee on Hawaiian Affairs

January 29, 2016

1:15 p.m.

Room 016

The Office of Hawaiian Affairs (OHA) **STRONGLY SUPPORTS** SB2125, which is a bill in OHA's 2016 Legislative Package. SB2125 will close a legal loophole that has allowed for the alienation of public lands, including "ceded" and public land trust lands, without the legislative oversight and public accountability otherwise required.

Unlike other public lands, lands classified as "remnants" may be sold without formal notice to the legislature or OHA, without legislative supermajority approval, and without public auction. While remnants typically consist of formerly condemned lands or abandoned ditches or roads, recent remnant sales have involved much more significant parcels of land -- including five acres of ceded, public land trust lands in Hāna, Maui. This Hāna parcel, featuring a stream, waterfall, and pool frequented by both tourists and cultural practitioners, was sold to an adjacent landowner for a mere \$5,000 an acre, and was classified as a "remnant" based solely on an assertion that it was "unsuitable for development." Subsequently, a seven-acre parcel of land in Nu'uānu, O'āhu was similarly sold as a "remnant" deemed "unsuitable for development." Given that the vast majority of state lands may be described as "unsuitable for development," such sales raise grave concerns regarding the potential selling off of our limited public land base, outside of legislatively-established procedural protections.

Accordingly, this measure provides a much-needed safeguard against the privatization of improperly classified public lands as "remnants," by giving OHA the right of first refusal to purchase remnant lands proposed for sale. Such third-party oversight in the sale of "remnants" allows for intervention in the case of inappropriate remnant classifications, and disincentivizes remnant sales that may unduly benefit private purchasers. As a leading advocate for the protection of our public lands base, and as a quasi-independent, public agency entrusted with safeguarding the future assets of the Lāhui, OHA is also a highly appropriate entity to review and, if necessary, purchase public and potentially "ceded" lands being sold as "remnants." Notably, granting OHA a right of first refusal will not diminish the state's current flexibility in classifying and selling land as "remnants," and the state will not be required to keep remnant lands it does not want. In addition, OHA is not likely to intervene in the sale of what it considers bona fide remnant lands, but may choose to purchase "remnants" it believes are inappropriately classified, or that hold particular significance to the Hawaiian community.

Therefore, OHA urges the Committee to **PASS** SB2125. Mahalo nui for the opportunity to testify on this matter.



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## The Trust For Public Land's Testimony In Support of SB 2125 Relating To The Right Of First Refusal For The Disposition of Remnants

Senate Committee on Hawaiian Affairs, Conf. Room 016

Friday, January 29, 2016, 1:15 p.m.

Aloha Chair Shimabukuro, Vice-Chair English, and Committee Members:

The Trust for Public Land supports Senate Bill 2125 relating to the right of first refusal for the disposition of remnants. This bill would give the Office of Hawaiian Affairs (OHA) a right of first refusal to purchase "remnant" public lands for sale by the State of Hawai'i.

The Trust for Public Land is a national non-profit that conserves land for people. The Trust for Public Land has assisted the Office of Hawaiian Affairs in acquiring culturally significant and important lands, including Wao Kele O Puna on Hawai'i Island, Waimea Valley on the North Shore of O'ahu, and the agricultural land surrounding Kūkaniloko in Central O'ahu. The Trust for Public Land is currently assisting Hi'ipaka LLC (which now owns Waimea Valley) in acquiring a culturally important privately owned inholding within the Valley that is located adjacent to Hale O Lono (a heiau or temple dedicated to agriculture).

Recently, the State has sold "remnant" land in Hāna, Maui and Nu'uānu, O'ahu to private purchasers without notice to OHA and without the approval of the Legislature. Although the law requires the State to seek legislative approval for the sale of ceded lands, the sale of "remnant" lands is an exception to this requirement. While the State deemed these "remnant" lands "not developable," these lands may nonetheless have cultural and natural resource value. Before these "remnant" lands leave public ownership, it would be helpful to give OHA a right of first refusal to purchase the land at fair market value so that cultural and natural resources can be protected.

