

LINDA LINGLE  
GOVERNOR OF HAWAII



LATE TESTIMONY

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  
HAWAIIAN AFFAIRS  
and  
WATER, LAND, AND OCEAN RESOURCES

Wednesday, February 3, 2010  
9:00 AM  
State Capitol, Conference Room 329

In consideration of  
HOUSE BILL 2241  
RELATING TO PUBLIC TRUST LANDS

House Bill 2241 would transfer management control and title of all unencumbered lands described in article XII, section 4 of the state constitution, as lands held in the public trust, to the sovereign native Hawaiian entity upon its recognition by the United States and the State of Hawaii. The Department of Land and Natural Resources (Department) strongly opposes this measure as the Department believes that the language in this measure is overly broad and vague. More importantly, the targeted lands are held in the public trust for all Hawaii residents and serve multiple public interests. Dedicating public trust lands to a single interest would deprive all other public interests that are equally entitled to support from such resources.

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



**LATE TESTIMONY**

**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-FIFTH LEGISLATURE, 2010**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 2241, RELATING TO PUBLIC TRUST LANDS.

**BEFORE THE:**

House Committees on Hawaiian Affairs and on Water, Land, and Ocean Resources

**DATE:** Wednesday, February 3, 2010      **TIME:** 9:00 a.m.

**LOCATION:** State Capitol, Room 329

**TESTIFIER(S):** Mark J. Bennett, Attorney General, or  
Charleen M. Aina, Deputy Attorney General

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Chairs Carroll and Ito and Members of the Committees:

This bill contradicts article XII, section 4 of the State Constitution, which requires that "[t]he lands granted to the State of Hawaii by Section 5(b) of the Admission Act . . . be held by the State as a public trust for native Hawaiians and the general public". The State Constitution unequivocally mandates that the lands described in article XII, section 4 be held by the State as a public trust for both native Hawaiians and the general public. This bill, therefore, cannot be enacted without first amending the State Constitution.

Moreover, allowing the transfer of all ceded lands to the native Hawaiian governing entity that may be recognized by the United States and the State of Hawaii in the future, almost certainly will not comport with the Admission Act, unless the phrase "all unencumbered land" contemplates that only scattered parcels, or portions of the lands granted by section 5(b) of the Admission Act are to be transferred. It is unlikely that a court would interpret section 5(f) of the Admission Act as permitting all of the ceded lands, or all of the then-unused portion of ceded lands, to be transferred to the native Hawaiian entity so that the lands can be used thereafter for only one of that section's five stated purposes.

# LATE TESTIMONY

HOUSE OF REPRESENTATIVES, STATE OF HAWAII  
TWENTY-FIFTH LEGISLATURE, 2010

COMMITTEE ON HAWAIIAN AFFAIRS  
COMMITTEE ON WATER, LAND & NATURAL RESOURCES  
COMMITTEE ON THE JUDICIARY  
and  
COMMITTEE ON FINANCE

Re: **HB 2241** Transfer of public trust lands to sovereign native Hawaiian entity upon its recognition by U.S. and State of Hawaii.

For Hearing Date: Wednesday, February 3, 2010  
Time: 9:00 a.m.  
Place: Conference Room 329

**TESTIMONY IN OPPOSITION** by H. William Burgess, Attorney and Chairman, Aloha for All, Inc. Email: [hwburgess@hawaii.rr.com](mailto:hwburgess@hawaii.rr.com)

Aloha Chairs, Vice Chairs, committee members, and members of the public.

I am writing in opposition to HB 2241, which calls for the State to transfer management, control and title to most of the lands held in public trust by the State as Trustee of the public land trust, also known as the Ceded Lands Trust, to the sovereign native Hawaiian entity upon its recognition by the United States and the State of Hawaii.

