



HB1656/SB2125

Remnants Right of First Refusal

This bill grants OHA a right of first refusal to purchase “remnant” lands proposed for sale by the state, to address a loophole used to sell off public and “ceded” lands outside of the Act 176 process.

Hawai‘i’s public lands provide a critical foundation for the environmental, economic, cultural, and recreational needs and interests of our islands’ residents. Public lands also largely consist of “ceded” lands, acquired through the illegal overthrow of the Hawaiian Kingdom, to which Native Hawaiians have never relinquished their claims. In recognition of the importance of our public lands, their historic character, and to protect public lands from being sold without the most compelling justification, advance notice to OHA and a supermajority approval of the legislature are generally required prior to their sale (known as the “Act 176 process”).

An exception to the notice and legislative approval requirements for the sale of public lands does exist, for those lands classified as “remnants.” Although it is intended to be a narrow exception mainly applicable to formerly condemned lands or abandoned roads, ditches, or similar rights-of-way, the state has recently sold five acres of public, “ceded” lands in Hāna, Maui, including a stream and waterfall, as a “remnant”—for a mere \$5,000 an acre. Similarly, a seven acre parcel of public lands in Nu‘uanu was also sold as a “remnant,” without advance notice to OHA and without legislative approval. Continued misuse of the remnant exception for the sale of public lands may severely undermine if not dismantle existing protections of our public land base.

This measure provides a safeguard against the improper classification and sale of our public lands as “remnants,” by giving OHA the right to purchase remnant lands proposed for sale.

WHY A RIGHT OF FIRST REFUSAL? WHY NOT CHANGE THE DEFINITION OF REMNANTS?

In previous years, proposals to tighten up the definition of “remnants” failed to pass into law, due to the administration’s desire for flexibility in what lands it can sell without legislative approval. This measure does not diminish the state’s flexibility in classifying and selling land as “remnants,” but ensures that OHA will be able to thoroughly review the appropriateness of such sales. A right of first refusal also allows OHA to intervene and purchase remnant lands when their sale is disadvantageous to the state, or when they may hold particular cultural or other significance.

WHY OHA?

As a leading advocate for the protection of our public lands base, and as a quasi-independent, public agency entrusted with safeguarding the future assets of the Lāhui, OHA is a highly appropriate entity to review and, if necessary, directly intervene in the expedited sale of public and potentially “ceded” lands as “remnants.” Should the state decide to dispose of “ceded” or other public land as remnants, without the procedural safeguards of Act 176, it should at least give OHA the opportunity to purchase these lands on behalf of the Native Hawaiian people.

ARE THERE ANY FISCAL IMPLICATIONS OF THE BILL?

No, nor does this bill prohibit the state from classifying and selling as “remnants” lands it no longer wishes to maintain. It only provides that OHA be offered, for a reasonable time, the first opportunity to purchase lands the state wishes to sell as remnants.