

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LIEUTENANT GOVERNOR



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
OFFICE OF COMMUNITY SERVICES

830 PUNCHBOWL STREET, ROOM 420
HONOLULU, HAWAII 96813
www.hawaii.gov/labor
Phone: (808) 586-8675 / Fax: (808) 586-8685

ANNE E. PERREIRA-EUSTAQUIO
DEPARTMENT DIRECTOR

JOANN A. VIDINHAR
DEPARTMENT DEPUTY DIRECTOR

JOVANIE DOMINGO DELA CRUZ
EXECUTIVE DIRECTOR
OFFICE OF COMMUNITY SERVICES

IN REPLY, REFER TO:
OCS 20, _____

February 1, 2021

To: The Honorable Donovan M. Dela Cruz, Chair,
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair, and
Members of the Senate Committee on Ways and Means

Date: Wednesday, February 3, 2021

Time: 10:00 a.m.

Place: Conference Room 211, and via Videoconference

From: Jovanie Domingo Dela Cruz, Executive Director
Office of Community Services, an attached agency of the
Department of Labor and Industrial Relations (DLIR)

Re: S.B. No. 172 RELATING TO GRANTS

I. OVERVIEW OF PROPOSED LEGISLATION

This measure seeks to add an alternative means for an organization to become eligible to receive grants from the Legislature pursuant to Chapter 42F, Hawaii Revised Statutes, namely by demonstrating that it spends at least ninety percent of its operating budget in the State. This would be in the alternative to showing that the organization is incorporated in the State of Hawaii.

II. CURRENT LAW

Under current legislation, a non-profit organization must be incorporated in Hawaii in order to be eligible to receive grants under Chapter 42F.

III. COMMENTS ON THE SENATE BILL

The Office of Community Services is regularly designated by the Legislature as an expending agency for many Chapter 42F grants, and OCS has developed an expertise in administering them. In 2019, the last year before the Covid pandemic, out of 75 total Chapter 42F CIP grants, the Legislature designated OCS as the expending agency for 63 of them.

This bill would provide an alternative avenue for a very unusual organization that is not incorporated in Hawaii but somehow manages to spend "at least ninety percent of its operating budget" in Hawaii. (Why is such an organization not incorporated in Hawaii in the first place?) We are unsure how an organization

would prove that fact to the satisfaction of the Legislature's staff that reviews Chapter 42F applications in the very fast-paced schedule of the Legislative session, or how far back in time the ninety-percent test would apply. We would assume, however, that the organization's grant application would assure that its grant funds would be spent in Hawaii.

Because of outstanding questions such as these, we believe we should withhold our support at the present time pending further clarification. Accordingly, the Office of Community Services currently takes no position on this measure at this time, as it wishes to ascertain and weigh the views of others on this proposal.

COUNTY COUNCIL

Arryl Kaneshiro, Chair
Mason K. Chock, Vice Chair
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OFFICE OF THE COUNTY CLERK

Jade K. Fountain-Tanigawa, County Clerk
Scott K. Sato, Deputy County Clerk

Telephone: (808) 241-4188
Facsimile: (808) 241-6349
E-mail: cokcouncil@kauai.gov

Council Services Division
4396 Rice Street, Suite 209
Lihu'e, Kaua'i, Hawai'i 96766

February 2, 2021

TESTIMONY OF MASON K. CHOCK,
COUNCIL VICE CHAIR, KAUAI COUNTY COUNCIL
ON
SB 172, RELATING TO GRANTS
Senate Committee on Ways and Means
Wednesday, February 3, 2021
10:00 a.m.
Conference Room 211

Dear Chair Dela Cruz and Members of the Committee:

Thank you for this opportunity to provide support in favor of SB 172, Relating to Grants. My testimony is submitted in my individual capacity as Council Vice Chair of the Kaua'i County Council.

I support the intent of SB 172 to allow an organization that spends at least ninety percent (90%) of its operating budget within the State to qualify for grant funding. The National Tropical Botanical Garden (NTBG) has been operating in the state of Hawai'i since 1970 and has established four (4) botanical gardens and five (5) preserves on the islands of Kaua'i, Maui and Hawai'i. With over one hundred (100) full-time employees, NTBG provides stewardship to some of the most significant cultural sites in the state and manages the largest curated living collection of native Hawaiian plants in the world, a seed bank with over fourteen million (14,000,000) seeds of rare Hawaiian plants, and a herbarium of over ninety thousand (90,000) specimens of Hawaiian and Pacific Island plants. Over ninety-five percent (95%) of NTBG's annual operating budget is spent in Hawai'i annually.

