

TESTIMONY

SB 476



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

ON THE FOLLOWING MEASURE:

S.B. NO. 476, RELATING TO LANDS CONTROLLED BY THE STATE.

BEFORE THE:

SENATE COMMITTEE ON WATER, LAND, AGRICULTURE AND HAWAIIAN AFFAIRS

DATE: Wednesday, February 4, 2009 TIME: 2:45 PM

LOCATION: State Capitol, Room 229

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

Chair Hee and Members of the Committee:

The Department of the Attorney General offers the following comments on this bill.

While nothing stands in the way of lawsuits being filed in the federal courts challenging this bill's constitutionality, were it to be enacted, we believe this bill does not facilitate the types of challenges that other bills to prohibit the sale or exchange of ceded lands would generate, were they to be enacted. However, we recommend amendments to certain provisions of the 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 suggest that the bill 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.

We believe the Legislature should also consider a structural revision to the bill to provide an exemption for the sale or exchange of remnants, such as by adding the following language to each of the sections this bill adds to the Hawaii Revised Statutes: "The provisions of this section shall not apply to the sale (or exchange, as appropriate) of remnants, as that term is defined in section 171-52, or portions thereof."

If the Committee passes this bill, we respectfully ask that it be passed with the recommended amendments.

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 Senate Committee on
WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS**

**Wednesday, February 4, 2009
2:45 PM
State Capitol, Conference Room 229**

**In consideration of
SENATE BILL 476
RELATING TO LANDS CONTROLLED BY THE STATE**

Senate Bill 476 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
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS**

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, January 31, 2009 1:21 PM
To: WTLTestimony
Cc: thirr33@gmail.com
Subject: Testimony for SB476 on 2/4/2009 2:45:00 PM

Testimony for WTL 2/4/2009 2:45:00 PM SB476

Conference room: 229
Testifier position: support
Testifier will be present: No
Submitted by: Arvid T. Youngquist
Organization: The Mestizo Association
Address: P O Box 37542 Honolulu, HI 96837
Phone: 808-540-1910
E-mail: thirr33@gmail.com
Submitted on: 1/31/2009

Comments:
Chair Clayton Hee
Vice Chair Jill N. Tokuda
Honorable Members of Senate WTL Committee

Greetings! It was an honor to address your committee yesterday afternoon, Friday, Jan. 30, 2009.

I am providing this testimony in support of SB 476 related to ceded land (prohibition for the State to sell off w/o a 2/3 vote from both the House and the Senate. Granted, it is going to be difficult to over-ride the Governor's veto, if the measure reaches her desk.

However, any effort worth making, is worth doing well, and the only endeavor worth undertaking is the "impossible one".

For the same token, I also support the other bills before you today for consideration; some of them from the Legislature's Hawaiian Caucus. It would be prudent bear in mind, I suggest, that not all these bills are mutually exclusive, and will be worth reporting them out with your endorsements, be it with or without amendments. Each bill of course, I know, will be heard on its merit.

SB 1085, SB 475, & SB 582 are all barometer of how much the caucus has matured as well as grown in numbers. Many local office holders and agencies will voice objections to any one of these bills under consideration, but it would be worthwhile to determine whether they speak for the organization, the leadership positions they occupy, or principles as private citizens.

As a minimum, may I recommend that the Senate WTL Committee report out SB 476 and the balance as fallback legislations in case SB 476 gathers steam in the other Chamber? I believe in increased choices, rather than diminished alternatives.

Mahalo for this opportunity to provide written testimony. Thank you again for the hard work that you already do, and the harder work yet ahead of you during the Session.

Me Ke Aloha Pumehana.
("1 of 16,588 local voices")

TO: COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS;
Senator Clayton Hee, Chair, Senator Jill N. Tokuda, Vice Chair

Re: ~~SB 1085, SB 475~~, SB 476 RELATING TO CEDED LAND SALES
For hearing Wednesday, February 4, 2009 2:45 p.m Room 229

TESTIMONY IN OPPOSITION, By:
Kenneth R. Conklin, Ph.D.
e-mail Ken_Conklin@yahoo.com

Aloha Chair Hee, Vice Chair Tokuda; members, and public.

I oppose SB 1085, SB 475, and SB 476

Books, scholarly articles, and legal briefs have been written about the ceded lands and their history. There's no way I can summarize all that and tell my own position in only a few pages; nor would you be interested in reading that.

But I will tell you a few things you might not have heard before, including a reminder of 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 Liliuokalani 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>

Sovereign Councils
of the



**Hawaiian Homelands
Assembly**

89-188 Farrington Highway
Wai'anae, Hawai'i 96792
Phone & Fax: (808) 668-0441

Kamaki Kanahele
Chair
O'ahu

Leah K. Pereira
Vice-Chair
Kaua'i

M. Kammy Purdy
Secretary
Moloka'i

M. Kanani Kapuniai
Treasurer
Hawai'i

Richard Soo
Executive Director

February 3, 2009

To: **Senator Clayton Hee, Chair**
Senator Jill N. Tokuda, Vice Chair & Members of the
Committee on Water, Land, Agriculture & Hawaiian Affairs

From: **Kali Watson**
Chairman of Statewide Economic Development Committee
SCHHA
Honolulu, Hawaii 96792

Re: **Hearing on SB -476 Relating to Lands Controlled by the State**
February 4, 2009 at 2:45pm
Conference Room 229, State Capitol

TESTIMONY IN SUPPORT

Dear Chair Hee, Vice Chair Tokuda and Members:

Thank you for the opportunity to provide testimony in support to SB 476-relating to lands controlled by the State. This bill requires two-thirds majority vote of the legislature to adopt concurrent resolution to sell or exchange certain public lands. It basically places a moratorium on ceded lands. It allows the legislature to carry out its fiduciary responsibilities to the people of Hawaii, but especially to its indigenous Hawaiian people. The obvious intent is to place possible transfers of ceded lands under the purview and control of our State's elected leaders, rather than the whims and easily influenced discretion of State bureaucrats. The SCHHA supports the intent to place the State in the position of addressing and resolving the theft of lands from the Hawaiian people. If these "Ceded Lands" were lost forever through sales and transfers, then any settlement would be meaningless and empty for it is the "aina" or land that will truly make our nation whole and righteous.

The Sovereign Councils of the Hawaiian Homelands Assembly, formerly the State Council of Hawaiian Homestead Associations was founded more than 20 years ago to unite homestead communities and to advocate for the beneficiaries of the Hawaiian Homes Commission Act of 1921. The SCHHA is the oldest statewide advocacy organization representing the interests of more than 30,000 beneficiaries and families residing in the communities of the Hawaiian Home Land Trust. Its mission is to promote the self determination of native Hawaiians and the well being of homestead communities. DHHL lands are part of the ceded lands inventory.

I urge you to please pass this measure, SB 476.

Sincerely,
Kali Watson

Kali Watson
Chairman of Economic Development

THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009

COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

Senator Clayton Hee, Chair
Senator Jill N. Tokuda, Vice Chair

DATE: Wednesday, February 4, 2009
TIME: 2:45 p.m.
PLACE: State Capitol --- Conference Room 229
415 South Beretania Street

ALOHA, MY NAME IS: LEONA M. KALIMA

I AM IN SUPPORT OF THE FOLLOWING SENATE BILLS.....MAHALO

SB 580

RELATING TO FORFEITURE.

Clarifies that the forfeiture laws apply to violations of conservation and resources statutes and rules and to protection of caves, historic preservation, and the Kaho'olawe island reserve.

SB 582

RELATING TO KULEANA LANDS.

Makes the office of Hawaiian affairs the trustee of any unclaimed kuleana lands. Prohibits quieting title to kuleana lands or claiming kuleana lands by adverse possession.

SB 1085

RELATING TO CEDED LANDS.

Prohibits the board of land and natural resources from selling, exchanging, or otherwise alienating ceded lands in the public land trust.

SB 475

RELATING TO LANDS CONTROLLED BY THE STATE.

Prohibits the sale or exchange of certain public lands considered to be ceded lands. Expires on decision of U.S. Supreme Court on pending appeal of related case.

SB 476

RELATING TO LANDS CONTROLLED BY THE STATE.

Requires two-thirds majority vote of the legislature to adopt concurrent resolution to sell or exchange certain public lands.



TESTIMONY OF
AHA KIOLE ADVISORY COMMITTEE

IN SUPPORT OF
SB 476

Description:

Requires two-thirds majority vote of the legislature to adopt concurrent resolution to sell or exchange certain public lands.

Senate Committee on Water, Land, Agriculture and Hawaiian Affairs
Conference Room 229, 2:45 p.m.

February 4, 2008

Aloha Chair Hee and Members of the Committee:

The Aha Kiole Advisory Committee (AKAC) created through Act 212 in Legislative Session 2007 and working with Native Hawaiian *lawaiia* (fishermen) and *mahiai* (farmers) practitioners to create a system of best practices based upon the indigenous resource management practices of traditional moku opposes the sale or exchange of ceded lands.

