



EXECUTIVE CHAMBERS

HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

Testimony SB 2783  
Relating to the Public Trust Lands

Governor Neil Abercrombie

SENATE COMMITTEE ON HAWAIIAN AFFAIRS

Senator Brickwood Galuteria, Chair

Senator Pohai Ryan, Vice Chair

And

SENATE COMMITTEE ON WATER, LAND, & HOUSING

Senator Donovan M. Dela Cruz, Chair

Senator Malama Solomon, Vice Chair

February 6, 2012  
2:45 pm, Room 224

Chair Galuteria, Chair Dela Cruz, Vice Chair Ryan, Vice Chair Solomon, and members of the committees, thank you for hearing Senate Bill 2783 Relating to the Public Trust Lands. I respectfully request your support of this important measure.

Last year, my administration and the Office of Hawaiian Affairs (OHA) began discussions regarding claims to income and proceeds from the public trust lands dating back to 1978. These discussions resulted in an agreement in principal that is embodied in Senate Bill 2783.

In accordance with the Legislature's authority to determine OHA's appropriate portion of income and proceeds from ceded lands, we are presenting this agreement in principal for your consideration and approval.

In summary, the agreement would convey approximately \$200 million worth of land in Kaka'ako Makai to OHA. No cash would be paid. In exchange for the land, any and all claims regarding OHA's share of ceded land receipts from November 7, 1978 through July 1, 2012, would be resolved.

I believe this agreement is pono and benefits both Native Hawaiians and the entire State of Hawaii. As you consider this agreement, I and my administration will work with you through the vetting process and I look forward to these discussions.

Again, mahalo for your consideration of this agreement in principal.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2012**

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**ON THE FOLLOWING MEASURE:**  
S.B. NO. 2783, RELATING TO THE PUBLIC TRUST LANDS.

**BEFORE THE:**

SENATE COMMITTEES ON HAWAIIAN AFFAIRS AND ON  
WATER, LAND, AND HOUSING

**DATE:** Monday, February 6, 2012 **TIME:** 2:45 p.m.

**LOCATION:** State Capitol, Room 224

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

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Chairs Galuteria and Dela Cruz, and Members of the Committees:

The Attorney General urges passage of this bill.

The fundamental objective of this bill is to finally and completely resolve all of the longstanding differences between the State and the Office of Hawaiian Affairs (OHA) about OHA's portion of the income and proceeds from the use of ceded lands. Article XII, section 6 of the State Constitution specifies OHA is to receive a portion of the income and proceeds from the ceded lands with which to better the conditions of native Hawaiians, as provided by law. While most of OHA's claims to income and proceeds from the ceded lands have been resolved, at least three disputes relating to whether OHA should have received a portion of the State's receipts from its hospitals situated on ceded lands, and its rental housing and affordable housing development programs, and a larger portion of the airports' duty free concession leases, are still outstanding. OHA, the Governor, and the Attorney General agree that these and any and all other disputes relating to OHA's portion of ceded land receipts from the period November 7, 1978 through June 30, 2012, need to be resolved.

This bill was drafted jointly by the Attorney General and OHA, and introduced in the Legislature at the request of the Governor. It presents the Governor's and OHA's mutually agreed to proposal for resolving these three claims, and any and all other claims OHA has, had, or may have to the income and proceeds from the public land trust lands under article XII, sections 4 and 6 of the State Constitution, for the period November 7, 1978 through June 30, 2012.

The proposal is presented in the form of this bill because under article XII, section 6 of the State Constitution and the Hawaii Supreme Court's decisions in Trustees of the Office of Hawaiian Affairs v. Yamasaki, 69 Haw. 154, 737 P.2d 446 (1987) (Yamasaki), Office of Hawaiian Affairs v. State, 96 Hawai'i 388, 31 P.3d 901 (2001) (OHA I), and Office of Hawaiian Affairs v. State, 110 Hawai'i 338, 133 P.3d 767 (2006) (OHA I), only the Legislature can specify what OHA's portion of the income and proceeds from the public land trust lands is, and resolving all of OHA's remaining claims for that period is contingent upon the Legislature specifying what the State's obligation under the State Constitution is for that period.

It is important to understand that the bill does not address and thus cannot effect claims relating to, arising out of, or founded upon self-governance, sovereignty, the overthrow of the Kingdom of Hawaii, annexation by the United States, the Hawaiian Homes Commission Act, or what OHA's portion of the income and proceeds from the public land trust lands is today, or prospectively. As to what OHA's portion is today, Act 178, Session Laws of Hawaii 2006, specifies that OHA must receive \$15.1 million of the income and proceeds from the public land trust lands annually, and only this or a future legislature can change what that portion is, or how it is to be quantified in the future.

We are pleased that OHA's trustees are willing to compromise and resolve all differences about its portion of ceded land receipts, in exchange for the nine parcels of land at Kaka'ako Makai preliminarily valued at \$200 million that will be conveyed to OHA if this bill passes without objection. All of the parcels of land are already zoned commercial, are contiguous to each other, and thus are suited for master planning. They are also located in the midst of an area of Honolulu that is already experiencing significant and long-range redevelopment.

Conveying the lands should not adversely affect the State's interests. OHA has agreed and the bill provides that the lands conveyed are to remain under the jurisdiction and subject to the authority of the Hawaii Community Development Authority (HCDA) with respect to zoning, land use, and all other matters over which HCDA is authorized to act. Similarly, OHA has agreed and the bill specifies that the conveyances do not include the State's interest in minerals and metallic mines, including rights to geothermal energy, submerged lands, surface or ground water, or the State's regulatory and ownership rights, if any, over, or to historic properties, aviation artifacts, burial sites, and prehistoric remains under chapter 6E, Hawaii Revised Statutes.

OHA has also agreed to continue all rights and encumbrances, including leases, easements, and rights of entry, applicable to all of the parcels conveyed, and allow reasonable access rights and easements to state agencies for the benefit and use of their adjoining properties.

S.B. No. 2783 is the product of OHA's and our combined efforts to resolve disputes that have strained the relations between OHA and the State for almost as long as article XII, sections 4 and 6 of the State Constitution have provided that the Legislature shall earmark a portion of the ceded land receipts for OHA to use to better the conditions of native Hawaiians. We believe the bill's provisions are fair and just, and that OHA agrees that they are fair and just. Since 2006, Act 178 has told us how much OHA is to receive as its portion of the income and proceeds from the public land trust lands. Resolving all disputes as to what OHA's portion was before then is long overdue.<sup>1</sup>

The Attorney General respectfully requests that the Committees pass this measure so that all disputes regarding OHA's portion of the income and proceeds from the public land trust lands can be resolved and satisfied by the Legislature.

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<sup>1</sup> A chronology of how and when the disputes arose is attached to this testimony.

## CHRONOLOGY

In 1978, the State Constitution was amended by the delegates to the Constitutional Convention to implement the provision in section 5(f) of the Admission Act that authorizes the lands, and income and proceeds from the lands ceded back to the State by the United States at Statehood, to be used to better the conditions of native Hawaiians. The delegates added article XII, sections 4, 5 and 6 to the State Constitution, to establish OHA, and to direct the Legislature to enact laws that expressly earmarked income and proceeds from the ceded lands for OHA to use, to better the conditions of native Hawaiians. These amendments were ratified by the voters on November 7, 1978.

In 1979, chapter 10 was added to the Hawaii Revised Statutes to initiate implementation of article XII, sections 4, 5 and 6. Section 10-13.5, Hawaii Revised Statutes, was added in 1980, to establish OHA's portion of the income and proceeds from the ceded lands, and prescribe how that portion was to be quantified. It provided: "Twenty per cent of all funds derived from the public lands trust, described in section 10-3, shall be expended by the office, . . . for the purposes of this chapter."<sup>1</sup>

From 1980 through 1982, state agencies, principally the Department of Land and Natural Resources ("DLNR"), transferred 20% of what they received in rents and proceeds from leases or the sale of ceded lands to OHA. However, in 1983, OHA filed Trustees of the Office of Hawaiian Affairs v. Yamasaki, 69 Haw. 154, 737 P.2d 446 (1987) ("Yamasaki") to claim that in addition to the rents it was already receiving, 20% of the proceeds from the DLNR's sale of sand from a beach on Molokai, and the income and proceeds from the sale, lease and other disposition of ceded lands, including in particular, receipts from the Department of Transportation ("DOT") Harbors Division's Aloha Tower Development Agreement, were owed.

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<sup>1</sup>Section 10-3 described the "public lands trust" as being comprised of

all proceeds and income from the sale, lease, or other disposition of lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July 7, 1898 (30 Stat. 750), or acquired in exchange for lands so ceded, and conveyed to the State of Hawaii by virtue of section 5(b) of the Act of March 18, 1959 (73 Stat. 4, the Admissions Act), (excluding therefrom lands and all proceeds and income from the sale, lease, or disposition of lands defined as "available lands" by section 203 of the Hawaiian Homes Commission Act, 1920, as amended), and all proceeds and income from the sale, lease, or other disposition of lands retained by the United States under sections 5(c) and 5(d) of the Act of March 18, 1959, later conveyed to the State under section 5(e).

In 1987, the Hawaii Supreme Court concluded that it could not resolve OHA's claims because sections 10-13.5 and 10-3 were neither sufficiently detailed nor facially consistent to glean which income and proceeds were subject to section 10-13.5's 20% apportionment.

After the Yamasaki decision was issued, the Legislature enacted Act 395, Session Laws of Hawaii 1988, which required in section 5 that the Governor propose a plan that retroactively resolved all controversies relating to the ceded lands public trust between August 21, 1959 (Statehood) and July 1, 1988, the effective date of the act. Representatives of the Waihee Administration and OHA trustees and staffers met regularly for 30 months thereafter, to identify where the ceded lands were being used and how much income and proceeds they were generating, to establish what OHA's portion of the income and proceeds from the public trust lands would be for purposes of going forward, as well as retroactively, and to prescribe how the portion would be quantified.

In 1990, Governor Waihee and OHA's trustees jointly submitted a bill to the Legislature to codify the results of their efforts. The bill was enacted as Act 304, Session Laws of Hawaii 1990.<sup>2</sup> Act 304 amended chapter 10 to prescribe that only "revenue" or income and proceeds from the use of public land trust lands for "proprietary" functions, would be subject to section 10-13.5's 20% apportionment for OHA. In addition, section 8 of the bill outlined how the Director of Finance and OHA were to review and reconcile receipts and payments to OHA during the period January 16, 1980 through June 30, 1991, and recommend a sum for appropriation by the Legislature to settle all claims relating to the ceded land public trust for that 11 year period.

