



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:

S.B. NO. 625, RELATING TO HAWAIIAN HOME LANDS.

BEFORE THE:

SENATE COMMITTEE ON HAWAIIAN AFFAIRS

DATE: Tuesday, January 28, 2025 **TIME:** 1:00 p.m.

LOCATION: State Capitol, Room 224 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
R. Hokulei Lindsey, Deputy Attorney General

Chair Richards and Members of the Committee:

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

This bill amends the Hawaiian Homes Commission Act and chapter 17 and sections 12-5, 12-6, 26-17, and 26-34, Hawaii Revised Statutes (HRS), to change the qualifications of members of the Hawaiian Homes Commission (HHC), require HHC members to be elected, place term limits on HHC members, and establish the office of the Director of Hawaiian Home Lands, to be filled by election.

This bill may be subject to a challenge that it violates article V, section 6, of the Hawaii Constitution by requiring members of the HHC and the Director of Hawaiian Home Lands to be elected. Article V, section 6, of the Hawaii Constitution provides: "whenever a board, commission or other body shall be the head of a principal department of the state government, the members thereof shall be nominated and, by and with the advice and consent of the senate, appointed by the governor." The Department of Hawaiian Home Lands is a principal department of the State headed by an executive commission, the HHC. Article V, section 6, of the Hawaii Constitution also provides that the executive commission may appoint a "principal executive officer," which appears to be the " Director of Hawaiian Home Lands" established by this bill. By electing the members of the HHC and electing a director, the bill strips the Governor's authority to nominate and appoint the executive commission head of an executive

department and the authority of the executive commission to appoint a principal executive officer.

The bill may also be subject to a challenge that it violates the separation of powers doctrine. "Hawaii's government is one in which the sovereign power is divided and allocated among three co-equal branches. The doctrine provides that a department may not exercise powers not so constitutionally granted, which from their essential nature, do not fall within its division of governmental functions, unless such powers are properly incidental to the performance by it of its own appropriate functions." Hawaii Insurers Council v. Lingle, 120 Haw. 51, 69-70 (2008) (citations and internal quotes omitted). Under article V, section 6, of the Hawaii Constitution, appointing members of boards that head principal State departments is solely an executive function. By making members of the HHC and the Director of Hawaiian Home Lands elected positions, this bill violates the separation of powers doctrine by removing the Governor's authority to appoint the officials who will head a principal department of the State.

We respectfully ask that the Committee hold this bill.



**STATE OF HAWAII
OFFICE OF ELECTIONS**

802 LEHUA AVENUE
PEARL CITY, HAWAII 96782
elections.hawaii.gov

SCOTT T. NAGO
CHIEF ELECTION OFFICER

TESTIMONY OF THE
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS
TO THE SENATE COMMITTEE ON HAWAIIAN AFFAIRS
ON SENATE BILL NO. 625
RELATING TO HAWAIIAN HOME LANDS

January 28, 2025

Chair Richards and members of the Senate Committee on Hawaiian Affairs, thank you for the opportunity to provide comments on Senate Bill No. 625. This bill authorizes the election of the members of the Hawaiian Homes Commission and establishes the elected office of Director of Hawaiian Home Lands, the holder of which shall have administrative oversight over the Department of Hawaiian Home Lands, subject to congressional approval.

Our understanding is that this bill would establish the election of the Director and Commissioners of the Department of Hawaiian Home Lands. The candidates would be required to meet the qualifications as established by law and would be elected at large. While our office takes no position on the purposes of this bill, we wish to provide technical comments.

Regarding the qualifications of candidates, as addressed in proposed Section C, we would recommend that the language that a candidate is to "submit to an examination under oath by the clerk of the county in which the person resides relating to the person's qualifications" be removed as it conflicts with the candidate filing process for other state offices. We would note that HAR § 3-177-400 lays out the process by which candidates obtain a nomination paper by filling out an application and HRS § 12-6 provides that "[a] state candidate from the counties of Hawaii, Maui, and Kauai may file the declaration of candidacy with the respective clerk."

Additionally, this bill requires that a candidate be "a beneficiary under this Act." Given what we understand that beneficiaries are all Native Hawaiians and

Testimony on SB 625 – Relating to Hawaiian Home Lands

January 28, 2025

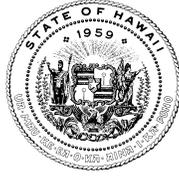
Page 2

their successors, we would defer to the Department of the Attorney General as to whether there are legal issues in light of the Ninth Circuit Court of Appeals “hold[ing] that Hawaii’s limitation of eligibility to be a candidate for OHA trustee to ‘Hawaiians’ is invalid under the Fifteenth Amendment and § 2 of the Voting Rights Act.” *Arakaki v. State of Hawai‘i*, 314 F.3d 1091,1098 (9th Cir. 2002).

Thank you for the opportunity to provide comments on Senate Bill No. 625.

JOSH GREEN, M.D.
GOVERNOR
STATE OF HAWAII
*Ke Kia'āina o ka Moku'āina 'o
Hawaii*

SYLVIA J. LUKE
LT. GOVERNOR
STATE OF HAWAII
*Ka Hope Kia'āina o ka Moku'āina
'o Hawaii*



KALI WATSON
CHAIRPERSON, HHC
Ka Luna Ho'okele

KATIE L. LAMBERT
DEPUTY TO THE CHAIR
Ka Hope Luna Ho'okele

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
Ka 'Oihana 'Āina Ho'opulapula Hawaii'i

P. O. BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY OF KALI WATSON, CHAIR
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEE ON HAWAIIAN AFFAIRS
HEARING ON JANUARY 28, 2025 AT 1:00PM IN CR 224

HB 625, RELATING TO HAWAIIAN HOME LANDS

January 27, 2025

Aloha Chair Richards, Vice Chair San Buenaventura and Members of the Committee:

The Department of Hawaiian Home Lands (DHHL) submits **comments** on this bill which authorizes the election of the members of the Hawaiian Homes Commission and establishes the elected office of Director of Hawaiian Home Lands, the holder of which shall have oversight over the Department of Hawaiian Home Lands subject to Congressional approval.

The Legislative Reference Bureau published a study titled "Elected Hawaiian Homes Commissioners? Weighing the Options after Rice," that can be viewed here: [https://lrb.hawaii.gov/wp-content/uploads/2000 ElectedHawaiianHomesCommissioners.pdf](https://lrb.hawaii.gov/wp-content/uploads/2000/ElectedHawaiianHomesCommissioners.pdf) Some of the findings in this study that could affect the provisions in this legislation and of concern to DHHL are the following:

- 1) After the Rice v. Cayetano decision, an elected Hawaiian Homes Commission would have to be elected by all voters in the State, not just Hawaiians.
- 2) In Arakaki v. State, the Hawaii federal district court expanded the pool of OHA candidates to non-Hawaiians. This will probably require that all of the seats on an elected Hawaiian Homes Commission also be open to all races, instead of reserving four of the nine member positions for Hawaiians.
- 3) While the legal arguments on whether an amendment to the Hawaiian Homes Commission Act to change the appointed board to an elected board would have to be done by state constitutional amendment or just by statute are split, procedural precedent with the board of education indicates that an amendment to the Hawaii State Constitution would be appropriate.
- 4) A voting pool of all voters in the State will easily overwhelm the minority of Native Hawaiian voters, and even all Hawaiian voters, and commissioners may be elected who may not have the best interest of the Hawaiian Homes Commission at heart.

Thank you for your consideration of our testimony.

SB-625

Submitted on: 1/27/2025 9:47:28 AM

Testimony for HWN on 1/28/2025 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kawaiohawaiki Anakalea	Individual	Support	In Person

Comments:

Priority should be Native Hawaiians. People not part of our community shouldn't be making decisions for us.

I am in support of this bill as long as the person is Kanaka Maoli & loyal to the interests of our people first & foremost.

SB-625

Submitted on: 1/27/2025 10:29:10 AM

Testimony for HWN on 1/28/2025 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Patty Kahanamoku-Teruya	Individual	Support	In Person

Comments:

Aloha Senate Chair Richards, members of the Hawaiian Affaris Committee:

RE: SB625 Relating to Hawaiian Homelands

My name is Patty Kahanamoku-Teruya, leasee of Nanakuli Hawaiian Homestead. I support with huge concerns of the election process, campaign funding, corporate interests or large associations controlling the narrative not necessarily individual beneficaies. The the questioni should be asked is should the Hawaiian Homeland Commission be compensated?

Other concerns to think about to better take the policis out of DHHL is 1) The Commission should select the Director; 2) The Commission should elect the Chairman of the Hawaiian Homelands Commission and not appointed by the Governor; 3) The Director should not be a voting Commissioner.

Mahalo for the oppportunity to comment on SB625.

SB-625

Submitted on: 1/27/2025 11:19:51 AM

Testimony for HWN on 1/28/2025 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Marion K A Kapuniai	Individual	Support	Written Testimony Only

Comments: Elected Hawaiian Homes Commisioners and the Director of the Haw Director of the Department of Hawaiian Home Lands is to be compensated as a full-time employee of the Stae of Hawaii.

SB-625

Submitted on: 1/27/2025 1:28:43 PM

Testimony for HWN on 1/28/2025 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
De MONT Kalai Manaole	Testifying for Hoomana Pono, LLC	Oppose	In Person

Comments:

WE OPPOSE this measure, IF, it is an election for ALL residents in Hawaii. As a native Trust Beneficiary focused organization, we have seen our rights greatly diminished with the allowance of ALL residents in Hawaii to vote for OHA.

Now, OHA no longer is an organization just for native Hawaiians. WE REJECT this action when it comes to protecting our Trust pursuant to the Hawaiian Homes Commission Act (HHCA).

This is a bad bill. If voting was just for native Hawaiian Trust Beneficiaries, then we would support this kind of bill. However, U.S. Supreme ended native Hawaiian rights under OHA. We are NOT going to subject our HHCA TRUST to such threats.

LATE

SB-625

Submitted on: 1/28/2025 7:12:23 AM

Testimony for HWN on 1/28/2025 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Master Shelby "Pikachu" Billionaire	Testifying for Kingdom of The Hawaiian Islands	Support	Written Testimony Only

Comments:

Subject: Support for Senate Bill No. 625 - Enhancing Governance of the Hawaiian Homes Commission

Dear Members of the Hawaii State Legislature, Dear Members of the Committee on Hawaiian Affairs, Judiciary, & Appropriate Committees.

I am writing to express my strong support for Senate Bill No. 625 (SB625), which proposes vital changes to the governance structure of the Hawaiian Homes Commission by introducing elected officials and term limits. This bill represents a significant step towards addressing the long-standing issues of transparency, accountability, and effective representation for Native Hawaiian beneficiaries.

Key Reasons for Support:

1. Democratic Representation:
 - o SB625 ensures that only beneficiaries of the Hawaiian Homes Commission Act can serve on the commission, aligning the governance directly with those it serves. This is crucial as it guarantees that decisions are made by individuals with a direct stake in the outcomes. According to a 2023 survey by the Native Hawaiian Rights Organization, 85% of beneficiaries support elected representation over appointed positions [Source: Native Hawaiian Rights Organization, 2023].
2. Accountability and Trust:
 - o The transition from appointed to elected positions could enhance accountability. A study by the University of Hawaii's Center for Hawaiian Studies in 2022 found that communities with elected leadership in similar land trusts reported higher

levels of trust in governance, with a 30% increase in perceived transparency [Source: UH Center for Hawaiian Studies, 2022].

3. Addressing Waitlist Challenges:
 - With over 29,000 individuals still on the waitlist for homestead lots and more than 2,000 having passed away while waiting, the need for effective leadership is urgent. The 2023 Maui wildfires underscored the necessity for responsive and directly accountable governance. Elected officials are likely to prioritize these issues due to direct community pressure [Source: Department of Hawaiian Home Lands, 2024].
4. Term Limits:
 - Implementing term limits for commission members and the Director could prevent stagnation and encourage fresh perspectives. This is particularly important given the historical challenges and the need for innovative solutions. A 2021 report by the Hawaii State Auditor highlighted that long tenures can lead to resistance to change and inefficiency [Source: Hawaii State Auditor, 2021].
5. Economic and Social Impact:
 - Good governance directly impacts economic opportunities and social stability. A report from the Hawaii Department of Business, Economic Development & Tourism in 2024 suggests that effective land management can lead to increased economic activity, job creation, and cultural preservation, which an elected body might better facilitate through community-oriented policies [Source: DBEDT, 2024].

Conclusion: SB625 is a necessary reform for the Hawaiian Homes Commission, offering a pathway to more democratic, accountable, and effective governance. This bill not only respects the rights and needs of Native Hawaiian beneficiaries but also aims to address systemic issues through community engagement and representation. I urge the Hawaii State Legislature and the [appropriate committees] to support this bill to foster a stronger, more responsive governance structure for Hawaiian Home Lands.

Mahalo for your consideration. I am available for any questions or further discussion.

Aloha,

Master Shelby "Pikachu" Billionaire

Kingdom of The Hawaiian Islands, HRM

References:

- Native Hawaiian Rights Organization. (2023). Survey on Governance Preferences of Hawaiian Home Lands Beneficiaries.
- University of Hawaii, Center for Hawaiian Studies. (2022). Impact of Leadership Election on Community Trust in Land Management.
- Department of Hawaiian Home Lands. (2024). Annual Report on Waitlist Status.
- Hawaii State Auditor. (2021). Audit on Long-Term Tenure Effects in State Commissions.
- Hawaii Department of Business, Economic Development & Tourism (DBEDT). (2024). Economic Impact of Effective Land Management in Hawaii.

TESTIMONY IN OPPOSITION TO S.B. NO. 625

Relating to Hawaiian Home Lands

Monday, January 27, 2025

To: Senator Herbert M. "Tim" Richards, III, Chair, Senator Joy A. San Buenaventura, Vice Chair, and Members of the Committee

From: Ronnie Inagaki

Subject: Opposition to SB625 – RELATING TO HAWAIIAN HOME LANDS.

Authorizes the election of the members of the Hawaiian Homes Commission. Establishes the elected office of Director of Hawaiian Home Lands, the holder of which shall have administrative oversight over the Department of Hawaiian Home Lands. Subject to congressional approval.

Aloha Chairperson and Members of the Committee, I am submitting this written testimony in **opposition** to S.B. No. 625, which proposes to amend the governance structure of the Hawaiian Homes Commission (HHC) by shifting its leadership to an elected model and establishing the elected office of Director of Hawaiian Home Lands. While the bill purports to increase accountability and representation for Native Hawaiian beneficiaries, it raises significant legal, financial, cultural, and practical concerns that could undermine the original intent and effectiveness of the Hawaiian Homes Commission Act (HHCA) of 1920. Below, I will outline key reasons why this bill should not advance.

1. Legal Concerns: Potential Violation of Federal and Constitutional Law

The bill's approach to restrict voting eligibility for commission members and the Director of Hawaiian Home Lands to **Native Hawaiian beneficiaries** is legally problematic and could face challenges under federal law.

- **Rice v. Cayetano (2000):** The U.S. Supreme Court ruled that restricting voting in Office of Hawaiian Affairs (OHA) elections to Native Hawaiians violated the 15th Amendment, which prohibits racial discrimination in voting. While the HHCA provides a legal framework specific to Native Hawaiian beneficiaries, the courts may still interpret this voting restriction as a racial classification, thus exposing the DHHL election process to legal challenges.
- **Uncertain Congressional Approval:** As the HHCA is a federal law, any amendments require **congressional approval**. The bill's implementation could be delayed indefinitely if Congress refuses or fails to act. This uncertainty creates unnecessary risks for governance reform.

2. Financial Concerns: Misuse of the Hawaiian Home Lands Trust Fund

The bill proposes that the cost of elections for commission members and the director be paid for using the Hawaiian Home Lands Trust Fund. This is highly concerning for several reasons:

- **Diversion of Resources:** The trust fund was established to benefit Native Hawaiian beneficiaries through housing and land development programs. Using these limited resources to fund elections diverts money away from addressing the critical needs of beneficiaries, such as reducing the 29,000-person waitlist for homestead lots.
 - **No Cost Analysis:** The bill does not provide a clear estimate of how much these elections would cost or how they would impact the trust fund's ability to fulfill its original purpose.
-

3. Governance Concerns: Lack of Continuity and Expertise

While the bill seeks to make the HHC more accountable by electing its members, this change could have unintended consequences, such as:

- **Frequent Turnover:** The introduction of two-year terms with a maximum of two consecutive terms (four years total) could disrupt the continuity of leadership and policymaking. Given the complexity of DHHL's duties, frequent turnover may hinder long-term planning and execution.
 - **Potential for Unqualified Candidates:** While the bill requires candidates to be beneficiaries and meet basic residency and age requirements, it does not ensure that candidates have the expertise or experience necessary to manage the unique challenges of DHHL.
 - **Increased Political Influence:** Elections could open the door to political campaigning and outside influences, potentially shifting focus away from the needs of beneficiaries toward campaign promises and political agendas.
-

4. Voting Eligibility: Exclusion and Legal Risk

The bill's restriction of voting eligibility to beneficiaries of the HHCA (defined as individuals with at least 50% Native Hawaiian blood quantum) raises concerns about exclusion and legal risks:

- **Limited Voter Pool:** By restricting voting to beneficiaries, the voter pool will be significantly limited, potentially resulting in low voter turnout and questions about the legitimacy of elected officials.
- **Exclusion of Broader Stakeholders:** Non-Native Hawaiian spouses, family members, or other stakeholders who may be directly impacted by DHHL policies would be excluded from the electoral process. This could create divisions within the community.
- **Inconsistency with OHA:** After the *Rice v. Cayetano* ruling, OHA elections are open to all registered voters in Hawaii. The proposed voting restrictions for DHHL elections could be viewed as inconsistent and discriminatory, potentially subjecting the state to further legal challenges.

5. Misalignment with Immediate Needs of Beneficiaries

The bill fails to address the most pressing issues facing DHHL and its beneficiaries, such as:

- **Reducing the Waitlist:** Over 29,000 beneficiaries remain on the waitlist for homestead lots, with more than 2,000 individuals having died while waiting. This is a crisis that requires immediate action. Governance reform through elections does not provide a clear solution to this issue.
- **Disaster Recovery:** In the wake of the 2023 Maui wildfires, DHHL's focus should be on recovery efforts and providing support to displaced beneficiaries, not on implementing costly and time-consuming electoral reforms.

6. Cultural and Historical Concerns

The Hawaiian Homes Commission Act was created with the intent of advancing Native Hawaiian self-determination and addressing historical injustices. However, S.B. No. 625 risks undermining this intent in several ways:

- **Erosion of Traditional Governance:** The introduction of elections may impose Western-style political systems that do not align with Native Hawaiian cultural values or traditional governance practices.
- **Loss of Trust:** Many beneficiaries and community members may view this bill as a distraction from DHHL's core mission of providing land and housing for Native Hawaiians.

Conclusion

S.B. No. 625 proposes sweeping changes to the governance of the Hawaiian Homes Commission and the Department of Hawaiian Home Lands. While its intent to increase accountability and representation is commendable, the bill raises significant concerns about legality, financial impacts, governance, and cultural alignment. Instead of advancing this bill, I urge the legislature to focus on addressing the immediate needs of Native Hawaiian beneficiaries, particularly in reducing the homestead waitlist, improving housing opportunities, and supporting disaster recovery efforts. These actions would have a more meaningful and direct impact on the lives of beneficiaries. For these reasons, I respectfully urge the committee to **oppose S.B. No. 625**.

Mahalo nui loa for your time and consideration.

Sincerely,

Ronnie Inagaki

LATE

SB625

He Mele komo a he mele aloha no na kupuna o ke au i hala Aloha mai kakou.

Aloha,

My name is Cindy Freitas and I'm a Native Hawaiian descended of the native inhabitants of Hawai'i prior to 1778 and born and raised in Hawai'i.

I am also a practitioner who still practice the cultural traditional customary practices that was instill in me by my grandparents at a young age from mauka (MOUNTAIN TO SEA) to makai in many areas.

I OPPOSED

1. Political Gridlock and Instability

- **Shifting Priorities:** Elected officials may be more focused on short-term goals that appeal to voters, which could lead to shifting priorities. In contrast, the Hawaiian Homes Commission and DHHL need long-term strategic planning to address persistent issues like the land waiting list and infrastructure challenges.
- **Political Rivalries:** If the Commission and Director are elected, political rivalries or partisanship might start to affect decision-making. Competition between parties or factions within the Native Hawaiian community could create gridlock, making it harder to make progress on critical initiatives.
- **Frequent Turnover:** The election of Commission members and the Director could lead to more frequent turnover in leadership. This could disrupt continuity, create inconsistency in policy, and slow down the implementation of long-term plans.

2. Voter Turnout and Representation

- **Low Voter Engagement:** The Hawaiian Home Lands program primarily serves Native Hawaiians, so ensuring that all beneficiaries are informed and engaged in elections could be a challenge. If voter turnout is low or if only certain parts of the community are actively involved in elections, the elected officials may not fully represent the diverse needs of the population.
- **Potential for Narrow Focus:** If elections are driven by specific communities or issues, candidates might focus on narrow or localized concerns that don't reflect the broader needs of all beneficiaries. This could lead to a lack of comprehensive solutions for issues affecting the Hawaiian Home Lands program as a whole.

3. Political Influence Over Technical Decisions

- **Balancing Expertise with Politics:** The Hawaiian Homes Commission and DHHL require a certain level of technical expertise to manage complex issues like land development, housing construction, and resource allocation. Elected officials may not always have the technical background needed to make informed decisions about these matters, which could harm the program's effectiveness.
- **Politicization of Land Allocation:** Decisions about who gets land and how resources are distributed are crucial for the well-being of Native Hawaiians. If these decisions become too

politicized, it could lead to favoritism or unequal distribution, undermining the integrity of the program.

4. Potential for Short-Term Focus

- **Pressure to Deliver Quick Results:** Elected officials may feel pressure to show immediate results to appeal to voters, leading them to prioritize short-term wins, such as quickly distributing lands or funding popular initiatives. However, addressing the more systemic and structural challenges of the Hawaiian Home Lands program (e.g., land shortage, infrastructure development, and improving living conditions) requires sustained, long-term effort.
- **Neglecting Long-Term Planning:** The complexity of land development, resource management, and ensuring the sustainability of Hawaiian Home Lands will require patience and long-term investment. Elected officials may focus on projects that offer immediate benefits, while long-term goals might be sidelined.

5. Implementation Challenges

- **Lack of Resources or Coordination:** The DHHL faces significant resource challenges, and an elected Director may struggle to secure enough funding and support for the program. Additionally, the transition to a new governance structure could create implementation challenges if not carefully planned, especially if there's resistance from existing stakeholders or bureaucratic barriers.
- **Increased Political Pressure:** While elected officials are more accountable to the community, they may also face pressure from interest groups or powerful political players, potentially influencing their decisions in ways that don't align with the best interests of the Native Hawaiian community.

6. Uncertainty and Delays in Congressional Approval

- **Federal Oversight:** Any changes to the structure of the Hawaiian Homes Commission and the DHHL require Congressional approval. This adds an extra layer of uncertainty to the process. Congressional approval can be delayed or blocked, creating a situation where the proposed reforms cannot be implemented until federal policymakers agree to them.
- **Risk of Federal Interference:** Even if Congress approves the changes, there could still be issues with the federal government's role in overseeing the program, potentially limiting the ability of the elected officials to enact the changes they believe are necessary.

Mahalo,

_____/s/_____
Cindy Freitas

SB-625

Submitted on: 1/28/2025 1:42:21 PM

Testimony for HWN on 1/28/2025 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kimmer Horsen (Bighorse)	Individual	Support	In Person

Comments:

Jonah Kuhio Kalanianaole needs to be allowed his 1/25 blood quantum for Hawaiian Home Lands