

HB 397 HD 2



HB 397, HD 2
RELATING TO LANDS CONTROLLED BY THE STATE
Senate Committee on Hawaiian Affairs
Senate Committee on Water, Land, and Housing
Senate Committee on Judiciary and Labor

March 21, 2011

2:45 p.m.

Room 224

The Office of Hawaiian Affairs (OHA) strongly **SUPPORTS** HB397 HD2, which is a bill in OHA's 2011 Legislative Package. This bill requires more timely notice of, and greater specificity in, resolutions for legislative consideration involving anticipated sales, gifts, or exchange of state-controlled lands. We ask that the effective date of the measure be changed from January 7, 2059 to "upon its approval."

Act 176, Session Laws of Hawaii 2009, established a more comprehensive process for the sale or gift of state-owned land, and reserved a larger oversight role for the Legislature to assure that key information about certain sales, gifts, or exchanges of land is shared with the Legislature and OHA.

A key element in this process involves state departments submitting for consideration legislative resolutions containing information as to their anticipated land transactions. The law requires that OHA receive a copy of each resolution when it is submitted to the Legislature.

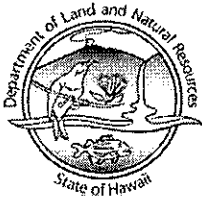
During the 2010 Regular Session, substantial numbers of "Act 176 resolutions" moved through both houses of the Legislature, but OHA's full consideration of the resolutions, in anticipation of legislative hearings, was hindered because of the limited time between OHA's receipt of the resolutions and the Legislature's consideration of the resolutions. Furthermore, the resolutions were not always informative regarding a matter of great interest to OHA: whether the land was formerly crown or government land of the Kingdom of Hawai'i.

HB 397 HD2 is designed to facilitate OHA's review by requiring that the draft resolutions be transmitted to OHA at least three months prior to the convening of the Legislature and by requiring additional detail in the resolutions, including an explanation of whether the land was classed as government or crown land previous to August 15, 1895, or was acquired by the State in exchange for such lands. We respectfully suggest that requiring the additional detail could assist the Legislature

in considering the potential impact of the transaction to the ceded lands, the public land trust, and other key policy matters.

We urge your committees to PASS HB 397 HD2. Mahalo for the opportunity to testify on this important measure.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the Senate Committees on
HAWAIIAN AFFAIRS,
WATER, LAND, AND HOUSING,
and
JUDICIARY AND LABOR**

**Monday, March 21, 2011
2:45 PM
State Capitol, Conference Room 224**

**In consideration of
HOUSE BILL 397, HOUSE DRAFT 2
RELATING TO LANDS CONTROLLED BY THE STATE**

House Bill 397, House Draft 2, proposes to amend Sections 171-64.7(c) and 171-50 (c), Hawaii Revised Statutes, by requiring more specificity in all concurrent resolutions for the review of proposed sale or gifts of state land and exchanges of public land for private land, including whether the land was classed as government or crown lands prior to August 15, 1895. Additionally, it requires that a draft copy of the resolution be submitted to the Office of Hawaiian Affairs (OHA) at least three (3) months prior to the convening of a regular or special session of the legislature.

The Department of Land and Natural Resources does not object to this measure but would like to point out that this bill may result in slowing down certain transactions. For example, if staff only first becomes aware of a potential transaction two (2) months prior to the start of a legislative session, then the bill would require the applicant to wait another year for legislative review because the draft resolution would not have met the requirement of at least three (3)-months prior notice to OHA.

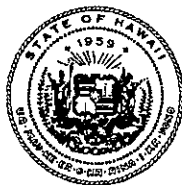
WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
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

NEIL ABERCROMBIE
GOVERNOR



KAREN SEDDON
EXECUTIVE DIRECTOR

STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 QUEEN STREET, SUITE 300
Honolulu, Hawaii 96813
FAX: (808) 587-0600

IN REPLY REFER TO:

Statement of
Karen Seddon
Hawaii Housing Finance and Development Corporation
Before the

SENATE COMMITTEE ON HAWAIIAN AFFAIRS
SENATE COMMITTEE ON WATER, LAND, AND HOUSING
SENATE COMMITTEE ON JUDICIARY AND LABOR
March 21, 2011 at 2:45 p.m.
Room 224, State Capitol

In consideration of
H.B. 397, H.D. 2
RELATING TO LANDS CONTROLLED BY THE STATE.

The HHFDC supports H.B. 397, H.D. 2. The bill in its current form incorporates several amendments requested by HHFDC, with concurrence from the Office of Hawaiian Affairs.

Thank you for the opportunity to testify.

galuteria1 - Ikaika

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 16, 2011 3:15 PM
To: HWN Testimony
Cc: inunyabus@gmail.com
Subject: Testimony for HB397 on 3/21/2011 2:45:00 PM

Follow Up Flag: Follow up
Flag Status: Completed

Testimony for HWN/WLH/JDL 3/21/2011 2:45:00 PM HB397

Conference room: 224
Testifier position: support
Testifier will be present: No
Submitted by: e.dunbar
Organization: Individual
Address:
Phone:
E-mail: inunyabus@gmail.com
Submitted on: 3/16/2011

Comments:

Dear Chair and Members,

These lands should never be sold. That's the law.

But for now, I SUPPORT this bill.

DLNR argues that it will slow down the process. In fact that is a very good argument on behalf of this bill.

Please pass this measure EFFECTIVE IMMEDIATELY and amend the advance submission notice to ONE YEAR instead of three months, which is inadequate, and allow discretion for NHLC to extend the one year research period if necessary.

This is long overdue and not having this requirement has been the reason behind many lawsuits that drag on after the fact.

This should alleviate and clarify future questions and illegal abuses.

Please retain "SPECIFICITY" and do not replace with "draft" as DBEDT wishes.

Removing the word "specificity" will erase the intent of this bill.

galuteria1 - Ikaika

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 16, 2011 4:18 PM
To: HWN Testimony
Cc: Ken_Conklin@yahoo.com
Subject: Testimony for HB397 on 3/21/2011 2:45:00 PM

Follow Up Flag: Follow up
Flag Status: Completed

Testimony for HWN/WLH/JDL 3/21/2011 2:45:00 PM HB397

Conference room: 224
Testifier position: oppose
Testifier will be present: No
Submitted by: Kenneth R. Conklin, Ph.D.
Organization: Individual
Address:
Phone:
E-mail: Ken_Conklin@yahoo.com
Submitted on: 3/16/2011

Comments:

My testimony deals with a very curious phrase "… land that was classed as government or crown lands previous to August 15, 1895, or was acquired by the State in exchange for such lands …"

This phrase seems to be the focal point of this bill, and is found in four places:
Page 2 lines 8-13, Page 2 lines 18-20, Page 3 line 19 to page 4 line 2, Page 4, lines 8-10.

The date August 15, 1895 was more than 13 months after the Republic of Hawaii was created by publication of its Constitution on July 4, 1894.

Historians might be interested in whether a particular parcel of land about to be sold or exchanged by the State of Hawaii was formerly part of the crown lands of the Kingdom of Hawaii or whether that parcel was part of the government lands of the Kingdom. But there's no valid reason why our state government today should be spending money on such an obscure academic issue.

After the revolution of January 17, 1893 there was no longer any monarch, and therefore all the crown lands became merged with the government lands. In fact, an act of the Kingdom legislature in 1865 had already transferred ownership of the crown lands to the government.

The following are the five governments of the unified archipelago of Hawaii, and their dates: Kingdom of Hawaii (Ko Hawai'i Pae 'Aina, 1810 to January 16, 1893); Provisional Government of Hawaii (January 17, 1893 to July 4, 1894); Republic of Hawaii (July 4, 1894 to August 12, 1898); Territory of Hawaii (August 12, 1898 to August 21, 1959); State of Hawaii (August 21, 1959 to now).

Every one of those five governments had legislatures with the authority to make decisions about land ownership. Decisions made by the legislature of the Republic of Hawaii were equally as valid as decisions made by today's state legislature, whether those decisions were made before or after August 15, 1895. Throughout the entire year of 1895 there was as

yet no annexation, so the government of Hawaii retained its full sovereignty as an independent nation.

Every nation which had previously recognized the Kingdom also recognized the Republic. Although the Provisional Government had only de facto recognition (as appropriate to a temporary revolutionary government), the Republic had full-fledged de jure recognition as the rightful government, as conveyed in letters personally signed by Emperors, Kings, Queens, and Presidents of at least 20 nations on four continents in eleven languages, all addressed to President Sanford B. Dole and received between July 1894 and January 1895. Those letters are in the Hawaii State Archives; and photographs of them are available at <http://tinyurl.com/4wtwdz>

By an act of the Kingdom legislature in 1865, signed by King Lot Kamehameha V, the crown lands became the property of the government in return for the government issuing bonds to pay the mortgage which the King had incurred on the crown lands in order to pay his gambling debts. It was at that time that the government and crown lands became jointly known as the public lands.

The public lands of Hawaii were held by the government on behalf of all Hawaii's people, without any communal racial ownership or racial distinction, throughout the remaining history of the Kingdom and the entire history of the Provisional Government, Republic, Territory, and State.

The only reason why OHA is able to make race-based demands for revenue from the ceded lands is because the state legislature passed a bill to give OHA 20% of ceded land revenues. The legislature CAN AND SHOULD repeal that law immediately. It has been the source of all sorts of lawsuits and demands, which are completely unnecessary. Let OHA be funded by the same appropriation process as all other branches of the state government. Then we will no longer need to trace whether particular parcels of land were once upon a time crown or government lands.

It is entirely up to the Legislature whether to appropriate any tax dollars or allocate any ceded land revenues to OHA. There is nothing in the Hawaii Constitution to specify how OHA shall be funded. It was the Legislature which revived OHA following the Supreme Court invalidation of the Constitutional Amendment which created it in 1978 (Kahalekai v. Doi), and it was the Legislature which passed a bill to give 20% of ceded land money to OHA. The Legislature could pass a law at any time cancelling the 20% allocation of ceded land money to OHA, or clearly defining the 20% as based on net income after capital investment and operating expenses (which would turn out to be 20% of nothing).

Even if the Legislature decides that the existence of 5 enumerated purposes for ceded land money (section 5f of the statehood Admissions Act) implies a 20% share of gross revenue for ethnic Hawaiians, it must be remembered that Hawaiians comprise about 20% of our population and will therefore receive 20% of government expenditures without any special legislation being needed. If a special 20% share were appropriated for OHA, that would be on top of the 20% share ethnic Hawaiians would automatically get through normal race-neutral expenditures. That would be shortchanging 80% of our people.

Through either negligence or deliberate subterfuge, the figure of 20% has come to be interpreted as 20% of gross revenue rather than 20% of net income after expenses. Airports, harbors, schools, public housing, and public hospitals require enormous capital investment and operating expenses. Yet OHA's 20% share of gross revenue would come off the top from all the money taken in by those agencies, without regard to capital and operating expenses. In most cases, the net income from government operations on ceded lands is actually negative.

OHA has repeatedly filed lawsuits regarding "back rent" allegedly owed by the state to OHA. After five years of deliberation, the state Supreme Court finally issued a ruling on

September 11, 2001 dismissing one of OHA's lawsuits on the grounds that there is no way for a court to determine how much money the state owes OHA, partly because there is no inventory of ceded lands.

One OHA lawsuit claimed that 20% of all gross revenue at the Duty Free Shop in Waikiki must be paid to OHA, even though DFS is not located on ceded land. OHA's theory was that all merchandise bought at DFS by foreigners is delivered directly to the airport to be placed on departing flights (to ensure the merchandise is actually exported and thus eligible for the tax waiver) -- and that a portion of the airplanes' runway is on ceded land. OHA also claimed it is entitled to 20% of the money paid by patients at a government-run hospital, and 20% of the money paid in rent by tenants in welfare housing, despite the fact that the hospital and the housing were built by the state and have large operating losses.

More recently a lawsuit demanded that the State of Hawaii be prohibited from selling any parcel of ceded lands until such time as a final settlement has been reached between the State of Hawaii and a Native Hawaiian governing entity -- the theory was that a sale of ceded lands would deprive OHA of its 20% share of future revenues. After several years of litigation the state Supreme Court ruled 5-0 in favor of OHA! However, the Governor and Attorney General then appealed directly to the U.S. Supreme Court, which ruled 9-0 to vacate the state court's decision. A 9-0 decision by the U.S. Supreme Court on March 30, 2009 ruled that the ceded lands belong to the State of Hawaii in fee-simple absolute, and that the apology resolution of 1993 does not impose any restriction on the right of the state to sell ceded lands without permission from OHA or ethnic Hawaiians.
<http://www.supremecourt.us/opinions/08pdf/07-1372.pdf>

UH Professor Jon Van Dyke, a frequent shill for OHA, wrote a book "Who Owns the Crown lands of Hawai'i" claiming the crown lands belong to ethnic Hawaiians collectively. The utter nonsense of that claim was shown in the following analysis: Paul M. Sullivan, "A Very Durable Myth: A Critical Commentary on Jon Van Dyke's 'Who Owns the Crown Lands of Hawai'i?' (University of Hawai'i Law Review, Vol. 31, No. 2, Fall 2008, pp. 341-368). That book review can be downloaded in pdf format here:
<http://big09a.angelfire.com/SullivanBookReviewVanDykeCrownLands.pdf>



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HOUSE BILL 397, HD 2 RELATING TO THE LANDS CONTROLLED BY THE STATE

BEFORE THE SENATE COMMITTEES ON HAWAIIAN AFFAIRS, WATER, LAND AND HOUSING, AND JUDICIARY AND LABOR

DATE: Monday, March 21, 2011
TIME: 2:45 p.m.
PLACE: Conference Room 224

Chairs Galuteria, Dela Cruz, and Hee, Vice-Chairs Ryan, Solomon, and Shimabukuro, and members of the Senate Committees on Hawaiian Affairs, Water, Land and Housing, and Judiciary and Labor. Aloha. My name is Moses Haia and I am the Executive Director of the Native Hawaiian Legal Corporation (NHLC). NHLC is a non-profit, public interest law firm which endeavors to provide low cost legal assistance to Native Hawaiian individuals, families and communities in their individual and collective efforts to preserve their traditional Hawaiian way of life. Thank you for this opportunity to provide testimony in strong support of House Bill 397, H.D. 2, relating to the lands controlled by the state.

The cases undertaken by NHLC and on behalf of native Hawaiians and Hawaiians include assertion of ahupua`a tenants' and kuleana rights; access and water rights; protection and preservation of traditional and customary practices; and the protection of historic sites, including burials. Many of these cases involve resources and/or constitutionally protected rights on or related to state-controlled lands.

Section 1 of Article XI of the Hawaii Constitution recognizes the application of the public trust doctrine to all of Hawaii's resources including land and requires that the State protect all such resources for the benefit of its people. In Hawaii, this doctrine was originally established to preserve the rights of native tenants during the transition to a western system of private property.

Article XII, section 7 of the Hawaii Constitution recognizes the importance of such rights by placing an affirmative duty on the State and its agencies to preserve and protect traditional and customary native Hawaiian rights and confers upon the State and its agencies a solemn duty to protect these rights and prevent any interference with the exercise of these rights. The exercise of such rights is, in effect, a public trust purpose.

Section 5(f) of the Hawaii Admission Act established a public land trust for, among other things, the betterment of the conditions of native Hawaiians. Pursuant to

Services made possible with major funding from the Office of Hawaiian Affairs.

Article XII, Section 6 of Hawaii's constitution, the Office of Hawaiian Affairs was created in part to "manage and administer the proceeds from the sale or other disposition of the lands, natural resources, minerals and income derived from whatever sources for native Hawaiians and Hawaiians" and to "formulate policy relating to affairs of native Hawaiians and Hawaiians." The Office of Hawaiian Affairs must therefore ensure that any proposed sale, gift, or exchange of state-controlled lands is in the best interests of native Hawaiians and Hawaiians.

Act 176, Session Laws of Hawaii 2009, established a more comprehensive process for the sale or gift of state-owned land to ensure that the State of Hawaii, through the Legislature and OHA receive the type of information that will allow each, in light of their respective duties and obligations, to engage in informed decision making with respect to the appropriateness of the proposed sale, gift, or exchange. The bill under consideration seeks to provide OHA and the Legislature with an opportunity to engage in a more reasoned and less hurried analysis of such by requiring that a proposal be provided to OHA well in advance of the convening of the Legislature and contain additional detail, including an explanation of whether the land was classified as government or crown land prior to August 15, 1895, or acquired by the State in exchange for such lands. This additional information will also greatly assist the Legislature's consideration of the potential impact of the transaction on the ceded lands trust, the public land trust, and other key policy matters.

Mahalo for the opportunity to testify in strong support of this measure.



Aha Kiole Advisory Committee

Legislative Testimony

In SUPPORT of HB 397 HD 2

Relating to Lands controlled by the State.

Submitted to: Joint Committee Hearing – Hawaiian Affairs; Water, Land and Housing; and
Judiciary and Labor

March 21, 2011

2:45 p.m.

Room: 224

Submitted by: The Aha Kiole Advisory Committee (AKAC): Vanda Hanakahi, Moloka'i
(Chair), Leslie Kuloloio, Kahoolawe, (Vice-Chair); Timmy Bailey, Maui; Winifred Basques,
Lana'i; Pi'ilani Ka'awaloa, (Po'o) Hawai'i; Charles Kapua, O'ahu; Sharon Pomroy, Kaua'i;
Keith Robinson, (Konohiki) Ni'ihau.

Aloha Chair Galuteria and Vice-Chair Ryan; Chair Dela Cruz and Vice-Chair Solomon; Chair
Hee and Vice-Chair Shimabukuro; and Members of the Committees,

Thank you for the opportunity to testify in support of HB 397 HD 2 which is meant to assist the
legislature in reviewing resolutions for proposed exchanges, sales, or gifts of state land,
including lands that were classified as government or crown lands prior to August 15, 1895.
This bill requires that a draft copy of the resolution be submitted to the Office of Hawaiian
Affairs at least three months prior to the appropriate legislative session.

The AKAC, in general, is opposed to any exchange or sale of that public land known as ceded
lands for any reason. However, it is also understood that these occurrences may happen even
with the mandatory disapproval by the legislature by two thirds vote of either the senate or the
House of Representatives, or by a majority vote of both in regular or special session following
the date of the BLNR approval in principle of the exchange. We believe that it is important that
OHA be given ample time to review and give meaningful input from the Native Hawaiian
beneficiaries on resolutions containing proposed exchanges or sales of ceded lands.

The Aha Kiole Advisory Committee supports this bill and we urge you to pass HB 397 HD 2.

Mahalo nui loa,

Vanda Hanakahi, Chair, Moloka'i, Aha Kiole Advisory Committee

P.O. Box 507, Ho'olehua, HI 96729, Phone: 808-336-6184

kaiwilauula@yahoo.com

ASSOCIATION OF HAWAIIAN CIVIC CLUBS

TESTIMONY BY PRESIDENT SOULEE STROUD

SUPPORTING HOUSE BILL 397 HD2

Relating to Lands Controlled by the State

Before the Joint Senate Committees

on

Hawaiian Affairs; Water, Land and Housing; Judiciary and Labor

March 21, 2011; 2:45 pm; Room 224

Aloha Chairman Galuteria and Vice Chair Ryan of the Hawaiian Affairs Committee; Chairman Delacruz and Vice Chair Solomon of the Water, Land and Housing Committee; and Chairman Hee and Vice Chair Shimabukuro of the Judiciary Committee. I am Soulee Stroud, President of the Association of Hawaiian Civic Clubs here today to support the passage of House Bill 397HD2.

The first civic club was founded in 1918 and we continue to thrive with clubs on all islands of the State of Hawaii, 11 states on the continent and the District of Columbia. We now have sixty component clubs participating in those activities that our founders envisioned – historic preservation, education of Native Hawaiian students, protection of traditional culture and advocacy for Hawaiian Home Lands. We have also been very supportive of the Office of Hawaiian Affairs (OHA) since its inception, and partnered with OHA on many occasions.

On January 18, 2011 members of my Board of Directors met with OHA administrative staff, and received a briefing and summaries of the OHA package.

On January 22, 2011 the entire Board met in a quarterly meeting that included Board members from all islands and several from the continent. Our agenda included a discussion of the OHA legislative package and the Board was unanimous in its vote to support the entire package.

We believe that if there is to be a reduction in the trust corpus that OHA, as one of the Trustees of these lands, has an obligation to research the implications of this reduction and to confer with their beneficiaries on this matter. The change from six months to three months inhibits appropriate consultation with OHA's beneficiaries, who are located not just statewide, but nationwide as well.

Further, the reduction in time undermines the very principles of openness and transparency in governmental deliberations. We regret that the time factor was amended from six to three months.

The Committee report also notes that "this bill would affect not only OHA but also the Department of Agriculture, University of Hawaii, Agribusiness Development Corporation, and High Technology Development Corporation as holders of title to public lands." We are not clear what the purpose is served by this Legislative "notice", since none of these agencies or organizations hold that sacred and public trust responsibility as do the Legislature and OHA .

It is important that the State monitor the reduction of the public corpus, as the State has the responsibility of a public trust to its citizens. Similarly, the Office of Hawaiian Affairs has as its mission, the "betterment of conditions of Native Hawaiians". This mission is funded, in part, by a twenty percent, pro rata share of the income derived from the public land trust. OHA therefore, must be maka'ala about the sale or transfer of the public corpus by agencies of the State.

Additionally, this bill provides, in part, the specific size, purpose, and plans for the public lands that are being exchanged. It also requires a statement of whether the land in question is land classified as government prior to 1895 or acquired by the State later. It is important to OHA and its beneficiaries to monitor the transfer of "crown" lands or the government lands of 1895....and to distinguish them from lands recently acquired and transferred.

We support all mechanisms that shall keep the Office of Hawaiian Affairs informed of the trust corpus. In addition, we expect that OHA will consult and confer with us, the beneficiaries of the trust lands should there be an effort to reduce the corpus. This is the kuleana of OHA to its beneficiaries.

Thank you for your consideration of our testimony.

For further information please contact our Government Relations Chair, Jalna Keala at jalna.keala2@hawaiiantel.net www.aohcc.org

galuteria1 - Ikaika

From: Victoria Takamine [vtakamine@gmail.com]
Sent: Sunday, March 20, 2011 6:04 AM
To: HWN Testimony
Subject: Support HB 397, HD2

Follow Up Flag: Follow up
Flag Status: Completed

Vicky Holt Takamine

Pres. 'Īlio'ulaokalani Coalition

PO Box 17483

Honolulu, HI. 96817

PH. 808-754-2301

Email: vtakamine@gmail.com

TO: Senate Committee on Hawaiian Affairs
Senate Committee on Water Land & Housing
Senate Committee on Judiciary & Labour

RE: Strong Support for HB 397, HD2 Relating to Lands Controlled by the State

Aloha Sens. Galuteria, Dela Cruz, Hee and members of the Committees,

I am Vicky Holt Takamine, Pres of 'Īlio'ulaokalani, an organization comprised of native Hawaiian cultural practitioners who advocate for the protection of native rights, our natural and cultural resources and our 'āina. I present testimony in strong support of HB 397, HD2 which will require that a draft copy related to the disposition, exchanges, sales or gifts of all state lands be presented to the Office of Hawaiian Affairs (OHA) at least three months before the appropriate legislative session to allow OHA an opportunity to review the legislation and prepare comments and suggestions. This will help to alleviate and perhaps resolve any potential conflicts prior to the legislative session.

We look forward to working with the legislature and the Office of Hawaiian Affairs to ensure protection of our lands.

Mahalo,

Vicky Holt Takamine

Pres. 'Īlio'ulaokalani Coalition

Melody Kapilialoha MacKenzie, Esq.
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H.B. 397, H.D. 2
RELATING TO LANDS CONTROLLED BY THE STATE

Senate Committee on Hawaiian Affairs
Senate Committee on Water, Land and Housing
Senate Committee on the Judiciary and Labor
Hearing on Monday, March 21, 2011, at 2:45 p.m.

I submit this testimony in **support** of H.B. 397, H.D. 2, which would provide more specificity and information in the resolutions submitted to the Legislature for the exchange or alienation of state controlled public lands. I am an associate professor at the William S. Richardson School of Law and director of Ka Huli Ao Center for Excellence in Native Hawaiian Law. I submit this testimony, however, in my personal capacity as a private citizen and as an attorney who has worked, litigated, and written on Native Hawaiian legal controversies, including the public land trust, for many years.

One of the most troubling issues related to the public land trust for the Native Hawaiian community, and indeed our greater community, has been the lack of a detailed and accurate inventory of the lands. Without this information, it is difficult for the community to provide rational and meaningful input when the Legislature considers exchanging or alienating the trust lands. Thus, amending Act 176 (codified in sections 171-50(c) and 171-64.7 of Hawai'i Revised Statutes) as outlined in H.B. 397, H.D. 2, makes great sense and is good public policy.

After a year of experience with the mechanism established in Act 176, this bill seeks to improve that process by identifying specific information that should be disclosed by state agencies and departments in order to ensure that the Legislature, the Office of Hawaiian Affairs, the Native Hawaiian community, and the general public, are fully informed. This bill will give the Legislature the critical information it needs to make important decisions on the public land trust and other state controlled lands, and will provide greater transparency in government decision-making. Most importantly, this will help to ensure that the Legislature is fully implementing the State's trust responsibilities related to the public land trust.

Mahalo for this opportunity to submit testimony on this important bill.

**Testimony before the Senate Committees on Hawaiian Affairs; Water, Land, and Housing;
and Judiciary and Labor**

Monday, March 21, 2011, 2:45 pm

State Capitol, Room 224

Re: HB 397, H.D.2, Relating to Lands Controlled by the State

Submitted by Jon M. Van Dyke
4191 Round Top Drive
Honolulu, Hawaii

[I regret that I cannot deliver this testimony in person, because I am a Visiting Professor of Law at the University of California at Berkeley during this current spring semester. I participated in the deliberations at the Office of Hawaiian Affairs that led to the development of HB 397 and also was part of the legal team representing OHA in the Ceded Lands Litigation, which led to the enactment of Act 176 in 2009.]

This testimony is submitted in support of the enactment of HB 397, H.D.2. This Bill is designed to clarify the process of evaluating whether public lands should be sold or otherwise transferred, and to ensure that no lands that were formerly classified as Crown or Government Lands under the Kingdom of Hawaii are sold or otherwise transferred without full deliberation and a complete understanding of the origins of these lands.

Act 176 was passed by this Legislature in 2009 to require a two-thirds vote by both chambers before any state-owned lands could be sold or transferred into private hands. By requiring careful deliberation and an enhanced majority before such a transfer can take place, Act 176 protects these Crown and Government Lands (which are frequently called “Ceded Lands” because they were ceded to the United States in 1898), so that they will be available to be utilized to settle the claims of Native Hawaiians based on the illegal overthrow and “ceding” of lands to the United States without compensation to or the consent of Native Hawaiians.

HB 397 H.D.2 serves to protect the lands that were formerly Crown and Government Lands by requiring the more complete information about the lands being considered for sale or

transfer, including a detailed explanation of whether the lands in question were formerly classified as Crown or Government Lands (or was acquired in exchange for such lands), and how that determination was made by the relevant state agency. This Bill also ensures that OHA and its constituents will have enough time to evaluate the proposed sale or transfer, and the reasons for the sale or transfer, so that lands important to the Native Hawaiians can be protected. This Bill is necessary, because the experience of dealing with Act 176 resolutions last year proved that more information and time are necessary to ensure a complete and transparent evaluation of each proposed sale or transfer.

It is well established that the limited `Aina in Hawaii's islands is of paramount importance to the well-being of Native Hawaiians. Efforts are now underway to restore a Native Hawaiian Governing Entity and to resolve the claims of Native Hawaiians by returning lands to them. HB 397 H.D.2 is carefully designed to protect the former Crown and Government Lands, which will be the source of lands returned to the Native Hawaiians. This Bill should be passed into law.