

STAND. COM. REP. NO.

139

Honolulu, Hawaii

FEB 18 2009

RE: S.B. No. 1085
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Madam:

Your Committee on Water, Land, Agriculture, and Hawaiian Affairs, to which was referred S.B. No. 1085 entitled:

"A BILL FOR AN ACT RELATING TO CEDED LANDS,"

begs leave to report as follows:

The purpose of this measure is to prohibit the Board of Land and Natural Resources from selling, exchanging, or otherwise alienating ceded lands in the public land trust.

Testimony in support of this measure was submitted by one state agency, fifteen organizations, and twenty-nine public citizens. One state agency submitted comments. Testimony in opposition was submitted by one state agency and two public citizens. Copies of written testimony are available for review on the Legislature's website.

In January 2008, the Hawaii State Supreme Court in *Office of Hawaiian Affairs v. Housing and Community Development Corporation of Hawaii*, 117 Hawaii 174 (2008), enjoined the State from selling or otherwise transferring to third parties any ceded lands from the public lands trust until the claims of the Native Hawaiian people to the ceded lands have been resolved.

The Court stated, that "[b]ased on a plain reading of the . . . [Apology Resolution], we believe Congress has clearly recognized that the native Hawaiian people have unrelinquished claims over the ceded lands, which were taken without consent or compensation and which the native Hawaiian people are determined



to preserve, develop, and transmit to future generations." The Court further held, ". . . we believe and, therefore, hold that the Apology Resolution and related state legislation . . . give rise to the State's fiduciary duty to preserve the corpus of the public lands trust, specifically, the ceded lands, until such time as the unrelinquished claims of the native Hawaiians have been resolved. Such duty is consistent with the State's 'obligation to use reasonable skill and care' in managing the public lands trust and Ahuna court's declaration that the State's conduct 'should . . . be judged by the most exacting fiduciary standards.'" 117 Haw. at 193.

In April 2008, the Governor directed the Attorney General to petition the United States Supreme Court for a writ of certiorari on whether the passage of Public Law 103-150, otherwise known as the Apology Resolution, strips the State of Hawaii of the authority to sell, exchange, or transfer ceded lands unless or until the State reaches a political settlement with the Native Hawaiian people about the status of these lands. In October 2008, the United States Supreme Court granted the State's petition for certiorari in the foregoing case.

In light of these developments, your Committee believes that it is necessary to reassert the Legislature's sole authority under the Constitution of the State of Hawaii to resolve this issue on behalf of the State and to dispose of lands under the control of the State.

Your Committee finds that the State possesses a fiduciary duty to preserve the corpus of the public land trust, specifically ceded lands, until the unrelinquished claims of the Native Hawaiian people are resolved. This measure preserves the public land trust to ensure a fair and just settlement leading to reconciliation with the Native Hawaiian people.

Your Committee believes this measure serves as a legislative vehicle not only to assert the Legislature's constitutional authority and fiduciary duty, but to implement the policy clearly set forth by the Hawaii State Supreme Court in its decision in *Office of Hawaiian Affairs v. Housing and Community Development Corporation of Hawaii*, *supra*.

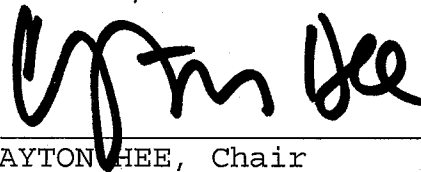
Your Committee has amended this measure by:



- (1) Clarifying that the prohibition on the sale or transfer of ceded lands shall not apply to remnants, as defined in section 171-52, Hawaii Revised Statutes, easements for public utilities or government agencies pursuant to section 171-95, Hawaii Revised Statutes, or the exchange of lands pursuant to sections 171-50 and 171-51, Hawaii Revised Statutes;
- (2) Prohibiting the sale or transfer of ceded lands until the unrelinquished claims of the Native Hawaiian people are resolved, or the Legislature finds by concurrent resolution adopted by a two-thirds majority vote of each House that the State no longer supports reconciliation between the State and the Native Hawaiian people, or until December 31, 2014, whichever may occur first;
- (3) Inserting provisions that establish a process with specific safeguards for the sale or transfer of ceded land, to be implemented only after the occurrence of one of the conditions set forth in (2), above; and
- (4) Making technical, nonsubstantive changes for clarity, consistency, and style.

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 is in accord with the intent and purpose of S.B. No. 1085, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1085, S.D. 1, and be referred to the Committee on Judiciary and Government Operations.

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

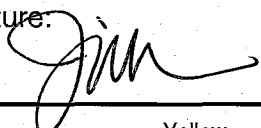


CLAYTON HEE, Chair



The Senate
Twenty-Fifth Legislature
State of Hawaii

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

Bill / Resolution No.:*	Committee Referral:	Date:		
SB1085	WTL, JGD	2/4/09		
<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 type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310		
<input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
TOKUDA, Jill N. (VC)		✓		
BUNDA, Robert	✓			
FUKUNAGA, Carol	✓			
KOKUBUN, Russell S.				✓
TAKAMINE, Dwight Y.				✓
HEMMINGS, Fred	✓			
TOTAL	9	1	0	2
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy	

*Only one measure per Record of Votes