

**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008**

ON THE FOLLOWING MEASURE:

S.C.R. NO. 138, PROPOSED S.D. 1, REQUESTING A FINANCIAL AND MANAGEMENT
AUDIT OF THE OFFICE OF HAWAIIAN AFFAIRS.

BEFORE THE:

SENATE COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS

DATE: Thursday, March 27, 2008 **TIME:** 2:45 PM

LOCATION: State Capitol, Room 224
Deliver to: Committee Clerk, Room 218, 1 copy

LATE

TESTIFIER(S): Mark J. Bennett, Attorney General

Chair Tokuda and Members of the Committee:

The Department of the Attorney General believes that many of the facts set forth in the WHEREAS clauses of this proposed Resolution, and thus the factual predicates for this proposed Resolution, are demonstrably false.

The Third WHEREAS clause states: "WHEREAS, prior to submitting the legislation, neither the Governor nor the Office of Hawaiian Affairs was forthcoming with any Public Land Trust settlement details or if in fact any negotiations were being conducted at all" This false WHEREAS clause wholly ignores and disregards the history of the last five years.

In 2003, at the joint request of OHA and the Governor, the Legislature passed Act 34 of 2003, which appropriated funds to OHA that:

represent twenty per cent of the receipts for the use of lands in the public land trust that were not transferred to the office but deposited instead into the various funds after the Hawaii Supreme Court decided *OHA v. State*, 96 Haw. 388 (2001), and state agencies were directed to discontinue transferring twenty per cent of receipts from the public land trust lands to the office pursuant to section 10-

13.5, Hawaii Revised Statutes, as enacted by Act 273, Session Laws of Hawaii 1980.

Testimony to the Legislature in 2003 made clear that negotiations were needed to try to resolve the then 25-year-old disputes regarding ceded lands payments to OHA.

In 2004, both houses of the Legislature passed H.B. 295 to establish a "Legislative Task Force to be known as the Public Lands Resolution Task Force." Although conferees were appointed, the bill never passed. H.B. 295, S.D. 2, noted:

While there is a compelling need to vigorously proceed towards permanent resolution of this long-standing, complex, and often controversial issue, the legislature finds that with back and interim payments in place, a resolution need not and should not be rendered in this legislative session, even if the perfect answer was in hand. Particularly true in this situation, the legislature finds that the process of arriving at a solution is more important than the solution itself. . . .

Therefore, the legislature, with sole authority to enact laws and with the responsibility as mandated constitutionally, statutorily, and by the state supreme court to resolve this matter, shall reach out into the Hawaiian communities on all islands to explain and invite participation on the breadth of this issue, including a historical perspective, provisions of the Admission Act, the State Constitution, and applicable statutes, enacted legislation, payments rendered, litigation, the results of such actions, current factors being addressed, and the options for consideration towards permanent resolution by way of community forums.

The sentiment may have been noble, but the Legislature did not act upon it, nor move forward. With regard to negotiations, the Committee Report for H.B. 295, S.D. 2, noted:

Your Committee finds that negotiations between the State and the Office of Hawaiian Affairs have long sought to resolve the Office of Hawaiian Affairs' entitlement to income from the public land trust established in section 5(f) of the Admission Act.

As noted, the bill died, and the Legislature established no such "Legislative Task Force."

Meanwhile, negotiations between OHA and the State continued. In June 2005, OHA and the State offered to provide full briefings on the status of the negotiations to the Legislature. The Legislature requested such briefings, and on June 29, 2005 and June 30, 2005, OHA and the Attorney General did provide such briefings to legislative leaders and legislators of both houses. Many questions were asked by legislators, and many answers were given by OHA and the Attorney General.

In 2006, because negotiations between OHA and the State had significantly progressed, OHA and the State jointly offered a second interim measure to the Legislature, which the Legislature adopted as Act 178, Session Laws of Hawaii 2006. During testimony on this matter, and in other written and oral communications with the Legislature and legislators, OHA and the State made clear *again* that negotiations had been ongoing for some time, and that if what became Act 178 was enacted, the goal of the next round of negotiations would be to achieve a comprehensive resolution of the issues regarding the share of income and proceeds from the ceded lands to be paid to OHA, dating from 1978. And legislators, at the hearings and in private, encouraged the negotiations.

In 2007, there were further briefings to legislative leaders and legislators regarding the negotiations. And resolutions were introduced in the Legislature to encourage negotiations and a resolution. For example, S.C.R. 152/S.R.

105: "Encouraging the Office of Hawaiian Affairs and the Executive Branch to negotiate a settlement regarding the income and proceeds from the public land trust."

The Attorney General's written testimony before the Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs on these resolutions stated:

For more than two years, the Attorney General and other members of the Governor's Cabinet have met with trustees of the Office of Hawaiian Affairs (OHA) designated to negotiate on behalf of the Board of Trustees, to outline proposals each side has brought to the table, to resolve the issues about OHA's share of the income and proceeds from the ceded lands that are still outstanding.

The Attorney General remains optimistic of achieving a negotiated settlement with OHA, and welcomes the structure and support these resolutions provide for the on-going effort.

And Standing Committee Report 1388 with regard to S.C.R. 152, adopted by the Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs with the "Aye" votes of Senators Kokubun, Tokuda, Hee, and Slom (Exhibit 1 attached hereto) states:

The members of the Executive Branch and the Office of Hawaiian Affairs have regularly continued negotiations for the purposes of developing a permanent solution for implementing the requirements of article XII, section 6 of the State Constitution, and settling all claims to income and proceeds from the public land trust. This measure encourages the continuance of further discussion on these matters so that a settlement can finally be reached after years of controversy and litigation.

The Office of Hawaiian Affairs and the Department of the Attorney General indicated to your Committee that they are confident

that a settlement will be reached in the near future.

The Resolution, which moved no further, encouraged the parties to "continue their negotiations and to try to agree upon a proposal to settle all outstanding differences regarding claims of the Office of Hawaiian Affairs to income and proceeds from the public land trust."

Thus, the premise of the instant 2008 Resolution - S.C.R. 138, proposed S.D. 1 - that the Legislature has been kept in the dark, is quite simply, clearly and demonstrably false.

The fourth WHEREAS clause of the instant proposed Resolution states:

WHEREAS, during the 2008 Regular Session, the Legislature was put in the awkward position of considering whether to accept and enact the settlement proposal without any forewarning or prior information being provided by the Office of Hawaiian Affairs or the Governor to the Legislature, the beneficiaries of the Office of Hawaiian Affairs, or the general public;

This clause is similarly clearly untrue, as the above factual recital demonstrates. In a large sense, the "facts" have been public for almost thirty years. But putting that aside, the Legislature and legislators have regularly been briefed as to negotiations. At no point did the Legislature object to the process - indeed they encouraged it - nor ask for a seat at the negotiating table. Moreover, Exhibit 1, the 2007 Senate Committee Report states: "[Y]our Committee recognizes the confidential nature of the ongoing negotiations"

And as the Legislature itself has recognized, and as is undeniable, the Legislature has always been free to exercise what is the Legislature's constitutional responsibility to resolve this issue. Indeed, the proposition that after thirty years of controversy, with all of the material financial facts

being matters of public record, the Senate was simply unable to resolve this issue in one session (when it resolves the budget every single year) is just unfathomable. But if the Senate needed more information, it was free to request it, as it routinely does on many measures before it each year. It did not do so.

The proposed Resolution states that it is these false factual premises that "have led the Legislature to question whether the Office of Hawaiian Affairs is adequately managing its affairs and its financial resources" This is a complete *non sequitur* to begin with, but even were it not, as noted, the factual premises on which the proposed Resolution is based are demonstrably false.

We believe that the people of Hawaii would be far better served by the Senate acting on the proposed settlement in 2008, than by proceeding with this Resolution.

Honolulu, Hawaii

MAR 30 2007

RE: S.C.R. No. 152

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Madam:

Your Committee on Water, Land, Agriculture, and Hawaiian Affairs, to which was referred S.C.R. No. 152 entitled:

"SENATE CONCURRENT RESOLUTION ENCOURAGING THE OFFICE OF HAWAIIAN AFFAIRS AND THE EXECUTIVE BRANCH TO NEGOTIATE A SETTLEMENT REGARDING THE INCOME AND PROCEEDS FROM THE PUBLIC LAND TRUST,"

begs leave to report as follows:

The purpose of this measure is to encourage the Office of Hawaiian Affairs and the Executive Branch to negotiate a settlement of all outstanding claims regarding income and proceeds from the public land trust.

Specifically, this measure:

- (1) Encourages the Office of Hawaiian Affairs and the Executive Branch to continue their negotiations to develop a settlement of all outstanding claims regarding income and proceeds from the public land trust; and
- (2) Requests that upon reaching a settlement, the Office of Hawaiian Affairs and the Executive Branch include in the settlement report:
 - (A) The legal foundation for the State's obligation to allocate a pro rata portion of the income and proceeds from the public land trust to the Office of Hawaiian Affairs;



- (B) A narrative history and summarized chronology of the efforts to implement and satisfy this obligation; and
 - (C) The proposed key elements of the settlement; and
- submit the report to the Legislature prior to the 2008 Regular Session.

