



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

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**ON THE FOLLOWING MEASURE:**

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

**BEFORE THE:**

HOUSE COMMITTEE ON WATER, LAND, AND HAWAIIAN AFFAIRS

**DATE:** Friday, February 1, 2019 **TIME:** 9:00 a.m.

**LOCATION:** State Capitol, Room 325

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

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Chair Yamane and Members of the Committee:

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

This bill establishes, and appropriates moneys 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, native Hawaiian-controlled homestead associations, and a Hawaiian homestead association's designated tax exempt community development corporation.

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.

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 for 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 3-5, 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  
**HOUSE COMMITTEE ON WATER, LAND & HAWAIIAN AFFAIRS**

Friday, February 1, 2019  
9:00am  
State Capitol, Conference Room 325

In consideration of  
**HB1402**  
**RELATING TO THE COMMUNITY-BASED ECONOMIC DEVELOPMENT.**

Chair Yamane, Vice Chair Todd and members of the Committee. The Department of Business, Economic Development and Tourism (DBEDT) **offers comments** on HB1402, 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.

DBEDT supports the concept, however, it should be noted that:

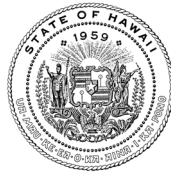
1. It is important that this program be consistent with the Hawaiian Homes Act of 1921.
2. We are not sure whether such a grants and loans program duplicates other programs from such agencies as the Department of Hawaiian Homelands and the Office of Hawaiian Affairs.
3. There may be constitutional issues relating to CBED providing services exclusively for a special class of citizens.
4. DBEDT and the CBED program does not currently have a loan officer position, which would be necessary to implement the program.

5. This bill may adversely impact priorities as indicated in our Executive Biennium Budget.

DBEDT requests the opportunity to continue the discussion on this measure.

Thank you for the opportunity to testify.

DAVID Y. IGE  
GOVERNOR



RODERICK K. BECKER  
DIRECTOR

ROBERT YU  
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 RODERICK K. BECKER  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE HOUSE COMMITTEE ON WATER, LAND, AND HAWAIIAN AFFAIRS  
ON  
HOUSE BILL NO. 1402

**February 1, 2019  
9:00 a.m.  
Room 325**

**RELATING TO THE COMMUNITY-BASED ECONOMIC DEVELOPMENT PROGRAM**

House Bill (H.B.) No. 1402: 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 \$4,000,000 in general funds for both FY 20 and FY 21 to be deposited into the MEAPHHL sub-account; and appropriates \$4,000,000 in revolving funds for both FY 20 and FY 21 from the MEAPHHL sub-account for loans or grants for the program.

The department generally 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, 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.



January 30, 2019

To: Rep. Ryan Yamane, Chair  
Rep. Chris Todd, Vice Chair  
Members of the House Committee on Water, Land, and Hawaiian Affairs

**Re: Hearing on HB 1402 Relating to The Community Based Economic Development Program**

February 1, 2019 at 9:00 am  
Hawai'i State Capitol  
Conference Room 325

**TESTIMONY IN SUPPORT OF HB 1402 WITH AMENDMENTS**

HB 1402 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.

While CNHA supports the intent of this measure, we have reservations about language within this bill that limits participation only to Hawaiian Homestead Associations and to Hawaiian Homestead Associations' tax exempt Community Development Corporations while excluding native Hawaiian serving community organizations like CNHA and Hawaiian Community Asset (HCA), both of which have a proven track record of providing necessary and needed capital and support to native Hawaiian homestead beneficiaries. Our amendments are designed to expand the pool of qualified applicants to include native Hawaiian serving organizations such as the Council for Native Hawaiian Advancement and Hawaii Community Assets.

CNHA proposes the following amendments:

On page 2, line 11, rewrite section (1) to read as follows: “Be used exclusively for the purpose of providing grants or loans for qualified native Hawaiians as defined by the Hawaiians Home Commission Act of 1920 and pursuant to title XII of the state constitution for the implementation of the micro enterprise assistance program.”

On page 2, lines 14-21, and on page 3, lines 1 and 2, strike all of (1) (a),(b), and (c) and replace it with a new section (1)(a),(b), and (c) to read as follows:

(1) “Entities qualified to receive funding under this section are as provided herein.

