



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

Testimony of **Ford Fuchigami**
Administrative Director, Office of the Governor

Before the
Senate Committee on Ways and Means
February 23, 2018
10:30 a.m., Conference Room 211

In consideration of
Senate Bill No. 2136, SD 1
**RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA
SHARE OF PUBLIC LAND TRUST FUNDS.**

Chair Dela Cruz, Vice Chair Keith-Agaran, and committee members:

Thank you for the opportunity to provide comments with **strong concerns** to **Senate Bill 2136, SD 1**. The Department of Budget and Finance as well as many executive departments still require more information to determine the full impact of this bill on their programs.

The Office of the Governor defers specific comments to testimony submitted separately by the Department of Budget and Finance and other departments impacted by this measure.

Thank you for the opportunity to submit testimony.

DAVID Y. IGE
Governor

DOUGLAS S. CHIN
Lt. Governor



State of Hawaii
DEPARTMENT OF AGRICULTURE
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SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER
Deputy to the Chairperson

**TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE SENATE COMMITTEE ON WAYS & MEANS

**FEBRUARY 23, 2018
10:30 A.M.
CONFERENCE ROOM 211**

**SENATE BILL NO. 2136 SD1
RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA
SHARE OF PUBLIC LAND TRUST FUNDS**

Chairperson Dela Cruz and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 2136 SD1. This bill establishes a blank amount as the office of Hawaiian affairs' pro rata share of the public land trust and transfers a blank amount less certain funds to the office of Hawaiian affairs for underpayment of the public land trust funds for 7/1/12 to 6/30/18. The bill requires the department of budget and finance to provide an annual accounting of receipts from lands described in section 5(f) of the Admissions Act and establishes a committee to recommend the annual amount of the income and proceeds from the public land trust that the office of Hawaiian affairs shall receive annually. The Department offers comments with strong concerns on portions of this bill.

SB2136 SD1 seeks to increase the pro rata share of all State departments to OHA for ceded lands revenues by more than 15% over and above the current 20% allocation. DOA has strong concerns with this increase as being excessive as they pertain to the department's agricultural mission both on public trust equity and pragmatic grounds. OHA's entitlement to receive 20% of the ceded lands revenue is derived from the fact that the mandated benefits to native Hawaiians and Hawaiians is one of five public trust purposes protected by the Hawaii State Constitution and Hawaii



Revised Statutes. As such, a 20% share of the ceded lands revenues is appropriate and in accord with the mandate. Agriculture is also one of the five protected public trust purposes. Increasing the burden on DOA for compensating OHA without considering the ongoing and historical fact that DOA operates with one of the smallest operational budgets at barely breakeven levels, seriously undermines its Constitutional mandate to support and promote agriculture in Hawaii. DOA's agricultural park and non-agricultural park programs operate by special funds that are primarily derived from low agricultural lease rents and fees. Unlike other uses of public lands, those under the Department's jurisdiction are limited to agricultural use and the corresponding lower rental values are reflected in that distinction. Any increased pro rata share would require raising lease rents beyond levels supported by independently appraised values for agricultural uses. The resulting imbalance in revenues and operating expenses will result in growing operational deficits on an annual basis that cannot be sustained by the Department.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
Governor

DOUGLAS S. CHIN
Lt. Governor



JAMES J. NAKATANI
Executive Director

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

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TESTIMONY OF JAMES J. NAKATANI
EXECUTIVE DIRECTOR
AGRIBUSINESS DEVELOPMENT CORPORATION

BEFORE THE COMMITTEE ON WAYS AND MEANS

Friday, February 23, 2018
10:30 a.m.

SENATE BILL NO. 2136, SD 1
RELATING TO INCREASING THE OFFICE OF HAWAIIAN
AFFAIRS' PRO RATA SHARE OF PUBLIC LAND TRUST FUNDS

Chairperson Dela Cruz and Members of the Committee:

My name is James Nakatani, Executive Director of the Agribusiness Development Corporation ("ADC"). The ADC has **comments with strong concerns** over portions of Senate Bill No. 2136, SD 1 which proposes to establish a new interim amount representing twenty percent of the gross revenue realized from public trust lands, and to, among other things, establish and require the payment of amounts deemed to have been underpaid to the Office of Hawaiian Affairs ("OHA") since 2012.

The ADC is an agency attached to the Hawaii Department of Agriculture tasked with transitioning former plantation lands and water systems for diversified agriculture and providing solutions to certain bottleneck issues facing today's agriculture industry. It survives primarily on revolving funds into which are deposited all funds available to it, including funds from public trust lands.

In a spreadsheet of public trust land payments made in the fiscal year 2016 provided by the Department of Budget and Finance, ADC has already paid twenty

percent (20%) of its gross revenues to OHA. If ADC must pay more to supplement past years, it will end up paying about thirty five (35%) of its gross revenues for the fiscal year, 2016, alone. Those funds have been spent. ADC's revolving funds pays for its salaries, much of its contract obligations, its utility and other operating expenses. ADC will not have sufficient funds to pay thirty-five percent (35%) of its revenues into the trust fund for the past 4 fiscal years.

