



SB2136
**RELATING TO INCREASING THE PAYMENT AMOUNT FOR THE OFFICE OF HAWAIIAN
AFFAIRS' SHARE OF THE PUBLIC LAND TRUST**

Committees on Hawaiian Affairs, Water and Land, and Judiciary

February 1, 2018

1:45 p.m.

Room 016

The Office of Hawaiian Affairs (OHA) **STRONGLY SUPPORTS** SB2136, which is a bill in OHA's 2018 Legislative Package. This measure uses years of state accounting information, generated pursuant to Act 178 (Reg. Sess. 2006), to update the amount set aside annually for Native Hawaiians as their constitutional share of the income and proceeds from the Public Land Trust. Based on best available data from historically undisputed Public Land Trust revenue streams, SB2136 would update Native Hawaiians' annual share of the Public Land Trust as \$35 million; transfer to OHA a lump sum of \$119 million, as an 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 (2006); and convene a Public Land Trust Revenues Committee every six years to make recommendations on the amount of 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 Kingdom's unlawful overthrow. The Hawai'i Constitution entrusts OHA with the responsibility to manage and administer these funds. State law sets 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, for the purpose of revisiting the interim annual amount, informed by better data.

With state data now available, it is time to revisit Native Hawaiians' fair share from the State. 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. 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 address our beneficiaries' needs through proper funding.

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 \$35 million 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.**

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 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 in the revised annual amount. Additionally, the amount in SB2136 is only based on receipts that were identified during OHA's financial review, it 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.

Respectfully, we request that the committees correct a typographical error located on page 17, line 14 of SB2136, as follows:

(4) The ~~amount of funds~~ "account or fund . . ."

Also, to more adequately characterize the nature of the funds involved, OHA also respectfully requests the Committee to add a new section to this measure as follows:

SECTION ____.

"Any funds transferred pursuant to this Act shall be deemed income and proceeds from the public land trust, just as if the funds had been paid out of the income and proceeds from the public land trust pursuant to article XII, section 6 of the State Constitution."

We respectfully urge your committees to pass this measure, with the minor amendment and additional section as noted above. Mahalo nui loa for the opportunity to testify.



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

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

Before the
Senate Committee on Hawaiian Affairs
Senate Committee on Water and Land
Senate Committee on Judiciary

February 1, 2018
1:45 p.m., Conference Room 016

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

Chair Shimabukuro, Chair Rhoads, Chair Taniguchi, Vice Chair Galuteria, Vice Chair Gabbard and committee members:

The Office of the Governor defers to the comments from the Department of the Attorney General on this measure.

Thank you for the opportunity to submit testimony.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

S.B. NO. 2136, RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF PUBLIC LAND TRUST FUNDS.

BEFORE THE:

SENATE COMMITTEES ON HAWAIIAN AFFAIRS AND ON WATER AND LAND AND ON JUDICIARY

DATE: Thursday, February 1, 2018 **TIME:** 1:45 p.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Russell A. Suzuki, First Deputy Attorney General,
Charleen M. Aina or Donna H. Kalama, Deputy Attorney General

Chairs Shimabukuro, Rhoads, and Taniguchi and Members of the Committees:

The purpose of this bill is to increase the Office of Hawaiian Affairs' ("OHA") share of the income and proceeds from the use of land subject to the public trust under section 5(f) of the Admission Act, and article XII, sections 4 and 6, of the State Constitution, from \$15.1 million to \$35 million per year, effective as of July 1, 2012. The bill incorporates provisions of Act 178, Session Laws of Hawaii 2006, and Executive Order No. 06-06 to prescribe how state agencies are to transfer OHA's share of the income and proceeds to OHA going forward. It also appropriates \$119 million of general funds for OHA, and transfers the balance of funds in a holding account established by Executive Order No. 06-06 to OHA, to make up the difference between amounts transferred from July 1, 2012, through the current fiscal year.

Relying on its earlier decision in Trustees of OHA v. Yamasaki, 69 Haw. 154, 737 P.2d 446 (1987) ("Yamasaki"), and the provisions of article XII, sections 4 and 6, and article XVI, section 7, of the State Constitution, the Supreme Court in OHA v. State, 96 Hawai'i 388, 401, 31 P.3d 901, 914 (2001) ("OHA I"), held that only the Legislature can establish what OHA's share of the income and proceeds is, because that decision requires "policy determinations" that only the Legislature can make:

. . . the State's obligation to native Hawaiians is firmly established in our constitution. *How* the State satisfies that constitutional obligation

requires policy decisions that are primarily within the authority and expertise of the legislative branch. As such, it is incumbent upon the legislature to enact legislation that gives effect to the right of native Hawaiians to benefit from the ceded lands trust. See Haw. Const. art. XVI, § 7.

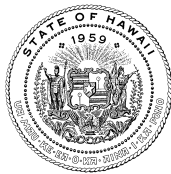
Thus, if OHA's share is to be increased, its request must be considered by the Legislature.

OHA's position and the amount of the share of the public land trust receipts it asks for, appears to be based on a calculus that applies 20 percent to all receipts that are collected from the use of all of those lands, although it is not yet clear whether this total does, or does not include patient services revenues collected by the Hawaii Health System Corporation or the State's two housing agencies. Because OHA's request would increase its share by more than 100 percent and has to impact the rents, fees, and charges that state agencies currently collect, it should be subjected to close scrutiny.

Questions as to whether OHA's share must include a portion of every receipt collected for the use of every parcel of ceded land still need to be addressed

Thank you for the opportunity to provide these comments.