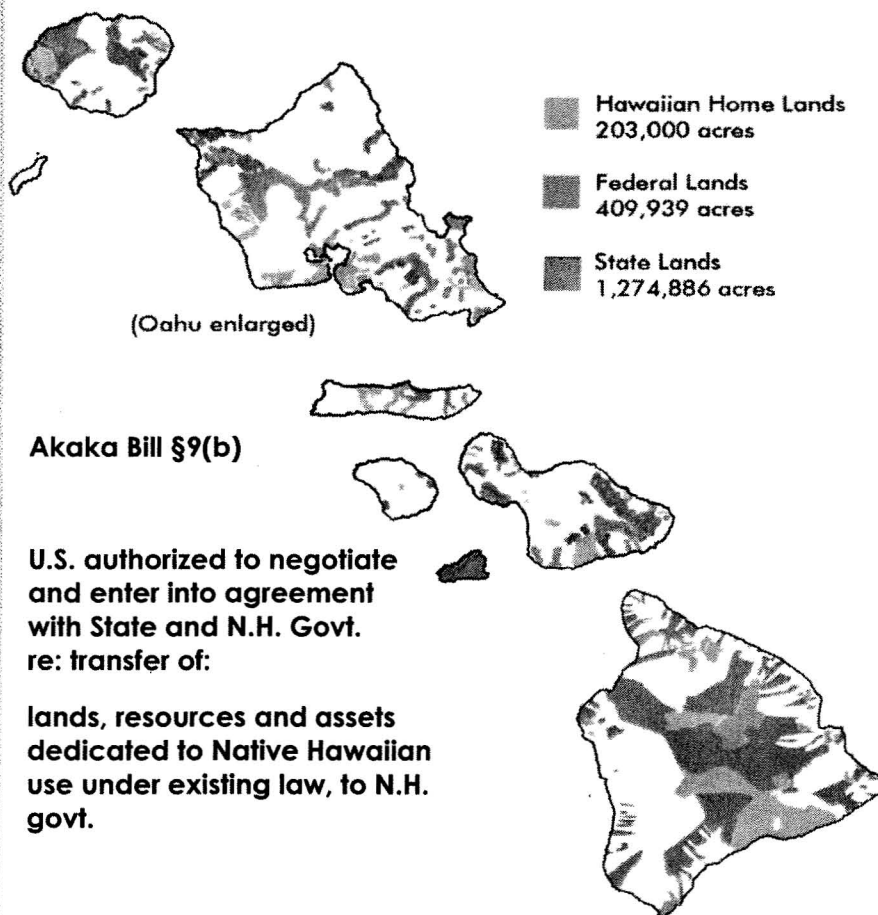
As I explained in my testimony opposing HB 2672, the Ceded Lands Trust was established in 1898 "solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes." When a federal, state or local government holds lands in a public trust it is fiduciary bound by basic principles of trust law.

HB 2241 would have the State, after 30 years of illegally diverting Ceded Lands Trust revenues to OHA (when the trust never generated any annual net income from which distributions could lawfully be made to or for any beneficiaries), transfer most of the trust corpus to a sovereign entity not bound by all the provisions of the Constitution and laws of the United States and not subject to suit by the other citizens of Hawaii.

HB 2241, if enacted, would multiply and accelerate the toxic consequences of the Akaka bill. The following graphic shows the lands on the table for negotiations. The major item sought by the negotiations called for by the Akaka bill, the 1.2 million acres of the ceded land shown in blue, as would be surrendered immediately without even a whimper of resistance.

## **IF THE AKAKA BILL BECOMES LAW:**

**Q: WHAT LANDS ARE ON THE TABLE FOR TRANSFER TO THE NEW GOVERNMENT?**



**A: ALL THE LANDS IN COLOR ARE UP FOR NEGOTIATION.**

An educational project of Grassroot Institute of Hawaii  
Telephone (808) 864-1776 • Email: [grassroot@hawaii.rr.com](mailto:grassroot@hawaii.rr.com)  
[www.grassrootinstitute.com](http://www.grassrootinstitute.com)  
Nurturing the rights and responsibilities of the individual in a civil society...

Hawaii divided against itself cannot stand. Please reject HB 2241.

Mahalo,

H. WILLIAM BURGESS Honolulu, HI 96822 Tel: 947-3234  
FAX: 947-5822

# LATE TESTIMONY

February 3, 2010

To: **Representative Mele Carroll, Chair of Hawaiian Affairs Committee & Representative Ken Ito, Chair of Water, Land, & Ocean Resources Committee & Members**

From: **David "Kawika" Kamai of Haiku Maui**

RE: **TESTIMONY IN SUPPORT OF HB 2241 Relating to Public Trust Lands**

Dear Chair Carroll and Chair Ito and Members:

Thank you for this opportunity to provide testimony **in support of HB 2241 Relating to Public Trust Lands**. This bill provides transfer management, control, and title of public trust land to sovereign Hawaiian entity upon recognition by the United States and the State of Hawaii.

With the passage of the Akaka Bill and the opportunity for native Hawaiians to govern themselves, I urge you to pass **HB 2241**. As a native Hawaiian myself, I feel that it is imperative that the State of Hawaii return the public trust lands (ceded lands), at least the unencumbered lands back to its rightful owner, the native Hawaiians. Let us have the opportunity to thrive by empowering our people and providing necessary support to improve the lives of native Hawaiians as written in the admission act for the purpose of these lands.

I urge you to **please support and pass out HB 2241 Relating to Public Trust Lands**. It's time that the United States and the State of Hawaii return what's rightfully ours. Do the right thing, support the passage of this bill and be pono. The future of our native Hawaiian children are the future and we owe it to them to preserve, protect and perpetuate our culture, heritage and resources. The land, the culture and its people are one. We are the indigenous people of this land. Let us steward this land like our ancestors and Kupuna have where true sustainability existed.

Mahalo Nui,

David "Kawika" Kamai  
Haiku, Maui  
(808) 870-9759

TESTIMONY IN SUPPORT

**LATE TESTIMONY**

February 3, 2010

To: Representative Mele Carroll, Chair of Hawaiian Affairs Committee  
Representative Ken Ito, Chair of Water, Land, & Ocean Resources Committee

From: Mapu Kekahuna of Nahiku, Maui

RE: **TESTIMONY IN SUPPORT OF HB 2241 Relating to Public Trust Lands**

Dear Chair Carroll and Chair Ito:

Thank you for this opportunity to provide testimony in support of HB 2241 Relating to Public Trust Lands. This bill provides transfer management, control, and title of public trust land to sovereign Hawaiian entity upon recognition by the United States and the State of Hawaii.

It is bad enough that our Kupuna had to endure the theft of our Hawai'i. This injustice has to stop and the legislation that was enacted last session to allow the state the ability to sell lands from the public trust land (ceded lands) is hewa.

I urge you to please support and pass out HB 2241 Relating to Public Trust Lands. It's time that the United States and the State of Hawaii return what's rightfully ours. Do the right thing, support the passage of this bill and be pono. Our Queen Liliuokalani and our ancestors are watching you. We never gave up our right to govern ourselves.

Mahalo Nui,

Mapu Kekahuna  
Nahiku, Maui  
(808) 248-7818

TESTIMONY IN SUPPORT

LATE TESTIMONY

February 3, 2010

To: Representative Mele Carroll, Chair of Hawaiian Affairs Committee  
Representative Ken Ito, Chair of Water, Land, & Ocean Resources Committee

From: Kumu Kamalu Kaho'okele Kekahuna Sili of Nahiku, Maui

RE: **TESTIMONY IN SUPPORT OF HB 2241 Relating to Public Trust Lands**

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Mahalo Nui,

Kumu Kamalu Kaho'okele Kekahuna Sili  
Nahiku, Maui  
(808) 248-8887



TESTIMONY IN SUPPORT

LATE TESTIMONY

February 3, 2010

To: Representative Mele Carroll, Chair of Hawaiian Affairs Committee  
Representative Ken Ito, Chair of Water, Land, & Ocean Resources Committee

From: Corinna "T" Kekahuna of Nahiku, Maui

RE: **TESTIMONY IN SUPPORT OF HB 2241 Relating to Public Trust Lands**

Dear Chair Carroll and Chair Ito:

Thank you for this opportunity to provide testimony in support of HB 2241 Relating to Public Trust Lands. This bill provides transfer management, control, and title of public trust land to sovereign Hawaiian entity upon recognition by the United States and the State of Hawaii.

It is bad enough that our Kupuna had to endure the theft of our Hawai'i. This injustice has to stop and the legislation that was enacted last session to allow the state the ability to sell lands from the public trust land (ceded lands) is hewa.

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Mahalo Nui,

Corinna "T" Kekahuna  
Nahiku, Maui  
(808) 248-8887

# LATE TESTIMONY

February 3, 2010

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From: **David "Kawika" Kamai of Haiku Maui**

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I urge you to **please support and pass out HB 2241 Relating to Public Trust Lands**. It's time that the United States and the State of Hawaii return what's rightfully ours. Do the right thing, support the passage of this bill and be pono. The future of our native Hawaiian children are the future and we owe it to them to preserve, protect and perpetuate our culture, heritage and resources. The land, the culture and its people are one. We are the indigenous people of this land. Let us steward this land like our ancestors and Kupuna have where true sustainability existed.

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