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GOVERNOR OF HAWAII



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

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

**Before the House Committee on
WATER AND LAND**

**Friday, February 6, 2015
9:00 A.M.
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 515
RELATING TO REMNANTS**

House Bill 515 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 opposes this bill because it would tie the hands of the Board of Land and Natural Resources ("Board") rather than allowing the Board to make an informed, balanced, and reasoned decision as provided by current law.**

Section 171-52, HRS, currently allows the Board to consider whether a parcel of land that is economically or physically undesirable for development or utilization should be disposed of as a remnant, and also provides a fair process for such disposition. The bill, however, proposes to mandate that a remnant must not serve any public purpose, the parcel contains no natural or cultural resources for native Hawaiian subsistence and practices, the cause of the uneconomic nature of the parcel is beyond the State's control, if there is risk of significant and unavoidable liability, the Department of the Attorney General must make that determination, and there must be substantial evidence in the record that supports a decision to dispose of the parcel. The current law allows the Board to consider such issues as well as any other relevant issues and concerns raised by members of the public, the Board members themselves, departmental staff, and anyone else providing testimony to the Board. The inflexible requirements of the bill would not allow the Board to consider all of the parcel's circumstances, all issues and concerns, and to arrive at a well-informed, well-considered, and well-reasoned decision that is possible under the existing provisions of section 171-52, HRS.

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

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AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS



HB515
RELATING TO REMNANTS
House Committee on Water and Land

February 6, 2015

9:00 a.m.

Conference Room 325

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment will recommend to the OHA Board of Trustees a position of **SUPPORT** for HB515. 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

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.

condemned lands, nor an abandoned right-of-way. However, the state nevertheless 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 explicitly describing “remnants” as lands which serve no public purpose for both present and future generations, which lack natural and cultural resources important to Native Hawaiian traditions, and which lack economic value and serve no public purpose, 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. Mahalo nui for the opportunity to testify on this measure.