DAVID Y. IGE
GOVERNOR



LAUREL A. JOHNSTON
ACTING DIRECTOR

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

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

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

WRITTEN ONLY
TESTIMONY BY LAUREL A. JOHNSTON
ACTING DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEES ON HAWAIIAN AFFAIRS, WATER AND LAND,
AND JUDICIARY
ON
SENATE BILL NO. 2136

February 1, 2018
1:45 p.m.
Room 016

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

This measure establishes \$35,000,000 as the Office of Hawaiian Affairs' (OHA) pro rata share of the public land trust; makes a \$119,000,000 general fund appropriation, less certain amounts to OHA for underpayment of the public land trust funds for July 1, 2012 to June 30, 2018; requires the Department of Land and Natural Resources 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 OHA shall receive annually.

The Department of Budget and Finance recognizes that it is appropriate to periodically review the amounts provided to OHA for the use of public land trust lands. However, we do not have sufficient information to comment on the appropriateness and reasonableness of amounts proposed in this measure at this time.

Thank you for your consideration of our comments.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committees on Hawaiian Affairs,
Water and Land,
and Judiciary

February 1, 2018 at 1:45 p.m.

by

Kalbert K. Young

Vice President for Budget and Finance/Chief Financial Officer
University of Hawai'i System

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

Chairs Shimabukuro, Rhoads, and Taniguchi, Vice Chairs Galuteria and Gabbard, and members of the committees:

Thank you for the opportunity to testify. 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 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 of \$15.1 million currently paid to the Office of Hawaiian Affairs on an interim basis as its pro rata share of income and proceeds from the public land trust, with a \$35,000,000 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 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 No. 2948, which became Act 178, SLH 2006. 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 and accepts its obligation to pay over OHA's allocated share of those items. However, given recent positions taken by OHA, the University is deeply concerned that the use of the undefined term "receipts" in SB 2136 could lead to claims that other types of University funds are also subject to OHA's pro rata share, leading to potentially complex and costly disputes and unforeseeable and unmanageable financial impacts to the university, students, and taxpayers relating to all State services.

Thank you for your time and consideration.

Professor Melody Kapilialoha MacKenzie
Ka Huli Ao Center for Excellence in Native Hawaiian Law
William S. Richardson School of Law, UH–Mānoa
2515 Dole Street, Honolulu, Hawai'i 96822

S.B. 2134
Relating to Training

COMMITTEE ON HAWAIIAN AFFAIRS
Senator Maile S.L. Shimabukuro, Chair
Senator Brickwood Galuteria, Vice Chair

COMMITTEE ON LABOR
Senator Jill N. Tokuda, Chair
Senator J. Kalani English, Vice Chair

COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS
Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair

Hearing on Thursday, February 1, 2018, at 1:45 p.m.

Mahalo for this opportunity to submit testimony in strong **support** of S.B. 2134, which expands the applicability of Act 169, Session Laws of Hawai'i 2015, to require that certain state and county officials attend the Native Hawaiian law training course, funded by the Office of Hawaiian Affairs (OHA). This training is necessary so that more key decision-makers will better understand their legal responsibilities to Native Hawaiians and their public trust duties.

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 have been the lead at Ka Huli Ao in working with OHA to establish and implement the training. We began this training initiative in 2013, before the passage of Act 169. Since 2013, Ka Huli Ao has conducted ten Native Hawaiian law trainings with almost 700 people in attendance. Although Act 169 specifically targets members of state boards, councils, and commissions, a number of state legislators, county councilmembers, and other decision-makers and staff have also attended the trainings.

The response to the training course has been overwhelmingly positive. As a result, Ka Huli Ao was invited to hold a training on Kaua'i for key state and county decision-makers. We were also honored to provide condensed training sessions to both the University of Hawai'i Board of Regents and the Governor's Cabinet. Finally, we have received requests from both Maui County and Hawai'i Island County to bring the training to those islands.

Another indication of the success of the training course has been the positive evaluations and feedback we have received from attendees. The evaluations from our most recent

December 2017 training indicate that 88% of those responding were *very satisfied* with the course. Furthermore, 77% of those responding felt that the course provided them with a better understanding of the state's legal and trust responsibilities. When asked to identify the most important "take-aways" from the December 2017 training, responses included:

- We all have a responsibility to protect our natural and cultural resources
- I am a trustee; all public natural resources are held in trust by the state for the benefit of the people
- [The] Public trust doctrine has a particular articulation in Hawaii
- There are no vested rights in water
- Native Hawaiian interests are everyone's interests
- Traditional & customary rights need to be clarified/brought into the 21st century
- Be proactive in dealing with iwi [Native Hawaiian ancestral remains] in light of climate change and environmental threats
- The law is still unclear and so black & white application is not yet possible
- Lawmakers and agencies must really understand the underlying laws and cultural history to make good decisions

We believe that the training courses have greatly increased the understanding of attendees and have given them the knowledge and tools to aid in making difficult decisions. Furthermore, the training course facilitates interactions and discussion between attendees, allowing them to share concerns and possible solutions with each other, thus helping to build common understanding and increased cooperation among different agencies and departments.

Our natural and cultural resources are irreplaceable. The state's duty to protect these resources is enshrined in our state constitution and other laws, and has been reaffirmed by our courts time and again. Expanding the training course requirement to include those identified in this bill will help to ensure that more key decision-makers have a better understanding of their obligations to Native Hawaiians and the public trust, especially in relation to traditional and customary rights, the public land trust, water, and iwi kūpuna.

Mahalo for this opportunity to express **strong support** for S.B. 2134.

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 Committees on
HAWAIIAN AFFAIRS
and
WATER AND LAND
And
JUDICIARY**

**Thursday, February 1, 2018
1:45 PM
State Capitol, Conference Room 016**

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

Senate Bill 2136 proposes to: 1) establish \$35,000,000 as the Office of Hawaiian Affairs' (OHA) pro rata share of the public land trust, 2) transfer \$119,000,000 less certain funds to OHA for underpayment of the public land trust funds from July 1, 2012 to June 30, 2018, 3) requires the Department of Land and Natural Resources to provide an annual accounting of receipts from lands described in section 5(f) of the Admissions Act, and 4) establishes 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 defers to the testimony prepared by the Department of the Attorney General representing the position of the Administration.**

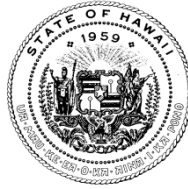
Thank you for the opportunity to testify on this measure.

