

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
CARTY S. CHANG
Interim Chairperson**

**Before the House Committee on
JUDICIARY**

**Tuesday, February 17, 2015
2:00 P.M.
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 515, HOUSE DRAFT 1
RELATING TO REMNANTS**

House Bill 515, House Draft 1, proposes to further define what would constitute a "remnant" parcel of public land and further restrict the disposition of such remnants in section 171-52, Hawaii Revised Statutes (HRS). **The Department of Land and Natural Resources ("Department") opposes the bill.**

The Department respectfully requests that this bill be held because the current statute provides sufficient flexibility to allow all of the proposed restrictions to be taken into consideration by the Board of Land and Natural Resources ("Board"), and in fact such matters are considered by the Board when determining whether a parcel of land qualifies as a remnant and whether the parcel should be disposed of as a remnant. The Department will also seek out other government agencies that may be affected by the disposition of the remnant for comments, and all responses are provided to the Board to allow the Board to make an informed and responsible decision. While some of the proposed restrictions were removed in the House Draft 1 version, the bill would still drastically curtail the Board's authority to dispose of remnants to adjoining landowners who may need, for example, access to a landlocked parcel or a little more land area to subdivide their parcel.

We also point out that in subsection (a) of section 171-52, HRS, the proposed new paragraph (3) would require that the Attorney General admit to and provide evidence of significant and unavoidable risk of liability beyond that generally associated with undeveloped natural areas, which may subject the State to liability and damages for claims of injuries to people and property.

CARTY S. CHANG
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DANIEL S. QUINN
INTERIM FIRST DEPUTY

W. ROY HARDY
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS



HB515 HD1
RELATING TO REMNANTS
House Committee on Judiciary

February 17, 2015

2:00 p.m.

Conference Room 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB515 HD1. This measure restores transparency, accountability, and legislative oversight over the alienation of public lands, including “ceded” lands and public land trust lands, by clarifying which public lands qualify as “remnants” exempt from public auction and legislative approval requirements otherwise applicable to the sale of such lands.

Act 176, which settled a decade-long lawsuit brought by OHA over the State of Hawai‘i’s attempt to sell “ceded” lands,¹ was enacted to “establish a more comprehensive process for the sale of state-owned land, and to reserve a larger oversight role for the legislature to assure that key information about certain sales or exchanges of land is shared with the legislature.” In recognition of the finality and permanence of the sale of Hawai‘i’s most precious and limited resource, the Legislature established procedural mechanisms to ensure transparency and accountability in public land sales—namely, the prior approval by a super majority of the Hawai‘i State Legislature, “before most state-owned land [can] be sold[.]” Act 176 (Reg. Sess. 2009) (emphasis added). Additionally, a public auction process is currently required for the sale of most public lands.

The only exception to these procedural safeguards exists for those lands classified as “remnants,” which are arguably limited to formerly condemned lands that are no longer needed, or abandoned roads, ditches, or other similar rights-of-way. HRS § 171-52. In such circumstances, remnants must also be found unsuitable or undesirable for development. If the state determines a parcel of land to be a “remnant,” then it may sell the parcel without going through a public bidding process, and without a super majority approval of the Legislature.

Unfortunately, in certain cases, the state has used a selectively broad interpretation of the remnant definition to sell multiple parcels, including a five-acre parcel of ceded, public land trust lands, without public auction or legislative approval. This parcel of land included a culturally significant stream and waterfall in East Maui, and was not formerly condemned lands, nor an abandoned right-of-way. However, the state nevertheless

¹ On November 4, 1994, OHA filed a lawsuit, *OHA v. Hawaii Finance and Development Corporation* [later renamed *OHA v. Housing and Community Development Corporation of Hawai‘i (HCDCH)*], to seek a moratorium on the sale of ceded lands by the State of Hawai‘i in order to implement its policy to protect the ceded lands corpus until the unrelinquished claims of Native Hawaiians are resolved.

determined this parcel to be a remnant based solely on a finding that it was “unsuitable for development.” In a subsequent decision, a seven-acre parcel of non-ceded, non-public land trust, undeveloped lands was also approved for sale as a “remnant”; again, the only criterion applied was that this land was considered “unsuitable for development.” OHA expresses serious concern that the greater application of this broad interpretation of “remnants” may substantially undermine the Legislature’s desire to have a “larger oversight role” over public land sales, as envisioned by Act 176.

For example, similar applications of the “remnant” definition, should this trend continue, could allow a significant proportion of the state’s public lands to be classified and sold as “remnants,” due to their “unsuitability” for development. As illustrated in the aforementioned land sales, such a trend would undermine the procedural mechanisms used to safeguard our limited land assets, and open the door for our public lands base to be gradually diminished through sales without the opportunity for meaningful public scrutiny or financial accountability. Further remnant sales may also impact the state’s commitments to a reconciliation process with Native Hawaiians and the health and well-being of the Native Hawaiian people, which is intrinsically tied to their connection and attachment to the ‘āina.

By clarifying that remnants shall be either formerly condemned property, abandoned rights-of-way, or lands which give rise to a significant, unique, and unavoidable risk of liability, and by further prohibiting the sale, through the remnants exception, of lands which contain natural and cultural resources necessary for Native Hawaiian traditions, this bill restores meaning to the procedural laws that protect our public and ceded lands base. In addition, such provisions uphold the intent of Act 176, which recognizes the importance of the ceded lands to the Native Hawaiian people, respects the claims held by Native Hawaiians to their ancestral lands, and ensures the otherwise high burden of persuasion the Legislature has long required for the permanent alienation of our public lands.

Accordingly, OHA urges the Committee to **PASS** HB515 HD1. Mahalo nui for the opportunity to testify on this measure.