Testimony in support of this measure was submitted by the Department of the Attorney General and the Office of Hawaiian Affairs.

Under article XII, section 6 of the State Constitution, the Board of Trustees of the Office of Hawaiian Affairs is required to manage and administer the income and proceeds from a pro rata portion of the public land trust, which contains certain ceded lands returned to Hawaii pursuant to the Admissions Act. For many years, determining the pro rata share of the income and proceeds has been the subject of debate, controversy, legislation, and litigation.

Act 178, Session Laws of Hawaii 2006, was a significant step forward in resolving the Office of Hawaiian Affairs' claims to the income and proceeds of the public land trust. Act 178 established a pro rata portion of the public land trust to the Office of Hawaiian Affairs at \$15,100,000 annually beginning with fiscal year 2005-2006, until further action is taken by the Legislature, and appropriated the sum of \$17,500,000 to the Office of Hawaiian Affairs for amounts received from the use of public trust lands that the Legislature determined were underpaid between July 1, 2001, and June 30, 2005.

The members of the Executive Branch and the Office of Hawaiian Affairs have regularly continued negotiations for the purposes of developing a permanent solution for implementing the requirements of article XII, section 6 of the State Constitution, and settling all claims to income and proceeds from the public land trust. This measure encourages the continuance of further discussion on these matters so that a settlement can finally be reached after years of controversy and litigation.

The Office of Hawaiian Affairs and the Department of the Attorney General indicated to your Committee that they are confident that a settlement will be reached in the near future.



Although your Committee recognizes the confidential nature of the ongoing negotiations, it encourages the Office of Hawaiian Affairs to brief the Senate President and the Speaker of the House of Representatives if any potential settlements are reached so that appropriate plans can be made for state budgetary purposes for the next fiscal year.

As affirmed by the record of votes of the members of your Committee on Water, Land, Agriculture, and Hawaiian Affairs that is attached to this report, your Committee concurs with the intent and purpose of S.C.R. No. 152 and recommends that it be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Water, Land,
Agriculture, and Hawaiian
Affairs,


RUSSELL S. KOKUBUN, Chair



The Senate
 Twenty-Fourth Legislature
 State of Hawaii

Record of Votes
Committee on Water, Land, Agriculture and Hawaiian Affairs
WAH

Bill / Resolution No.:* <i>SCR 152</i>	Committee Referral: <i>WAH, WAM</i>	Date: <i>3/28/07</i>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input checked="" type="checkbox"/> Pass, unamended 2312 <input type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
KOKUBUN, Russell S. (C)	<i>X</i>			
TOKUDA, Jill N. (VC)	<i>X</i>			
FUKUNAGA, Carol				<i>X</i>
HEE, Clayton	<i>X</i>			
SLOM, Sam	<i>X</i>			
TOTAL	<i>4</i>	<i>0</i>	<i>0</i>	<i>1</i>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <div style="text-align:center;"><i>[Signature]</i></div>				
Distribution: Original Yellow Pink File with Committee Report Clerk's Office Drafting Agency				

*Only one measure per Record of Votes

LATE

TESTIMONY of M. Kammy Purdy
Ahupua`a o Molokai
The Sovereign Councils of Hawaiian Homelands Assembly
Ho`olehua Homestead Agriculture Association

SCR 138 SD1
Thursday, March 27, 2008

DISAPPROVING THE SALARY INCREASES RECOMMENDED BY THE SALARY COMMISSION
FOR THE TRUSTEES OF THE OFFICE OF HAWAIIAN AFFAIRS.
Audit of the Office of Hawaiian Affairs

Aloha Chair Jill Tokuda and Committee AHW, WAM

Under my leadership of the Ahupua`a o Moloka`i; the union of five Molokai homestead association, we support SCR 138 SD1. An OHA Audit should be performed before any salary increase is approved. On Moloka`i we question the practices of our Molokai Trustee Colette Machado. She has funded \$100K for the Molokai Land Trust of which she is associated. She has attended an OHA grant workshop where she had expressed to all that attended that she was going to approve grant funds for her preferred projects. An OHA audit will bring to light all of the discrepancies and mismanagement of our beneficiary trust that has been used to fund the trustee's special interest.

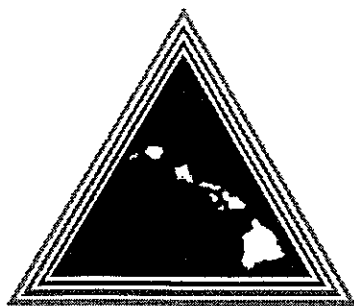
Humbly submitted by Kammy Purdy
President of the Ahupua`a o Moloka`i (represents 5 Moloka`i homestead associations)
Executive Secretary and Mokuuni President for the SCHHA
Treasurer of the Ho`olehua Homestead Agriculture Assn.

March 27, 2008

**SCHHA Testimony and Position on SCR 138 SD1
OHA Financial and Management Audit**

**Senate Hearing – March 27, 2008
2:45 pm, Room 224, State Capitol**

Submitted by: Kamaki Kanahale, SCHHA Chair



**Hawaiian Homelands
Assembly**

89-188 Farrington Highway
Wai'anae, Hawai'i 96792
Phone & Fax: (808) 696-2955

Kamaki Kanahale
Chair
O'ahu

Leah K. Pereira
Vice-Chair
Kaua'i

M. Kammy Purdy
Secretary
Moloka'i

M. Kanani Kapuniai
Treasurer
Hawai'i

Rev. N. Tasha Kama
Executive Officer
Maui

G. Pikake Pelekai
Executive Director

The Sovereign Councils of the Hawaiian Homelands Assembly (SCHHA), formerly known as the State Council of Hawaiian Homestead Associations was founded more than 20 years ago for the specific purpose of uniting homestead communities and advocating for the beneficiaries of the Hawaiian Homes Commission Act of 1920. We represent over 20 community homestead associations across the state. The SCHHA provides the following comments on the Senate Resolution:

We support the content of this resolution – it is always important to conduct audits of public trusts, a crucial approach to ensuring that public funds and fiduciary duties are upheld.

We also request to receive the most basic information necessary to evaluate the recent settlement agreement between Governor Lingle and the State Office of Hawaiian Affairs. It is impossible to prudently evaluate the sensibility of the terms of the agreement without basic information, including the total sum of payments made to OHA since 1978, and the total revenues generated by the Ceded Lands in the Public Land Trust.

Attached is a straightforward request for the proper information needed for the Legislature and the beneficiaries of the Public Land Trust to assess the adequacy and fairness of the settlement agreement.

Mahalo for the opportunity to express our support for a resolution that requests relevant and proper information on the fiscal and management functions of a public trust and state agency.



Sovereign Councils of the Hawaiian Homeland Assembly

89-188 Farrington Highway

Wai'anae, Hawai'i 96792

Phone & Fax: (808) 696-2955

Formerly the State Council of Hawaiian of Homestead Associations

Information Request & Beneficiary Consultation OHA/Lingle Settlement Agreement

Information Request for Due Diligence

The content of the OHA/Lingle Settlement consists of \$200 million (\$13 million in cash and \$187 million in land) in payment of ceded land revenues due from 1978-2008, a period of 30 years. It also establishes an annual payment minimum of \$15.1 million beginning in 2009. Very basic information is needed to review these settlement terms in the proper context.

What amounts are due over 30 years based on ceded land revenues

– What amounts have been paid to OHA over 30 years

= Starting point of settlement amount for the past 30 years

This basic data will provide context from which the Legislature and the beneficiaries of the Public Land Trust can evaluate and perform even a cursory due diligence review. While every settlement is the result of negotiation, the result of numerous factors that may dictate compromise, the following information is hereby requested and prudent to receive:

1) Basis of 30 Year Settlement Amount. A clear declaration of how the \$200 million dollar amount was determined including whether revenues considered included disputed and undisputed income sources.

- a. Provide a listing of all revenue generating ceded lands with the respective annual revenue amounts associated with each, regardless of whether these parcels were considered in the calculation of the \$200 million and \$15.1 million determinations;
- b. Indicate on the listing above, those revenue generating ceded lands where the parties do not dispute inclusion for the purposes of calculating revenues due to OHA.
- c. Likewise, indicate on the listing above, those revenue generating ceded lands where the parties dispute inclusion for the purposes of calculating revenues due to OHA and why.
- d. Provide a breakdown of the total amount paid to OHA since 1978 through 2008 by year.

2) Basis of Lands In Lieu. A clear declaration of how \$187 million of the total \$200 million was determined to be provided in lieu of cash.

- a. Provide a listing of lands that were eligible to select from and applied toward any “in lieu of cash payment”;
- b. Provide a listing of the parcels included in the agreement, valuation basis used, confirmation of whether the parcel is part of the ceded lands inventory, and the reason the parcel was selected over cash.

3) Basis of Annual Payments Going Forward. A clear declaration of how the annual minimum payment of \$15.1 million was determined.

- a. Provide the calculations or the rationale used to determine the \$15.1 million payment;

4) Waiver of Rights. A clear declaration of what rights are being waived.

- a. Provide a listing of rights waived, including clear explanations on what the waiver precludes and who is precluded;
- b. With specificity, indicate if the waiver of rights include the right of disclosure articulated in *OHA v. State*, 110 Haw. 338, 354-355 wherein the court stated:

The common law of trusts also identifies two instances where a trustee is under a "duty to inform." First, a fiduciary has "a duty to give beneficiaries upon request 'complete and accurate information as to the nature and amount of trust property.'" *Faircloth v. Lundy Packing Co.*, 91 F.3d 648, 656 (4th Cir. 1996). Second, in limited circumstances, a trustee is required to provide information to the beneficiary even when there has been no specific request:

Ordinarily the trustee is not under a duty to the beneficiary to furnish information to him in the absence of a request for such information . . . [However,] he is under a duty to communicate to the beneficiary material facts affecting the interest of the beneficiary which he knows the beneficiary does not know and which the beneficiary needs to know for his protection [in dealing with a third person with respect to his interest.]

In a previous complaint by OHA against the state, filed by **Attorney William Meheula and Attorney Robert Klein**, the plaintiffs alleged that the State violated, inter alia, the duty of impartiality and the duty to inform them of its decisions regarding actions in response to the Federal government's position on its grant conditions. They further alleged that, due to the State's conduct, the trust beneficiaries, represented by the plaintiffs, lost the right to receive any future income from airport revenues for the use of ceded lands under the Admission Act, the Hawai'i State Constitution, HRS Chapter 10, and Act 304.

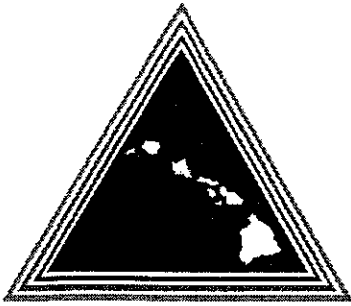
The judge ruled that pursuant to HRS §§ 10-13.5 and -16, OHA may bring suit in its corporate name, act as trustee in carrying out its obligations, and serve as a receptacle for the public lands proceeds under the public trust. Therefore, the plaintiffs are entitled to bring a claim for breach of the public lands trust and states a proper claim upon which relief could, under the proper circumstances, be granted. ...*Office of Hawaiian Affairs v. State*, 110 Haw. at 355-56

Beneficiary Consultation

The SCHHA requests that the State and OHA conduct meaningful consultation that includes the above information with native Hawaiian beneficiaries as defined under 5(f) of the 1959 Hawaii Admissions Act, as well as with the Hawaiian Homes Commission as trustee for beneficiaries defined under the Hawaiian Homes Commission Act.

Furthermore, the SCHHA requests the information identified above to evaluate the most basic terms of the settlement agreement and to conduct consultation and a prudent review with our members and communities.

**Sovereign Councils
of the**



**Hawaiian Homelands
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M. Kanani Kapuniai
Treasurer
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G. Pikake Pelekai
Executive Director

LATE

March 27, 2008

**SCHHA Testimony and Position on SCR 1 SD1
OHA Financial and Management Audit**

**Senate Hearing – March 27, 2008
2:45 pm, Room 224, State Capitol**

Submitted by G. Pikake Pelekai, SCHHA Executive Director

The Senate Committee on Agriculture and Hawaiian Affairs deserves applause for conducting this hearing SCR138 SD1 requesting a financial and management audit of the Office of Hawaiian Affairs. The requested audit is about trust accountability and transparency owed to the native beneficiaries and the community-at-large.

OHA Trustees and Administration have a fiduciary responsibility and obligation to act exclusively in the interest of native beneficiaries. The request of a financial and management audit of the Office of Hawaiian Affairs will provide native beneficiaries with an open and honest "report card," pertaining to the trust derived from the public land trust. Therefore, I submit my testimony in support of SCR138 SD1.

Mahalo for the opportunity to express our support for a resolution that requests relevant and proper information on the fiscal and management functions of a public trust and state agency.

HPACH
919 4th Street
Pearl City, Hawaii 96782

LATE

March 27, 2008

Senator Jill No Tokuda, Chair
Senator J. Kalani English, Vice Chair
And Committee Members On Agriculture And Hawaiian Affairs
The Senate, The Twenty-Fourth Legislature
Regular Session of 2008, State of Hawaii

Subject: SCR 138 SD1 Requesting A Financial And Management Audit of the
Office Of Hawaiian Affairs, "SUPPORT"

ALOHA Kakou,

My name is Richard Pomaikaiokalani Kinney. As Sovereign of the
Hawaiian Political Action Council of Hawaii, I strongly "SUPPORT" the intent
and passage of SCR 138 SD1.

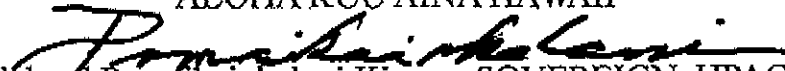
The recent signed "Settlement Agreement" by the Governor and the Office
of Hawaiians Affairs has raised many questions within Native Hawaiian
community. Resulting in much distrust in the administration of the Office of
Hawaiian Affairs among the OHA Beneficiaries and members of the general
public community.

In the past I have spend about 20 years of life attending many of the
meetings of OHA. Also testifying at many public hearings at the legislature on
the concerns of OHA.

I believe that it is important that a financial and management audit of
OHA is needed at this time. After attending many of the community meetings on
the Senate and House Bills on the OHA Settlement and testifying on both of the
OHA Settlement Bills, I find too many questions on the OHA Settlement that
needs to answered.

Once more HPACH strongly "SUPPORT" the intent and passage of
SCR 138 SD 1. Mahalo nui for the opportunity to present my testimony on this
very important Senate Resolution.

ALOHA KUU AINA HAWAII


Richard Pomaikaiokalani Kinney, SOVEREIGN, HPACH
Email: HIAHAWAII@aol.com

Senator Jill Tokuda, Chair
Senator Kalani English, V-Chair
Committee on Agriculture and Hawaiian Affairs
March 27, 2008
Rm. 224
2:45pm

LATE

TESTIMONY IN SUPPORT: SCR 138, SD 1 Requesting a Financial and
Management Audit of the Office of Hawaiian Affairs.

Aloha kuaa,

I am a native Hawaiian resident of Molokai who has worked in a professional and private capacity with partners in community, government and private non-profits to build community capacity and improve the lives of our families, including but not limited to the Native Hawaiian families of Molokai, for over 30 years.

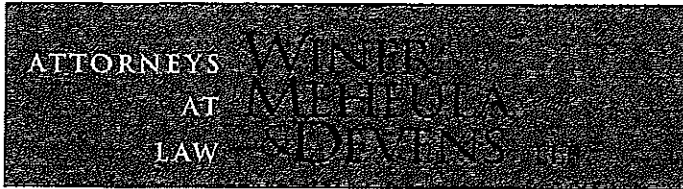
I believe an audit of the Office of Hawaiian Affairs is necessary, and may provide insight into what some members of our community perceive as inappropriate use of public funds and political authority, in part related to discretionary grant making. I have personally been contacted by OHA staff on two occasions, requesting clarification on a very large (in excess of \$140,000.00) grant which was approved "somchow" without basic information such as where and how and benefits to others being provided. This put myself and other community members in a very uncomfortable position to either support a grant without knowing any details, or speak against it and appear to be non-supportive of a group of our friends and colleagues. More importantly, the OHA staff who called seemed genuinely concerned that things were routinely being done improperly, but they were too far down on the food-chain to say anything. Colleagues report there is an air of tension and secrecy at OHA that does not seem supportive of trust or leadership or pono.

Besides financial irresponsibility, there is unfortunately a general perception that personal gain, favoritism and outright fraud have replaced leadership, collaboration and honesty within OHA. The Office of Hawaiian Affairs was conceived to be a temporary measure in the eventual establishment of a separate Hawaiian government managing our own properties, assets and affairs. Perhaps this audit will show us how OHA is moving towards accomplishing that goal, or if they have lost sight entirely of their primary purpose. At the very least, we would be able to determine as beneficiaries who at OHA is trust-worthy.

Mahalo,



K. Mahealani Davis
P.O.Box 350
Kaunakakai HI 96748



LATE
A PARTNERSHIP INCLUDING LAW CORPORATIONS
ANDREW S. WINER* WILLIAM K. MEHEULA* VLADIMIR P. DEVENS

**SCR 138, Proposed SD1, REQUESTING A FINANCIAL AND MANAGEMENT AUDIT
OF THE OFFICE OF HAWAIIAN AFFAIRS
Senate Committee on Agriculture and Hawaiian Affairs**

Date: March 27, 2008 Time: 2:45 pm Room: 224

Aloha Chair Tokuda, Vice Chair English, and Members. I am Bill Meheula and I represent OHA in its current efforts to settle disputes regarding OHA’s constitutional entitlement to a pro rata share of the income and proceeds from the public land trust. I submit this written testimony in opposition to SCR 138, Proposed SD1.

After hearing five hours of testimony submitted to the three Senate committees that rejected HB265HD2 on March 17, 2008, I submitted the following op ed letter to the Honolulu Advertiser that ran on March 21, 2008:

HOMESTEADERS SHOULD TAKE BATTLE ELSEWHERE

The recent opposition to the \$200 million ceded lands settlement came from some Hawaiian homesteader groups.

These 50 percenters (Hawaiians with a 50 percent or more blood quantum) object to the settlement because they believe the revenues that the Office of Hawaiian Affairs receives from the public land trust should be spent exclusively on them.

They want a commitment that 100 percent of the \$200 million will be spent on them. They apparently are willing to stop the settlement to make their point.

However, this settlement is not about whether the 50 percenters are exclusively entitled to OHA's public land trust revenues. That issue is being litigated in an ongoing lawsuit, Day v. Apoliona, that I am not involved in. The settlement documents are completely neutral on this issue in the sense they do not change OHA's constitutional obligation to the 50 percenters. Therefore, if the homesteaders win the Day case, OHA may be obligated to spend the settlement proceeds on the 50 percenters.

All nine OHA trustees, the Lingle administration and all but two House members have supported this settlement.

A recent Ward Research poll shows that 68 percent of Hawai'i residents and 72 percent of Hawaiians support legislative approval of the settlement.



Moreover, until the homesteaders voiced their opposition on Monday, there was very little opposition to the settlement and that opposition came primarily from those who generally oppose all Native Hawaiian benefits and those who believe the United States is illegally occupying Hawai'i.

I urge the homesteaders to take their battle elsewhere, and I urge the Senate to reconsider the merits of the settlement.

William Meheula
OHA settlement lawyer

SCR 138, Proposed SD1 seeks to give the Sovereign Council of Hawaiian Homestead Associations, Kamaki Kanahale, Robin Danner and Mike Kahikina (collectively "*Advocates for Use of Revenues only on 50 Percenters*") what they could not achieve through the OHA trustee election process and through the legal process. They want to control the settlement process and they want all of OHA's public land trust revenues to be used exclusively on 50 percenters. They should try again to prevail at the polls for OHA trustee and they should continue to try to win *Day v. Apoliona* or similar lawsuit.

But there is a much more significant political issue at stake here: *Advocates for Use of Revenues only on 50 Percenters* want membership in any post-Akaka Bill Native Hawaiian Governing Entity to be limited to 50 Percenters. This position is not supported by the desires of the majority of State's 200,000 Native Hawaiians and is contrary to the express provisions of the Apology Resolution and the Akaka Bill.

Those legislators who support SCR 138, Proposed SD1 as a means to assist their homesteader constituents should seriously consider their obligation to all Native Hawaiians.

The authors of SCR 138, Proposed SD1 contend that the proposed settlement is flawed because there was no pre-agreement consultation with the Legislature and OHA beneficiaries. The Attorney General and I concluded in our professional opinion that we could not effectively negotiate this settlement in public. There is no trust fiduciary duty that requires trustees to consult with its beneficiaries before entering into a settlement agreement especially where their lawyers have recommended confidential negotiations. Indeed, if the confidential negotiation process was illegal, the Attorney General would not have participated in it.

But more importantly, over the last two months, the details of the settlement have been exhaustively presented to and discussed with the Legislature, the beneficiaries and the general public. The House and 72% of Native Hawaiians apparently do not believe the settlement should be rejected because of lack of consultation.

Significantly, as set forth in the following January 27, 2006 Honolulu Advertiser article, the Senate knew about these ongoing negotiations:

Posted on: Friday, January 27, 2006

State's offer to OHA: \$15 million a year

By Gordon Y.K. Pang
Advertiser Staff Writer

The state would allocate \$15 million a year to the Office of Hawaiian Affairs and pay a one-time sum of \$17.5 million, under a partial settlement of the issue of revenues from ceded lands.

The agreement between OHA and the Lingle administration was announced yesterday. It still must be approved by the OHA board of trustees, which is expected to vote on it Thursday, and the Legislature.

Ceded lands are 1.4 million acres of former crown and government lands — once part of the Hawaiian kingdom — held in trust by the state. OHA is due a share of the revenues derived from those lands under the Hawai'i Constitution.

OHA, in recent years, has been receiving about \$10 million annually as its pro rata share of revenues derived from the public land trust. That amount would be increased to \$15.1 million under the proposed partial settlement. Also, the agency would receive \$17.5 million as back payment for the period from July 1, 2001, to June 30, 2005, reflecting additional receipts from the use of the lands.

Clyde Namu'o, OHA administrator, said the state currently collects about \$50 million annually from the revenues derived from ceded lands, including harbor fees, leases from a portion of the land under the jurisdiction of the Department of Transportation, parking revenues from 'Iolani Palace and other ceded lands, and leases from a portion of land in Kaka'ako under the jurisdiction of the Hawai'i Community Development Authority.

The settlement does not include additional state revenues that OHA believes it is entitled to. A decision in a lawsuit over that revenue dispute is pending before the Hawai'i State Supreme Court. These so-called "disputed revenues" include payment for use of a portion of the land under Hilo Hospital and University of Hawai'i at Manoa, airport landing fees, concession fees, and the state's share of revenues from DFS Hawai'i, the state's duty-free store contractor.

The state and OHA are continuing discussions on the disputed revenues. And the Supreme Court has agreed to reconsider its decision last year to dismiss OHA's legal claim to the disputed revenues.

OHA has never received any revenues from the sources under dispute. The amount at stake ranges from \$150 million to hundreds of millions of dollars, according to estimates by state and OHA lawyers.

The proposed partial settlement was reached following more than a year of discussions between OHA and administration officials.

PAYMENTS HALTED

All payments to OHA were stopped by former Gov. Ben Cayetano in 2001 but Gov. Linda Lingle resumed those payments in 2003, shortly after she entered office. Cayetano halted payments after a Hawai'i Supreme Court decision that threw out the formula used to calculate how much OHA should receive. Before that ruling, OHA received about 20 percent of revenues from "undisputed" ceded lands.

OHA returned to court in 2003 in another bid to collect money in connection with the disputed revenues.

OHA Chairwoman Haunani Apoliona, in a press release, said she was pleased with the proposed partial settlement and commended Lingle for her work.

With the work of the OHA negotiating team and concurrence of the OHA board of trustees, we acknowledge that this is only the first phase of work to be completed relating to the ceded land revenues," Apoliona wrote.

Lingle, in the same release, praised OHA officials and said the agreement is "the right and fair thing to do."

BROAD SUPPORT

Leaders in both houses of the Legislature indicated they see support for the agreement.

"The Legislature needs to take this proposal very seriously because we have a constitutional obligation to make these payments," said Rep. Scott Saiki, D-22nd (McCully, Pawa'a), chairman of the House Hawaiian Affairs Committee.

"I would hope there will be an attempt in this legislative session to address the disputed amounts and attempt to find a resolution to that issue."

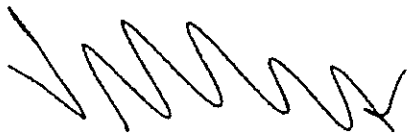
Senate Majority Leader Colleen Hanabusa, D-21st (Nanakuli, Makaha), said, "I don't see why it wouldn't go through." Hanabusa, who also serves as chairwoman of the Senate Judiciary and Hawaiian Affairs Committee, added, "This is something that we've tried to resolve in one way or another."

State Rep. Ezra Kanofo, D-15th (Lihu'e, Koloa), the chairman of the House Water, Land Use and Ocean Resources Committee, said he too was pleased.

"This is something that won't go away. This is an obligation," Kanofo said.

If the Senate passes SCR 138, Proposed SD1 and continues to reject the settlement, those Senators who are taking this position should concede that they are doing so because they support *Advocates for Use of Revenues only on 50 Percenters*. Native Hawaiians need to know where you stand on this important issue.

Mahalo for the opportunity to testify.



WILLIAM MEHEULA

Time: 2:45pm
Place: Conference Room 224, Capitol

To Senate Committee:

Agriculture and Hawaiian Affairs
Chair Jill N. Tokuda and Vice Chair J. Kalani English

LATE

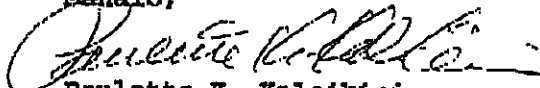
Ways and Means
Chair Rosalyn H. Baker and Vice Chair Shan S. Tsutsui

Subject: Testimony in Support of to SCR138 SD1 (Financial and Management Audit of the Office of Hawaiian Affairs)

The Senate deserves applause for introducing SCR138 SD1 requesting a financial and management audit of the Office of Hawaiian Affairs. The requested audit is about trust accountability and transparency owed to the native beneficiaries and the community-at-large.

