

# SB123 SD1

Amends the Hawaiian Homes Commission Act, 1920, as amended, to establish a Native Hawaiian corporation under the department of Hawaiian home lands to manage "available lands" under the Hawaiian Homes Commission Act, "ceded lands" under the Admissions Act, and other lands to which Native Hawaiians and Hawaiians may be entitled, to be referred to collectively as "Native Hawaiian lands". (SD1)



**SB123 SD1  
RELATING TO ECONOMIC DEVELOPMENT**

Senate Committee on Economic Development, Government Operations  
and Housing  
Senate Committee on Tourism and Hawaiian Affairs

February 28, 2013

1:45 p.m.

Room 225

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB123 SD1, which proposes to establish a Native Hawaiian Corporation that would have the purpose of receiving and managing what the bill refers to as "Native Hawaiian lands." The new entity would be a "body corporate and a public instrumentality of the State" and would be placed under the Department of Hawaiian Home Lands (DHHL) for administrative purposes. "Native Hawaiian lands" would include the Hawaiian Home Lands; the "ceded lands" conveyed to the State under section 5(f) of the Admission Act; and "any other lands to which Native Hawaiian and Hawaiians may be entitled for the benefit of Native Hawaiians."

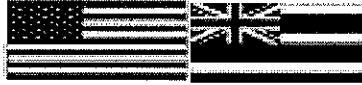
OHA opposes this bill, firstly because the bill appears to set the State and Native Hawaiians on a course different from that envisioned by Act 195, Session Laws of Hawaii 2011. Act 195 recognized the Native Hawaiian people as the only indigenous, aboriginal, maoli people of Hawai`i and established a roll that would list Native Hawaiians eligible to participate in the organization of a Native Hawaiian governing entity. In our view, that entity, once formed, would be the most appropriate entity to receive and manage Native Hawaiian lands. In this light, SB123 SD1 seems premature and could undermine the vision of Act 195.

Secondly, the bill is short on legal, structural, and operational details regarding the proposed new corporation.

Thirdly, implicit in the bill are unresolved issues, needing study, relating to the appropriate constitutional and statutory missions, and beneficiary and constituent groups, of the Department of Hawaiian Home Lands, the Department of Land and Natural Resources, and the Office of Hawaiian Affairs.

In light of the above, OHA asks that the committees **HOLD** this bill. Mahalo for the opportunity to testify.

Center for Hawaiian Sovereignty Studies  
46-255 Kahuhipa St. Suite 1205 Kane'ohe, HI 96744  
Tel/Fax (808) 247-7942  
Kenneth R. Conklin, Ph.D. Executive Director  
e-mail Ken\_Conklin@yahoo.com



Unity, Equality, Aloha for All

To: EGH/THA

From: Kenneth R. Conklin, Ph.D.

Re: SB123\_SD1

Amends the Hawaiian Homes Commission Act, 1920, as amended, to establish a Native Hawaiian corporation under the department of Hawaiian home lands to manage "available lands" under the Hawaiian Homes Commission Act, "ceded lands" under the Admissions Act, and other lands to which Native Hawaiians and Hawaiians may be entitled, to be referred to collectively as "Native Hawaiian lands". (SD1)

Date: February 26, 2013 for hearing on February 28

#### TESTIMONY IN OPPOSITION

This bill is a wolf in sheep's clothing. It's a Hawaiian sovereignty bill masquerading as a bill to create a government land management corporation:

Please, dear Senators, remember that "The public lands conveyed to the State pursuant to section 5(f) of the Admission Act, commonly referred to as 'ceded lands'" [page 1, line 13-15 of the pdf version of this bill] comprise about 95% of all the government-owned lands of the State of Hawaii. But now this bill proposes to turn over all those lands to a race-based "Native Hawaiian corporation."

Please remember that on March 31, 2009 the U.S. Supreme Court handed down a UNANIMOUS ruling that the ceded lands belong to the State of Hawaii in fee simple absolute for the benefit of ALL the people of Hawaii, and the State does not need permission from Native Hawaiians to sell any parcel of the ceded lands. The decision is available on the Supreme Court website at

<http://www.supremecourt.us.gov/opinions/08pdf/07-1372.pdf>

Section 5(f) of the 1959 statehood act identified 5 purposes for the use of revenues from the ceded lands, and only one of those five purposes made any reference to native Hawaiians; and those native Hawaiians were explicitly defined by reference to the Hawaiian Homes Commission Act of 1920 as having at least 50% blood quantum, unlike the much larger group nowadays called "Native Hawaiians."

