

Honolulu, Hawaii

FEB 29, 2008

RE: H.B. No. 266

H.D. 2

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

Sir:

Your Committees on Water, Land, Ocean Resources & Hawaiian Affairs and Judiciary and Finance, to which was referred H.B. No. 266, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO HAWAIIAN AFFAIRS,"

beg leave to report as follows:

The purpose of this bill is to most effectively and responsibly meet the State's constitutional obligations to native Hawaiians with regard to the benefits from the lands in the public trust referred to in Article XII, Sections 4 and 6, of the Hawaii Constitution (public trust lands). Among other things, this bill:

- (1) Conveys certain parcels of land in Kakaako Makai and Kalaeloa Makai on Oahu and on Hilo Banyan Drive on the island of Hawaii, and pays \$13,189,860 to the Office of Hawaiian Affairs (OHA) for the period from November 7, 1978, to July 1, 2008, as a result of a re-examination of the State's constitutional obligation to native Hawaiians;
- (2) Establishes a method for determining for each fiscal biennium, beginning in fiscal biennium 2009-2011, the amount of income and proceeds that OHA is to receive from the public trust lands;
- (3) Finds that the amount of income and proceeds OHA is to receive from the public trust lands for fiscal year



2008-2009 is \$15,100,000 and mandating the disbursement of the sum to OHA;

- (4) Authorizes the chairperson of OHA to appoint an additional member to the Hawaii Community Development Authority (HCDA); and
- (5) Exempts the Kakaako Makai lands conveyed to OHA from certain powers that HCDA has over those lands.

The Trust for Public Land, Association of Hawaiian Civic Clubs, Hawaiian Civic Club of Honolulu, Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO, Hui Malama Ola Na Oiwi, Historic Hawaii Foundation, Pauline Worsham Marketing, Manawalea Riding Center, Ohana Naluai, and numerous concerned individuals supported this bill. The Institute for Native Pacific Education and Culture, Native Hawaiian Hospitality Association, and numerous concerned individuals supported the intent of this measure. OHA, Hawaiian Political Action Council of Hawaii, and several concerned individuals supported this bill with amendments. Aloha for All and several concerned individuals opposed this measure. The Attorney General (AG), Hawaii Habitat for Humanity, Kanaka Council Moku O Keawe, and numerous concerned individuals provided comments.

The Admissions Act, besides bestowing statehood upon Hawaii and addressing other matters, transferred certain former Crown or Government lands, then held by the United States, to the State of Hawaii. Pursuant to Article XII, Section 4, of the Hawaii Constitution, a certain portion of these ceded lands are "held by the State as a public trust for native Hawaiian and the general public." On November 7, 1978, OHA was constitutionally established to, among other things, manage and administer all income and proceeds from that pro rata portion of the public trust lands. In Trustees of the Office of Hawaiian Affairs v. Yamasaki, 69 Haw. 154, 737 P.2d 446 (1987), the Hawaii Supreme Court concluded that the issue of how the apportionment is formulated is a political question for the Legislature to determine. The court further found in Office of Hawaiian Affairs v. State of Hawaii, 96 Haw. 388, 401, 31 P.3d 901, 914 (2001), that:

*The State's obligation to native Hawaiians is firmly established in our constitution. **How** the State satisfies that constitutional obligation requires policy decisions that are primarily within the authority and expertise of the legislative branch. As*



such, it is incumbent upon the legislature to enact legislation that gives effect to the right of native Hawaiians to benefit from the ceded lands trust.
(Emphasis in original)

Your Committees recognize that the Governor and OHA have reached a settlement agreement with respect to all issues relating to the amount to be paid to OHA from the income and proceeds from the public trust lands for the period between November 7, 1978, and July 1, 2008, and find that the lands and funds identified in the settlement agreement reflect a joint recommendation as to the policy the Legislature should adopt in fulfilling its constitutional obligation to native Hawaiians.

