



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 1064, RELATING TO CEDED LANDS.

BEFORE THE:

**HOUSE COMMITTEES ON WATER & LAND AND ON
OCEAN, MARINE RESOURCES, AND HAWAIIAN AFFAIRS**

DATE: Wednesday, February 13, 2013 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Room 325

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

Chairs Evans and Hanohano and Members of the Committees:

The Department of the Attorney General testifies to provide the assurances set out below and respectfully suggest that this bill is not necessary.

This bill directs the Department of Land and Natural Resources to conduct an audit of all state-held lands, and identify the location, size, and name of the state agency that owns the land in an inventory that is submitted to the Legislature twenty days before the 2014 regular session.

Pursuant to section 5 of Act 178, Session Laws of Hawaii 2006, DLNR presently compiles an annual report that identifies the ceded lands and the state agencies that generate and collect the receipts from the use of public land trust lands that are used to pay the Office of Hawaiian Affairs the \$15.1 million that currently constitutes its share of the ceded land receipts under article XII, section 6 of the State Constitution.

In addition, as the Legislature directed and funded in enacting Act 54, Session Laws of Hawaii 2011, DLNR is in the process of establishing an electronic information system to inventory and maintain information about all of the lands of the public land trust. It submitted the report it was required to submit to the Legislature last December, and asked the Legislature to extend the December 31, 2013 deadline for completing the system by an additional year, until December 31, 2014.

The Department respectfully suggests that another inventory is not needed.

Copies of Act 178 and Act 54 are attached for the Committee's reference.

private institution for detention, care, and treatment. Within a reasonable time following any other release on conditions under subsection (1), the court shall appoint a panel of three qualified examiners in felony cases or one qualified examiner in nonfelony cases to report to the court on whether the defendant presents a substantial likelihood of becoming fit to proceed in the future. If, following the report, the court determines that the defendant probably will remain unfit to proceed, the court may dismiss the charge and:

- (a) Release the defendant; or
- (b) Subject to the law governing involuntary civil commitment, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011.
(Approved May 19, 2011.)

Note

- 1. Comma should be underscored.

ACT 54

S.B. NO. 2

A Bill for an Act Relating to the Public Land.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the department of land and natural resources has already collected a substantial amount of information about lands that are in the public land trust. The focus of this measure is the further study or review of the trust status of those lands to which state agencies hold title and the disposition of those lands, to verify the accuracy of or make amendments to their trust status as indicated in the department's existing database of public land trust lands.

The purpose of this Act is to facilitate the establishment of a comprehensive information system to inventory and maintain information about the lands of the public land trust described in section 5(f) of the Admission Act and article XII, section 4 of the Hawaii State Constitution.

SECTION 2. (a) For purposes of this Act:

"Ceded lands" means those lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation approved on July 7, 1898.

"Department" means the department of land and natural resources unless the context clearly indicates otherwise.

"Public land trust" means that public land trust established in section 5(f) of the Admission Act.

(b) The department shall initiate and coordinate all efforts to establish a public land trust information system. The information system shall consist of a complete and accurate inventory of all lands in the public land trust to which state agencies hold title or over which they maintain management control.

(c) Beginning July 1, 2011, the department shall identify all of the lands that are to be included in the public land trust inventory. After interviewing representatives of each of the four counties of the city and county of Honolulu, Kauai, Maui, and Hawaii, and conducting discussions with the office of Hawaiian affairs, the department of Hawaiian home lands, the department of transportation, the attorney general, the director of finance, and other state agencies holding title to public land trust lands or to which lands of the public land trust have been set aside, the department shall also determine what other information would be useful to include in the inventory.

At minimum, the department of land and natural resources shall determine whether the following information relating to each parcel of land in the operating inventory would be useful:

- (1) The parcel's location by metes and bounds, tax map key number, or both;
 - (2) The parcel's size rounded to the nearest acre;
 - (3) The date the parcel was acquired;
 - (4) If conveyed out of the public land trust, the date the parcel was conveyed;
 - (5) Whether the parcel was acquired by the State pursuant to section 5(b) or 5(e) of the Admission Act or Public Law 88-233, or in exchange for a parcel of land acquired by the State pursuant to those laws;
 - (6) Whether the parcel is a subdivided portion of a larger parcel acquired by the State pursuant to section 5(b) or 5(e) of the Admission Act or Public Law 88-233, or in exchange for a parcel of land acquired by the State pursuant to those laws;
 - (7) Whether the parcel or any portion of the parcel is ceded land, and the extent to which the parcel consists of ceded land;
 - (8) The name of the state or county agency holding title to the parcel;
 - (9) Whether the parcel has been set aside and the name of the state or county agency to which the parcel has been set aside;
 - (10) The parcel's current state land use, state land classifications pursuant to section 171-10, Hawaii Revised Statutes, and county zoning designations;
 - (11) A description of all natural resources, including minerals and water, found on or appurtenant to the parcel;
 - (12) A description of every easement, covenant, regulatory condition, or other benefit or servitude to which the parcel is entitled or subject; and
 - (13) A description of all leases, uses, or other disposition to which the parcel has been put.
- (d) The department shall also conduct an investigation into the most appropriate means of establishing and maintaining the public land trust information system, including:
- (1) The type of hardware and software appropriate for storing and maintaining the information system;
 - (2) Whether the information system should be established as a geographic information system;
 - (3) The tasks needing to be performed to complete and establish the information system;
 - (4) The sequence in which the tasks needing to be performed should be completed;
 - (5) Whether and to what extent state and county agencies holding title to public land trust lands or to which public land trust lands have

been set aside should continue maintaining separate inventories of the public land trust lands:

- (6) Whether a single agency should be responsible for maintaining the public land trust information system;
- (7) To which agency the responsibility should be delegated if a single agency concept is chosen; and
- (8) The extent to which other agencies should be required to cooperate and assist in that effort.

(c) The department shall identify existing sources of data, information, and resources that can be incorporated into or used to establish the public land trust inventory and public land trust information system, including existing inventories of the ceded lands and the public land trust lands established or maintained by the federal government, the office of Hawaiian affairs, the department of Hawaiian home lands, the University of Hawaii, the department of transportation, the Hawaii housing finance and development corporation, other state agencies, the counties, or private entities.

(f) The department shall:

- (1) Estimate the total cost of establishing the public land trust information system;
- (2) Identify possible sources of funding to defray that cost; and
- (3) Identify the factors to be considered in prioritizing the expenditures to be made in each fiscal year,

if an incremental or phased implementation process is used to complete the system.

(g) All state and county agencies shall assist the department in facilitating the establishment of the public land trust information system and shall comply with any and all requests the department of land and natural resources may make for any information and services pertinent to the completion of the information system.

(h) All state agencies shall report to the department of land and natural resources:

- (1) By August 1, 2011, each parcel of land, or part of a parcel of land, to which the reporting agency holds title or that has been set aside to the reporting agency, regardless of whether the land is within the public land trust, is ceded land, or both;
- (2) By August 1, 2011, on the disposition or transfer of any parcel of land, or part of a parcel of land, to which the agency holds title, and provide documents pertinent to that disposition or transfer; and
- (3) By January 1, 2012, any inaccuracy discovered in the information provided to the department pursuant to paragraph (1) or (2) and include:
 - (A) A description of how the inaccuracy will be corrected; and
 - (B) Copies of all documents related to the correction of those inaccuracies.

SECTION 3. (a) The department of land and natural resources shall submit a progress report to the legislature no later than twenty days prior to the convening of the regular sessions of 2012 and 2013. The progress report shall:

- (1) Indicate what is necessary to complete the public land trust inventory and the public land trust information system; and
- (2) Include any proposed legislation that the department deems necessary to facilitate the expeditious completion and support of the inventory and information system.

ACT 55

(b) The inventory and information system shall be completed and operational by December 31, 2013, unless the department advises the legislature otherwise in a progress report.

SECTION 4. There is appropriated out of the land conservation fund, established by section 173A-5, Hawaii Revised Statutes, the sum of \$275,000 or so much thereof as may be necessary for fiscal year 2011-2012 and \$85,000 or so much thereof as may be necessary for fiscal year 2012-2013 for the establishment and maintenance of a computerized, comprehensive statewide public land trust inventory database and funding for one staff position for a database and application developer.