So only one of five purposes for the ceded lands was to benefit Native Hawaiians of at least 50% blood quantum, who might comprise perhaps 5% of Hawaii's population. And according to Census 2010, only 21% of Hawaii's population has even one drop of Hawaiian native blood, the group now commonly called "Native Hawaiians." What about the other 4 out of 5 purposes for the ceded lands identified in Section 5(f) of the admissions act? What about the rights of the other 79% of Hawaii's people excluded from the "Native Hawaiian corporation" which this bill proposes to control those lands?

So why in the world would it be pono (righteous) to hand over 95% of all Hawaii's government lands to a "Native Hawaiian corporation"? And why would it be pono to refer to these lands as "Native Hawaiian lands" when in fact they are the public lands of all the people of Hawaii without regard to race?

Vote NO on this bill, and demand an apology from whoever is wasting our time by putting forward this bill as though it were a respectable piece of legislation.

**Dane Wicker**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 26, 2013 10:58 AM  
**To:** EGHTestimony  
**Cc:** hankhawaiian@yahoo.com  
**Subject:** Submitted testimony for SB123 on Feb 28, 2013 13:45PM

**SB123**

Submitted on: 2/26/2013

Testimony for EGH/THA on Feb 28, 2013 13:45PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Hank Fergstrom	Na Kupuna Moku O Keawe	Oppose	No

Comments: This bill is absolutely ridiculous. First of all We question the ability of a State entity, who is only the administer of a Federal Act to make amendments to said act. Further because the Hawaiian Homes Commission act of 1920 has a blood quantum as a qualifier for participation. Lands that are spoken of are Ceded lands and the part of the public lands trust. We DO NOT SUPPORT this bill in any form. Na kupuna Moku O Keawe is a grouping of Kupuna fro all six district of the island of Hawaii. We have over 200 voters and our ranks are increasing daily.

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## Association of Hawaiian Civic Clubs

P. O. Box 1135  
Honolulu, Hawai'i 96807

Testimony of President Soulee Stroud

JOINT SENATE COMMITTEES ON  
ECONOMIC DEVELOPMENT, GOVERNMENT  
OPERATIONS AND HOUSING  
AND  
TOURISM AND HAWAIIAN AFFAIRS

### SB123, SD1 RELATING TO ECONOMIC DEVELOPMENT

Thursday, February 28, 2013; 1:45pm; Room 225

Aloha Chairman Dela Cruz, Chairman Galuteria and members of the joint Senate committees meeting on SB123, SD1 Relating to Economic Development. I am Soulee Stroud president of the Association of Hawaiian Civic Clubs here to offer two amendments to this bill.

Given what we have learned recently about the way the State of Hawaii manipulates the Department of Hawaiian Home Lands administration, commission and budget for its own purposes, we are offering amendments to establish "Native Hawaiian Lands" within the **elected**, rather than **appointed**, entity representing the larger Native Hawaiian population.

Our suggestion follows:

Section 1. **Chapter 10, Hawaii revised statues**, is amended by adding a new section to be appropriately designated and to read as follows:

Subsection, line 4, Native Hawaiian corporation; establishment.

Replace [the department of Hawaiian home lands] with "**the Office of Hawaiian Affairs...**"

Last line of the subsection to read: These lands collectively shall be referred to as the "Native Hawaiian Lands" **and held in trust by the Office of Hawaiian Affairs until the recognition of the future Native Hawaiian sovereign entity by the State of Hawaii, at which time management and control shall be transferred to the Native Hawaiian sovereign entity.**

There is merit to this plan and it is a novel concept that has promise for the betterment of all Native Hawaiians. However, all things considered, the Office of Hawaiian Affairs has a better degree of autonomy and response record to a broader range of beneficiaries with its elected Board of Trustees. Holding the land in trust for the future Native Hawaiian sovereign entity duplicates the model now in place for the Kahoolawe Island Reserve .

We also would like to urge a process of public meetings and promotion, possibly electronic surveys and polls to familiarize the community, particularly the Native Hawaiian community with the scope and details of this bill.

Please give our suggestions your serious consideration. Thank you for the opportunity to testify.

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

**Testimony of Robert Loy**  
**Director of Environmental Programs**  
**The Outdoor Circle**  
**SB 123 SD1**  
**Committee on Economic Development and Housing**  
**Committee on Tourism and Hawaiian Affairs**  
**February 28, 2013 1:30 PM**  
**Room 225**

**RE: Strong opposition to SB 123 SD1-relating to Economic Development**

The Outdoor Circle strongly opposes this legislation.

SB123 SD1 proposes creating a Native Hawaiian corporation, under the Department of Hawaiian Home Lands, for the "receiving and managing" of several categories of public lands.