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



Testimony by:
JADE T. BUTAY
INTERIM DIRECTOR

Deputy Directors
ROY CATALANI
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

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

February 1, 2018
1:45 p.m.
State Capitol, Room 016

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

Senate Committee on Hawaiian Affairs, Committee on Water and Land &
Committee on Judiciary

The Department of Transportation **opposes** this measure that establishes an interim measure to address the pro rata share of public land trust revenues to be paid to the Office of Hawaiian Affairs (OHA).

The Department of Transportation, through its Harbors Division, contributed \$13.5 million of the \$15.1 million transferred from the State to OHA in Fiscal Year 2017. The Harbors Division is a completely self-funded enterprise and contributes the largest portion, about 90%, to the public land trust revenues OHA receives and annually honors its obligation to transfer the appropriate sums owed. However, the Department of Transportation opposes this legislation because it is yet another temporary measure that defers permanent resolution; it does not clarify the language in the Constitution of the State of Hawaii and the Hawaii Revised Statutes to address the long-standing political question of how to appropriately calculate the pro rata share.

Further, the impact of the interim measure on the financial projections of the self-funded Harbors Division is unknown and has not been calculated. This bill will not only jeopardize the Harbors Division and the ongoing Harbors Modernization Plan, but will impact the State of Hawaii as a whole.

Thank you for the opportunity to provide testimony.

Council Chair
Mike White

Vice-Chair
Robert Carroll

Presiding Officer Pro Tempore
Stacy Crivello


Councilmembers
Alika Atay
Elle Cochran
Don S. Guzman
Riki Hokama
Kelly T. King
Yuki Lei K. Sugimura



COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

January 29, 2018

TO: Honorable Maile S. L. Shimabukuro, Chair
Senate Committee on Hawaiian Affairs
Honorable Karl Rhoads, Chair
Committee on Water and Land
Honorable Brian T. Taniguchi, Chair
Committee on Judiciary, Chair

FROM: Stacy Helm Crivello
Councilmember 

DATE: Thursday, February 1, 2018

SUBJECT: **SUPPORT OF SB 2136, RELATING TO INCREASING THE OFFICE OH HAWAIIAN AFFAIRS' PRO RATA SHARE OF PUBLIC LAND TRUST FUNDS**

Thank you for the opportunity to testify in **support** of this important measure. The purpose of this measure is to establish \$35,000,000 as the Office of Hawaiian Affairs' pro rata share of the public land trust. Transfers \$119,000,000 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. Requires the Department of Land and Natural Resources to provide an annual accounting of receipts from lands described in section 5(f) of the Admissions Act. Establishes a committee to recommend the annual amount of the income and proceeds from the public land trust that the Office of Hawaiian shall receive annually. Appropriates funds.

I **support** this measure for the following reasons:

1. Act 178 Sessions Law of Hawaii 2006 requires the identification of revenue-generating public trust lands and the amounts derived from these lands. Annual accounting of the amounts derived from the public trust and research commissioned by OHA determines the gross public land trust receipts at \$174,816,220 in fiscal year 2015-2016 and 20% of that amount is \$34,963,244.

January 29, 2018

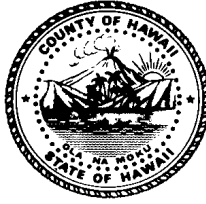
Page 2

2. The legislature determines that \$119,000,000 has been underpaid to the Office of Hawaiian Affairs from July 1, 2012 to June 30, 2018 for amounts received from the use of the public land trust
3. In *Trustees of the Office of Hawaiian Affairs v. Yamasaki*, the Hawaii Supreme Court concluded that it was unable to determine the parameters of section 10-13.5 HRS because the issue of how the 20% apportionment is formulated was a political question for the legislature to determine. This measure addresses that responsibility and rights an injustice

For the foregoing reasons, I **support** this measure.

2018SB2136Support

From the office of -
Council Member
District 3



Office: (808) 961-8396
Fax: (808) 961-8912
Email: sue.leeloy@hawaiicounty.gov

SUSAN L.K. LEE LOY

25 Aupuni Street, Hilo, Hawai'i 96720

The Honorable Maile S.L. Shimabukuro, Chair
And members of the Committee on Hawaiian Affairs

The Honorable Karl Rhoads, Chair
And members of the Committee on Water and Land

The Honorable Brian T. Taniguchi, Chair
And members of the Committee on Judiciary

January 30, 2018

Dear Chair Shimabukuro, Chair Rhoads, Chair Taniguchi, and Joint Committee Members,

I strongly support SB 2136, 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 percent 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 Joint Committee to pass SB 2136.

Aloha Piha,

Susan L.K. Lee Loy
Hawai'i County Council Member, District 3

Hawai'i County Is an Equal Opportunity Provider And Employer

SB-2136

Submitted on: 1/30/2018 11:51:21 AM

Testimony for HWN on 2/1/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Hawaiian Civic Club of Honolulu	Support	No

Comments:

SB-2136

Submitted on: 2/1/2018 9:57:27 AM

Testimony for HWN on 2/1/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Bianca Isaki	KAHEA: The Hawaiian-Environmental Alliance	Support	No

Comments:

SB-2136

Submitted on: 1/29/2018 7:58:14 PM

Testimony for HWN on 2/1/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Leimomi Khan	DPH Hawaiian Affairs Caucus	Support	Yes

Comments:

Strongly urge passage of SB2136 to comply with the intent of the Hawaii State Constitution and as a matter of justice. Further, this revenue is very much needed to fund for programs, grants and services needed for the health, educational, cultural, and social well-being of Native Hawaiians.