Mahalo for this opportunity to testify. I regret that I cannot make attend the hearing in person due to a prior commitment.

Me ke aloha,

Lea Hong  
Hawaiian Islands State Director





Association of Hawaiian Civic Clubs  
P. O. Box 1135  
Honolulu, Hawai'i 96807

## **SENATE COMMITTEE ON HAWAIIAN AFFAIRS**

### **SB2125 RELATING TO THE RIGHT OF FIRST REFUSAL FOR THE DISPOSITION OF REMNANTS**

Friday, 1/29/16; 1:15pm; Room 016

Aloha Madam Chair Shimabukuro, Vice Chair English and members of the Senate Committee on Hawaiian Affairs. I am Annelle Amaral, president of the Association of Hawaiian Civic Clubs here to testify in support of SB2125 that would give the Office of Hawaiian Affairs the right of first refusal with regard to public lands classified as remnants under section 171-52, HRS.

This bill would correct the narrow exception created in Act 176, SLH 2009 that allowed broad interpretations and sale of significant parcels classified as "remnant" lands without appropriate procedures. This practice has raised serious alarm for members of the legislature, general public and Native Hawaiian community and needs to be corrected.

Senate bill 2125 would give the Office of Hawaiian Affairs the right of first refusal with regard to the disposition of public lands that are classified as remnants. Appropriate steps would also be taken to assure fair and equitable price safeguards for OHA, abutting land owners and/or other concerned parties.

Thank you for the opportunity to testify in support of SB2125.

Contact: [Jalna.keala2@hawaiiantel.net](mailto:Jalna.keala2@hawaiiantel.net)

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Unity, Equality, Aloha for all



To: Senate Committee on Hawaiian Affairs  
For hearing Friday, January 29, 2016

Re: SB2125 RELATING TO THE RIGHT OF FIRST REFUSAL FOR THE  
DISPOSITION OF REMNANTS.

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

#### TESTIMONY IN OPPOSITION

This testimony explains three reasons why SB2125 should be rejected:  
(1) An abutting landowner is far preferable to OHA to have the right of  
first refusal for purchase of remnant land, because the abutter will  
have an interest in keeping the land clean and putting it to good use  
for the same purposes as the abutting land is already used, whereas  
OHA would be merely an absentee landlord; (2) If a Hawaiian tribe gets  
federal recognition, the remnant land would be controlled by a different  
set of laws causing conflict with neighbors; (3) The first page of

SB2125 is filled with historical, legal, and moral falsehoods dangerous to the State of Hawaii and which the legislature should repudiate.

(1) Why an abutting landowner should have right of first refusal for purchase of remnant land

If an abutting landowner has his own home or residential rental property there, he is likely to take good care of the remnant land he purchases and might use it to build an addition on his house or build a separate house for rental income, such as a recently passed ordinance of the County of O'ahu has authorized. If an abutting landowner already has a farm or business there, he is likely to use the remnant land for the same purpose to increase his income, which will benefit the State of Hawaii and the county by increasing the tax base and providing more services to neighbors. However, if OHA purchases the remnant, the land might lie unused and would be poorly supervised by its absentee owner OHA, which already has an empire of other lands scattered throughout Hawaii whose higher value commands its attention. Vacant unsupervised land becomes a nuisance in a neighborhood -- a place used by gangs and druggies.

(2) If a Hawaiian tribe gets federal recognition, the remnant land would be controlled by a different set of laws causing conflict with neighbors.

It's possible -- indeed likely -- that the tribe would have its own police force and courts with different laws from the state or county. Tribal lands are not required to obey local zoning laws -- thus, a remnant of only an acre or two might be used for a gas station, bar, liquor store, tobacco shop, nightclub, etc. even in a residential neighborhood. Tribal businesses would not be required to obey labor laws such as minimum age for working or the right to unionize; and would not be required to be insured for workers compensation or other liability. Indeed, for these reasons it might be wise to set a negative preference against OHA, so that even if OHA is the highest bidder, the remnant would be sold to any other bidder who then chooses to match OHA's offer.