After Act 304's passage, the Director of Finance retained Ernst and Young, and OHA retained Deloitte and Touche ("D&T") to conduct detailed surveys and reconcile differences between their respective accounts. Each prepared detailed reports of the review and reconciliation effort. According to the Executive Summary of D&T's December 15, 1992 Report on Ceded Lands for the Period 1981 through 1991, the Memorandum signed by representatives of the Governor and OHA on April 27 and 28, 1993, respectively, and the June 4, 1993 letter receipt to OHA Chairman Clayton Hee from Harold Matsumoto of the Office of the Governor, see attached, most of OHA's claims for additional income and proceeds were resolved

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<sup>2</sup> Except for the period between July 1, 1997 through June 30, 1999, when Act 329, Session Laws of Hawaii 1997, fixed OHA's portion of the income and proceeds from the public land trust lands at \$15.1 million. to facilitate negotiations between the State and OHA to settle OHA I, Act 304's "20% of proprietary income and proceeds" methodology served as the measure of OHA's portion of the income and proceeds from the public land trust lands until the Supreme Court's decision repealing Act 304 in OHA I was issued on September 12, 2001.

by State payments to OHA in 1990, 1992, and 1993 in excess of \$136 million. The unresolved claims were limited to what the Memorandum refers to in Item 7 as “Excluded Items:” DLNR lease premiums, previously unreported ceded land receipts collected by DLNR and the Department of Accounting and General Services, DOT airports’ duty free lease rent revenues, certain DOT Harbors’ receipts, Department of Health cafeteria receipts, interest income, patient service revenues from state hospitals situated on ceded lands, Duty Free Shoppers (DFS) Waikiki sales, DFS lease cancellation fee, miscellaneous airport revenues, and receipts from State public rental housing and affordable housing development programs.

The first of two OHA v. State lawsuits was filed in 1994 to assert its claims to the Excluded Items. Judge Heely agreed that OHA should have received 20% of Interest Income, Patient Service Revenues, rental and affordable housing receipts, and DFS Waikiki Sales, and entered summary judgment in OHA’s favor. The State appealed. While the appeal was pending in the Hawaii Supreme Court, Congress passed the Forgiveness Act which precluded states, including Hawaii, from paying airport revenues to native groups, including Native Hawaiians. The State brought the act to the attention of the Hawaii Supreme Court because section 16 of Act 304 provided for its repeal if any provision of the act conflicted with federal law. In September 2001, the Hawaii Supreme Court issued its decision in Office of Hawaiian Affairs v. State, 96 Hawa’i 388, 31 P.3d 901 (2001) (“OHA I”). The decision declared that Act 304 had been repealed by its own terms upon Congress’ passage of the Forgiveness Act, and reinstated the 1980 version of section 10-13.5 as the measure of OHA’s portion of the income and proceeds from the public land trust lands.

However, no payments to OHA were made until 2003, when payments resumed pursuant to Executive Order No. 03-03 which Governor Lingle issued on February 11, 2003, see attached. In addition, the Legislature enacted Act 34, Session Laws of Hawaii 2003, which appropriated the sums from fiscal years 2001 and 2002 that had been withheld from OHA after the OHA I decision was issued because Yamasaki had previously declared the 1980 version of section 10-13.5 ineffective. Payments to OHA continued pursuant to Executive Order No. 03-03 until the Legislature enacted Act 178, Session Laws of Hawaii 2006, and Governor Lingle issued Executive Order No. 06-06, see attached. Since 2006, OHA has received \$15.1 million annually, without reliance on either the 1980 provisions of section 10-13.5 (which remains a part of the Hawaii Revised Statutes but has been held in abeyance by section 2 of Act 178), or Act 304’s “20% of proprietary income and proceeds” methodology (which was repealed after Congress enacted the Forgiveness Act).

In July 2003, OHA filed the second Office of Hawaiian Affairs v. State (“OHA II”) lawsuit to reassert its claims to the Excluded Items. That suit was dismissed by the circuit court, OHA appealed, and the Hawaii Supreme Court affirmed the lower court’s dismissal of OHA’s complaint and claims as untimely filed. OHA v. State, 110 Hawai’i 338, 133 P.3d 767 (2006).

For the last seven or eight years, representatives of OHA and the Lingle and Abercrombie Administrations have met to try and resolve the remaining disputes about the Excluded Items. The remaining disputes appear only to be about airports’ duty free concession leases, patient service and other operating revenues generated at state hospitals situated on ceded lands, and the Hawaii Public Housing Authority’s rental and Hawaii Housing Finance and Development Corporation’s affordable housing programs.





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**OFFICE OF HAWAIIAN AFFAIRS**

**A REPORT ON CEDED LANDS**

**FOR THE PERIOD 1981 THROUGH 1991**

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**December 15, 1992**



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**Deloitte Touche  
Tohmatsu  
International**

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**OFFICE OF HAWAIIAN AFFAIRS**  
**A REPORT ON CEDED LANDS**  
**FOR THE PERIOD 1981 THROUGH 1991**

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## **I. EXECUTIVE SUMMARY**

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## EXECUTIVE SUMMARY

### OVERVIEW

Act 304, passed in the 1990 Legislative Session, sought to clarify the lands and the revenues to be derived from those lands comprising the public land trust for the betterment of the conditions of Native Hawaiians.

The Department of Budget and Finance (B&F) was given the responsibility of accumulating information from various State Departments and the University of Hawaii as to the revenues derived on ceded lands during the years 1981 through 1989, and the resulting amounts due to the Office of Hawaiian Affairs (OHA).

Ernst & Young (E&Y) was engaged by B&F to assist in reviewing and evaluating the methodologies utilized by the departments, in verifying the ceded land revenues calculated by the departments, and in determining the procedures necessary to continue gathering and verifying the revenue amounts in the future.

Deloitte & Touche (D&T) was engaged by OHA to assist in testing the reasonableness of E&Y's findings and conclusions, and to test the accuracy of the coding of lands between ceded and non-ceded on the land inventory listing maintained by the Department of Land and Natural Resources (DLNR). D&T's report on its findings was issued in January 1992.

B&F extended its compilation of revenues for the years 1990 and 1991. The State, through the Office of State Planning (OSP), and OHA then reached a tentative settlement of amounts due to OHA for ceded land revenues for the years 1981-1991 based on these amounts and adjusted for certain findings made by E&Y and D&T. The settlement was subject to a review of the 1990 and 1991 amounts by OHA. OHA hired D&T to perform such a review. This report summarizes D&T's findings relating to the 1990 and 1991 amounts.

### D&T's Findings Relating to 1990 and 1991 Amounts

The following are the major issues identified by D&T:

- *Lease Premium* - DLNR did not report to B&F a portion of a lease premium received in 1991. A lease premium of \$10 million was paid by a developer to the County of Hawaii, of which \$6 million was remitted to DLNR. The Department correctly remitted 20% of the \$10 million, or \$2 million, to OHA; however, only that \$2 million was included in the ceded land revenue schedule reported to B&F. As a result, the tentative settlement reflects only \$400,000 (20% of \$2 million) as being due to OHA, rather than the full \$2 million. Therefore, we added \$8 million to the ceded land revenue schedule to correctly reflect the full \$2 million due to OHA. The impact on OHA is an increase of \$1,600,000.
- *Previously Unreported Ceded Lands* - In our previous report, we noted that the Department of Accounting and General Services (DAGS) did not report any revenues from certain parcels identified as ceded lands. We obtained a description of the activities occurring on these lands and noted that one parcel, Iolani Palace, has been generating revenues. Iolani Palace generates revenues from two sources, parking lot assessments (handled by DAGS) and admission fees (handled by DLNR). Using information obtained from DAGS, we determined the cumulative revenues from the parking lot for the years 1981 through 1991 to be \$521,599. The impact on OHA is an increase of \$104,320. Based on the information provided by DLNR, we computed the cumulative revenues from admission fees for the years 1981 through 1991 to be \$2,215,626. The impact on OHA is an increase of \$443,125.

- *Duty Free Shoppers (DFS) Lease Rent Revenue* - Department of Transportation - Airports Division (DOT-Airports) incorrectly computed the percentage of ceded lands leased by DFS. The result is an overstatement of ceded land revenues reported to B&F of \$2,680,760. The impact on OHA is a reduction of \$536,152.
- *Non-Ceded Revenues Included as Ceded Revenues* - The Department of Business, Economic Development and Tourism (DBEDT) erroneously reported to B&F all revenues earned by DBEDT, including amounts derived from non-ceded parcels. This resulted in an overstatement of ceded land revenues in 1990 and 1991 of \$1,670,002. The impact on OHA is a reduction of \$334,000.

The University of Hawaii (UH) also erroneously included revenues generated on non-ceded lands. This resulted in an overstatement of ceded land revenues in 1990 and 1991 of \$651,903. The impact on OHA is a reduction of \$130,381.

- *Hilo Oil Pipeline Audit Adjustment* - Department of Transportation - Harbors Division (DOT-Harbors) incorrectly allocated an audit adjustment between ceded and non-ceded revenues. As a result, ceded land revenues were understated by \$610,582. The impact on OHA is an increase of \$122,116.
- *Cafeteria Income* - The Department of Health (DOH) did not report to B&F cafeteria sales in hospitals on ceded lands. This resulted in an understatement of ceded land revenues of \$449,316. The impact on OHA is an increase of \$89,863.

