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

TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON WATER, LAND, AND HAWAIIAN AFFAIRS
ON
HOUSE BILL NO. 2585

January 31, 2020
9:00 a.m.
Room 325

RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS

The Department of Budget and Finance (B&F) supports the general intent of House Bill (H.B.) No. 2585 and offers the following comments.

H.B. No. 2585:

- Provides that all grants and contracts awarded by the Office of Hawaiian Affairs (OHA) shall be subject to approval by the board of trustees;
- Establishes a public land trust revenues negotiating committee to determine the increase to the annual amount of income and proceeds from the public land trust that OHA shall receive annually under the State constitution and other State laws; and
- Appropriates funds to B&F to conduct a financial review of the amounts of revenue generated from the public land trust.

To facilitate the financial review, B&F request that H.B. No. 2585 be amended to provide B&F with additional support needed to complete the tasks the bill assigns.

Section 5 of the bill directs B&F to conduct a financial review of the amounts of revenue generated in FY 18 from the public land trust established pursuant to Section 5(f) of the Admission Act, inclusive of those lands conveyed to the State pursuant to Public Law 88-233 ("An Act to Revise the Procedures Established by the Hawaii Statehood Act, Public Law 86-3, for the Conveyance of Certain Lands to the State of Hawaii, and for Other Purposes") and by Section 10-13.5, provided that "revenue" shall be defined as provided in Section 3 of Act 304, SLH 1990. The review must be completed, and the results of the review submitted to the Legislature by December 31st later this year.

The financial review described in Section 5 of the bill appears to be the same type of review that OHA had retained N&K CPAs, Inc., to conduct of the FY 16 "revenue." (Please refer to Attachment A, which is the Executive Summary (starting on page 5) from the N&K CPAs, Inc., Report to [OHA] on the Accuracy and Completeness of a Report by the [DLNR] to the Hawaii State Legislature on Public Land Trust Receipts for the Fiscal Year Ended June 30, 2016.) It appears that the only difference between the review N&K CPAs Inc., conducted for OHA, and the one proposed in H.B. No. 2585, is the year of the data that is to be reviewed.

Given this, and the 8-month deadline, H.B. No. 2585 sets for completing both the financial review and submitting the results of the review to the Legislature, B&F requests that Section 5 be amended to include directions to OHA to provide B&F with copies of the material and data N&K CPAs, Inc., used to gather and prepare OHA's FY 16 report.

Further, all of the information necessary for completing the financial review is only available at the Department of Land and Natural Resources (DLNR) and from all of the State agencies that hold title or are responsible for the managing and maintaining

public land trust lands. To facilitate access to this information, B&F recommends a provision be included to require that affected departments and agencies assign a liaison to work with B&F for each program reporting public land trust revenues to the DLNR, and that DLNR assign a liaison to work with B&F in utilizing the Act 178, SLH 2006, public land trust revenue database. Having dedicated liaisons will make getting relevant FY 18 revenue and other information and answering questions about the information that much easier and timely.

Out of an abundance of caution, B&F recommends that the reporting date of 20 days before the convening of the Regular Session of 2021 be the deadline for B&F to provide a status report of its effort and that its final deadline be extended to 2022. We estimate we will need at least two months if this measure passes to retain professional support to assist us in preparing and organizing the information that needs to be collected and analyzed to complete the review. We also estimate that we will need \$150,000 for this work.

Thank you for your consideration of our information and recommendations.

Attachment

REPORT TO THE OFFICE OF HAWAIIAN AFFAIRS
ON THE ACCURACY AND COMPLETENESS
OF A REPORT BY THE
DEPARTMENT OF LAND AND NATURAL RESOURCES
TO THE HAWAII STATE LEGISLATURE ON
PUBLIC LAND TRUST RECEIPTS

For the Fiscal Year Ended June 30, 2016



OFFICE OF HAWAIIAN AFFAIRS

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EXECUTIVE SUMMARY

Office of Hawaiian Affairs
REPORT ON PUBLIC LAND TRUST RECEIPTS
Fiscal Year Ended June 30, 2016

This report presents the results of the procedures performed by N&K CPAs, Inc. (“N&K”) relating to the Public Land Trust receipts for the fiscal year ended June 30, 2016 that were reported to the Legislature by the State of Hawai‘i Department of Land and Natural Resources (“DLNR”) in November 2016.

Background

Pursuant to Section 10-13.5, Hawai‘i Revised Statutes, the Office of Hawaiian Affairs (“OHA”) is entitled to twenty percent (20%) of all funds from the sale or use of the public land trust (hereinafter referred to as “Public Land Trust” or “PLT”). Act 178, Session Laws of Hawai‘i 2006, temporarily provides that OHA receive the fixed annual amount of \$15,100,000 until the Legislature takes further action. Act 178 also requires each state agency to report to DLNR all receipts from the Public Land Trust land that the agency uses or manages. DLNR is responsible for collecting the information and providing an annual accounting of all receipts from the Public Land Trust to the Legislature (“DLNR Act 178 Report”).

