

TESTIMONY
SB2500
LATE

LATE TESTIMONY

TO: COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

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

Re: SB 2500

For hearing Friday, January 29, 2010 2:45 p.m. Room 229

TESTIMONY IN SUPPORT

Aloha Chair Hee, Vice Chair Tokuda, committee members, and members of the public.

I am writing in strong support of SB 2500, calling for a financial and management audit of OHA to be completed before the Legislature convenes for its session in January 2011.

OHA is a state agency controlling hundreds of millions of dollars worth of land and money that belongs to all the people of Hawaii.

OHA and state officials responsible for the expenditure and use of those assets should be accountable to the people of Hawaii.

The **only** way to ensure that public funds are spent wisely and handled with absolute integrity is through an independent public audit. Audits are an important tool that could uncover irregularities in financial matters due to fraud or corruption and/or errors in following procedures as required by law. This public audit must be independent of OHA and the State so that the auditors are not improperly influenced by these organizations.

It would be unconscionable if this current legislature did not audit OHA.

Sandra Puanani Burgess
2299C Round Top Drive
Honolulu, Hawaii 96822
Home/office: 808-947-3881
email: spburgess@hawaii.rr.com

LATE TESTIMONY

COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

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

Re: SB 2500

For hearing Friday, January 29, 2010 2:45 p.m. Room 229

TESTIMONY IN SUPPORT by: H. William Burgess, Attorney
email: hwburgess@hawaii.rr.com

Aloha Chair Hee, Vice Chair Tokuda, committee members, and members of the public.

I am writing in support of SB 2500, calling for a financial and management audit of OHA to be completed before the Legislature convenes for its session in January 2011.

In addition to the reasons ably stated by Senator Slom and other supporters of his bill, there is the challenged dot-connection ability of the political branches:

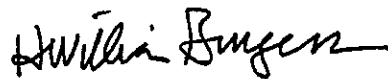
Dot 1. On June 4, 2008 in the Federal District Court in *Day v. Apoliona*, the State of Hawaii acknowledged and proved by the declarations of Georgina Kawamura, Director of B&F and other responsible State officials, that the Ceded Lands Trust costs the State many times more than the 1.2 million acres bring in; and that the disparity between Trust expenses and Trust revenues has occurred in every year since Statehood in 1959.

Dot 2. Basic Trust law as to distributions to beneficiaries. Except as otherwise provided by the terms of the trust, the Trustee's duty to pay income to beneficiaries is limited to paying the net income after deducting, from the revenues or gross income, the expenses properly incurred in the administration of the trust.

The Connection. The hundreds of millions paid to OHA exclusively "for the betterment of the conditions of native

Hawaiians” over the last three decades (while making *no* distributions exclusively for non-native Hawaiian beneficiaries) have all been improper diversions of trust funds held for the benefit of all the people of Hawaii.

The audit called for by SB 2500 will be of great value in identifying the OHA Trustees and other persons responsible for the diversion or misapplication of entrusted funds and their restitution to the Executive branch or to a receiver to be held for the benefit of all the people of Hawaii.

A handwritten signature in black ink, appearing to read "H. William Burgess". The signature is fluid and cursive, with a long horizontal stroke at the end.

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

From: Lehua Gibson [kipikona@hawaii.rr.com]
Sent: Thursday, January 28, 2010 4:45 PM
To:
Subject: SB2500

LATE TESTIMONY

The Senate
Hawaii State Legislature
Regular Session of 2010
State of Hawai'i

January 28, 2010

To Senate Committees:

Water, Land, Agriculture, and Hawaiian Affairs

Chair Clayton Hee and Vice-Chair Jill N. Tokuda

Ways and Means

Chair Donna Mercado Kim and Vice-Chair Shan S. Tsutsui

Subject: Testimony in *SUPPORT* for SB2500 that *Requires the State auditor to conduct a financial and management audit of the Office of Hawaiian Affairs, and to issue a report on or before the convening of the 2011 legislative session.*

SB2500 requesting a financial and management audit of the Office of Hawaiian Affairs demonstrates the Senate's responsibility to ensure that Chapter 10 of the Hawai'i Revised Statutes is being administered appropriately. The audit of the Office of Hawaiian Affairs is about due diligence. Thus, I support SB2500.

Sincerely,

Lehua Gibson

Haiku, Maui, HI

LATE TESTIMONY

From: tom macdonald [tjmacdonald@earthlink.net]
Sent: Friday, January 29, 2010 8:58 AM
To: WTLTestimony
Subject: Testimony Supporting SB 2500, Friday, January 29, 2:30 PM

I fully support the audit of the Office of Hawaiian Affairs proposed in SB 2500 for several reasons:

1. Past audits have disclosed sloppy financial controls and poor personnel management. Taxpayers are entitled to know whether or not OHA has fixed these deficiencies.
2. Allegations have popped up in the press and online that OHA personnel have been flying back and forth to Washington on first class tickets to conduct lobbying operations for the Akaka Bill. In these tough budgetary times taxpayers should not be funding first class travel. And government funds should not be used for lobbying.
3. Most importantly, The auditor should determine whether or not the State has been committing breaches of trust over the past 30 years in paying money to OHA from the gross revenues of the Ceded Lands Trust rather than from the net income of the trust. The State has admitted in federal court that since 1959 the Ceded Lands Trust has never generated any net income. Its expenses have always exceeded its revenues.

It is a settled principle of trust law that, unless the trust instrument provides otherwise, the trustee may only make distributions to trust beneficiaries from net income, not from gross income. So no distributions should have been made from the trust to OHA or any other beneficiary until the trust's assets began producing net income.