Thank you for the opportunity to testify.



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

DAVID Y. IGE
GOVERNOR

LUIS P. SALAVERIA
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

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Statement of
Luis P. Salaveria
Director

Department of Business, Economic Development, and Tourism
before the

SENATE COMMITTEE ON WAYS AND MEANS

Friday, February 23, 2018
10:30 AM

State Capitol, Conference Room 211

in consideration of

SB 2136, SD 1

RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF PUBLIC LAND TRUST FUNDS.

Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Senate
Committee on Ways and Means.

The Department of Business, Economic Development, and Tourism (DBEDT) **has comments with strong concerns** on this bill because of its projected financial impact on programs under DBEDT. Specifically, this measure will adversely impact the Foreign-Trade Zone (FTZ) program which is solely special funded and takes no funds from the state's general fund. Rather, it relies exclusively on the revenues it generates to sustain ongoing operations.

Should SB2136, SD1 pass, the FTZ would need to greatly increase its rates in order to generate sufficient revenue to sustain operations. A rate increase would affect current and future clients of the FTZ, making the program less attractive and cause a reduction in the number of clients participating in the program. This would lead to a loss in overall revenue and would severely stress the program's ability to meet its financial obligations. In order to continue operations, the program would then need to rely on general funds to offset any deficit caused by the revenues transferred to OHA through this measure.

Thank you for the opportunity to submit testimony on this bill.



NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY

An Authority of the State of Hawaii attached to the Department of Business, Economic Development & Tourism



Statement of
Gregory P. Barbour
Executive Director
Natural Energy Laboratory of Hawaii Authority
before the

SENATE COMMITTEE ON WAYS AND MEANS

Friday, February 23, 2018
10:30 am
State Capitol, Conference Room 211

in consideration of

SB 2136 SD1 RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF PUBLIC LAND TRUST FUNDS..

The Natural Energy Laboratory of Hawaii Authority (NELHA) is pleased to offer comments on SB 2136 S.D. 1 relating to OHA's pro rata share of public land trust funds. We have serious concerns regarding this measure due to projected financial impact on our agency.

As you know, NELHA has worked very hard over the past 10 years to become self-sufficient and not rely on general funds for our livelihood. This bill will adversely impact our ability to sustain ongoing operations.

If this measure is adopted, NELHA will need to increase its land rent significantly to maintain operations. Increasing lease rents will put them above market rates and we are very concerned that this will initiate a dangerous downward spiral in our revenues with existing tenants leaving the park and finding less expensive property in Kona.

In order to continue operations at current levels, NELHA will need to rely on general funds to offset any deficit caused by the revenues transferred to OHA through this measure.

Thank you for the opportunity to offer these comments.



HAWAII COMMUNITY
DEVELOPMENT AUTHORITY



KAKAAKO
KALAELOA

David Y. Ige
Governor

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STATEMENT OF

GARETT KAMEMOTO, INTERIM EXECUTIVE DIRECTOR
HAWAII COMMUNITY DEVELOPMENT AUTHORITY

BEFORE THE
SENATE COMMITTEE ON WAYS AND MEANS

Friday, February 23, 2018
10:30 a.m.
State Capitol, Conference Room 211

in consideration, of
SB 2136, SD1

**RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS'
PRO RATA SHARE OF PUBLIC LAND TRUST FUNDS.**

Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the committee.

The Hawaii Community Development Authority (HCDA) has not yet taken a position on this bill. However, as the interim executive director I appreciate the opportunity to provide **comments** on SB 2136, SD1.

HCDA appreciates initiatives to better the lives of native Hawaiians, which can strengthen the state of Hawaii. However, we are concerned about the effect this bill will have on HCDA's ability to carry out its mission.

HCDA lost approximately \$2 million in annual revenue with the transfer of about 30 acres of Kakaako Makai property from HCDA to the Office of Hawaiian Affairs, and our Leasing and Management Fund can no longer cover expenses incurred by HCDA including park security and repair expenses.

If the pro rata share is set at \$35 million, we are concerned that our share will increase by 35 percent, making us more dependent on General Funds, and less able to quickly react if major repairs must be made to public facilities in the case of an emergency if our funds are depleted.

Thank you for the opportunity to provide comments on this bill.

