



2011 OHA Legislative Package Proposal Summaries

OHA-1

Topic: General Fund Biennium Budget FY 2011-12/2012-13

Description: This bill requests general fund resources for OHA operations with matching funds provided out of OHA trust fund resources. The bill would also include a request for general funds for three budget provisos for social services, educational enrichment programs and legal services and representation. The Board of Trustees approved the Biennium Budget on September 2, 2010.

Justification: This request for general funding provides needed resources to OHA to fund its operations. It also reaffirms the state's commitment to address the needs of Native Hawaiians by appropriating general fund resources to fund OHA operations and programs. Request for each year of the biennium: \$2.47 million in general funds to be matched with \$5.81 million in trust funds.

OHA-2

Topic: Resolution of Past Due Revenues from the Public Land Trust Owed to OHA

Description: This bill provides a format for a possible OHA/State settlement proposal to resolve the past due revenue issue. The draft bill consists of background on the past due revenue issue, and blank sections that could contain the elements of a new OHA proposal or OHA/State settlement.

Justification: Despite OHA's best efforts, including a \$200 million settlement agreement with the Lingle Administration and numerous proposed bills over the years, OHA has not been able to obtain legislative resolution of the past due revenue issue. Although the Hawai'i Supreme Court said that the Legislature has responsibility for resolving the issue, it appears that no further action will occur unless OHA brings forth a new or renewed proposal. The \$200 million figure will need renewed discussion in light of the time that has passed since it was negotiated with the Lingle Administration and the election of Neil Abercrombie as Governor Elect of the State of Hawai'i.

OHA-3

Topic: Amendments to Laws Relating to the Sale of State-Controlled Land

Description: This bill amends Act 176, Session Laws of Hawaii 2009 (as amended) to require that legislative resolutions proposing the sale, gifting or exchange of state-controlled land include additional information such as whether the land was part of the public lands of the Hawaiian Kingdom or exchanged for such land, the specific location of the land, and size of the land. The draft bill also gives OHA more time to review the resolutions.

Justification: Act 176 allows state agencies to sell or gift public land, regardless of its ceded lands status, as long as the proposed sale is approved by two-thirds of both chambers of the Legislature. Act 176 was part of the settlement agreement that ended OHA's 15-year-old lawsuit that sought to prohibit the state from alienating ceded lands until the Native Hawaiian people's unrelinquished claims to those lands are resolved. Reflecting OHA's experience with the application of Act 176 during the 2010 legislative session, in which the Legislature approved numerous land sales, the proposed amendments are designed to enhance the tools available to both the Legislature and OHA for evaluating future land sale proposals. The proposed amendments would better enable OHA to assess the proposed sales and determine whether or not the lands were part of the public lands of the Kingdom of Hawai'i or not.

OHA-4

Topic: Cultural Impact Assessment Requirement

Description: This bill would amend Chapter 343, Hawaii Revised Statutes, to require that environmental assessments (EA) and environmental impact statements (EIS) include cultural impact assessments (CIA) that assess impacts on the Native Hawaiian culture. The bill also conditions the acceptance of an EIS or an EA by the appropriate agency on OHA's approval of a CIA.

Justification: While Chapter 343 requires that an EA and an EIS assess a project's cultural impacts, the statute does not provide specific requirements for such an assessment. As a result, CIAs often provide decision makers and the public with inadequate information on the impacts a project could have on cultural practices. The bill also provides OHA with approval authority over CIAs.

OHA-5

Topic: Disparate Treatment in the Criminal Justice System

Description: This bill would establish a task force that would specifically address the findings and recommendations of OHA's recent justice system study, entitled "The Disparate Treatment of Native Hawaiians in the Criminal Justice System." The proposed task force, called the Task Force to Reduce Contact with the Criminal Justice System, would be composed of the CEO of

OHA, the state Attorney General, the Administrator of the Hawaii State Judiciary's Adult Client Services Branch, the Director of the Department of Public Safety and a Circuit Court Judge appointed by the Chief Justice of the Hawaii Supreme Court. The inclusion of additional members to the task force is still under discussion. The bill requests a state general fund appropriation and attaches the task force administratively to OHA.

Justification: By including officials who can effect change, the task force proposed by this bill would be better positioned to implement the findings of OHA's justice system study and push for systemic changes that include fair treatment by the justice system.

OHA-6

Topic: Tuition Waivers for Native Hawaiian Students

Description: This bill provides for a full tuition waiver for Native Hawaiian students attending any of the campuses within the University of Hawai'i system.

Justification: The intent of the bill is to remove an economic barrier faced by many Native Hawaiian students. By eliminating the cost of tuition, the hope is that more Native Hawaiian students will be encouraged to enter post-secondary educational institutions and complete the requirements for higher education degrees.

OHA-7

Topic: Training for Officials with Public Trust Responsibilities to Native Hawaiians

Description: This bill would require all council, board, and commission members that have authority over trust assets for which Native Hawaiians are a beneficiary (public land trust, water) and/or an obligation to protect traditional and customary rights and related resources, to attend a training course on their obligations and responsibilities. OHA would facilitate developing the curriculum and conducting the training.

Justification: Council, board, and commission members are often responsible for making decisions that directly impact OHA's beneficiaries. Sometimes these decisions are not made with sufficient analysis on impacts to Native Hawaiian rights, particularly related to Native Hawaiian claims to the Public Land Trust, their priority rights to water, or their right to exercise their traditional and customary rights. The proposed training course will help to inform and educate these members on relevant Native Hawaiian rights.

OHA-8

Topic: Native Hawaiian Government Reorganization Act Implementation

Description: This resolution requests the state Legislative Reference Bureau to conduct a study to identify state laws that may need to be amended after the Native Hawaiian Government Reorganization Act (NHGRA) is enacted into law and upon federal recognition of the Native Hawaiian governing entity. It would request that the study be completed by 2012.

Justification: This resolution represents a proactive attempt to better inform the state and the Native Hawaiian community of the state laws that will be impacted by the enactment into law of NHGRA and upon federal recognition of the Native Hawaiian governing entity. A later study can be undertaken during the negotiation stage between the state and the Native Hawaiian governing entity.

OHA-9

Topic: State Historic Preservation Division's Review and Comment Authority Over State and County Permits

Description: This proposal ensures that all project permits go to the State Historic Preservation Division (SHPD) and would provide SHPD with the authority to determine which projects pose a high risk of historic site disturbance.

Justification: This proposal addresses a loophole in Chapter 6E, HRS, which allows state and county agencies other than SHPD to determine whether projects will impact historic properties and burial sites. If the agencies determine that no historic properties will be impacted by a project, SHPD, the state entity with historic preservation expertise, does not review the project. This loophole in the law was highlighted by the controversial Ke'eumoku Wal-Mart development. The City and County of Honolulu, on the erroneous belief that no historic sites were present on the Ke'eumoku Superblock, did not submit the permits to SHPD for review. More than 60 burial sites were discovered including a large unmarked smallpox cemetery. This amendment seeks to prevent another Ke'eumoku Wal-Mart situation by clarifying that all projects permits must be reviewed by SHPD before project commencement.