

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
WATER & LAND**

**Friday, February 10, 2017
9:00 AM
State Capitol, Room 325**

**In consideration of
HOUSE BILL 622
RELATING TO PUBLIC TRUST LAND**

House Bill 622 proposes to authorize the Chairperson of the Board of Land and Natural Resources to transfer public land trust funds to the Kahoolawe Rehabilitation Trust Fund. The measure also proposes to authorize the Office of Hawaiian Affairs (OHA) to expend public land trust funds for purposes consistent with those of the Kahoolawe Rehabilitation Trust Fund. **The Department of Land and Natural Resources (Department) appreciates the intent of this bill, but respectfully opposes it pending the outcome of larger state discussions regarding OHA funding.**

Pursuant to Act 178, Session Laws of Hawaii 2006, the annual payment to OHA from the use and disposition of ceded lands is currently fixed at \$15.1 million per year. However, in recent years there have been various attempts to increase that amount. The Department understands that a task force has been convened to examine the potential of raising the amount of the annual payment to OHA, as much as doubling the amount to \$30 million per year. Additionally, there have been attempts in past legislative sessions that have proposed to increase the ceded land payment amount to OHA from the fixed annual \$15.1 million to a flat 20% of gross receipts from the use or disposition of ceded lands by all state departments and agencies. Those past measures did not take into account that some receipts are prohibited by law from being transferred to OHA, such as those received by the Airports Division of the Department of Transportation, or are otherwise used to fulfill one of the other trust purposes under Section 5(f) of The Admission Act. 20% of Airport ceded land revenues would result in the State having to come up with another \$14 million dollars. See 2017 Act 178 Report, Summary of Receipts. In other words, there would be "shortage" of about \$14 million after all the other agencies pay OHA 20% of their public land trust proceeds.

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
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

Considering the significant fiscal implications of the foregoing, the Department has serious reservations about additional designations for the use of public land trust revenues at this time, but instead would respectfully suggest an alternative source of funding such as general fund appropriations to the Kaho‘olawe Rehabilitation Trust Fund as deemed appropriate.

Finally, the measure would set a dubious precedent, allowing for sizable expenditures outside of a request through the Executive Budget. This would result in bypassing the customary oversight and prioritization authority delegated to the Department of Budget and Finance, as well as the legislative budget committees. Furthermore, this exemption would only apply to a single entity attached administratively to the Department, the Kaho‘olawe Island Reserve Commission (Commission), while other Department divisions, as well as other state agencies, would still be subject to the standard budget requests. The Department notes the inclusion of a general fund appropriation of \$1,065,147.00 in each of Fiscal Years 2017-2018 and 2018-2019 to fund 15 full time temporary positions and cover operating expenses in the Administration’s Biennium Budget request. The Department appreciates and supports the appropriation of general fund revenues to the Commission.

Thank you for the opportunity to comment on this measure.



HB622
RELATING TO NATIVE HAWAIIAN RESOURCES
House Committee on Water & Land

February 10, 2017

9:00 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) Beneficiary Advocacy and Empowerment Committee will recommend that the Board of Trustees **OPPOSE** HB622, which may arbitrarily prioritize the use of public land trust revenues set aside for the betterment of native Hawaiians.

Commendably, this bill seeks to facilitate the continuing preservation, restoration, and appropriate use of the Kaho‘olawe Island Reserve.

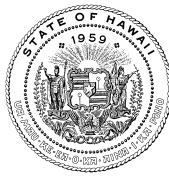
Kaho‘olawe, a kinolau of Kanaloa, remains a piko of Hawaiian culture, yet still retains visible scars from decades of previous mismanagement. Kaho‘olawe was critical to the Hawaiian cultural renaissance and continues to serve as an integral educational center for traditional navigation, hula, natural resource management and other cultural traditions and disciplines. In light of this, OHA has provided funding over the years to the Protect Kaho‘olawe ‘Ohana, including a current \$129,000 grant to facilitate cultural practitioner trips to the island to conduct Makahiki ceremonies, document kupuna fishing knowledge, and host workdays, which involve environmental restoration projects. In addition, OHA has recently assisted KIRC with navigating the congressional appropriation request process, and we understand that KIRC has also submitted an OHA grant proposal that is currently pending review.

Unfortunately, the funding mechanism in Section 2 of this bill could undermine OHA’s constitutional right to a pro rata share of the public land trust. Section 2 authorizes the BLNR chair to transfer to the Kaho‘olawe Rehabilitation Trust Fund up to \$3 million annually from DLNR’s “public land trust accounts set aside . . . for the betterment of native Hawaiians.” While it is unclear precisely which accounts would be involved, Section 2 risks being interpreted in a way that could reduce the annual trust moneys transferred to OHA, if and when the \$15.1 million cap on OHA’s pro rata share of public land trust revenues is lifted or revisited. Furthermore, Section 4 of this measure would seemingly elevate the needs of KIRC to a higher status than the plethora of other Hawaiian needs that compete for OHA’s public land trust funds, including housing, education, health, income, and the protection and preservation of ‘āina and cultural practices across Ka Pae ‘Āina Hawai‘i.

Accordingly, OHA urges the Committee to **HOLD** this measure. Mahalo for the opportunity to testify.

DAVID Y. IGE
GOVERNOR

LATE



WESLEY K. MACHIDA
DIRECTOR

LAUREL A. JOHNSTON
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAII
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ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY
TESTIMONY BY WESLEY K. MACHIDA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON WATER AND LAND
ON
HOUSE BILL NO. 622

February 10, 2017
9:00 a.m.
Room 325

RELATING TO THE PUBLIC TRUST LAND

House Bill (H.B.) No. 622 authorizes the Board of Land and Natural Resources Chairperson to transfer public land trust funds to the Kahoolawe Rehabilitation Trust Fund not to exceed an annual amount of \$3,000,000. The bill authorizes the Office of Hawaiian Affairs to expend the public land trust funds for purposes consistent with the Kahoolawe Island Reserve Trust Fund.

The Department of Budget and Finance offers the following comments. This proposal may be premature due to ongoing discussions by the Public Land Trust Negotiating Committee established during the 2016 legislative session. Further, allowing the Board of Land and Natural Resources to direct funds to the Kahoolawe Island Reserve Commission circumvents the Executive and Legislative budget process.

Thank you for your consideration of our comments.



BEFORE THE HOUSE COMMITTEE ON WATER & LAND

February 10, 2017

House Bill No. 622

Relating to Native Hawaiian Resources

Aloha Chair Yamane, Vice Chair Kong and Members of the Committee:

The Ka Lāhui Hawai‘i Political Action Committee (KPAC) affirms and defends our Hawaiian peoples' right to over 1.8 million acres of our national lands.

KPAC submits the following testimony in opposition to HB 622. This bill would authorize the BLNR Chairperson to transfer public land trust funds to the Kahoolawe Rehabilitation Trust Fund and authorizes OHA to expend public land trust funds for purposes consistent with those of the Kahoolawe Rehabilitation Trust Fund. The proposal to utilize public land trust funds for the US military's failure to clean up Kahoolawe directly contradicts its intended purpose as detailed below and could also potentially be determined to be a breach of trust.

By way of background, Professor Williamson Chang of the UH Law School has detailed his analysis that the Joint Resolution was incapable of acquiring Hawaii at http://blog.hawaii.edu/aplpj/files/2015/09/APLPJ_16_2_Chang.pdf. Despite this analysis, the former Crown and government lands of the Kingdom of Hawaii were illegally transferred to the US and as a condition of Statehood was transferred to the State of Hawaii to be held as a public trust for 5 purposes including the betterment of the conditions of native Hawaiians as defined in the Hawaiian Homes Commission Act, 1920. The Admissions Act further states that any other object besides the 5 purposes shall constitute a breach of trust for which suit may be brought by the United States. The Article XII Constitutional provisions further establish that the lands are held as a public trust for native Hawaiians as defined in the Hawaiian Homes Commission Act, 1920 and should be used solely for that purpose.

Respectfully Submitted,

Healani Sonoda-Pale
KPAC Chair

kong2 - Crystal

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 7, 2017 7:11 PM
To: waltestimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for HB622 on Feb 10, 2017 09:00AM*

HB622

Submitted on: 2/7/2017

Testimony for WAL on Feb 10, 2017 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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HB622

Submitted on: 2/8/2017

Testimony for WAL on Feb 10, 2017 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Kama Hopkins	Individual	Oppose	No

Comments:

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