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 Senate Committee on
WAYS AND MEANS**

**Friday, February 23, 2018
10:30 AM
State Capitol, Conference Room 211**

**In consideration of
SENATE BILL 2136, SENATE DRAFT 1
RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA
SHARE OF PUBLIC LAND TRUST FUNDS**

Senate Bill 2136, Senate Draft 1 proposes to: 1) establish a blank amount as the Office of Hawaiian Affairs' (OHA) pro rata share of the public land trust, 2) transfer a blank amount less certain funds to OHA for an alleged "underpayment"¹ of the public land trust funds from July 1, 2012 to June 30, 2018, 3) require the Department of Budget and Finance to provide an annual accounting of receipts from lands described in section 5(f) of the Admissions Act, and 4) establish a committee to recommend the annual amount of the income and proceeds from the public land trust that OHA receives annually. **The Department of Land and Natural Resources (Department) has strong concerns with this measure because of the financial impact on the Department and offers the following comments.**

Under this measure, the Department estimates that it could be responsible to pay between \$4 to 5 million per year in addition to what is already currently paid to OHA. By comparison, the Department's total budget is approximately \$138 million, about 1% of the total State budget. Due to ceded land revenue supporting its operations, the Department receives very little general fund support totaling only 0.5% of the State's general fund budget. This bill could result in OHA being paid as much as 7% of the Department's total budget. This would significantly impact the Department's financial resources and its ability to fulfill its mission benefitting the public, including Native Hawaiians. For Fiscal Year 2016 Land Division support to other divisions totaled approximately \$4.3 million, which were used to support numerous Department natural resource management programs.

The revenues collected by the Land Division cover the entire annual operating budget for the Land Division, the Office of Conservation and Coastal Lands, the Dam Safety program, and the

¹ The author of the bill refers to OHA as being underpaid by the State. In fact, the State paid to OHA the required \$15.1 million dollars under Act 178 (SLH 2006), including those years from July 1, 2012 to June 30, 2018.

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

ROBERT K. MASUDA
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

Geothermal program. The revenues also fund other positions within the Department such as five (5) positions within the Commission on Water Resource Management, and provide funding support to the Division of State Parks and various resource protection programs administered by the Division of Forestry and Wildlife such as the protection of threatened and endangered species, removal of invasive species, wildland firefighting and lifeguard services. Revenues collected by other divisions have supported watershed protection, preservation of cultural and historical sites and public recreational resources. In addition, the Department has provided lands to other agencies in support of a variety of agricultural, educational, transportation and affordable housing projects, often at the expense of generating revenue to support its own programs. These collective efforts have contributed significantly to the betterment of native Hawaiians as well as the general public, in excess of the revenues paid to OHA.

As a result of the settlement with OHA, OHA no longer receives a percentage of actual ceded land revenues received by the State, but instead has received an annual amount fixed at \$15.1 million. In recent years, agency payments of 20 % ceded land revenues to OHA have exceeded the fixed amount of \$15.1 million. In these instances, OHA is required to return the excess funds which are then held in a trust holding account. Annual payments in fiscal year 2016 totaled \$18,147,269.55, and in fiscal year 2017 totaled \$20,226,502.90. Historically when there has been a revenue shortage in arriving at the \$15.1 million yearly amount, it has been made up solely by funds of the Department's Land Division.

The Department appreciates the amendments to the bill to delete a specific payment amount in order to foster further evaluation and discussion. However, the Department is concerned that the bill now proposes to require that any difference between the new required payment amount and the amount of receipts transferred shall be made up by the agencies by transferring an equal percentage of its receipts from that portion of receipts from the use, sale, lease, or other disposition of lands within the public land trust. Although this provision would appear to have State agencies bear the burdens of additional payment equally, the result would actually be a disproportionate impact on the Department. The Department generates a greater portion of ceded land revenues than most other state agencies and consequently is more reliant on ceded land revenues for operating funds than most other State agencies, in lieu of general fund support.

In fiscal year 2017, the Land Division alone collected approximately \$12 million in total revenue, and the Department in its entirety collected approximately \$28 million. By comparison no other State agency outside of the Department of Transportation's Harbors and Airports Divisions reported gross receipt amounts greater than \$7 million. Additionally, half of the agencies reported ceded land receipts of less than \$2 million. Therefore, under this bill the Department would be one of a select few agencies burdened with the responsibility for payment of any increase in annual payments to OHA², which would impose a significant financial burden upon the Department and its natural, recreational and historical resource protection programs.

In examining the language of the bill, it appears that the increase is intended to recoup a share of revenues generated by the airports, of which payment to OHA was prohibited by the Department of Transportation Appropriations Act of 1998, Public Law 105-66. This federal law is supreme

² The Department notes that both the previous draft of this bill and the House companion measure require a fixed annual payment of \$35 million to OHA.

law of the land and supersedes any inconsistent state law. Assuming that this is the purpose of the bill, it is a misguided attempt as the resulting impact would be to harm programs that serve all the residents of Hawaii, including native Hawaiians, such as natural resource management, support of local agriculture, affordable housing development, public health services and public education. If OHA truly believes Public Law 105-66 is so egregious and unconscionable because it pillages what is rightfully belonging to only the native Hawaiians, then the Department respectfully suggests that OHA work with the State's congressional delegation to pursue a solution through an amendment of Public Law 105-66.³

Finally, in regards to SECTION 7 of the bill, the Department opposes the public land trust revenues committee to the extent the Department is forced to bear the administrative costs of the committee without any supporting appropriation. The Department would be forced to either dedicate limited personnel resources to support the committee, or hire additional staff. Additionally, it is unknown as to any additional expenses that committee may incur that the Department would be responsible for. Furthermore, given that the Department has no representation on the committee, it would be more appropriate that the committee be placed administratively with the offices of one of its members.

Thank you for the opportunity to testify on this measure.

³ In fiscal year 2017, the State's airports generated approximately \$84.67 million in ceded land revenues, 20% of which would represent an additional payment to OHA of almost \$17 million, in addition to the \$15.1 million currently being paid.



SB2136 SD1
RELATING TO INCREASING THE PAYMENT AMOUNT FOR THE OFFICE OF HAWAIIAN
AFFAIRS' SHARE OF THE PUBLIC LAND TRUST
Senate Committee on Ways and Means

February 23, 2018

10:30 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) **STRONGLY SUPPORTS** SB2136 SD1, which is a bill in OHA's 2018 Legislative Package. This measure would update the amount set aside annually for Native Hawaiians as their constitutional share of the income and proceeds from the Public Land Trust. Specifically, SB2136 SD1 would update Native Hawaiians' annual share of the Public Land Trust; transfer to OHA a lump sum amount that should have been set aside for Native Hawaiians as their 20% share of Public Land Trust receipts over the past six years; continue the state agency receipt reporting requirements established under Act 178 (Reg. Sess. 2006); and convene a Public Land Trust Revenues Committee every six years to make recommendations as to what amount should constitute Native Hawaiians' fair share of the Public Land Trust.

The Hawai'i Admission Act and the State Constitution established the Public Land Trust for the betterment of the conditions of native Hawaiians and for the general public. The Public Land Trust comprises over one million acres of former government and crown land of the Kingdom of Hawai'i, seized as part of the unlawful overthrow of the Kingdom. The Hawai'i Constitution entrusts OHA with the responsibility to manage and administer these funds. State law specifies that 20% of all funds from the Trust should be set aside for expenditure by OHA.

After decades of disagreement, in 2006, OHA and the state set an interim annual amount of \$15.1 million, to be transferred to OHA as a reflection of Native Hawaiians' share, "until further action is taken by the legislature." Furthermore, the state was to compile annual reports on all receipts generated from the Public Land Trust, to provide better data that could inform the intended revisiting of the interim annual amount.

With years of state data now available, it is time to revisit Native Hawaiians' annual share of Public Land Trust funds. Despite the temporary nature of the 2006 legislation, and despite years of state reporting showing that 20% of Public Land Trust receipts far exceeds the \$15.1 million set aside annually for Native Hawaiians, the "interim" \$15.1 million has not been updated in over a decade. Notably, a negotiating committee established by the Legislature in 2016 was only convened once by the Governor, and failed to make any meaningful progress in its work. OHA's obligations to its beneficiaries compel us to act now, to ensure proper Public Land Trust revenues are set aside to address our beneficiaries' needs.

OHA has a proven track record of investing in strategic, innovative, and award-winning programs and services, that seek and explore solutions to systemic issues and challenges faced by Native Hawaiians and other Hawai'i residents. OHA-funded programs, grants, and services have won national recognition for moving people off the streets and into housing; helped small businesses and entrepreneurs get started, stay afloat, and thrive; sent students to college and beyond; and engaged grassroots communities with government agencies and landowners in the stewardship and sustainability of our natural resources and environment.

Public Land Trust revenue is the primary source of funding for such programs, grants, and services that benefit both the Native Hawaiian and larger community. Raising the annual payment to OHA will support a wider range of strategic and innovative OHA-run and OHA-funded programs and activities specifically designed to improve the conditions of Native Hawaiians and Hawai'i in such vital areas as education, health, economic self-sufficiency, culture, land, governance, and access to justice.

The state's data and OHA's own research and analysis show that the temporary \$15.1 million annual amount set in Act 178 falls nowhere near 20% of the present-day receipts generated from the Public Land Trust. **Fairness and justice demands that the \$15.1 million annual amount be updated, to better reflect what 20% of Public Land Trust receipts actually amounts to.**

OHA understands that the annual and back due amounts in the original draft of this measure have been removed in the current draft. Accordingly, OHA respectfully requests the restoration of the amounts of \$35,000,000 and \$119,000,000, as Native Hawaiians' annual share of Public Land Trust receipts and the lump sum amount that should have been set aside for Native Hawaiians over the past six years, respectively. These amounts were calculated using state's own accounting and reporting data on Public Land Trust revenues and historically agreed upon definitions and methodologies. Accordingly the revenue streams used are historically undisputed as subject to Native Hawaiians' 20% share of the Public Land Trust.

The \$35 million amount represents 20% of receipts generated in state fiscal year 2015-2016 from the following undisputed revenue streams:

- Revenue sources that state agencies currently transfer to OHA,
- Revenue sources not currently transferred by state agencies to OHA due to accounting errors,
- Revenue sources inconsistently transferred by agencies (for example, an agency transfers receipts from one of its parking lots on Public Land Trust land but not from another lot on Public Land Trust land),
- Revenue sources not currently transferred to OHA even though the same agency has transferred receipts from the same source in the past, and
- Revenue sources not currently transferred to OHA, but which fall within historically agreed upon categories of revenues that have been transferred to OHA.

Although they fall within the categories listed above, at this time OHA has chosen to not include in the revised annual amount revenue streams from hospital patient fees generated from state hospitals on Public Land Trust land, or from residential unit rents and charges from state public housing on Public Land Trust land. Additionally, the \$35 million is only based on receipts that were identified during OHA's financial review, and does not include unknown receipts that were withheld by certain state agencies, namely the University of Hawai'i.

The lump sum back payment of \$119 million from state general funds was calculated by taking the difference between the \$35 million and the \$15.1 million OHA has been and currently receives, then multiplying the difference by six to represent the last six fiscal years that OHA has been underpaid.

Finally, this bill sets up a periodic, collaborative review process between the Legislature, Administration, and OHA to take place every six years, to better ensure that Native Hawaiians' share of Public Land Trust revenue remains up-to-date and consistent with the law.

We respectfully urge your committee to **PASS** this measure with the amounts included in SB2136. Mahalo nui loa for the opportunity to testify.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Ways and Means
February 23, 2018 at 10:30 a.m.

by
Kalbert K. Young
Vice President for Budget and Finance/Chief Financial Officer
University of Hawai'i System

SB 2136 SD1 – RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF PUBLIC LAND TRUST FUNDS

Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the committee:

Thank you for the opportunity to submit comments with strong concerns on SB 2136 SD1. The educational mission of the University of Hawai'i (UH), as set forth in Board of Regents Policy, includes embracing, as the only provider of public higher education in Hawai'i, its unique responsibilities to the indigenous people of Hawai'i and to Hawai'i's indigenous language and culture. To fulfill this responsibility, UH ensures active support for the participation of Native Hawaiians at the University and support vigorous programs of study and support for the Hawaiian language, history, and culture. That said, the UH has serious concerns with SB 2136 SD1 in its current form, on the basis that this measure promotes foreseeable increased fiscal impacts to the University and its students and programs in particular, as well as taxpayers more generally.

This bill replaces the annual fixed amount with a blank amount paid to the Office of Hawaiian Affairs (OHA) on an interim basis as its pro rata share of income and proceeds from the public land trust, with a blank amount for the annual share beginning in fiscal year 2018-2019 on State agencies to pay OHA including all "receipts for the use, sale, lease, or other disposition of the public land trust" on a quarterly basis. UH is concerned that the term "receipts" is not clearly defined or appropriately limited by SB 2136 SD1 as currently drafted, and may be construed to include UH funds such as student tuition and fees that are currently, and properly, excluded from the computation of amounts due from UH toward OHA's pro rata share of the public land trust. The term "receipts" may also imply gross receipts as opposed to net receipts thereby jeopardizing the financial stability of campus bookstores.

UH, as a public institution of higher education and also a beneficiary of the Public Land Trust, serves one of the express purposes, and in fact the first-mentioned purpose of the Public Land Trust established by the Admission Act. Under current law, as interpreted and applied by the Office of the Attorney General, receipts from the University's educational programs and ancillary services are not subject to apportionment to OHA. Such receipts include student tuition and fees, services of

educational departments, and student housing. The University also receives federal and other research grants and contracts, federal reimbursements of UH research overhead expenses, philanthropic gifts, and other funding streams, in addition to the support provided by the Legislature.

Currently, in accordance with past discussions with the Office of the Attorney General, OHA has been determined to be entitled to a pro rata share of specific types of University revenues as described in Conference Committee Report No. 101 to SB 2948, which became Act 178, Session Laws of Hawai'i (SLH) 2006. Recently, the University has made the following payments to OHA: FY 2015- 643,289.48; FY 2016- \$650,480.96; and FY 2017- \$620,302.18. Those revenue sources are: UH Mānoa and UH Hilo parking, faculty housing, non-student housing rentals, including food and vending machines, telephone commissions/collections, and UH Hilo Bookstore logo products, sundries but not books or school supply items.

UH acknowledges the requirements set forth by Act 178, SLH 2006, regarding OHA's allocated share of public land trust receipts. However, given recent positions taken by OHA, the University is deeply concerned that the use of the undefined term "receipts" in SB 2136 SD1 could lead to claims that other types of University funds are also subject to OHA's pro rata share. For example, increasing the pro rata share of \$15.1 million of existing revenues to OHA to \$35 million (as contemplated in the original SB 2136) would potentially increase the University's obligation to more than \$1.1 million. The difference would require funding from other University revenues and diminish funding for existing University educational programs. This would lead to potentially unmanageable financial impacts to the University, students, and taxpayers relating to all State services.

