

STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 QUEEN STREET, SUITE 300
Honolulu, Hawaii 96813
FAX: (808) 587-0600

IN REPLY REFER TO

Statement of
Karen Seddon
Hawaii Housing Finance and Development Corporation
Before the

HOUSE COMMITTEE ON WATER, LAND & OCEAN RESOURCES
HOUSE COMMITTEE ON JUDICIARY

March 13, 2009, 2:00 p.m.
Room 325, State Capitol

In consideration of
S.B. 1677, S.D. 1
RELATING TO LANDS CONTROLLED BY THE STATE.

The Administration and the HHFDC oppose S.B. 1677, S.D. 1 for the following reasons.

The S.D. 1 creates a new subpart to Chapter 171, Hawaii Revised Statutes, and a new section, both referencing "ceded lands". Then, the new section 171-A prohibits the sale of public lands (using the 171-2 definition of public lands), including lands held by the HHFDC, absent legislative approval of a concurrent resolution by a two-thirds vote. **We are concerned that this could have the effect of changing the status of all non-ceded lands into ceded lands.**

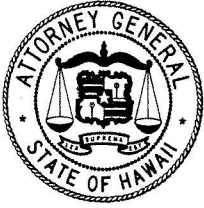
Secondly, **we are concerned that passage of this bill would harm the State's ability to obtain federal stimulus funds due to the inability to obtain mandatory legislative approval of land transfers during the interim.** A major focus of the American Recovery and Reinvestment Act of 2009 ("Recovery Act") is investment in infrastructure improvements, such as highway projects for new affordable housing developments that of necessity will involve transfers of rights-of-way from the HHFDC to the State Department of Transportation or to county governments.

A specific example of this is the proposed Ane Keohokalole Highway in West Hawaii. A major criterion in qualifying for federal funding under the Recovery Act is readiness to proceed with construction in a relatively short period of time. In this case, this includes conveyance of right-of-way title to the County of Hawaii, including a sliver of State land from a proposed high school site. This bill would delay, if not disqualify, this project from competing for the federal funds because of the requirement to obtain legislative approval. The same timeliness issue would impact the ability to obtain federal funding under the Recovery Act for the development of Phase 1A of the Lahaina Bypass Highway, should this bill become law.

Third, we are concerned that this bill would interfere with the HHFDC's ability to purchase and resell individual single family properties or condominium units that are acquired under the 201H buyback provision or through foreclosure.

Residential units developed under Chapter 201H, HRS are subject to resale restrictions including a 10-year buyback and sharing of appreciation equity. Should HHFDC repurchase a single family or condominium unit under the buyback provision or through foreclosure proceedings, the bill would impede the resale of that property to an eligible first-time homebuyer because of the legislative approval requirements.

Thank you for the opportunity to provide written comments on this bill.



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2009**

ON THE FOLLOWING MEASURE:

S.B. NO. 1677, S.D. 1, RELATING TO LANDS CONTROLLED BY THE STATE.

BEFORE THE:

HOUSE COMMITTEES ON WATER, LAND, AND OCEAN RESOURCES
AND ON JUDICIARY

DATE: Friday, March 13, 2009 **TIME:** 2:00 PM

LOCATION: State Capitol, Room 325

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

Chairs Ito and Karamatsu and Members of the Committees:

The Department of the Attorney General offers the following comments, but opposes the preapproval process proposed in this bill.

This bill conditions the sale or exchange of the lands listed in the bill upon the department or other state agency proposing the sale or exchange first securing the Legislature's approval of the sale or exchange, as evidenced by the adoption of a concurrent resolution by at least a two-thirds majority of the members of each house.

We believe there is no policy reason to amend the current procedures and processes regarding public land transfers. If this bill is passed, however, we believe it should be amended to be consistent with statutes like sections 171-41 and 171-50, Hawaii Revised Statutes, which subject exchanges of certain state lands and sales for certain purposes, to legislative disapproval, rather than pre-approval, by a two-thirds vote of either the House or the Senate, or by a majority vote of each of the houses at a regular or special session following the date of disposition. Disapproval, rather than individual transaction pre-approval, not only conforms to the present statutory scheme, but also would appear to make far more sense as a method of allowing legislative input into these types of transactions.

In addition, if this bill is passed, we recommend that it be passed with a defective effective date to facilitate further discussion.

We have attached a redline version of S.B. No. 1677, S.D. 1, reflecting our proposed amendments, and a clean version of the bill as it would appear with our proposed amendments incorporated. If this bill is passed, we recommend that it be passed with these amendments.

S.B. NO. 1677
S.D. 1

A BILL FOR AN ACT

RELATING TO LANDS CONTROLLED BY THE STATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 ~~SECTION 1. In January 2008, the Hawaii Supreme Court in~~
2 ~~Office of Hawaiian Affairs v. Housing and Community Development~~
3 ~~Corporation of Hawaii, 117 Hawaii 174, 177 P.3d 884 (2008),~~
4 ~~enjoined the State from selling or otherwise transferring to~~
5 ~~third parties any ceded lands from the public lands trust until~~
6 ~~the claims of the native Hawaiian people to the ceded lands have~~
7 ~~been resolved.~~

8 ~~In April 2008, the governor directed the attorney general~~
9 ~~to petition the United States Supreme Court for a writ of~~
10 ~~certiorari on whether the passage of Public Law 103-150,~~
11 ~~otherwise known as the Apology Resolution, strips the State of~~
12 ~~Hawaii of the authority to sell, exchange, or transfer ceded~~
13 ~~lands unless or until the State reaches a political settlement~~
14 ~~with native Hawaiians about the status of these lands. In~~
15 ~~October 2008, the United States Supreme Court granted the~~
16 ~~State's petition for certiorari in the foregoing case.~~

1 ~~In light of these developments, the legislature believes~~
2 ~~that it is necessary to reassert its constitutional authority in~~
3 ~~that it has the sole authority to resolve this issue on behalf~~
4 ~~of the State and to dispose of lands under the control of the~~
5 ~~State as it deems appropriate.~~

6 ~~The purpose of this Act is to require the adoption of a~~
7 ~~concurrent resolution by two thirds majority vote of each house~~
8 ~~of the legislature to sell or exchange ceded lands.~~

9 SECTION 21. Chapter 171, Hawaii Revised Statutes, is
10 amended by adding a new part to be appropriately designated and
11 to read as follows:

12 "PART . CEDED LANDS

13 §171-A Sale of ceded lands under the control of state
14 departments and agencies; legislative disapproval ~~required~~. (a)

15 This section applies to the following lands:

- 16 (1) Land defined as public lands under section 171-2;
17 (2) Land set aside pursuant to law for the use of the
18 United States;
19 (3) Land to which the United States relinquished the
20 absolute fee and ownership under section 91 of the
21 Organic Act prior to the admission of Hawaii as a
22 state of the United States unless subsequently placed

- 1 under the control of the board of land and natural
2 resources and given the status of public lands in
3 accordance with the state constitution, or other laws;
- 4 (4) Land to which the University of Hawaii holds title;
- 5 (5) Land to which the Hawaii housing finance and
6 development corporation in its corporate capacity
7 holds title;
- 8 (6) Land to which the department of agriculture holds
9 title by way of foreclosure, voluntary surrender, or
10 otherwise, to recover moneys loaned or to recover
11 debts otherwise owed the department under chapter 167;
- 12 (7) Land that is set aside by the governor to the Aloha
13 Tower development corporation; land leased to the
14 Aloha Tower development corporation by any department
15 or agency of the State; or land to which the Aloha
16 Tower development corporation holds title in its
17 corporate capacity;
- 18 (8) Land that is set aside by the governor to the
19 agribusiness development corporation; land leased to
20 the agribusiness development corporation by any
21 department or agency of the State; or land to which

1 the agribusiness development corporation in its
2 corporate capacity holds title; or

3 (9) Land to which the high technology development
4 corporation in its corporate capacity holds title.

5 (b) ~~Notwithstanding any law to the contrary, no sale of~~
6 ~~lands under subsection (a) in fee simple, including land sold~~
7 ~~for roads and streets, shall occur without the prior approval of~~
8 ~~the sale by the legislature by concurrent resolution to be~~
9 ~~adopted by each house by at least a two thirds majority vote of~~
10 ~~the members to which each house is entitled in a regular or~~
11 ~~special session at which a concurrent resolution is submitted~~
12 ~~for approval of the sale~~Notwithstanding any law to the contrary,
13 any sale of lands under subsection (a) in fee simple, including
14 land sold for roads and streets, shall be subject to disapproval
15 by the legislature by two-thirds vote of either the senate or
16 the house of representatives or by majority vote of both in any
17 regular or special session next following the date of
18 disposition; provided that the provisions of this section shall
19 not apply to the sale of remnants, as defined in section 171-52,
20 or portions thereof; and provided further that this section
21 shall not apply to the issuance of licenses, permits, easements,

1 and leases in conformance with the applicable law for lands
2 listed in subsection (a).

3 ~~(c) The state department or agency proposing to sell any~~
4 ~~state land listed under subsection (a) shall submit for~~
5 ~~introduction to the legislature a concurrent resolution for~~
6 ~~review of any sale of state land. The concurrent resolution~~
7 ~~shall contain a list of all sales of state land proposed by the~~
8 ~~state department or agency. The concurrent resolution shall~~
9 ~~contain the following information:~~

10 ~~(1) The location and area of the parcels of land to be~~
11 ~~sold;~~

12 ~~(2) The appraisal value of the land to be sold;~~

13 ~~(3) The names of all appraisers performing appraisals of~~
14 ~~the land to be sold;~~

15 ~~(4) The date of the appraisal valuation;~~

16 ~~(5) The purpose for which the land is being sold; and~~

17 ~~(6) A detailed summary of any development plans for the~~
18 ~~land to be sold.~~

19 ~~(d) If the legislature fails to approve the concurrent~~
20 ~~resolution by at least a two thirds majority vote of both~~
21 ~~houses, the transaction shall not be consummated by the state~~
22 ~~department or agency.~~

1 §171-B Exchange of lands under the control of state
2 departments and agencies for private land; legislative
3 ~~disapproval required.~~ (a) This section applies to the
4 following lands:

5 (1) Land defined as public land under section 171-2;
6 (2) Land set aside pursuant to law for the use of the
7 United States;
8 (3) Land to which the United States relinquished the
9 absolute fee and ownership under section 91 of the
10 Organic Act prior to the admission of Hawaii as a
11 state of the United States unless subsequently placed
12 under the control of the board of land and natural
13 resources and given the status of public lands in
14 accordance with the state constitution, or other laws;
15 (4) Land to which the University of Hawaii holds title;
16 (5) Land to which the Hawaii housing finance and
17 development corporation in its corporate capacity
18 holds title;
19 (6) Land to which the department of agriculture holds
20 title by way of foreclosure, voluntary surrender, or
21 otherwise, to recover moneys loaned or to recover
22 debts otherwise owed the department under chapter 167;

1 (7) Land that is set aside by the governor to the Aloha
2 Tower development corporation; land leased to the
3 Aloha Tower development corporation by any department
4 or agency of the State; or land to which the Aloha
5 Tower development corporation holds title in its
6 corporate capacity;

7 (8) Land that is set aside by the governor to the
8 agribusiness development corporation; land leased to
9 the agribusiness development corporation by any
10 department or agency of the State; or land to which
11 the agribusiness development corporation in its
12 corporate capacity holds title; or

13 (9) Land to which the high technology development
14 corporation in its corporate capacity holds title.

15 (b) ~~Notwithstanding any law to the contrary, no exchange~~
16 ~~of lands under subsection (a), including land being used for~~
17 ~~roads and streets, shall occur without the prior approval of the~~
18 ~~exchange by the legislature by concurrent resolution to be~~
19 ~~adopted by each house by at least a two thirds majority vote of~~
20 ~~the members to which each house is entitled in a regular or~~
21 ~~special session at which a concurrent resolution is submitted~~
22 ~~for approval of the exchange~~Notwithstanding any law to the

1 contrary, any exchange of lands under subsection (a) in fee
2 simple, including land exchanged for roads and streets, shall be
3 subject to disapproval by the legislature by two-thirds vote of
4 either the senate or the house of representatives or by majority
5 vote of both in any regular or special session next following
6 the date of disposition; provided that the provisions of this
7 section shall not apply to the exchange of remnants, as defined
8 in section 171-52, or portions thereof; and provided further
9 that this section shall not apply to the issuance of licenses,
10 permits, easements, and leases in conformance with the
11 applicable law for lands listed in subsection (a).

12 ~~(c) The state department or agency proposing the exchange~~
13 ~~shall submit for introduction to the legislature a concurrent~~
14 ~~resolution for review of any exchange. The concurrent~~
15 ~~resolution shall contain a list of all exchanges proposed by the~~
16 ~~state department or agency and shall be submitted with the~~
17 ~~proposed exchange deeds for the exchanges to be executed by the~~
18 ~~parties, together with the following information:~~

19 ~~(1) The location and area of the parcels of land to be~~
20 ~~exchanged;~~

21 ~~(2) The appraisal value of the lands to be conveyed by the~~
22 ~~State and the private party;~~

- 1 ~~(3) The names of all appraisers performing appraisals of~~
- 2 ~~the parcels of land to be exchanged;~~
- 3 ~~(4) The date of the appraisal valuation;~~
- 4 ~~(5) The purpose for which the parcels of land are being~~
- 5 ~~exchanged; and~~
- 6 ~~(6) A detailed summary of any development plans for the~~
- 7 ~~parcels of land to be exchanged.~~

8 ~~(d) If the legislature fails to approve the concurrent~~
9 ~~resolution by at least a two thirds majority vote of both~~
10 ~~houses, the transaction shall not be consummated by the state~~
11 ~~department or agency."~~

12 SECTION 32. In codifying the new sections added by section
13 1 of this Act, the revisor of statutes shall substitute
14 appropriate section numbers for the letters used in designating
15 the new sections in this Act.

16 SECTION 43. This Act shall take effect ~~upon its approval~~
17 July 1, 2050.

A BILL FOR AN ACT

RELATING TO LANDS CONTROLLED BY THE STATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 171, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 **"PART . CEDED LANDS**

5 **§171-A Sale of ceded lands under the control of state**
6 **departments and agencies; legislative disapproval.** (a) This
7 section applies to the following lands:

8 (1) Land defined as public lands under section 171-2;

9 (2) Land set aside pursuant to law for the use of the
10 United States;

11 (3) Land to which the United States relinquished the
12 absolute fee and ownership under section 91 of the
13 Organic Act prior to the admission of Hawaii as a
14 state of the United States unless subsequently placed
15 under the control of the board of land and natural
16 resources and given the status of public lands in
17 accordance with the state constitution, or other laws;

- 1 (4) Land to which the University of Hawaii holds title;
- 2 (5) Land to which the Hawaii housing finance and
3 development corporation in its corporate capacity
4 holds title;
- 5 (6) Land to which the department of agriculture holds
6 title by way of foreclosure, voluntary surrender, or
7 otherwise, to recover moneys loaned or to recover
8 debts otherwise owed the department under chapter 167;
- 9 (7) Land that is set aside by the governor to the Aloha
10 Tower development corporation; land leased to the
11 Aloha Tower development corporation by any department
12 or agency of the State; or land to which the Aloha
13 Tower development corporation holds title in its
14 corporate capacity;
- 15 (8) Land that is set aside by the governor to the
16 agribusiness development corporation; land leased to
17 the agribusiness development corporation by any
18 department or agency of the State; or land to which
19 the agribusiness development corporation in its
20 corporate capacity holds title; or
- 21 (9) Land to which the high technology development
22 corporation in its corporate capacity holds title.

1 (b) Notwithstanding any law to the contrary, any sale of
2 lands under subsection (a) in fee simple, including land sold
3 for roads and streets, shall be subject to disapproval by the
4 legislature by two-thirds vote of either the senate or the house
5 of representatives or by majority vote of both in any regular or
6 special session next following the date of disposition; provided
7 that the provisions of this section shall not apply to the sale
8 of remnants, as defined in section 171-52, or portions thereof;
9 and provided further that this section shall not apply to the
10 issuance of licenses, permits, easements, and leases in
11 conformance with the applicable law for lands listed in
12 subsection (a).

13 **§171-B Exchange of lands under the control of state**
14 **departments and agencies for private land; legislative**
15 **disapproval.** (a) This section applies to the following lands:

- 16 (1) Land defined as public land under section 171-2;
17 (2) Land set aside pursuant to law for the use of the
18 United States;
19 (3) Land to which the United States relinquished the
20 absolute fee and ownership under section 91 of the
21 Organic Act prior to the admission of Hawaii as a
22 state of the United States unless subsequently placed

- 1 under the control of the board of land and natural
2 resources and given the status of public lands in
3 accordance with the state constitution, or other laws;
- 4 (4) Land to which the University of Hawaii holds title;
- 5 (5) Land to which the Hawaii housing finance and
6 development corporation in its corporate capacity
7 holds title;
- 8 (6) Land to which the department of agriculture holds
9 title by way of foreclosure, voluntary surrender, or
10 otherwise, to recover moneys loaned or to recover
11 debts otherwise owed the department under chapter 167;
- 12 (7) Land that is set aside by the governor to the Aloha
13 Tower development corporation; land leased to the
14 Aloha Tower development corporation by any department
15 or agency of the State; or land to which the Aloha
16 Tower development corporation holds title in its
17 corporate capacity;
- 18 (8) Land that is set aside by the governor to the
19 agribusiness development corporation; land leased to
20 the agribusiness development corporation by any
21 department or agency of the State; or land to which

1 the agribusiness development corporation in its
2 corporate capacity holds title; or

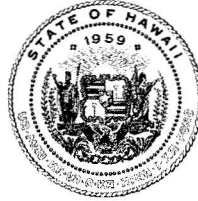
3 (9) Land to which the high technology development
4 corporation in its corporate capacity holds title.

5 (b) Notwithstanding any law to the contrary, any exchange
6 of lands under subsection (a) in fee simple, including land
7 exchanged for roads and streets, shall be subject to disapproval
8 by the legislature by two-thirds vote of either the senate or
9 the house of representatives or by majority vote of both in any
10 regular or special session next following the date of
11 disposition; provided that the provisions of this section shall
12 not apply to the exchange of remnants, as defined in section
13 171-52, or portions thereof; and provided further that this
14 section shall not apply to the issuance of licenses, permits,
15 easements, and leases in conformance with the applicable law for
16 lands listed in subsection (a).

17 SECTION 2. In codifying the new sections added by section
18 1 of this Act, the revisor of statutes shall substitute
19 appropriate section numbers for the letters used in designating
20 the new sections in this Act.

21 SECTION 3. This Act shall take effect on July 1, 2050.

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the House Committees on
WATER, LAND & OCEAN RESOURCES
and
JUDICIARY**

**Friday, March 13, 2009
2:00 PM
State Capitol, Conference Room 325**

**In consideration of
SENATE BILL 1677, SENATE DRAFT 1
RELATING TO LANDS CONTROLLED BY THE STATE**

Senate Bill 1677, Senate Draft 1 proposes to require two-thirds majority vote of the Legislature to adopt concurrent resolution to sell or exchange certain public lands. The Department of Land and Natural Resources defers to the Department of the Attorney General with regard to providing specific comments on this measure.

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIKOOLOAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS



**SB 1677, SD 1
RELATING TO LANDS CONTROLLED BY THE STATE**

**House Committee on Water, Land, & Ocean Resources
House Committee on Judiciary**

March 13, 2009
Room 325

2:00 p.m.

Aloha Chairs Ito and Karamatsu, Vice Chairs Har and Ito,
and Members.

We offer the following comments on this bill:

OHA prefers a bill that would impose a full moratorium. On the other hand, OHA also prefers a moratorium bill that requires a two-thirds majority vote of each house of the Legislature to sell or exchange ceded lands, to no moratorium bill at all.

Mahalo for the opportunity to testify.



KO'OLAUPOKO HAWAIIAN CIVIC CLUB

March 13, 2009

To: Rep. Ken Ito, Chair
And Members
House Committee on Water, Land & Ocean Resources

Rep. Jon Karamatsu, Chair
And Members
House Committee on Judiciary

From: Mahealani Cypher, President
Ko'olaupoko Hawaiian Civic Club

Subject: S.B. 1677, S.D.1, Relating to Lands Controlled by the State

Aloha mai kakou from the Ko'olaupoko Hawaiian Civic Club, working with nine ahupua'a around Kane'ohu Bay, moku Ko'olaupoko, O'ahu.

Our civic club advocates for a moratorium on the sale or exchange of Hawaiian "ceded" lands until Native Hawaiian claims on these lands are resolved.

To the extent that this bill helps achieve this level of protection, ensuring that the State of Hawai'i honors its kuleana to hold these lands in trust, we strongly support this bill and urge your committee and the Legislature to pass it – overwhelmingly – into law.

We applaud the introducers of this bill for making the effort to find a mechanism to protect the public trust lands, and thank you, Mr. Chair, for holding this hearing.

Again, we ask all of you in the Legislature to pass this bill – or a stronger measure that imposes a moratorium – into law this session.

Mahalo for this opportunity to share our mana'o.

P. O. Box 664
Kaneohe, HI 96744
Ph. (808) 235-8111
koolaupokohcc.org



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

RANDY PERREIRA

Executive Director

Tel: 808.543.0011

Fax: 808.528.0922

NORA A. NOMURA

Deputy Executive Director

Tel: 808.543.0003

Fax: 808.528.0922

DEREK M. MIZUNO

Deputy Executive Director

Tel: 808.543.0055

Fax: 808.523.6879

The Twenty-Fifth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Water, Land & Ocean Resources
Committee on Judiciary

Testimony by
Hawaii Government Employees Association
March 13, 2009

S.B. 1677, S.D. 1 – RELATING
TO LANDS CONTROLLED
BY THE STATE

The Hawaii Government Employees Association supports the purpose and intent of S.B. 1677, S.D. 1. The bill, as drafted, would require the adoption of a concurrent resolution by a two-thirds majority vote of each legislative house for the State to sell, transfer or exchange ceded lands. We agree that it is necessary for the Legislature to assert its constitutional authority to resolve the ceded lands issue and to dispose of lands under the control of the State as it deems appropriate.

S.B. 1677, S.D. 1 will enable the Legislature to carry out its fiduciary responsibilities to the people of Hawaii, and ensure the preservation of the public land trust (ceded lands) until the claims of Native Hawaiians are resolved.

Thank you for the opportunity to testify in support of S.B. 1677, S.D. 1.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director

TO: COMMITTEE ON WATER, LAND, AND OCEAN RESOURCES;
Representative Ken Ito, Chair, Representative Sharon Har, Vice Chair; and
COMMITTEE ON JUDICIARY
Representative Jon Riki Karamatsu, Chair; Representative Ken Ito, Vice Chair

Re: SB 1677 SD 1 For hearing Friday, March 13, 2009 2 PM Room 325

TESTIMONY PARTLY IN OPPOSITION, PARTLY SUGGESTING IMPROVEMENTS
By: Kenneth R. Conklin, Ph.D. e-mail [REDACTED]

Aloha Chairs Ito and Karamatsu, Vice Chair Har; committee members, and members of the public.

What makes this bill different from the other ceded land bills is the provision to require a 2/3 vote of the Legislature before ceded lands can be sold. However, the Legislature in session this year cannot bind any Legislatures of future years. Any future Legislature could, by simple majority vote, repeal this 2/3 requirement and make its own decision whether to sell ceded lands and by what voting process to authorize such a sale. The only way to bind future Legislatures is to pass a Constitutional amendment.

This proposal is terribly unbalanced, because it restricts the state or any of its agencies from selling any ceded lands, but it does not impose any restriction on the state transferring public lands to the control of OHA or to the control of a future Akaka tribe aka "Native Hawaiian Governing Entity."

I find it legally unconstitutional and morally reprehensible for the State of Hawaii, or any of its agencies, to give any public lands to any government or private entity which practices racial discrimination or exclusion, even if such racial discrimination occurs under the euphemism of "indigenous people." Please at least amend this bill to add the following concept: The State of Hawaii, and its agencies, are hereby prohibited from selling, giving away, or leasing any of Hawaii's public lands (including the ceded lands) to any government or private agency or institution which practices racial discrimination or racial exclusion, including providing benefits or services to beneficiaries who are restricted according to race, gender, or national origin.

Now let me tell you a few things about the ceded lands which you might not have heard before, including some things you are obligated to believe if you wish to continue in your position as a Legislator of the State of Hawaii.

HAWAII REALLY IS A PART OF THE UNITED STATES

Before briefly recalling the history, let me remind you that if you do not believe Hawaii is legally and morally a part of the United States, then you must immediately resign your position in the Legislature. Before you could run as a candidate or be seated, you were required to take an oath including "I will support and defend the Constitution of the United States." There's no room for quibbling here.

Hawaiian sovereignty activists claim that the revolution of 1893 that overthrew the monarchy was "illegal." They claim that the presence of 162 U.S. peacekeepers constituted an armed invasion (like China invading Tibet or Germany invading Poland), and that the U.S. apology resolution of 1893 is a confession of a crime under international law. They claim the annexation of 1898 was illegal (for many reasons, all bogus). They claim the Statehood vote of 1959 was illegal. They claim the apology resolution of 1993 is a confession of a crime under international law which requires the U.S. to withdraw from Hawaii and provide huge reparations for 116 years of belligerent military occupation of the Hawaiian indigenous homeland.

My dear Legislator, if you believe any of those things you should immediately resign. You are violating your oath of office if you give credence to any of those assertions and, giving the benefit of the doubt to them, you then pass legislation that basically says "here's what we must do just in case this is true." You must stand firm, in public, in front of God and your fellow citizens, and you must say "I am proud to be an American, I have no doubt that Hawaii is the 50th State of the United States, and I will never support any legislation based on any doubt of that or which would in any way violate the U.S. Constitution."

Here are a few places where you can get more information about specific topics addressed above:

Historical Issues Related to Hawaiian Sovereignty -- Revolution (Overthrow of monarchy), Annexation, Statehood, Indigenous Status, Hawaiian Language Ban, Ceded Lands, Etc. This is a webpage whose purpose is to provide links to other webpages on specific historical topics.
<http://tinyurl.com/3323rz>

What Does the United States Owe to Native Hawaiians? Two reports commissioned by Congress contain the answers (Morgan Report of 1894 about the revolution of 1893, and Native Hawaiians Study Commission report of 1983). Links to the full text of both reports, which are many hundreds of pages and well-documented.
<http://tinyurl.com/b6lakw>

The 1993 apology resolution is filled with factual errors and distortions. Constitutional law scholar, attorney Bruce Fein, wrote a monograph which includes extensive, point-by-point refutation of it. See "Hawaii Divided Against Itself Cannot Stand" at
<http://tinyurl.com/7d6xq>

Following the creation of the Republic of Hawaii in July 1894 by publication of its Constitution, there were Emperors, Kings, Queens, and Presidents of 20 nations on 4 continents who personally signed official letters recognizing the Republic as the rightful government of Hawaii de jure. Photos of the original letters in the state archives, plus Liliuokalani's letter of abdication and oath of loyalty to the Republic, can all be seen at
<http://tinyurl.com/4wtwdz>

Lili'uokalani Loses A Big One (The Crown Lands) -- Liliuokalani v. United States, 45 Ct. Cl. 418 (1910)
<http://tinyurl.com/56czl>

THE PUBLIC LANDS OF HAWAII (INCLUDING THE "CEDED LANDS") BELONGED TO ALL THE SUBJECTS (CITIZENS) OF THE MULTIRACIAL KINGDOM OF HAWAII AND THE REPUBLIC OF HAWAII WITHOUT RACIAL DISTINCTION; WERE SET ASIDE BY THE U.S. AS A PUBLIC TRUST SOLELY TO BENEFIT ALL THE PEOPLE OF HAWAII WITHOUT RACIAL DISTINCTION DURING THE TERRITORIAL PERIOD; AND ONCE AGAIN BELONG TO ALL THE CITIZENS OF THE STATE OF HAWAII WITHOUT RACIAL DISTINCTION.

