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

WRITTEN ONLY
TESTIMONY BY RODERICK K. BECKER
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON HAWAIIAN AFFAIRS
ON
HOUSE BILL NO. 1402, H.D. 1

March 14, 2019
1:19 p.m.
Room 016

RELATING TO THE COMMUNITY-BASED ECONOMIC DEVELOPMENT PROGRAM

House Bill (H.B.) No. 1402, H.D. 1: establishes a sub-account within the Hawaii Community-Based Economic Development Revolving Fund for grants or loans to deliver the Micro Enterprise Assistance Program on Hawaiian Home Lands (MEAPHHL) to qualified native Hawaiians, Hawaiian Homestead Associations consisting of qualified native Hawaiian members, or a Hawaiian Homestead Association's designated tax-exempt community development corporation; appropriates an unspecified amount of general funds for both FY 20 and FY 21 to be deposited into the MEAPHHL sub-account; and appropriates an unspecified amount of revolving funds for both FY 20 and FY 21 from the MEAPHHL sub-account for loans or grants for the program.

The department does not support the creation of a sub-account within a revolving fund as the sub-account should also meet the requirements of Section 37-52.4, HRS. Revolving funds should: 1) serve a need as demonstrated by the purpose, scope of work and an explanation why the program cannot be implemented successfully under the general fund appropriation process; 2) reflect a clear nexus between the benefits

sought and charges made upon the users or beneficiaries or a clear link between the program and the sources of revenue; 3) provide an appropriate means of financing for the program or activity; and 4) demonstrate the capacity to be financially self-sustaining. In regards to H.B. No. 1402, H.D. 1, it is difficult to determine whether the proposed MEAPHHL revolving sub-account would be self-sustaining.

In addition, creating a sub-account complicates the management of the revolving fund.

Thank you for your consideration of our comments.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

H.B. NO. 1402, H.D. 1, RELATING TO THE COMMUNITY-BASED ECONOMIC DEVELOPMENT PROGRAM.

BEFORE THE:

SENATE COMMITTEE ON HAWAIIAN AFFAIRS

DATE: Thursday, March 14, 2019 **TIME:** 1:19 p.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Clare E. Connors, Attorney General, or
Margaret S. Ahn, Deputy Attorney General

Chair Shimabukuro and Members of the Committee:

The Department of the Attorney General provides the following comments on this bill.

This bill establishes, and appropriates funds to, a subaccount of the Hawaii Community-Based Economic Development Revolving Fund for the Department of Business, Economic Development, and Tourism's Community-Based Economic Development (CBED) grant and loan program. The subaccount moneys are to be used exclusively for grants or loans for qualified native Hawaiians as defined by the Hawaiian Homes Commission Act of 1920 and pursuant to article XII of the Hawai'i Constitution. Qualified recipients are restricted to native Hawaiian-controlled homestead associations, a Hawaiian homestead association's designated tax exempt community development corporation, and native Hawaiian community organizations that administer loans to qualified native Hawaiians.

The CBED grant and loan program cannot be administered on the basis of race. Under the Equal Protection clauses of article 1, section 5, of the Hawai'i Constitution and the Fourteenth Amendment to the United States Constitution, the CBED program may not be restricted to recipients of a particular race. In addition, section 210D-11(a)(3), Hawaii Revised Statutes, prohibits CBED grant applicants from discriminating against persons on the basis of race or other characteristic protected under federal or state law.

To remedy these constitutional and statutory concerns, we suggest making the Department of Hawaiian Home Lands (DHHL) the recipient of the appropriation and be responsible for carrying out the purposes of the bill, as DHHL may lawfully restrict the use of its funds to native Hawaiians. This would require finding another bill for this purpose, however, as this bill's title is "Relating to the Community-Based Economic Development Program."

In addition, we note that on page 3, lines 10-12, of the bill, it states that the moneys deposited into the subaccount shall consist of "revenues, income, and receipts derived from the Hawaiian home lands development program." First, we are not aware of a program specifically named the "Hawaiian home lands development program." Therefore, we suggest that this wording be amended to clarify the program intended by the Legislature. Second, if the Legislature intends an amount that is less than *all* of the revenues, income, and receipts derived from the program be deposited into this subaccount, we suggest that the wording be further amended to reflect a more specific amount or percentage.

Thank you for the opportunity to provide these comments.



DAVID Y. IGE
GOVERNOR

MIKE MCCARTNEY
DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of
MIKE MCCARTNEY
Director

Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON HAWAIIAN AFFAIRS

Thursday, March 14, 2019
1:19pm
State Capitol, Conference Room 016
In consideration of

HB 1402, HD1 **RELATING TO THE COMMUNITY-BASED ECONOMIC DEVELOPMENT.**

Chair Shimabukuro, Vice Chair Kahele and Members of the Committee. The Department of Business, Economic Development and Tourism (DBEDT) **offers comments** on HB 1402, HD1, which establishes a subaccount within the Hawaii Community-Based Economic Development Revolving Fund for grants or loans to deliver the Micro Enterprise Assistance Program on Hawaiian Home Lands to qualified native Hawaiians, Hawaiian Homestead Associations consisting of qualified native Hawaiian members, or a Hawaiian Homestead Association's designated tax-exempt community development corporation.

