

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

S.B. NO. 2566, RELATING TO THE HAWAIIAN HOMES COMMISSION.

BEFORE THE:

SENATE COMMITTEE ON HAWAIIAN AFFAIRS

DATE: Tuesday, February 1, 2022 **TIME:** 1:01 p.m.

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Craig Y. Iha, Deputy Attorney General

Chair Shimabukuro and Members of the Committee:

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

This bill creates six Hawaiian homes district councils corresponding to each Department of Hawaiian Home Lands (DHHL) district office. The bill also requires that when a vacancy arises on the Hawaiian Homes Commission, the Governor may only nominate a replacement from a list of three names submitted by the council corresponding to the geographic area associated with the vacant commission position.

The bill may conflict with article V, section 6, of the Hawai'i Constitution, which 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 government that is headed by a commission. See, section 26-17, Hawaii Revised Statutes. By limiting the choice of Hawaiian Homes Commission nominees to only those names provided by the district council, the bill restricts the Governor's authority to nominate and appoint the head of a state executive department.

Second, the bill may violate 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

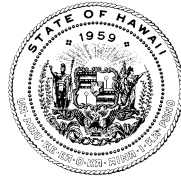
not so constitutionally granted, which from their essential nature, do not fall within its division of governmental functions, unless such powers are properly incidental to the performance by it of its own appropriate functions.” *Hawai’i Insurers Council v. Lingle*, 120 Hawai’i 51, 69-70 (2008) (citations and internal quotes omitted). This bill requires the Governor to select nominees from lists provided by the district council. The determination of candidates for nomination to the Hawaiian Homes Commission, which heads the Department of Hawaiian Home Lands, is an executive, not legislative, function. The bill therefore may violate the separation of powers doctrine by limiting the Governor’s constitutional authority to select the leadership of the Department of Hawaiian Home Lands.

To address this concern, we suggest amending the bill to change the district councils from the bodies that determine which candidates the Governor may consider when filling vacancies on the Hawaiian Homes Commission, to advisory bodies that may inform the Governor’s decision.

Thank you for the opportunity to provide these comments.

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

JOSH GREEN
LT. GOVERNOR
STATE OF HAWAII



WILLIAM J. AILA, JR.
CHAIRMAN
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879
HONOLULU, HAWAII 96805

**TESTIMONY OF WILLIAM J. AILA, JR, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEE ON HAWAIIAN AFFAIRS
HEARING ON FEBRUARY 1, 2022 AT 1:01PM VIA VIDEOCONFERENCE**

SB 2566 RELATING TO THE HAWAIIAN HOMES COMMISSION

February 1, 2022

Aloha Chair Shimabukuro, Vice Chair Keohokalole, and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) submits comments on this bill that (1) requires the Governor make nominations to fill vacancies on the Hawaiian Homes Commission in accordance with recommendations by representatives of Hawaiian homestead and beneficiary associations, (2) requires that the Governor make nominations to fill vacancies within sixty days, and (3) requires that eligible candidates have a working knowledge of the Hawaiian Homes Commission Act of 1920.

DHHL appreciates the motivation behind this bill, but is concerned that this bill would inappropriately require DHHL to determine eligible Hawaiian homestead or beneficiary associations and policies regarding the terms of district council appointments. These decisions are within the purview of each homestead or beneficiary community.

Similar to HRS §§17-3 and 17-4, this bill would require the Governor to make an appointment within sixty calendar days. However, both HRS §§17-3 and 17-4 allow the list of prospective appointees to be provided to the Governor within thirty days following the first day of vacancy. This bill would require the names to be submitted to the Governor within twenty-one calendar days of being notified of the vacancy. This shortened timeframe limits the amount of notice and opportunity to appropriately consider qualified candidates.

Finally, DHHL does not object to the requirement that eligible candidates for the Hawaiian Homes Commission have a working knowledge of the Hawaiian Homes Commission Act of 1920, as amended.

Thank you for your consideration of our testimony.

Pi'ihonua Hawaiian Homestead Community Association

Director: Poliahu Kalima-Motas
"Nurturing our Hawaiian Heritage"



As a current sitting officer of the Pi'ihonua Hawaiian Homestead Community Association located in Hilo, Hawaii, we urgently request your support for Senate Bill #2566 which will be introduced by our Senator Laura Acasio on Tuesday, February 2, 2022. She is advocating for the legislature to adopt rules that can allow a process by which a commissioner's vacant seat in the Hawaii's Department of Hawaiian Home Lands (DHHL) can be replaced in a fair and expeditious manner. Our last vacancy took over two years to fill, and many of the leadership and members of the East Hawaii district did not know the candidate until after he was selected. Several of us wrote letters of protest, but the governor still selected him, and the Senate approved him. However, after having a discussion with the new commissioner, we are optimistically supportive of this appointment by the governor.