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, we respectfully urge the Committee to **PASS SB2136.**

Kalihi Palama Hawaiian Civic Club



*Hōikaika Like Me Ke Aloha
Strive Together with Love*

January 31, 2018

To: Committee Members of
Hawaiian Affairs, Water and Land, and Judiciary

Subject: Senate Bill 2136, Relating to Increasing the Office of Hawaiian Affairs' Pro Rata Share of Public Land Trust Funds.

Mahalo for this opportunity to submit testimony. The Kalihi-Palama Hawaiian Civic Club strongly supports S.B. 2136, Relating to Increasing the Office of Hawaiian Affairs' Pro Rata Share of Public Land Trust Funds.

In 1959, statehood occurred when Congress passed the Admissions Act and ratified the State Constitution. The Admissions Act recognized the special status of Hawai'i's public lands and reflected the intent to return these lands to the newly created State of Hawai'i. Approximately 1,400,000 acres of land were returned with the proviso that the lands granted to the State, together with the proceeds from the sale or other disposition of any such lands and income therefrom, shall be held by the State as a public trust for the support of five purposes, one of which is the betterment of the conditions of native Hawaiians.

Subsequent to this 1959 Admissions Act mandate, there has been a continuous erosion of resources to the Hawaiian people as a result of subsequent legislation reducing the initial mandate.

As a people of Hawaiian descent and 'oiwi descendants of time immemorial of Hawai'i nei, we continue to endure the long and complicated 125 years of unresolved justice that has yet to be resolved.

The Office of Hawaiian Affairs restores hope to our kamali'i, makua, and kupuna. The Kalihi-Palama Hawaiian Civic Club ask you of the same by passing S.B. 2136.

This bill sets the ground work for a good faith effort 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 the Office of Hawaiian Affairs to benefit the Hawaiian people. The 125 years of history that we endure cannot be neglected. You must be 'onipa'a – *steadfast* - on this good faith opportunity to facilitate the 125 years of unresolved justice here in the State of Hawai'i.

I call upon this committee and the Legislature as a whole to address the pro rata share of the income and proceeds from the Public Land Trust go to the Office of Hawaiian Affairs to benefit the Hawaiian people. Your action would truly set us on the path to justice.

Thank you for this opportunity to submit testimony in support of S.B. 2136.

Ka'imookalani P. Muhlestein
President,
Kalihi-Palama Hawaiian Civic Club



Senate Committees on Hawaiian Affairs; Water and Land; and Judiciary
Chairs Maile Shimabukuro, Senator Karl Rhoads, Senator Brian Taniguchi

02/01/2018 1:45 PM Room 016

SB2136 – Relating to Increasing the Office Of Hawaiian Affairs’ Pro Rata Share of Public Land
Trust Funds

TESTIMONY / OPPOSE

Corie Tanida, Executive Director, Common Cause Hawaii

Dear Chair Shimabukuro, Chair Rhoads, Chair Taniguchi, and members of the committees:

Common Cause Hawaii opposes SB2136 which would establish \$35 million 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 **opposing SB2136**.

¹ <http://oip.hawaii.gov/>

SB-2136

Submitted on: 1/29/2018 8:00:21 PM

Testimony for HWN on 2/1/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kaulana Dameg		Support	No

Comments:

SB-2136

Submitted on: 1/30/2018 4:15:55 AM

Testimony for HWN on 2/1/2018 1:45:00 PM

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

Comments:

SB-2136

Submitted on: 1/30/2018 8:43:43 AM

Testimony for HWN on 2/1/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
NO Kapaole		Support	No

Comments:

Hawaiians should be getting more, but this is a good start and change from the current fraudulent cap administered during the Lingle administration.

Next, the State of Hawaii Senate and Legislatiure need to recognize the proper claimant - Kanaka Maoli, not Native Hawaiian Americans.



49 South Hotel Street, Room 314 | Honolulu, HI 96813
www.lwv-hawaii.com | 808.531.7448 | voters@lwv-hawaii.com

SENATE COMMITTEE ON HAWAIIAN AFFAIRS
SENATE COMMITTEE ON WATER AND LAND
SENATE COMMITTEE ON JUDICIARY

Thursday, February 1, 2018, 1:45 PM, Conference Room 016
SB 2136, Relating to Increasing the Office of Hawaiian Affairs' Pro Rata Share of Public Land Trust Funds

TESTIMONY

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chairs Shimabukuro, Rhoads, Taniguchi and Committee Members:

The League of Women Voters requests amendment of SB 2136. SB 2136 temporarily sets the Office of Hawaiian Affairs' (OHA) share of revenues from the public land trust; compensates OHA for prior underpayment; requires an annual accounting of revenues from the public land trust; creates a public lands trust revenue committee to recommend future OHA compensation from the public land trust; and appropriates funds.

The League has no expertise or position concerning OHA's fair share of revenues. However, we request amendment of SB 2136 so that the proposed public lands trust revenue committee is subject to Chapter 92, Hawaii Revised Statutes. There is no compelling justification to exempt the proposed committee from the Sunshine Law.

Thank you for the opportunity to submit testimony.

SB-2136

Submitted on: 1/30/2018 11:55:23 PM

Testimony for HWN on 2/1/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Desire DeSoto	Community	Support	No

Comments:

I STRONGLY SUPPORT HB1747/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. 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 HB1747/SB2136.

SB-2136

Submitted on: 1/31/2018 8:45:10 AM

Testimony for HWN on 2/1/2018 1:45:00 PM

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

Comments:

SB-2136

Submitted on: 1/31/2018 9:36:51 AM

Testimony for HWN on 2/1/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Donna K Santos		Support	No

Comments:

I am a Native Hawaiian of the Kipu Ahupua`a, Puna Moku of Kaua`i and I support SB 2136 and ask that you support and pass this bill.

