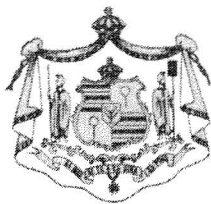


LATE TESTIMONY



Association of Hawaiian Civic Clubs  
P. O. Box 1135  
Honolulu, Hawai'i 96807

**TESTIMONY OF LEIMOMI KHAN, PRESIDENT  
IN SUPPORT OF  
HOUSE BILL 2672, RELATING TO THE  
OFFICE OF HAWAIIAN AFFAIRS**

**COMMITTEE ON HAWAIIAN AFFAIRS  
COMMITTEE ON WATER, LAND, & OCEAN RESOURCES**

Hearing date, time, location: Wednesday, February 3, 2010, 9:00 a.m., Room 329

Aloha, Representative Mele Carroll, Chair, Committee on Hawaiian Affairs; Representative Ken Ito, Chair, Committee on Water, Land & Ocean Resources; and members of these committees

We write to support House Bill 2672, Relating to the Office of Hawaiian Affairs. The bill states its purpose is to allow the State to most effectively and responsibly make progress toward meeting part of its constitutional obligation to native Hawaiians by addressing the additional amount of income and proceeds that the Office of Hawaiian Affairs is to receive from the public trust pursuant to article XII, sections 4 and 6, of the Hawaii constitution, for the period from November 7, 1978, to July 1, 2010, by requiring the transfer of cash to the Office of Hawaiian Affairs. The State agrees on the \$200,000,000 settlement with payments of at least \$30,000,000 each fiscal year, beginning with fiscal year 2015-2016 (July 1, 2015 through June 30, 2016), and that such payments shall continue until the \$200,000,000 and applicable interest of 4% per year has been paid to the OHA.

In 2008, OHA and the Executive Branch announced that they had concluded negotiations and a proposed settlement that would convey a mixture of land and cash to OHA; that agreement failed to pass the Legislature, despite OHA conducting over 45 briefings across the state as requested in a 2008 Senate Concurrent Resolution. Subsequently, in 2009, the Legislature again did not pass legislation, even after the Chair of the Committee on Hawaiian Affairs conducted meetings across the state.

**The current HB 2672 is yet another attempt to resolve this issue. Its provisions are reasonable and realistic. Delaying the first payment to July 1, 2015 also reflects the sensitivity of OHA to the state's current financial condition and, at the same time, puts in place a settlement agreement to resolve this issue.**

**Delegates to the Association of Hawaiian Civic Clubs conventions in 2007 and 2008 passed resolutions that repeatedly encouraged the Office of Hawaiian Affairs, the Executive Branch, and the Legislature to reach an agreement to resolve the past due income and proceeds from the Public Land Trust due to OHA for the betterment of conditions of Native Hawaiians and for the legislature to pass such an agreement into law. We urge the House to pass HB 2241 to this end.**

Thank you for this opportunity to testify regarding House Bill 2241.

#### **ABOUT THE AHCC**

The Association is a growing national confederation of fifty-eight Hawaiian Civic Clubs, located throughout the State of Hawai'i and in the States of Alaska, California, Colorado, Illinois, Nevada, Utah, Virginia, Washington State, Tennessee, and Texas. It initiates and works to support actions that enhance the civic, economic, educational, health and social welfare of our communities, and in particular, the culture and welfare of the Native Hawaiian community.

## Rep. Maile Shimabukuro

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**From:** tom macdonald [tjmacdonald@earthlink.net]  
**Sent:** Tuesday, February 02, 2010 4:46 PM  
**To:** HAWtestimony  
**Subject:** Testimony Opposing HB 2672 :\$200 million additional to OHA-Commits Further Breach of Trust by the State; Wed 2/03/10 9:00

LATE TESTIMONY

Testimony of Thomas J Macdonald, Kaneohe, Hawaii

As the retired president of Hawaiian Trust Company, with 25 years experience managing every conceivable type of trust fund I oppose the payment to OHA proposed in this bill. I can state with some certainty that the State of Hawaii, as trustee of the Ceded Lands Trust, does not legally owe any money to the Office of Hawaiian Affairs and should stop payments to OHA immediately.

The State has committed a major breach of its trust by distributing ANY funds to OHA when there were no funds in the Ceded Lands Trust that were legally distributable.

It is a settled principle of trust law that, unless the trust terms provide otherwise, a trustee's duty to distribute income to beneficiaries is limited to the NET trust income, after deducting the expenses properly incurred in the administration of the trust.

On June 4, 2008 the State acknowledged in federal court that in every year since the State became trustee in 1959, the expenses of the Ceded Lands Trust exceeded the revenue that the 1.2 million acres generated. The expenses of the trust have always exceeded its income. It has consistently operated at a loss. So it has had no net income to distribute. The State has been distributing GROSS income, not net income.

To distribute money from a trust that produces no net income constitutes an invasion of trust principal. Such invasions of principal eventually will bankrupt the trust and terminate its existence. The Ceded Lands Trust was intended to be a perpetual trust, continuing forever, for the benefit of all Hawaii's people.

Therefore, the hundreds of millions of dollars the State distributed to OHA over the past three decades have been improper and the State, as trustee of the Ceded lands Trust, has committed a major breach of trust.

So any further payments from the Ceded Lands Trust to OHA would simply compound the already serious violation of the law.

And from a purely pragmatic point of view, neither the trust nor the State have \$200 million to spare during this financial crisis in Hawaii.

Therefore I respectfully oppose the passage of HB 2672.