See below for more detail:

STATE COMMITS BREACH OF TRUST BY FUNDING OHA

As the retired president of Hawaiian Trust Company, with 25 years experience managing every conceivable type of trust fund, I can state with some certainty that the State of Hawaii, as trustee of the Ceded Lands Trust established at Statehood in 1959, does not owe any money to the Office of Hawaiian Affairs.

In fact, the State has committed a major breach of its trust by distributing ANY funds to OHA.

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 itself 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. It has had no net income to distribute.

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, has committed a major breach of trust.

So Clyde Namuo's generous offer (Advertiser 1/23) to let the State delay the payment of money it "owes" to OHA is meaningless. In fact, OHA owes the State hundreds of millions of dollars that it has wrongfully received over the years, and the Legislature could help solve the

current budget crisis by stopping future OHA payments and reclaiming the improperly paid funds from OHA.

Thomas J. Macdonald
46-428 Holokaa Street
Kaneohe 96744
234-0218

**Senate Committee
Water, Land, Agriculture
and Hawaiian Affairs
2010 State of Hawaii**

LATE TESTIMONY

January 27, 2010

Hearing on Friday, January 29, 2010, at 2:45 p.m.

Subject: Testimony in Favor of SB 2500: RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS Audit and report.

Aloha kakou to all the Members of the Committee.

My name is Kealii Makekahu, I am a Native Hawaiian and a beneficiary of the OHA residing in Hawaii, I am testifying in strong support of SB 2500, which Requires the State auditor to conduct a financial, and management audit of the Office of Hawaiian Affairs, and to issue a report on findings and recommendations to the governor and the legislature on or before the convening of the 2011 legislative session.

I would like for the committee to also consider any amendments that could strengthen the process were financial oversight via the sunshine law or F.O.I.A can be implemented without cost to the beneficiary. The last two audit reports about the OHA and the current draft report have identified a pattern of malfeasance that the state auditor office has identified and echoed since 2005. As a government agency, and an autonomous trust, OHA has been conferred a broad mandate—to provide all Hawaiians the opportunity for a better life and future, that however does not mean that ethics and financial accountability are to be set aside.

In the latest response to 2009 draft report, the OHA Board of Trustees claimed that the report contained major factual errors and numerous inaccuracies. However, the board's arguments generally misconstrued the facts presented in the report. Further, although the board provided extensive comments that appeared to erode the findings, in most instances the board ultimately acknowledged the validity of the findings. Other comments by the board indicated its failure to comprehend the major points of our audit and the extent of the board's responsibilities with respect to the trust.

Given the current state of the economy and the public's faith in leadership via democracy, I would consider it absolute that change is indeed needed through legislation and financial oversight with regards to OHA; this bill could certainly be the implementation of that process. I therefore recommended passage of this bill with further amendments.

**Sincerely,
Kealii Makekahu
2563 Date st #312
Honolulu, Hi 96826**

From:
Sent:
To:
Subject:

WTLTestimony
FW: SB2500 support

LATE TESTIMONY

From: kahealani keahi-wood [mailto:kahealanikeahi@yahoo.com]
Sent: Friday, January 29, 2010 11:55 AM
To: Sen. Clayton Hee
Subject: SB2500 support

The Senate
Hawaii State Legislature
Regular Session of 2010
State of Hawai'i

January 29, 2010

To Senate Committees:

Water, Land, Agriculture, and Hawaiian Affairs
Chair Clayton Hee and Vice-Chair Jill N. Tokuda

Ways and Means
Chair Donna Mercado Kim and Vice-Chair Shan S . Tsutsui

Subject: Testimony in SUPPORT for SB2500 that *Requires the State auditor to conduct a financial and management audit of the Office of Hawaiian Affairs, and to issue a report on or before the convening of the 2011 legislative session.*

SB2500 requesting a financial and management audit of the Office of Hawaiian Affairs demonstrates the Senate's responsibility to ensure that Chapter 10 of the Hawai'i Revised Statutes is being administered appropriately. The audit of the Office of Hawaiian Affairs is about due diligence. Thus, I support SB2500.

Sincerely,

Kahealani Keahi
Honolulu, Hawai'i

LATE TESTIMONY

From: Tamar deFries [tamardefries@hotmail.com]
Sent: Friday, January 29, 2010 2:00 PM
To: WTLTestimony
Cc: hee4 - Katherine
Subject: FW: MSHCC TESTIMONY

Aloha mai,

Mahalo. Please see testimony below from the Merchant Street Hawaiian Civic Club in Support of SB2500.

From: chanel.blackwell@gmail.com
Subject: MSHCC TESTIMONY
Date: Thu, 28 Jan 2010 15:59:53 -1000

The Senate
Hawaii State Legislature
Regular Session of 2010
State of Hawai'i

January 28, 2010

To Senate Committees:

Water, Land, Agriculture, and Hawaiian Affairs
Chair Clayton Hee and Vice-Chair Jill N. Tokuda

Ways and Means
Chair Donna Mercado Kim and Vice-Chair Shan S. Tsutsui

Subject: Testimony in **SUPPORT for SB2500** that *Requires the State auditor to conduct a financial and management audit of the Office of Hawaiian Affairs, and to issue a report on or before the convening of the 2011 legislative session.*

SB2500 requesting a financial and management audit of the Office of Hawaiian Affairs demonstrates the Senate's responsibility to ensure that Chapter 10 of the Hawai'i Revised Statutes is being administered appropriately. The audit of the Office of Hawaiian Affairs is about due diligence. Thus, the Merchant Street Hawaiian Civic Club supports SB2500.

Sincerely,

Chanel Blackwell
Vice President
Merchant Street Hawaiian Civic Club

TESTIMONY
SB2500
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(END)