It should be noted that:

1. There may be constitutional issues relating to CBED providing services exclusively for a special class of citizens. We defer to the Attorney General's office on this matter.
2. This bill may adversely impact priorities as indicated in our Executive Biennium Budget.

Thank you for the opportunity to testify.

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

JOSH GREEN
LT. GOVERNOR
STATE OF HAWAII



JOBIE M. K. MASAGATANI
CHAIRMAN
HAWAIIAN HOMES COMMISSION

WILLIAM J. AILA, JR.
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY OF JOBIE M. K. MASAGATANI, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEE ON HAWAIIAN AFFAIRS
HEARING ON MARCH 14, 2019 AT 1:19PM IN CR 016

**HB 1402, HD1 RELATING TO THE COMMUNITY-BASED ECONOMIC
DEVELOPMENT PROGRAM**

March 12, 2019

Aloha Chair Shimabukuro, Vice Chair Kahele, and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) submits comments on this bill that establishes a subaccount within the Hawaii Community-Based Economic Development Revolving Fund for grants or loans to deliver the Micro Enterprise Assistance Program on Hawaiian Home Lands to qualified native Hawaiians and qualified entities.

The Department appreciates the overall motivation behind this measure, which seeks to provide grants or loans to deliver the Micro Enterprise Assistance Program on Hawaiian Home Lands. However, this bill as currently drafted on page 3, lines 11-12 is unclear in its reference to “revenues, income, and receipts derived from the Hawaiian home lands development program.” No such program exists, but if the bill’s intent is to utilize funds from the Hawaiian home-loan fund, the Hawaiian home-operating fund, and the Hawaiian home-development fund, any such requirement would be subject to Section 4 of the Admissions Act and Article XII, Section 3 of the State Constitution, which stipulates that none of these funds shall be reduced or impaired by any law whether made in the constitution or through state legislation except with the consent of the United States.

Thank you for your consideration of our testimony.



Robin Puanani Danner, SCHHA Chairman
Kammy Purdy, SCHHA Vice Chairman
590 Farrington Hwy, Suite 210 - PMB #151
Kapolei, Hawaii 96707

March 13, 2019

Senator Maile Shimabukuro, Hawaiian Affairs Committee Chair
Senator Kai Kahele, Hawaiian Affairs Committee Vice Chair

RE: Hearing on HB1402 HD1 – Relating to Community Based Economic Development Program
Date: March 14, 2019 at 1:19 pm
Location: State Capitol, Room 016

Testimony in Support with Amendments

Honorable Chair, Vice Chair & Members of the Committee:

About the SCHHA

Founded in 1987, the SCHHA is a national organization serving native Hawaiians, and Hawaiian Homestead Associations, as defined under the Hawaiian Homes Commission Act of 1920 (HHCA), as amended. SCHHA is the oldest and largest coalition of HHCA beneficiaries, leaders and associations exercising sovereignty and delivering direct services on Hawaiian Home Lands under the HHCA in 38 different homestead areas around the State.

In short, SCHHA and its leaders are experts on the HHCA, its intent and purposes and the services to HHCA beneficiaries defined under state and federal law, as not less than 50% native Hawaiian blood quantum. As a matter of law, the HHCA is not a race-based program, but rather establishes native Hawaiians as a political body of people, and a unique category of citizens in the country.

Background on HB1402

The SCHHA supports Representative Luke's original HB1402, to establish the *Micro Enterprise Assistance Program on Hawaiian Home Lands* within the Department of Business, Economic Development & Tourism (DBEDT), to directly invest in economic development projects of Hawaiian Homestead Associations and their designated non-profit community development corporations (CDCs).

There are over 48 Hawaiian Homestead Associations and designated CDC's located in every county of the State of Hawaii, that are eligible under the original legislation introduced by Representative Luke. These associations and CDCs exist and are governed by HHCA beneficiaries to advance economic development projects that serve not only beneficiaries of the HHCA, but also the larger general public via Section 207 (c)(1)(A) of the HHCA – public purposes, including social, educational, economic and health purposes.

Said simply, the original HB1402 bill introduced by Representative Luke is brilliant, because it creates a *Micro Enterprise Assistance Program on Hawaiian Home Lands* for Hawaiian Homestead Associations to develop economic development projects essentially owned by HHCA beneficiaries through their homestead associations or CDCs, which are not limited to only serving native Hawaiians (50% blood quantum).