I believe that nonprofit organizations that are working primarily in the state of Hawai'i and are doing work that benefits Hawai'i's communities, but are not incorporated in the State, like the NTBG, should be eligible for State funding through the GIA process.

Thank you again for this opportunity to provide testimony. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188 or via E-mail to cokcouncil@kauai.gov.

Sincerely,

MASON K. CHOCK
Council Vice Chair, Kaua'i County Council

AN EQUAL OPPORTUNITY EMPLOYER

OFFICE OF THE MAYOR

DEREK S.K. KAWAKAMI, MAYOR

MICHAEL A. DAHLIG, MANAGING DIRECTOR

LATE



Testimony of Michael A. Dahilig
Managing Director, County of Kauai

Before the
Senate Committee on Ways and Means
February 3, 2021; 10:00 a.m.
Conference Room 211

In consideration of
Senate Bill 172
Relating to the Grants

Honorable Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee:

The County of Kauai **supports** the intent of SB172 which would allow an organization to qualify for grants under Chapter 42F, Hawai'i Revised Statutes, if the organization spends at least ninety percent of its operating budget in the State.

In rare cases, non-profits are incorporated under a Congressional Charter rather than a State Charter. Currently, non-profits with only a Congressional Charter are ineligible under Hawai'i statutes to participate in the Grant-In-Aid process.

With fewer than 100 non-profits with a Congressional Charter in existence across the country, the County of Kaua'i supports amending the existing law to allow any non-profits who spend at least ninety percent of its operating budget in Hawai'i, the same privileges as State Chartered non-profits who likewise function to improve the educational, cultural, and overall well-being of the residents and natural resources of Hawai'i.

The GIA program is robust and well vetted with many layers including Budget and Finance review. Understandably, the program is currently suspended due to the fiscal restraints from the COVID-19 pandemic. When the State is once again financially equipped to offer assistance to non-profits, we respectfully ask that all non-profits which meet the Department of Commerce and Consumer Affairs qualifications and spend at least ninety percent of its operating budget in Hawai'i be allowed to apply.

Thank you for your consideration in passing this measure.



NATIONAL TROPICAL BOTANICAL GARDEN

Saving Plants • Saving People

NATIONAL HEADQUARTERS 3530 Papalina Road, Kalāheo, Hawai'i 96741 USA
(808) 332-7324 · Fax (808) 332-9765 · www.ntbg.org

TO: The Honorable Donovan M. Dela Cruz, Chair,
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair, and
Members of the Senate Committee on Ways and Means

DATE: Wednesday, February 3, 2021
TIME: 10:00 a.m.
Place: Conference Room 211, and via Videoconference

From: Chipper Wichman, President
National Tropical Botanical Garden

Re: Testimony in Support of S.B. No. 172 RELATING TO GRANTS

I am writing today as the President of the National Tropical Botanical Garden (NTBG), an organization I have worked for since 1976. NTBG is in STRONG support of SB 172 and is responsible for seeking its introduction. While some may look at this as special interest legislation, we believe that the proposed amendment of HRS_0042F-0103 is in the best interest of the State of Hawaii as it will allow organizations currently working in Hawaii who advance the wellbeing of the State to be eligible to participate in the GIA process.

The organization that I work for is an excellent case in point. The National Tropical Botanical Garden (NTBG) has operated in Hawaii since 1970. We spend millions of dollars every year employing Hawaii residents, paying Hawaii taxes, and protecting the unique biocultural heritage of Hawaii in a way that no other organization in Hawaii does – through a network of botanical gardens and preserves that encompasses five different ecosystems on three different islands.

We are also unlike any other organization in Hawaii in that we operate under a Congressional Charter rather than a State Charter – this means that NTBG was incorporated in Washington, DC not Hawaii. Being a Congressionally Chartered 501(c)3 nonprofit organization is a status given to only a small number of organizations in the entire USA.

NTBG's Congressional Charter was a result of the hard work of Senator Daniel Inouye and Representative Sparky Matsunaga who worked tirelessly to establish NTBG for the benefit of the people of Hawaii. They believed that it would be very prestigious for Hawaii to have a Congressionally Chartered nonprofit established and operating in the State. We are a purpose-driven organization that was brought into being by the vision and commitment of these legendary political leaders.

On August 19, 1964, Public Law 88-449 was signed into law by President Lyndon B. Johnson establishing "... *an educational and scientific center in the form of tropical botanical gardens and facilities ...*" We existed in name only until we acquired our first property in 1970 on the island of Kauai establishing the Lāwa'i valley as the location for our flagship operations which continues to this day. In the late 1970s, NTBG established our national headquarters in Kalāheo overlooking the Lāwa'i valley thanks to a gift of land from Alexander and Baldwin.

From 1970 until 1990, NTBG operated solely in Hawaii. During that time NTBG acquired 2,000 acres of land including five different ecosystems and established four botanical gardens and five preserves on the islands of Kaua'i, Maui, and Hawaii.

In 1990, NTBG was gifted a 10-acre historic property in Miami, Florida. This property called The Kampong was the home of Dr. David Fairchild plant explorer extraordinaire. This is the only property NTBG holds outside of Hawaii and it is on the national register of Historic Places due to the importance of Dr. Fairchild in the history of the US Department of Agriculture.

Although NTBG does own and operate this small property in Miami, over 95% of NTBG's operating budget (which fluctuates between \$8-10 million annually) is spent only in Hawaii each year. As part of our mission-driven work, NTBG manages the largest curated living collection of rare and endangered native Hawaiian plants in the world, a seed bank with over 14 million seeds of rare Hawaiian plants, and a research herbarium containing over 90,000 specimens of Hawaiian and Pacific Island plants. These are the priceless treasures of Hawaii's botanical heritage that are being preserved for the people of Hawaii.

NTBG is also the steward to some of the most significant cultural sites in Hawaii including the Piilanihale Heiau in Hana, Maui and the Limahuli Archaeological Complex in Hā'ena, Kauai. NTBG's Breadfruit Institute maintains the world's largest germplasm collection of breadfruit (over 150 varieties) and has given away over 10,000 breadfruit trees to farmers and organizations in Hawaii to help establish the base of a future breadfruit industry in Hawaii. Over the past 30 years we have been honored several times by resolutions passed by the Hawaii Legislature.

NTBG's has over 100 full-time employees in Hawaii and our payroll in Hawaii is over \$4 million per year. This is 93% of total payroll for the whole organization and NTBG pays over \$40,000 in Hawaii GET annually. NTBG also brings in millions of dollars each year to Hawaii from donors and visitors from the continental US – these are funds that would otherwise not circulate in our Hawaiian economy.

In 2008, NTBG was awarded a \$200,000 GIA (GIA log No: 189-C) to support the construction of a new \$20 million botanical research center on Kauai to house our herbarium, labs, research offices, and our seed conservation lab. We did not apply again for a GIA until 2019 which is when we discovered that HRS_0042F-0103 now requires organizations to be incorporated in Hawaii to qualify for a GIA.

Why should an organization that has operated in Hawaii for decades and does so much to benefit our State suddenly no longer qualify to apply for a GIA? We believe that ALL nonprofit organizations that are working in Hawaii and are doing work that benefits that State of Hawaii should be eligible for State funding through the GIA process. The proposed amendment of HRS_0042F-0103 is intended to allow that to happen while still ensuring that only organization that are truly working in Hawaii will qualify.

Least you be concerned that this amendment would open the door to organizations that might not use State funds appropriately, the GIA process itself should ensure that awarded funds are only used in the State of Hawaii and for the benefit of the people of Hawaii. Where an organization is "chartered" is less important than an organization's mission and the impact of the work that is

conducts and if it is registered to work in Hawaii and is in good standing. If this work is of a critical nature and benefits Hawaii then we believe that that organization should be eligible to apply for a GIA and allow the application process determine if a grant should be awarded.

A good question to ask is what other organizations might benefit from this change to HRS_0042F-0103? We are not sure about how many organizations might qualify to apply for a GIA under this proposed change, but as discussed above, if this change allows nonprofits that are already conducting critically important work in Hawaii to apply for a GIA then that should be considered a good thing and not a bad thing.

Perhaps a better measure of qualification for a GIA is requiring that any organization applying for a GIA be registered with the Hawaii DCCA and have a valid Certificate of Vendor Compliance issued by the State of Hawaii documenting their compliance and good standing with the Hawaii Department of Taxation (DOTAX), the Internal Revenue Service, the Hawaii Department of Labor and Industrial Relations (DLIR), and the Hawaii Department of Commerce and Consumer Affairs. It seems to me that any organization that meets those requirements should be a welcome participant in the GIA process. I have attached the NTBG Certificate of Vendor Compliance for NTBG as an example.

On behalf of our employees and the natural and cultural resources of the State of Hawaii that we mālama I thank you for your consideration of this testimony and hope that you agree that supporting SB172 is in the best interest of our State!

Me ke aloha a me ka mahalo nui,

A handwritten signature in black ink, appearing to read "Chipper Wichman". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Chipper Wichman, President,
National Tropical Botanical Garden

Attachment: NTBG 2020 Certificate of Vendor Compliance



**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

CERTIFICATE OF VENDOR COMPLIANCE

This document presents the compliance status of the vendor identified below on the issue date with respect to certificates required from the Hawaii Department of Taxation (DOTAX), the Internal Revenue Service, the Hawaii Department of Labor and Industrial Relations (DLIR), and the Hawaii Department of Commerce and Consumer Affairs

Vendor Name: NATIONAL TROPICAL BOTANICAL GARDEN

DBA/Trade Name: NATIONAL TROPICAL BOTANICAL GARDEN

Issue Date: 02/28/2020

Status: Compliant

Hawaii Tax#: W4019424401
New Hawaii Tax#: GE061068083201
FEIN/SSN#: XX-XXX7064
UI#: XXXXXX2753
DCCA FILE#: 37498

Status of Compliance for this Vendor on issue date:

| Form | Department(s) | Status |
|-------------|---|---------------|
| A-6 | Hawaii Department of Taxation | Compliant |
| | Internal Revenue Service | Compliant |
| COGS | Hawaii Department of Commerce & Consumer Affairs | Exempt |
| LIR27 | Hawaii Department of Labor & Industrial Relations | Compliant |

Status Legend:

| Status | Description |
|---------------|---|
| Exempt | The entity is exempt from this requirement |
| Compliant | The entity is compliant with this requirement or the entity is in agreement with agency and actively working towards compliance |
| Pending | The entity is compliant with DLIR requirement |
| Submitted | The entity has applied for the certificate but it is awaiting approval |
| Not Compliant | The entity is not in compliance with the requirement and should contact the issuing agency for more information |

SB-172

Submitted on: 2/2/2021 9:34:00 AM

Testimony for WAM on 2/3/2021 10:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|--|---------------------------|---------------------------|
| Presley Wann | Testifying for Hui Maka'ainana O Makana | Support | No |

Comments:

Aloha to all,

We, on behalf of the non-profit Hui Maka'ainana O Makana in Ha'ena, Kaua'i, strongly urge support of HB172. We, especially no during this pandemic times , feel this bill would keep our local economy supported.

Mahalo Nui Loa, Presley Wann (currently President for the Hui Maka'ainana O Makana)

HUI MAKA'ĀINANA O MAKANA



The Hui Maka'ānana o Makana is a non-profit organization dedicated to perpetuating and teaching the skills, knowledge, and practices of our kūpuna (ancestors) through the interpretation, restoration, care, and protection of natural and cultural resources in within the Hā'ena State Park.

To: The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair, and
Members of the Senate Committee on Ways and Means

Date: Wednesday, February 3, 2021

Time: 10:00 a.m

From: Kirsten Hermstad, Executive Director
Hui Maka'ainana o Makana

Re: Testimony in Support of S.B. No. 172 RELATING TO GRANTS

I am writing today as the Executive Director of Hui Maka'ainana o Makana (HUI), in support of SB 172. The HUI is a non-profit organization with a curatorship agreement for the care of Ha'ena State Park.

While it is easy to understand the intent of the law – to exclude organizations outside of Hawai'i from participating in the Grant-in- Aid (GIA) process - I do not believe that the writers of the law intended to exclude treasured Hawai'i organizations like the National Tropical Botanical Garden (NTBG).

Ha'ena State Park and Limahuli Gardens (part of the NTBG) reside in the same ahupua'a and therefore, the Hui and NTBG work closely together on a daily basis to perpetuate and teach the skills, knowledge, and practices of our kupuna through the interpretation, restoration, care and protection of the natural and cultural resources of the entire ahupua'a. I do not think anyone would dispute the importance of the work performed by NTBG to our state, pacific region, and worldwide.

The Congressional Charter that resulted in the development of NTBG should be a point of pride for Hawai'i and should not hinder any organization, that contributes to the State in a similar fashion, from participating in the GIA process.

This amendment of HRS_0042F_0101 will allow organizations like NTBG who are truly operating for the good of Hawai'i, it's people, and our land, to qualify for participation in the GIA process. This can only be good for our place – Hawai'i and planet earth.

Mahalo for your service,

Kirsten Hermstad, Executive Director
Hui Maka'ainana o Makana

SB-172

Submitted on: 2/1/2021 11:05:36 AM

Testimony for WAM on 2/3/2021 10:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Dr. Jim Shon | Individual | Oppose | No |

Comments:

Chair, members of the committee. This bill looks and smells like a special interest bill designed to allow a grant to a specific organization. If it is introduced specifically as special interest legislation, it should identify the beneficiary, and also identify what other entities are likely to benefit.

Because of the current law, obviously the passage of this bill will facilitate the movement of limited grant funds from existing Hawaii based organization to an out of state entity. Already, Hawaii is unable to fill all the legitimate grant requirements.