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

**H.B. NO. 402, H.D. 1, PROPOSED S.D. 2, RELATING TO INCREASING THE OFFICE  
OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF PUBLIC LAND TRUST FUNDS**

Hearing: Friday, April 5, 2019, 5:00 p.m.

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The Office of the Auditor has **no position** regarding H.B. No. 402, H.D. 1, Proposed S.D. 2, which, among other things, requires that we “conduct a comprehensive review of all programs that serve Hawaiians and are administered by state agencies.” **However, we offer the following comments and request that the committee clarify the work it intends the Office of the Auditor to perform.**

We note the scope of the requested review (i.e., “all programs that serve Hawaiians and are administered by state agencies”) is very broad, and strongly suggest that the committee identify the specific State programs that it wants included in an assessment to ensure that we include the issues the Legislature is most interested in having us examine.

If the intent of the “comprehensive review” required by this bill includes reviews of the State programs’ financial statements, we will contract with an independent CPA firm to perform that audit or review and, therefore, require an appropriation. Without a better understanding as to the magnitude of State programs that need to be audited or reviewed, we can only speculate as to the required work, and conservatively suggest that the Legislature appropriate \$300,000 to us for purposes of contracting for the financial audits or reviews.

Thank you for considering our testimony related to H.B. No. 402, H.D. 1, Proposed S.D. 2.

DAVID Y. IGE  
GOVERNOR



RODERICK K. BECKER  
DIRECTOR

ROBERT YU  
DEPUTY DIRECTOR

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

**STATE OF HAWAII**  
**DEPARTMENT OF BUDGET AND FINANCE**  
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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 RODERICK K. BECKER  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE SENATE COMMITTEE ON WAYS AND MEANS  
ON  
HOUSE BILL NO. 402, H.D. 1, S.D. 1, PROPOSED S.D. 2

**April 5, 2019**  
**5:00 p.m.**  
**Room 211**

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

House Bill (H.B.) No. 402, H.D. 1, S.D. 1, Proposed S.D. 2:

- Establishes the Public Land Trust Revenues Negotiating Committee to determine and report to the Legislature an increased amount of the Office of Hawaiian Affairs' (OHA) annual portion or "*Share*" of the income and proceeds for the use of public land trust lands to better the conditions of native Hawaiians under Section 5(f) of the Admission Act and Article XII, Section 6 of the State Constitution;
- Requires the Department of Budget and Finance (B&F) to conduct a financial review of the amounts of revenue generated from the use of the public land trust lands for FY 2018 and report its results to the Legislature;
- Requires the Legislative Auditor to conduct a comprehensive review of programs administered by the State that serve Hawaiians and submit a report of its findings to the Legislature; and
- Appropriates unspecified amounts of general funds for FY 2020 to B&F and the Legislative Auditor to effectuate the purposes of the bill.

B&F supports passage of this revised version of H.B. No. 402. The interim measures it adopts will further the Legislature's ultimate objective of determining whether, when, and by how much, OHA's "Share" of the receipts from the use of public land trust lands to better the conditions of native Hawaiians under Article XII, Section 6 of the State Constitution needs to be increased. To provide greater support for this effort, B&F respectfully requests that the Proposed S.D. 2 be amended to provide B&F with additional support it needs to complete the tasks the bill assigns.

Section 3 of the bill directs B&F to conduct a financial review of all the "revenue," as defined in Section 3 of Act 304, SLH 1990, that State agencies collected from the lands conveyed to the State by the United States at Statehood pursuant to Section 5(f) of the Admission Act, and the lands conveyed to the State by the United States pursuant to Pub. Law 86-3 and Pub. Law 88-233 in FY 2018, using the formula in Haw. Rev. Stat. §10-13.5 to calculate OHA's share of the "revenue." The review must be completed, and the results of the review submitted to the Legislature by December 27<sup>th</sup> later this year.

To the best of our knowledge, all of the information necessary for completing the financial review B&F is tasked with completing is only available at OHA. If that information is not available, B&F will need to gather information about the public land trust lands from the Department of Land and Natural Resources' (DLNR) Public Trust Land Inventory (which fortunately is an electronic data base), and financial information from all of the State agencies that hold title or are responsible for managing and maintaining public land trust lands.

Fortunately, however, the financial review described in Section 3 of the bill appears to be the same type of review OHA retained N&K CPAs Inc., to conduct of the FY 2016 "revenue," as defined in Section 3 of Act 304, SLH 1990, that State agencies

collected from the public land trust lands, and the 20% portion of that “revenue” required to be transferred to OHA, if Haw. Rev. Stat. §10-13.5 were used to calculate OHA’s share of that “revenue.” Attachment A 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 Proposed S.D. 2, directs B&F to conduct appears to be the year of the data that is to be reviewed.

Given this, and the 8-month deadline the Proposed S.D. 2 sets for completing both the financial review and submitting the results of the review to the Legislature, B&F requests that the Committee amend Section 3 to expressly direct that B&F update OHA’s FY 2016 report utilizing the methodology N&K CPAs, Inc., used to prepare that report, and FY 2018 “revenue” in lieu of the FY 2016 “revenue” as input for the financial review B&F is required to complete. B&F also asks that Section 3 be amended to include directions to OHA to provide B&F with copies of the material and data N&K CPAs, Inc., gathered and prepared, to produce OHA’s FY 2016 report.

To further facilitate timely completion of its assignment, 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 2018 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 2020 be the deadline for B&F



to provide a status report of its effort, and that its final deadline be extended to 2021.

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.

The additional material attached (Attachment B) is B&F's draft testimony prepared to provide the Committee with information that B&F believed would be helpful to assess the impact H.B. No. 402, S.D. 1, would have had on the departments and agencies that presently collect and transfer public land trust receipts to OHA pursuant to Act 178, SLH 2006.

Thank you for your consideration of our information and recommendations.

Attachments

**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.

<b>Agency</b>	<b>Land Inventory</b>	<b>Financial Reporting</b>
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.



DAVID Y. IGE  
GOVERNOR



## **Attachment B**

RODERICK K. BECKER  
DIRECTOR

ROBERT YU  
DEPUTY DIRECTOR

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

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

# **DRAFT**

### **WRITTEN ONLY**

TESTIMONY BY RODERICK K. BECKER  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE SENATE COMMITTEE ON WAYS AND MEANS  
ON  
HOUSE BILL NO. 402, H.D. 1, S.D. 1

**April XX, 2019**  
**XX:XX a.m.**  
**Room 211**

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

House Bill (H.B.) No. 402, H.D. 1, S.D. 1, proposes to:

- Increase the \$15.1 million the Office of Hawaiian Affairs (OHA) currently receives pursuant to Act 178, SLH 2006, as OHA's annual portion or "*Share*" of the income and proceeds for the use of public land trust lands to better the conditions of native Hawaiians under Section 5(f) of the Admission Act and Article XII, Section 6 of the State Constitution, to an unspecified amount;
- Transfer an unspecified amount to OHA, for supposed underpayment of the public land trust funds, for the seven years from July 1, 2012 to June 30, 2019;
- Reduce the receipts the University of Hawaii (UH) transfers to OHA annually by an amount equal to tuition and special funds UH provides for Native Hawaiian programs;
- Require the Department of Budget and Finance (B&F) to provide an annual accounting of receipts from public land trust lands;

- Require an annual audit of any funds transferred pursuant to this Act;
- Establish the Public Land Trust Review Committee to make recommendations to the Governor and Legislature regarding the annual income and proceeds collected from the use of the public trust lands;
- Prohibit new funding appropriations to OHA until OHA's 2017 fiscal and performance audit is completed and provided to the Legislature; and
- Repeal Act 178, SLH 2006.

B&F recognizes that the Legislature should periodically review and, if appropriate, adjust what OHA receives as its share of the receipts from the use of public land trust lands to better the conditions of native Hawaiians under Article XII, Section 6 of the State Constitution. B&F provides these comments to assist the Legislature to make this determination.

I. Determination of OHA's Share:

The State Constitution does not specify what OHA's *Share* is, or prescribe how that *Share* is to be quantified, collected, and provided to OHA. There are also no statutes that provide a means for calculating how much OHA is to receive annually that the Legislature can rely upon or incorporate by reference to address this insufficiency. Act 178, SLH 2006, relies on the executive order it authorizes the Governor to issue to fix the amount of receipts each State department or agency that manages public land trust lands must transfer to OHA annually. This bill does not include similar provisions for accomplishing that purpose. The bill also acknowledges and expressly provides that Section 10-13.5, Hawaii Revised Statutes, cannot be used to quantify OHA's *Share* in light of the Hawaii Supreme Court's decision in the Yamasaki case.

If this bill is passed without provisions which recognize that departments and agencies collect receipts from the use of public land trust lands for multiple purposes,

including to maintain and improve the lands with staff that must be paid, services and supplies that need to be purchased, and debt service for borrowings that need to be repaid, increasing OHA's *Share* is unlikely to accomplish what Act 178 has managed to do for the last 13 years without implementation problems. If the Legislature determines that OHA's *Share* should be increased, and Act 178 should not continue to be the means for providing OHA with its *Share*, at the very least, this bill needs to specify:

- Whether the "receipts from the use, sale, lease, or other disposition of lands within the public land trust collected" referenced at lines 18-20 and 1-2 on pages 13 and 14, respectively, include all the receipts State departments and agencies collect from rents and other disposition of the lands, as well as fees, charges, and other monies they collect in connection with their management or the services and activities they provide or conduct on those lands;
- What percentage or other means of determining what portion of the receipts departments and agencies collect from the use of public land trust lands must be transferred to OHA as its *Share* of the income and proceeds from the public land trust lands that are to be used to better the conditions of native Hawaiians under Section 5(f) of the Admission Act and Article XII, Section 6 of the State Constitution; and
- When transfers are to be made. Under Act 178, one fourth of OHA's annual *Share* was transferred at the close of each fiscal quarter. B&F has an operational concern with the proposed change to an annual transfer at the end of the fiscal year because should there be a shortfall, it would be less burdensome on the affected departments to absorb smaller quarterly additional assessments than a large annual assessment at the end of the fiscal year.



If the Legislature determines that all departments and agencies must transfer 20% of all receipts they collect from the use of public land trust lands as OHA's *Share*, it will likely need to also:

- Appropriate other funds, to replace the public land trust receipts the Department of Transportation (DOT), Airports Division, is prohibited from transferring to OHA by federal law, and supplement the additional receipts that other departments and agencies transfer; or
- Increase the percentage used to calculate how much each department or agency transfers to OHA and appropriate additional funds for the amount that a department's or agency's total receipts are insufficient to cover; or
- Appropriate funds from other sources to replace the receipts transferred to OHA that would otherwise have been used to maintain the public land trust lands.

Alternatively, the Legislature should give serious consideration to reducing the transfer(s) to OHA for DOT Airports receipts to only those "certain ancillary receipts" from the Airports Division's HIA Terminal Rental Revenue, HIA Terminal Concession Revenue, Non-HIA Aeronautical Revenue, and Non-HIA Concession/Other Terminal Revenue referenced in the Conference Committee Report to Act 178, SLH 2006 (see Attachment 1). According to the Committee Report, these were the only Airports' revenue sources considered in establishing OHA's \$15.1 million share in 2006.

II. Impact of Including All Department and Agency Revenues in Determination of OHA's *Share*:

Attachment 2 illustrates the impact of including DOT Airports Division receipts and other departments and agencies receipts that currently do not transfer receipts to OHA in the base for determining OHA's *Share*, when Airports receipts cannot be

transferred, and the burden will fall on other departments and agencies that are making transfers. Column A reflects total receipts that departments and agencies reported to DLNR for FY 2018, which totals \$225,079,055. It is noted that the amounts with an “\*” include moneys collected for/owed to third-parties, e.g., revenue bond principle and interest (DOT Airports and Harbors Divisions), goods sold, utilities, water and other pass-throughs. It is also noted that the amounts for the Hawaii Health Systems Corporation does not include patient service fees and, for UH, does not include tuition and student fees, cost of goods sold, utilities and other moneys collected for/owed to third-parties.

Column B reflects 20% of those receipts for the respective departments and agencies and totals \$45,015,811 -- this is the calculated amount of OHA's *Share* based on reported total receipts. Column C reflects actual receipts transferred to OHA in FY 2018 and totals \$17,391,958 – the amounts over the \$15,100,000 transfer amount set in Act 178 were subsequently returned to B&F by OHA. Column D reflects the amount of receipts retained (total receipts less receipts transferred to OHA) by the departments and agencies to provide services and programs.

To meet the calculated 20% amount of \$45,015,811, an additional \$27,623,852 will have to be transferred. Column E illustrates the additional amount that each department and agency will have to transfer to OHA if this shortfall were to be allocated evenly to each. Column F reflects the resulting retained receipts and, as can be seen, the smaller departments and agencies would have negative retained receipts to provide services and programs under this allocation method.

Column G illustrates the additional amount that each department and agency will have to transfer to OHA if this shortfall were to be allocated to departments and agencies in the same proportion of their transfers under the \$15.1 million amount.



Column H is the total amount to be transferred to OHA – the FY 2018 actual transfers plus the additional proportional share. Column I reflects the percentage of transfers made to OHA of the FY 2018 total receipts reported to DLNR and, as can be seen, many of the departments and agencies would be transferring over 50% of receipts to OHA under this allocation method.

Attachment 3 shows the impact of increasing OHA's *Share* from \$15.1 million to \$35.0 million per year (as proposed in the original draft of H.B. No. 402) could have on the programs of departments and agencies that transfer public land trust receipts to OHA based on the current payment methodology. The same proportion of transfers the respective departments and agencies made to transfer \$15.1 million to OHA were made to the proposed \$35.0 million share. The estimated percentage assessment was calculated by dividing the calculated proportionate shares by total revenues reported in FY 2018 to DLNR. As can be seen, the estimated percentage assessments would increase from 20% to over 40% for many of the departments and agencies.

It should be noted that any reductions in receipts transferred to OHA, such as the proposed reduction for UH, will result in the remaining departments and agencies having to make up the amount of reduction.

B&F strongly urges the Legislature to consult with the affected departments to determine what impacts this could have, and what increases in rent and/or user fees that may be necessary if ceded land assessments were to increase beyond current levels.

III. Historical Information on Section 5(f) Receipts:

Attachment 4 is a summary of the Section 5(f) lands receipt reports compiled by DLNR for the period FY 2007 to FY 2018. Total gross receipts increased from \$128.48 million in FY 2007 to \$225.08 million in FY 2018. This increase is due primarily

to increases in receipts from DOT's Airports and Harbors Divisions, which increased fees and charges to support revenue bond debt service for the Airport Division's and Harbor Division's modernization programs. It should be noted that these two divisions' receipts account for 77% of the total gross receipts for FY 2018.

IV. Other Concerns:

The following are B&F's concerns with specific sections of the bill:

- Section 4 – Section 4 contemplates using the carry-forward trust holding account established by Executive Order No. 06-06 that Act 178 authorized the Governor to issue, to make up payment shortfalls. However, the Legislature needs to appreciate that few funds will be deposited into the holding account if the amount of receipts transferred to OHA is increased. This is because, as noted above, departments and agencies may be required to transfer more than 20% of their receipts to OHA to provide OHA with a larger share of the public land trust receipts (see Attachment 3).
- Section 6 – Section 6 requires B&F to prepare an accounting of “all receipts from lands described in section 5(f) of the Admission Act,” that each State department or agency collects. It makes no reference to the public land trust reporting system DLNR designed and currently maintains, and appears to say that the DLNR system is being replaced by an annual list of receipts that B&F, with the assistance of the departments and agencies that collect the receipts, is required to prepare. The bill needs to clarify if the DLNR system is being replaced by an annual list that B&F prepares which identifies the department or agency that collects a receipt, the amount of the receipt collected, the portion of the receipt transferred to OHA, the portion of the receipt retained by the department or agency and the fund into which it was deposited, and the tax map key number, DLNR inventory number, or any other

description that would identify the parcel of public land trust land from which the receipt was collected. If B&F is required to maintain the system DLNR designed, or do anything more than what the bill currently specifies, all of the servers, software, databases, computers and equipment, as well as system-related positions and system-related funding for licenses, consultant services, etc., need to be transferred from DLNR to B&F. B&F currently does not have any in-house staff/expertise and funding to maintain this type of system nor any of the necessary software, hardware and equipment.

- Section 10 – Section 10 calls for an annual audit of the funds OHA receives pursuant to the bill. However, it does not specify who is to do the audit, and is unclear as to whether the funds deposited each year are to be audited, or the fund or funds into which OHA deposits the funds it receives is to be audited annually. The bill also does not state what the funds are to be audited for. The bill seems to intend that OHA commission the annual audit, given that it would have or have spent the funds that were transferred, and have the records necessary to determine how the funds were maintained or spent. The bill should be amended to make this clear. If some other entity is named to conduct the audit, the bill should also provide the entity with the resources with which to conduct the audits and full access to all records relating to the funds that were transferred.

Thank you for your consideration of our information and comments.

Attachments



CONFERENCE COMMITTEE REP. NO. **101** -06

Honolulu, Hawaii

**APRIL 27**, 2006

RE: S.B. No. 2948  
S.D. 1  
H.D. 2  
C.D. 1

Honorable Robert Bunda  
President of the Senate  
Twenty-Third State Legislature  
Regular Session of 2006  
State of Hawaii

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Third State Legislature  
Regular Session of 2006  
State of Hawaii

Sir:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 2948, S.D. 1, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO THE PUBLIC LAND TRUST,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to establish the amount of interim revenue to be transferred to the Office of Hawaiian Affairs from the public land trust, each fiscal year beginning with fiscal year 2005-2006, at \$15,100,000.

In addition, this measure also appropriates \$17,500,000 as the amount of revenues owed to the Office of Hawaiian Affairs for the underpayment of the Office of Hawaiian Affairs' pro rata share of the public land trust revenues between July 1, 2001 and June 30, 2005.



Section 2 of this measure specifies that beginning in fiscal year 2005-2006, and until further legislative action is taken, the income and proceeds from the pro rata portion of the public land trust for expenditure by OHA pursuant to Article XII, Section 6 of the Hawaii Constitution shall be \$15,100,000 per fiscal year. This amount shall be transferred from various state departments and agencies to OHA in four equal quarterly installments via voucher payments. According to the Attorney General,

The annual \$15.1 million share . . . for annual transfer to OHA is based on the sums actually transferred during these four fiscal years, the sums of analogous receipts that could have been transferred from the health and housing corporations and the University, the upward trend of these receipts over the last four years, and negotiation and fairness considerations.

The \$15,100,000 also includes certain ancillary receipts from the state airports.

Also, according to the Attorney General, the approximate amount of funding actually transferred to OHA pursuant to Executive Order No. 03-03 and Act 34, Session Laws of Hawaii 2003, was as follows:

FYs	<u>2002-2003</u>	<u>2004</u>	<u>2005</u>
DAGS State Parking Revolving Fund	\$ 43,676	\$22,896	\$ 23,730
DOA Agricultural Park Special Fund General Fund	\$110,038	\$66,659	\$106,558
DBED&T Foreign Trade Zone Special Fund			
HCDA Revolving Fund			
NELHA Special Fund	\$474,684	\$291,906	\$352,531
DOE Use of School Facilities Special Fund	\$ 81,493	\$ 48,400	\$ 45,098
DLNR Boating Special Fund			
Special Land & Development Fund			
State Parks Special Fund			
Beach Restoration Special Fund			
General Fund	\$3,054,738	\$2,827,717	\$3,404,405



DOT Harbors Special Fund	\$11,737,324	\$6,480,000	\$6,866,384
Act 34, SLH 2002	<u>\$ 2,041,852</u>	_____	_____
General Fund			
Annual Totals	<b>\$17,543,805</b>	<b>\$9,737,578</b>	<b>\$10,789,706</b>

The approximate amounts of "analogous" ceded land receipts were as follows:

FYs	<u>2002-2003</u>	<u>2004</u>	<u>2005</u>
Hawaii Health Systems Corporation Hilo Medical, Kula Hospital, Samuel Mahelona	\$ 665,687	\$471,650	Unverified
Non-Patient Food Sales			
Catering Revenue			
Parking Revenue			
Data processing Services Revenue			
Medical Records Abstract Sales			
Non-Patient Room Rentals			
Telephone & Telegraph Revenue			
Restricted and Non-Restricted Contributions			
Employee Housing Rent Revenue			
Clinical Rent Revenue			
Other Space Rental			
University of Hawaii	\$1,293,852	\$1,182,121	Unverified
Manoa and Hilo Campuses			
Parking			
Faculty Housing			
Non-Student Housing Rentals, including food and vending machine, telephone commissions/collections			
Hilo Bookstore - logo products, sundries but not books or school supplies			
Other Revenue			
HCDCH Housing	\$80,626	\$40,091	\$32,625
Public School Faculty Housing Rentals			
Public Rental Housing			
Laundromat/Vending Machine Receipts			
Public Rental Housing Antennae Rental Receipts			
Annual Totals	<u>\$2,040,165</u>	<u>\$1,693,862</u>	<u>Unverified</u>



According to the Attorney General, the approximate amounts of ancillary receipts from the state airports were as follows:

FYs	<u>2002-2003</u>	<u>2004</u>	<u>2005</u>
HIA Terminal Rental Revenue	\$2,598,460	\$1,290,018	\$1,068,268
HIA Terminal Concession Revenue	\$ 857,152	\$ 503,754	\$ 525,671
Non-HIA Aeronautical Revenue	\$1,158,094	\$ 671,564	\$ 712,015
Non-HIA Concession/Other	<u>\$18,241,417</u>	<u>\$9,655,042</u>	<u>\$10,159,033</u>
Terminal Revenue			
Annual Total Receipts	\$22,855,123	\$12,120,378	\$12,464,987
20% Share	<b>\$4,571,025</b>	<b>\$2,424,076</b>	<b>\$2,492,997</b>

Section 4 of this measure appropriates the sum of \$17,500,000 to OHA in fiscal year 2005-2006. According to the Attorney General, this one-time appropriation raises the amount of ceded land receipts actually transferred to OHA during the fiscal years 2002 through 2005. The one-time appropriation of general funds is roughly equivalent to analogous rent-type receipts for the use of ceded lands collected by the Hawaii Health Systems Corporation, the Housing and Community Development Corporation of Hawaii, and the University of Hawaii, etc. during the relevant period which were not paid for legal reasons, interest, and negotiation and fairness considerations. In other words, this appropriation represents a "catch-up" of amounts that were underpaid during the specified time period.

Section 5 requires the DLNR to provide an annual accounting of revenues derived from the public land trust. At the present time, no single state department or agency is responsible for compiling such data. A single accounting will provide the Legislature, OHA, the general public, and even the state administration with a clearer financial picture of the public land trust.

Your Committee on Conferences notes that the agreement embodied in this measure does not extinguish past and future claims that the Office of Hawaiian Affairs may have regarding revenue payments from ceded lands. The agreed \$17,500,000 should be considered a credit for payment owed the Office of Hawaiian Affairs for the period of July 1, 2001 through June 30, 2005. The payment of \$17,500,000 should be construed as coming from ceded land revenues.

Your Committee on Conference has amended this measure to insert H.B. 2204, S.D. 1, which requires that the Department of Land and Natural Resources provide an accounting of revenues from the public land trust and appropriates funds to the Department to conduct the accounting. The Senate draft of H.B. 2204 also provides that the





Office of Hawaiian Affairs is to provide additional funds for the accounting. Your Committee on Conference has amended this measure to:

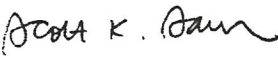
- (1) Change the date of the appropriation to the Department from fiscal year 2005-2006 to fiscal year 2006-2007;
- (2) Include language to further clarify that the Office of Hawaiian Affairs' funds are to be expended only after those general revenue funds appropriated to the Department are expended;
- (3) Change the effective date to upon approval.


As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 2948, S.D. 1, H.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 2948, S.D. 1, H.D. 2, C.D. 1.

Respectfully submitted on behalf  
of the managers:

ON THE PART OF THE HOUSE

ON THE PART OF THE SENATE

  
\_\_\_\_\_  
SCOTT K. SAIKI, Co-Chair

  
\_\_\_\_\_  
COLLEEN HANABUSA, Chair

  
\_\_\_\_\_  
DWIGHT TAKAMINE, Co-Chair



**Hawaii State Legislature**  
**Record of Votes of a**  
**Conference Committee**

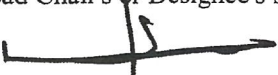
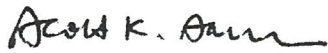
Bill / Concurrent Resolution No.: <b>SB 2948, SD 1, HD 2</b>					Date/Time: <b>4/27/06 11:00 a.m.</b>				
<input checked="" type="checkbox"/> The recommendation of the House and Senate managers is to pass with amendments (CD).									
<input type="checkbox"/> The Committee is reconsidering its previous decision.									
<input type="checkbox"/> The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure					<input type="checkbox"/> The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.				
Senate Managers	A	WR	N	E	House Managers	A	WR	N	E
HANABUSA, Colleen, Chr.	/				SAIKI, Scott K., Co-Chr.	/			
TANIGUCHI, Brian	/			/	TAKAMINE, Dwight Y., Co-Chr.	/			
WHALEN, Paul	/				CARROLL, Mele				/
					CHONG, Pono	/			
					FINNEGAN, Lynn	/			
TOTAL	2			1	TOTAL	4			1
A = Aye		WR = Aye with Reservations			N = Nay		E = Excused		
Senate Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted					House Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Senate Lead Chair's or Designee's Signature: 					House Lead Chair's or Designee's Signature: 				
Distribution:~		Original <i>File with Conference Committee Report</i>	Yellow <i>House Clerk's Office</i>	Pink <i>Senate Clerk's Office</i>			Goldenrod <i>Drafting Agency</i>		

Illustration of Impact of Including All Department and Agency Revenues in Determination of OHA's Share

Department / Agency	(A) Total Receipts	(B) 20% of Total Receipts	(C) Fiscal Year 2018 Actual Receipts Transferred to OHA	(D) Receipts Retained	(E) 20% of Total Receipts Shared Equally Across Other Programs	(F) Receipts Retained After Covering 20% of Total Receipts Shortfall	(G) 20% of Total Receipts Shared Proportionately Across Other Programs	(H) Total Amount Transferred to OHA Including Prorated Shortfall	(I) % of Total Receipts to OHA Including Prorated Shortfall
	(A) * 20%	(A) * 20%	Per Datamart	(A) - (C)	(\$27,623,852.48) <sup>1</sup> \$27,623,852.48 / 18	(D) - (E)	\$27,623,852.48 Prorated	(C) + (H)	(H) / (A)
DOT Airports	92,878,681.00	18,575,736.20	0.00	92,878,681.00	0.00	92,878,681.00	0.00	0.00	0.00%
DOT Harbors	80,973,796.78	16,194,759.36 <sup>2</sup>	10,000,000.00 <sup>3</sup>	70,973,796.78	1,534,658.47	69,439,138.31	15,883,117.68	25,883,117.68	31.96%
DOT Highways	202,116.00	40,423.20	40,693.20	161,422.80	1,534,658.47	-1,373,235.67	64,633.49	105,326.69	52.11%
HHSC	1,225,765.43 <sup>4</sup>	245,153.09 <sup>5</sup>	0.00	1,225,765.43	1,534,658.47	-308,893.04	0.00	0.00	0.00%
University of Hawaii	3,978,360.47 <sup>6</sup>	795,672.09	795,672.10	3,182,688.37	1,534,658.47	1,648,029.90	1,263,775.36	2,059,447.46	51.77%
DAGS-Automotive	118,252.00	23,650.40	19,709.00	98,543.00	1,534,658.47	-1,436,115.47	31,304.04	51,013.04	43.14%
DOA	1,651,677.13	330,335.43	331,359.62	1,320,317.51	1,534,658.47	-214,340.96	526,302.38	857,662.00	51.93%
DOA-ADC	780,026.98	156,005.40	0.00	780,026.98	1,534,658.47	-754,631.49	0.00	0.00	0.00%
DOD	14,483.50	2,896.70	2,896.70	11,586.80	1,534,658.47	-1,523,071.67	4,600.86	7,497.56	51.77%
DOE	2,464,451.21	492,890.24	113,470.00	2,350,981.21	1,534,658.47	816,322.74	180,225.74	293,695.74	11.92%
DLNR-Forestry	405,920.89	81,184.18	77,355.97	328,564.92	1,534,658.47	-1,206,093.55	122,865.40	200,221.37	49.33%
DLNR-Land Div	12,397,617.16	2,479,523.43	2,469,936.78	9,927,680.38	1,534,658.47	8,393,021.91	3,923,029.65	6,392,966.43	51.57%
DLNR-Parks	4,271,038.68	854,207.74	867,156.04	3,403,882.64	1,534,658.47	1,869,224.17	1,377,314.14	2,244,470.18	52.55%
DLNR-Boating	10,113,563.85	2,022,712.77	2,200,586.66	7,912,977.19	1,534,658.47	6,378,318.72	3,495,217.69	5,695,804.35	56.32%
DBEDT-FTZ	29,946.74	5,989.35	5,989.38	23,957.36	1,534,658.47	-1,510,701.11	9,513.00	15,502.38	51.77%
DBEDT-HCDA	387,735.61	77,547.12	77,547.12	310,188.49	1,534,658.47	-1,224,469.98	123,169.00	200,716.12	51.77%
DBEDT-HHFD	7,807,451.63 <sup>7</sup>	1,561,490.33	59,489.18	7,747,962.45	1,534,658.47	6,213,303.98	94,487.36	153,976.54	1.97%
DBEDT-NELHA	1,650,483.00	330,096.60	330,096.83	1,320,386.17	1,534,658.47	-214,272.30	524,296.68	854,393.51	51.77%
DHS-HPHA	3,727,687.26 <sup>8</sup>	745,537.45	0.00	3,727,687.26	1,534,658.47	2,193,028.79	0.00	0.00	0.00%
TOTAL	225,079,055.32	45,015,811.06	17,391,958.58	207,687,096.74	27,623,852.48	180,063,244.26	27,623,852.48	45,015,811.06	

\* Includes amounts that are collected for/owed to third-parties, e.g. revenue bond principle and interest (DOT-Harbors), goods sold, utilities (water, sewer, and electricity) and other pass-through cost.  
 1 Allocating 20% of the total receipts shortfall (\$27,623,852.48) equally among remaining 18 departments/agencies (\$1,534,658.47 per department), results in a deficit in receipts for DOT Highways, HHSC, DAGS-Automotive, DOA, DOA-ADC, DOD, DLNR-Forestry, DBEDT-FTZ, DBEDT-HCDA and DBEDT-NELHA, and will require approximately \$9,765,825 to meet the proposed \$45 million total.

2 Additional sources of funds necessary to transfer total annual Share to OHA

3 Because Executive Order 06-06 does not allow the return of funds in excess of the Act 178, SLH 2006 required \$15.1 million OHA transfer, DOT - Harbors made a policy decision to transfer only \$10 million in FY 2018.

4 Does not include patient service fees

5 Remaining 17 departments/agencies would also need to make up this sum if OHA's Share is based on 20% of Total Receipts

6 Does not include tuition and student fees, cost of goods sold, utilities and other moneys collected for/owed to third parties

7 Does not include receipts from sale or rental of affordable housing units

8 Does not include receipts from rental of affordable housing units



**Attachment 3**

**FY 2018 OHA Payments**

**\$35,000,000**  
As proposed in HB 402  
and SB 1363

Department	Proportion of total trsf's to OHA			Gross receipts	Proportionate share of \$35M	\$35M share as % of gross receipts
	Amt trsf'd to OHA	OHA				
<b>JV Transfers</b>						
Accounting & Gen Svcs	5,030.00	5,052.00	5,019.00	4,608.00	19,709.00	0.11%
Agriculture						
Non-Ag Park Lands (S-305)	57,038.04	88,805.60	54,750.37	34,886.28	235,480.29	1.35%
Non-Ag Park Lands (S-305) (DLNR)						0.00%
Ag Dev Corp (S-307-A)						0.00%
Ag Park Lands (S-317-A)	26,682.44	11,173.63	31,338.30	26,684.96	95,879.33	0.55%
Bus, Econ. Dev. & Tourism						
FTZ (S-302-B)	1,279.05	1,771.32	1,831.10	1,107.91	5,989.38	0.03%
NELHA (S-345-B)	75,310.39	80,409.56	79,507.88	94,868.80	330,096.63	1.90%
HCDA (S-352-B)		77,547.12			77,547.12	0.45%
HHFDC (Honokowai Hale/Lailani) (T-906-B)	15,596.60	15,760.08	14,028.69	14,103.81	59,489.18	0.34%
Defense	681.00	921.90	575.00	718.80	2,896.70	0.02%
Education	24,010.00	28,513.00	28,891.00	32,056.00	113,470.00	0.65%
HHSC						0.00%
Land & Natural Resources						
DLNR (Other than Boating)	749,478.76	649,124.29	1,065,339.42	950,506.32	3,414,448.79	19.63%
Boating	305,590.93	495,935.55	529,964.24	869,095.94	2,200,586.66	12.65%
Transportation (Harbors)	2,516,137.89	2,500,483.50	2,503,394.87	2,479,983.74	10,000,000.00	57.50%
Transportation (Highways)		40,693.20			40,693.20	0.23%
<b>JV Total</b>	<b>3,776,835.10</b>	<b>3,996,190.75</b>	<b>4,314,639.87</b>	<b>4,508,620.56</b>	<b>16,596,286.28</b>	
<b>No Transfers</b>						
Human Services (HPHA)						
Transportation (Airports)						
<b>Check Transfers</b>						
University of Hawaii	200,891.19	206,722.84	197,164.45	190,893.62	795,672.10	4.57%
<b>Total Transfers</b>	<b>3,977,726.29</b>	<b>4,202,913.59</b>	<b>4,511,804.32</b>	<b>4,699,514.18</b>	<b>17,391,958.38</b>	<b>100.00%</b>
Act 178, SLH 2006, requirement	3,775,000.00	3,775,000.00	3,775,000.00	3,775,000.00	15,100,000.00	
Balance (Shortfall)	202,726.29	427,913.59	736,804.32	924,514.18	2,291,958.38	
<b>Total</b>	<b>1,601,229.88</b>	<b>1,601,229.88</b>	<b>1,601,229.88</b>	<b>1,601,229.88</b>	<b>35,000,000.00</b>	<b>40.25%</b>

Note: Gross receipts include some revenues that are not subject to the 20% OHA ceded land assessment.



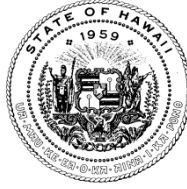
Gross Receipts from Public Land Trust Lands

Department	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	% of FY 2018 Grand Total
Accounting & Gen Svcs	117,374.00	119,345.00	116,212.00	115,706.00	108,929.00	104,231.00	123,928.00	126,253.00	124,293.00	124,484.00	124,536.00	118,252.00	0.05%
Agriculture	509,713.00	933,443.00	1,158,780.00	701,904.00	108,929.00	1,051,451.58	817,798.92	1,675,909.84	1,182,991.29	1,407,032.75	1,372,708.42	1,651,677.13	0.73%
Non-Ag Park Lands (S-305)	-	-	-	-	-	-	-	-	-	-	-	-	0.00%
Non-Ag Park Lands (S-305) (DLNR)	-	-	-	-	-	-	-	-	-	-	-	-	0.00%
Ag Dev Corp (S-307-A)	245,026.00	324,608.00	312,036.00	338,598.00	461,023.76	616,545.93	695,777.09	781,098.49	986,414.59	1,043,838.70	739,165.50	780,026.98	0.35%
Ag Park Lands (S-317-A)	-	-	-	-	-	-	-	-	-	-	-	-	0.00%
Bus, Econ. Dev. & Tourism	-	-	-	-	-	-	-	-	-	-	-	-	0.00%
FTZ (S-302-B)	74,745.00	96,231.00	101,304.00	-	86,730.56	86,668.56	91,467.25	73,612.44	44,037.60	27,648.80	36,515.63	29,946.74	0.01%
NELHA (S-345-B)	3,315,336.00	1,238,997.00	1,462,769.00	1,601,052.00	1,798,995.56	1,798,995.56	1,785,309.09	1,807,609.52	1,714,901.13	1,917,296.57	1,848,565.19	1,650,483.00	0.73%
HCDA (S-352-B)	886,032.00	288,755.00	322,746.00	467,903.00	401,562.86	1,356,962.95	87,555.00	39,720.90	947,146.24	300,000.00	639,848.23	387,735.61	0.17%
HHFDC (Honokowai Hale/Lalaima) (T-906-B)	4,833,970.00	3,858,518.00	-	-	3,438,315.92	3,596,723.46	4,531,973.27	5,132,024.72	5,752,970.99	6,560,768.88	6,570,471.26	7,807,451.63	3.47%
Defense	-	1,168.00	300.00	600.00	550.00	1,975.00	5,575.00	10,180.00	6,097.00	60,611.00	162,347.50	14,493.50	0.01%
Education	1,009,742.00	1,011,116.00	386,995.00	1,559,715.00	-	2,182,578.99	2,499,211.83	2,241,831.00	2,302,228.00	2,346,148.00	2,604,412.00	2,464,451.21	1.09%
HHSC	1,226,308.00	-	-	-	2,801,183.32	1,271,732.00	1,154,687.00	1,414,529.00	1,639,157.00	1,683,181.00	1,046,732.02	1,225,765.43	0.54%
HMS - HPHA	-	-	-	-	-	-	2,711,636.28	2,857,487.08	3,066,987.37	3,390,077.52	3,560,108.81	3,727,687.26	1.66%
Land & Natural Resources	-	-	-	-	-	-	-	-	-	-	-	-	0.00%
DOFAW	175,435.00	236,632.00	181,869.00	682,381.00	297,883.62	941,896.52	882,929.46	236,277.54	240,304.83	247,632.90	457,456.19	405,950.89	0.18%
DLNR - Land	9,626,805.00	11,205,839.00	10,982,755.00	8,554,816.00	10,929,062.74	13,655,985.27	11,573,535.01	12,112,982.83	11,116,087.20	10,555,593.00	12,009,781.12	12,397,617.16	5.51%
DLNR - Parks	2,225,306.00	2,552,988.00	2,579,972.00	2,576,857.00	2,848,806.56	3,347,677.20	3,850,000.72	4,135,256.48	3,754,911.34	4,311,177.85	4,399,628.55	4,271,038.68	1.90%
Boating	7,678,922.00	6,880,957.00	5,836,347.00	6,176,821.00	5,193,655.60	2,480,018.31	6,909,481.12	7,252,863.72	7,217,347.55	7,199,231.61	11,273,355.27	10,113,563.85	4.49%
Transportation (Airports)	41,845,011.00	43,923,698.00	53,839,928.00	59,465,647.00	68,233,701.00	68,233,701.00	64,774,386.00	62,871,137.00	71,275,360.00	73,102,565.00	84,582,157.00	82,378,681.00	41.26%
Transportation (Harbors)	52,858,104.00	35,473,393.00	31,577,821.00	30,182,850.00	38,069,301.52	45,145,673.89	52,795,625.47	57,546,519.20	63,413,558.14	60,604,548.19	67,685,798.06	80,973,796.78	35.96%
Transportation (Highways)	3,852.00	-	3,852.00	4,716.00	14,400.00	4,250.00	15,600.00	43,000.00	36,000.00	83,252.50	203,466.00	202,116.00	0.09%
University of Hawaii	1,848,894.00	1,944,613.00	1,942,316.00	2,103,782.00	2,234,756.51	2,260,752.68	4,664,562.85	2,963,884.02	3,216,447.40	3,252,404.82	3,101,510.88	3,978,360.47	1.77%
<b>Grand Total</b>	<b>128,480,575.00</b>	<b>110,096,291.00</b>	<b>110,806,002.00</b>	<b>114,473,348.00</b>	<b>64,085,378.65</b>	<b>150,939,203.32</b>	<b>159,971,589.36</b>	<b>163,322,176.78</b>	<b>178,043,260.67</b>	<b>177,617,893.09</b>	<b>202,528,563.63</b>	<b>225,079,055.32</b>	<b>100%</b>

20% of the Gross Receipts	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
	25,696,115.00	22,019,258.20	22,161,200.40	22,894,669.60	12,817,075.73	30,187,840.66	31,994,317.87	32,664,435.36	35,608,652.13	35,523,578.62	40,505,712.73	45,015,811.06
<b>General Fund Portion of DLNR Receipts *</b>	498,775.40	498,775.40	3,685,171.67	1,950,812.35	5,455,846.63	4,114,610.15	2,288,243.56	2,744,204.02	2,872,442.75	2,921,848.19	335,710.68	3,409,381.49

Note: Gross receipts include some receipts that are not subject to the 20% Public Land Trust assessment. Amounts per department report to DLNR per Act 178, SLH 2006.