- (a) 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; or
- (b) A Hawaiian homestead association’s designated tax-exempt community development corporation; or
- (c) A Native Hawaiian community organization with a demonstrated ability and history of making and administering loans and providing support to qualified native Hawaiians as defined by the Hawaiians Home Commission Act”.

Respectfully,



J. Kuhio Lewis  
Chief Executive Officer  
Council for Native Hawaiian Advancement



Representative Ryan I. Yamane, Chair  
Representative Chris Todd, Vice Chair  
House Committee on Water, Land & Hawaiian Affairs

Testimony of Jame K. Schaedel

Friday, February 1, 2019

**Opposition** against House Bill No. 1402 – Relating to the Community Based Economic Development Program

### **WRITTEN TESTIMONY ONLY**

Thank you for the opportunity to offer testimony in **strong opposition** against House Bill No. 1402. I am a board member of the Kapolei Community Development Corporation (KCDC), which serves Native Hawaiian homestead beneficiaries in the Kapolei region. However, I offer this testimony as a private citizen.

This bill would create the Micro Enterprise Assistance Program on Hawaiian Home Lands subaccount in the Hawaii Community-Based Economic Development Revolving Fund. Funds from the subaccount would be used to provide grants or loans for the implementation of the Micro Enterprise Assistance Program to service qualified native Hawaiians, native Hawaiian-controlled homestead associations, or a Hawaiian homestead association's designated tax exempt community development corporation.

Unfortunately, House Bill No. 1402, as written, currently excludes several well established native Hawaiian community lending financial institutions, such as the Council for Native Hawaiian Advancement, from participating in the aforementioned program. Furthermore, this bill also excludes native Hawaiian community development corporations not controlled by one or more homestead associations, such as KCDC, from participating in the program.

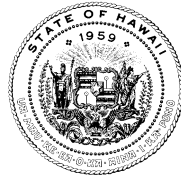
Therefore, this bill, as written, only benefits less than a handful of native Hawaiian organizations. If it is not significantly amended to include all native Hawaiian community development corporations which serve homestead beneficiaries, and native Hawaiian community lending financial institutions, then I respectfully request that it be deferred. Please consider the testimony of other organizations, and amend this bill accordingly. Thank you for the opportunity to provide written testimony in opposition against House Bill No. 1402.

Respectfully,

Jame K. Schaedel  
Kapolei, Hawai'i

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

**LATE**

TESTIMONY OF JOBIE M. K. MASAGATANI, CHAIRMAN  
HAWAIIAN HOMES COMMISSION  
BEFORE THE HOUSE COMMITTEE ON WATER, LAND, & HAWAIIAN AFFAIRS  
HEARING ON FEBRUARY 1, 2019 AT 9:00AM IN CR 325

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

January 31, 2019

Aloha Chair Yamane 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, Hawaiian Homestead Associations consisting of qualified native Hawaiian members, or a Hawaiian Homestead Association's designated tax-exempt community development corporation.

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 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.

**LATE**

**HB-1402**

Submitted on: 1/31/2019 10:48:04 PM

Testimony for WLH on 2/1/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Robin Danner	SCHHA	Support	No

Comments:

As the Chairman of the Sovereign Council of Hawaiian Homestead Associations serving 38 Hawaiian homeland areas statewide, please accept this testimony in support of enactment. This bill creates an opportunity for homestead associations and their experienced community development corporations to access a relevant program and the expertise at DBEDT to leverage non-state capital on job creating and economic prosperity projects on every island. This program empowers homestead associations governed by native Hawaiians to deliver economic programming to homestead areas, but also to all Hawaii residents that live on or live are near these important communities. Mahalo for a highly relevant program and investment in the capacity of homestead associations and their experienced nonprofit CDCs to work directly with DBEDT to advance economic development for all.

**LATE**

**HB-1402**

Submitted on: 1/31/2019 11:42:25 PM

Testimony for WLH on 2/1/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Randy Akau	Kanehili Community Assoc.	Support	No

Comments:

Aloha WLH, EDB and FIN Committees,

My name is Randy Akau, and I'm the president of the Kanehili Community Association located on Hawaiian Homes Trust Lands in East Kapolei 1.