Thank you for your time and consideration.

SB-2136-SD-1

Submitted on: 2/22/2018 1:54:45 AM

Testimony for WAM on 2/23/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for OCC Legislative Priorities Committee, Democratic Party of Hawai'i	Support	No

Comments:

SB-2136-SD-1

Submitted on: 2/20/2018 10:38:03 PM

Testimony for WAM on 2/23/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Testifying for Ho'omanapono Political Action Committee (HPAC)	Support	Yes

Comments:

We continue to STRONGLY SUPPORT this bill. Mahalo.



Senate Committee on Ways and Means
Chair Donovan Dela Cruz, Vice Chair Gilbert Keith-Agaran

02/23/2018 10:30 AM Room 211
SB2136 SD1 – Relating to Increasing the Office Of Hawaiian Affairs' Pro Rata Share of Public
Land Trust Funds

TESTIMONY / COMMENTS
Corie Tanida, Executive Director, Common Cause Hawaii

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the committee:

Common Cause Hawaii offers comments SB2136 SD1 which would establish an unspecified amount as the Office of Hawaiian Affairs' (OHA) pro rata share of the public land trust, and among other things establish a committee to recommend the annual amount of income and proceeds from the public land trust that OHA shall receive annually.

We have no position on revenues that OHA receives from the public land trust. However, we are concerned that the public land trust committee, created by this bill, will not be subject to our Sunshine Laws. As OIP states on its website, the law is "intended to open up governmental processes to public scrutiny and participation by requiring government business to be conducted as transparently as possible."¹ We do not understand the reasoning for this exemption as it would curtail public participation, and urge you to subject this committee to the Sunshine Law (HRS Ch 92).

Thank you for the opportunity to offer testimony **on SB2136 SD1**.

¹ <http://oip.hawaii.gov/>

I am Angus Raff-Tierney, Legislative Committee Chair of the Society for Hawaiian Archaeology (SHA). We have over 150 members that include professional archaeologists and advocates of historic preservation in general. I am writing this testimony in **SUPPORT of SB2136**, which would seek to ensure that OHA's constitutional and statutory right to a pro rata share is more adequately reflected and that the state's Public Land Trust (PLT) obligations to Native Hawaiians are fulfilled, by: (1) Establishing \$35 million as an interim reflection of the 20% of PLT revenues that should be transferred annually to OHA; (2) Transferring \$119 million to OHA for underpaid PLT revenues between July 1, 2012 and June 30, 2018; (3) Requiring continued annual accounting of revenues from PLT lands; and (4) Convening a Public Land Trust Revenues Committee every six years, to review and make recommendations regarding OHA's portion of PLT revenues.

Archaeologists, on behalf of their clients, are mandated to consult with OHA whenever we encounter native Hawaiian burials. Without the funding that OHA is due they cannot be expected to fulfill this consultation and their other duties properly and timely. When working on issues involving ancestral remains it is imperative that absolute care is taken and that all parties can properly come to the table to affect the proper treatment. Otherwise, as has happened many times in the past, mistakes are made impacting native Hawaiians, other archaeologists, and the development communities. Raising the annual payment to \$35 million will support their consultation efforts along with a wider range of strategic and innovative programs and activities designed to improve the well-being and conditions of Native Hawaiians and Hawai'i. Therefore, I respectfully urge the Committee to **PASS SB2136**.



Native Hawaiian Chamber of Commerce

P.O. Box 597
Honolulu, HI 96809

nativehawaiianchamberofcommerce.org nhccoahu@gmail.com

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COMMITTEE ON WAYS AND MEANS
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

February 21, 2018

Re: SB2136 SD1 - RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF PUBLIC LAND TRUST FUNDS

Aloha Senator Dela Cruz, Chair a me Senator Keith-Agaran, Vice Chair;

The Native Hawaiian Chamber of Commerce strongly supports SB2136 SD1, which would seek to ensure that OHA's constitutional and statutory right to a pro rata share is more adequately reflected and that the state's Public Land Trust (PLT) obligations to Native Hawaiians are fulfilled, by: (1) Establishing \$35 million as an interim reflection of the 20% of PLT revenues that should be transferred annually to OHA; (2) Transferring \$119 million to OHA for underpaid PLT revenues between July 1, 2012 and June 30, 2018; (3) Requiring continued annual accounting of revenues from PLT lands; and (4) Convening a Public Land Trust Revenues Committee every six years, to review and make recommendations regarding OHA's portion of PLT revenues.

The Native Hawaiian Chamber of Commerce (NHCC) is made up of 300+ strong Native Hawaiian professionals and Native Hawaiian owned businesses. The mission of the NHCC is to connect and strengthen Native Hawaiian businesses, professions and communities by building on a foundation of relationships, resources and Hawaiian values.

It is the view of the Native Hawaiian Chamber of Commerce that adequate accounting of all obligations is in everyone's best interest. Hiding from obligations is never a Pono business or ethical approach. And the continual denial of such obligations is an affront the Native Hawaiian people and the Native Hawaiian Business Community. Money means business and

business in the Native Hawaiian Community is the kuleana of the Native Hawaiian Chamber of Commerce. What is good for Native Hawaiians is good for Native Hawaiian Business activity and is good for all of Hawaii.

The NHCC further notes that after years of talk and injustice, it is time to revisit Native Hawaiians' fair share of the PLT revenue. This revenue is the primary source of funding for programs, grants and services that benefit both Native Hawaiians, Native Hawaiian Businesses and the larger community. Raising the annual payment to \$35 million will support a wider range of strategic and innovative programs and activities designed to improve the well-being and conditions of Native Hawaiians, develop and encourage more Native Hawaiian entrepreneurship and thereby increase Native Hawaiian Businesses activities. Therefore, we respectfully urge the Committee to PASS SB2136 SD1.

Me ka 'oia'i'o,

A handwritten signature in black ink, appearing to read 'Ron Jarrett', with a long, sweeping horizontal stroke extending to the right.

Ron Jarrett
Chairman, Government Relations Committee,
Native Hawaiian Chamber of Commerce

SB-2136-SD-1

Submitted on: 2/21/2018 2:55:39 PM

Testimony for WAM on 2/23/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Taffi Wise	Testifying for Kanu o ka Aina	Support	No

Comments:

SB-2136-SD-1

Submitted on: 2/20/2018 11:29:46 PM

Testimony for WAM on 2/23/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Sandra C. Castell	Individual	Support	No

Comments:

SB-2136-SD-1

Submitted on: 2/21/2018 1:19:16 PM

Testimony for WAM on 2/23/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Individual	Support	Yes

Comments:

SB-2136-SD-1

Submitted on: 2/21/2018 10:31:32 AM

Testimony for WAM on 2/23/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kevin Chang	Individual	Support	No

Comments:

SB-2136-SD-1

Submitted on: 2/21/2018 1:52:55 PM

Testimony for WAM on 2/23/2018 10:30:00 AM

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

Comments:

Melody Kapilialoha MacKenzie, Esq.
579 Kāneʻapu Place ♦ Kailua, Hawaiʻi 96734
(808) 780-8236 ♦ melodykmackenzie@gmail.com

S.B. 2136, S.D. 1
Relating to Increasing the Office of Hawaiian Affairs’
Pro Rata Share of Public Land Trust Funds

COMMITTEE ON WAYS AND MEANS
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

Decision Making on Friday, February 23, 2018, at 10:30 a.m.

Mahalo for this opportunity to submit testimony in **support** of S.B. 2136, S.D.1, Relating to Increasing the Office of Hawaiian Affairs’ Pro Rata Share of Public Land Trust Funds. I am a professor at the William S. Richardson School of Law and the founding director of Ka Huli Ao Center for Excellence in Native Hawaiian Law. I submit this testimony, however, in my personal capacity as a private citizen and an attorney who has worked, litigated, and written extensively on Native Hawaiian legal controversies, and particularly on the Public Land Trust. Indeed, I was a member of the legal team that represented the Office of Hawaiian Affairs (OHA) in a major dispute with the State over the sale and alienation of trust lands.

In my classes, I teach, review, and analyze all of the constitutional provisions, statutes, and cases affecting the Public Land Trust and I believe the findings in this bill succinctly and accurately lay out this long and complicated history, as well as good faith efforts to give full effect to the constitutional and statutory requirements that a “pro rata” portion of the income and proceeds from the Public Land Trust go to OHA to benefit the Native Hawaiian community. As you know, in 1980, the Legislature set that pro rata share at twenty per cent (codified at Haw. Rev. Stat. § 10-13.5). Numerous questions immediately arose: What constituted income and proceeds? Should the calculation be based on gross or net income? Which lands should be included in the calculation – just those under the jurisdiction of the Dept. of Land and Natural Resources, or those held by other departments? Indeed, a major issue was determining exactly which state-held lands were part of the Public Land Trust.

After years of effort, including litigation and legislative initiatives, I am encouraged to see the progress that has been made in reaching a true and accurate determination of the pro rata share that should go to OHA. Since at least 2006, when the Legislature set OHA’s annual share at \$15.1 million as an interim measure, the relevant State departments have been required to and, for the most part, have complied in reporting their revenue from the Public Land Trust. As the bill notes, there are still unresolved and disputed issues, but the progress has been significant.