(3) The first page of SB2125 is filled with historical, legal, and moral falsehoods dangerous to the State of Hawaii and which the legislature should repudiate.

SB2125 says "Hawaii's public lands have a complex history as unlawfully seized and "ceded" former national and crown lands of the Hawaiian Kingdom." Let's be clear. The Hawaiian revolution of 1893 overthrew the monarchical form of government and resulted in a Republic. Hawaii remained an independent nation from January 1893 until annexation in 1898 -- a period of nearly six years. The public lands of Hawaii remained the public lands of Hawaii -- only the government changed, not the government ownership of the public lands. The situation of the public lands was similar to what happens when the U.S. government changes hands between Democrat and Republican -- the land is owned by the government on behalf of all the people, although the laws for using the land might slowly change over time. No private lands were taken. Furthermore, the former crown lands became owned by the government because of an act passed by the Kingdom legislature and signed by King Lot Kamehameha V in 1864. Queen Lili'uokalani never personally owned the crown lands -- see full documentation of the facts in *Liliuokalani v. United States*, 45 Ct. Cl. 418 (1910), summarized and with full text of the Court decision provided at <http://www.angelfire.com/hi2/hawaiiansovereignty/liliucrownlands.html>

SB2125 says "after the illegal overthrow of the sovereign Kingdom of Hawaii, "one million eight hundred thousand acres of crown and government lands were ... ceded to the United States without consent or compensation to the Native Hawaiian people or their sovereign government." and "the Native Hawaiian people never relinquished their claims to ... their national lands ..." Let's be clear. The successor government of the Republic of Hawaii was internationally recognized as the lawful, rightful government by all the nations that had previously maintained relations with the Kingdom. A webpage displays

photographs of letters in the State archives personally signed by Emperors, Kings, Queens, and Presidents of 19 nations on 4 continents in 11 languages recognizing President Sanford B. Dole as head of the Republic; see <http://historymystery.grassrootinstitute.org/recognition-of-the-republic-of-hawaii/>

Therefore, under international law, the Republic had the right to speak on behalf of the nation of Hawaii and to strike a deal with the U.S. for annexation. The Treaty of Annexation ceded the public lands of Hawaii to the U.S. to be placed in trust and held for the benefit of Hawaii's people, with income to be used for education and other public purposes, until those lands were returned to Hawaii upon Statehood in 1959. In return, the U.S. paid the accumulated national debt of the nation of Hawaii, most of which came from the Kingdom period (Kalakaua's trip around the world, construction of Iolani Palace, etc). Thus all the people of Hawaii, including Native Hawaiians, were compensated for the ceding of the public lands; and as noted previously, Native Hawaiians never collectively owned either the government lands or the crown lands. See webpage "Treaty of Annexation between the Republic of Hawaii and the United States of America (1898). Full text of the treaty, and of the resolutions whereby the Republic of Hawaii legislature and the U.S. Congress ratified it" at <http://www.angelfire.com/big09a/TreatyOfAnnexationHawaiiUS.html>

The legislature of 2016 should be ashamed that the legislature of 2013 passed a resolution containing the falsehoods and militant language cited in SB2125, and should certainly not perpetuate those falsehoods by passing this bill.

SB2125 on page 2 refers to Act 176 Session Laws of Hawaii 2009. But SB2125 fails to mention what prompted the legislature to pass Act 176. On March 31, 2009 the U.S. Supreme Court ruled 9-0 -- unanimously -- that the ceded lands belong to the State of Hawaii in fee simple absolute, and that the 1993 apology resolution is merely a

resolution of sentiment with no legally enforceable consequences, and does not in any way affect the right of the State to sell any parcel of ceded lands. The decision cited the 1898 treaty of annexation and the 1959 Hawaii statehood act as evidence regarding the chain of custody of the ceded lands. The 12-page decision is easy to read, and can be found on the Supreme Court's own website at <http://www.supremecourt.gov/opinions/08pdf/07-1372.pdf>

It should be noted that Act 176 imposing a requirement of a 2/3 vote by both chambers of the legislature to authorize a sale of ceded lands was a session law of 2009. It is not a part of the Constitution and therefore it cannot bind future legislatures. This legislature of 2016, or any future legislature, has a right to set aside Act 176 by a simple majority vote. In any case section 171-52, Hawaii Revised Statutes, allows the sale of remnant lands to take place without legislative approval.

Thus there is no prohibition on the sale of remnant lands. Neither the apology resolution, nor Act 176, nor anything else limits the right of the State to sell remnant lands, nor the right of the State to sell such lands to the highest bidder; and nothing requires the State to give preference or right of first refusal to OHA.

Please reject SB2125 for the reasons described in sections 1 and 2 of this testimony, and because the State of Hawaii should not further enshrine the falsehoods debunked in section 3 of this testimony. When selling remnant lands the best practice is to allow right of first refusal to abutting landowners, and thereafter to sell to the highest bidder.

Indeed, for reasons described in section 2 of this testimony, it might be wise to set a negative preference against OHA, so that even if OHA is the highest bidder, the remnant would be sold to any other bidder who then chooses to match OHA's offer.

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**SB2125**

Submitted on: 1/26/2016

Testimony for HWN on Jan 29, 2016 13:15PM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Bobby-John Campbell	Individual	Support	No

Comments: Large parcels of public land should not be sold as "remnants." This loophole must be fixed to keep public lands in the hands of the public. The Office of Hawaiian Affairs, as a leading advocate for the protection of our public and mostly "ceded" lands, should be given an option of first refusal to provide an additional layer of protection against the disposal of public lands for private interests. This option of first refusal will allow the State to dispose of lands it does not want but will ensure that those lands continue to serve the public interest. Please SUPPORT this bill.  
Aloha.

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**Date:** Thursday, January 28, 2016 12:07:22 PM

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**SB2125**

Submitted on: 1/28/2016

Testimony for HWN on Jan 29, 2016 13:15PM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Derek Kauano	Individual	Support	No

Comments: I urge the Committee to pass SB2125. Ceded lands continue to be an issue that should be resolved with and for Native Hawaiians. One simple way to support the idea of working towards a resolution of ceded lands claims by Native Hawaiians or a Native Hawaiian government is to ensure that the Office of Hawaiian Affairs has the right of first refusal when ceded lands "remnants" are proposed for sale. My comment is provided in my own individual and personal capacity. Derek

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Aloha Senators,

Please accept the following testimony in support S.B. No. 2125, "Relating to the right of first refusal for the disposition of remnants." Public lands, and access to them.

I am an avid hiker and have been disappointed by the recent closure of many trails due to access issues. This is one of many reasons why I believe that public land must be protected in Hawaii. As a leading advocate in the protection of Hawai'i's public and "ceded" lands base, OHA is a highly appropriate entity to be granted the right of first refusal for the sale of public lands, including "ceded" lands, classified as "remnants." S.B. No. 2125 will not prevent the State from alienating lands in appropriate circumstances, but will add further, needed oversight over disposition processes should the remnants definition be inappropriately applied.

Thank you for considering my testimony.

Sincerely,

Greg Schuster

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**SB2125**

Submitted on: 1/28/2016

Testimony for HWN on Jan 29, 2016 13:15PM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kamaile Maldonado	Individual	Comments Only	No

Comments: As a Native Hawaiian with unresolved claims on lands in the public land trust, I am gravely concerned about the diminishment of this trust over time and, therefore, SUPPORT this measure. I believe several recent land sales have been improperly classified as remnants in order to circumvent the process this legislature has established to best protect the integrity of the trust. Allowing OHA the right of first refusal for "remnant" sales will provide a much-needed layer of third party review in the expedited sale of public and largely "ceded" lands, and disincentivize remnant sales unfavorable to the state or the Hawaiian people. This still allows the state to dispose of remnant lands it does not want, but will allow the Hawaiian community to rebuild a land base by retaking lands that might not be bona fide remnants or might be otherwise significant. For these reasons, I see this bill as a simple fix that benefits Native Hawaiians but does not compromise state interests. Therefore, I humbly request your support for this measure. Mahalo nui for the opportunity to testify.

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**SB2125**

Submitted on: 1/27/2016

Testimony for HWN on Jan 29, 2016 13:15PM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kapua Keliikoa-Kamai	Individual	Support	No

Comments: Aloha no, Please pass this Bill also, mahalo. Kapua Keliikoa-Kamai

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**SB2125**

Submitted on: 1/23/2016

Testimony for HWN on Jan 29, 2016 13:15PM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kealii Makekau	Individual	Support	No

Comments: Would this legislation be carried on in the likelihood that a native Hawaiian government similar to indian tribes or domestic dependent nations arise and OHA abolishing itself and transferring all of its assets and resources to that tribal entity?

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**SB2125**

Submitted on: 1/23/2016

Testimony for HWN on Jan 29, 2016 13:15PM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lani Kaaihue	Individual	Support	No

Comments: To State Legislature. Most recently in 2012, the Minami family somehow quit-deeded approximately 2 acres of State lands, claiming that the old Hawaiian Railway was deeded to them. They then erected a gate and is quick to call the cops if anyone went around this gate. This gate is located on State lands. These people now claim they own the entire valley of Waimalu. This is a ridiculous claim by racist foreigners who have manipulated the law system by quit-deeding an old hawaiian railway system to them that existed over State Remnant Lands. I would rather see such lands go back to the Hawaiian people than stolen by Foreign Hostile Japanese people, especially the Minami Family. The State has been notified, and they are basically dumb-founded to know what to do. It took them over a year to research, talk to attorneys, and last I spoke with them, they are writing up their answers. I do know that the Minami family didn't have access over State lands to access their property. They have been in litigation to obtain legal access, and instead, the Minami family blocks access to the State by the erecting of a gate on State lands. This is wrong for the Hawaiian people If you would like more information about this, feel free to contact Barry Cheung at 587-0430. Actually, this was already 3 years ago when they did this. This is a ridiculous claim of State lands, and these kinds of incidents will continue to occur. In addition this particular State lands was used for many years to breed cock-fighting roosters and the State allowed this kind of activities to occur. This testimony is submitted by Aulani Kaaihue, Land Owner, and Candidate for Honolulu Mayor 2016

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**SB2125**

Submitted on: 1/22/2016

Testimony for HWN on Jan 29, 2016 13:15PM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Leimomi Khan	Individual	Support	No

Comments: Aloha, Chair Shimabukuro, Vice Chair English, and members of the Committee on Hawaiian Affairs, I write in support of SB2125 since it's provisions will address the disposition of remnants lands that have significant value. Granting OHA a right of first refusal to any contemplated disposition of "remnant" lands would constitute some level of accountability in the permanent alienation of public and potentially "ceded" lands. Mahalo, Leimomi Khan

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**SB2125**

Submitted on: 1/26/2016

Testimony for HWN on Jan 29, 2016 13:15PM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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**SB2125**

Submitted on: 1/28/2016

Testimony for HWN on Jan 29, 2016 13:15PM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jonathan Ching	Individual	Support	No

Comments:

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**SB2125**

Submitted on: 1/26/2016

Testimony for HWN on Jan 29, 2016 13:15PM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Wayne	Individual	Support	No

Comments: This measure is a much-needed safeguard for an expedited sale process that can and has substantially undermined the legislature's desired oversight in sales of public lands, including ceded lands held in trust by the state. This measure will not force the state to keep lands it no longer wishes to maintain nor does it affect the standard process by which public lands may be sold (i.e. with legislative approval and advance notice to the Office of Hawaiian Affairs). Please support this bill! Mahalo nui, Wayne Tanaka

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