For example, the Waimea CDC on **Hawaii Island**, is pursuing an agricultural park project to be owned and operated by its homestead association CDC, that will serve HHCA beneficiaries, and as an economic development project, it will also serve members of the larger public to engage in farming activities.

Founded in 1987, SCHHA is the oldest and largest coalition of Hawaiian Homestead Associations and Leaders exercising sovereignty on the trust lands enacted by Congress under the Hawaiian Homes Commission Act of 1920

Another example, the Kapolei CDC on **Oahu**, owns and operates a community facility and certified kitchen. The facility is owned and operated by HHCA beneficiaries through the CDC, yet, it serves HHCA beneficiaries as well as members of the larger public, as it must to make economic sense.

Yet another example is Paupena CDC on **Maui**, the designated CDC for several homestead associations on Maui. This CDC is pursuing a number of economic development projects, that will serve HHCA beneficiaries, and yet again, the larger public that includes Native Hawaiians that do not meet the definition of the HHCA.

And finally, the Homestead CDC headquartered on **Kauai**, is the designated CDC for 3 Kauai homestead associations, that owns and operates a certified kitchen, an outdoor marketplace, a family campground, a youth center and an enterprise center. These projects are owned by HHCA beneficiaries but serve native Hawaiians and the larger public. Said simply, these projects are controlled by HHCA beneficiaries as the HHCA intended, but under Section 207 (c)(1)(A), they are able to serve those that may not meet the HHCA blood quantum and other members of the general public. This is vital to economic sustainability.

Makuu Farmers Market is yet another example, where the Makuu Farmers Market on **Hawaii Island** is owned and operated by HHCA beneficiaries on Hawaiian Home Lands through the Makuu homestead association, yet vendors that benefit from this economic development project, need not and are not restricted to HHCA beneficiaries.

HB1402 HD1 – Cuts Off the Economic Development Strategy Envisioned

The amended HB1402 that is now in the form of HB1402 HD1, perhaps well intentioned, restricts the economic development potential HHCA beneficiaries are seeking – which is to develop projects that are owned and operated by HHCA beneficiary associations and CDCs, that enable customers and clients to benefit and engage regardless of HHCA beneficiary status. In its current form, HB1402 HD1 entirely restricts the intended economic investments to ONLY HHCA beneficiaries, instead of the original intent, to HHCA homestead associations that will build out economic projects.

The SCHHA offers the following comments:

- 1. Housed within DBEDT.** SCHHA supports Representative Luke’s intent to place this program within DBEDT, rather than DHHL, to maximize the expertise of DBEDT to advance community based economic development. DBEDT has decades of experience in this field, and it is time to bring that expertise to bear on Hawaiian Home Lands where HHCA beneficiaries and the general public can engage in homestead economies.

SCHHA specifically corrects any notion that the tenets of the HHCA that are enshrined in the Hawaii Constitution may only be delivered by ONE state agency, DHHL. Indeed, the Hawaii Admissions Act of 1959, is a compact with the federal government, that requires the State of Hawaii government, to administer the purposes of the HHCA, not a single state agency.

- 2. Eligible Organizations to Participate in this CBED Program.** A plain reading of Representative Luke’s original bill makes clear that the MEAP program has the potential to serve at least 48 homestead associations that exist today, plus another dozen CDC’s.

This CBED program, is an incredible opportunity for long standing and numerous homestead focused organizations to build out economic development projects that will not only energize homestead economies but engage Hawaii citizens in our economies as homestead associations build them.

3. Amend to Return to Original HB1402 Version. SCHHA requests HB1402 HD1 to be amended to return to the original language starting on page 2, line 11 to read:

(1) Be used exclusively for the purposes of providing grants and loans for the implementation of the micro enterprise assistance program serving:

(A) Qualified native Hawaiians as defined by the Hawaiian Homes Commission Act of 1920 and pursuant to title XII of the state constitution;

(B) Native Hawaiian-controlled homestead associations with members who are qualified native Hawaiians as defined by the Hawaiian Homes Commission Act of 1920 and pursuant to title XII of the state constitution;

(C) A Hawaiian homestead association's designated tax-exempt community development corporation; and.....

Our recommended amendment by your committee, would strike HB1402 HD1 page 2, line 11 through 17, and page 3, line 5 through 9.

We recognize that HB1402 HD1 was amended by the very first House Committee as a result of testimony provided that unintentionally restricted the purposes of this CBED program to ONLY HHCA beneficiary individuals, which missed the reality that economic development projects, like all of those listed above, must have access to non-HHCA beneficiaries to thrive.