The Crown lands originally were set aside in the Mahele (1838) as the King's private property. But in 1865 the Kingdom Legislature passed a law to take government ownership of the crown lands in return for the government's issuance of bonds to pay off a mortgage the King had placed on the crown lands, which mortgage was in danger of foreclosure; and the King happily signed that law.

From that point forward the crown lands were merged with the government lands and became jointly the "public lands" except that the income from the crown lands was set aside by statute for the purpose of financing the official functions of the head of state (at that time the King). After the revolution there was no more monarch, so the "crown land" revenues went to support the functions of government in the same way as the old "government land" revenues.

Please note that throughout the history of the Kingdom of Hawaii there was never any racial set-aside of any lands communally for native Hawaiians as a group. There were crown lands, government lands, and private lands; but there were never any "Native Hawaiian" lands.

In 1909 ex-queen Lili'uokalani filed a lawsuit in the U.S. Court of Claims demanding money for herself as compensation for the "confiscation" of "her" crown lands resulting from the annexation. In 1910 the court ruled that Lili'uokalani had never personally owned the crown lands and therefore was not entitled to any compensation. Today's Hawaiian activists would do well to note that their hero Lili'uokalani never asserted that the ceded lands belonged communally to ethnic Hawaiians; and if she had won her lawsuit the money would have been paid to her personally and not to ethnic Hawaiians communally.

SECTION 5(f) OF THE 1959 STATEHOOD ADMISSION ACT DOES NOT REQUIRE THAT ONE PENNY MUST BE SPENT SPECIFICALLY FOR ETHNIC HAWAIIANS TO THE EXCLUSION OF OTHERS. ETHNIC HAWAIIANS HAVE ZERO CLAIM TO ANY RACIAL SET-ASIDES.

Section 5(f) says ceded land revenues can be spent for ANY ONE OR MORE of 5 purposes. One of those purposes is public education; and for the first 20 years of statehood virtually all the ceded land revenues was given to the public schools. Since 26% of the school children were ethnic Hawaiians, therefore ethnic Hawaiians received 26% of the ceded land revenues without any explicit racial set-aside.

One of the five purposes identified in section 5(f) is "for the betterment of native Hawaiians as defined in the Hawaii Homes Commission Act of 1921." The reason for including that among the 5 purposes was to allow ceded land revenues to be used to support the Hawaiian Homesteads, which are restricted to Hawaiians of at least 50% native blood quantum.

It may well be that HHCA of 1921 was unconstitutional. It is likely that section 5(f) of the Admission Act is unconstitutional to the extent that it is construed as giving the State of Hawaii permission to violate the 14th Amendment by setting aside some or all of the ceded land revenues to be used for a racially exclusionary purpose.

In any case, the racial set-aside apparently allowed under section 5(f) is exclusively for Hawaiians of 50% native blood quantum, and does not require or even contemplate any racial set-aside for all "one-drop" Hawaiians (the class eligible to sign up for Kau Inoa and join the much-anticipated Akaka tribe).

It is ludicrous to imagine that "Hawaiians" or "Native Hawaiians" as a group (as defined by statute according to the one-drop rule) have any legal or moral claim to the ceded lands. There are no legal or moral race-based claims which needs to be resolved before parcels of ceded lands can be sold. The only way such claims might be established is if you, the Legislature, decide to create such claims. Please don't do that. Just say no.

THE BIG PICTURE

I believe the single most important issue facing Hawai'i in the foreseeable future is the imminent and continuing threat that the lands, resources, government and people of Hawai'i will be divided along racial lines.

The Legislature has repeatedly passed resolutions favoring the Akaka bill to create a racially exclusionary government empowered to negotiate with YOU, the legislators. It is expected that you will give away massive amounts of land, money, and jurisdictional authority.

Numerous bills in the Legislature in recent years have tried to implement massive give-aways even before the tribe is created, and before any negotiations have started. That's absurd! No responsible negotiator gives away important concessions before the opponents even arrive at the table.

Please read "Hawaiian Apartheid: Racial Separatism and Ethnic Nationalism in the Aloha State" at <http://tinyurl.com/2a9fqa>

The State of Hawaii, and its agencies, are hereby prohibited from selling, giving away, or leasing any of Hawaii's public lands (including the ceded lands) to any government or private agency or institution which practices racial discrimination or racial exclusion, including providing benefits or services to beneficiaries who are restricted according to race, gender, or national origin.

JEANNINE JOHNSON

March 11, 2009

COMMITTEE ON WATER, LAND, & OCEAN RESOURCES

Rep. Ken Ito, Chair

Rep. Sharon E. Har, Vice Chair

COMMITTEE ON JUDICIARY

Rep. Jon Riki Karamatsu, Chair

Rep. Ken Ito, Vice Chair

SB 1677, SD1 RELATING TO CEDED LANDS.

Hearing: Friday, March 13, 2009 at 2 pm in Conference Room 325

Aloha kākou,

I strongly support SB1677 SD1 which requires two-thirds majority vote of the legislature to adopt a concurrent resolution to sell or exchange certain public lands.

I humbly request your support. Mahalo for your consideration.

Sincerely,


Jeannine Johnson

cc: Sen. Sam Slom
Rep. Lyla Berg
Rep. Barbara Marumoto

Testimony for SB1677 on 3/13/2009 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Thursday, March 12, 2009 11:06 AM

To: WLOtestimony

Cc: [REDACTED]

Testimony for WLO/JUD 3/13/2009 2:00:00 PM SB1677

Conference room: 325

Testifier position: support

Testifier will be present: Yes

Submitted by: Homelani Schaedel

Organization: Malu'ohai Residents Assn

Address: [REDACTED]

Phone: [REDACTED]

E-mail: [REDACTED]

Submitted on: 3/12/2009

Comments:

Aloha Chair Ito, Chair Karamatsu and members of the committees:

The issue regarding the sale of ceded lands have stirred the souls of Native Hawaiians, and the people of Hawaii who understand the repercussion of the Governor's and Attorney General's request to the U.S. Supreme Court.

During recent months, I've reflected on how my ancestor's reacted to or acted upon past transgressions they experienced during the overthrow, transfer of government to the U.S. and State of Hawaii. Unfortunately, there is no documented record. However, silent their voices may or may not have been then, I hear them now.

I come before you so that future generations of my ohana and community will not have to ask the same questions. I stand in support this bill and it's intent and humbly ask you to do the same.

Mahalo for your time and consideration.
Homelani Schaedel

Derek Kauanoë
WLO and JUD House Committees
Friday, March 13, 2009, 2:30pm
SB 1677

Lawmakers, today you are gathered to hear testimony on Senate Bill 1677 which requires a two-thirds majority vote in both the State House and Senate for the sale of "ceded" lands. While this restriction is greatly appreciated, I have concerns towards SB 1677 in its current form.

THERE ARE LEGITIMATE CONCERNS WITH THE CURRENT VERSION OF SB 1677.

Although I appreciate the Senate majority's effort to place restrictions on the sale of "ceded" lands, I do believe that Senate Bill 1677, in its current form brings important concerns to this legislature and today, to these two committees.

There are two recent occurrences that give rise to my concern regarding SB 1677.

These two occurrences are:

- the passage of Senate Concurrent Resolution 40 and
- the recent oral arguments at the United States Supreme Court regarding the case, *Hawaii v. Office of Hawaiians* on February 25, 2009.

WHAT WE NEED TO BE CONCERNED ABOUT.

Since our State House of Representatives voted to adopt SCR 40 with only two Representatives voting against it, I will assume that you are all familiar with the public policy that the Legislature declared in that resolution.

Realizing that you're all consumed researching and voting on other proposed bills, I understand that you may not have the time or the inclination to read the transcripts of the "ceded" lands case oral arguments at the Supreme Court. The transcripts provide a degree of guidance and highlights what may be important to the language of proposed bills affecting the "ceded" lands. The reason these transcripts provide guidance is because we learn answers to questions between the Supreme Court Justices and the attorneys representing both sides.

A review of the oral argument transcripts suggest that state legislative action taken on the "ceded" lands (public land trust) should be done in a manner that is not inconsistent with federal legislation. The federal legislation this Legislature may want to concern itself with is the Admission Act of 1959, which is also the legislation that "transferred" these lands from the control of the federal government to the State. What we may want to pay more attention to is Section 5(f) of the 1959 Admission Act where it describes the lands at issue. Section 5(f) provides,

shall be held by said State as a public trust for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended, for the development of farm and

home ownership on as widespread a basis as possible for the making of public improvements, and for the provision of lands for public use. Such lands, proceeds, and income shall be managed and disposed of for one or more of the foregoing purposes in such manner as the constitution and laws of said State may provide, and their use for any other object shall constitute a breach of trust for which suit may be brought by the United States.

When we look at the language of SB 1677, nothing indicates that SB 1677 will be enacted in conformity with Section 5(f). In fact, Section 1 paragraph three, in part, provides, “the legislature believes that . . . it has the sole authority to resolve this issue on behalf of the State and to dispose of lands under the control of the State as it deems appropriate.”

A comparison of SB 1677 to SB 1085 shows that, in Section 3 of SB 1085 there exists language that recognizes the public land trust. SB 1085 also contains language that mentions an effort to maintain, and not diminish, the public land trust.

With hesitation, I support SB 1677, but that the members of these two committees wait for SB 1085 before proceeding on passing SB 1677. I believe it will be both useful and beneficial to hear both bills in a hearing and allowing the public an opportunity to give testimony on both bills.

If the members of these two committees have already obligated themselves to passing this particular bill, I strongly suggest, that it do so in a manner that integrates key sections of SB 1085.

Thank you for this opportunity to comment.

Sincerely,

Derek Kauanoë

Testimony for SB1677 on 3/13/2009 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Thursday, March 12, 2009 3:21 PM

To: WLOtestimony

Cc: [REDACTED]

Testimony for WLO/JUD 3/13/2009 2:00:00 PM SB1677

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: william and melva aila

Organization: [REDACTED]

Address: [REDACTED]

Phone: [REDACTED] 21 [REDACTED]

E-mail: [REDACTED]

Submitted on: 3/12/2009

Comments:

We support the passage of SB 1677 SD1 because it would send a strong message to Governor Lingle that the Legislature honors its commitment to Native Hawaiians and to the reconciliation of unresolved issues. ahalo for the opportunity to testify in support.

