



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

ON THE FOLLOWING MEASURE:

S.C.R. NO. 184/S.R. 140, REQUESTING THE CONVENING OF A WORKING GROUP TO DISCUSS AND RECOMMEND LEGISLATION TO SUPPORT THE ESTABLISHMENT OF AN ENTITY TO ENHANCE THE FINANCIAL RESOURCES OF NATIVE HAWAIIANS.

BEFORE THE:

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

DATE: Monday, March 25, 2013 **TIME:** 3:15 p.m.

LOCATION: State Capitol, Room 224

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

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

The Department of the Attorney General takes no position on whether these resolutions should be adopted. The Department testifies only to correct the representations about the Hawaii Supreme Court's decision in Nelson v. Young, 127 Hawaii 185 (2012), made in the fifth recital of the resolutions.

The Nelson case is still pending in the Hawaii Supreme Court, awaiting the court's decision on the plaintiffs' motion for fees on appeal. Once that determination is made, the case will be remanded to the Intermediate Court of Appeals and then to the First Circuit Court for its initial determination of what constitutes "sufficient sums" for the administrative and operating expenses of the Department of Hawaiian Home Lands. Until that determination is made and, if necessary, reviewed by the State's appellate courts, it is premature to represent that \$15,000,000 per year is currently what is "sufficient" for that purpose. It is also incorrect to represent that the "obligation" to provide "sufficient funds" "runs in perpetuity" and "requires a back payment." The requirement to provide "sufficient funds" must be satisfied as long as article XII, section 1, of the State Constitution imposes that requirement. The Nelson plaintiffs have only asked for prospective injunctive relief – thus, no "back payment" is required. The fifth recital should end after "Hawaiian Home Lands," and "operational expenses" should be changed to "operating expenses."