The sums appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 5. This Act shall take effect on July 1, 2011.

(Approved May 20, 2011.)

ACT 55

S.B. NO. 1555

A Bill for an Act Relating to the Department of Land and Natural Resources.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
PUBLIC LAND DEVELOPMENT CORPORATION**

§ -1 Findings and purpose. The legislature finds that certain public lands under the jurisdiction of the department of land and natural resources are not used effectively. Public lands in certain areas may serve the State and its people better if managed and developed into suitable recreational and leisure centers where the public can congregate and where visitors to our State can go as part of their holiday experience. However, the department of land and natural resources is hamstrung by its limited mission. Creating a development arm of the department of land and natural resources, similar to the agribusiness development corporation, and placing appropriate public lands into the new corporation's jurisdiction, may help to create these recreation and leisure areas, while also creating revenue-generating opportunities for the new corporation. In turn, revenues generated may be used to offset the regulatory functions of the department of land and natural resources.

The purpose of this chapter is to create a vehicle and process to make optimal use of public land for the economic, environmental, and social benefit of the people of Hawaii. This chapter establishes a public corporation to administer an appropriate and culturally-sensitive public land development program. The corporation shall coordinate and administer programs to make optimal use of public land, while ensuring that the public land is maintained for the people of Hawaii. The corporation shall identify the public lands that are suitable for development under this chapter, carry on marketing analysis to determine the best revenue-generating programs for the public lands identified, enter into public-private agreements to appropriately develop the public lands identified.

A Bill for an Act Relating to the Public Land Trust.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In *Trustees of the Office of Hawaiian Affairs v. Yamasaki*, 69 Haw. 154, 737 P.2d 446 (1987), the Hawaii supreme court concluded that the issue of what constitutes the office of Hawaiian affairs' pro rata portion of all the revenues derived from the public land trust pursuant to article XII, section 6 of the Hawaii Constitution, is a political question for the legislature to determine. In *Yamasaki*, the office of Hawaiian affairs sought a pro rata portion of revenues arising out of the illegal mining of sand on Molokai and sales, leases, and other disposition of lands surrounding state harbors, and lands on Sand Island, the Honolulu International Airport, and the Aloha Tower complex. The supreme court declined to rule upon the substance of the case because it presented issues "of a peculiarly political nature and therefore not meet for judicial determination." *Id.*, at 175, 737 P.2d at 459.

In response to the *Yamasaki* decision, the legislature enacted Act 304, Session Laws of Hawaii 1990 (Act 304), to clarify the extent and scope of the State's constitutional obligation to provide a portion of the revenues derived from the public land trust to the office of Hawaiian affairs.

On September 12, 2001, the Hawaii supreme court ruled in *Office of Hawaiian Affairs v. State of Hawai'i*, 96 Haw. 388, 31 P.3d 901 (2001), that Act 304 was effectively repealed by its own terms, so that once again, it was necessary for the legislature to specify what portion of which receipts, from which lands the office of Hawaiian affairs was to receive a portion of the revenues under the state constitution. In its decision, the supreme court affirmed *Yamasaki*, observing:

[T]he State's obligation to native Hawaiians is firmly established in our constitution. How the State satisfies that constitutional obligation requires policy decisions that are primarily within the authority and expertise of the legislative branch. As such, it is incumbent upon the legislature to enact legislation that gives effect to the right of native Hawaiians to benefit from the ceded lands trust. See Haw. Const. art. XVI, §7. Although this court cannot and will not judicially legislate a means to give effect to the constitutional rights of native Hawaiians, we will not hesitate to declare unconstitutional those enactments that do not comport with the mandates of the constitution. At this juncture, we believe it fitting to quote then-state Senator Neil Abercrombie's prophetic statement to the legislature at the time HRS §10-13.5 was first enacted:

I fear that for those who are interested in seeing [OHA] move forward that they have won a Pyrrhic victory, that this is merely a skirmish in a very large battle.