#### D&T Findings Not Accepted by the State

In our previous report, we noted certain revenues which were not specifically excluded from Act 304 and, therefore, could be considered ceded land revenues. Certain of these findings were not accepted by the State and were not included in the tentative settlement agreement with OHA. The major adjustments not accepted by the State are as follows:

- *Interest Income* - With the exception of UH, none of the departments included interest income in the base revenue amounts for 1981-1991. Since interest income is not specifically excluded from the definition of ceded land revenues under Act 304, OHA should take the position that it should be included. In our previous report, we estimated that the amount of interest income applicable to ceded lands totaled \$34,684,802 for the years 1981 through 1989. OHA's 20% share would be \$6,936,960. As this adjustment was not accepted by the State, we excluded these amounts in our summary schedule of findings. We computed the interest income for the years 1990-1991 for informational purposes (see analyses by department) but did not include these amounts in our summary schedule. The interest income for these years totaled \$14,694,580. OHA's 20% share would be \$2,938,916.
- *Patient Service Revenues* - DOH did not include patient service revenues in the base revenue amounts for 1981-1991. Since patient service revenues are not specifically excluded from the definition of ceded land revenues under Act 304, OHA should take the position that they should be included. In our previous report, we estimated that the patient service revenues, excluding the Medicare and Medicaid portions, applicable to ceded lands totaled \$73,067,379 for the years 1984 through 1989. OHA's 20% share would be \$14,613,475. As this adjustment was not accepted by the State, we excluded these amounts in our summary schedule of findings. We computed the patient service revenues for the years 1990-1991 for informational purposes (see analyses by department - Department of Health) but did not include these amounts in our summary schedule. The patient service revenues for 1990-1991, net of Medicare and Medicaid reimbursements, totaled \$31,999,820. OHA's 20% share would be \$6,399,964.

- *Duty Free Shoppers' (DFS) Waikiki Sales* - DOT-Airports did not include sales from DFS's Waikiki location in the gross receipts base that is used to compute the amount of rent due to DOT-Airports by DFS. OHA should take the position that, since a portion of the rent that DFS pays is based on the exercise of its right to deliver in-bond merchandise to the Honolulu International Airport, it does not matter where the sales take place. The rent is for the use of ceded lands; the amount of sales of DFS is only used to compute the amount of rent. In our previous report, we calculated such amount to be \$205,287,389 for the years 1981 through 1989. OHA's 20% share would be \$41,057,478. As this adjustment was not accepted by the State, we excluded these amounts from our summary schedule of findings. We computed the DFS rent including its Waikiki sales for the years 1990-1991 for informational purposes (see analyses by department - Department of Transportation - Airports Division) but did not include these amounts in our summary schedule. The additional rent for these years totaled \$117,970,809. OHA's 20% share would be \$23,594,162.
- *Duty Free Shoppers' Lease Cancellation Fee* - DOT-Airports did not include a portion of the lease cancellation fee received from DFS in 1982 as a part of ceded land revenues. In our previous report, we computed the ceded land portion of the lease cancellation fee as \$775,000. OHA's 20% share would be \$155,000.
- *DOT-Airport's Miscellaneous Revenues* - DOT-Airports did not report the ceded share of miscellaneous revenues generated at the Honolulu International Airport, even though it had reported such miscellaneous revenues at the other airports on ceded land. In our previous report, we calculated such amount to be \$159,108 for the years 1981 through 1989. OHA's 20% share would be \$31,822. As this adjustment was not accepted by the State, we excluded these amounts from our summary schedule of findings. We computed the miscellaneous revenues for the years 1990-1991 for informational purposes (see analyses by department - Department of Transportation - Airports Division) but did not include these amounts in our summary schedule. The miscellaneous revenues for these years totaled \$132,280. OHA's 20% share would be \$26,456.

#### **Inability to Follow-up on Unresolved Issues**

We were unable to follow-up on certain unresolved issues due to the lack of information provided by the State. These issues are as follows:

- *Hawaii Housing Authority* - Revenues from 750 parcels of ceded land have not been included in amounts reported to B&F.
- *DOH* - The Medicare and Medicaid portions of patient service revenues for 1981-83 could not be identified. In addition, we were unable to determine the amount of revenues derived from five parcels identified as ceded lands which have not been reported to B&F in the past. These lands include Lanakia Health Center and State Hospital. The revenues from these operations are not readily determinable from the Department's records.
- *DOT-Harbors* - We were unable to determine whether the Matson Navigation Company rent for Pier 2 was included in the B&F base revenue amounts reported to B&F. In addition, we were unable to conclude on the propriety of the adjustment proposed by E&Y to reduce ceded land revenues.

MEMORANDUM

I. PURPOSE OF MEMORANDUM

The purpose of this Memorandum is to document the results of the efforts undertaken by the Department of Budget & Finance ("B&F"), the Office of State Planning ("OSP"), and the Office of Hawaiian Affairs ("OHA") to ascertain the amount which should be paid to OHA, pursuant to Act 304, 1990 Session Laws of Hawaii 951.

By Act 273, 1980 Hawaii Session Laws 525, Chapter 10, Hawaii Revised Statutes ("HRS"), was amended to authorize OHA to expend twenty percent of all funds derived from the public land trust, as described in section 10-3, HRS.

In the Trustees of the Office of Hawaiian Affairs v. Yamasaki, 69 Hawaii 154, 737 P.2d 446 (1987), certiorari denied, 108 S.Ct. 234, 484 U.S. 898, 98 L.Ed.2d 192 (1987), the Hawaii Supreme Court ruled that (1) nothing in section 10-3, HRS, serves as a statutory base for ruling that twenty percent of a settlement reached by the State in its litigation with Moloakai Ranch should be paid or conveyed to OHA, and (2) legislative clarification of Chapter 10, HRS, was necessary to resolve facial statutory inconsistencies and to establish the funding of OHA under chapter 10, HRS, because of a lack of judicially discoverable or manageable standards adequate to permit a judicial resolution.

By Act 304, 1990 Session Laws of Hawaii 947, the legislature amended Chapter 10, HRS, to (1) clarify the lands

comprising the public land trust under Chapter 10, HRS, (2) clarify the revenues derived from the public land trust which shall be considered to establish the amount of funding to OHA for the purpose of the betterment of the conditions of native Hawaiians; and (3) provide for a process to determine the actual amounts payable to OHA and for the formulation of a plan for the payment of that sum consistent with the restrictions and limitations under existing federal and state laws and regulations, and bond and contractual obligations.

B&F and OHA were mandated, pursuant to Act 304, 1990 Session Laws of Hawaii 951, to determine the actual amount which OHA should have received from funds derived from the public land trust during the period of January 16, 1980 through June 30, 1991, less any moneys appropriated and received by OHA pursuant to section 11 of Act 304 and any revenue received by OHA from the Department of Land and Natural Resources or other agencies pursuant to sections 10-2 and 10-13.5, HRS.

OSP, at the request of the director of finance, and OHA have ascertained that the amount in section 1 of this Memorandum is payable to OHA for the period of June 16, 1980 through June 30, 1991.

Pursuant to Act 35, the 1993 Legislature has authorized the issuance of general obligation bonds and the expenditure of such bond proceeds, or so much thereof as may be required, to make payment to OHA. OHA may be conveyed certain parcels of



public land in full or partial satisfaction of the amount payable to OHA, pursuant to Act 304 or as otherwise permitted by law. Section II documents the results of the efforts of OSP and OHA to implement Act 304.

## II. RESULTS

1. OHA Funding. In accordance with Act 304, OSP and OHA have determined that, in addition to the sum of \$7.2 million appropriated and received by OHA pursuant to Act 304, and any other revenue received by OHA from the Department of Land and Natural Resources or other state agencies for fiscal year 1990-1991, the sum of \$111,859,000.00 is payable to OHA pursuant to Chapter 10, HRS, as amended by Act 304, for the period of June 16, 1980 through June 30, 1991, (the total amount thereof being hereinafter collectively referred to as the "Amount"); provided that this Amount (a) may increase or decrease based on audit, and (b) does not include any matters referred to in sections 6 and 7.

2. Definitions. As used herein, unless a different meaning clearly appears from the context:

a. "Audit" means the examination, review, verification and adjustment or correction of the Amount payable to OHA pursuant to Chapter 10, HRS, as amended, including review and consideration of the following matters:

(1) fiscal year 1989-1990 and 1990-1991 revenues;

- (2) completion by OSP, and the review and verification, by OSP and OHA, of title reports covering public lands presently or formerly under the jurisdiction of the Harbors Division, Department of Transportation, State of Hawaii, including those lands transferred and designated for use as part of the Foreign Trade Zone (being Tax Map Key Parcel Nos. 1/2-1-15:9, sub 2, 7, 8, and 9);
- (3) the inclusion of revenues derived from the State's small boat harbors;
- (4) the value of the parcels of land situate at Hanapepe (Waimea District), Island of Kauai, Hawaii, which were developed by the Housing Finance and Development Corporation ("HFDC") for the Cliffside at Hanapepe Housing Project, and being TMK Parcel Nos. 4/1-8-7:3 (por.) and :18(por.), 4/1-8-12:1 (por.) and :32 (por.), and 4/1-8-13:1 (por.) and containing 88.48 acres, more or less;
- (5) "Miscellaneous Revenues" reported by the Airports Division, Department of Transportation, State of Hawaii;

- (6) revenue derived by the State of Hawaii in connection with parking at Iolani Palace; and
- (7) revenue derived by the Department of Accounting and General Services, State of Hawaii, from the public land trust in connection with the storage of surplus property and parking facilities.

(b) "Revenue" means all proceeds, fees, charges, rents, or other income, or any portion thereof, as further defined in Section 10-2, HRS.

(c) "Public land trust" means those lands as defined in Section 10-2, HRS.

3. Partial Payment. OSP requested the 1992 Legislature in regular session to appropriate and the 1992 Legislature appropriated the sum of \$5 million, for partial payment of the sum of \$111,859,000.00 specified in section 1 hereinabove. The aforesaid sum will be reduced upon payment to OHA of the \$5 million appropriated by the 1992 Legislature under Act 300, 1992 Hawaii Session Laws 831.

4. Included Items. OSP and OHA recognize that the Amount under section 1 hereinabove, subject to audit, includes (a) OHA's portion of revenues from the public land trust, except as provided in section 6 and 7 hereof, and (b) interest, at such rates as provided under Act 304, on the revenues included in (a) through June 30, 1991.

5. Conveyance of Public Land.

Act 304 contemplates that OHA receive (a) moneys in an amount, as determined by B&P, equivalent to the revenues under sections 10-2 and 10-13.5, HRS, as amended, which OHA should have received for the period of June 16, 1980 through June 30, 1991, plus accrued interest in accordance with Act 304, or (b) parcels of public land of equivalent value to such amount, plus accrued interest in accordance with Act 304, or (c) moneys and public lands, which together are equivalent to such amount, plus accrued interest in accordance with Act 304.

OSP and OHA accordingly agree that OHA may, subject to the concurrence of the Department of Land and Natural Resources, by its Board of Land and Natural Resources (hereinafter referred to as the "BLNR"), select and designate for conveyance to OHA, any or all of the following parcels of public land under such terms and conditions as are acceptable to OSP and the BLNR:

- (1) 200 acres, more or less, situated at Lalamilo, Island of Hawaii, Hawaii, being a portion of Tax Map Key Parcel No. 3/6-6-1:2;
- (2) 200 acres, more or less, situated at Kukio-Maniniowali, South Kohala, Island of Hawaii, Hawaii, being a portion of Tax Map Key Parcel No. 3/7-2-4:4;

- (3) the Canoe Center site, situated at Keehi Lagoon, Oahu, Hawaii, being Tax Map Key Parcel No. 1/1-1-3:3;
- (4) 6.215 acres, more or less, situate at Sand Island, Oahu, Hawaii, being Tax Map Key Parcel No. 1/1-2-21: 36, 37, 40, 41, 42, and 44;
- (5) 322.4 acres, more or less, situated at Wailua, Kauai, being Tax Map Key Parcel Nos. 4/3-9-2:12 and 13; and
- (6) such other parcels of public land as may be agreed to by OSP (in consultation with the BLNR) and OHA, including but not limited to (i) the Waikiki Yacht Club site (Tax Map Key Parcel No. 1/2-3-37:6), and (ii) the Stadium Bowl-O-Drome site (Tax Map Key Parcel No. 1/2-7-8:13 and 20).

In the event OHA selects any lands which were cultivated in sugar cane on November 7, 1978, such lands will be conveyed to OHA, subject to a covenant running with the land, requiring OHA, as the Grantee of such lands, its successors and assigns, to pay all sums owed pursuant to Article XII, Section I of the Hawaii State Constitution into the native Hawaiian rehabilitation fund established by the Department of Hawaiian Home Lands.

Except as may otherwise be agreed to by OSP and the BLNR, OSP and OHA further agree that the parcels selected by OHA shall be conveyed by quitclaim deed, without any warranties or representations whatsoever.

OSP and OHA agree that the value of the parcels which OHA selects will be based on appraisal, and will consider:

- (1) any restrictions or limitations on use applicable to the parcel, and the limited market for the parcel;
- (2) any encumbrances, leases, licenses, permits, encroachments, easements, access rights, or other interests therein which currently encumber the parcel, or which will be reserved by the State of Hawaii in favor of the general public, or for public purposes;
- (3) such appropriate adjustments, acceptable to OSP, to the value estimate reflecting the ceded land status of any parcels;
- (4) any public purpose or benefit, which will be served by or through the development of such lands by OHA.

The Amount specified in section 1 above shall be reduced by the value, as established above, of any parcel which is selected by and conveyed to OHA.

6. Housing.

Except for the sum of \$1,026,000.00 (subject to audit) derived in connection with the housing project located on public land trust lands at Hanapepe (which is included in the Amount specified in section 1 hereinabove), the amount payable to OHA for housing projects utilizing the public land trust during the period of 1981 to 1990, including the Honokowai Kauhale Rental Housing Project situated at Honokowai (Lahaina District), Island of Maui, Hawaii, is not included in the Amount. As the legislature is examining the use of the public land trust in connection with affordable housing projects, and Act 304 requested OSP to review, evaluate and to provide recommendations for a revision of existing policies, practices and procedures relating to the public land trust, this matter has been bifurcated and OHA and OSP intend to examine and resolve this as a separate matter.

7. Excluded Matters. Notwithstanding any other provisions of this Memorandum to the contrary, OSP and OHA recognize and agree that the Amount specified in section 1 hereof does not include several matters regarding revenue which OHA has asserted is due to OHA and which OSP has not accepted and agreed to.

III. CONCLUSION

This Memorandum reflects the results of OHA's and OSP's efforts to determine the amount which OHA should receive for the

period of June 16, 1980 through June 30, 1991 pursuant to Act 304. It is the intent of OHA and OSP that its provisions be implemented by Act 35, Act 300, 1992 Hawaii Session Laws 831, or the conveyance of parcels of public lands selected by OHA, pursuant to Act 304 or as otherwise permitted by law.

CONCUR:

OFFICE OF STATE PLANNING

By Norma Stone  
Its Deputy Director  
Dated: April 27, 1993

CONCUR:

OFFICE OF HAWAIIAN AFFAIRS

By Clifton H. Hee  
Its Chairman, Board of Trustees  
Dated: April 28, 1993

By Richard K. Paghinawa  
Its Administrator  
Dated: April 28, 1993





## **OFFICE OF STATE PLANNING**

*Office of the Governor*

MAILING ADDRESS: P.O. BOX 3540, HONOLULU, HAWAII 96871-3540  
STREET ADDRESS: 260 SOUTH HOTEL STREET, 4TH FLOOR  
TELEPHONE: (808)587-3848, 587-3800

FAX: Director's Office 587-3848  
Planning Division 587-3824

June 4, 1993

### HAND DELIVERED

Honorable Clayton H.W. Hee, Chairman  
Board of Trustees  
Office of Hawaiian Affairs  
711 Kapiolani Boulevard, Suite 500  
Honolulu, Hawaii 96813-5249

Dear Chairman Hee:

Subject: Act 304 Payment to OHA

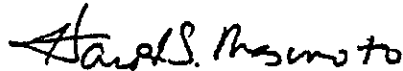
Enclosed herewith is State of Hawaii Warrant Nos. 232154 & 23216, payable to the Office of Hawaiian Affairs, in the amount of \$129,584,488.85, subject to audit and reimbursement to the State of any portion thereof which is excess of the amount due the Office of Hawaiian Affairs. In order to expedite payment to the Office, the warrant has been issued for an amount which may be in excess of the amount payable to the Office as shown by the enclosed summary sheet, subject to reimbursement as aforesaid.

The warrant constitutes payment of the sum of \$129,226,085.05, which is payable to the Office of Hawaiian Affairs pursuant to Chapter 10, Hawaii Revised Statutes, as amended, and Act 304, 1990 Session Laws of Hawaii, for the period of June 16, 1980 through June 30, 1991, and includes statutory interest pursuant to Act 304, as determined by the Office of Hawaiian Affairs and the Office of State Planning, at the request of the director of finance, pursuant to Act 304 [and in accordance with the Memorandum between Office of Hawaiian Affairs and the Office of State Planning], which amount is, however, subject to audit and reimbursement.

Honorable Clayton H.W. Hee  
Page 2  
June 4, 1993

Kindly acknowledge the receipt and acceptance of the aforesaid amount by the Office of Hawaiian Affairs, subject to audit and reimbursement as aforesaid, by signing and returning the enclosed copy of this letter in the space provided below.

Very truly yours,



Harold S. Masumoto  
Director

RECEIPT ACKNOWLEDGED:

Receipt of State of Hawaii Warrant Nos. 23215 & 23216, for the amount of \$129,584,488.85, which amount is subject to audit and reimbursement as stated above, and which constitutes payment of the above-described amount payable pursuant to Act 304, is hereby acknowledged and accepted.

OFFICE OF HAWAIIAN AFFAIRS

By Clayton H.W. Hee

CALCULATION OF OHA PAYMENT

Amount due to OHA from State pursuant to State's analysis for period 6/16/80 - 6/30/91	\$111,582,256.00
Additional amount due to OHA from State for period 6/1/90 - 6/30/91 re: Housing Finance and Development Corporation/Hanapepe property (1) [ $\$26,000.00 + (\$26,000.00 \times 10\% \times 30/365)$ ] + [ $(\$26,000.00 + (\$26,000.00 \times 10\% \times 30/365)) \times 10\% \times 365/365$ ]	<u>28,835.07</u>
Total amount due to OHA @ 6/30/91	111,611,091.07
10% simple interest from 7/1/91 - 6/30/92 (1) ( $\$111,611,091.07 \times 10\% \times 365/365$ )	<u>11,161,109.11</u>
Total amount due to OHA @ 6/30/92	122,772,200.18
10% simple interest from 7/1/92 - 4/29/93 (1)(2) ( $\$122,772,200.18 \times 10\% \times 303/365$ )	<u>10,191,774.43</u>
Total amount due to OHA before Partial Payment	132,963,974.61
Less: Partial Payment to OHA by State on 4/30/93	<u>&lt;5,000,000.00&gt;</u>
Total amount due to OHA after Partial Payment @ 4/30/93	127,963,974.61
10% simple interest from 4/30/93 - 6/4/93 (1) ( $\$127,963,974.61 \times 10\% \times 36/365$ )	<u>1,262,110.44</u>
Amount due to OHA @ 6/4/93 per State calculation, subject to audit	<u>\$129,226,085.05</u>
Amount paid to OHA @ 6/4/93 Check No. 23215      \$64,584,488.85 Check No. 23216 <u>65,000,000.00</u>	129,584,488.85
Less: Amount due to OHA @ 6/4/93 per State calculation, subject to audit	<u>&lt;129,226,085.05&gt;</u>
Unallocated difference and reimbursement due to State, subject to audit	<u>\$ 358,403.80</u>
(1) Interest rate of 10% is pursuant to section 8 of Act 304, SLH 1990.	
(2) Interest is accrued to 4/29/93 because the partial payment was made on 4/30/93.	

EXECUTIVE ORDER NO. 03- 03

WHEREAS, even though the Hawaii Supreme Court declared that "[i]n the absence of the substantive definition of 'revenue' provided in the now invalid Act 304, [it] is again left with no judicially manageable standards by which to discern what specific funds OHA is entitled to received under chapter 10," and that it "cannot and will not judicially legislate a means to give effect to the constitutional rights of native Hawaiians," OHA v. State of Hawaii, 96 Haw. 388, 401 (2001), Article XII, Section 4 of the State Constitution still provides that

The lands granted to the State of Hawaii by Section 5(b) of the Admission Act and pursuant to Article XVI, Section 7, of the State Constitution, excluding therefrom lands defined as "available lands" by Section 203 of the Hawaiian Homes Commission Act, 1920, as amended, shall be held by the State as a public trust for native Hawaiians and the general public;

Article XII, Section 6 of the State Constitution still specifies that

The board of trustees of the Office of Hawaiian Affairs shall exercise power as provided by law: 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, including all income and proceeds from that pro rata portion of the trust referred to in section 4 of this article for native Hawaiians;

Haw. Rev. Stat. § 10-13.5 continues to direct that

Twenty per cent of all funds derived from the public land trust, described in section 10-3, shall be

expended by [OHA], as defined in section 10-2, for the purposes of this chapter;

and, nothing in OHA v. State presently requires or precludes agencies from determining on a case-by-case basis whether a particular receipt for the use of land was "derived from the public land trust," and transferring twenty per cent of such receipts to the Office of Hawaiian Affairs ("OHA") to use to better the conditions of native Hawaiians;

WHEREAS, even prior to the enactment of Act 304, Haw. Sess. Laws 947 (1990), the Department of Land and Natural Resources regularly determined under Haw. Rev. Stat. § 10-13.5 as enacted by Act 273, Session Laws of Hawaii (1980), whether receipts from its leases, licenses and permits for the use of improved and unimproved lands were "derived from the public land trust" and transferred twenty per cent of such receipts to OHA;

WHEREAS, the Legislature recognized this practice in enacting Act 304 and required that "any moneys . . . received by the office from the department of land and natural resources, or any other agency, pursuant to sections 10-2 and 10-13.5 during the period of June 16, 1980 through June 30, 1991," be set off against any amount owed for the 1980-1991 period by that act, see, Section 8 of Act 304, Haw. Sess. Laws 951 (1990);

WHEREAS, pursuant to Article V, Section 5 of the State Constitution, the "governor shall be responsible for the

faithful execution of the laws," and pursuant to Article V, Section 6 of the State Constitution, "[e]ach principal department [of the state government] shall be under the supervision of the governor;"

WHEREAS, the Supreme Court expressly declared that "we would do a disservice to all parties involved if we did not acknowledge that the State's obligation to native Hawaiians is firmly established in our constitution," OHA v. State, 96 Haw. at 401;

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," id., there is no good reason not to resume the practice the Department of Land and Natural Resources followed prior to the enactment of Act 304 of providing twenty per cent of receipts derived from the public land trust from its general leases, revocable permits, sale of wood, etc., licenses for use of land, sale of land, docking and parking fees, park concessions, and other rentals, to OHA; and

WHEREAS, there is likewise no good reason for other state agencies not to also resume the practice of the Department of Land and Natural Resources and again provide twenty per cent of funds derived from public land trust land to OHA;

NOW, THEREFORE, I, Linda Lingle, Governor of Hawaii, pursuant to the provisions of the State Constitution that confer me the power and responsibility to execute the State's laws, do hereby direct that all departments establish the following accounts and procedures, make the following determinations, and accumulate and transfer on a quarterly basis, twenty per cent of all receipts they derive from the public land trust, to OHA.

Effective as of the fiscal quarter ending December 31, 2002, all departments shall

1. Establish a ceded lands proceeds trust holding account for the general fund, and for all of the special funds into which receipts from the department's programs are deposited, to accumulate OHA's share of the department's public land trust receipts on a quarterly basis.

2. Determine whether a particular receipt is for the use of an improved or unimproved parcel of ceded land or land that consists in whole or in part of public land trust land. For purposes of this paragraph, "public land trust land" is land assigned "Trust Land Status" "5(b)," "5(e)" or "Pub. L. 88-233" 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.

3. If a receipt is for the use of a parcel of ceded land, determine whether any federal or state law precludes any portion of the receipt from being used to better the conditions of native Hawaiians. If no such limitation applies, establish the ceded/non-ceded fraction for the parcel by area (square feet or acres).

4. Calculate OHA's portion of the receipt by multiplying the actual receipt by the ceded/non-ceded fraction, and multiplying the result by 20%.

5. Determine whether transfer of OHA's portion of the receipt to OHA will cause the department 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 or department, and if no such breach or failure will occur, deposit OHA's portion of each receipt into the ceded lands proceeds trust holding account for the general fund, or the special fund into which the receipt would otherwise be deposited, using separate Treasury Deposit Receipt slips (State Accounting Form B-13) for each fund into which deposits are made.

6. Use the following procedures to transfer all moneys accumulated in each of the department's ceded lands proceeds trust holding accounts to OHA.



a. Within ten calendar days of the close of each fiscal quarter, transfer all moneys accumulated in each of the department's ceded lands proceeds trust holding accounts during the prior quarter to OHA by journal voucher using the following accounting information: Account No. T-03-901-Z1; transaction codes 802 for OHA and 801 for your department.

b. Under the "Explanation" section of the journal voucher, note that the transfer is "to record transfer of funds derived from the public land trust to OHA per Section 10-13.5 as enacted by Act '273, Session Laws of Hawaii 1980."

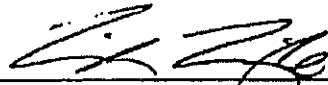
c. Send a copy of each journal voucher to OHA.

d. Complete and send the attached transmittal, Attachment "A," with a copy of each of the department's journal vouchers to the Department of Budget and Finance.

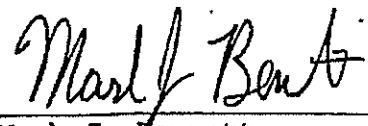
7. Maintain a separate file for each fiscal year, of all Treasury Deposit Receipts (State Accounting Form B-13) and all

journal vouchers used to deposit and transfer OHA's portions of each receipt from public land trust lands to OHA.

DONE at the State Capitol, Honolulu,  
State of Hawaii, this 11<sup>th</sup>  
Day of February, 2003.

  
\_\_\_\_\_  
LINDA LINGLE  
Governor of Hawaii

APPROVED AS TO FORM:

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

ATTACHMENT A

TRANSMITTAL

DATE: \_\_\_\_\_

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

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

SUBJECT: Ceded Land Revenue Payments to Office of Hawaiian  
Affairs

- ( ) No Ceded Land revenues were received by this department during the quarter ended \_\_\_\_\_.
- ( ) A total of \_\_\_\_\_ journal vouchers are attached showing transfers of \$ \_\_\_\_\_ to Office of Hawaiian Affairs for the quarter ended \_\_\_\_\_.

If there are questions, please call \_\_\_\_\_  
at \_\_\_\_\_.

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

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

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

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;



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

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

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 LINGLE  
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 Ceded/Public Land Trust Total Holding Total Amounts  
Land Total Receipts Account Deposits Transferred to OHA  
Name/No.

_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____

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.  
206640\_1.DOC

**galuteria1 - Davis**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 05, 2012 9:06 PM  
**To:** HWN Testimony  
**Cc:** kaenap@yahoo.com  
**Subject:** Testimony for SB2783 on 2/6/2012 2:45:00 PM

Testimony for HWN/WLH 2/6/2012 2:45:00 PM SB2783

Conference room: 224  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Kaena Peterson  
Organization: South Kohala Hawaiian Civic Club  
E-mail: [kaenap@yahoo.com](mailto:kaenap@yahoo.com)  
Submitted on: 2/5/2012

Comments:  
South Kohala Hawaiian Civic Club supports Bill SB2783



**SB NO. 2783**  
**RELATING TO THE PUBLIC TRUST LANDS**

Senate Committee on Hawaiian Affairs/Senate Committee on Water, Land, and Housing

February 6, 2012

2:45 p.m.

Room 224

The Board of Trustees of the Office of Hawaiian Affairs (OHA) strongly **SUPPORTS** SB2783. This bill will finally right a decades-old wrong by resolving the State's outstanding constitutional obligation to OHA that accrued as a result of the State's failure to pay OHA its proper share of public land trust revenues between 1978 and 2012.

If enacted, SB2783 will resolve the State's outstanding past due revenues debt by transferring approximately \$200 million worth of land in Kaka'ako Makai to OHA. The \$200 million amount represents a compromise between the State and OHA regarding the value of the disputed claims.

SB2783 provides the Legislature an opportunity to finally put to rest an issue that has plagued the State government and OHA for more than three decades, and that the Hawai'i Supreme Court has ruled is primarily the Legislature's responsibility to address. Appropriate legislative action will help fulfill the State's solemn obligation to OHA and will have a positive impact on OHA's beneficiaries and the State government.

The following background information may be useful during your Committees' 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 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 Hawai‘i 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 Hawai‘i Supreme Court ruled that Act 304 was invalid due to a conflict between federal law and one of the Act’s technical provisions.
- Act 34, Session Laws of Hawai‘i 2003, required the transfer of several million dollars to OHA to help continue the revenue stream following the invalidation of Act 304.
- Executive Order No. 03-03 set forth Governor Lingle’s procedure for continuing the revenue stream.
- Act 178, Session Laws of Hawai‘i 2006, included an interim provision setting OHA’s annual amount of public 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 and 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 kuleana to resolve this important issue. We look forward to working with the Legislature, as we have done over the years, toward a fair and just resolution of this matter.

We respectfully urge your Committees to PASS SB2783. Mahalo for the opportunity to testify on this important measure.

February 6, 2012

Juanita Mahienaena Kawamoto Brown  
1926A Fern St.  
Honolulu, Hi. 96826

**Re: SB 2783 RELATING TO THE PUBLIC TRUST LANDS.**

Office of Hawaiian Affairs' Portion of Income and Proceeds from the Public Trust Lands between November 7, 1978 through June 30, 2012

Conveys Kakaako Makai lands to Office of Hawaiian Affairs, and resolves all disputes and controversies, and extinguishes, discharges and bars all claims, suits, and actions relating to OHA's portion of income and proceeds from the public trust lands for the period November 7, 1978 through June 30, 2012

Aloha Mai Chairs Galuteria and Dela Cruz and vice chairs and committee members,

My name is Juanita Mahienaena Kawamoto Brown and I am hear to testify as a Native Hawaiian Citizen Advocate, a member of the Na Wahine Royal Order of Kamehameha Chap 1, past member of Pearl Harbor, Koolaupoko, Waikiki Hawaiian Civic clubs, active participant of Moana Nui and Aha Wahine and supporter of Papa Ola Lokahi, Hale Kipa and Ke Ola Mamo , a executive board committee member at large for the Environmental Caucus of the Democratic Party of Hawaii, a active member of the Kaka`ako Makai Community Action group – CPAC and the market manager for the Kaka`ako Makai Community Cultural Marketplace.

**I am in support of SB 2783 with strong reservations.** I personally attended the 4 of the 5 1<sup>st</sup> round meetings with the Hawaiian Community on Oahu and the most recent 2<sup>nd</sup> round hearing at Kapolei DHHL Community Center and have found myself very divided on how to support this bill, hence my strong reservations concerning this request for legislation.



I would like to list my reservations, concerns and comments:

1. The level of attendance at these hearing were not well attended in my opinion. **I have been to 4 out of the 5 first round Oahu meetings where the attendance did not exceed 30 people from the community per meeting, in comparison to the 2010 census that shows a statewide figure of 135,422 Native Hawaiians or other Pacific Islanders.** I suggested from the very first meeting in Wahiawa, verbally and in writing, to the Staff and Trustees of OHA, who attended these meetings, to consider televising the meetings using Olelo's community services or to promote a strong awareness to our Hawaiian Community that these meetings on the issues of the Ceded land settlements are taking place and that we need to come and listen, learn and ask questions as a community. If we are able to see and hear what our other fellow Hawaiians are commenting on we can form an educated conclusion for ourselves and therefore strongly help OHA's effort to help our Hawaiian Community together. As a Hawaiian, I do not like making decisions that do not take into account other people's considerations and that may cause division of our community in the future.
2. The information distributed at the community meetings were specific concerning the Terms of the Settlement and differ from the language in this current bill so it should be amended to reflect "Agreement Language" from the OHA proposed settlement distributed at the community meetings.

OHA package info stated:

"This Agreement does not address, is not intended to address, and shall have no effect upon claims, disputes and controversies which may exist, relating to Hawaiian sovereignty, the overthrow of the Hawaiian Kingdom including any alleged claims to crown or government lands, the Hawaiian Homes Commission Act, or claims against the United States."

The Hawaiian community and OHA would still be able to pursue other legal claims to correct or complete other issues affecting Hawaiians and our need for self governance and recognition.

3. We are a money trust not a land trust.

Estimated or specific development costs and environmental mitigation costs would probably run high due to the lack of expertise and knowledge required to understand why land trusts develop their land assets. The fact that we will be taking this property "As Is" means a lot more money to invest in the land will be needed. We should seriously look at what other alternatives we have.

The positive factor that out weighed my decision to oppose this bill is the need to have some means to an end regarding the \$200 million dollar settlement for the Hawaiian community and OHA.

I believe the Hawaiian community can take this legislation and work more diligently with OHA or whatever near future governance that will be finally determined and start the movement for a better future with the Hawaiian Community through strong "inclusive" communications and the knowledge to help us persevere.

Mahalo for the opportunity to testify.

Sincerely,

Juanita Mahienaena Kawamoto Brown

# ASSOCIATION OF HAWAIIAN CIVIC CLUBS

TESTIMONY OF PRESIDENT SOULEE STROUD

**SENATE BILL 2783 RE: TO PUBLIC LANDS**

**COMMITTEE ON HAWAIIAN AFFAIRS**

**COMMITTEE ON WATER, LAND & HOUSING**

Monday; February 6, 2011; 2:45p.; Rm. 325

Aloha Chairman Galuteria of the Senate Hawaiian Affairs Committee, Chairman Dela Cruz, of the Senate Water, Land and Housing Committee, and to the members of both committees. I am Soulee Stroud, president of the Association of Hawaiian Civic Clubs, here to testify in support of this bill that conveys land to the Office of Hawaiian Affairs to resolve all disputes, controversies, claims, suits and actions related to the portion of income and proceeds from the public trust fund lands for the period of November 7, 1978 through June 30, 2012.

Our Association has supported the resolution of claims for this issue in past years, just as we support it today. At times the Office of Hawaiian Affairs has had to go to extraordinary lengths to settle these claims, seeking what is fair and equitable for the Hawaiian people, turning to both the courts and the legislature to reach decisions.

We have assisted in that process, often disagreeing with the legislature, and sometimes disagreeing with OHA on how to proceed, but always looking for the end goal – the betterment of conditions of Hawaii’s native people.

Today, we are in agreement with all parties. I can confidently say that our organization will continue to be available to assist OHA as the trustees make their plans to move forward into the future. Thank you and congratulations for bringing everyone together. Thank you also for the opportunity to testify on this momentous occasion.

Contact: [jalna.keala2@hawaiiantel.net](mailto:jalna.keala2@hawaiiantel.net)



## KO'OLAUPOKO HAWAIIAN CIVIC CLUB

February 5, 2012

TO: Sen. Brickwood Galuteria, Chair  
And Members  
Committee on Hawaiian Affairs

Sen. Donovan Dela Cruz, Chair  
And Members  
Committee on Water, Land & Housing

FROM: Alice P. Hewett, President  
Ko'olaupoko Hawaiian Civic Club

SUBJECT: S.B. 2783 RELATING TO THE PUBLIC TRUST LANDS

Aloha. My name is Alice Hewett, president of the Ko'olaupoko Hawaiian Civic Club. Our club was established in 1937 and includes members from Kualoa to Kane'ohē, in the nine ahupua'a surrounding Kane'ohē Bay.

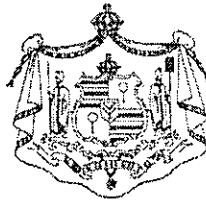
We are here to testify in support of S.B. 2783, which would provide a settlement of past-due obligations of the State of Hawai'i to the Office of Hawaiian Affairs.

This settlement is long overdue. We testified in support of another measure two years ago which we felt was much better but, unfortunately, it did not pass the Senate.

We hope this bill has more success as it moves through both houses of the Legislature. We urge all of you to support this bill.

Mahalo for allowing me to testify.

P. O. Box 664  
Kaneohe, HI 96744  
Ph. (808) 235-8111  
[www.koolaupokohcc.org](http://www.koolaupokohcc.org)



**O'ahu Council  
Association of Hawaiian Civic Clubs**

P.O. Box 37874  
Honolulu, Hawaii 96837-1122

February 5, 2012

**TESTIMONY IN SUPPORT OF SB2783, WITH RESERVATION  
RELATING TO THE PUBLIC TRUST LANDS**

Hearing, Monday, February 6, 2012, 2:45 p.m., Conference Room 224, State Capitol

Senator Brickwood Galuteria, Chair  
Senator Pohai Ryan, Vice Chair  
Members, Committee on Hawaiian Affairs

Senator Donovan M. Dela Cruz  
Senator Malama Solomon, Vice Chair  
Members, Committee on Water, Land & Housing

Aloha mai, kākou

The O'ahu Council of the Association of Hawaiian Civic Clubs comprised of 25 civic clubs located on the island of O'ahu testifies in support, with reservation, of SB 2783, Relating to the Public Trust Lands.

We applaud the Governor's initiative to settle OHA's claim for its share of revenue from the Public Land Trust for the period November 7, 1978 to June 30, 2012. We note that this is the third effort at attempting to settle this claim valued at \$200 million.

While cash is preferable, we note the condition of Hawai'i's economic state and appreciate the efforts being made to settle the back pay claim. We provide testimony in support with reservation, the reservation being the inclusion of ceded lands and the potential costs to mitigate cleanup of lands. Nevertheless, the Office of Hawaiian Affairs had done due diligence and in doing so has also explored opportunities to mitigate costs for cleanup of lands, where necessary. While we don't like the inclusion of ceded lands in the settlement, it does offer opportunity to immediately develop those lands with 100% of the proceeds going to the OHA to be used to enhance its programs to the Native Hawaiian community.

We understand that the proposed settlement agreement does not address, is not intended to address, and shall have no effect upon claims, disputes and controversies which may exist, relating to Hawaiian sovereignty, the overthrow of the Hawaiian Kingdom including any alleged claims to crown or government lands, the Hawaiian Homes Commission Act, or claims against the United States.

Mahalo for the opportunity to provide this testimony in support of SB 2783 with reservation.

Me kealoha pumehana

A handwritten signature in black ink that reads "Mahealani Cypher". The signature is written in a cursive style with a large, stylized initial 'M'.

MAHEALANI CYPHER  
President

**About the O'ahu Council, Association of Hawaiian Civic Clubs (AHCC)**

The O'ahu Council is one of five councils that comprise the AHCC. It advocates actions that enhance the civic, economic, educational, health and social welfare of our communities and elevates the social and intellectual status of all Hawaiians. Twenty-five clubs located throughout the island of O'ahu comprise the council.

## galuteria1 - Davis

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, February 03, 2012 4:24 PM  
**To:** HWN Testimony  
**Cc:** kaiulani@kalo.org  
**Subject:** Testimony for SB2783 on 2/6/2012 2:45:00 PM

Testimony for HWN/WLH 2/6/2012 2:45:00 PM SB2783

Conference room: 224  
Testifier position: Support  
Testifier will be present: No  
Submitted by: V. Ka'iulani Pahi'o  
Organization: Na Lei Na'auao - Native Hawaiian Charter Schools  
E-mail: [kaiulani@kalo.org](mailto:kaiulani@kalo.org)  
Submitted on: 2/3/2012

### Comments:

On behalf of Na Lei Na'auao - Native Hawaiian Charter School Alliance; as advocates for Hawaiian focused public education and knowing the intent of the Admissions Act: &quot;(f) The lands granted to the State of Hawaii by subsection (b) of this section and public lands retained by the United States under subsections (c) and (d) and later conveyed to the State under subsection (e), together with the proceeds from the sale or other disposition of any such lands and the income therefrom, shall be held by said State as a public trust for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920...&quot;; we believe the Office of Hawaiian Affairs (OHA) has practiced due diligence in proposing this legislation to resolve this longstanding issue and trust OHA will utilize revenues from the acquired properties for the educational betterment of all native Hawaiians, today and for generations to come. Mahalo nui loa for your consideration!

**Charles L. Rose Jr.  
217 Prospect St. # B-2  
Honolulu, HI 96813  
Phone # 808-536-0375 (h)  
808-291-7865 (cell)  
e-mail: [kaleloke@hawaii.rr.com](mailto:kaleloke@hawaii.rr.com)**

**Testimony on HB 2783  
before the  
State Senate  
Committee on Hawaiian Affairs**

Aloha!

My name is Charles Rose. As a person of Hawaiian ancestry, I am a beneficiary of the Office of Hawaiian Affairs programs. It is in that capacity that I testify in support of the passage of Senate Bill 2783 being heard by this committee. As I understand it, the bill attempts to settle some of the Office of Hawaiian Affairs claims of past due compensation that has been lingering for many years. **I say that it is about time a solution has been reached.** It is obvious that the loss of funds due since 1978 has had a negative and long lasting effect on the operations of the Office of Hawaiian Affairs for many years. The overdue funds could have been used for a multitude of purposes. This has prevented the Office of Hawaiian Affairs from expanding necessary services that they provide to the beneficiaries.

I also realize that this settlement is a compromise and less than ideal for the Hawaiian people and there will be critics, however, from my point of view it is an opportunity to put closure to a long standing obligation on the part of the state and allows both sides to move forward. For the Office of Hawaiian Affairs to add \$200,000 to their assets after all these years of waiting may be too little in the eyes of some people, however, further delay only increases and compounds the harm. In that regard, I would



ask that the committee view any concerns of this settlement on its merit, taking into consideration that many people will have legitimate misgivings about the settlement. However, please do not be swayed by any hostile testimony that may be presented that does not address the settlement.

Please know that I have observed, praised, criticized and participated in various activities of the Office of Hawaiian Affairs from its creation. I have observed the Office of Hawaiian Affairs conducting their business at the highest level of competence and sometimes not as well. I have also witnessed them receiving harsh and sometimes underserved criticisms. In fact, I sometimes I feel that we as beneficiaries are quick to criticize their actions and their staff but are slow to praise their effort.

I, for one, support the Office of Hawaiian Affairs despite any disagreements that I may have with them on how they go about conducting the business of providing services to their beneficiaries. I believe that, although there are many organizations that provide programs and services to the Hawaiian people, the Office of Hawaiian Affairs is the only entity whose leaders are elected by all of the people of Hawai'i, therefore they deserve a certain degree of respect and appreciation.

**I close by urging you to pass this Legislation.**

**galuteria1 - Davis**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 06, 2012 8:27 AM  
**To:** HWN Testimony  
**Cc:** punikekauoha@gmail.com  
**Subject:** Testimony for SB2783 on 2/6/2012 2:45:00 PM

Testimony for HWN/WLH 2/6/2012 2:45:00 PM SB2783

Conference room: 224  
Testifier position: Support  
Testifier will be present: Yes  
Submitted by: B. Puni Kekauoha  
Organization: Individual  
E-mail: [punikekauoha@gmail.com](mailto:punikekauoha@gmail.com)  
Submitted on: 2/6/2012

Comments:

**From:** «GreetingLine»  
[dkapua@gmail.com](mailto:dkapua@gmail.com)  
**Date:** February 5, 2012

**Cmte:** HAW/WLH  
**Bill Nbr:** SB2783  
**Bill Title:** Relating To The Public Trust Lands

**Position:** Strong Support  
**Comments:** Aloha Chairs Galuteria, Dela Cruz and Respective Committee Members,

Mahalo for allowing me to express my support for SB 2783 which will convey Kakaako Makai lands to the Office of Hawaiian Affairs. This action is necessary to fulfill the states obligation to native Hawaiians under Article XII, sections 4 and 6, of the Hawaii State Constitution, for the period of November 7, 1978 to June 30, 2012.

I support this legislation because it resolves a past debt and allows us all to move forward with a clean slate. I recognize that the monetary value, via the specified Kakaako parcels, was not determined through an exact science, but rather through negotiations of what is reasonable and feasible for the state and native Hawaiians.

I further support this legislation because the Office of Hawaiian Affairs has heeded the concerns that others and I expressed in previous attempts to resolve this issue. OHA has and continues to engage beneficiaries and the broader community in this process. They are actively and wholeheartedly soliciting input that will facilitate their decision-making process and due diligence by March 1, 2012. In addition, the Office of Hawaiian Affairs has clearly relinquished all their, and only their, future rights and claims for the period of November 7, 1978 to June 30, 2012.

Again, I urge you to pass SB 2783 out of your respective committees and allow the dialogue to continue within the various communities and legislature for a final resolution to this long-standing issue.

Mahalo nui,  
«GreetingLine»

Melody Kapilialoha MacKenzie, Esq.  
579 Kāne'apu Place ♦ Kailua, Hawai'i 96734  
(808) 780-8236 ♦ melodykmackenzie@gmail.com

**S.B. 2783**

**Relating to the Public Trust Lands**

Senate Committee on Hawaiian Affairs

Senate Committee on Water, Land and Housing

Hearing on Monday, February 6, 2012, at 2:45 p.m.

Mahalo for the opportunity to submit this testimony in **support** of S.B. 2783. 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 issues, particularly in relation to the public lands trust, for many years.

S.B. 2783 would resolve claims related to revenues due to the Office of Hawaiian Affairs for the period from OHA's creation on November 7, 1978, through June 30, 2012. I have carefully reviewed this bill with several objectives in mind:

- First, to ensure that S.B. 2783 does not waive any claims of the Native Hawaiian people to sovereignty, lands, or other natural and cultural resources.
- Second, to determine whether the settlement itself is fair – in other words, acknowledging that a settlement by its very nature means that each party must compromise in some respects, is the \$200 million adequate compensation.
- Finally, to make certain that current laws, such as HRS Chap. 673, waiving the State's sovereign immunity for breaches of trust, would not be negatively impacted by S.B. 2783.

My review of the bill indicates that it does not waive any broader claims of the Native Hawaiian people; it relates solely to claims for the income and proceeds due OHA from the public land trust under sections 4 and 6 of article XII of the Constitution. Secondly, while one could dispute the exact amount due OHA, OHA's efforts to settle the revenue issue through the courts have failed. The Hawai'i Supreme Court, while acknowledging the State's trust responsibility and duty to fulfill the terms of the State Constitution, has consistently held that this is an issue for the Legislature to resolve. Given all of the relevant factors, the \$200 million amount appears fair to both OHA and the State. I understand that OHA is now doing its "due diligence" in reviewing the specific parcels of land in Kaka'ako proposed for the settlement. Finally, S.B. 2783 has no negative impact on the waiver of State sovereign immunity under Chap. 673 or similar laws; it basically confirms the current state of the law.

This is a significant bill. It will ensure that the Legislature is fully implementing its responsibilities under the State Constitution related to the public land trust revenue due OHA. It will bring closure to a contentious issue that has often divided our community. It will immediately provide OHA with additional funding to support its beneficiary initiatives and with the potential to provide a robust revenue stream in the future. I strongly urge its passage.

**Testimony of Ms. Kehaulani Lum**  
**Presented to the Senate Committees on Hawaiian Affairs and Water, Land and Housing**  
**Hearing Date: 2/06/2012 2:45 p.m.**  
**Conference Room 224**  
**In Support of SB 2783**

Aloha Chair Galuteria, Chair Dela Cruz, Vice Chair Ryan, Vice Chair Solomon, and Members of the Committees. Mahalo nui loa for the opportunity to present testimony **in support** of SB2783, which conveys Kaka'ako Makai lands to the Office of Hawaiian Affairs, and resolves all disputes and controversies, and extinguishes, discharges and bars all claims, suits, and actions relating to OHA's portion of income and proceeds from the public trust lands for the period November 7, 1978 through June 30, 2012.

My family and I **support** SB2783 because we believe that it will peacefully resolve the matter of past due public land trust revenues owed to OHA and bring about stability and co-existence between Native Hawaiians and the State of Hawai'i based on mutual co-operation and benefit. This measure will properly put to rest thirty four years of anguish, costly litigation, and lost economic opportunity suffered by both OHA and the State, in pursuit of justice inherent in the Constitution of this land.

Meaningful and intentional effort by many thoughtful people has gone into the crafting of this bill, and we are deeply grateful to the Committees for bringing it to light. While it may be too late for the thousands of kupuna who crossed the veil without witnessing the fulfillment of promises made decades ago, we are confident that this outcome will benefit their descendants, and the community of Hawai'i as a whole, for generations to come. Please support SB2783.

Mahalo,

Ms. Kehaulani Lum

**galuteria1 - Davis**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, February 03, 2012 3:37 PM  
**To:** HWN Testimony  
**Cc:** soor001@hawaii.rr.com  
**Subject:** Testimony for SB2783 on 2/6/2012 2:45:00 PM

Testimony for HWN/WLH 2/6/2012 2:45:00 PM SB2783

Conference room: 224  
Testifier position: Support  
Testifier will be present: Yes  
Submitted by: Richard Soo  
Organization: Individual  
E-mail: [soor001@hawaii.rr.com](mailto:soor001@hawaii.rr.com)  
Submitted on: 2/3/2012

Comments:



# KANU O KA 'ĀINA LEARNING 'OHANA

Grows womb-to-tomb models of education that advance Hawaiian culture for a sustainable Hawai'i

February 6, 2012  
2:45 p.m.  
Conference Room 225

TESTIMONY TO  
THE SENATE COMMITTEE ON HAWAIIAN AFFAIRS and  
THE SENATE COMMITTEE ON LAND, WATER AND HOUSING

RE: SB 2783 – RELATING TO THE PUBLIC TRUST LANDS.

Dear Chairs Galuteria and Dela Cruz, Vice Chairs Ryan and Solomon, and Members of the Committees:

We are Taffi Wise, Executive Director and Katie Benioni, Chief Financial Officer of Kanu o ka 'Aina Learning 'Ohana (KALO) a Hawaiian non-profit organization that grows models of education that advance Hawaiian culture for a sustainable Hawai'i.

KALO **strongly supports Senate Bill 2783** which proposes the Conveyance of Kakaako Makai lands to Office of Hawaiian Affairs, and resolves all disputes and controversies, and extinguishes, discharges and bars all claims, suits, and actions relating to OHA's portion of income and proceeds from the public trust lands for the period November 7, 1978 through June 30, 2012.

As advocates for Hawaiian-focused public education and knowing the intent of the Admissions Act,

"(f) The lands granted to the State of Hawaii by subsection (b) of this section and public lands retained by the United States under subsections (c) and (d) and later conveyed to the State under subsection (e), together with the proceeds from the sale or other disposition of any such lands and the income therefrom, shall be held by said State as a **public trust for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians**, as defined in the Hawaiian Homes Commission Act, 1920..."

we believe the Office of Hawaiian Affairs (OHA) has practiced due diligence in proposing this legislation to resolve this longstanding issue and trust OHA will utilize revenues from the acquired properties for the educational betterment of native Hawaiians.

Kanu o ka 'Aina Learning 'Ohana appreciates the opportunity to testify in support of SB 2783.

## galuteria1 - Davis

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, February 02, 2012 9:55 PM  
**To:** HWN Testimony  
**Cc:** Ken\_Conklin@yahoo.com  
**Subject:** Testimony for SB2783 on 2/6/2012 2:45:00 PM

Testimony for HWN/WLH 2/6/2012 2:45:00 PM SB2783

Conference room: 224  
Testifier position: Oppose  
Testifier will be present: Yes  
Submitted by: Kenneth R. Conklin, Ph.D.  
Organization: Individual  
E-mail: Ken\_Conklin@yahoo.com  
Submitted on: 2/2/2012

### Comments:

One small step for OHA, one giant leap toward racial apartheid in Hawaii. This bill threatens to slice off another piece of the multiracial State of Hawaii, handing it over to a racially exclusionary entity. This process is slowly killing our state through the death of 1,000 cuts.

That's the big picture regarding the Kakaako Makai lands agreement between Governor Abercrombie and OHA which this bill seeks to enact into law:

Let me move from the general to the specific. First I'll describe that big picture. Then I'll point out that any "settlement" reached by OHA will be disavowed by the Akaka tribe or Act 195 tribe, because they will say that OHA was a state agency which had no right to speak on behalf of the Native Hawaiian people or the tribe. Finally I'll discuss the ownership of ceded lands and allocation of revenues from them.

### THE BIG PICTURE

I recently published a book you all should read. It's not in bookstores but is available in the library or from the publisher through <http://tinyurl.com/2a9fqa>. The title says it all: "Hawaiian Apartheid -- Racial Separatism and Ethnic Nationalism in the Aloha State."

Since 1978 the government of Hawaii has been facilitating the development an Evil Empire of racially separate governmental and private institutions exclusively for ethnic Hawaiians. The Office of Hawaiian Affairs (OHA) was founded on three pillars of racial separatism: Only ethnic Hawaiians could vote for OHA trustees; only ethnic Hawaiians could run for OHA trustee; and only ethnic Hawaiians could receive benefits from OHA. The first pillar was knocked down by the U.S. Supreme Court in *Rice v. Cayetano*. The second pillar was knocked down by the U.S. District Court in Honolulu and the 9th Circuit Court of Appeals in *Arakaki v. State of Hawaii*. But the third pillar remains standing despite substantively correct lawsuits dismissed on technicalities.

In response to those lawsuits, the Akaka bill has been continuously re-introduced in Congress for nearly 12 years, with zealous support from our Governor, Attorney General, and nearly every member of our Legislature. The Akaka bill seeks to authorize creation of a racially exclusionary government for all persons worldwide who have a drop of Hawaiian native blood -- that is the primary requirement for membership. The bill would authorize transfer of land, money, and jurisdictional authority to the phony Akaka tribe.



The whole concept of a racially exclusionary government is evil. And unlike any of the real Indian tribes which include a small number of people in a restricted and usually remote area of land, this one would legally segregate 20% of the entire population of a State, and perhaps 50% of the State's lands; thus deserving the label "apartheid";

Hawaii's Evil Empire of racially exclusionary institutions has grown so powerful that hardly any public officials will dare to stand up against it. The multiracial, multicultural society of Hawaii has hardly any voice in government to advocate for unity and equality; because the wealthy, powerful institutions of the Evil Empire have silenced their voice through the expenditure of untold millions of dollars in lobbying, advertising, school curriculum, and outright intimidation. Remember those expensive, racist Kau Inoa commercials beamed into our living rooms at least 200 times, or newspaper ads "explaining" the Akaka bill?

In case the Akaka bill does not get enacted, OHA created "Plan B" to expand the Evil Empire almost as effectively anyway by passing Act 195 last year. The idea is to get our compliant Governor and Legislature, plus the Counties and private groups, to transfer land, money, and jurisdictional authority directly to a clone of OHA -- a plan already being implemented.

On O'ahu the County of Honolulu used tax dollars plus money from several environmental groups to purchase the entire Waimea Valley. OHA made only a small contribution, but was given the deed to the entire valley. In Waokele O Puna on Hawaii Island, OHA again contributed only a small portion of the purchase price but ended up with the deed to the entire parcel of 40 square miles.

Bills are now pending in the Legislature that would create racially stacked commissions to manage Ha'iku Valley and Makua Valley, with OHA having seats on those boards, and including a provision for outright transfer of the entire valley to the Akaka tribe or Act 195 tribe. OHA keeps asking for money to build its new headquarters, which would become the national capitol of the new Akaka tribal nation (until 'Iolani Palace which taxpayers renovated is handed over). Now comes the State of Hawaii ready to give away \$200 Million of public land to OHA through this current bill.

If the Akaka bill passes, or the Act 195 tribe actually builds a membership roll and tribal council, then the leadership of the new tribe will negotiate with the State of Hawaii for enormous amounts of land, money, and jurisdictional authority -- and who will stand up to protect the rights of the general public? Not our legislators!

Why should the State of Hawaii give away anything at this time, in the face of future negotiations where more will be demanded? Would a business owner give away part of something even before he enters negotiations where his opponent is demanding all of it?

The time is now to begin protecting all Hawaii's people against wealthy, powerful, greedy race-based institutions seeking to grab as much as they can at the expense of everyone else. Hawaii is experiencing the death of 1,000 cuts. Waimea Valley and Waokele O Puna were two of those cuts. This bill would take another cut out of the State of Hawaii, continuing the erosion of our tax base. To stop death by 1,000 cuts there must come a time when the knife is brushed aside before it can cut again.

OHA IS A STATE AGENCY WHICH LACKS THE AUTHORITY TO SPEAK ON BEHALF OF THE FUTURE TRIBE.

On the mainland, Indian tribes often enter into contracts with state or county governments, or with private companies. But when disputes arise, the tribes assert their sovereign rights and refuse to submit themselves to the jurisdiction of non-tribal courts. Vendors go unpaid, while workers or visitors on tribal lands who get injured are unable to sue for damages.

We already hear Hawaiian sovereignty activists saying that under international law, any agreements with state or federal governments, or decisions by state or federal courts, will have no force or effect on the future Nation of Hawaii, because the Nation of Hawaii was under belligerent occupation and its actions were taken under duress.

OHA is a State agency. Any future tribal government or Nation of Hawaii is likely to disavow any negotiated settlement reached between OHA and the State of Hawaii. OHA trustees are elected by all Hawaii voters, regardless of race. Therefore OHA trustees cannot claim to speak on behalf of Native Hawaiians in disputes between the State and Native Hawaiians.

The State of Hawaii will feel bound to abide by whatever agreements it makes with OHA. But Native Hawaiians will never feel bound to abide by agreements made by OHA allegedly on their behalf.

Since this legislature seems to be rushing headlong to support creation of the Act 195 tribe, you should not make any so-called "settlement" with the soon-to-be-defunct entity OHA. Wait for the tribe to build its membership roll and elect its officers, who will then have the authority to make an agreement with the State. So-called "past due" monies are part of the eventual package to be negotiated.

#### CEDED LANDS AND REVENUES

It is historically, legally, and morally wrong to allocate government land, or revenues from land, for exclusive use by a racial group. Neither Kingdom law, nor the Organic Act for annexation, nor the Statehood Admissions Act, contemplated or required the creation of OHA. The Constitutional amendment that created OHA in 1978 was passed by the smallest number of yes votes among all the amendments coming out of the Constitutional Convention; and the amendment creating OHA would have been defeated except that blank votes were counted as yes votes at that time, contrary to the way we count blank votes today.

The decision to set aside 20% of ceded land revenue for OHA in 1978 was an arbitrary and capricious enactment of an ordinary law. It is NOT part of our Constitution -- the Legislature can AND SHOULD repeal the 20% law at any time.

The public lands of Hawaii, including the ceded lands, belong to all the people of Hawaii without racial distinction. During the Kingdom, following the Mahele, the government lands were held by the government on behalf of all the people, just as now. The Crown lands also became government property by act of the Kingdom Legislature, gladly signed by the King, to issue government bonds to pay a mortgage lien on the Crown Lands the King had incurred to pay the King's personal (gambling) debts. Thereafter the government owned the Crown Lands, while income from the Crown Lands was set aside to maintain the office of head of government in his official capacity but not as his private property. Thus, when the monarchy ended, the Crown lands and government lands were indistinguishable, all held by government as public lands to benefit all the people without regard to race -- both then and now.

The Statehood Act of 1959 does not require setting aside any ceded land income specifically for any racial group. It identified 5 purposes for the use of ceded land revenues, and explicitly said that part or all of the revenue could be used for any one or more of those 5 purposes.

When 100% of ceded land revenues was sent to the public schools from 1959 to 1979, the result was that 26% of ceded land revenues were thereby used for the betterment of Native Hawaiians, without need for racial separatist designation, simply because 26% of the children were of that racial group. Wasn't that a wonderful idea? Why not do that again?

It must also be noted that the section 5(f) language identifying "betterment of native Hawaiians" as one purpose for spending ceded land revenues explicitly defined "native Hawaiians" as that term was used in the Hawaiian Homes Commission Act of 1920, which required 50% native blood quantum. Therefore neither OHA, nor the anticipated Akaka tribe, is a proper receptacle for ceded land revenue, since OHA beneficiaries and Akaka tribe members are defined as needing only to have a single drop of the magic blood.

On January 20, 2008 in the Honolulu Star-Bulletin, Jon Van Dyke wrote: "the revenue generated from these lands to be used for five named purposes ..." No Jon, not really. There was no requirement to spend one dime on any particular one of those purposes. Van Dyke laments "During the next two decades, however, the state failed to allocate any of the revenue specifically for this purpose [betterment of native Hawaiians], devoting almost all of it to public education. To address this failure ..." No Jon, not really. As I explained above, Native Hawaiians received 26% of the ceded land revenues without any need for racist set-asides. Furthermore, it was not a failure to send the money to the public schools, who now get zero money from the ceded lands because 20% of gross revenue sent to OHA exceeds 100% of net income after allowing for capital improvements and operating expenses for which we all pay.

TELL OHA TO SPEND ITS HOARDED CASH AND STOP GIVING THEM MORE

OHA already has about \$400 Million. Most of that money has been sucked out of Hawaii's economy and sent to New York for stock market investments. OHA occasionally makes small grants to its "beneficiaries" but very little money reaches the maka'ainana (little people). It's time to stop feeding the beast. Repeal the law sending 20% of ceded land revenues to OHA. You can repeal that law tomorrow by a simple majority vote.

In the past OHA has sued the State of Hawaii (can a hand sue its arm?) for past-due "rent" "owed" for the 20% share of revenue. Does anybody think that won't happen again? Stop this craziness. Repeal the 20% law.