Mahalo.

SB-2136

Submitted on: 1/31/2018 2:04:50 PM

Testimony for HWN on 2/1/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Leanne Fox		Support	No

Comments:

I **STRONGLY SUPPORT 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.

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**.

Mahalo, Dr. Leanne Kealoha Fox

SB-2136

Submitted on: 1/31/2018 3:39:50 PM

Testimony for HWN on 2/1/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Wayne		Support	No

Comments:

Aloha mai kākou,

Please **SUPPORT** this measure, and help to ensure that the state upholds its constitutional and statutory obligation and commitment to Native Hawaiians.

A decades-old law has long reflected the understanding that Native Hawaiians' constitutional share of the Public Land Trust should be 20% of revenues from the Trust. However an abundance of data from the State itself clearly shows that Trust revenues have far exceeded the annual, flat-rate set-aside for Native Hawaiians, which has not changed for over a decade. This measure is therefore a long-awaited and well-supported step towards ensuring the better fulfillment of the State's promise and legal commitment to Native Hawaiians.

Mahalo nui loa for your favorable consideration of this measure!

Wayne Tanaka

SB-2136

Submitted on: 1/31/2018 7:13:58 PM

Testimony for HWN on 2/1/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Landen Paikai		Support	No

Comments:

I STRONGLY SUPPORT HB1747/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.

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 HB1747/SB2136.

SB-2136

Submitted on: 1/31/2018 7:41:02 PM

Testimony for HWN on 2/1/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Brian Lehmann		Support	No

Comments:

SB-2136

Submitted on: 1/31/2018 10:55:57 PM

Testimony for HWN on 2/1/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Summer Sylva		Support	No

Comments:

SB2136 would better ensure that Native Hawaiians receive their fair share of revenues from former Hawaiian Kingdom lands as required by the state constitution.

The added revenues set aside under this measure would mean that much more funding for grants, advocacy, and other programs that support public Native Hawaiian-focused charter schools, mālama 'āina groups, legal services and access to justice, financial and housing assistance, and many other areas of importance to the Hawaiian community, which, in turn, benefits the community at large.

SB-2136

Submitted on: 2/1/2018 8:30:33 AM

Testimony for HWN on 2/1/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Debra Koonohiokala Norenberg		Support	No

Comments:

Aloha.

From: [Jayna Weatherwax](#)
To: [HWNTestimony](#)
Subject: Please PASS SB2136
Date: Tuesday, January 30, 2018 7:48:06 PM

I STRONGLY SUPPORT 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. 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.

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Sent from Gmail Mobile

From: [Taffi Wise](#)
To: [HWNTestimony](#)
Subject: Please PASS SB2136
Date: Tuesday, January 30, 2018 8:27:50 PM

I STRONGLY SUPPORT 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. 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.

Me ka ha'aha'a,
Taffi Wise

From: [patty.nishiyama](#)
To: [HWNTestimony](#)
Subject: Please PASS SB2136
Date: Tuesday, January 30, 2018 9:14:02 PM

I STRONGLY SUPPORT 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. 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.

From: [Lucas Park](#)
To: [HWNTestimony](#)
Subject: HB1747/SB2136
Date: Tuesday, January 30, 2018 9:55:27 PM

I STRONGLY SUPPORT HB1747/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.

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 HB1747/SB2136**.

From: [Noalani Nakasone](#)
To: [HWNTestimony](#)
Subject: Please PASS SB2136
Date: Wednesday, January 31, 2018 1:12:39 AM

I STRONGLY SUPPORT 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. 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.

Noalani Nakasone
Sent from my iPhone 8Plus

From: [Kathleen Papalimu](#)
To: [HWNTestimony](#)
Subject: Please PASS SB2136
Date: Wednesday, January 31, 2018 5:00:12 AM

I STRONGLY SUPPORT 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. 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.

From: [Madeline Neely](#)
To: [HWNTestimony](#)
Subject: Please PASS SB2136
Date: Wednesday, January 31, 2018 8:36:06 AM

I STRONGLY SUPPORT 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. 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.

From: [Pake Salmon](#)
To: [HWNTestimony](#)
Subject: Please Pass HB1747/SB2136
Date: Wednesday, January 31, 2018 11:06:01 AM

I STRONGLY SUPPORT HB1747/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.

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 HB1747/SB2136.

Mahalo,
Pake Salmon

Chaunnel "Pake" Salmon
www.PakeSalmon.com
Phone: 808-258-7253

From: [Keoahunui Warrington](#)
To: [HWNTestimony](#)
Subject: Please PASS SB2136
Date: Wednesday, January 31, 2018 9:01:34 PM

I STRONGLY SUPPORT 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. 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.

Constance Keoahunui Uale Warrington

Sent from my iPhone

Center for Hawaiian Sovereignty Studies
46-255 Kahuhipa St. Suite 1205
Kane'ohe, HI 96744
(808) 247-7942
Kenneth R. Conklin, Ph.D. Executive Director
e-mail Ken_Conklin@yahoo.com
Unity, Equality, Aloha for all



To: SENATE COMMITTEE ON HAWAIIAN AFFAIRS, COMMITTEE ON WATER AND LAND and COMMITTEE ON JUDICIARY

For hearing Thursday, February 1, 2018

Re: SB 2136

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

Establishes \$35,000,000 as the Office of Hawaiian Affairs' pro rata share of the public land trust. Transfers \$119,000,000 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. Requires the Department of Land and Natural Resources to provide an annual accounting of receipts from lands described in section 5(f) of the Admissions Act. 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. Appropriates funds.