[A]lthough I would be delighted to say otherwise, I regret to say that I expect that the moment this passes into statute, there will be a suit and that the business of the Office of Hawaiian Affairs is, as a result, going to be tied up in court for God-knows how many years.

Now, more than twenty years later, as we continue to struggle with giving effect to that enactment, we trust that the legislature will re-examine the State's constitutional obligation to native Hawaiians and the purpose of HRS §10-13.5 and enact legislation that most effectively and responsibly meets those obligations. (*Office of Hawaiian Affairs v. State of Hawai'i*, 96 Haw. at 401, 31 P.3d at 914 (citations omitted; emphasis in original)).

The legislature acknowledges that the State's obligation to native Hawaiians is firmly established in the state constitution. (See Haw. Const. art. XII.) While many

complex issues require the legislature's further attention and consideration in the wake of the repeal of Act 304, the legislature finds, in furtherance of the decision in *Yamasaki*, that immediate action should be taken to clearly designate the pro rata share of revenues derived from the public land trust that the office of Hawaiian affairs is to receive annually.

The legislature also finds that information pertaining to revenue generated by the public land trust should be consolidated within a single state department or agency. In prior years, it has been difficult to account for revenues generated by the public land trust because basic revenue-generating data was and is dispersed among multiple state agencies. A single state department should be responsible for compiling and providing an accounting of such information.

Accordingly, the specific purposes of this Act are to:

- (1) Provide interim measures to ensure that an adequate amount of income and proceeds is made available to the office of Hawaiian affairs from the pro rata portion of the public land trust, for the betterment of the conditions of native Hawaiians; and
- (2) Identify revenue-generating public trust lands and the amounts derived from those lands by requiring that the department of land and natural resources provide an annual accounting to the legislature.

SECTION 2. Notwithstanding the provisions of chapter 10, Hawaii Revised Statutes, including section 10-13.5, Hawaii Revised Statutes, and until further action is taken by the legislature for this purpose, the income and proceeds from the pro rata portion of the public land trust under article XII, section 6, of the state constitution for expenditure by the office of Hawaiian affairs for the betterment of the conditions of native Hawaiians for each fiscal year beginning with fiscal year 2005-2006 shall be \$15,100,000.

SECTION 3. Notwithstanding the provisions of chapter 10, Hawaii Revised Statutes, or the requirements of Executive Order No. 03-03, beginning in fiscal year 2005-2006, the departments of agriculture, accounting and general services, business, economic development, and tourism, education, land and natural resources, and transportation (for its harbors division), and any other department or agency that collects receipts from the lands within the public land trust, shall determine and transfer to the office of Hawaiian affairs that portion of their receipts from the use of lands within the public land trust collected during each fiscal quarter, necessary to ensure that a total of \$3,775,000 of revenues generated by the public land trust is transferred to the office of Hawaiian affairs, within thirty days of the close of each fiscal quarter; provided that for fiscal year 2005-2006, the departments shall have until thirty days after the close of the fiscal year to transfer a total of \$15,100,000 from their receipts from the use of lands within the public land trust collected during fiscal year 2005-2006, to the office of Hawaiian affairs whether by the procedures set out in Executive Order No. 03-03 or this Act.

The governor is expressly authorized to fix the amounts each agency shall transfer to the office of Hawaiian affairs in each quarter by executive order to implement the provisions of this section.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$17,500,000 or so much thereof as may be necessary for fiscal year 2005-2006 to pay to the office of Hawaiian affairs amounts received from the use of lands in the public land trust that the legislature has determined were underpaid between July 1, 2001, through June 30, 2005. The sum appropriated shall be expended by the department of budget and finance.

lowen2-Anosh

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 13, 2013 6:41 AM
To: waltestimony
Cc: notpono@yahoo.com
Subject: Submitted testimony for HB1064 on Feb 13, 2013 08:30AM

HB1064

Submitted on: 2/13/2013

Testimony for WAL/OMH on Feb 13, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Johnnie-Mae L. Perry	Individual	Support	No

Comments: It is imperative to have ALL Native Hawaiian Land inventored! Sincerely, Johnnie-Mae L. Perry Native Hawaiian at Birth

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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