OHA Trustees and Administration have a fiduciary responsibility and obligation to act exclusively in the interest of native beneficiaries. The request of a financial and management audit of the Office of Hawaiian Affairs will provide native beneficiaries with an open and honest "report card," pertaining to the trust derived from the public land trust. Therefore, I submit my testimony in support of SCR138 SD1.

Mahalo,



Paulette K. Kaleikini

Stella Enos
89-430 Farrington Highway
Waianae, HI 96792

March 27, 2008

LATE

Senator Jill N. Tokuda, Chair
Senator J. Kalani English, Vice Chair
Members of the Committee on Agriculture & Hawaiian Affairs

RE: **SCR 138**

I write today my testimony in **favor** of SCR 138, disapproving the Salary Increases Recommended by the Salary Commission for the Trustees of the Office of Hawaiian Affairs – Proposed SD1: Requesting a Financial and Management Audit of the Office of Hawaiian Affairs.

I am a 100% native Hawaiian who resides on the Nanakuli Hawaiian Homestead, I am very concern on the decisions, discussions, implementations, negotiations, funding, contracts as well as settlements that the Office of Hawaiian Affairs conducts.

As a beneficiary of the funds that is designated specifically for the native Hawaiians from the Ceded Lands (5f) Revenues, which is allocated to the Office of Hawaiian Affairs, should be audited every year, so there is no misunderstanding on how and who got funding from this trust fund.

I believe the Office of Hawaiian Affairs **do not** keep accurate financial reports; I also believe the management of this State Agency should be abolish. How is it that they wish to include and take care of the rest of the Hawaiians 50% and less, as well as the public, when they can't even take care of this small group of native Hawaiians?

No Trustee of the Office of Hawaiian Affairs should get an increase or get any kind of salary until every native Hawaiian gets their fare share or when the Hawaiian Nation is establish.

The Office of Hawaiian Affairs has abused and misused their obligations and fiduciary duties to the native Hawaiians, please pass SCR 138, so justice can prevail.

Josiah L. Hoohuli
89-639 Nanakuli Avenue
Waianae, HI 96792

March 27, 2008

LATE

Senator Jill N. Tokuda, Chair
Senator J. Kalani English, Vice Chair
Members of the Committee on Agriculture & Hawaiian Affairs

RE: SCR 138

I write today my testimony in **strong support** of SCR138 Disapproving the Salary Increases Recommended by the Salary Commission for the Trustees of the Office of Hawaiian Affairs – Proposed SD1: Requesting a Financial and Management Audit of the Office of Hawaiian Affairs.

I am a 100% native Hawaiian who resides on the Nanakuli Hawaiian Homestead, and still believes that what is rightfully entitled to the native Hawaiians should not be negotiated in any shape or form.

We the native Hawaiians are constantly put in the poor category, yet the revenues that the Office of Hawaiian Affairs receives from the Ceded Lands (5f) seems to do very little.

There are thousands of native Hawaiians on the Department of Hawaiian Home Lands list and yet were is the kokua (help).

No Trustee of the Office of Hawaiian Affairs should get an increase until every native Hawaiian gets their fare share.

The Office of Hawaiian Affairs has abused and misused their obligations and fiduciary duties to the native Hawaiians, please pass SCR 138, so justice can prevail.

testimony

From: Kahukama@aol.com
Sent: Thursday, March 27, 2008 11:44 AM
To: testimony
Cc: duke@pixi.com; duke@sandwichisles.com; kamakihfl@hawaii.rr.com; Leahkpereira@aim.com; purdy@wave.hicv.net; vbkplace@wave.hicv.net; soor001@hawaii.rr.com; keakua1@hawaiiantel.net
Subject: SCR 138 SD1

LATE

THE SENATE
 THE TWENTY-FOURTH LEGISLATURE
 REGULAR SESSION OF 2008
 COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS

Senator Jill Tokuda, Chair
 Senator Kalani English, Vice Chair

COMMITTEE ON WAYS AND MEANS
 Senator Rosalyn Baker, Chair
 Senator Shan Tsutsui

March 27, 2008

IN SUPPORT OF SCR 138 SD1

Aloha Senators,

Thank you for the opportunity to submit this testimony in support of SCR 138 SD1. My name is Tasha Kama and I am the Executive Officer of the Sovereign Councils of the Hawaiian Homelands Assembly (SCHHA) residing on the island of Maui.

I sat on the first commission that addressed compensation for the Office of Hawaiian Affairs that traveled throughout the state of Hawaii to gather input from the native people. Many of the people then felt that the trustees should not receive a salary because they were not doing enough to better the conditions of native Hawaiians as defined by the Hawaiian Homes Commission Act of 1921, as amended. Here we are almost 20 years later asking another question, "should they receive a salary increase?" Again the response is "what have they done to better the conditions of the native Hawaiians as defined by the HHCA?"

An audit will reveal how well they are accomplishing the task in which they were created to do. It is with this in mind that I ask for your passage of SCR 138 SD1.

Sincerely,

Tasha Kama

Create a Home Theater Like the Pros. [Watch the video on AOL Home.](#)

3/27/2008

Lela M. Hubbard
Na Koa Ikaika
99-407 Aiea Hgts. Drive
Aiea, HI 96701-3516
(808) 487-2311

LATE

Committee on Agriculture and Hawn Affairs
Hearing of March 27, 2008, 2:45 PM, Rm 224
State Capitol

TESTIMONY IN FAVOR OF SCR138, SD1, Proposed

At this momentous time in our history, we concur with the Senate's request for an audit. This is not an arbitrary action as this is part of the law ; this will give many Hawaiians more of an understanding of OHA's operations as well as increase OHA's credibility in the Hawaiian and wider communities.

Those of us who have observed OHA for many years, from the administration of Richard Pagliniwan to Clyde Namuo, have seen many changes. With the current Hale format it is extremely difficult to figure out what a project really costs. What has been spent on the Akaka Bill---lobbying in DC is in one hale, transportation in another, education in another, etc, etc,. There should be a system set up to track the total cost of a project. What has Kau Inoa cost? Advertising. recruiting and education on the continent, freebies given out : t shirts, bumper stickers, recruiting and educational costs in Hawaii, cost of verification of applications: staffing, etc. .

Unfortunately, the beneficiaries were not part of the settlement although we could tell from the Executive Sessions listed on the agendas and information from people there, that a deal was being cut. The same strategy was used to try to pass the notorious Blueprint--- which failed. Hawaiians do not like to be spoonfed and coerced.

For years we have asked for a complete inventory of the Ceded Lands. Where is it?
WHAT CRITERIA WAS USED? Buzzy Agaard many years ago researched what was due us. His figure was \$30 million a year.

Mahalo for this opportunity to share our mana'o.

Lela Malina Hubbard

**Proposed SD 1 of SCR 138
REQUESTING A FINANCIAL AND MANAGEMENT AUDIT OF
THE OFFICE OF HAWAIIAN AFFAIRS**

Hearing date and time: Thursday, March 27, 2008 2:45 P.M.

Aloha Chairperson Tokuda, Vice Chair English and Members of the Senate Committee on Agriculture and Hawaiian Affairs.

Thank you for this opportunity to oppose Proposed Senate Draft 1 to Senate Concurrent Resolution 138, which requests a financial and management audit of the Office of Hawaiian Affairs.

As many of you know, having given testimony to this body before, I am the President of the Association of Hawaiian Civic Clubs. However, I am here to give testimony today in my own name because the notice of this resolution hearing was insufficient to canvass the fifty-three Hawaiian Civic Clubs, located throughout the State of Hawai'i and in the States of Alaska, California, Colorado, Illinois, Nevada, Utah, Virginia and Washington State.

The Senate passed a resolution calling for community meetings on the Public Lands Trust settlement, believing it necessary to hear from the people. By so doing, it gave the impression that the people's opinion was necessary and valued. Yet, the Senate made a decision to kill the Senate Bill before even receiving OHA's report regarding community meetings. And, in this case, insufficient notice was given to the public to enable organizations such as ours time to consult with its membership on the merits of an audit of OHA. Thus, the Senate is guilty of the very thing it identifies as a material weakness by OHA; that is, lack of community consultation.

The language is insulting, somehow suggesting some underhandedness by the OHA trustees, among which are two retired judges and a former trustee of a major Hawaiian Trust. It also infers that the settlement might have been inappropriate. The settlement of back claims has been pending for over 20 years, and the Courts have repeatedly and consistently held that major responsibility for correcting this situation is with the legislature, that the legislature must work with OHA to resolve this. OHA, as part of its fiduciary responsibilities has been doing its part.

The AHCC resolution passed last year supported the making of a settlement for a lot of good reasons articulated in a very lengthy resolution, which is part of this legislature's record. The Cayetano Administration tried, but failed to achieve resolution. At that time, there was absolutely no initial input by the Hawaiian community, as contrasted with our situation today, where there has been substantial input. During the Cayetano administration, there was neither a call for community meetings nor an audit.

Whether true or not, there is a perception that audits are called for when an organization is suspected of doing something wrong. Else, why call for an audit out of cycle? There is no evidence of wrongdoing...at least none made public if the senate

knows something we don't know about. Further, the state is strapped for money now. Who will fund this? The state can't even fund the important work of the 'Aha Moku Councils, the `Aha Kiole process.

I hope that you will agree with me on these comments. As you can tell, this situation is upsetting...and I am hoping that the Native Hawaiian people are not being held hostage to political agendas.

Thank you for this opportunity to testify in opposition to Proposed Senate Draft 1 to Senate Concurrent Resolution 138.

From: Julie Lopez [mailto:pesto@aloha.net]
Sent: Thursday, March 27, 2008 1:26 PM
To: Sen. Jill Tokuda
Subject: Support Bill

LATE

Aloha ,Senator Tokuda

I support the Bill SCR 138 and SD1 attachment. I believe that the OHA Trustees have forgotten why they are in office.

Sincerely,
Julie Lopez

LATE

From: Bridget Mowat [mailto:plhkki@hawaiiantel.net]
Sent: Thursday, March 27, 2008 12:40 PM
To: Sen. Jill Tokuda
Cc: Sen. J. Kalani English; Sen. Mike Gabbard; Sen. Clayton Hee; Vice Chair, Senator Russell Kokuban; Sen. Sam Slom
Subject: Support of SCR 138 OHA AUDIT

Aloha Senators of AHW committee,

Please accept this testimony in support of the proposed OHA audit. I also question Trustees funding of personal projects as a regular practice. I encourage this committee to approve this resolution and provide results to their constituents. By allowing the audit, the Hawaiian community will be satisfied one-way or the other.
Please act accordingly .

Mahalo,

Bridget A. Mowat
PO Box 315
Kaunakakai, Hi. 96748

**SCR 138, Proposed SD1, REQUESTING A FINANCIAL AND MANAGEMENT
AUDIT OF THE OFFICE OF HAWAIIAN AFFAIRS
Senate Committee on Agriculture and Hawaiian Affairs**

Date: March 27, 2008

Time: 2:45 pm

Room: 224

Aloha Chair Tokuda, Vice Chair English, and Members. I am Daniel M. Akiu Jr., a Native Hawaiian businessman and President of Group IQ, Inc.

I strongly oppose this concurrent resolution and find it hard to understand the need for this audit and further misuse of precious government time and funds.

Section 10-14.55, Hawai'i Revised Statutes, requires that the State Auditor conduct an audit of OHA at least once every four years to examine both management and financial performance. According to government sources the next audit will begin in December of this year and will cover the period of 2005 to present.

Historically, annual financial audits of OHA conducted by independent auditing firms have year after year found no reportable conditions. Also, the 2005 Audit of the Office of Hawaiian Affairs issued by the State Auditor, while criticizing OHA in certain respects, praised OHA for improvements in its management of its investments.

As a taxpayer and businessman, I respect this body and the House of Representatives, yet I have great concern about the nature of the inquiry and what motivated this reaction.

Since the year 2001, OHA has repeatedly proposed legislation addressing OHA's share. Through both testimony and proposed legislation, OHA had made it abundantly clear what the key issues were, that negotiations were continuing, and that a settlement could include a combination of cash and land.

I strongly oppose this resolution as unnecessary and wasteful of taxpayers money. If the Legislature falls victim and succumbs to the demands of a few in the Native Hawaiian community, it will begin to unravel the intent and possibly put into jeopardy the responsibilities and functions imposed on OHA and the State of Hawaii by the Hawai'i State Constitution.

Thank you for allowing me to testify and express my concerns. Aloha.

MEMO

TO: Office of Hawaiian Affairs

FROM: Mapuana S. Tector

DATE: March 20, 2008

SUBJECT: Testimony and Recommendation for Audit of all the Trustee' of OHA and all Financial Transactions for the past Ten Years.

*nanakuli
+ instead*

SUPPORT

LATE

Memo: My recommendation is to have each OHA Trustee' Audited of all activities both in office and out the office.

The reason for my letter is to submit a letter of documentation of my denial letter of an opportunity to attend college to enhance my education and my equip myself with all the literacy programs.

I know that my future career for a better pay and education that OHA has funds that is ere marked for native Hawaiians towards literacy. Well as of now, OHA has never funded me towards my education. I have a sample letter of denial from OHA.

I am of native ancestry and the fact is that I am more than 50% native Hawaiian. OHA has denied me an opportunity and contradicts their mission statement. I am saddened, ashamed of their lies and am sick of them. They are requesting a higher salary. My question is why? No more pay for the Trustee'.

My recommendation is to have the Audit conducted against each Trustee' in the Office of the Hawaiian Affairs. My recommendation to that their policies and procedures be researched as to include their amended rules and regulations.

AUDIT to be conduct: Salary of Trustee'

Allotted expenditure of each program funded per Trustee'

Research be public information of non-native Hawaiian programs funded

Data be given of native Hawaiian and non-native Hawaiian grants given or not

Data to show how funds are dispersed per program accordingly

Data to show how notifications of hearing or meetings

** NHLC denied services on the Neighbor Island*



HAWAII COMMUNITY FOUNDATION

LATE

December 1, 2006

Mapuana Tector
89-706 Nanakuli Ave.
Waianae, HI 96792

Dear Mapuana,

Thank you for your scholarship application to the **Office of Hawaiian Affairs Higher Education Scholarship Program**. We regretfully inform you that you were not selected as a recipient.

On behalf of the Hawaii Community Foundation, we commend you on your decision to pursue your higher education goals and encourage you to apply again next year at www.hawaiicommunityfoundation.org.

Please visit our website for information about other scholarships available for the 2007-2008 academic year. The online application will launch on January 10, 2007.

Best wishes for a successful year,

Scholarship Team

LATE

The Senate & House
Twenty-Fourth Legislature
Regular Session of 2008
State of Hawai'i

March 27, 2008

To Senate Committees:
Agriculture and Hawaiian Affairs, Chair Jill N. Tokuda

Bill Number: HB266 HD2
Date: Thursday, March 27, 2008
Time: 2:45 pm
Place: Room 224 State Capitol

Subject: Testimony Relating To SCR 138 SD1

The Honorable Senators:

I am Colin Kippen and I am the executive director of the Native Hawaiian Education Council. I am testifying today as a private citizen with respect to SCR 138 SD1 a proposal to have OHA undergo a fiscal and management audit before the next legislative session.

My comments are merely offered as a point of reference to assist the committee in its deliberations.


If you read the front page of yesterday's Advertiser or today's Star Bulletin, or have listened to the radio or television news over the last two days, you have learned about a Government Accountability Office (GAO) Audit recently completed by that federal agency on the Native Hawaiian Education Act. That audit was critical of the management of this NHEA grant program by the US Department of Education for the last 20 years, was critical of the lack of data collection and evaluation showing positive impact, and was critical of the manner in which our Native Hawaiian Education Act Island and State Councils functioned in accomplishing their duties under the Act. It suggested a number of improvements that should occur, some of which have already begun.

While some might have viewed this audit as something to be feared and avoided, my view is that this is exactly what we need to make this program better. I have embraced this audit with open arms because I believe it will help us to be a better agency, to better serve native Hawaiian students, and to better track what we are accomplishing.

Over a year ago - -by unanimous vote- -my Council chose to ask our Hawaii U.S. Senators to request this GAO conduct an audit of our program. We did this because we

I FLEW OVER FROM **LATE**
BIG ISLAND TO TBSLEY
ON BILL RELATING TO OHA AUDIT SER VS
IS THERE A SIGN UP SHEET

— KUAE SOLI NIHEU
POB 6575
KAMUELA HAWAII
HAWAIIAN KINGDOM





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LATE

TESTIMONY OF MAHEALANI PEREZ-WENDT, EXECUTIVE DIRECTOR

OPPOSING S.D. 1 of S.C.R. 138
REQUESTING A FINANCIAL AND MANAGEMENT AUDIT OF
THE OFFICE OF HAWAIIAN AFFAIRS

Aloha Chair Tokuda, Vice Chair English and Members of the Senate Committee on Agriculture and Hawaiian Affairs.

We don't oppose program, management and fiscal audits of publicly funded entities. However, the timing of this proposed audit is unfortunate, because it gives the appearance touted in this morning's headlines, i.e., "PUNITIVE". I ask this Committee to please reconsider.

As an organization that has served both Hawaiians who have one-half Hawaiian blood and those that don't; as an organization founded by homesteaders; as an organization whose mission has been to obtain the full benefits of both the Hawaiian Home Lands and Ceded Lands Trusts to their rightful beneficiaries, it is dismaying to see this schism developing along fault lines of fifty-percenters and less than fifty-percenters.

I draw the conclusion that the rift between the two groups is growing more acute from this morning's news account, in which Kamaki Kanahale, as president of the Sovereign Councils of the Hawaiian Home Lands Assembly (formerly the State Council of Hawaiian Homestead Associations), is quoted as stating "OHA has been negligent in giving priority to beneficiaries of the ceded land trust". This seems to be the main impetus for Senator Hanabusa's announced support of the audit, as OHA was not even given an opportunity to fully respond to the other expressed concern, that of insufficient beneficiary consultation. It seems the full extent of OHA's beneficiary consultation efforts were actually irrelevant.

I'm not sure what Kamaki means by labeling OHA negligent with respect to priority treatment for beneficiaries of the ceded lands trust, but for many decades now we have heard from individuals of fifty percent or more Hawaiian blood who are distrustful of the approach that OHA has taken to serve all of its beneficiaries; i.e., match special with general funds to fulfill its constitutional mandate to serve all Hawaiians.

My disappointment is that this concern need not have waited until the eve of a settlement that has been pending for decades. The issue has been litigated extensively, is still being litigated but has so far been successful. If OHA were guilty of cheating its

Services made possible with major funding from the Office of Hawaiian Affairs.



Niolo. Upright, straight, stately, tall and straight as a tree without branches; sharply peaked, as mountains. Fig., righteous, correct.

beneficiaries, there is no doubt that beneficiary litigants would have succeeded long ago. Rather than hold the settlement hostage, which would resolve the state's constitutionally-mandated obligation, the Hawaiian Home Lands and Ceded Lands beneficiaries could sit down and resolve this with their communities, with OHA, the Executive branch and this legislature.

Please do not amend S.C.R. 138 to call for an OHA audit. Please accord OHA the respect it has earned and rightly deserves by proceeding with the audit next year as originally scheduled.

Thank you for this opportunity to testify.

LATE**Native Hawaiian Education Association**

Legislative Testimony

**SCR 138, Proposed SD1, REQUESTING A FINANCIAL AND MANAGEMENT
AUDIT OF THE OFFICE OF HAWAIIAN AFFAIRS
Senate Committee on Agriculture and Hawaiian Affairs****Date: March 27, 2008****Time: 2:45 pm****Room: 224**

Aloha Chair Tokuda, Vice Chair English, and Members. I am Lui Hokoana, President of the Native Hawaiian Education Association (NHEA).

We oppose this resolution calling for an out-of-cycle audit of the Office of Hawaiian Affairs. OHA is scheduled to be audited next year. Why the rush now?

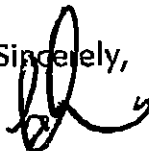
The request for an audit now appears to be politically driven and motivated by a small, very vocal group of Native Hawaiians who have another agenda in mind. We ask that the Senate not succumb to that political agenda. We agree that all agencies should be audited on a regular basis, which OHA is. We ask that there be no "punitive" audit such as the audit SCR 138 proposes.

We urge this Committee and the Senate not to pass SCR 138 and instead give further consideration to the passage of a bill supporting the ceded lands revenue settlement agreement reached by OHA and the State executive branch.

The best way to assist Native Hawaiians today is to approve the settlement agreement. This will allow OHA to move forward to address other issues and will also provide significantly more funding for programs that are desperately needed within the Hawaiian community.

Mahalo for the opportunity to testify.

Sincerely,



Lui Hokoana
President

Native Hawaiian Education Association

LATE

Legislative Testimony

SCR 138, Proposed SD1, REQUESTING A FINANCIAL AND MANAGEMENT AUDIT OF THE OFFICE OF HAWAIIAN AFFAIRS Senate Committee on Agriculture and Hawaiian Affairs

Date: March 27, 2008

Time: 2:45 pm

Room: 224

We oppose SCR 138 SD 1 calling for an out-of-cycle audit of the Office of Hawaiian Affairs. OHA is already scheduled to be audited next year. We urge this Committee and the Senate not to pass SCR 138 SD 1, which appears to be a punitive audit, and instead give further consideration to the passage of a bill supporting the ceded lands revenue settlement agreement reached by OHA and the State executive branch.

Print Name

Signature

DANA CIACCI

Dana Ciacci

Kauikaolani Darnie

Kauikaolani Darnie

Kalani Kulolota

Kalani Kulolota

Pili Labian

Pili Labian

AULANI APOLLONA

Aulani Apollona

Chadlee

Chadlee

Native Hawaiian Education Association

Legislative Testimony

SCR 138, Proposed SD1, REQUESTING A FINANCIAL AND MANAGEMENT AUDIT OF THE OFFICE OF HAWAIIAN AFFAIRS Senate Committee on Agriculture and Hawaiian Affairs

Date: March 27, 2008

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Print Name	Signature
<u>Samuel Nihiali</u>	<u>Samuel Nihiali</u>
<u>Ehukai Carvalho-Munar</u>	<u>Ehukai Carvalho-Munar</u>
<u>Kristie Yeung</u>	<u>Kristie Yeung</u>
<u>Milton Yeung</u>	<u>Milton Yeung</u>
<u>Laura Weirig</u>	<u>Laura Weirig</u>
<u>Shaun Kemueli</u>	<u>Shaun Kemueli</u>
<u>Lillian Segal</u>	<u>Lillian Segal</u>
<u>George N. Davis</u>	<u>George N. Davis</u>
<u>Nathaniel Stillman</u>	<u>Nathaniel Stillman</u>
<u>Kalani Mauo</u>	<u>Kalani Mauo</u>
<u>Maile Singj</u>	<u>Maile Singj</u>
<u>JUNE M. Clark</u>	<u>JUNE M. Clark</u>
<u>Neal Ryback</u>	<u>Neal Ryback</u>

Native Hawaiian Education Association

Legislative Testimony

SCR 138, Proposed SD1, REQUESTING A FINANCIAL AND MANAGEMENT AUDIT OF THE OFFICE OF HAWAIIAN AFFAIRS Senate Committee on Agriculture and Hawaiian Affairs

Date: March 27, 2008

Time: 2:45 pm

Room: 224

We oppose SCR 138 SD 1 calling for an out-of-cycle audit of the Office of Hawaiian Affairs. OHA is already scheduled to be audited next year. We urge this Committee and the Senate not to pass SCR 138 SD 1, which appears to be a punitive audit, and instead give further consideration to the passage of a bill supporting the ceded lands revenue settlement agreement reached by OHA and the State executive branch.

Print Name	Signature
<u>Maura Shirahishi - Nagao</u>	<u>Maura Shirahishi Nagao</u>
<u>KEOLA K. ARANA</u>	<u>Keola K. Arana</u>
<u>Karin N. Burgess</u>	<u>Karin N. Burgess</u>
<u>Kimberly Mok</u>	<u>Kimberly Mok</u>
<u>La Kehealani Ganibe</u>	<u>La Kehealani Ganibe</u>
<u>Kara Wang</u>	<u>Kara Wang</u>
<u>Jessie Kaitiaki Wai</u>	<u>Jessie Kaitiaki Wai</u>
<u>WANA SAJ</u>	<u>Wana Saj</u>
<u>Wionale Wai</u>	<u>Wionale Wai</u>
<u>Ku'ulei Akaka</u>	<u>Ku'ulei Akaka</u>
<u>Mary Ann Crowell</u>	<u>Mary Ann Crowell</u>
<u>Clementine K. KONG</u>	<u>Clementine K. Kong</u>
<u>Chessa DeCambra</u>	<u>Chessa DeCambra</u>

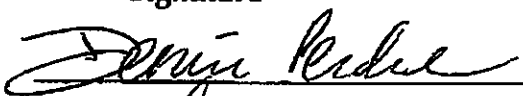
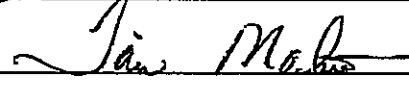


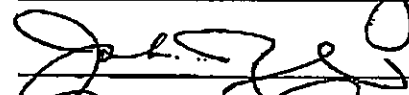

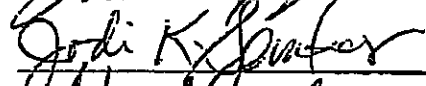


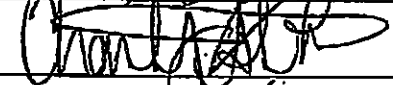

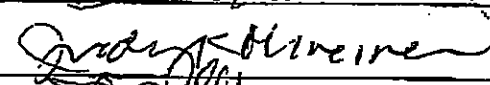

Native Hawaiian Education Association

Legislative Testimony

SCR 138, Proposed SD1, REQUESTING A FINANCIAL AND MANAGEMENT AUDIT OF THE OFFICE OF HAWAIIAN AFFAIRS Senate Committee on Agriculture and Hawaiian Affairs

Date: March 27, 2008 Time: 2:45 pm Room: 224

We oppose SCR 138 SD 1 calling for an out-of-cycle audit of the Office of Hawaiian Affairs. OHA is already scheduled to be audited next year. We urge this Committee and the Senate not to pass SCR 138 SD 1, which appears to be a punitive audit, and instead give further consideration to the passage of a bill supporting the ceded lands revenue settlement agreement reached by OHA and the State executive branch.