\* Does not include any amount used to cover shortfalls in meeting the \$15,100,000 payment to OHA.



**TESTIMONY BY:**

JADE T. BUTAY  
DIRECTOR

Deputy Directors  
LYNN A.S. ARAKI-REGAN  
DEREK J. CHOW  
ROSS M. HIGASHI  
EDWIN H. SNIFFEN

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

Friday, April 5, 2019  
5:00 p.m.  
State Capitol, Room 211

**H.B. 402, H.D. 1, proposed S.D. 2**  
**RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA**  
**SHARE OF PUBLIC LAND TRUST FUNDS.**

Senate Committee on Ways and Means

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The Department of Transportation (DOT) respectfully **supports the intent** of this bill. Similar to other departments of the State of Hawaii, the DOT has a deep respect for the Office of Hawaiian Affairs (OHA) to raise a beloved nation and values the importance of the betterment of Native Hawaiians. The DOT also concurs that remittances to OHA are required by the State Constitution, and by Hawaii Revised Statutes. DOT agrees with the intent of H.B. 402, H.D. 1, proposed S.D. 2 to establish a Public Land Trust Revenues Committee to determine the increase to the annual amount of the income and proceeds from the public land trust that OHA shall receive annually.

The DOT hopes that the negotiating committee consider establishing a State of Hawaii Accounting Policy that requires State agencies to account for "Any amounts derived from the public land trust pursuant to Section, HRS 10-13.5, from the ceded land revenues/receipts collected by a transferring agency for revenues generated to fulfill its mission for the State, are not an agency's expenditure. Rather these amounts remitted/transferred are "a pass-through of an agency's revenue". Reporting the share of revenue as reductions of an agency's revenues and not as an agency's operating expenses has a significant impact to the agency's ability to finance debt.

The DOT also suggests that except for working papers and documents to support the findings of the negotiating committee, all other documents are exempt from Chapter 92F.

Thank you for the opportunity to provide testimony.



## **O`ahu County Democrats Legislative Priorities Committee**

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

DATE: Friday, April 5, 2019  
TIME: 5:00 p.m.  
PLACE: Conference Room 211 State Capitol

### **RE: HB 402, HD 1, SD 2, Relating to Increasing the Office of Hawaiian Affairs' Pro Rata Share of the Public Land Trust Funds**

To the Honorable Donovan M. Dela Cruz, Chair; Senator Gilbert S.C. Keith-Agaran, Vice Chair; and Members of the Committee on Ways and Means:

My name is Melodie Aduja and I serve as Chair of the O`ahu County Democrats Legislative Priorities Committee of the Democratic Party of Hawai`i ("DPH"). Mahalo for this opportunity to submit testimony on HB 402, HD 1, SD 2. The O`ahu County Democrats Legislative Priorities Committee ("OCDLPC") hereby submits its testimony in **SUPPORT of HD 402, HD 1, SD 2, Relating to Increasing the Office of Hawaiian Affairs' Pro Rata Share of the Public Land Trust Funds.**

HB 402, HD 1, SD 2, establishes a public land trust revenue negotiating committee to determine the increase to the annual amount of the income and proceeds from the public land trust that the Office of Hawaiian Affairs shall receive annually under the state constitution and other state law. It requires the Department of Budget and Finance to conduct a financial review of the amounts of revenue generated from the public land trust. It further requires the Auditor to report to the Legislature on a comprehensive review of programs administered by the State that serve Hawaiians. HB 402, HD 1, SD 1, appropriates funds for the public land trust revenues negotiating committee and audit. (SD2 Proposed)

In 1978, the state constitution was amended to establish the office of Hawaiian affairs and its board of trustees. Article XII, section 6 of the state constitution provides as follows: The board of trustees of the Office of Hawaiian Affairs shall exercise power as provided by law to manage and administer the proceeds from the sale or other disposition of the lands, natural resources, minerals and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to

in section 4 of this article for native Hawaiians; to formulate policy relating to affairs of native Hawaiians and Hawaiians; and to exercise control over real and personal property set aside by state, federal or private sources and transferred to the board for native Hawaiians and Hawaiians. The board shall have the power to exercise control over the Office of Hawaiian Affairs through its executive officer, the administrator of the Office of Hawaiian Affairs, who shall be appointed by the board.

Act 273, Session Laws of Hawaii 1980, enacted section 10-13.5, Hawaii Revised Statutes, to implement the office of Hawaiian affairs' pro rata share and provide that "[t]wenty 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."

Native Hawaiians are the indigenous people of Hawai'i and deserve a just relationship with the State and Federal Governments. We support the growth of Native Hawaiian farming, agricultural and healing practices. We value and wish to foster the preservation of our host culture. We support the efforts of Native Hawaiians to pursue self-determination. We also support their right to pursue the international rights of Native Hawaiian people.

We acknowledge the past injustices and the misguided, harmful Federal and State policies and actions based on outdated and discredited values and beliefs that resulted in the destruction of the Hawaiian Nation's economies, social, and religious systems, the taking of their lands, and the creation of intergenerational trauma that exists to this day. We believe that we have a moral and profound duty to honor, respect, and uphold our sacred obligation to the Hawaiian Nation State and the Hawaiian people.

DPH also supports efforts for self-governance and self-determination of Native Hawaiians whose values are the foundation of the Hawaiian Islands. We support proactive actions by the Federal and State governments to enhance Native Hawaiian culture, health, language, and education. We recognize and honor the contributions and sacrifices made in service to our county by Native Hawaiians.

We support the continued engagement and empowerment of the Native Hawaiian community in decisions related to county and state affairs. *Democratic Party of Hawai'i Platform (2018), p. 15, ln. 32-50.*

The Democratic Party of Hawaii's 2018 Platform makes is clear that OHA is to be reinstated of its "full percentage of Public Land Trust Revenues set aside for the betterment of Native Hawaiians (20% of public land trust revenues)." *Democratic Party of Hawai'i Platform (2018), p. 2, ln. 17-19.*

For the foregoing reasons, to wit, Act 273, Session Laws of Hawaii 1980, enacted section 10-13.5, Hawaii Revised Statutes, to implement the office of Hawaiian affairs' pro rata share by providing twenty per cent of all funds derived from the public land trust to be expended by the

Office of Hawaiian Affairs, OCDLPC supports HB 402, HD 1, SD 1, and urges its passage out of the Committee on Ways and Means.

Mahalo nui loa

Me ka `oia`i`o

/s/ *Melodie Aduja*

Melodie Aduja

Chair, O`ahu County Democrats Legislative Priorities Committee

Ph. (808) 258-8889

Email: [legislativepriorities@gmail.com](mailto:legislativepriorities@gmail.com)

**HB-402-SD-1**

Submitted on: 4/4/2019 9:38:00 AM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
MaryAnn Tadoria	Testifying for Oha	Support	No

Comments:

**HB-402-SD-1**

Submitted on: 4/2/2019 3:15:02 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michael Golojuch Jr	Testifying for LGBT Caucus of the Democratic Party of Hawaii	Support	Yes

Comments:

Aloha Senators,

The LGBT Caucus of the Democratic Party of Hawaii supports the passage of HB 402 HD1 SD1.

Mahalo for your consideration and for the opportunity to testify. Mahalo,

Michael Golojuch, Jr.

Chair

LGBT Caucus of the Democratic Party of Hawaii

**HB-402-SD-1**

Submitted on: 4/2/2019 3:16:26 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Pride Work HI	Testifying for Pride at Work Hawaii	Support	Yes

Comments:

Aloha Senators,

The Pride at Work Hawaii, an affiliate of Hawaii State AFL-CIO, supports the passage of HB 402 HD 1 SD 1.

Mahalo for your consideration and for the opportunity to testify in STRONG support of HB 402 HD 1 SD 1.

Mahalo,

Pride at Work - Hawaii





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

SENATE COMMITTEE ON WAYS AND MEANS  
Friday, April 5, 2019, 12:30 PM, Conference Room 211  
HB 402, HD 1, SD 1, Proposed SD 2  
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

Chair Dela Cruz and Committee Members:

**The League of Women Voters of Hawaii requests amendment of HB 402, HD 1, SD 1, Proposed SD 2.**

The League has no expertise or position concerning OHA's fair share of revenues. However, we request amendment of Section 2 of this bill so that the proposed public lands trust revenues negotiating 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.

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](mailto:Ken_Conklin@yahoo.com)  
Unity, Equality, Aloha for all



To: SENATE COMMITTEE ON WAYS AND MEANS  
For hearing Tuesday, March 19, 2019

Re: HB 402, HD1, SD1 Proposed SD2 (SSCR1470)

**RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF PUBLIC LAND TRUST FUNDS.**  
Establishes a public land trust revenues negotiating committee to determine the increase to the annual amount of the income and proceeds from the public land trust that the Office of Hawaiian Affairs shall receive annually under the state constitution and other state law. Requires the Department of Budget and Finance to conduct a financial review of the amounts of revenue generated from the public land trust. Requires the Auditor to report to the Legislature on a comprehensive review of programs administered by the State that serve Hawaiians. Appropriates funds. (SD2 Proposed)

# 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 39 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. 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.

5. 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.

6. 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.

7. 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 \$662 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. 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?

5. 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>

6. 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 \$662 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!



7. The dollar amount for future annual payments to be 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.

The first draft of 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 the next fiscal year. Furthermore this bill would transfer to the office of Hawaiian affairs a sum of \$139,000,000 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, 2019.

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.

**HB-402-SD-1**

Submitted on: 4/3/2019 3:32:35 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Wilbur Luna	Testifying for OHA	Support	No

Comments:

**I STRONGLY SUPPORT HB402 HD1 SD1** which seeks to ensure that the state's constitutional and statutory Public Land Trust (PLT) obligations to Native Hawaiians are more properly fulfilled. **Accordingly, OHA believes that an updated interim annual amount of \$35 million, as proposed in the original version of HB402 HD1 SD1 is a prudent, fair, and long-awaited step towards better fulfilling the state's constitutional and moral obligations to Native Hawaiians.**

**I respectfully request the \$35 million annual amount be restored.**

**Similarly, I respectfully request that the measure's proposed lump sum back payment of \$139 million from state general funds be re-inserted into this measure** for underpaid PLT revenues between July 1, 2012 and June 30, 2019, and restore continued annual accounting of revenues of PLT revenue.