OHA contracted with N&K to evaluate whether the receipts reported in the fiscal year 2016 DLNR Act 178 Report were complete and accurate. Using the DLNR Act 178 Report and its accompanying detailed attachments, N&K then conducted its procedures to determine whether receipts had been completely and accurately reported.

Procedures Performed

N&K applied a two-prong approach in its procedures to assess the accuracy and completeness of the reports submitted. The first approach was to determine whether the agencies had reported all of the Public Land Trust parcels that had generated receipts during the fiscal year ended June 30, 2016. For each agency, N&K describes the work performed for that agency to accomplish this under the heading of *Land Inventory*. The second approach was to determine whether the financial information reported by the agencies was complete and accurate. N&K describes the work performed for each agency to accomplish this under the heading of *Financial Reporting*.

OHA provided N&K with an inventory listing of Public Land Trust parcels (“OHA Inventory Report”) for each state agency, which was obtained primarily from OHA’s research of DLNR’s State Land Information Management System (“SLIMS”) and DLNR’s Public Land Trust Information System (“PLTIS”) and reflected the trust land status from SLIMS for each TMK, where applicable. N&K used the OHA Inventory Report as the official detailed listing of Public Land Trust parcels to evaluate the completeness and accuracy of the respective agency’s land information included in the DLNR Act 178 Report. N&K provided each agency’s staff an opportunity to review the OHA Inventory Report, meet, and provide comments on the Public Land Trust lands and receipts attributed to their respective agencies. N&K investigated any differences noted to determine whether or not receipts were generated and properly reported. Exhibit 4 is a schedule of non-receipt generating parcels in the fiscal year ended June 30, 2016.

N&K began its evaluation of Public Land Trust receipts reported and identified potential unreported receipts by obtaining audited financial statements as of and for the fiscal year ended June 30, 2016 for each state agency, which included all revenue. If audited financial statements

**Office of Hawaiian Affairs
REPORT ON PUBLIC LAND TRUST RECEIPTS
Fiscal Year Ended June 30, 2016**

were not available, a schedule of all receipts for the fiscal year ended June 30, 2016 was requested from agency personnel.

N&K also requested supporting revenue schedules that separately reported the various receipt types generated by each agency. Next, attachments to the DLNR Act 178 Report, which contain information submitted to DLNR by the relevant agency, were reconciled to the agency's financial statements or schedule of receipts and the supporting schedules. All potential reporting gaps noted are described in this report.

In performing the evaluation, N&K assumed that parcels designated as Public Land Trust land in the OHA Inventory Report were accurate. N&K also assumed a literal interpretation of the language contained in Act 178 that agencies should report all receipts from the Public Land Trust. Agency records supporting the reports submitted to DLNR pursuant to Act 178 were not uniformly prepared. Accordingly, N&K developed and applied varying procedures to evaluate the accuracy and completeness of the reports.

Differences Noted

The reasons for differences between the information provided in the DLNR Act 178 Report and what N&K found while performing its procedures varied widely. Presented below is a table that shows where differences were found by agency.

Agency	Land Inventory	Financial Reporting
A. DAGS	X	X
B. ARM	X	X
C. ADC	X	X
D. FTZ9	X	
E. HCDA	X	
F. HHFDC		X
G. NELHA		X
H. DOD		X
I. DOE	X	X
J. DOH	X	X
K. HPHA		X
L. DOBOR	X	X
M. DOFAW		X
N. Land Division		X
O. State Parks	X	X
P. Airports		
Q. Harbors		X
R. Highways		X
S. UH	X	X

Office of Hawaiian Affairs
REPORT ON PUBLIC LAND TRUST RECEIPTS
Fiscal Year Ended June 30, 2016

A summary of the work performed for each agency is presented in Exhibit 3, which also indicates the method of reporting by the departments and or agencies as either receipts (accounted for using the cash basis in which revenues are recognized when cash is actually received) or revenue (accounted for using the accrual basis in which revenues are recognized when earned). These definitions of receipts and revenue are also applied throughout this report.

Summary

The state agencies reported receipts from the Public Land Trust totaling \$177.6 million in their reports submitted to DLNR pursuant to Act 178 for the fiscal year ended June 30, 2016. Because of the nature of the various records, some of which were not available to us, it was not always possible to accurately determine the amounts that should have been reported. Applying various methods and assumptions, as further explained in the report, N&K estimated underreporting differences could amount to more than \$247.2 million.