Based on the information compiled over these years as well as independent studies undertaken by OHA, the true pro rata share due to OHA can be calculated more accurately and with greater certainty. Although the subject matter committees reviewing this bill have amended the bill to delete the specific amount of \$35 million annually and the back payment of \$119 million requested by OHA, the amended bill is nevertheless a step forward because it recognizes that the amount OHA currently receives is not reflective of a true pro rata share.

Overall, the amended bill sets the stage for further discussions that will lead to justice for the Native Hawaiian community and to the State honoring its commitments – commitments made in both the State Constitution and in the 1980 legislation setting OHA’s pro rata share at twenty per cent. **Resolving this issue is one of the most impactful and important actions this Legislature could take.** It will result in increased opportunities for the Native Hawaiian community – funding for Hawaiian culture-focused and immersion schools, scholarships for Hawaiian students, greater emphasis on Hawaiian health and ola, support for many non-profits working to revitalize our ‘āina and restore wahi pana (storied places), help for Native Hawaiian businesses and start-ups, and funding for much needed housing opportunities.

I call upon this Committee and the Legislature as a whole to seek a resolution and keep the promise made forty years ago that a pro rata share of the income and proceeds from the Public Land Trust – lands that were originally the Crown and Government lands of the Hawaiian Kingdom – go to OHA to benefit the Native Hawaiian community. Your action now would truly help to continue the journey on the path of justice.

Mahalo for the opportunity to present this testimony in **support** of S.B. 2136, S.D. 1.

From: [Presley Wann](#)
To: [WAM Testimony](#)
Subject: Please Pass SB2136 SD1
Date: Tuesday, February 20, 2018 8:14:49 PM

I STRONGLY SUPPORT SB2136 SD1, which would seek to ensure that OHA's constitutional and statutory right to a pro rata share is more adequately reflected and that the state's Public Land Trust (PLT) obligations to Native Hawaiians are fulfilled, by: (1) Establishing \$35 million as an interim reflection of the 20% of PLT revenues that should be transferred annually to OHA; (2) Transferring \$119 million to OHA for underpaid PLT revenues between July 1, 2012 and June 30, 2018; (3) Requiring continued annual accounting of revenues from PLT lands; and (4) Convening a Public Land Trust Revenues Committee every six years, to review and make recommendations regarding OHA's portion of PLT revenues.

After years of injustice, it is time to revisit Native Hawaiians' fair share of the PLT revenue. This revenue is the primary source of funding for programs, grants and services that benefit both Native Hawaiians and the larger community. Raising the annual payment to \$35 million will support a wider range of strategic and innovative programs and activities designed to improve the well-being and conditions of Native Hawaiians and Hawai'i. Therefore, I respectfully urge the Committee to PASS SB2136 SD1.

Mahalo Nui, Presley Wann, a Native Hawaiian
Sent from my iPhone

I STRONGLY SUPPORT SB2136 SD1, which would seek to ensure that OHA’s constitutional and statutory right to a pro rata share is more adequately reflected and that the state’s Public Land Trust (PLT) obligations to Native Hawaiians are fulfilled, by: (1) Establishing \$35 million as an interim reflection of the 20% of PLT revenues that should be transferred annually to OHA; (2) Transferring \$119 million to OHA for underpaid PLT revenues between July 1, 2012 and June 30, 2018; (3) Requiring continued annual accounting of revenues from PLT lands; and (4) Convening a Public Land Trust Revenues Committee every six years, to review and make recommendations regarding OHA’s portion of PLT revenues. After years of injustice, it is time to revisit Native Hawaiians’ fair share of the PLT revenue. This revenue is the primary source of funding for programs, grants and services that benefit both Native Hawaiians and the larger community. Raising the annual payment to \$35 million will support a wider range of strategic and innovative programs and activities designed to improve the well-being and conditions of Native Hawaiians and Hawai’i. Therefore, I respectfully urge the Committee to PASS SB2136 SD1.

Jayna Weatherwax	Madeline Neely	Jessica Fu	Kathy Giffard	Mehana Vaughan
Kathleen Papalimu	Presley Wann	Uilani Kapu	Barbara Barry	Paul Bucher
Hanalei Sun				

From: [T.R](#)
To: [WAM Testimony: Tiffany](#)
Subject: Please Pass SB2136 SD1
Date: Thursday, February 22, 2018 12:47:57 AM

I STRONGLY SUPPORT SB2136 SD1, which would seek to ensure that OHA's constitutional and statutory right to a pro rata share is more adequately reflected and that the state's Public Land Trust (PLT) obligations to Native Hawaiians are fulfilled, by: (1) Establishing \$35 million as an interim reflection of the 20% of PLT revenues that should be transferred annually to OHA; (2) Transferring \$119 million to OHA for underpaid PLT revenues between July 1, 2012 and June 30, 2018; (3) Requiring continued annual accounting of revenues from PLT lands; and (4) Convening a Public Land Trust Revenues Committee every six years, to review and make recommendations regarding OHA's portion of PLT revenues.

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[Sent from Yahoo Mail on Android](#)