

**SCR 66**

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NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



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

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

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

**Friday, March 23, 2012  
2:55 PM  
State Capitol, Conference Room 224**

**In consideration of  
SENATE CONCURRENT RESOLUTION 66/SENATE RESOLUTION 27  
URGING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO  
TRANSFER A PORTION OF THE REVENUE DERIVED FROM THE CONVEYANCE  
OR TRANSFER OF ANY LAND OF THE PUBLIC LAND TRUST TO THE OFFICE OF  
HAWAIIAN AFFAIRS**

Senate Concurrent Resolution 66/Senate Resolution 27 urge the Department of Land and Natural Resources (Department) pay to the Office of Hawaiian Affairs (OHA) an amount equal to twenty percent (20%) of the fair market value of any lands of the public land trust conveyed or otherwise transferred by the Department. The Department **opposes** these resolutions for the following reasons:

The resolutions would create a new obligation for the Department to pay OHA, which obligation would be separate from, and in addition to the Department's existing obligation to pay OHA.

Under existing law, OHA is already entitled to receive twenty percent (20%) of all revenues derived from the use lands of the public land trust. Currently, the revenues derived from public land trust lands are calculated on a quarterly basis, and the accompanying 20% payment is made to OHA.

The resolutions, however, create a new obligation for the Department to pay OHA that is separate from, and in addition to, the Department's existing obligation. In addition to paying OHA 20% of all revenues derived from the use of public trust lands, the bill requires the Department to pay OHA 20% of the fair market value of any public trust lands conveyed or transferred, regardless of the amount of the revenues actually received by the Department.

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

GUY H. KAULUKUKUI  
FIRST DEPUTY

WILLIAM M. TAM  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

The resolutions would create an unfunded or underfunded obligation for the Department to pay OHA.

The resolution urges the Department pay OHA 20% of the fair market value of public lands conveyed or transferred, regardless of the amount received by the Department for the conveyance or transfer. Basing the amount payable to OHA on something other than the actual revenues received by the Department would create an unfunded or underfunded financial obligation for the Department. For example, the Department generally does not receive compensation for lands transferred to other government agencies. There are also instances in which the Department leases public lands to entities or organizations at below fair market rent, e.g., leases to non-profit organizations. Under this resolution, the Department would be required to pay to OHA 20% of the fair market value of those lands, even though the Department does not receive any compensation or receives compensation below fair market value.

In sum, existing law already provides for OHA to receive 20% of all revenues derived from the use public trust lands. The resolutions do not provide any rationale or justification for the additional payments to OHA and does not provide the Department with any additional funding to meet this new financial obligation. For these reasons, the Department opposes these resolutions.



## SCR66

### **URGING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO TRANSFER A PORTION OF THE REVENUE DERIVED FROM THE CONVEYANCE OR TRANSFER OF ANY LAND OF THE PUBLIC LAND TRUST TO THE OFFICE OF HAWAIIAN AFFAIRS.**

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

March 23, 2012

2:55 p.m.

Room 224

The Office of Hawaiian Affairs (OHA) offers the following **comments on SCR66**, which urges the Department of Land and Natural Resources (DLNR) to transfer a portion of the revenue derived from the conveyance or transfer of any land of the public land trust to OHA. The resolution also proposes that the revenues due to OHA from such public land trust land transfers or conveyances would be determined by multiplying the fair market value of the land – which would be based on the use of the land at the time of conveyance – by twenty percent.

Given the unresolved claims of Native Hawaiians to ceded lands, it is not clear that DLNR has the authority to transfer public land trust lands. However, OHA agrees with SCR66's proposition that if DLNR transfers public land trust lands despite Native Hawaiians' unresolved claims, DLNR must—at the very least—transfer a portion of the revenue derived from such conveyances to OHA. Unfortunately, the funding formula proposed by SCR66 incorrectly characterizes the portion of revenue owed to OHA and leaves open important questions about the interaction between SCR66 and applicable state law.

The proper formula for determining OHA's portion of the revenue is 20 percent of a fair market valuation of the land that considers the highest and best use of the land—meaning the most profitable, probable, and legal use to which the land can be put, as defined in HRS §10-13.6—as opposed to a valuation of the land that considers the use of the land at the time of conveyance. The propriety of considering the highest and best use of the land becomes obvious when examining proposed projects like the Villages of Leiali'i, which would develop residential and commercial properties on lands currently characterized as agricultural. Clearly, it would be unjust in such a situation to determine OHA's portion of revenue based on the irrelevant status of the land at the time of conveyance. The status that should be considered is the highest and best use of the land, which this Legislature, in its wisdom, has made the applicable status through HRS §10-13.6.

Moreover, it is unclear how the funding formula proposed under SCR66 would comport with Act 178, Session Laws of Hawaii 2006, which sets OHA's annual share of public land trust revenues at \$15.1 million.

Mahalo for the opportunity to testify on this important measure.

	<p>Association of Hawaiian Civic Clubs P. O. Box 1135 Honolulu, Hawai`i 96807 e-mail: <a href="mailto:firstvp@aohcc.org">firstvp@aohcc.org</a> phone (808) 753-1895, <a href="http://www.aohcc.org">www.aohcc.org</a></p>
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March 21, 2012

To: Senator Brickwood Galuteria and Senator Donovan M. Dela Cruz, Chairs, and Members of the Senate Committees on Hawaiian Affairs and Water, Land, and Housing  
From: Soulee Stroud, President, Association of Hawaiian Civic Clubs  
Re: In Support of SCR No. 66/SR 27 Urging the Department of Land and Natural Resources to Transfer a Portion of the Revenue Derived from the Conveyance or Transfer of Any Land of the Public Land Trust to the Office of Hawaiian Affairs

Aloha Senator Galuteria and Senator Dela Cruz and members of this Joint Committee:

Mahalo for allowing me to present my testimony in support of SCR No. 66/SR 27.

The first civic club was founded in 1918 and we continue to thrive with clubs on all islands of the State of Hawaii, 11 states on the continent and the District of Columbia. We now have sixty component clubs participating in those activities that our founders envisioned – historic preservation, education of Native Hawaiian students, protection of traditional culture and advocacy for Hawaiian Home Lands.

We come today to speak in support of Senate Concurrent Resolution Number 66 and Senate Resolution Number 27, the purpose of which is to urge that the Department of Land and Natural Resources transfer a portion of the revenue derived from the conveyance or transfer of any land of the public land trust, to OHA and further that the amount transferred to OHA for each conveyance or transfer shall be determined by multiplying the fair market value by twenty percent.

We note that such a formula has already been applied to certain lands on Maui and Hawaii islands and that SB 2327 intended to define the fair market value beyond this limited scope.

We agree with the intent of this concurrent resolution and urge its passage in order to create a reasonable income stream for the Office of Hawaiian Affairs and its obligations to the Native peoples of Hawaii.

Mahalo for allowing us to testify today.

Dane Wicker

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 20, 2012 4:36 PM  
**To:** WLH Testimony  
**Cc:** pomroys001@hawaii.rr.com  
**Subject:** Testimony for SCR66 on 3/23/2012 2:55:00 PM

Testimony for WLH/HWN 3/23/2012 2:55:00 PM SCR66

Conference room: 224  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Sharon Pomroy  
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Submitted on: 3/20/2012

Comments: