



**HB 399**  
**RELATING TO THE PORTION OF INCOME AND PROCEEDS**  
**FROM THE LANDS OF THE PUBLIC LAND TRUST FOR USE**  
**BY THE OFFICE OF HAWAIIAN AFFAIRS**  
House Committee on Judiciary

February 17, 2011

2:30 p.m.

Room 325

The Office of Hawaiian Affairs strongly **SUPPORTS** HB 399, which is a bill in OHA's 2011 Legislative Package. This bill seeks to have the State do what is right and long overdue and resolve its debt to OHA resulting from public land trust revenues unpaid from 1978 to 2010.

If enacted, HB 399 will establish the debt at \$200 million minimally and provide for annual payments of at least \$30 million beginning July 1, 2015 until the debt is paid. HB 399 would also require the State to pay interest to OHA beginning July 1, 2010. In lieu of cash payments, the state executive branch, beginning July 1, 2011 and with OHA's approval, could substitute, for all or any part of the cash payments, land having the fair market value of the cash for which the land is being substituted.

The delay in payment of the debt as permitted by this bill is OHA's recognition of the State's presently difficult financial circumstances. However, the OHA Board of Trustees believes that the State's economy will be on its way to recovery within three to five years and the State will be well able to begin retiring the debt.

OHA also notes that by 2015, the State's obligation to pay \$30 million annually into the Hawaiian Home Lands Trust Fund under Act 14 of the 1995 Special Legislative Session will end.

HB 399 provides the opportunity for the Legislature to take a major step in resolving an issue that has remained unresolved for more than three decades and that the Hawai'i Supreme Court has ruled is primarily the responsibility of the Legislature. Appropriate legislative action would help fulfill the State's solemn obligation to OHA.

The following information may be useful as background information during the committee's consideration:

- Following many years of relatively small transfers to OHA, Act 304, Session Laws of Hawaii of 1990, sought to establish how the State would carry out its state constitutional and statutory mandate to dedicate 20 percent of public land trust revenues to OHA's activities.
- Act 35, Session Laws of Hawaii 1993, appropriated \$136.5 million in general obligation bond funds to OHA as a settlement of undisputed claims to that point in time.
- Act 329, Session Laws of Hawaii 1997, established OHA's pro rata share to be \$15.1 million for each of the fiscal years 1997-1998 and 1998-1999.
- In 2001, the Hawaii Supreme Court ruled that Act 304 was invalid due to a conflict between one of its technical provisions and federal law.
- Act 34, Session Laws of Hawaii 2003, required the transfer of several million dollars to OHA to help continue the revenue stream following the court ruling against Act 304.
- Executive Order No. 03-03 set forth Governor Lingle's procedure for continuing the revenue stream.
- Act 178, Session Laws of Hawaii 2006, included an interim provision setting OHA's annual amount of land trust revenues at \$15.1 million and providing a lump sum payment of \$17.5 million for certain amounts that the Legislature determined were underpaid between July 1, 2001 through June 30, 2005.

We thank you for considering this bill. The issue is complex, but when 30 years of struggle to address this issue are examined, one key truth remains: it is ultimately the Legislature's task to resolve the issue. We look forward to working tirelessly with the Legislature, as we have done over the years, to find a fair and just solution.

We urge your Committee to PASS HB 399.

Mahalo for the opportunity to testify on this important measure.

# ASSOCIATION OF HAWAIIAN CIVIC CLUBS

TESTIMONY BY  
PRESIDENT SOULEE STROUD

**IN SUPPORT OF HOUSE BILL 399**  
**Relating to the Portion of Income and**  
**Proceeds from the Lands of the Public Land Trust for Use**  
**By the Office of Hawaiian Affairs**

Before the House Judiciary Committee  
February 2, 2011; 10:00 a; Room 325

Aloha Mr. Chairman Keith-Agaran, Vice Chair Rhoads and members 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 399 (HSCR 18).

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 members of the Board and I met with OHA administrative staff, and received a briefing and summaries of the OHA package.

A few days later, on January 22, 2011 the Board of Directors 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.

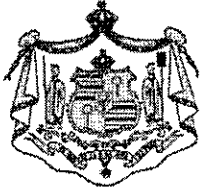
As a result, we continue to provide our supportive testimony on HB 399. The purpose of this bill is to assure the transfer of cash or land to OHA pursuant to Article 12, Sections 4 and 6 of the State Constitution, for the period of Nov. 1978 to July, 2010. This bill has already passed the Joint Committees of Water, Land and Hawaiian Affairs without amendments. We support the action of the previous committees.

The Legislature has been clearly directed by the Hawaii Supreme Court in OHA v, State of Hawaii, 96 Haw. 388, 31 P. 3d 901 (2001) "...to specify the apportionment to be managed and administered by the office of hawaiian affairs." Further, the Supreme Court has articulated that, " The State's obligation to native Hawaiians is firmly established in our constitution. How the State satisfies that constitutional obligation requires policy decisions that are primarily within the authority and expertise of the legislative branch."

We see HB 399 as a step to assist the Legislature in the policy decision-making responsibilities and we affirm, that this is a requirement that cannot be delayed any further. We ask you to move forward in settling past debts and allow the Office of Hawaiian Affairs the ability to support its mission and na kanaka oiwi access to its full and proper benefits.

Thank you for your consideration. We urge your support of the measure.

For further information please contact our Government Relations Chair, Jalna Keala at [jalna.keala2@hawaiiantel.net](mailto:jalna.keala2@hawaiiantel.net) [www.aohcc.org](http://www.aohcc.org) .



O'ahu Council  
Association of Hawaiian Civic Clubs  
P. O. Box 37874  
Honolulu, HI 96837-1122

February 17, 2011  
House Judiciary Committee Hearing

**TESTIMONY IN SUPPORT OF H.B. 399**  
**Relating to the Portion of Income and Proceeds from the Lands of the Public Land Trust  
For Use by the Office of Hawaiian Affairs**

Aloha mai kakou. My name is Mahealani Cypher, president of the O'ahu Council, Association of Hawaiian Civic Clubs. Our Council's membership is comprised of 26 Hawaiian civic clubs located on the island of O'ahu.

We are in strong support of House Bill 399, which would provide for an allocation of lands or funds to the Office of Hawaiian Affairs (OHA) as retroactive payment for monies owed from November 1978 to July 2010.

We believe it is important that this Legislature – and the State of Hawai'i – honor the will of the people of Hawai'i, who voted overwhelmingly in support of a state constitutional amendment in 1987 that mandates these payments.

It is unfortunate that this obligation has been allowed to languish for so many years and now, when state revenues are facing serious shortfalls, funds may not be readily available. We are grateful to the members of the House of Representatives, who voted to support similar legislation in past years, and urge you to work together with your colleagues in the Senate to support this bill, which allows for a delay to a date certain for any monetary payments to finally be made.

We urge your support for this bill.

Mahalo for this opportunity to offer our mana`o.

*Mahealani Cypher*

Ph. (808) 226-4195  
Email: [malamaono@aol.com](mailto:malamaono@aol.com)



## KO`OLAUPOKO HAWAIIAN CIVIC CLUB

February 16, 2011

To: Rep. Gilbert S.C. Keith-Agaran, Chair  
And Members  
House Committee on Judiciary

From: Alice P. Hewett, President

Subject: Support for H.B. 399 – Relating to the Portion of Income and Proceeds  
From the Lands of the Public Land Trust for Use by the Office of Hawaiian Affairs

Aloha. The Ko'olaupoko Hawaiian Civic Club offers our support for H.B. 399, which would call for a settlement and payment of what is owed for the use of identified Hawaiian Ceded Lands held in trust by the State of Hawai'i. This is long overdue, and action must be taken soon to rectify this outstanding debt to the Hawaiian people.

While we realize that the state of Hawai'i is facing major economic challenges at this time, it is our view that this legislation has adequate safeguards in providing for postponement of payment to a time certain in the future.

We are confident that the State of Hawai'i's economy will improve over the next few years. In fact, *it is confidence in our future* that will enable us to improve. The lack of such confidence by those who oppose this legislation will also serve as an obstacle, inhibiting our state's recovery from the recession. We therefore also urge our Legislators to demonstrate that you, too, have confidence in the future – become role models for our people, by expressing that confidence and approving a settlement agreement enabled by this legislation.

Mahalo nui loa.

*Alice P. Hewett*

P. O. Box 664  
Kaneohe, HI 96744  
Ph. (808) 235-8111  
koolaupokohcc.org



**Aha Kiole Advisory Committee**

Legislative Testimony

**In SUPPORT of HB 399**

Relating to Income and Proceeds of the Public Land Trust for Use of OHA

Submitted to: Committee on Judiciary

February 17, 2011

2:30 p.m.

Room: 325

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Submitted by: The Aha Kiole Advisory Committee: 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 Keith-Agaran, Vice-Chair Rhoads and Members of the Committee,

Thank you for the opportunity to testify in support of HB 399 which requires the transfer of cash or land to OHA as income and proceeds that OHA is to receive from the public trust pursuant to article XII, sections 4 and 6, of the State Constitution for the period from 11/7/1978 to 7/1/2010.

These funds are long overdue to the Office of Hawaiian Affairs. We support this bill and urge you to pass HB 399..

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](mailto:kaiwilauula@yahoo.com)

**Testimony for HB399 on 2/17/2011 2:30:00 PM**

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Saturday, February 12, 2011 7:11 AM

To: JUDtestimony

Cc: Ken\_Conklin@yahoo.com

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Testimony for JUD 2/17/2011 2:30:00 PM HB399

Conference room: 325

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: 2/12/2011

## Comments:

Here are some of the reasons I oppose HB399.

1. The Governor has said the State is in such terrible financial condition that he finds it necessary to tax retiree pensions and raise other taxes just to cover the expected deficit. This bill would add \$200 Million to that deficit. Do you really want to tell HGEA and HSTA members that you're going to tax their pensions in order to give OHA \$200 Million?
2. OHA already has about \$400 Million invested in the stock market. All that money was sucked out of Hawaii's economy and sent to New York. Clearly, OHA does not need the money. Tell OHA to bring the money back to Hawaii. Indeed, you should treat OHA's stash the same way you treat all other special funds -- raid it! If you can take money away from the Hurricane Relief Fund, or the Tobacco Settlement Fund, then surely you can take money away from the OHA slush fund.
3. Take this opportunity to shut off the flow of ceded land revenue to OHA permanently. The requirement to send 20% of ceded land revenue to OHA was an ordinary piece of legislation. It is not a requirement in either the Constitution or the Admissions Act. You can repeal that law at any moment. I suggest this would be a good moment to do so.
4. Senator Akaka has said he plans to introduce the Akaka bill in Congress again this year. This legislature has repeatedly passed resolutions supporting the Akaka bill. If you think there's any chance at all of passing the Akaka bill, then you should not be giving away state assets of land or money before negotiations even begin with the Akaka tribe.
5. I note the existence of SB1, SB1520, and HB1627 which contemplate the creation of a state-recognized tribe even though the Akaka bill does not pass. SB1 includes a provision to turn over all the ceded lands to the tribe. God help us if that bill is ever enacted. But in the meantime, don't give away anything.
6. The State previously negotiated a settlement for "back rent" on the ceded lands and paid the settlement in full to OHA. Why are we now being asked to pay more? This matter was already settled many years ago.
7. Follow the advice of Nancy Reagan when someone asked her what to do when a friend or family member requests money to feed a bad habit: "Just say no."



**Testimony for HB399 on 2/17/2011 2:30:00 PM**

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

**Sent:** Monday, February 14, 2011 8:07 AM

**To:** JUDtestimony

**Cc:** garrypsmith@juno.com

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Testimony for JUD 2/17/2011 2:30:00 PM HB399

Conference room: 325

Testifier position: oppose

Testifier will be present: Yes

Submitted by: Garry P. Smith

Organization: Individual

Address:

Phone:

E-mail: garrypsmith@juno.com

Submitted on: 2/14/2011

Comments:

This bill is not needed. The courts will decide if this money is owed. Even if this bill were to pass, how do you expect to fund it. We do not need another bill that spends \$200 Million but does not fund it. Stop this bill.

LEIALOHA "ROCKY" KALUHIWA

P. O. Box 4870

Kaneohe, HI 96744

Ph. 286-7955

February 16, 2011

To: Rep. Gilbert S.C. Keith-Agaran, Chair/And Members  
House Committee on Judiciary

From: Leialoha Kaluhiwa   
Kupa`aina, He`eia Ahupua`a

Subject: Testimony in Support – H.B. 399 – Relating to the Portion of Income and Proceeds  
from the Lands of the Public Land Trust for Use by the Office of Hawaiian Affairs

Aloha.

I am in favor of H.B. 399, because it is long overdue. I remember working at the Capitol 20 years ago, when this issue was brought up – and to think it has never been resolved since then.

I don't see what is so hard to see all of the revenues accumulated from already-known Ceded Lands like the airports, harbors, mountain tops that are used for astronomy, etc.

Its about time that the State do what is pono, and give its fair share back to our people. These funds, or income-producing lands, can help support our Hawaiian programs and provide scholarships.

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