While the legislation may be well-intentioned, the history of similar proposals provides no justification for such trust. The PLDC debacle has cast such a long shadow of doubt over all legislation that involves creation of government corporations with broad control over the future of public lands. That makes all proposals such as this one suspect or worse.

In this case the legislation seemingly was created out of thin-air and plugged into a placeholder "short form" bill on the countdown to 1st decking and crossover. It suffers from a near total lack of specific information about the real purposes and powers of the Native Hawaiian corporation, how it will be organized, how it might function across our state, and moreover, how it will be prevented from becoming another PLDC.

These are not the characteristics of legislation designed to calm the fears of the PLDC-battered public, they are the hallmarks of legislation designed to hide its true intentions and impacts.

Proponents of this bill have done absolutely nothing to reach out to the public. Instead of heeding the lessons of the PLDC-debacle and encouraging public discourse and involvement, this bill represents another broad attempt to shortcut the legislative process.

Our members across the state do not want another PLDC or any derivation of it. And with this legislation, that's what the Native Hawaiian corporation ultimately could become.

Please hold this legislation.



THE SENATE  
THE TWENTY-SEVENTH STATE LEGISLATURE  
REGULAR SESSION OF 2013

COMMITTEE ON ECONOMIC DEVELOPMENT,  
GOVERNMENT OPERATION AND HOUSING

COMMITTEE ON TOURISM AND HAWAIIAN AFFAIRS

Re: **SB 123, SD 1** Relating to establishment of a Native Hawaiian corporation to receive and manage the public lands of the State of Hawaii and any other lands to which Native Hawaiians and Hawaiians may be entitled.

**TESTIMONY IN OPPOSITION** by H. William Burgess, Attorney and Chairman, Aloha for All, Inc. Email: [hwburgess@hawaii.rr.com](mailto:hwburgess@hawaii.rr.com)

For Hearing Date: Thursday, February 28, 2013  
Time: 1:45 p.m.  
Place: Conference Room 225, State Capitol

Aloha Chairs, Vice Chairs, committee members, and members of the public.

I write in opposition to SB 123, HD 1, which would amend the Hawaiian Homes Commission Act, 1920, to establish a Native Hawaiian corporation, which "shall have the purpose of receiving and managing:"

- (1) The public lands designated as "available lands" under the HHCA;
- (2) The public lands conveyed to the State by the Admission Act, commonly referred to as the ceded lands; and
- (3) Any other lands to which Native Hawaiians may be entitled.

The bill would require the State of Hawaii and its officials to breach their fiduciary under the Ceded Lands Trust.

**Background of the public land trust**

Hawaii's public land trust is sometimes referred to as the "ceded lands trust" and sometimes as the "§ 5(f) trust."

The Supreme Court of the State of Hawaii has held:

The history of the trust begins with the cession of sovereignty by the Republic of Hawaii under the "Joint Resolution To provide for annexing the Hawaiian Islands to the United States," 30 Stat. 750, adopted by Congress on July 7, 1898. Along with sovereignty, the Republic cede[d] and transfer[red] to the United States the absolute fee

and ownership of all public, Government, or Crown lands ... belonging to the Government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining[.]” *Trustees of OHA v. Yamasaki*, 69 Hawaii 154, 159 (1987).

The resolution made “[t]he existing laws of the United States relative to public lands [inapplicable] to such lands in the Hawaiian Islands; but [stated] Congress ... shall enact special laws for their management and disposition.” *Id.*

*Yamasaki* further provided:

“That all revenue from or proceeds of the [public lands], except as regards such part thereof as may be used or occupied for the civil, military, or naval purposes of the United States, or may be assigned for the use of the local government, shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes.” *Id.*

“The effect of [the foregoing language was] to subject the public lands in Hawaii to a special trust, limiting the revenue from or proceeds of the same to the uses of the inhabitants of the Hawaiian Islands for educational or other purposes. 22 Op. Att’y Gen. 574 (1899)” *Id.*

“The concept that the public lands of Hawaii were impressed with a special trust, implicit in the joint resolution of annexation, See 22 Op. Atty Gen. 574, was reiterated in section 5(f) of the Admission Act.” *Id.* at 160.

“Hawaiian” means any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples have thereafter continued to reside in Hawaii.”

The noun “native Hawaiian” means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778.”

**The government as trustee has the same fiduciary duty as private trustees.**

*Ahuna v. Department of Hawaiian Home Lands*, 64 Haw. 327, 339, 640 P.2d 1161, 1189 (1982) (the conduct of the government as trustee is measured by the same strict standard applicable to private trustees, citing *United States v. Mason*, 412 U.S. 391 (1973). See also *Price v. Akaka*, 928 F.2d 824, 827 (9th Cir. 1991) citing the Restatement 2d of the Law of Trusts as applicable to conduct of the State of Hawaii as trustee of Hawaii’s public land trust.