The differences presented should not be used to presume or form the basis to compute a share due to OHA. In many cases, the differences presented are estimates based on the limited information available and are not represented to be absolute, but rather as starting points to continue the dialogue and further develop the proper accounting and reporting protocols of receipts in accordance with Act 178.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Water, Land, and Hawaiian Affairs
January 31, 2020 at 9:00 a.m.

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

HB 2585 – RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS

Chair Yamane, Vice Chair Todd, and members of the Committee:

Thank you for the opportunity to submit our strong concerns with HB 2585. Like the Office of Hawaiian Affairs (OHA), the University of Hawai'i (University) has a unique relationship to the public land trust requiring special consideration.

The Admissions Act § 5(f), which created the State of Hawai'i public trust lands commonly referred to as ceded lands, identifies multiple purposes to benefit from these lands. The first of these purposes enumerated in the Act is the "support of public schools and other public educational institutions" and the second of these purposes is the "betterment of Native Hawaiians." As the University is also an identified purpose of the public land trust, it should not be required to sacrifice its benefits from the public land trust to OHA¹.

The University and OHA were both established by the Hawai'i State Constitution. With this equal footing, the Hawai'i State Constitution expressly authorizes that University lands be used solely for its purposes. Article X, Section 5, states that the University "shall have title to all the real and personal property now or hereafter set aside or conveyed to it, which shall be held in public trust for *its* purposes[.]" See Hawai'i State Constitution, Article X, Section 5, emphasis added.

Independent from Act 178, Session Laws of Hawai'i (SLH) 2006, the University currently provides millions of dollars per year in direct tuition benefits from its own resources to Native Hawaiian students. And as just two additional examples, has created and funded the Hawai'inuiākea School of Hawaiian Knowledge at the University of Hawai'i at Mānoa and the Ka Haka 'Ula O Ke'elikōlani College of Hawaiian Language at the University of Hawai'i at Hilo, which are each completely distinctive in higher education in the United States.

¹ In creating OHA, the Hawai'i State Legislature adopted Hawai'i Revised Statute §§ 10-3 and 10-13.5 which provide that 20%, or one-fifth, of all funds derived from the public land trust shall be expended by OHA for the betterment of the conditions of native Hawaiians. Later in 2006, the Legislature fixed OHA's pro rata share of the public land trust to \$15,100,000. See Act 178, SLH 2006.

The University has embraced its mission to become a model indigenous-serving university and greatly appreciates the financial support from and many partnerships with OHA (along with the Ali'i Trusts and other organizations) to advance Native Hawaiian people, language, culture, and history. While the University does not necessarily object to any considerations as to whether the pro rata share of ceded land revenues to OHA can be increased or revised, we do point out that the University serves one of the same purposes as provided for under Admissions Act. The University must focus its resources to provide all of its students with the educational tools, training, and tenacity to meet the challenges in today's competitive local, national, and global workforce.

The University respectfully requests that HB 2585 be amended to exclude the University from any obligations to OHA derived from the University's benefits from the public land trust except for receipts flowing from the subleases issued by the University for properties situated at the Mauna Kea summit.

Thank you for your time and consideration.



HB2585
RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS
House Committee on Water, Land, & Hawaiian Affairs

January 31, 2020

9:00 a.m.

Room 325

The Beneficiary Advocacy and Empowerment Committee of the Office of Hawaiian Affairs (OHA) will recommend that the Board of Trustees (BOT) **SUPPORT WITH AMENDMENTS** HB2585, which would require all OHA grants to be approved by separate votes of the OHA BOT, and would establish a Public Land Trust Negotiating Committee to review the amount that OHA receives annually as the pro rata share of funds derived from the Public Land Trust for Native Hawaiians.

OHA Grants

OHA respectfully requests that the grant-related statutory amendments in sections 2 and 3 of this measure be stricken as unnecessary and an infringement on the authority otherwise reserved to the OHA BOT. Through the adoption of OHA Action Item RM #18-12 in October 2018, OHA's Trustees amended OHA executive policies to return all authority to approve OHA grants to the BOT, starting in state fiscal year 2021-2022. Prior to this BOT-initiated change, the OHA CEO had been delegated authority to award grants below an amount of \$25,000.00; the OHA BOT delayed the implementation of its 2018 policy change to allow time for OHA to properly change its granting processes and to minimize the impacts to OHA grant applicants. The statutory amendments contained in this bill would trigger the kinds of internal and external disruptions in OHA's grant activities that our Trustees had planned to avoid. These changes would also infringe on the constitutional and statutory authority of our BOT to adopt policies that govern the operations of OHA. Accordingly, we request that the forced changes to OHA grant approval requirements be removed, especially where such changes have already been initiated by the OHA BOT, of its own accord.

Public Land Trust Negotiating Committee

With years of state data now available, OHA strongly agrees that it is time to revisit Native Hawaiians' fair share of the Public Land Trust, and appreciates that HB2585 would set up a Public Land Trust Revenue Negotiating Committee. Despite the ostensibly temporary nature of the 2006 legislation setting aside \$15.1 million per year as OHA's "interim" share of the Public Land Trust; years of state reporting showing that the 20% of Public Land Trust receipts to which OHA should be entitled far exceeds this \$15.1 million annual amount; and years of OHA's own research, as presented to the legislature over multiple legislative sessions, demonstrating that \$35 million is more consistent with

20% of reported receipts from historically undisputed Public Land Trust revenue streams; Native Hawaiians' "interim" share has not been updated in over a decade.

As background, 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 Public Land Trust funds set aside for Native Hawaiians, which state law reaffirms as 20% of all funds from the Trust.

After decades of disagreement as to how to determine this 20%, in 2006, OHA and the state agreed to an interim annual amount of \$15.1 million, to be transferred to OHA as a reflection of Native Hawaiians' Public Land Trust share, "until further action is taken by the legislature." As part of this agreement, 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 with better data.

A Public Land Trust Negotiating Committee was established by the Legislature in 2016 to discuss updating Native Hawaiians' interim Public Land Trust share; however, the committee was only convened once by the Governor and failed to make any meaningful progress in its work.

OHA has sought and will continue to seek to engage in good faith discussions regarding Native Hawaiians' fair share of the Public Land Trust, as envisioned by the 2006 agreement, and accordingly supports this measure's renewed call for a Public Land Trust Negotiating Committee.

Finally, OHA notes that Public Land Trust revenue is the primary source of funding for programs, grants, and services that benefit both the Native Hawaiian and larger communities. 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. Efforts to increase OHA's Public Land Trust share 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.

Therefore, OHA urges the Committee to **PASS HB2585 with amendments**. Mahalo nui for the opportunity to testify on this measure.

HB-2585

Submitted on: 1/28/2020 7:16:54 PM

Testimony for WLH on 1/31/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments:

HB-2585

Submitted on: 1/29/2020 5:49:54 PM

Testimony for WLH on 1/31/2020 9:00:00 AM

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

Comments:

Aloha Chair Yamane, Vice Chair Todd and members of the House Committee on Water, Land and Hawaiian Affairs,

I am testifying in OPPOSITION to HB 2585 as currently drafted. My opposition is to any language requiring the Board of Trustees of the Office of Hawaiian Affairs to approve every grant and contract within the office. If passed it will create difficulty in operations. Thresholds already exist which separates what Trustees need to approve and what Administration can approve especially for operational purposes. Delegation of Authority actions exist and the language is in the action items which sets parameters on the approval process.

Currently, OHA is always looking at ways to improve and tighten up these parameters to meet current best practices. Thanks should be given to previous State Auditor reports and the recent CLA Contract and Dispersment Review Final Report which helped to identify where troublespots existed. OHA was already in the process of looking at ways to tighten up the parameters while the CLA review was in process. However, the level of detail in their review, in my view, has assisted OHA in bringing those changes forward quicker.

Mahalo for the opportunity to testify.



DAVID Y. IGE
GOVERNOR

Mary Alice Evans
DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Written Testimony of
Mary Alice Evans
Director, Office of Planning
before the

LATE

HOUSE COMMITTEE ON WATER, LAND, & HAWAIIAN AFFAIRS

Friday, January 31, 2020
9:00 AM
State Capitol, Conference Room 325

In consideration of
HB2585
RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS.

Chair Yamane, Vice Chair Todd and Members of the Committee.

The Office of Planning offers general support with comments for HB2585 which establishes a public land trust revenues negotiating committee and are requires the Department of Budget and Finance to conduct a financial review of amounts of revenues generated by the public land trust.

The Office of Planning believes that the actions mandated in the bill may provide the Legislature with information to further their deliberations on the annual amount of the public land trust revenues to be paid to the Office of Hawaiian Affairs. The Office of Planning supports limiting its role to that of providing administrative support. The Office of Planning was given that same role for the PASH Study Group, and the DHHL Land Trust Claims Task Force by previous Legislatures.

If the Committee is inclined to support this measure, the Office of Planning suggests that the financial review be completed prior to the convening of the public land trust revenues negotiating committee, so that the committee has the information on which to base its discussions. Currently, the bill requires both reports to be submitted to the Legislature 20 days prior to the convening of the 2021 regular session, thus requiring the two actions to happen concurrently.

The Office of Planning defers to the Department of Budget and Finance on the resources needed to conduct a financial review. Thank you for the opportunity to testify.