After years of unjustified delay, it is finally time to revisit Native Hawaiians' fair share of PLT revenues. Importantly, Native Hawaiians' PLT share is the primary source of funding for programs, grants, and services that benefit both Native Hawaiians and the larger community. Raising Native Hawaiians' annual share 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 HB402 HD1 SD1.**

**HB-402-SD-1**

Submitted on: 4/3/2019 4:27:21 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Leatrice Maluhia Kauahi	Testifying for Hawaiian Civic Club of Honolulu and Ka Lei Papahi O kakuhihewa	Support	No

Comments:

The Public Land Trust was created for a purpose and has not been upheld by our legislators and needs to be done; it is pono not only for Hawaiians, it is for all of Hawaii Nei. We need to know our legislators what and do the right actions in following the constitution. Please do your job what you were elected to do. It is for all of Hawaii Nei. This is not the end of the issue, be pono and continue to be pono. Mahalo piha.



# KE ONE O KĀKŪHIHEWA

O'ahu Council of the  
Association of Hawaiian Civic Clubs

BENTON KEALII PANG, PH.D.,-HAWAIIAN CIVIC CLUB OF  
HONOLULU  
PELEKIKENA

JACOB KA'ŌMAKAOKALĀ AKI-KING KAMEHAMEHA HCC  
HOPE PELEKIKENA

KALANI L. KA'ANĀ'ANĀ-KAILUA HCC  
HOPE PELEKIKENA 'ELUA

ALBERTA LOW-PEARL HARBOR HCC  
PU'UKŪ

ROTH PUAHALA -KING KAMEHAMEHA HCC  
PELEKIKENA IHO NEI

TERI LOO-KO'OLAUPOKO HCC  
KĀKAU 'ŌLELO

CHRISTINE "CHRISSY" ANJO-PEARL HARBOR HCC  
HOLE KĀKAU 'ŌLELO

'AHAHUI SIWILA HAWAII O KAPOLEI  
LANCE HOLDEN

ALI'I PAUAHI HCC  
KEHAULANI LUM

'EWA-PU'ULOLOA HCC  
MARLEEN KAU'I SERRAO

HCC OF HONOLULU  
MANU BOYD

KAILUA HCC  
MAPUANA DE SILVA

KALIHĪ-PĀLAMA HCC  
KAIMO MUHLESTEIN

KING KAMEHAMEHA HCC  
LETANI PELTIER

KO'OLAULOLOA HCC  
RANAĒ "TESSIE" FONOIOMOANA

KO'OLAUPOKO HCC  
ALICE P. HEWETT

LUALUALEI HCC  
SHIRLINE HO

MĀKAHA HCC  
LUANN LANKFORD-FABORITO

MĀLAMA MELE O HAWAII  
JANET ABRIGO

MAUNALUA HCC  
ROSE KITTY SIMONDS

NA LANI 'EHA HCC  
R. KELANI RAMOS

NĀNĀIKAPONO HCC  
JAYCINE HICKS

PAPAKŌLE'A HCC  
KEALI'I LUM

PEARL HARBOR HCC  
KU'UMEALOHA GOMES

PRINCE KŪHIŌ HCC  
A. MAKANA PARIS

PRINCESS KAI'ULANI HCC  
LEIMANA DAMATE

QUEEN EMMA HCC  
RAWLETTE P. KRAUT

HCC OF WĀHIWA  
MARIE "MĀLIA" DOO

HCC OF WAIALUA  
MAKALAPUA CASSON-FISHER

WAI'ANAE HCC  
CYNTHIA ENRIQUEZ

WAIKĪKĪ HCC  
L. PI'KEA TOMCZYK

HCC OF WAIMĀNALO  
FAITH KA'IAMA

SEN. DONOVAN DELA CRUZ (CHAIR), SEN. GILBERT KEITH-  
AGARAN (VICE-CHAIR), AND THE SENATE COMMITTEE ON WAYS  
AND MEANS

**SUPPORT** FOR HB402 RELATING TO INCREASING THE OFFICE  
OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF PUBLIC LAND  
TRUST FUNDS

APRIL 3, 2019

Aloha Sen. Donovan Dela Cruz (Chair), Sen. Gilbert Keith-Agaran (Vice-Chair), and the Senate Committee on Ways and Means,

As Pelekikena (President) of Ke One O Kākūhihewa (O'ahu Council-Association of Hawaiian Civic Clubs) and its 25 Hawaiian Civic Clubs, we support HB402 HDI SDI RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF PUBLIC LAND TRUST FUNDS. This bill establishes the OHA's pro rata share of the public land trust, transfers funds to OHA for underpayment of the public land trust funds for 7/1/2012 to 6/30/2019, and requires the DLNR to provide an annual accounting of receipts from public land trust lands. At its 58th annual convention, our Association of Hawaiian Civic Clubs (Association), for which we are a member, adopted resolution 2017-35 that urged the Department of Land and Natural Resources to report on the Public Land Trust Information System and to clarify the Public Land Trust (PLT) revenue. At its 57th annual convention, the Association adopted resolution 2016-1 that calls for a more equitable annual allocation of PLT revenue to OHA for its pro rata share and for the State to provide funds to address the years of underpayment. The appropriate annual allocation of PLT revenue can be more fairly determined through better accounting and reporting on PLT revenues across the state. As such, we support that all PLT receipts must be accounted for, including those receipts that a department or agency believes may not be subject to the Office of Hawaiian Affairs' pro rata share; and requiring all entities of the State that hold PLT lands, including the Department of Land and Natural Resources, to consult with OHA to ensure that the accounting is accurate and inclusive and requiring certain explanations and determinations regarding the amount of receipts transferred to OHA.





The Native Hawaiian community has been denied access to its fair share of trust resources for decades. The OHA pro rata share of PLT revenue is the primary source of funding for programs, grants and services that benefit the Native Hawaiian community, and has a positive impact on all of Hawai'i. Having more accurate reporting on PLT revenues, will allow the legislature to adjust the annual OHA appropriation to a just and fair amount. These resources will support a wider range of strategic and innovative programs--including in the areas of housing, health care, education, business opportunities, and job opportunities--that will improve the well-being and conditions of Native Hawaiians and, indeed, all of Hawai'i.

Thus, our council urges this committee PASS HB402 HD1 SD1.

*Ke One O Kakūhihewa is a native Hawaiian council made up of 25 civic clubs on the island of O'ahu. Our oldest member, Hawaiian Civic Club of Honolulu was established by Prince Jonah Kūhiō Kalaniana'ole on December 7, 1918.*

Sincerely,

Benton Kealii Pang, Ph.D.





Sen. Donovan Dela Cruz  
Senate Ways and Means Committee  
State Capitol  
Honolulu, HI

Re: House Bill 402, HD1, Proposed SD2

Chairman Dela Cruz and Committee Members:

The Hawaii Professional Chapter of the Society of Professional Journalists takes no position on the merits of this measure.

However, the chapter opposes a provision in the bill to allow the committee that would establish how much money OHA is owed and other related issues to act outside the Sunshine Law.

We feel no committee creating such policy recommendations on the use of public funds should be allowed to meet in secrecy.

Thank you for your time and attention,

Stirling Morita  
Hawaii Chapter SPJ

**Testimony of Denver Saxton Coon on behalf of Trilogy Corporation, in strong support of HB 402 HD1 SD1, relating to increasing the Office of Hawaiian Affairs' pro rata share of Public Land Trust funds.**

COMMITTEE ON WAYS AND MEANS

Senator Donovan M. Dela Cruz, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair

AMENDED NOTICE OF HEARING

DATE: Friday, April 5, 2019  
TIME: ~~12:30 PM~~ 5:00 PM  
PLACE: Conference Room 211  
State Capitol  
415 South Beretania Street

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Aloha. My name is Denver Saxton Coon. I am general counsel for Trilogy Corporation dba Trilogy Excursions. Trilogy Excursions has been operating on the island of Maui and Lanai for over 45 years. Trilogy Excursions is dedicated to educating its guests about the Hawaiian culture and giving back to our island community.

HB 402 HD1 SD1 will help the Native Hawaiian community by providing the Office of Hawaiian Affairs (OHA) with its constitutional and statutory right to a pro rata share of the Public Land Trust (PLT) revenue, a portion of which is derived from ocean tourism companies like Trilogy Excursions.

The OHA pro rata share of PLT revenue is the primary source of funding for programs, grants, and services that benefit the Native Hawaiian community, and has a positive effect on all of Hawai'i. Raising the interim annual appropriation to \$35 million and providing the \$139 million in back payments will support programs that positively impact trust beneficiary housing, health care, education, business opportunities, and job opportunities for Native Hawaiians. An increased share of the PLT revenue will help to ensure the protection and perpetuity of both the Native Hawaiian community and the Hawaiian culture.

Trilogy Excursions humbly requests that the committee pass HB402 HD1 SD1.

*Mahalo,*

Denver Saxton Coon  
Trilogy Corporation  
General Counsel



## **HAWAII HEALTH SYSTEMS**

C O R P O R A T I O N

*Quality Healthcare For All*

**Senate Committee on Ways and Means**  
**Senator Donovan M. Dela Cruz, Chair**  
**Senator Gilbert S.C. Keith-Agaran, Vice Chair**

April 5, 2019  
Conference Room 211  
5:00 p.m.  
Hawaii State Capitol

**Testimony Providing Comments House Bill 402, HD 1, SD 2  
Relating to Increasing the Office of Hawaiian Affairs' Pro Rata Share  
of Public Land Trust Funds.**

**Establishes the OHA's pro rata share of the public land trust. Transfers funds to OHA for underpayment of the public land trust funds for 7/1/2012 to 6/30/2019. Requires the DLNR to provide an annual accounting of receipts from public land trust lands. Appropriates funds.**

Linda Rosen, M.D., M.P.H.  
Chief Executive Officer  
Hawaii Health Systems Corporation

On behalf of the Hawaii Health Systems Corporation (HHSC) Corporate Board of Directors, thank you for the opportunity to present testimony **providing comments on HB 402, HD 1, SD 2** that establishes the OHA's pro rata share of the public land trust, transfers funds to OHA for underpayment of the public land trust funds for 7/1/2012 to 6/30/2019 and requires the DLNR to provide an annual accounting of receipts from public land trust lands.