TESTIMONY IN OPPOSITION

SUMMARY OF MAIN POINTS:

1. The legislature always has the power to amend or rescind any statute law. Act 273 (1980) requiring payment of 20% of ceded land revenue to OHA has created 38 years of bitter controversy and litigation, and should be rescinded. OHA should be funded the same way as other departments of the State government, through ordinary budget appropriations. Put an end to OHA's incessant lawsuits over the 20% rule.
2. If the legislature chooses to maintain the 20% rule, the base for calculating 20% should be net income after expenses, not gross revenue. Taxpayers pay for all capital investments and operating expenses whereby the ceded lands are enabled to produce revenue, so it is illegal and immoral for OHA to siphon off gross revenue while the other 80% of the land trust beneficiaries, lacking a drop of Hawaiian blood, pay all the costs and receive none of the revenue.
3. The Ceded Lands Trust costs the State many times more annually for operating expense than the 1.2 million acres bring in. A previous state Director of finance and a Land Information Systems Manager acknowledged in a formal court declaration that this disparity between trust expenses and trust receipts has occurred in every year since statehood. Thus there is no net income from the ceded lands to be distributed to OHA or any of the other ceded land trust beneficiaries named in Section 5(f) of the Statehood Admissions Act -- the ceded lands money distributed to OHA is actually tax dollars in disguise.
4. This bill would require an absurd quarterly payout of OHA's share of ceded land gross revenues from each department of government without regard to ceded land deficits (capital investment or operating expenses) incurred by that department in other quarters or deficits incurred by other departments of the State government. Any corporation that irretrievably paid its taxes quarterly for profitable business lines and was never able to offset profits with losses would quickly go bankrupt.

5. Section 5(f) of the statehood Admissions Act identifies 5 purposes for which ceded land revenues can be used. So what about the remaining 4 purposes in addition to "betterment of native Hawaiians"? If OHA gets a dedicated 20% of ceded land revenue to fulfill one of the 5 purposes, then the public school system should also be getting its own dedicated 20% portion; the development of low-income housing should be getting its 20% portion; the Department of Land and Natural Resources (especially the Parks Department) should be getting its 20% portion; etc.

6. For the first 20 years of statehood, 100% of ceded land revenue was given to the public schools, where 26% of the children are Native Hawaiians. Thus 26% of ceded land revenues went for the betterment of Native Hawaiians, without any need for race-specific earmarking. Remove racial entitlements, which are both unconstitutional and immoral.

7. As a condition for receiving budget appropriations or ceded land revenues, OHA should be required to fulfill whatever obligation the State may have to fund the operation of the Department of Hawaiian Homelands -- especially the huge amount of alleged arrears which a court decision ordered the legislature to pay.

8. The dollar amount for future annual payments as specified in this bill is unsupportable by facts. The dollar amount for makeup of alleged arrears is both unsupportable by facts and would violate previous agreements negotiated in good faith.

SOME DETAILS ABOUT THOSE POINTS

1. There is a long history of contentious negotiation, legislation, and litigation over the amount of money owed to OHA under the rule specifying 20% of ceded land revenue. The first half of this bill reviews some of the elements of that history. The requirement to pay OHA 20% of ceded land revenue is statutory law enacted as Act 273, Session laws of 1980. Therefore, this law can be amended by the legislature at any time to reduce the percentage; or the law can be rescinded entirely.

Act 273, Session laws of 1980 should be rescinded. OHA should be funded in the same manner as any other branch of the State government; i.e., by an appropriation included in the annual or biennial State budget, including a line-item listing of the purposes for which the money is to be spent. Then there would be no further conflict or litigation over how to calculate the 20%. This bill proposes yet another in a long history of complicated formulas for calculating the number of dollars required by the 20% rule. Over the years these recalculations have come to resemble a Rube Goldberg device where a long series of tracks, levers, springs, bells, and whistles eventually propel a ball to its final destination. Let's get rid of that nonsense.

Repeal the 20% rule and fund OHA by ordinary budget appropriations in the same way as any other department of the State government.

Act 273 (1980) says "twenty per cent of all funds derived from the public land trust ... shall be expended by the office of Hawaiian affairs ... for the purposes of this chapter." Act 273 does not say the funds may be invested in an investment portfolio, it says the funds SHALL BE EXPENDED to provide services. Yet OHA seems to think it can grab tens of millions of dollars every year which it then invests or uses for political purposes such as lobbying for the Akaka bill or building a racial registry for "nationbuilding", but OHA fails to provide more than sporadic and inadequate funding for purposes which OHA should be supporting.

OHA currently has over \$600 Million in assets. No other agency of the state government is allowed to squirrel away huge amounts of wealth as a permanent cash stash. At its current level of expenditures OHA has enough money in its slush fund to meet all its budget needs for more than a decade. Stop feeding this beast.

2. If the legislature unwisely chooses to keep the requirement of a specific percentage of ceded land revenue to be paid to OHA, then the legislature should write into law that the percentage must be calculated on the base of NET INCOME AFTER EXPENSES rather than gross revenue. It costs a lot of money to construct roads and

buildings, supply water and electricity, and pay salaries of staff who operate or maintain the facilities that generate revenue from the ceded lands. Those capital expenditures and operating expenses should be deducted from gross revenue to determine the net income to be used when applying the percentage to calculate how much money to pay to OHA. In many if not most cases, government lands and infrastructure operate at a loss because their purpose is to provide services rather than to make a profit. That's why government imposes taxes in order to provide funding for its operations. Taxpayers pay for all capital investments and operating expenses whereby the ceded lands are enabled to produce revenue, so it is illegal and immoral for OHA to siphon off gross revenue while other land trust beneficiaries pay all the costs and receive none of the revenue.

3. In 2008 Georgina K. Kawamura, Director of Finance of the State of Hawaii, and Arthur J. Buto, State Land Information Systems Manager, stated in a formal court declaration that the Ceded Lands Trust costs the State many times more annually than the 1.2 million acres bring in. They also acknowledged that this disparity between trust expenses and trust receipts has occurred in every year since statehood. Thus there is no net income from the ceded lands to be distributed to OHA or any of the other ceded land trust beneficiaries named in Section 5(f) of the Statehood Admissions Act -- the ceded lands money already distributed to OHA is actually tax dollars in disguise. As attorney H. William Burgess said in 2002, "This can be fairly characterized as a confession of guilt to systematic and massive misappropriation of trust funds over the last three decades." From July 1, 1990 to June 30, 2002 OHA and DHHL together cost the State treasury more than a Billion dollars, and in 2002 the estimated cost for the following 10 years from July 1, 2004 through June 2014 was projected to be an additional two Billion dollars, for a total of three Billion dollars. See documentation of these figures, including spreadsheets filed in Arakaki v. Lingle, at <http://www.angelfire.com/hi5/bigfiles/ohadhhlburdenstatetreasury.html>

Enough already! No wonder the State is having budget problems!

4. This bill would require that " ... the departments [named] ... shall determine and transfer to the office of Hawaiian affairs that portion of their receipts from the use, sale, lease, or other disposition of lands within the public land trust collected during each fiscal quarter ... is transferred to the office of Hawaiian affairs, within thirty days of the close of each fiscal quarter ..." This piecemeal attack on each individual department and agency would impose a heavy burden of staff time and accounting. More importantly, it would cause the disappearance of net losses from the overall accounting regarding departments and agencies whose capital expenditures and operating expenses for the ceded lands under their control exceed the revenue generated by those ceded lands. Let's say that more clearly. If a department has a profit for a calendar quarter, it must immediately pay 20% to OHA; but if it has a loss in another calendar quarter, that loss cannot be used to offset the profit in any previous or subsequent quarter; and also, if a department has a loss, that loss cannot be used by any other department or agency to offset its profit. Profits have 20% skimmed off immediately and sent to OHA, whereas losses get swept under the rug. The correct way to do the accounting should be annually not quarterly, and should be done overall for the totality of ceded land revenue from all departments rather than individually for each department separately. A corporation does not send the government irretrievable taxes quarterly for each profitable line of its business while "eating" and ignoring that business line's losses in other quarters and ignoring the losses of other business lines. Any corporation that did its accounting in such a manner would soon go bankrupt (just like the State of Hawaii is on track to do!). As noted in item (3), annual accounting for all departments jointly would then discover that net income is zero or negative, and 20% of zero would be zero dollars for OHA. Indeed, if net ceded land income is negative then OHA should be required pay 20% of that to the State general fund as its rightful share of the loss. Shouldn't OHA help to paddle our collective canoe?

5. Here is the relevant language from section 5(f) of the statehood Admissions Act identifying the 5 purposes for the use of ceded land revenues: "... for the support of the public schools and other public

educational institutions, for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended, for the development of farm and home ownership on as widespread a basis as possible for the making of public improvements, and for the provision of lands for public use." So what about the remaining 4 purposes in addition to betterment of native Hawaiians? If OHA gets a dedicated 20% of ceded land revenue to fulfill one of the 5 purposes, then the public school system plus UH should also be getting its own dedicated 20% portion; the development of low-income housing should be getting its 20% portion; the Department of Land and Natural Resources (especially the Parks Department) and the Highway Department should be getting its 20% portion; etc. Furthermore, each of those departments should be getting its money quarterly as the bill requires for OHA, and in the same dollar amount. Really?

6. For the first 20 years of statehood, 100% of ceded land revenue was given to the public schools, where 26% of the children are Native Hawaiians. Thus 26% of ceded land revenues went for the betterment of Native Hawaiians, without any need for race-specific earmarking. Remove racial entitlements, which are both unconstitutional and immoral.

A valuable webpage providing information about 856 government funded racial entitlement programs for the exclusive benefit of "Native Hawaiians" was disrupted but has now been partially restored. Several other webpages on the same topic are also available. All these programs, valued into the Billions of dollars, are paid for by tax dollars from the governments of the United States and the State of Hawaii. It is likely that these programs are unconstitutional. Some have been challenged in state and federal courts. Thus far the lawsuits to dismantle them have been dismissed on technical procedural issues including "standing" and the "political question" doctrine. However, those dismissals never reached the merits of these cases. Thus all

these programs remain available as targets for future civil rights lawsuits based on the 14th Amendment equal protection clause and other arguments. Keep in mind that this compilation pertains only to government programs funded by taxpayers, and does not include enormous privately funded programs such as Kamehameha Schools (Bishop Estate) which alone is worth \$10-15 Billion, Lili'uokalani Childrens Trust, and many others. More recently, the U.S. Department of Interior, Office of Native Hawaiian Relations, has published a 217-page list of federal programs and grants for ethnic Hawaiians.

See details on the webpage "For Hawaiians Only" at <http://tinyurl.com/zrfuy8k>

7. As a condition for receiving budget appropriations or ceded land revenues, OHA should be required to fulfill whatever obligation the State may have to fund the operation of the Department of Hawaiian Homelands -- especially the huge amount of alleged arrears which a court decision ordered the legislature to pay. Let the Office of HAWAIIAN affairs support the Department of HAWAIIAN homelands -- that's the real reason why Section 5(f) of the 1959 Admissions Act specified that one purpose for which ceded land revenues can be spent is "for the betterment of the conditions of native Hawaiians AS DEFINED IN THE HAWAIIAN HOMES COMMISSION ACT, 1920."

OHA currently has over \$600 Million in assets. No other agency of the state government is allowed to squirrel away huge amounts of wealth as a permanent cash stash. At its current level of expenditures OHA has enough money in its slush fund to meet all its budget needs for more than a decade. Enough already! Stop feeding this beast. No wonder the State is having budget problems!

8. The dollar amount for future annual payments as specified in this bill is unsupportable by facts. The dollar amount for makeup of alleged arrears is both unsupportable by facts and would violate previous agreements negotiated in good faith.

This bill would establish \$35,000,000 as the Office of Hawaiian Affairs' annual share of the income and proceeds of the public land trust

beginning in fiscal year 2018- 2019. Furthermore this bill would transfer to the office of Hawaiian affairs a sum of \$119,000,000 to pay the office of Hawaiian affairs amounts received from the use of the public land trust that were allegedly underpaid between July 1, 2012 and June 30, 2018.

But those dollar amounts are unsupportable by facts. There is no inventory of the ceded lands, which is why the state Supreme Court several years ago dismissed OHA's lawsuit as non-justiciable -- there was no way for the court to calculate dollar amounts of ceded land revenues produced from lands for which there was no inventory list.

OHA previously reached a settlement with the State, enacted into law by the legislature, regarding annual payments in lieu of indeterminable ceded land revenues. State land in Kaka'ako valued by mutual agreement at \$200,000,000 was transferred to OHA. Comes now OHA crying that the agreed-upon dollar amount was too low. Boo-hoo! How much is enough? Political pressure to pass this bill, along with propaganda film broadcast repeatedly on TV, are evidence that no amount would ever be enough to satisfy the monster that is devouring Hawaii. Enough already! Stop feeding this beast.

SB-2136

Submitted on: 1/29/2018 10:26:18 PM

Testimony for HWN on 2/1/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kama Hopkins		Support	No

Comments:

SB-2136

Submitted on: 1/29/2018 10:27:11 PM

Testimony for HWN on 2/1/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Bob Lindsey		Support	No

Comments:

SB-2136

Submitted on: 1/31/2018 5:09:42 PM

Testimony for HWN on 2/1/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	OCC Legislative Priorities	Support	No

Comments:

**PRESENTATION OF THE
OAHU COUNTY COMMITTEE ON LEGISLATIVE PRIORITIES
DEMOCRATIC PARTY OF HAWAII**

TO THE COMMITTEE ON HAWAIIAN AFFAIRS,
COMMITTEE ON WATER AND LAND, AND
COMMITTEE ON JUDICIARY
THE SENATE

TWENTY-NINTH LEGISLATURE

REGULAR SESSION OF 2018

Thursday, February 1, 2018

1:45 p.m.

Hawaii State Capitol, Conference Room 016

RE: Testimony in Support of SB 2136, RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF PUBLIC LAND TRUST FUNDS

To the Honorable Maile S.I. Shimabukuro, Chair; the Honorable Brickwood Galuteria, Vice-Chair and Members of the Committee Hawaiian Affairs:

To the Honorable Karl Rhoads, Chair; the Honorable Mike Gabbard, Vice-Chair and Members of the Committee on Water and Land:

To the Honorable Brian T. Taniguchi, Chair; the Honorable Karl Rhoads, Vice-Chair and Members of the Committee on Judiciary:

Good afternoon, my name is Melodie Aduja. I serve as Chair of the Oahu County Committee ("OCC") Legislative Priorities Committee of the Democratic Party of Hawaii. Thank you for the opportunity to provide written testimony on Senate Bill No. 2136, relating to OHA's pro rata share of the Public Land Trust Funds. The OCC Legislative Priorities Committee is in favor of Senate Bill No. 2136 and support its passage.

Senate Bill No. 2136, is in accord with the Platform of the Democratic Party of Hawai'i ("DPH"), 2016, as it aims to protect and restore the civil and human rights of the Native Hawaiian people. Specifically, the DPH Platform states, "Native Hawaiian are the indigenous people of Hawai'i and deserve a just relationship with the state and federal governments. We support Native Hawaiian rights to self-determination in the formation of their chosen governmental entity. We support recognition of Native Hawaiians as indigenous people as provided by the U.S. Constitution; such recognition will add to the process of Native Hawaiian self-determination. We also support the international rights of the Native Hawaiian people.

We support the continued engagement and empowerment of the Native Hawaiian community in decisions related to county and state affairs." (Platform of the DPH, P. 4, Lines 204-211 (2016)),

Given that Senate Bill No. 2136 establishes \$35,000,000 as the Office of Hawaiian Affairs' pro rata share of the public land trust; transfers \$119,000,000 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; requires the Department of Land and Natural Resources 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, it is the position of the OCC Legislative Priorities Committee to support this measure as it perpetuates a just relationship between the Native Hawaiians as the indigenous people of Hawai'i and the state and federal governments.

Thank you very much for your kind consideration.

Sincerely yours,

/s/ **Melodie Aduja**

Melodie Aduja, Chair, OCC Legislative Priorities Committee

Email: legislativepriorities@gmail.com, Tel.: (808) 258-8889

SB-2136

Submitted on: 1/31/2018 9:49:48 PM

Testimony for HWN on 2/1/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Angus Raff-Tierney	Society for Hawaiian Archaeology	Support	No

Comments:

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**.

SB-2136

Submitted on: 2/1/2018 8:11:42 AM

Testimony for HWN on 2/1/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Christina Aiu	Individual	Support	No

Comments:

SB-2136

Submitted on: 2/1/2018 11:14:40 AM

Testimony for HWN on 2/1/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph Kohn MD	We Are One, Inc. - www.WeAreOne.cc - WAO	Support	No

Comments:

SB-2136

Submitted on: 2/1/2018 12:33:48 PM

Testimony for HWN on 2/1/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Alfred Lardizabal	UPW	Support	No

Comments:

Thursday, February 1, 2018

The UPW supports SB2136. Further testimony follows.

Thank you for the opportunity to submit this testimony.

Al Lardizabnal

UPW