The same considerations apply to OHA and its trustees and officials. Under *Price v. Akaka*, 928 F.2d 824, 827 (9th Cir. 1991), so long as § 5(f) trust income remained in the hands of the state, as it did when transferred from the § 5(f) corpus to the OHA corpus, the § 5(f) obligations applied.

The United States Circuit Court of Appeals for the Ninth Circuit has held (“There is no free floating federal common law of trusts, but we have no doubt that we would have the power to formulate a body of law for the purpose of enforcing the Act if that were appropriate under the circumstances. No doubt that would not present insuperable difficulties, since the common law of trusts is well developed in this country and speaks with a good deal of uniformity across the length and breadth of the land.” (citations omitted)).

For example, HRS Chapter 554A, Uniform Trustees’ Powers Act “UTPA.”<sup>1</sup> “Except as specifically provided in the trust, the provisions of this chapter apply to any trust with a situs in Hawaii, whenever established.” HRS § 554A-8.

The UTPA, HRS §554A-5(b), allows a trustee to exercise a trust power, such as the power “to effect distributions of money and property,” only by court authorization “if the duty of the trustee and the trustee’s interest as trustee of another trust, conflict in the exercise of the trust power.”

The Restatement (Third) of Trusts § 66(b) underlines a trustees’ affirmative duty to petition the court, “If a trustee knows or should know of circumstances that justify judicial action ... and of the potential of those circumstances to cause substantial harm to the trust or its beneficiaries, the trustee has a duty to petition the court for appropriate modification of or deviation from the terms of the trust.”

Trust beneficiaries, as well as trustees, have standing to apply to the court for instructions regarding distributions to beneficiaries, as Petitioners seek here. Under Restatement (Third) of Trusts § 71, “A trustee or beneficiary may apply to an appropriate court for instructions regarding the administration or *distribution* of the trust if there is reasonable doubt about the powers or duties of the trusteeship or about the proper interpretation of the trust provisions.” (Emphasis added.)

Disregarding their fiduciary duties under the Equal Protection, Supremacy and other clauses of the Constitution and laws of the United State, the State of Hawaii and its officials, including the Governor, the board and officials of DHHL and the OHA Trustees, have sought, promoted, and lobbied for distributions of public lands trust monies and properties to OHA and DHHL for “native Hawaiian” beneficiaries at the expense of those beneficiaries who lack the favored racial ancestry.

Such conduct meets the definition of HRS §708-974 (Misapplication of entrusted property, a misdemeanor) and/or Theft, HRS §708-830(6)(a) (Failure to make required Disposition of funds, a felony). As a result, most of the trust beneficiaries for over three decades have been deprived of the benefit of over a \$ billion worth of public land trust funds and lands through 2012; and such unlawful deprivations would still continue to accrue under color of the law of the State of Hawaii if H.B. 175 is enacted.

**The State's "bombshell" revelation.** On June 4, 2008 in the Federal District Court in *Day v. Apoliona*, the State of Hawaii acknowledged and proved by the declarations of Georgina Kawamura, Director of B&F and other responsible State officials, that the public land trust costs the State every year many times more than the 1.2 million acres bring in; and that the disparity between trust expenses and trust revenues has occurred in every year since statehood in 1959.

**Basic trust law as to distributions to beneficiaries.** Except as otherwise provided by the terms of the trust, the trustee's duty to pay income to beneficiaries is limited to paying the **net** income after deducting, from the revenues or gross income, the expenses properly incurred in the administration of the trust.

**Why is that important?** Because it means the hundreds of millions the State and its officials have caused to be distributed to OHA and DHHL from public land trust revenues exclusively "for the betterment of the conditions of native Hawaiian" beneficiaries over the last three decades (while making no distributions of money or lands exclusively for non-native Hawaiian beneficiaries) have all been improper diversions of trust funds held for the benefit of all the people of Hawaii.

Thus, no public land trust funds or lands should ever have been distributed to OHA or DHHL because the trust has never generated any net income from which distributions could lawfully have been made to any beneficiaries.

**Neither the State, nor its officials nor its legislature has the power to modify or terminate the public land trust.**  
*Trustees of Dartmouth College v. Woodward.*

In 1819, Chief Justice John Marshall held that the charter granted by the British Crown to the trustees of Dartmouth College, in New Hampshire, in the year 1769, was a contract within the meaning of that clause of the Constitution of the United States (Art. I, §10), which declares, that no state shall make any law impairing the obligation of contracts. The state of Vermont was a principal donor to Dartmouth College. The lands given lie in that state and are of "great value." The State of New Hampshire also donated lands of "great value." *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518, 574 (1819).

After the trustees had operated the college beneficially for nearly 50 years and after the American Revolution, the New Hampshire legislature, controlled by Republican supporters of Thomas Jefferson, passed a bill revising the charter of Dartmouth College, adding new trustees and a board of overseers. The trustees refused to accept the changes and filed suit to invalidate them. C.J. Marshall held that the royal charter had "every ingredient of a complete and legitimate contract." He ruled that the trustees were "one immortal being" whose powers continued forever and could not be abridged by legislative acts. Hawaii's Ceded Lands Trust, for "educational and other public purposes" was also endowed with public lands and also founded with every

ingredient of a complete and legitimate contract. On June 16, 1897 the Republic of Hawaii, by its proposed Treaty of Annexation, offered to cede to the United States its public lands (about 1.8 million acres formerly called the Crown lands and Government lands of the Kingdom of Hawaii) with the requirement that all revenue from or proceeds of the lands, except those used for civil, military or naval purposes of the United States or assigned for the use of local government, "shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes." Another condition of the Republic's offer was that "The public debt of the Republic of Hawaii" was to be "assumed by the government of the United States, but the liability of the United States in this regard shall in no case exceed \$4,000,000."

A year later, on July 7, 1898, by the Newlands Resolution, the United States accepted the offer, expressly including the conditions that it hold the lands in trust and that it assume the debts accumulated by the Kingdom and Republic up to \$4 million.

As the Supreme Court of the United States held, "Where there is a charter, vesting proper powers of government in trustees or governors, they are visitors; and there is no control in anybody else; except only that the courts of equity or of law will interfere so far as to preserve the revenues, and prevent the perversion of the funds, and to keep the visitors within their prescribed bounds." *Id.*, 17 U.S. 565.

That basic legal principle of trust law enforcing contractual obligations undertaken by the sovereign, announced 194 years ago, is now embodied in Restatement (Third) of Trusts §64 (2003) current through August 2008, §64. Termination Or Modification By Trustee, Beneficiary, Or Third Party

**(A) Except as provided in §§65 and 68, the trustee or beneficiaries of a trust have only such power to terminate the trust or to change its terms as is granted by the terms of the trust.**

**(B) The terms of a trust may grant a third party a power with respect to termination or modification of the trust; such a third-party power is presumed to be held in a fiduciary capacity.**

Since the Ceded Lands Trust gives no trustee, beneficiary or third party any right to modify or change the terms of the Ceded Lands Trust, as a matter of law, neither the State of Hawaii, nor the Hawaii Supreme Court, nor Congress, whether by the Apology resolution or any other law, has the power to impair the obligations to all the people of Hawaii undertaken by the United States in 1898 in the Annexation Act, and assumed by the State of Hawaii in 1959.

## CONCLUSION

SB 123, HD 1 should be rejected or amended to require that DHHL and OHA forthwith restore to State control all funds and trust lands distributed to and still held or controlled by them, to be held and used impartially for the benefit of all the citizens of Hawaii, including but not limited to those of Hawaiian ancestry.

Thank you for considering my testimony.

/s/ H. William Burgess

H. WILLIAM BURGESS,  
Honolulu, HI 96822.  
Tel: 947-3234;  
Cell: 372-3800;  
Email: [hwburgess@hawaii.rr.com](mailto:hwburgess@hawaii.rr.com)

Elaine Dunbar  
POB 861  
Lihue, HI 96766  
inunyabus@gmail.com

Aloha Chair and Committee Members,

Please, let's not do this.

I testify in strong OPPOSITION to SB123. It's a transparent attempt to encroach on Hawaiian Homelands and subsequently, Congressional law. SB123 constitutes the unauthorized restructuring of a federal Act, by the state, of a federal Act/Trust arrangement with Native Hawaiian beneficiaries. SB123 orchestrates a dangerous scheme by the state to insert itself into the Trust to access and manipulate assets by renaming it the Native Hawaiian Corporation. At the very least this is redundancy and the very worst, malfeasance. The state has no authority to embark on its mission to thwart the Native Hawaiian beneficiaries' Trust Assets.

Description: Amends the Hawaiian Homes Commission Act, 1920, as amended, to establish a Native Hawaiian corporation under the department of Hawaiian home lands to manage "**available lands**" under the Hawaiian Homes Commission Act, "**ceded lands**" under the Admissions Act, and other lands to which Native Hawaiians and Hawaiians may be entitled, to be referred to collectively as "Native Hawaiian lands". (SD1)

- DHHL already manages Hawaiian Homelands.
- The State of Hawaii already has laws in place with respect to 'ceded lands' which are not ceded, but stolen and currently pending disposition by the Sovereign.

SB123 misconstrues or re-defines the meaning of "**available lands**" in section 203 of the Hawaiian Homes Commission Act and is not in accordance with the Act.

- The obligations to Native Hawaiians on the waiting list to get onto Hawaiian Homelands is delinquent. It has not been fulfilled causing tens of thousands of Native Hawaiians to remain on a defunct and negligently administered waiting list for decades. Equally negligent, many lots have been awarded to non-Native Hawaiians BEFORE the Native Hawaiian priority had been satisfied, **§ 506**, as mandated in the Hawaiian Homes Commission Act. (c) If lots or units are available after all interested and qualified native Hawaiians have been awarded lots or units, the department may **temporarily** dispose of the remaining lots or units at fair market rental to the general public with **preference to Native Hawaiians**. The department may develop rental units on the remaining lots and rent them at fair market rental to the general public, with **preference given to Native Hawaiians**.
- These lands are off-limits to the state for **commercial developments** for the purpose of generating revenue for the state and are in conflict with the meaning of Chapters 76, 77, and 78 of the HRS, when the services to be performed will assist in carrying out the purposes of the Hawaiian Homes Commission Act.
- (b) Unless expressly provided elsewhere in this Act, lands or an interest therein

acquired by the department pursuant to section 213(b)(1), 221(c), or 225(b), or any other section of this Act authorizing the department to acquire lands or an interest therein, may be managed and disposed of in the same manner and for the same purposes as Hawaiian home lands.

**§ 206. [Other officers not to control Hawaiian home lands; exception.]**

The powers and duties of the governor and the board of land and natural resources, in respect to lands of the State, shall not extend to lands having the status of Hawaiian Home Lands, except as specifically provided in this title.

Hawaiian Homes are protected under **TITLE 4 - § 401**. All Acts or parts of Acts, either of the Congress of the United States or of the State of Hawaii, to the extent that they are inconsistent with the provisions of this Act, are hereby repealed. Therefore, SB123 is inconsistent with the Hawaiian Homes Commission Act and seeks to alter its spirit and intent.

- As stated in **§ 223. Right of amendment, etc.** The Congress of the United States reserves the right to alter, amend, or repeal the provisions of this title.
- The supremacy clause of the U.S. Constitution (as well as the Fourteenth Amendment) says that federal law supersedes state law.



February 27, 2013

Senate Committee on Economic Development, Government Operations and Housing  
Senator Donovan M. Dela Cruz , Chair  
Senator Sam Sloan, Vice Chair  
Senate Committee on Tourism and Hawaiian Affairs  
Senator Brickwood Galuteria, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair  
Members of the Committees

RE: SB 123, SD1

Aloha mai kakou:

I am Homelani Schaedel, and I reside on Hawaiian homestead lands in Kapolei.

SB 123 is vague, formless and obscure. It does not state its' purpose or intent, nor does it addresses how this bill will impact or improve economic development. It does not identify the formation and authority of the Native Hawaiian Corporation, the process in which DHHL will receive, manage and administer these lands, or determined if DLNR has completed its' accurate inventory of ceded and "other lands" Native Hawaiians may be entitled to. It does not address the conflict of interest and intent of the Hawaiian Homes Commission Act, of 1920 and the Admission Act, nor does it address effects and conflict with the Public Land Development Corporation (PLDC).

The purpose of the Hawaiian Homes Commissions Act of 1920, is... "to enable native Hawaiians to return to their lands in order to fully support self-sufficiency for native Hawaiians and the self-determination of native Hawaiians in the administration of this Act, and the preservation of the values, traditions, and culture of native Hawaiians..." and limits its' application to; "... any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778."

As a beneficiary of the Hawaiian Home Lands Trust, I have great concerns of the impact and ramifications this bill poses to the Department of Hawaiian Home Lands (DHHL), all Native Hawaiians and the citizens of our State.

SB123 would require amendments to the HHCA of 1920; which will adulterate the purpose and dilute the protection the act provides to beneficiaries of the Hawaiian Home Lands Trust.

It is with this regard that I strongly oppose SB 123. Mahalo for this opportunity to submit my testimony.

Respectfully,

Homelani Schaedel

**Dane Wicker**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 27, 2013 7:53 AM  
**To:** EGHTestimony  
**Cc:** sea.fire.enchantment@gmail.com  
**Subject:** \*Submitted testimony for SB123 on Feb 28, 2013 13:45PM\*

**SB123**

Submitted on: 2/27/2013

Testimony for EGH/THA on Feb 28, 2013 13:45PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
susanna walczak-pol	Individual	Oppose	No

Comments:

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**Dane Wicker**

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**Sent:** Tuesday, February 26, 2013 7:10 PM  
**To:** EGHTestimony  
**Cc:** akamaimom@gmail.com  
**Subject:** Submitted testimony for SB123 on Feb 28, 2013 13:45PM

**SB123**

Submitted on: 2/26/2013

Testimony for EGH/THA on Feb 28, 2013 13:45PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Felicia Cowden	Individual	Oppose	No

Comments: The Hawaiian people have been shafted for a couple of centuries. There should be the political will to make good on the commitments to the people without forcing them to "exploit" their lands for revenue. This feels like another swindle.

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**Dane Wicker**

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**Sent:** Tuesday, February 26, 2013 6:04 PM  
**To:** EGHTestimony  
**Cc:** Kealii8@hotmail.com  
**Subject:** \*Submitted testimony for SB123 on Feb 28, 2013 13:45PM\*

**SB123**

Submitted on: 2/26/2013

Testimony for EGH/THA on Feb 28, 2013 13:45PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kealii Makekau	Individual	Oppose	No

Comments:

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**Dane Wicker**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 26, 2013 3:15 PM  
**To:** EGHTestimony  
**Cc:** lmuakako@ymail.com  
**Subject:** Submitted testimony for SB123 on Feb 28, 2013 13:45PM

**SB123**

Submitted on: 2/26/2013

Testimony for EGH/THA on Feb 28, 2013 13:45PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Maria Taylor Sykes	Individual	Oppose	No

Comments: Oh, honest Americans, as Christians hear me for my down-trodden people! Their form of government is as dear to them as yours is precious to you. Quite as warmly as you love your country, so they love theirs. With all your goodly possessions, covering a territory so immense that there yet remain parts unexplored, possessing islands that, although near at hand, had to be neutral ground in time of war, do not covet the little vineyard of Naboth's, so far from your shores, lest the punishment of Ahab fall upon you, if not in your day, in that of your children, for "be not deceived, God is not mocked." The people to whom your fathers told of the living God, and taught to call "Father," and whom the sons now seek to despoil and destroy, are crying aloud to Him in their time of trouble; and He will keep His promise, and will listen to the voices of His Hawaiian children lamenting for their homes. Queen Lilio'ukalani, Hawai'i's Story by Hawai'i's Queen. I STRONGLY OPPOSE THIS BILL.

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**Dane Wicker**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 26, 2013 12:46 PM  
**To:** EGHTestimony  
**Cc:** slwsurfing@yahoo.com  
**Subject:** Submitted testimony for SB123 on Feb 28, 2013 13:45PM

**SB123**

Submitted on: 2/26/2013

Testimony for EGH/THA on Feb 28, 2013 13:45PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
sharon willeford	Individual	Oppose	No

Comments: OPPOSE - Big Island.

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**Dane Wicker**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 26, 2013 11:21 AM  
**To:** EGHTestimony  
**Cc:** Karen@RedwoodGames.com  
**Subject:** Submitted testimony for SB123 on Feb 28, 2013 13:45PM

**SB123**

Submitted on: 2/26/2013

Testimony for EGH/THA on Feb 28, 2013 13:45PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Karen Chun	Individual	Oppose	No

Comments: Have you people no shame? Another PLDC in Hawaiian clothing - gut and replace. The people have spoken. They don't want any PLDC schemes no matter WHAT you call them.

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**Dane Wicker**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 27, 2013 12:00 PM  
**To:** EGHTestimony  
**Cc:** bill@puna.us  
**Subject:** \*Submitted testimony for SB123 on Feb 28, 2013 13:45PM\*

**SB123**

Submitted on: 2/27/2013

Testimony for EGH/THA on Feb 28, 2013 13:45PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Bill Smith	Individual	Oppose	No

Comments:

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**Dane Wicker**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 27, 2013 1:28 PM  
**To:** EGHTestimony  
**Cc:** ponosize@hotmail.com  
**Subject:** \*Submitted testimony for SB123 on Feb 28, 2013 13:45PM\*

**SB123**

Submitted on: 2/27/2013

Testimony for EGH/THA on Feb 28, 2013 13:45PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Pono Kealoha	Individual	Oppose	No

Comments:

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**Dane Wicker**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 27, 2013 12:11 PM  
**To:** EGHTestimony  
**Cc:** shannonkona@gmail.com  
**Subject:** \*Submitted testimony for SB123 on Feb 28, 2013 13:45PM\*

**SB123**

Submitted on: 2/27/2013

Testimony for EGH/THA on Feb 28, 2013 13:45PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Shannon Rudolph	Individual	Oppose	No

Comments:

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**TESTIMONY OF**  
Kekane Pa, P.O.B 265  
Hawaiian Islands, 96766  
Tel: 808-645-1838, Email: kekanepa@hotmail.com

BEFORE THE  
SENATE COMMITTEES ON

**TOURISM AND HAWAIIAN AFFAIRS**

Chair Brickwood Galuteria  
Vice Chair S.C. Keith-Agaran

**ECONOMIC DEVELOPMENT, GOVERNMENT OPERATIONS AND HOUSING**

Chair Donovan M. Dele Cruz  
Vice Chair Sam Slom

ROOM 225  
2/28/2013, 1:45 PM

**SENATE BILL 123**  
RELATING TO ECONOMIC DEVELOPMENT  
Native Hawaiians; Hawaiian Homes Commission Act

**Description:** Amends the Hawaiian Homes Commission Act, 1920, as amended, to establish a Native Hawaiian corporation under the department of Hawaiian home lands to manage "available lands" under the Hawaiian Homes Commission Act, "ceded lands" under the Admissions Act, and other lands to which Native Hawaiians and Hawaiians may be entitled, to be referred to collectively as "Native Hawaiian lands". (SD1)

Chair and Committee Members,

**OBJECTION NOTICE: SB 123 SD 1**

Before the U.S. Occupation  
Public Land Development  
U.S. Corporation  
(Draft Hawaii Administrative Rules, Chapters 301, 302 and 303)

My objections and concerns pertain to a lack of honesty coming from elected (defacto) officials of the state of Hawaii, including and not limited to, the late U.S. Senator Daniel Inouye, Senator Daniel

Akaka and the current state of Hawaii Governor Neil Abercrombie and their respective colleagues and state-created entities, who believe in and effectuate their *flawed and misguided* interpretation of Hawaiian History; I speak especially of this *flawed and misguided* interpretation in its relation to crimes and criminal violations which continue to be recognized by the United States Congress. Specifically, fraudulent claims resulting from their mis-representation on matters of fact.

Here is my interpretation of their own code of conduct based on the actions of the U.S., relating to what's known in criminal justice as: fraud.

“Fraud is a false representation of matters of the fact” and that “Ignorance of the law is no excuse”. So I ask you, Senators, what is your excuse? When it comes to cheating, lying, false statements, deceptions, corruption, fraudulent acts and detrimentally misleading the Hawaiian people from truth and justice, it is happening on your watch; with full knowledge by you.

To allow a false/fabricated interpretation of Hawaiian history and to ignore new disclosures of truths and law to continue by living the old and disproven lie by falsifying signatures on documents 24/7, are evidence of willing parties assuming courses of action amongst themselves to which you are legally and morally bound not to, by not complying with U.S. Federal law. You have a duty to comply with the Federal Government's administration of the U.S.C. under title 48: until Hawaii is so ADMITTED INTO THE United States of America Union. A party that fails to live up to their obligations chooses to be held liable under International Law for War Crimes for failure to comply with mandated federal policies in the discharge of their duties.

Please note:

- The International Covenant on Civil and Political Rights (ICCPR). Add. 4 (State Party Report United States of America) 1993.
- The U.N. Committee Article 40 of the covenant on Civil and Political Rights addressing the Hawaiian as a People (NOT the word Native Hawaiian created by the Republic of Hawaii who were not the lawful owners of these lands).
- Based on U.S. Public - Law103-150 paragraphs 8, 29.
- U.S.C. Title 18- Crimes and criminal procedures... Whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the government of the United States, knowingly and willfully,
  - (1) Falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
  - (2) Makes any materially false, fictitious, or fraudulent statement or representation; or
  - (3) Makes or uses any false writing or document knowing the same contain any materially false, fictitious, fraudulent statement or entry; shall be fined under this title, and imprisoned, if the offenses involve International Criminal violations, Self Determination, Equal Protection of Rights in the Covenant, Equal Rights of Men and Women, Right to Life, Liberty and Justice, you will be responsible for these actions and prosecuted to the extent of the law for not complying with U.S. Federal law and committing a violation of Imposter Law which is identity theft.

For these reasons I demand that you rescind these bills pertaining to Hawaiians and their National Lands. These lands have not been federally recognized through U.S. Federal Law, period.

- Adding and Amending Treaty Obligations, “ a party cannot add a reservation after it has already joined a treaty”. The status of these Hawaii National Lands still remain as former Hawaiian Kingdom, Government, Crown and Public Lands.

- United Nations Declaration on the Rights of Indigenous people.  
Articles 3,4,10,20,26,30,33,37,40.
- I remind you that the United States is signatory to the Families of International Treaty Law and the U.S. endorsed the U.N. Declaration on December 13, 2010.
- Please see: U.S.C. title 18 - sec. 2314 Chapter 113 Stolen Properties.