HHSC supports the exclusion of patient service revenues from the ceded lands rental computation. The services provided by HHSC's facilities are of benefit to all of the communities we serve, which includes the Native Hawaiian population in those areas. As a result, it makes sense that those patient service revenues be excluded from the rental computation as OHA's constituents are already receiving a huge community benefit from having healthcare services provided by HHSC.

Further, the practice of continuing to have HHSC continue to pay rental income on its non-patient service revenues has a significant operating impact on a health care system that is already cash-strapped. HHSC's non-patient service revenues consist of items such as cafeteria income, medical record abstract fees, and rental income. In reality, HHSC cannot separate its non-patient service revenues from its patient service

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revenues and justify paying rent on those non-patient service revenues, as they are all related to the provision of healthcare services to the community. Therefore, HHSC believes that none of its revenues should be subject to the OHA rental computation, as OHA's constituents benefit equally from the non-patient service revenues that HHSC earns as well as the patient service revenues derived from direct patient care.

Thank you for the opportunity to testify before this committee **providing comments** on this measure.



MANA MAOLI 



KAMEHAMEHA SCHOOLS®



Senate Committee on Ways and Means

Time: 5:00 p.m.

Date: 'Apelila 5, 2019

Where: Capitol Room 211

Testimony submitted by the listed organizations

**RE: HB402, HD1, SD1, Relating to Increasing the Office of Hawaiian Affairs' pro rata share of the Public Land Trust Funds**

E ka Luna Ho'omalua Dela Cruz, ka Hope Luna Ho'omalua Keith-Agaran, a me nā Kenekoa 'ē a 'e o kēia mau Kōmike, aloha!

We, the listed organizations, submit this joint testimony in strong **SUPPORT** of HB402, HD1, SD1, which seeks to ensure that the State's constitutional and statutory Public Land Trust obligations to Native Hawaiians are more properly fulfilled. After years of unjustified delay, it is finally time to revisit Native Hawaiians' fair share of Public Land Trust revenues. Importantly, Native Hawaiians' PLT share is the primary source of funding for programs, grants, and services that benefit both Native Hawaiians and the larger community. Raising Native Hawaiians' annual share 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.

With this testimony, our organizations collectively ask the Committees to **PASS** HB402, HD1, SD1. Mahalo nui.

April 4, 2019

Senator Donovan Dela Cruz  
Chair, Senate Committee on Ways and Means

**Submitting Testimony in SUPPORT of HB402, HD1, SD1**  
Fulfilling the State's Public Land Trust Revenue Obligations

**I STRONGLY SUPPORT HB402, HD1, SD1** which seeks to ensure that the state's constitutional and statutory Public Land Trust (PLT) obligations to Native Hawaiians are more properly fulfilled.

The Native Hawaiian community has been denied access to their trust resources for decades. The OHA prorata share of PLT revenue is the primary source of funding for programs, grants and services that benefit the Native Hawaiian community, and has positive effect on all of Hawai'i. Raising the annual appropriation to \$35 million will support a wider range of strategic and innovative programs – including housing, health care, education, business and job opportunities that will improve the well being and conditions of native Hawaiians and all of Hawai'i.

I **respectfully URGE** the Ways and Means Committee to **APPROVE HB402, HD1 SD1** and return to the Native Hawaiians what is theirs.

My contact information is noted below. Please don't hesitate to contact me with any questions.

Me ke aloha,

Yvonne PeeWee Ryan  
Prince Kuhio Hawaiian Civic Club

91-1241 Kinoiki Street  
Kapolei HI 96707  
Email: peewee.ryan@gmail.com

**HB-402-SD-1**

Submitted on: 4/4/2019 4:22:06 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lahela Williams	Individual	Support	No

Comments:

**Aloha Chair Dela Cruz, Vice-Chair Keith-Agaran and members of the Senate Committee on Ways and Means:**

**I respectfully submit this testimony in strong SUPPORT of HB402 HD1 SD1.**

**The Office of Hawaiian Affairs (OHA) pro rata share of Public Land Trust (PLT) revenue is the primary source of funding for programs, grants and services that benefit the Native Hawaiian community, and has positive effect on all of Hawai'i. Raising the interim annual appropriation to 20% and providing the appropriate retroactive payments will support programs that positively impact housing, health care, education, business and the economic mobility potential of thousands of Native Hawaiians.**

**This bill will aide the State of Hawaii in fulfilling it's fiducary responsibilities to the Native Hawaiian community through providing OHA with its constitutional and statutory right to a 20% pro rata share of the PLT revenue.**

**I humbly ask the committee to PASS HB402 HD1 SD1. Mahalo piha for your time and condiseration.**

**Respectfully submitted: Lahela Williams**



## THE ASSOCIATION OF HAWAIIAN CIVIC CLUBS

Senate Committee on Ways and Means

*Pō‘alima, ‘Apelila 5, 2019*  
*Lumi ‘Aha Kūkā 211*  
*Ke Kapikala Moku ‘āina*  
415 South Beretānia Street

Re: HB402 HD1 SD1 - RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS’ PRO RATA SHARE OF PUBLIC LAND TRUST FUNDS

*Aloha Luna Ho ‘omalu* Donovan Dela Cruz, *Hope Luna Ho ‘omalu* Gilbert Keith-Agaran and members of the Senate Committee on Ways and Means:

The Association of Hawaiian Civic Clubs **SUPPORTS THE INTENT** of HB402 HD1 SD1. This measure will help the State better fulfill its trust responsibilities to the Native Hawaiian community, especially through providing their trustee, the Office of Hawaiian Affairs, with the constitutional and statutory pro rata share of the Public Land Trust revenue at **20%**. This is a matter of Justice for Native Hawaiians and Reconciliation for all of Hawai‘i. At nearly every juncture since the illegal invasion of the Hawaiian Kingdom in 1893, Native Hawaiians have been denied what is rightfully theirs -- their ancestral lands. Moreover, the Hawai‘i State constitution and the State Supreme Court made it clear that Native Hawaiians are entitled to a portion of the Public Land Trust revenue. At the 57th annual convention of the Association, resolution 2016-1 was passed which calls for a more equitable annual allocation of Public Land Trust revenue to OHA for its pro rata share and for the State to provide funds to address the years of underpayment. Let us give Native Hawaiians what is rightfully theirs.

Thus, the Association respectfully urges the committee to **PASS** HB402 HD1 SD1.

The civic club movement was founded in 1918 by Congressional Delegate Prince Jonah Kūhiō Kalaniana‘ole with the creation of the Hawaiian Civic Club in Honolulu, O‘ahu; the Association was formally organized in 1959 and has grown to a confederation of over sixty (60) Hawaiian Civic Clubs located throughout the State of Hawai‘i and the United States. The Association is the oldest Hawaiian community-based grassroots organization. The Association is governed by a 16-member Board of Directors; advocates for improved welfare of Native Hawaiians in

culture, health, economic development, education, social welfare, and nationhood; and perpetuates and preserves language, history, music, dance and other Native Hawaiian cultural traditions.

*Mahalo* for allowing us to share our *mana* 'o.

*Me ka 'oia 'i 'o,*

Hailama Farden  
*Pelekikena*

***ASSOCIATION OF HAWAIIAN  
CIVIC CLUBS***

***A RESOLUTION***

16 - 1

**URGING THE GOVERNOR OF THE STATE OF HAWAI'I TO CONVENE THE  
PUBLIC LAND TRUST REVENUES NEGOTIATING COMMITTEE**

WHEREAS, the House of Representatives of the Twenty-eighth Legislature of the State of Hawai'i, Regular Session of 2016, the Senate concurring, adopted a concurrent H.C.R. No. 188 H.D. 1 S.D. 1, requesting the Governor convene a Public Land Trust Revenues Negotiating Committee (Committee); and

WHEREAS, the Committee is to discuss the income and proceeds from the public land trust that the Office of Hawaiian Affairs (OHA) should receive annually pursuant to the State Constitution and other State laws; and

WHEREAS, the Committee is to be comprised of the Governor or designee, the President of the Senate or designee, the Speaker of the House of Representatives or designee, the Chairperson of the OHA or designee; and

WHEREAS, the State of Hawai'i has fiduciary responsibilities as the trustee of the public land trust established by section 5(f) of the Admission Act of 1959; and

WHEREAS, in 1978 the people of Hawai'i overwhelmingly ratified amendments to the constitution, including Article XII, section 6, which established OHA; and

WHEREAS, OHA has a right to receive a pro rata portion of the public land trust for one of the five express purposes of the public land trust – the betterment of the conditions of Native Hawaiians; and

WHEREAS, pursuant to its fiduciary obligations, the state of Hawai'i enacted Act 273, S.L.H. 1980, codified as Hawaii Revised Statute (HRS) section 10-13.5, which defined OHA's pro rata share as "twenty percent of all funds derived from the public land trust"; and

WHEREAS, OHA and the State litigated over the scope of revenue subject to OHA's pro rata share starting in the 1980s, which ultimately led to a dismissal by the court because HRS section 10-13.5 did not provide the court sufficient "judicially discoverable and manageable standards" and therefore could not be decided without initial policy determinations by the legislature; and



WHEREAS, for decades OHA and the State have disagreed on how to calculate OHA's pro rata share of the public land trust as well as whether certain revenue streams should be subject to OHA's minimum twenty percent share; and

WHEREAS, Act 178, SLH 2006, temporarily established OHA's pro rata share of the income and proceeds of the public land trust for the betterment of the conditions of Native Hawaiians at \$15,100,000 annually and required State agencies to report public land trust revenues to the legislature each year; and

WHEREAS, the State's annual payments to OHA for its portion of the public land trust, which are calculated using historically-undisputed revenue streams, have resulted in overages over the temporary \$15,100,000 allotment requiring OHA to return millions of dollars to the State starting in fiscal year 2013; and

WHEREAS, a decade has passed since the enactment of Act 178, SLH 2006, it is now appropriate for the State and the OHA to re-examine the annual figure of \$15,100,000 in light of information, data, and facts provided to the Legislature by State agencies over the last three fiscal years concerning revenues of the public land trust; and

WHEREAS, the Hawai'i Supreme Court has repeatedly held that the Legislature has a constitutional obligation to clarify the pro rata portion of revenues derived from the public land trust to which OHA is entitled for the benefit of Native Hawaiians under Article XII, sections 4 and 6 of the Hawai'i State Constitution; and

WHEREAS, OHA relies substantially on revenues derived from the public land trust to manage over 27,000 acres of conservation and agricultural lands, advocate for policies that better the conditions of Native Hawaiians, monitor government actions to ensure their compliance with environmental laws and the public trust, and provide community grants and scholarships; and

WHEREAS, the convening of the Committee would be a positive step towards improving the civic, economic, social welfare, and health of Native Hawaiians and the larger State community.