Print Name	Signature
Denise Perdue	
Tim Molone	
Wendy Okawa	
Keikilani Meyer	
John Pongosi	
Marshall Nishimura	
Jodi Santos	
MARK NAKAGAWA	
Kalena Stevens	
CHARITY AH UO	
Darrin Ishihara	
Judy Weimer	
CHERRY CRIBBS	

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Print Name

Signature

<u>David Kasea</u>	<u>[Signature]</u>
<u>Alfred Kamehewala</u>	<u>[Signature]</u>
<u>Oliver Morando</u>	<u>[Signature]</u>
<u>Christine Quintana</u>	<u>[Signature]</u>
<u>Ikaika Akiona</u>	<u>[Signature]</u>
<u>Loea Akiona</u>	<u>[Signature]</u>
<u>Kanohiua Renavel</u>	<u>[Signature]</u>
<u>Earl Tamai</u>	<u>[Signature]</u>
<u>Raulene Sato</u>	<u>[Signature]</u>
<u>Maggie Hanohano</u>	<u>[Signature]</u>
<u>LORETTA MONROY</u>	<u>[Signature]</u>
<u>Keanz York</u>	<u>[Signature]</u>
<u>Erica Preis</u>	<u>[Signature]</u>

Native Hawaiian Education Association

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Print Name

Signature

Peter Hanohano

Peter Hanohano Jr.

Hau'oli Akaka

Hau'oli Akaka

Francis (Lono) Kealoha

Francis Kealoha

Kanoe Wilson

Kanoe Wilson

Karen Nihipali

Karen Nihipali

Toxi Mallow

Toxi Mallow

David Sing

David Sing

Cynthia Choy

Cynthia Choy

Pua Case

Pua Case

Emalani Case

Emalani Case

Aaron Merzbary

Aaron Merzbary

Maria Merzbary

Maria Merzbary

Gene Call-Nolan

Gene Call-Nolan

Gene Call-Nolan

Gene Call-Nolan

testimony

From: Edward Gomes [egomes01@gmail.com]
Sent: Thursday, March 27, 2008 3:08 PM
To: testimony; Sen. Roz Baker; Sen. Shan Tsutsui; Sen. Jill Tokuda; Sen. J. Kalani English
Subject: Testimony in Support of to SCR138 SD1 (Financial and Management Audit of the Office of Hawaiian Affairs)

The Senate
Twenty-Fourth Legislature
Regular Session of 2008
State of Hawai'i

LATE

March 26, 2008

To the Honorable Senate Committees:

Agriculture and Hawaiian Affairs
Chair Jill N. Tokuda and Vice Chair J. Kalani English

Ways and Means
Chair Rosalyn H. Baker and Vice Chair Shan S. Tsutsui

Subject: Testimony in Support of to SCR138 SD1 (Financial and Management Audit of the Office of Hawaiian Affairs)

The Senate deserves applause for introducing SCR138 SD1 requesting a financial and management audit of the Office of Hawaiian Affairs. The requested audit is about trust accountability and transparency owed to the native beneficiaries and the community-at-large. Testimony that was presented to the committee hearings on the Ceded land bill were very disconcerting to listen to, regarding mismanagement of beneficiary funds. While these accusations may or may not be based on fiduciary misconduct, I urge the senate of this bill to either dispel the mismanagement allegations or find the real truth to what was provided in testimony. For OHA to claim that an audit is not due until next year, that the last audit did not provide any irregularities, and that there was a small portion of the beneficiaries and "activists" causing undue pressure, bears a resemblance to the Bishop Estate/Kamehameha Schools Investigation a few years ago. After listening to the former trustees relate that there was nothing wrong with KSBE and finally ending in the ouster of the trustees and felony convictions, leads one to assume that we are traveling down this same path.

OHA Trustees and Administration have a fiduciary responsibility and obligation to act exclusively in the interest of native beneficiaries. The request of a financial and management audit of the Office of Hawaiian Affairs will provide native beneficiaries with an open and honest "report card," pertaining to the trust derived from the public land trust. Therefore, I submit my testimony in support of SCR138 SD1.

Sincerely,

Edward J. Gomes Jr.
1 008 Lunaai Place
Kailua Hi, 96734

3/27/2008

LATE

Statement of

ART MORI

Former Economic Development Specialist for the Office of Hawaiian Affairs

before the

Senate Committee on Agriculture and Hawaiian Affairs

Thursday, March 27, 2008

2:45pm

State Capitol, Conference Room 224

in consideration of

SCR 138 S.D.1 PROPOSED

REQUESTING A FINANCIAL AND MANAGEMENT AUDIT OF THE OFFICE OF HAWAIIAN AFFAIRS.

Chair Tokuda, Vice-Chair English and committee members,

My name is Art Mori and I worked for the Office of Hawaiian Affairs (OHA) from August 23, 2004 to March 13, 2008. My position with OHA was terminated on March 13, 2008 as Economic Development Specialist for the OHA CBED Program. During my employment with OHA, I have witnessed a great many outrageous acts but none more blatant than being accused of spreading false rumors at the Legislature about someone who is close to the OHA Administrator and Deputy Director. Due to this accusation, I was fired by OHA without due process even though I vehemently denied the accusation.

I would like to say that during the time of my employment with OHA and under the present Administrator and Deputy Administrator, OHA staff morale has plummeted, programs implemented to benefit Native Hawaiians have been circumvented, and gross mismanagement has been apparent from the very top. Today, OHA is a self serving organization only interested in acquiring money and power for itself and is so hamstrung by politics that it has failed in its mission to help all Native Hawaiians in Hawaii. My direct observations have been made as an employee of OHA and not merely from the outside looking in. It would seem that the employees who have either chosen to leave OHA or who have been fired are the most competent at what they do professionally for Native Hawaiian communities and have the passion and drive to create successful projects for that community. Initiative is rewarded by reprimands and/or termination from OHA. Passion and a drive to succeed is rewarded by reprimands and/or termination from OHA by its top Administrators. OHA staff are forbidden to speak with any of the Trustees for fear that they will 'complain' to them about the Administrator and the Deputy Administrator. If a request is granted to speak with a Trustee, a manager accompanies staff to monitor what is being discussed.

In summary, a financial and management audit of the Office of Hawaiian Affairs is greatly warranted due to gross mismanagement of that quasi-state entity.

Thank you for this opportunity to testify.

testimony

From: Arvid Youngquist [thirr33@gmail.com]
Sent: Thursday, March 27, 2008 2:41 PM
To: testimony
Subject: Late Testimony in Opposition to: S.C.R. 138

LATE

**Senate Agriculture & Hawaiian Affairs Committee
Chair Sen. Jill N. Tokuda
Vice Chair, Sen. J. Kalani English
The Right Honorable Members of the Senate AHW Committee
Hearing on March 27, 2008 Monday at 2:45 PM
Hearing Room 224**

Good afternoon.

My name is Arvid Youngquist.

I testify in strong opposition to S.C.R. 138 SD1, Disapproving the Salary Increases Recommended by the Salary Commission for the Trustees of the Office of Hawaiian Affairs. Thank you for providing me this opportunity to provide some comments in my oral testimony.

Mahalo,

**Arvid T. Youngquist
P O Box 37542**

Honolulu, Hawaii 96837

--

" Peace in 2009"

Arvid Tadao Youngquist

"1 of 14,664 voices"

LATE

March 27, 2008

Senate Committee on Agriculture and Hawaiian Affairs
State Capitol
Honolulu, Hawai'i 96813

RE: SCR 138, Proposed SD1, REQUESTING A FINANCIAL AND MANAGEMENT AUDIT OF
THE OFFICE OF HAWAIIAN AFFAIRS; March 27, 2008, Time: 2:45 pm, Room: 224
LATE TESTIMONY AFTER ORAL TESTIMONY GIVEN AT THE HEARING

Dear Chair Tokuda and Committee Members,

My name is Jonathan Likeke Scheuer and I am an employee of the Office of Hawaiian Affairs but I am offering this testimony as an individual. I am also offering this testimony with acknowledgement of the respect I have for you as individuals and for your offices as Senators.

I am in opposition to this resolution as worded as well as the proposed rewording of the recitals ("whereas" clauses). I have two points I would like to raise today.

First, the Committee Chair stated at the beginning of today's hearing that she had no idea who wrote the resolution SD1. I find that disturbing. If you do not know who wrote a resolution, and you clearly did not fact check it, it should not have been proposed in the first place.

Second, a statement was made at the beginning of the hearing that the recitals would be removed, new recitals would be inserted, but the "guts" of the resolution – the body or the "Now therefore" clauses – would remain in place.

- As a matter of statutory construction, the recitals are critical. They are the Why of the resolution and the body is the What. The Why justifies the What.
- To suggest – before anyone has spoken and before anyone has read the new recitals – that you are planning to insert them suggests that your decision has already been made.
- If your decision has already been made to pass this out, than all of our testimony today – for and against – is without substance. Those of us speaking against the resolution will be ignored. Those of us speaking for it are merely providing justification for a pre-determined decision.

Out of due respect to yourselves and your offices, I ask you to kill the resolution. Passage of this resolution cheapens you and does not honor the role you play.

Mañalo,



Jonathan Likeke Scheuer, Ph.D.
Scheuerj001@hawaii.rr.com