This CBED program, is not a "homesteading program" that must be limited to HHCA beneficiaries only. It is an economic development program, under the tenets of HHCA Section 207 (c)(1)(A), which is best accomplished by directing resources to HHCA homestead associations that are able to build economic development projects that welcome all members of the public to thrive (ie, an agriculture park, or a marketplace, etc). Scale is an absolute must in sustainability of economic projects.

Mahalo for the opportunity to submit testimony to your committee. This CBED program is a powerful opportunity to build out economic projects owned and operated by HHCA beneficiary homestead associations that will result in job creation and business development for all, as is necessary in building any healthy economy.

We stand in support with the amendments proposed and look forward to homestead associations successfully implementing their projects all across the state!

Robin Puanani Danner
SCHHA Chairman

Kammy Purdy
SCHHA Vice Chairman

March 12, 2019

SENATE COMMITTEE ON HAWAIIAN AFFAIRS

Hearing Re: HB 1402 HD1 Relating to Community Based Economic Development

Date: March 14, 2019

Location: Room 016, Hawaii State Capitol

Time: 1:19 p.m.

To the Honorable Members of the Senate Committee on Hawaiian Affairs:

The Council for Native Hawaiian Advancement testifies in strong support of HB 1402 HD 1 which establishes a new subaccount within the Hawaii Community-Based Economic Revolving Fund for grants or loans for microenterprise purposes for qualified native Hawaiians as defined by the Hawaiian Homes Commission Act of 1920 and pursuant to title XII of the Hawaii State constitution. It also appropriates \$4 million dollars for these purposes.

The Council for Native Hawaiian Advancement (CNHA) is a member-based 501(c)3 non-profit organization with a mission to enhance the cultural, economic, political, and community development of Native Hawaiians. CNHA is a national network of Native Hawaiian organizations and a strong voice on public policy. CNHA operates a loan fund, delivers capacity building services, fosters leadership development and has convened the Annual Native Hawaiian Convention for 17 consecutive years. CNHA has an 18-year record of providing support to native Hawaiians to homestead beneficiaries.

The CNHA supports economic development activities on the homesteads which will support native Hawaiian homestead beneficiaries in developing and implementing economic activities that will enhance and foster their economic well-being. The bill as presently written will make it possible for qualified native Hawaiian-controlled homestead associations, a Hawaiian homestead association's designated tax-exempt community development corporation, and native Hawaiian community organizations that administer loans to qualified native Hawaiians to participate in these loan and grant programs for the benefit of native Hawaiians as defined in the Hawaiian Homes Commission Act. Once enacted, settled administrative law vests DBEDT with the power and authority to promulgate and implement the

necessary rules and procedures to enable this grant and loan process to come into existence so that the intent of the law may be realized.

The CNHA takes strong exception to the position of the State Attorney General, and by implication, DBEDT's reliance on that same AG's testimony, that this bill as presently written violates the equal protection clause of both federal and state constitutions because it is intended to benefit native Hawaiian beneficiaries of the Hawaiian Homes Commission Act. Such a position by the Attorney General is as untenable as it is unsupportable, especially given the contractual requirement embedded in the Compact between the federal and state government transferring the federal trust responsibility over the Hawaiian Homesteading program from the federal government to the State of Hawaii to faithfully administer the Hawaiian Homes Commission Act as a condition of Hawaii's entry into the union of states as the nation's fiftieth state, as well as the numerous federal and state judicial opinions affirming the State of Hawaii's continuing and enduring trust responsibility to its native Hawaiian homestead beneficiaries.

The Attorney General expands on this unsupportable argument by contending that the constitutionally defensible manner of enabling this bill to survive constitutional scrutiny is to have the Department of Hawaiian Homelands administer this program, as if the Department of Hawaiian Homelands alone, and not the State of Hawaii in its entirety, was responsible for the faithful execution of the purposes of the Hawaiian Homes Commission Act occasioned by the transfer of this power over the Homestead program from the federal government to the State of Hawaii on the eve of statehood in 1959. The solution posed by the AG is unworkable and leads nowhere, because DHHL, as expressed in their recent testimony on this bill, lacks the means, the expertise, and the existing authority to implement such an economic development program.

The upshot of this analysis is simply this: DBEDT is the appropriate agency with both the authority and expertise to house and implement this program, the AG's concerns notwithstanding. This bill should be passed as written.

CNHA concludes its testimony by expressing its abiding belief in and support for the economic development activities envisioned in this bill and for those native Hawaiian homestead beneficiary serving organizations willing and able to assist in creating the economic improvements that are much desired and needed.

Respectfully,

A handwritten signature in blue ink, appearing to read 'J. Kuhio Lewis', with a stylized flourish at the end.

J. Kuhio Lewis
Chief Executive Officer

HB-1402-HD-1

Submitted on: 3/13/2019 5:48:37 AM

Testimony for HWN on 3/14/2019 1:19:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kamuela Werner MPH	Individual	Support	No

Comments: