



**HB865 HD1**  
**RELATING TO COLLECTIVE BARGAINING**  
Committee on Finance

February 24, 2017

11:00 a.m.

Room 308

The Office of Hawaiian Affairs (OHA) **OPPOSES** HB865 HD1, which would undermine OHA's autonomy as a fiduciary of the Native Hawaiian trust fund, by subjecting OHA to collective bargaining requirements and the provisions of the Hawai'i Civil Service Law.

This bill raises the following serious concerns:

Infringement on OHA's Autonomy

This bill, with its sweeping inclusion of OHA in the state civil service law and the collective bargaining process, would subordinate OHA's Board of Trustees to the vote of the Governor, undermining OHA's constitutionally-recognized autonomy.

**OHA's autonomy is well-established under Hawai'i law.** Reflecting the constitutional provisions establishing OHA and its Board of Trustees, Hawai'i Revised Statutes (HRS) Chapter 10 gives OHA many attributes of autonomy, including its status "as a body corporate which shall be a separate entity and independent of the executive branch," led by a Board of Trustees that has the power "to determine the character of and the necessity for its obligations and expenditures[.]" HRS § 10-4 (emphasis added). This autonomy is firmly rooted in OHA's origins, when delegates to the 1978 Constitutional Convention expressed a clear intent "that the Office of Hawaiian Affairs will be independent from the executive branch and all other branches of government although it will assume the status of a state agency." Proceedings of the Constitutional Convention of Hawai'i of 1978, Standing Committee Rep. No. 59, at 645.

**This measure undermines the autonomy of the OHA Board of Trustees, as OHA's independent decisionmakers and fiduciaries of the Native Hawaiian Trust Fund.** The amendment to HRS § 89-6 could result in the OHA Board of Trustees holding only 1 of 14 votes when negotiating a collective bargaining agreement involving OHA employees, whose salaries make up a significant portion of OHA's operating budget. Coupled with the requirements of the Civil Service Law, HRS Chapter 76, OHA Trustees' ability to oversee and plan for personnel expenses would be reduced and subjected in large part to the decisions of the executive branch and Governor, who would hold 7 votes in collective bargaining negotiations involving OHA employees. Given such a voting imbalance, this measure would effectively require the OHA Board of Trustees to cede control over some of its key expenditures to the State.

## Impact on Native Hawaiian Trust Funds

OHA also has concerns over the potential adverse impacts that this bill may have on OHA's budget and the Native Hawaiian Trust Fund. Should the requirements of civil service and collective bargaining be imposed on OHA employees, OHA would have to change the way it hires, compensates, and maintains its workforce. Existing personnel policies would need to be overhauled, resulting in short-term disruptions to operations and the long-term restructuring of OHA that would be needed to ensure compliance with collective bargaining and civil service requirements. OHA trust funds may also need to cover higher wages or increased benefits resulting from collective bargaining agreements and civil service classifications.

As a general trust principle, OHA's Board of Trustees has a responsibility to prudently manage and protect OHA's trust assets. Given the high likelihood of increased personnel costs resulting from the proposed imposition of collective bargaining and civil service laws on its operations, OHA cannot support this measure.

In light of the above, we ask that this Committee **HOLD** this bill. Mahalo for the opportunity to testify on this matter.

DAVID Y. IGE  
GOVERNOR



JAMES K. NISHIMOTO  
CHIEF NEGOTIATOR

**STATE OF HAWAII  
OFFICE OF COLLECTIVE BARGAINING  
EXECUTIVE OFFICE OF THE GOVERNOR**  
235 S. BERETANIA STREET, SUITE 1201  
HONOLULU, HAWAII 96813-2437

February 23, 2017

**TESTIMONY TO THE  
HOUSE COMMITTEE ON FINANCE**

For Hearing on Friday, February 24, 2017  
11:00 a.m., Conference Room 308

By

**JAMES K. NISHIMOTO**  
OFFICE OF COLLECTIVE BARGAINING, CHIEF NEGOTIATOR

**House Bill No. 865 HD1  
Relating to Collective Bargaining**

**(WRITTEN TESTIMONY ONLY)**

CHAIRPERSON LUKE, VICE CHAIR CULLEN AND MEMBERS OF THE HOUSE  
COMMITTEE ON FINANCE:

House Bill No. 865 HD1 proposes to make Office of Hawaiian Affairs (OHA)  
employees subject to civil service and collective bargaining rights; and gives OHA  
voting rights as a public employer. The Office of Collective Bargaining has the following  
**concerns.**

As stated in OHA's testimony on HB 865 to the House Committee on Ocean,  
Marine Resources, & Hawaiian Affairs and the House Committee on Labor & Public  
Employment on February 7, 2017:

**"... OHA's autonomy is well-established under Hawaii law.**

Reflecting the constitution provisions establishing OHA and its Board of

Trustees, Hawaii Revised Statutes (HRS) Chapter 10 gives OHA many attributes of autonomy, including its status ‘as a body corporate which shall be a separate entity and independent of the executive branch,’ led by a Board of Trustees that has the power ‘to determine the character of and the necessity for its obligations and expenditures [.]’ HRS § 10-4 (emphasis added). This autonomy is firmly rooted in OHA’s origins, when delegates to the 1978 Constitutional Convention expressed a clear intent “that the Office of Hawaiian Affairs will be independent from the executive branch and all other branches of government although it will assume the status of a state agency.” Proceedings of the Constitutional Convention of Hawaii of 1978, Standing Committee Rep. No. 59, at 645.”

Given OHA’s position regarding its independence from the executive branch, while HB 865 HD 1 would provide OHA with a vote in balance with increasing the Governor votes to seven (7), which would serve to more fully fulfill provision of the Hawaii State Constitution, ARTICLE XIII, Section 2, which states “**PUBLIC EMPLOYEES Section 2.** Persons in public employment shall have the right to organize for the purpose of collective bargaining as provided by law.” Further, it may be appropriate to align OHA authority as an independent voting member of the employer group by amending with Chapter 76 to empower OHA with the authorities commensurate with a county jurisdiction as set forth in Chapter 76 Part II, Section 76-71 **PART II. SPECIAL CIVIL SERVICE PROVISIONS FOR THE COUNTIES OF HAWAII, MAUI, AND Kaua’i: §76-71 Department of civil service.** There shall be a department of civil service for each of the counties of Hawaii, Maui, Kaua’i and OHA, which shall include a personnel director and a merit appeals board established under section 76-47.

However, should it be determined that OHA's independence and its associated employees is more extensive and precludes application of public sector statutes, then it may not be appropriate to extend application of the provisions of Chapter 89 based on Article XIII, Section 2 relating to public employees. Instead it would seem that the provision of the Hawaii State Constitution, ARTICLE XIII, Section 1, which states **"ORGANIZATION; COLLECTIVE BARGAINING PRIVATE EMPLOYEES Section 1.** Persons in private employment shall have the right to organize for the purpose of collective bargaining."

Thank you for this opportunity to testify on this measure.

DAVID Y. IGE  
GOVERNOR



JAMES K. NISHIMOTO  
DIRECTOR

RYKER WADA  
DEPUTY DIRECTOR

**STATE OF HAWAII**  
**DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT**  
235 S. BERETANIA STREET  
HONOLULU, HAWAII 96813-2437

FEBRUARY 23, 2017

TESTIMONY TO THE  
HOUSE COMMITTEE ON FINANCE  
For Hearing on FRIDAY, FEBRUARY 24, 2017  
11:00 a.m., Conference Room 308

By

JAMES K. NISHIMOTO  
DIRECTOR

**House Bill No. 865, HD1**  
**Relating to Collective Bargaining**

CHAIRPERSON LUKE, VICE-CHAIR CULLEN AND MEMBERS OF THE HOUSE  
COMMITTEE ON FINANCE:

HB 865 HD1 among other things, requires employees of the Office of Hawaiian Affairs to be subject to Hawaii Revised Statutes (HRS) Chapter 76.