Nonetheless, we should not have to wait over two years. We should be part of the process as to who represents us, the beneficiaries of the Trust. We therefore wholeheartedly Support Senate Bill 2566 which adopts the Democratic Party Rules that govern the replacement of a Representative or a Senator on the same urgency and selection process of candidates for the Governor to select from. What a wonderful concept that the Democratic Party of Hawaii adopted and should equally be applied to open seats on the DHHL commission council. Just a fair and equitable process that other member representatives in the State of Hawaii's legislature receives.

A hui hou,

Members of the Pi'ihonua Hawaiian Homestead Community Association (PHHCA)

President: Jordan "Kama" LeeLoy

Vice President: Ronald T. Kodani

Secretary: Kanoe Malani Leeloy

Treasurer: Doreen Stone Kodani


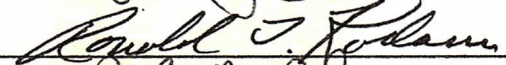
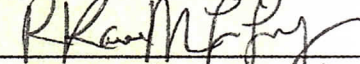
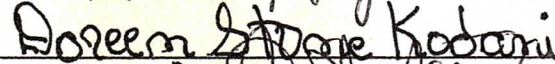


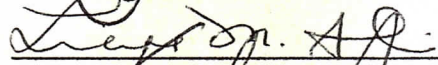
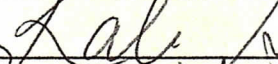
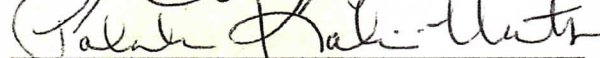
Director: Daniel Rhodes

Director: Cara Dudoit

Director: Lian Aki

Director: Kaleo Aki

Director: Poliahu Kalima-Motas

SB-2566

Submitted on: 1/29/2022 1:05:38 PM

Testimony for HWN on 2/1/2022 1:01:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Bridgit Bales	Individual	Support	No

Comments:

I strongly support this Bill.

SB-2566

Submitted on: 1/29/2022 1:52:34 PM

Testimony for HWN on 2/1/2022 1:01:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Namaka	Individual	Support	No

Comments:

Aloha Chair Shimabukuro Vice Chair Keohokalole and members of the Senate Committee on Hawaiian Affairs,

I support this bill that requires that the Governor make nominations to fill vacancies on the Hawaiian Homes Commission in accordance with recommendations by representatives of Hawaiian homestead and beneficiary associations. I am a beneficiary of the HHL Act. Mahalo nui!

SB-2566

Submitted on: 1/30/2022 8:24:58 AM

Testimony for HWN on 2/1/2022 1:01:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Nako'o Warrington	Individual	Support	No

Comments:

SUPPORT!

SB-2566

Submitted on: 1/30/2022 10:15:19 PM

Testimony for HWN on 2/1/2022 1:01:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Grace Bezilla	Individual	Support	No

Comments:

Kāko'o.

SB-2566

Submitted on: 1/31/2022 8:18:04 AM

Testimony for HWN on 2/1/2022 1:01:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Kimo Apaka	Individual	Support	No

Comments:

As a beneficiary and member of the Hawaiian Homes community, I support SB2566 because I believe there always needs to be genuine input from DHHL beneficiaries in regards to every matter concerning DHHL, but specifically, in this case, vacancy nominations made by the Governor. Mahalo.

SB-2566

Submitted on: 1/31/2022 12:07:30 PM

Testimony for HWN on 2/1/2022 1:01:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Kalaniakea Wilson	Individual	Support	No

Comments:

Aloha I'm a beneficiary waiting to die on the list with no home. 28,000 on the list on the land now! I support SB 2566. Stop the genocide of beneficiaries on the 100 year failed obligation in the State of Hawaii consitiution all legislators are in violation of the federal congressional act 1920 Hawaiian Homes commission act.

SB-2566

Submitted on: 1/31/2022 12:47:51 PM

Testimony for HWN on 2/1/2022 1:01:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
WALLACE A ISHIBASHI JR	Individual	Support	No

Comments:

i SUPPORT THE INTENT OF SB 2566

LATE

SB-2566

Submitted on: 1/31/2022 5:44:38 PM

Testimony for HWN on 2/1/2022 1:01:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Elizabeth Hansen	Individual	Support	No

Comments:

I am a registered voter in Hakalau HI 96710. Please support this bill. Mahalo