Testimony for SB1677 on 3/13/2009 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Thursday, March 12, 2009 10:11 AM

To: WLOtestimony

Cc: [REDACTED]

Testimony for WLO/JUD 3/13/2009 2:00:00 PM SB1677

Conference room: 325

Testifier position: support

Testifier will be present: Yes

Submitted by: Leimomi Khan

Organization: Association of Hawaiian Civic Clubs

Address: [REDACTED]

Phone: [REDACTED]

E-mail: [REDACTED]

Submitted on: 3/12/2009

Comments:

The following testifiers have submitted testimony identical to the attached

Allison Vaughan	Individual	Support
Keali`i`olu`olu Gora	Individual	Support
Andrew Rosenthal	Individual	Support
Desiree Lee	Individual	Support
Diane Texidor	Individual	Support
Amoriann Laimana	Individual	Support
Ka'ano'i Walk	Individual	Support
Brandee Aukai	Individual	Support
Kelly Anne Beppu	Individual	Support
Haley & Aloha Cerit	Individual	Support
Noah & Chesare Texidor	Individual	Support
Garid Faria	Individual	Support
Anuheia Reimann-Giegerl	Individual	Support
Yvonne Geesey	Individual	Support
Rocky Gilding	Individual	Support
Pomaika'I Akiona	Individual	Support
Hank George	Individual	Support
Henry & Evonne George	Individual	Support
Wayne Tanaka	Individual	Support
Emmanuel Chen	Individual	Support
Tabitha Milian	Individual	Support
Cortney Silva	Individual	Support
Darcy Jean Ebanez	Individual	Support
Ikaika Kon	Individual	Support
Margaret Primacio	Individual	Support
Justin Dery	Individual	Support
Rev. Dennis Kamakahi	Individual	Support
Kailianu Michaels	Individual	Support
Mari Freitas	Individual	Support
Kalai Carey	Individual	Support
Julia Estigoy	Individual	Support
Mikhail Ponce	Individual	Support
Pamela Rivas	Individual	Support
Paul Gabriel	Individual	Support
Sarah Dean	Individual	Support
Kira Lee	Individual	Support
Mark Hull	Individual	Support
Dawn Gohara	Individual	Support

Allison Ka`ilihiwa Kaha`ipi`ilani Vaughan

House Committee on Water, Land & Ocean Resources
House Committee on Judiciary
Friday, March 13, 2009 at 2:00pm
SB 1677

Dear Committee Chair Ken Ito, Madame Vice-Chair Sharon Har and members of the Committee on Water, Land, & Ocean Resources,

Dear Committee Chair Jon Karamatsu, Vice-Chair Ken Ito, and members of the Committee on Judiciary,

I, Allison Ka`ilihiwa Kaha`ipi`ilani Vaughan submit testimony in support of Senate Bill 1677 on the condition that SB 1677 be amended to better reflect the Hawai'i Legislature's policy as defined in Senate Concurrent Resolution 40, passed by the Senate and adopted by the House of Representatives last month.

Through Senate Concurrent Resolution 40, as members of the Legislature, you

- urged the Governor to “withdraw the appeal to the United States Supreme Court of the Hawai‘i State Supreme Court decision” in the “ceded” lands case, and
- declared “the public policy of the State of Hawai‘i is to honor the decision of the Hawai‘i Supreme Court.”

Passing SB 1677, in its current form, does not reflect the public policy described in Senate Concurrent Resolution 40.

I urge you to add the language below to SB 1677:

Chapter 171, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§171- Limitation on sale and transfers. The State shall not dispose of any lands in the public land trust, as described in subsection 171-18(a), whether by lease with option to purchase, sale, or exchange, except as provided in subsection 171-18(d); provided that the State may dispose of lands in the public land trust pursuant to subsection 171-18(c), if one of

the following conditions is met:

(1) The claims of the native Hawaiian people, as defined in the United States Apology Resolution, Pub. L. No. 103-150, 107 Stat. 1510 (1993), have been resolved;

(2) The legislature finds pursuant to a concurrent resolution adopted by at least two-thirds majority vote of the members to which each house is entitled that the State no longer supports reconciliation between the State and the native Hawaiian people; or

(3) The approval of the disposition of the public lands trust land by lease with option to purchase, sale, or exchange occurs after December 31, 2014."

In addition to the above language, I also urge you to add the language below:

Notwithstanding any law to the contrary, the State, its political subdivisions, boards, agencies, departments, and entities created pursuant to state law, may hold or manage public land trust lands, as described in subsection (a), by lease, permit, license, easement, exchange, or set aside. In addition, upon the occurrence of an event as described in section 171- (1), (2), or (3), the State, its political subdivisions, boards, agencies, departments, and any other state entity may dispose of public land trust lands, whether by lease with option to purchase, sale, or exchange, provided that all of the following conditions are met:

(1) The State establishes a compelling state interest for the disposition;

(2) There is no reasonable alternate means to accomplish the compelling state interest;

(3) The disposition is limited to accomplishing the compelling state interest; and

(4) The disposition is approved by the legislature by concurrent resolution adopted by at least two-thirds majority vote of the members to which each house is entitled.

The conditions described in subsection (c)(1) to (4) shall not prevent the State from:

(1) Disposing of remnants, as defined in section 171-52;

(2) Providing easements to public utilities and government agencies pursuant to section 171-95; or

(3) Engaging in land exchanges pursuant to sections 171-50 and 171-51."

The above proposed language better reflects the public policy of our Legislature. Any and all text in the current form of SB 1677 that contradicts this proposed language should be omitted/stricken so as to recognize that the proposed language above is the language recognized in the Bill.

I urge you to pass 1677 only with amendments. I also urge you to schedule a hearing for SB 1085 which better reflects the public policy declared by our legislature.

Thank you for this opportunity to submit testimony.

Allison Ka`ilhiwa Kaha`ipi`ilani Vaughan