The Department of Human Resources Development (DHRD) has the following **CONCERNS** with HB 865 HD1 as OHA is not part of the executive branch and as such, they should not be subject to and should continue to be exempt from HRS Chapter 76.

Although HRS §10-4 states that the Office of Hawaiian Affairs is a separate entity independent of the Executive Branch, DHRD respectfully comments on HB 865 HD1 to the extent that it applies to the merit principle, HRS Chapter 76.

HRS §76-1 states "It is the purpose of this chapter to require each jurisdiction to establish and maintain a separately administered civil service system based on the merit principle. The merit principle is the selection of persons based on their fitness and ability for public employment and the retention of employees based on their

demonstrated appropriate conduct and productive performance." Chapter 76 also requires each jurisdiction to administer their human resource program in accordance with policies set forth therein, such as the "impartial selection of individuals for public service by means of competitive tests which are fair, objective, and practical." Further, HRS §76-18 states, "There shall be examinations for testing the fitness and ability of applicants for positions in civil service."

SECTION 3 of H.B. No. 865, HD1 states "All existing employees of the office of Hawaiian affairs shall be conferred permanent civil service status within the meaning of chapter 76, Hawaii Revised Statutes, without the necessity of examination." This language appears to conflict with the merit principle as defined in HRS Chapter 76, and gives the same benefits and privileges afforded to civil service employees who had to meet certain requirements, such as minimum qualification and other public employment requirements.

Furthermore, OHA's statutory autonomy may be in direct conflict with the provisions of HRS 76. As stated in OHA's testimony on HB 865 to the House Committee on Ocean, Marine Resources, & Hawaiian Affairs and the House Committee on Labor & Public Employment on February 7, 2017, "The Office of Hawaiian Affairs (OHA) Beneficiary Advocacy and Empowerment Committee will recommend that the Board of Trustees **OPPOSE** HB865, which would undermine OHA's autonomy as a fiduciary of the Native Hawaiian trust fund, by subjecting OHA to collective bargaining requirements and the provisions of the Hawai'i Civil Service Law." It further stated, "**OHA's autonomy is well-established under Hawaii law.** Reflecting the constitution provisions establishing OHA and its Board of Trustees, Hawaii Revised Statutes (HRS)

Chapter 10 gives OHA many attributes of autonomy, including its status ‘as a body corporate which shall be a separate entity and independent of the executive branch,’ led by a Board of Trustees that has the power ‘to determine the character of and the necessity for its obligations and expenditures [.]’ HRS § 10-4 (emphasis added). This autonomy is firmly rooted in OHA’s origins, when delegates to the 1978 Constitutional Convention expressed a clear intent “that the Office of Hawaiian Affairs will be independent from the executive branch and all other branches of government although it will assume the status of a state agency.” Proceedings of the Constitutional Convention of Hawaii of 1978, Standing Committee Rep. No. 59, at 645.”

Given the foregoing, we recommend that H.B. 865 HD1 be held or alternately amended to conform with the merit principle of HRS 76 in order to be conferred with civil service status.

Thank you for the opportunity to provide testimony on HB 865 HD1.



DAVID Y. IGE  
GOVERNOR



WESLEY K. MACHIDA  
DIRECTOR

LAUREL A. JOHNSTON  
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM  
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
OFFICE OF THE PUBLIC DEFENDER

**STATE OF HAWAII**  
**DEPARTMENT OF BUDGET AND FINANCE**  
P.O. BOX 150  
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE  
BUDGET, PROGRAM PLANNING AND  
MANAGEMENT DIVISION  
FINANCIAL ADMINISTRATION DIVISION  
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

**WRITTEN ONLY**  
TESTIMONY BY WESLEY K. MACHIDA  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE HOUSE COMMITTEE ON FINANCE  
ON  
HOUSE BILL NO. 865, H.D. 1

**February 24, 2017**  
**11:00 a.m.**  
**Room 308**

**RELATING TO COLLECTIVE BARGAINING**

House Bill No. 865, H.D. 1, extends collective bargaining and civil service rights to employees of the Office of Hawaiian Affairs (OHA) by amending Section 10-12, HRS.

