

# **SCR 51 / SR 29**

## **Measure Title:**

**REQUESTING THE UNITED STATES CONGRESS TO  
REPEAL SECTION 340 OF PUBLIC LAW NO. 105-66  
PROHIBITING THE TRANSFER OF AIRPORT REVENUE  
TO THE OFFICE OF HAWAIIAN AFFAIRS AND TO  
AFFIRMATIVELY AUTHORIZE THE HAWAII STATE  
DEPARTMENT OF TRANSPORTATION TO TRANSFER A  
PORTION OF THE AIRPORT REVENUES TO THE  
OFFICE OF HAWAIIAN AFFAIRS.**



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

March 20, 2013  
1:15 pm  
State Capitol, Room 224

**SCR 51/ SR 29**

**REQUESTING THE UNITED STATES CONGRESS TO REPEAL SECTION 340 OF PUBLIC LAW NO. 105-66 PROHIBITING THE TRANSFER OF AIRPORT REVENUE TO THE OFFICE OF HAWAIIAN AFFAIRS AND TO AFFIRMATIVELY AUTHORIZE THE HAWAII STATE DEPARTMENT OF TRANSPORTATION TO TRANSFER A PORTION OF THE AIRPORT REVENUES TO THE OFFICE OF HAWAIIAN AFFAIRS.**

Senate Committee(s) on Public Safety, Intergovernmental and Military Affairs  
& Transportation and International Affairs & Tourism and Hawaiian Affairs

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The Department of Transportation (DOT) **opposes** these resolutions.

The FAA maintains the high standards of the nation's aviation system, a capability and industry that is important to the nation's economy and safety. Much of Hawaii's economic well-being is due to air travel, and tourism. The FAA ensures that these standards are maintained by its funding of airport programs. This resolution puts at risk one of the largest sources of funding for Hawaii's airport system.

This resolution asks Congress to repeal the current limitation and affirmatively permit airport revenue to be included in what OHA presently receives, \$15.1 million annually, as its portion of the income and proceeds from ceded lands.

Federal funding for DOT airports, however, amounts to approximately \$75 million per year. In effect, this resolution calls for the State of Hawaii to have the DOT pay a portion of the \$15.1 million, and risk foregoing \$75 million in federal funding, which in turn translates to many jobs, a more vibrant economy, and a modern airport system able to compete for visitors from all over the world.

The DOT opposes this resolution because of its implications for the State economy, the ability to fund ongoing improvement and maintenance projects, and the loss that it would represent for the state as a whole.

Thank you for the opportunity to provide this testimony.



NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

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

ESTHER KIA'AINA  
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  
KAIHOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Testimony of  
WILLIAM J. AILA, JR  
Chairperson

Before the Senate Committees on  
PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS  
and  
TRANSPORTATION AND INTERNATIONAL AFFAIRS  
and  
TOURISM AND HAWAIIAN AFFAIRS

Wednesday, March 20, 2013  
1:15 PM  
State Capitol, Conference Room 224

In consideration of  
SENATE CONCURRENT RESOLUTION 51/SENATE RESOLUTION 29  
REQUESTING THE UNITED STATES CONGRESS TO REPEAL SECTION 340 OF  
PUBLIC LAW No. 105-66 PROHIBITING THE TRANSFER OF AIRPORT REVENUE  
TO THE OFFICE OF HAWAIIAN AFFAIRS AND TO AFFIRMATIVELY  
AUTHORIZE THE HAWAII STATE DEPARTMENT OF TRANSPORTATION TO  
TRANSFER A PORTION OF THE AIRPORT REVENUES TO THE OFFICE OF  
HAWAIIAN AFFAIRS

Senate Concurrent Resolution 51 and Senate Resolution 29 request the United States Congress to repeal a provision of federal law that prohibits the transfer of airport revenues in Hawaii to the Office of Hawaiian Affairs (OHA), and to authorize the Hawaii State Department of Transportation (DOT) to transfer a portion of airport revenues to OHA. **The Department of Land and Natural Resources (Department) supports these resolutions.**

Prior law entitled OHA to receive 20% of all revenues derived from the use of ceded lands. Act 178, Session Laws of Hawaii 2006, converted OHA's 20% share to a set figure of \$15.1 million annually. Because certain agencies such as DOT-Airports do not contribute at all to this amount (or contributes less than their fair share), there is a shortage each year that the State is required to cover.<sup>1</sup> All State agencies should be required to pay their fair share to OHA. If all agencies were to pay, then there would be no shortage. The Department could then direct additional funds

<sup>1</sup> Though not expressly required by Act 178, the Land Division from DLNR has been covering the shortage created by those agencies not paying their fair share to OHA. This could change as the Department's general fund and federal fund support decreases and the need to retain funds for its own programs increases.

to the protection of the State's limited natural, cultural and historic resources in accordance with its mission.

Thank you for the opportunity to testify.



**SCR51/SR29**

**REQUESTING THE UNITED STATES CONGRESS TO REPEAL SECTION 340 OF  
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REVENUE TO THE OFFICE OF HAWAIIAN AFFAIRS AND TO AFFIRMATIVELY  
AUTHORIZE THE HAWAII STATE DEPARTMENT OF TRANSPORTATION TO  
TRANSFER A PORTION OF THE AIRPORT REVENUES TO THE OFFICE OF  
HAWAIIAN AFFAIRS**

Senate Committee on Public Safety, Intergovernmental and Military Affairs  
Senate Committee on Transportation and International Affairs  
Senate Committee on Tourism and Hawaiian Affairs

March 20, 2013

1:15 p.m.

Room 224

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The Office of Hawaiian Affairs (OHA) provides the following comments on SCR51/SR29, which asks Hawai'i's Congressional delegation to introduce and support legislation repealing section 340 of Public Law No. 105-66, also known as the "Forgiveness Act," and to affirmatively authorize the Hawai'i State Department of Transportation (DOT) to transfer a portion of airport revenues to OHA.

Hawai'i Constitution, article XII, section 6 establishes OHA's right to receive a "pro rata portion" of "all income and proceeds" from the public land trust established by Admission Act section 5(f) for the betterment of the conditions of Native Hawaiians. Hawai'i Revised Statutes (HRS) section 10-13.5 established OHA's pro rata portion as "20% of all funds derived from the public land trust;" however, Act 178, SLH 2006, temporarily supersedes HRS section 10-13.5 "until further action is taken by the legislature." Act 178 establishes OHA's interim pro rata portion as a specific dollar amount -- \$15.1 million per year.

Act 178 gives the governor authority to establish a process to implement Act 178 by fixing the amount of revenue each agency must transfer to ensure OHA receives \$15.1 million annually. Pursuant to Executive Order 06-06, each agency must transfer to OHA 20% of all revenue generated by the use of public trust land, unless the transfer is prohibited by law or the transfer would require the state to renege on any pre-existing obligation.

Because the federal and state governments have taken the position that transfer of airport revenue from the DOT Airports Division (DOT-Airports) to OHA would violate the Airport and Airway Improvement Act of 1982, 49 U.S.C. § 47107, and the Forgiveness Act, currently, DOT-Airports does not transfer revenue to OHA pursuant to EO 06-06.

The 1997 Forgiveness Act forgave the state from repaying \$28.2 million DOT-Airports had transferred to OHA between 1992 and 1996 to satisfy the state's public land trust payments to OHA, while at the same time prohibiting future payments of airport revenues for claims related to the public land trust. Since that time, DOT-Airports has made no payments to OHA.

OHA notes that a complete repeal of the Forgiveness Act could put the state in jeopardy of having to repay to the federal government the \$28.2 million of DOT-Airports revenue that the state transferred to OHA, which was initially forgiven by the Forgiveness Act. Additionally, repealing the Forgiveness Act will not affect the Airport and Airway Improvement Act of 1982, the underlying law the Inspector General found to prohibit the state DOT from transferring airport revenues to OHA. Without repealing or amending the underlying law, the federal government may continue to interpret that law to prevent future transfer of DOT-Airport revenues in satisfaction of the state's constitutional obligation to OHA.

Section 8(d) of the Forgiveness Act clarifies that the restriction on airport revenues does not affect the State's trust obligations to Native Hawaiians; the Forgiveness Act only prohibits the state from using airport revenues to satisfy those obligations. In 2001 and 2006, the Hawai'i Supreme Court twice reaffirmed the state's obligation to Native Hawaiians and found it "incumbent on the legislature to enact legislation that gives effect to the rights of native Hawaiians to benefit from the ceded lands trust." Office of Hawaiian Affairs, et al. v. State of Hawaii, 96 Haw. 388, 401, 31 P.3d 901, 914 (2001) (OHA I); Office of Hawaiian Affairs, et al. v. State of Hawaii, 110 Haw. 338, 366, 133 P.3d 767, 795 (2006) (OHA II).

Accordingly, the Forgiveness Act, OHA I, and OHA II clarify that the state continues to have an obligation to OHA, despite the inability to use airport revenue to satisfy the obligation, and it is incumbent on the legislature to effectuate the state's obligation. OHA respectfully requests that the legislature continue to work with OHA to satisfy the state's constitutional obligation, including supporting OHA's efforts to obtain and review financial information relating to receipts from the use of land within the public land trust.

Mahalo for the opportunity to testify on this important measure.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 19, 2013 10:22 AM  
**To:** PSMTestimony  
**Cc:** souleelko@gmail.com  
**Subject:** Submitted testimony for SCR51 on Mar 20, 2013 13:15PM  
**Attachments:** SCR51ceded land.doc

**SCR51**

Submitted on: 3/19/2013

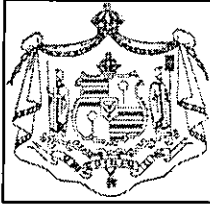
Testimony for PSM/TIA/THA on Mar 20, 2013 13:15PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Soulee L.K.O. Stroud	Association of Hawaiian Civic Clubs	Support	Yes

**Comments:**

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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## **Association of Hawaiian Civic Clubs**

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

**JOINT SENATE COMMITTEES ON  
PUBLIC SAFETY, INTERGOVERNMENTAL & MILITARY AFFAIRS;  
TRANSPORTATION AND INTERNATIONAL AFFAIRS; and  
TOURISM AND HAWAIIAN AFFAIRS**

**SENATE CONCURRENT RESOLUTION 51/SENATE RESOLUTION 29**

**REQUESTING THE UNITED STATES CONGRESS TO REPEAL SECTION 340 OF  
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REVENUE TO THE OFFICE OF HAWAIIAN AFFAIRS AND TO AFFIRMATIVELY  
AUTHORIZE THE HAWAII STATE DEPARTMENT OF TRANSPORTATION  
TO TRANSFER A PORTION OF THE AIRPORT REVENUES TO  
THE OFFICE OF HAWAIIAN AFFAIRS**

Wednesday, March 20, 2013; 1:15pm; Room 224

Aloha Chairman Espero, Chairman English and Chairman Galuteria of the joint Senate Committees hearing SCR51/SR29 requesting repeal of the section of Public Law 105-66 that prohibits the transfer of revenue from the use of ceded lands at Honolulu International Airport to the Office of Hawaiian Affairs and further, that asks the U.S Congress to approve a transfer of airport revenues to the Office of Hawaiian Affairs.

The Association of Hawaiian Civic Clubs has long supported the transfer of a portion of the revenue from the use of ceded lands to the Office of Hawaiian Affairs, regardless of whether those lands are being utilized by Federal, State or County entities.

When Hawaii was annexed in 1898, the Republic of Hawaii ceded approximately 1.75 million acres of Government and Crown Lands to the US. The Government and Crown Lands had been set aside by Kamehameha III in 1848 for the benefit of the chiefs and people. The Crown Lands were reserved to the sovereign, provided a source of the income and support for the crown and, pursuant to an 1865 act, were made inalienable. This means that the lands were held by the sovereign on behalf of the gods and for the



benefit of all. At the time of annexation, the United States implicitly recognized the trust nature of the Government and Crown Lands.

The Joint Resolution annexing Hawaii to the US "ceded and transferred 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." Existing federal laws dealing with public lands were not made applicable to lands in Hawaii.

Instead, the Joint Resolution stated that congress would enact "special laws for the management and disposition of" Hawaii's public lands.

Another section of the Joint Resolution provided that: " All revenues from or proceeds of the public lands, except as regards to such part thereof as may be used or occupied for the civil, military, or naval purposes of the US....shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes. " (Joint Resolution, 1898)

In an 1899 opinion, the US Attorney General interpreted this language to mean "a special trust, limiting the revenue from proceeds of the same to the uses of the inhabitants of the Hawaiian Islands for educational and other purposes. " (22 Op. Att'y Gen. 574 (1899).

While the Federal government has the ability to supersede State laws regarding airport revenues, it has never been freed of the overriding special trust responsibility to the people of Hawaii who occupied these islands at the time of the annexation of Hawaii.

We recognize that the Office of Hawaiian Affairs too, has a special trust responsibility to Native Hawaiians and as such, we continue to advocate for the justice promised to our kupuna, for benefits derived from Crown and Government lands.

We ask that you support SCR 51/SR 29 as another step towards the fragile epitaph we construct for our kupuna who wait for justice. Mahalo for allowing me to testify in support today.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 18, 2013 6:35 PM  
**To:** PSMTestimony  
**Cc:** tabraham08@gmail.com  
**Subject:** Submitted testimony for SR29 on Mar 20, 2013 13:15PM

**SR29**

Submitted on: 3/18/2013

Testimony for PSM/TIA/THA on Mar 20, 2013 13:15PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Troy Abraham	Individual	Support	No

Comments: I support passage of bill so portion of airline revenue can be help to fund hawaiian affairs so they get funds to educate public of hawaiian legacy and preserve the hawaiian legacy for generations to come.

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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