

**TESTIMONY BY KALBERT K. YOUNG  
INTERIM DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE HOUSE COMMITTEE ON HAWAIIAN AFFAIRS  
ON  
HOUSE BILL NO. 222**

**February 9, 2011**

**RELATING TO THE DEPARTMENT OF HAWAIIAN HOME LANDS**

House Bill No. 222 requires that 5% of all revenue derived from the public ceded land trust be transferred to and expended by the Department of Hawaiian Home Lands for the development of farm and home ownership. This 5% transfer would be in addition to the 20% transfer under Act 178, SLH 2006.

Act 178 requires that in total, \$15.1 million of the income and proceeds from the public land trust under Article XII, Section 6 of the State Constitution be transferred to the Office of Hawaiian Affairs for the betterment of the conditions of native Hawaiians. Act 178 specifically requires a quarterly transfer of \$3,775,000 of ceded land receipts to the Office of Hawaiian Affairs within 30 days after the close of each quarter. The Act 178 transfers are currently being made by the Departments of Agriculture; Accounting and General Services; Business, Economic Development and Tourism; Education; Land and Natural Resources; and Transportation (Harbors Division).

Executive Order No. 06-06 (see attached) details how the quarterly payments are to be made. Unless federal law or a pre-existing obligation limits the extent that receipts can be used or are available to transfer to the Office of Hawaiian Affairs, agencies are required to set aside 20% of public land trust

receipts for each quarterly transfer. When the quarterly amount falls short of the required \$3,775,000, the shortage is transferred from the Department of Land and Natural Resources' public land trust account which contains ceded land receipts that would otherwise be deposited to the general fund.

Based on FY 2010 revenues, the amount in the public land trust account should be sufficient to cover the Office of Hawaiian Affairs shortages as well as the proposed additional 5% to the Department of Hawaiian Home Lands. However, it is uncertain if the residual balance in the public land trust account would be sufficient in future years to meet the Act 178 shortages and the proposed additional 5% transfer to the Department of Hawaiian Home Lands. If the public land trust residual balance is not sufficient, the special funded programs pro rata share may have to increase above 20% to meet the requirements of Act 178.

We defer to the departments on specific concerns that they may have with the proposed additional transfer.

Attachment

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EXECUTIVE ORDER NO. 06 - 06

WHEREAS, Section 3 of Act 178, 2006 Session Laws of Hawaii, requires each agency of the State that "collects receipts from the lands within the public land trust" to determine and transfer a portion of those receipts as necessary to ensure that a total of \$3,775,000 is transferred to the Office of Hawaiian Affairs ("OHA") thirty days after the close of each fiscal quarter;

WHEREAS, Section 3 of Act 178 expressly authorizes the Governor to fix the exact amount each agency is to transfer to OHA on a quarterly basis, without regard for the provisions of chapter 10, Hawaii Revised Statutes, or the requirements of Executive Order No. 03-03;

WHEREAS, pending the Legislature's policy determinations regarding how best to give long-term "effect to the right of native Hawaiians to benefit from the ceded lands trust," OHA v. State, 96 Haw. 388, 401 (2001), it continues to be appropriate to rely upon the rationale and the procedures set out in Executive Order No. 03-03, for determining which receipts from the use of public land trust lands are to be transferred to the OHA on a quarterly basis, to satisfy the requirements of Section 3 of Act 178;

WHEREAS, because receipts for the use of lands are received in different amounts at varying intervals and frequency over the

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course of a fiscal quarter or a fiscal year, the procedures set out in Executive Order No. 03-03 for segregating and transferring receipts for the use of public land trust lands to OHA need to be modified if the requirements of Section 3 of Act 178 are to be satisfied; and

WHEREAS, for purposes of this executive order, "public land trust land" is land assigned "Trust Land Status," or "5(b)," "5(e)" or "Pub. L. 88-233" status on the Department of Land and Natural Resources' State Land Inventory Listing, or described in the agency's records as land acquired by the State through Section 5(b) or 5(e) of the Admission Act or Pub. L. 88-233, or in exchange for such a parcel;

NOW, THEREFORE, I, Linda Lingle, Governor of Hawaii, pursuant to the authority conferred upon me by Section 3 of Act 178, 2006 Session Laws of Hawaii, direct that the following accounts be established, and the following determinations and procedures made and implemented, so that the requirements of Section 3 of Act 178 may be satisfied at the close of each fiscal quarter.

1. All departments and agencies that collect receipts for the use of ceded or public land trust land shall:

a. Establish trust holding accounts to accumulate OHA's portion of each receipt that would otherwise be deposited into the general fund or a special fund, and to accumulate the

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remainder of each receipt that would otherwise be deposited into the general fund for the rest of the fiscal year ("GFRTHA");

b. Determine if:

- (1) Any federal or state law precludes any portion of the receipt from being used to better the conditions of native Hawaiians; or
- (2) The transfer of any portion of the receipt will cause the department or agency to renege on any pre-existing pledge, rate covenant, or other pre-existing obligation to holders of revenue bonds or other indebtedness of the State, department, or agency;

c. If use of a receipt is not limited by the provisions of paragraph 1.b.(1) or 1.b.(2) above,

- (1) Determine OHA's share of the receipt by calculating the ceded/non-ceded fraction for the parcel that generated the receipt by area (square feet or acres), multiplying the receipt by the ceded/non-ceded fraction, and multiplying that result by 20% or any alternative percentage the Governor specifies,
- (2) Deposit the resulting amount into the appropriate trust holding account established pursuant to paragraph 1.a above to accumulate OHA's portion, and
- (3) Deposit the remaining portion of the receipt into the GFRTHA if it would otherwise be deposited into the

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general fund; otherwise, deposit the remaining portion of the receipt into the appropriate special fund, using separate Treasury Deposit Receipt slips (State Accounting Form B-13) for each trust holding account into which receipts are deposited.

d. If use of a receipt is limited by paragraph 1.b.(1) or 1.b.(2) above, report the receipt as a gross receipt on the electronic spreadsheet developed by the Department of Land and Natural Resources' to effect the reporting requirements of Act 178, and deposit the entire amount to the credit of the general fund or special fund as appropriate.

e. Within ten calendar days of the close of each fiscal quarter,

- (1) Complete, and email and deliver a copy of the "Transmittal Re: Quarterly Transfer of Public Land Trust Receipts to OHA," attached here as Attachment "A," to the Department of Budget and Finance, Attn: Administrator, Budget, Program Planning and Management Division, to inform the same of the receipts collected, deposited in each of its trust holding accounts, and transferred to OHA; and
- (2) Unless the Governor directs otherwise, transfer all receipts deposited in its general and special fund trust holding accounts, other than its GFRTHAs, to OHA

by journal voucher using the accounting information and processes described in paragraph 4 below, and transmit a copy of each journal voucher used to transfer the receipts, to OHA, and to the Department of Budget and Finance with the Transmittal prepared pursuant to paragraph 1.e.(1) above.

2. No later than 12 calendar days after the close of each fiscal quarter, the Director of Finance or the Director's designee, shall

a. Compute the total amount of receipts from the use of ceded lands or lands in the public land trust deposited into the trust holding accounts during the immediately prior fiscal quarter, the total amount of receipts transferred to OHA for the immediately prior fiscal quarter, the total amount on deposit in the GFRTHA of all agencies, and the difference, if any, between the total amount of receipts transferred to OHA and \$3,775,000;

b. If the total amount of receipts transferred to OHA exceeds the \$3,775,000, notify OHA and request that OHA deposit the overpayment by journal voucher into the carry-forward trust holding account the Director establishes for that purpose, using the accounting information and processes described in paragraph 4 below;

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c. If the total amount of receipts transferred to OHA is less than \$3,775,000, and unless the Governor fixes different amounts for some or all agencies, make up

(1) The shortfall by transferring up to the entire amount on deposit in the carry-forward trust holding account to OHA, by journal voucher using the accounting information and processes described in paragraph 4 below; and

(2) Any remaining difference by establishing the additional amount of receipts each agency must transfer to OHA from its GFRTHAs and special funds, to satisfy the requirements of Section 3 of Act 178 for the immediately prior fiscal quarter, and

notify each agency by email what amounts of receipts specified by the Governor or established by the Director, if any, it must transfer to OHA, from its trust holding accounts, its GFRTHA, or its special funds, to satisfy the requirements of Section 3 of Act 178.

3. No later than 15 calendar days after the close of each fiscal quarter, each department or agency shall,

(a) If notified by the Director of Finance that additional receipts must be transferred to OHA from its special funds, reverse earlier deposits of receipts into its special funds in



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the amounts specified by the Director, and deposit the same into the appropriate special fund trust holding account, and

(b) Transfer all amounts specified for transfer from its GFRTHAs and its trust holding accounts, to OHA, by journal voucher using the accounting information and processes described in paragraph 4 below.

4. Accounting Information and Process.

a. Use Account No. T-YY-901-Z1; transaction codes 805 for OHA and 804 for the department or agency;

b. Include the following note under the "Explanation" section of the journal voucher: "to record transfer of funds derived from the public land trust to OHA, pursuant to Executive Order 06-06, and Act 178, 2006 Session Laws of Hawaii."


5. Immediately after all transfers to OHA for the fourth fiscal quarter are made, each department or agency shall deposit any balance remaining in any trust holding account to the credit of the general fund or the special fund into which the receipt would have been deposited if it had not been deposited into the trust holding account. The Director of Finance or the Director's designee shall transfer any balance remaining in the carry-forward trust holding account to each department or agency that transferred additional receipts to OHA in the prior fiscal year pursuant to paragraphs 2.c.(3), in amounts proportionate to


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each department's or agency's total contributions to avoid any shortfall in the prior fiscal year.


Each department or agency shall also maintain a separate file for each fiscal year, of all Treasury Deposit Receipts (State Accounting Form B-13) and all journal vouchers it used to deposit receipts for the use of public land trust land to the separate trust holding accounts established under paragraph 1, and to transfer OHA's portion of the same to OHA.

DONE at the State Capitol, Honolulu,  
State of Hawaii, this 20th  
day of September, 2006.

  
\_\_\_\_\_  
LINDA LINGME  
Governor of Hawaii



APPROVED AS TO FORM:

  
\_\_\_\_\_  
Mark J. Bennett  
Attorney General

TRANSMITTAL TO MAKE QUARTERLY TRANSFER OF PUBLIC LAND TRUST RECEIPTS TO OHA

Date: \_\_\_\_\_  
(By Email and Messenger)

TO: Mr. Neal Miyahira  
Administrator, Budget, Program Planning and Management Division  
Department of Budget and Finance

FROM: \_\_\_\_\_

Department/Agency Name \_\_\_\_\_

SUBJECT: Ceded Land/Public Land Trust Receipts for Quarterly Transfer to Office of Hawaiian  
Fiscal Year \_\_\_\_\_, \_\_\_\_\_ Fiscal Quarter's

80%GFTHA/20% Holding Account Name/No.	Ceded/Public Land Trust Land Total Receipts	Total Holding Account Deposits	Total Amounts Transferred to OHA
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____

If there are questions, please call or email \_\_\_\_\_  
at Ext. \_\_\_\_\_; Email \_\_\_\_\_.

NOTE: Due no later than 10<sup>th</sup> Calendar Day after the end of each fiscal quarter.

**clee2 - Matt**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 08, 2011 10:55 PM  
**To:** HAWtestimony  
**Cc:** info@schha.org  
**Subject:** Testimony for HB222 on 2/9/2011 8:30:00 AM

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Testimony for HAW 2/9/2011 8:30:00 AM HB222

Conference room: 329  
Testifier position: support  
Testifier will be present: No  
Submitted by: Michael Kahikina  
Organization: Sovereign Councils of the Hawaiian Homelands Assembly  
Address: 1050 Queen Street Suite 200 Honolulu, Hawaii  
Phone: 529-1627  
E-mail: [info@schha.org](mailto:info@schha.org)  
Submitted on: 2/8/2011

Comments:



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**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2011**

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ON THE FOLLOWING MEASURE:

HB 222, RELATING TO THE DEPARTMENT OF HAWAIIAN HOME LANDS.  
BEFORE THE:

HOUSE COMMITTEE ON HAWAIIAN AFFAIRS

DATE: Wednesday, February 9, 2011 TIME: 8:30 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): David M. Louie, Attorney General, or  
Charleen M. Aina, Deputy Attorney General

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Chair Hanohano and Members of the Committee:

The Attorney General takes no position on the merits of H.B. No. 222.

However, if the Committee concludes that the Department of Hawaiian Home Lands ("DHHL") should receive a portion of the income and proceeds from the lands held as a public trust under section 5(f) of the Admission Act, to increase home and farm ownership, the Attorney General recommends that amendments be made to Act 178, Session Laws of Hawaii (2006), rather than section 26-17, Hawaii Revised Statutes, for that purpose. Amending Act 178 will allow the processes already in place to transfer public land trust receipts to the Office of Hawaiian Affairs ("OHA"), to be used to transfer receipts from the same sources to DHHL as well.

In 2006, the Legislature enacted Act 178, and the Governor issued Executive Order No. 06-06 to implement it, and transfer \$15.1 million of public land trust receipts, to OHA, annually. Using the collection, accounting and transfer procedures, and the recordkeeping and reporting system put into place by Executive Order No. 06-06, and Section 5 of Act 178, to

also transfer public land trust receipts to DHHL, will avoid duplication, minimize confusion, and ensure coordinated transfers of receipts from the same sources, to two separate entities. With minimal adjustments, the same accounting process the Accounting Division of the Department of Accounting and General Services set-up to collect and transfer receipts to OHA, and the same electronic recordkeeping system the Department of Land and Natural Resources established and maintains with which to make annual reports to the Legislature, can be used to make and document transfers to DHHL. Similarly, transfers to both OHA and DHHL will be coordinated by the Department of Budget and Finance.

Most importantly, authorizing the transfer of public land trust receipts to OHA and as well as the DHHL in the same law, should assure that the Legislature will have the benefit of input from all who could be affected by any amendment to the law that the Legislature may consider making in the future.

We are available to assist in revising this measure to amend to Act 178 to effect the recommended consolidation.