The measure also gives the Board of Trustees of OHA an employer vote in collective bargaining negotiations and increases the number of votes for the Governor to seven.

The Department of Budget and Finance has the following concerns:

- Extending collective bargaining rights to OHA would increase the cost of negotiated agreements.
- It is unclear what the full impact may be of "grandfathering" in OHA employees with full civil service benefits may be.

Thank you for your consideration of our comments.



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
AFSCME Local 152, AFL-CIO

**RANDY PERREIRA**, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Ninth Legislature, State of Hawaii  
House of Representatives  
Committee on Finance

Testimony by  
Hawaii Government Employees Association

February 24, 2017

H.B. 865, H.D. 1 – RELATING TO  
COLLECTIVE BARGAINING

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of granting officers and employees within the Office of Hawaiian Affairs collective bargaining rights.

HGEA represents more than 42,000 members employed by the state and county in eight bargaining units, and also serves a large associate membership composed of retirees, other state and county employees and officials, and federal and private sector employees. As the state's largest labor organization, we firmly believe in the fundamental right for employees, like those employed by the Office of Hawaiian Affairs, to have the right to collectively bargain their wages, benefits, and terms and conditions of employment. These beliefs concur with and are upheld by the Hawaii State Constitution, Article XIII, Section 2, which states, "Persons in public employment shall have the right to organize for the purpose of collective bargaining as provided by law."

Thank you for the opportunity to provide our support on the passage of H.B. 865, H.D. 1.

Respectfully submitted,

Randy Perreira  
Executive Director

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 22, 2017 4:35 PM  
**To:** FINTestimony  
**Cc:** kamakane73@gmail.com  
**Subject:** \*Submitted testimony for HB865 on Feb 24, 2017 11:00AM\*

**HB865**

Submitted on: 2/22/2017

Testimony for FIN on Feb 24, 2017 11:00AM in Conference Room 308

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

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](mailto:webmaster@capitol.hawaii.gov)



From: mailinglist@capitol.hawaii.gov  
 Sent: Friday, February 24, 2017 9:04 AM  
 To: FINTestimony  
 Cc: blawaiianlvr@icloud.com  
 Subject: Submitted testimony for HB865 on Feb 24, 2017 11:00AM

**HB865**

Submitted on: 2/24/2017

Testimony for FIN on Feb 24, 2017 11:00AM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Ho'omana Pono, LLC.	Oppose	Yes

Comments: We STRONGLY OPPOSE this bill. We believe that OHA will be greatly out matched & out voted as just one of 14 votes, in the Union. We see this as just another attempt to water down OHA & weaken its ability to serve its beneficiaries.

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](mailto:webmaster@capitol.hawaii.gov)

**LATE**

From: mailinglist@capitol.hawaii.gov  
Sent: Friday, February 24, 2017 1:05 PM  
To: FINTestimony  
Cc: dkapua@gmail.com  
Subject: Submitted testimony for HB865 on Feb 24, 2017 11:00AM

**HB865**

Submitted on: 2/24/2017

Testimony for FIN on Feb 24, 2017 11:00AM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kapua Keliikoa-Kamai	Individual	Oppose	Yes

Comments: I OPPOSE SB 865 HD1 because it minimizes the ability of the OHA BOT to properly manage their budget. Please refrain from directing OHA's expenditures and DEFER this Bill. Mahalo.

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](mailto:webmaster@capitol.hawaii.gov)