Since its inception in 2007, the AKAC has strived to restore the Aha Moku System, an ancient proven system of traditional land and ocean resource management used universally in Hawaii prior to the 9th century A.D. This restored system is meant to aide government in its goal of ecosystem sustainability in Hawaii today and at the same time, protect native Hawaiian practices and traditional resource methodology that is site specific.

We believe and trust that our elected legislators will listen to the will of the people and also oppose the sale and exchange of Public Trust lands. However, to do that fairly we support the requirement of a two-thirds majority vote of the Legislature to adopt any concurrent resolution calling for the sale or exchange of our ceded lands.

The Aha Kiole Advisory Committee representing the islands of Hawaii, Maui, Molokai, Lanai, Kahoolawe, Oahu, Kauai and Niihau are in support of SB 476 as stated. Thank you for your consideration in hearing this testimony and we urge passage of this bill.

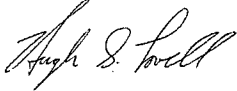
Respectfully,



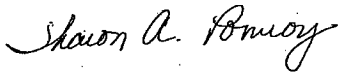
Vanda Hanakahi, Moloka'i, Chair



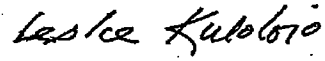
Timothy Bailey, Maui



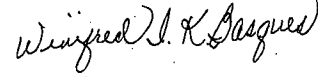
Hugh Lovell, Hawai'i



Sharon Pomroy, Kaua'i



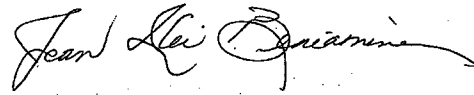
Leslie Kuloloio, Kahoolawe, Vice-Chair



Winifred Basques, Lana'i



Charles Kapua, O'ahu



Jean Ilei Beniamina, Ni'ihau



**Senate Bill No. 476
RELATING TO LANDS CONTROLLED BY THE STATE**

**Senate Committee on Water, Land, Agriculture, and Hawaiian
Affairs**

February 4, 2009
Room 229

2:45 p.m.

Aloha Chair Hee, Vice Chair Tokuda, and Members.

The decision by OHA's Trustees to seek moratorium legislation emerged following the state administration's appeal to the U.S. Supreme Court of a unanimous ruling by the Hawai'i Supreme Court that the State possesses a fiduciary duty to preserve the corpus of the public land trust, specifically the ceded lands, until such time as the "unrelinquished claims" of Native Hawaiians to these lands are resolved. OHA believes that any moratorium legislation should reflect and be consistent with the Hawaii Supreme Court's ruling.

Mahalo for the opportunity to testify.



February 3, 2009

Senator Clayton Hee, Chair, Committee on Water, Land, Agriculture and Hawaii Affairs
Senator Brian T. Taniguchi, Chair, Committee on Judiciary and Government Operations
c/o Committee clerk, Room 228, State Capitol

Dear Chairmen Hee and Taniguchi and members of the WTL and JGO Committees:

Re: ~~SB1085, SB475 and SB476; and SB1677~~

The Maunaloa Hawaiian Civic Club supports the reconciliation between the State of Hawaii and the descendants and beneficiaries of the Hawaiian Kingdom. The ceded lands should not be alienated without consultation with the beneficiaries and survivors of the Hawaiian Kingdom. Clear title to land means that lands were transferred through legal transactions all the way back to when title was created. Ceded lands are special lands held in trust for descendants of the Kingdom of Hawaii.

As trustee for the Public and Native Hawaiians the State must be held to a high standard of Trust administration. By challenging the findings of their own high court, it is clear that the administration, despite all of her campaign promises, is against Native Hawaiians, native rights and the native trust. The administration is willing to attempt to undermine their own high court decision and their own authority by asking an outside authority, the US Supreme Court, to rule in their favor against the decision of their own court.

We ask the Hawaii Legislature to take the lead in this matter. Judge Healey stated in the original decision, some 14 years ago, that this is an issue that needs a political solution. Since the Executive will not do it, we ask the Legislature to take the lead and in this moratorium on the sale of ceded lands to begin the process of reconciliation.

Mahalo,

Kitty M. Simonds
President

Maunaloa Hawaiian Civic Club
P.O. Box 240388, Aina Haina Station
Honolulu, Hawai'i 96824

TESTIMONY

SB 476

(END)