I am in full support of HB1402. This bill will create enormous economic opportunities in and around the Kapolei area for Native Hawaiians residing in Homestead Associations.

Mahalo,

Randy Akau

**LATE**

**HB-1402**

Submitted on: 2/1/2019 6:32:47 AM

Testimony for WLH on 2/1/2019 9:00:00 AM

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

Comments:

My name is Harold Johnston. I am a proud second generation Hawaiian Homesteader and, as typical in our homestead households, have both 3rd and 4th generations living with me. I am also a past president of the Papakolea Community Development Corporation (PCDC) and a member and former officer of the Papakolea Community Association.

I fully support House Bill 1402. I grew up on the homestead but was blessed to receive a full college scholarship as the Naval Academy. Following combat service in Viet Nam as a Marine Corps infantry officer, I went on to a career involving senior management positions in major U.S. corporations on the mainland before returning to Hawaii and working in industry here. Living on the homestead and serving in community leadership capacities, I am fully aware of the tremendous need to improve the well being of our families. Besides access to better education, I see jobs and economic growth opportunities as the major solutions.

Approval of HB1402 will be a blessing to our homestead communities. In recent years, I have seen the tremendous progress in community-based economic program capacity. The financial support via HB1402 funding will allow our homestead organizations not only access to needed business capital, but also provide the necessary training and support to help HHL based businesses accelerate development of core business skills. Mahalo to the Legislature for its understanding of the need and its initiative in drafting HB1402. I urge you to adopt it into law.

Harold Johnston

**LATE**

Testimony in Opposition of HB 1402

**LATE**

SENATE COMMITTEE ON HAWAIIAN AFFAIRS  
Representative Ryan I. Yamane, Chair  
Representative Chris Todd, Vice Chair

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

February 01, 2019

Aloha Chair Yamane, Vice Chair Todd, and members of this Committee,

My name is Homelani Schaedel. I am a lessee residing at Malu'ōhai homestead in Kapolei for the past 17 years, a homestead leader in the Kapolei region, a beneficiary and advocate for the Hawaiian Home Lands Trust.

At first glance, this bill appears to be a "good bill" to create a separate subaccount for the exclusive purpose of providing grants or loans for micro enterprise to qualified native Hawaiians as defined by the Hawaiian Homes Commission Act of 1920 (HHCA), native Hawaiian controlled homestead associations, and a Hawaiian homestead association's designated tax exempt community development corporation.

Now, some would say..."Don't look a gift horse in the mouth". But as I read this bill closer I recalled a simple lesson shared with me by my kupuna. He said to me:

1. You don't get a gift from a horse, except kukai, and you have to clean it up.
2. You don't look a gift horse in the mouth, because it may bite you.
3. But, you remember the Trojan horse story? Sometimes you have to look in the horse's mouth, because if they did, they wouldn't have lost the war.

A simple yet profound lesson.

So, as an advocate of the Hawaiian Home Lands Trust, I'm looking into the horse's mouth, and I don't like what I see.

1. The subaccount is being created to provide access to a specific group which promotes and stereotypes the "have koko/don't have enough koko often creating a wedge between our people that we as a lahui are trying so hard to dispense with and promote kakou.
2. This bill opens the door for a class action suit, and all Hawaiians will have to deal with the kukai.
3. This bill restricts other Hawaiian and Non-Hawaiian organizations who have a proven record of serving all Hawaiians access to these funds.

4. This bill seeks to incorporate funding from the legislature and other sources including; revenues, income and receipts derived from the Hawaiian home lands development program, thereby reducing this fund which can only be approved by Congress.

5. Funding for loans and grants from the Department of Business, Economic Development and Tourism is available to everyone now, including all Hawaiians.

Quite frankly, I'm tired of Hawaiian's being viewed by the general public as indigent and in need of special treatment!

What we need is for the legislature to provide the funds DHHL and OHA are entitled to under Title XIII! Its' not a gift, its' an entitlement under the State Constitution and the Admissions Act.

For these reasons, I strongly oppose this bill.

Mahalo for the opportunity to provide my testimony.