After giving careful consideration to the history of the public trust lands, recommendations of the Governor and OHA, and re-examining the State's constitutional obligations to native Hawaiians, including the payments made to OHA in the past, your Committees find that the substance of this bill most effectively and responsibly meets those constitutional obligations.

In re-examining the disbursements of income and proceeds from the public trust lands made to OHA in the past, your Committees find that the recommendations of the Governor and OHA are in order, that is, \$13,189,860 and the conveyance of certain lands, with improvements thereon, to OHA. Although title to the lands will be in OHA, the lands conveyed are still considered public lands held by a state agency. As such, the lands for the most part are treated as any other state lands, except for specific exemptions, including the prohibition of HCDA to condemn land and siting the proposed cultural public market on OHA's Kakaako Makai property.

Your Committees find that disbursements on a regular basis are critically important to the success of OHA's mission. This bill sets forth a procedure that provides information regarding receipts from the lands in the public trust referred to in Article XII, Section 4, of the Hawaii Constitution, to the Legislature on a schedule that allows the Legislature to determine the amount of income and proceeds OHA is to receive from the public trust lands on a biennium basis and disbursable quarterly. To ensure the timely determination and disbursement of the amount of income and proceeds OHA is to receive from the public trust lands, should the Legislature fail to enact legislation, this bill authorizes the Governor to make the determination and disbursement to OHA after considering certain factors.



After extensive discussion, the Governor and OHA found the amount of \$15,100,000 per fiscal year to be an appropriate amount of the income and proceeds OHA is to receive from the public trust lands for fiscal year 2008-2009. Your Committees find no compelling reasons to doubt the appropriateness of their conclusion. However, the amount of income and proceeds OHA is to receive from the public trust lands every fiscal biennium should not be fixed, but commensurate with the income and proceeds amounts, which may vary over time.

While a future legislature cannot be bound by the actions of a prior legislature, your Committees believe that the amount of the income and proceeds OHA is to receive from the public trust lands should never fall below the sum of \$15,100,000 per fiscal year. As an expression of your Committees' strong recommendation to establish a minimum amount to guide future legislatures and governors, your Committees have amended this bill by requiring that the amount of \$15,100,000 per fiscal year serve as the floor baseline for future legislatures and governors as the amount of income and proceeds OHA is to receive from the public trust lands is set.

Additionally, your Committees have also amended this bill by:

- (1) Rewording the purpose section to:
 - (A) Reflect that the Legislature recognizes that OHA and the Governor reached a settlement agreement;
 - (B) State that the Legislature finds that the land and funds identified reflect a joint recommendation as to the policy the Legislature should adopt; and
 - (C) Express legislative intent that this Act is an expression of legislative policy, not a settlement or contract;
- (2) Specifically requiring the Legislature to determine the appropriate dollar amount of income and proceeds OHA is to receive from the public trust pursuant to Article XII, Sections 4 and 6, of the Hawaii Constitution, every fiscal biennium;




- (3) Ensuring that OHA would receive an amount equal to the previous authorized disbursement in the event that neither the Legislature nor the Governor set the dollar amount of income and proceeds OHA is to receive from the public trust pursuant to Article XII, Sections 4 and 6, of the Hawaii Constitution;
- (4) Including the Highways Division of the Department of Transportation as one of the state agencies that is required to transfer to OHA a portion of the receipts collected from public trust lands;
- (5) Clarifying that OHA is to hold the property that is conveyed under this bill in trust pursuant to Article XII, Sections 4, 5, and 6, of the Hawaii Constitution;
- (6) Extending the requirement for the report from the Department of Land and Natural Resources (DLNR) regarding the receipts collected from lands in the public trust referred to in Article XII, Section 4, of the Hawaii Constitution, to 30 days before the convening of the 2011 Regular Session, and allowing DLNR to submit a similar report under Act 178, Session Laws of Hawaii 2006, prior to the 2009 and 2010 Regular Sessions;
- (7) Deleting from the scope of the DLNR report, information relating to the sale or exchange of public trust lands;
- (8) Specifically providing that the property conveyed by this bill does not include the minerals or surface or ground water rights the State retains in the property;
- (9) Specifically authorizing the AG to direct the execution and recording of instruments of conveyance for the lands conveyed to OHA under this bill;
- (10) Removing the reference to county legislative bodies from the provision regarding the limitation of power to enact laws that may affect the land conveyed to OHA under this measure, since the powers and authority of the counties are as provided by the Hawaii Constitution and law; and
- (11) Clarifying in the land transfer section of the bill that the section does not limit the power of the Legislature to enact any laws.



Your Committees have also made a technical amendment to the statutory section relating to which funds the Board of Trustees of OHA may be paid from, to conform to the statutory changes regarding the determination of the amount of income and proceeds OHA is to receive from the public trust lands made in this bill. Your Committees have also made other technical, nonsubstantive amendments for style, clarity, and consistency.

As affirmed by the records of votes of the members of your Committees on Water, Land, Ocean Resources & Hawaiian Affairs and Judiciary and Finance that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 266, H.D. 1, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 266, H.D. 2, and be placed on the calendar for Third Reading.

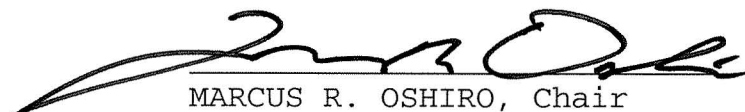
Respectfully submitted on
behalf of the members of the
Committees on Water, Land,
Ocean Resources & Hawaiian
Affairs and Judiciary and
Finance,



TOMMY WATERS, Chair



KEN ITO, Chair



MARCUS R. OSHIRO, Chair



State of Hawaii
House of Representatives
The Twenty-fourth Legislature

HSCR 874-08

Record of Votes of the Committee on Water, Land, Ocean Resources & Hawaiian Affairs

Bill/Resolution No.: HB 266 HD <i>[initials]</i>	Committee Referral: WLH/JUD/FIN	Date: 2/27/08		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
WLH Members	Ayes	Ayes (WR)	Nays	Excused
1. ITO, Ken (C)	/			
2. KARAMATSU, Jon Riki (VC)	/			
3. CARROLL, Mele	/			
4. MAGAOAY, Michael Y.	/			
5. MORITA, Hermina M.				/
6. SAGUM, Roland D., III	/			
7. SAIKI, Scott K.				/
8. THIELEN, Cynthia	/			
TOTAL (8)	6	0	0	2
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <div style="text-align: center; margin-left: 100px;">committee acronym(s)</div>				
Vice Chair's or designee's signature: <i>[Signature: Jon Riki Karamatsu]</i>				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office				

Record of Votes of the Committee on Finance

Bill/Resolution No.: HB 266 HD1	Committee Referral: FIN	Date: 2-27-2008		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
FIN Members	Ayes	Ayes (WR)	Nays	Excused
1. OSHIRO, Marcus R. (C)	✓			
2. LEE, Marilyn B. (VC)	✓			
3. AWANA, Karen Leinani	✓			
4. BELATTI, Della Au	✓			
5. BROWER, Tom	✓			
6. CARROLL, Mele	✓			
7. HANOHANO, Faye P.	✓			
8. HAR, Sharon E.				✓
9. KARAMATSU, Jon Riki	✓			
10. MAGAOAY, Michael Y.	✓			
11. MANAHAN, Joey	✓			
12. MIZUNO, John	✓			
13. NAKASONE, Bob				✓
14. RHOADS, Karl	.	✓		
15. SAGUM, Roland D., III	✓			
16. TOKIOKA, James Kunane	✓			
17. MEYER, Colleen Rose				✓
18. PINE, Kymberly Marcos				✓
19. WARD, Gene, Ph.D.	✓			
TOTAL (19)	14	1	0	4
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. committee acronym(s)				
Vice Chair's or designee's signature: <u>Marilyn B. Lee</u>				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office				