NOW, THEREFORE, BE IT RESOLVED, by the Association of Hawaiian Civic Clubs at its 57<sup>th</sup> annual convention at Las Vegas, Nevada this 19<sup>th</sup> day of November 2016, that it urges the Governor of the State of Hawai'i to convene the Public Land Trust Revenues Negotiating Committee; and

BE IT FURTHER RESOLVED, that as part of the negotiated settlement the State shall provide at least twenty percent of all public land trust revenue to OHA moving forward; and



BE IT FURTHER RESOLVED, that the State shall provide all back funds based on the minimum twenty-percent pro rata share that has not been transferred to OHA since its Constitutional creation; and

BE IT FURTHER RESOLVED, that OHA and the State introduce legislation to formalize such agreement by the 2018 legislative session; and

BE IT FURTHER RESOLVED, that the Legislature determine the policy for judicially discoverable and manageable standards; and

BE IT FURTHER RESOLVED, that a certified copy of this resolution be transmitted to the Governor of the State of Hawai'i, President of the State Senate, Speaker of the State House of Representatives, Chair of the State Senate Committee on Hawaiian Affairs, Chair of the State House Committee on Ocean, Marine Resources, & Hawaiian Affairs, Chair of the Board of Trustees of the Office of Hawaiian Affairs, and all County Mayors.



The undersigned hereby certifies that the foregoing Resolution was duly adopted on the 19<sup>th</sup> day of November 2016, at the 57th Annual Convention of the Association of Hawaiian Civic Clubs in Las Vegas, Nevada.

*Annelle C. Amaral*

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Annelle C. Amaral, President



Luna O Na Papa Alakai

Senate Committee on Ways and Means

Pelekikena  
A. Makana Paris

Friday, April 5, 2019  
5:00 pm House Conference Room 211  
State Capitol  
415 South Beretania Street

Hope Pekekikena  
Ekahi  
Randi Fernandez

Hope Pelekikena  
Elua  
Matthew Gumapac

Re: HB402 HD1 SD1 - RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF PUBLIC LAND TRUST FUNDS

Puuku  
Denise Kekuna

Aloha Chair Donovan Dela Cruz, Vice-Chair Gilbert Keith-Agaran and honorable members:

Kakauolelo Hoopaa  
Sai Furukawa

The Prince Kūhiō Hawaiian Civic Club **SUPPORTS THE INTENT** of HB402 HD1 SD1. The bill will allow the State to more fully act upon its trust *kuleana* (responsibility) to Native Hawaiians by allocating to the Office of Hawaiian Affairs (OHA) a more just pro rata share of the Public Land Trust revenue.

Kakauolelo Hooholo  
Palapala  
Kamuela Werner

The bill in its original form transfers \$139 million to OHA for back funds owed from July 1, 2012 to June 30, 2019; establishes \$35 million as the new interim pro rata share allocation to OHA; requires the better accounting of revenue generation on 5(f) lands; and creates a public land trust revenue committee to make recommendations on the appropriate pro rata share that OHA shall receive annually every six years.

Pelekikena Hala  
Koke  
Yvonne 'PeeWee'  
Ryan

Native Hawaiians enjoy a trust relationship with the State. OHA is the entity in which Native Hawaiians as trust beneficiaries are able to access their trust resources in the form of grants, services, programs, scholarships, and loans. By raising the annual appropriation to \$35 million, and by granting the back underpayments of approximately \$139 million, the Native Hawaiians community will be able to access more of their trust resources and will be able improve their well-being and better the conditions for all of Hawai'i.

Luna Alakai  
Kuni Agard  
Puamana Crabbe  
Kanani Pali  
Marlene Sai  
Jennifer Smythe  
Bruce Wong

Thus, the Prince Kūhiō Hawaiian Civic Club respectfully urges the Committee to **PASS** HB402 HD1 SD1.

Mailing Address:  
P.O. Box 4728  
Honolulu ~ Hawaii  
96812

*Mahalo nui loa.*

www.pkhcc.org

*Me ke aloha,*

A. Makana Paris  
Pelekikena  
president@pkhcc.org

Founded in 1964  
by Liliuokalani  
Kawananakoa Morris



**HB402 HD1 SD1 and proposed SD2**  
**RELATING TO INCREASING THE OFFICE OF HAWAIIAN**  
**AFFAIRS' PRO RATA SHARE OF PUBLIC LAND TRUST FUNDS**  
Senate Committee on Ways and Means

April 5, 2019

5:00 p.m.

Room 211

The Office of Hawaiian Affairs (OHA) **SUPPORTS WITH AMENDMENTS HB402 HD1 SD1 and the proposed SD2.** HB402 HD1 SD1 provides a means of immediately updating the amount set aside annually for Native Hawaiians as their constitutional and fair share of the income and proceeds from the Public Land Trust. If this committee is unable to move forward with an immediate increase, the Proposed SD2 establishes a two-year, formal process to allow the State to gather additional revenue data and engage in negotiations with OHA on an appropriate amount for a long-overdue increase to Native Hawaiians' annual share of the Public Land Trust.

**Native Hawaiians' Pro Rata Share**

As background, the Hawai'i Admission Act and the Hawai'i State Constitution established the Public Land Trust for the betterment of the conditions of native Hawaiians and for the general public. The Hawai'i State Constitution entrusts OHA with the responsibility to manage and administer Public Land Trust funds set aside for Native Hawaiians, which state law reaffirms as a 20% pro rata share of all funds from the Trust.

After decades of disagreement as to how to determine this 20% pro rata share, 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. This agreement was embodied in Act 178 of the 2006 Regular Session of the State Legislature. **With years of state data now available, OHA strongly agrees that it is time to revisit and update Native Hawaiians' fair share of the Public Land Trust.**

**Amendments in Support of HB402 HD1 SD1**

OHA believes that an updated interim annual amount of \$35 million, as proposed in the original version of HB402, and which already excludes significant revenue streams, is a prudent, fair, and long-awaited step towards better fulfilling the state's constitutional and moral obligations to Native Hawaiians. Therefore, OHA respectfully

requests that Sections 1, 2, 3, and 4 of HB402 HD1 SD1 be amended to restore the originally proposed \$35 million annual amount. **OHA further requests that the measure's proposed lump sum back payment of \$139 million from state general funds be re-inserted into Sections 1 and 5 of HB402 HD1 SD1.**

Further, OHA respectfully requests that HB402 HD1 SD1 be amended to restore other key elements of the original bill and to address other concerns. Specifically, if the Committee moves the SD1 version of this measure, OHA requests that the Committee:

- Amend Section 2 to clarify that upon passage of HB402, the interim amount set in Act 178 would no longer be applicable;
- Amend Section 4 to provide for quarterly, not annual, payments of Public Land Trust revenues to OHA, as provided in the original version of HB402; and
- Amend Section 6 to require the Department of Budget and Finance (DLNR) to consult with OHA in determining the method in which the annual accounting of Public Land Trust receipts shall be conducted and in ensuring that the accounting is accurate and inclusive of all receipts generated by the Public Land Trust

Proposed amendment language and additional justifications for these requested amendments can be found in prior OHA testimony on HB402 to other legislative committees.

In addition, OHA requests that Section 3(2) be deleted, as it appears to allow the University of Hawai'i to reduce the amount of Public Land Trust receipts it collects "by an amount equal to university receipts derived from tuition and special funds utilized for native Hawaiian programs." Although OHA appreciates that Hawai'i's public university system has programs dedicated to Hawai'i's indigenous people, OHA has no role in the decisionmaking of the University of Hawai'i regarding the development or funding of such programs. The Hawai'i Constitution makes clear that the OHA Board of Trustees has the responsibility to determine how to spend Native Hawaiian's pro rata share of the Public Land Trust and the offset afforded to the University of Hawai'i effectively allows it to substitute its judgment for that of OHA's Board in how to best address the needs of Native Hawaiians..

Finally, OHA requests that Section 9 of the SD1 be deleted for lack of clarity. The broad and confusing wording of this section raises concerns that it would affect a wider range of OHA funding than may have been intended, such as general funds or the amount currently received by OHA as Native Hawaiian's pro rata share under Act 178 (2006). However, should your committee not favor deletion of Section 9 in its entirety, OHA requests that the section be revised for clarity, as follows (language in the SD1 to be added is underlined; language to be deleted is bracketed and stricken):

SECTION 9. [~~No additional funding not already approved for use by or appropriated to the office of Hawaiian affairs shall be authorized~~] No annual share of the income and proceeds of the public land trust over an amount of \$15.1 million that is to be transferred to the office of Hawaiian affairs, as set forth in this Act, and no sum to be transferred to the office of Hawaiian Affairs as a payment for amounts received from the use of the public land trust that the legislature has determined were underpaid between July 1, 2012 through June 30, 2019, as set forth in this Act, shall be made available to the office of Hawaiian affairs until the fiscal and performance audit, as approved by the board of trustees of the office of Hawaiian affairs in 2017 and conducted under OHA contract number 3284 for auditing services, is completed and a complete and accurate copy is provided to the legislature.

Public Land Trust revenue is the primary source of funding for programs, grants, and services that benefit both the Native Hawaiian and larger communities. Raising Native Hawaiians' annual Public Land Trust share 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.

**Accordingly, OHA respectfully urges the Committee to PASS HB402 HD1 SD1, with the recommended amendments described above.**

### **HB402, Proposed SD2**

If the Committee chooses not to move HB402, HD1, SD1, OHA also **SUPPORTS** HB402 Proposed SD2, which still represents a step forward toward ensuring that Native Hawaiians receive a long-overdue increase to reflect their fair annual share of the revenues generated annually from the Public Land Trust. We are grateful that this Committee chose to continue dialogue on this matter by hearing this bill in this forum. OHA notes that the Proposed SD2 establishes a Public Land Trust Revenues Negotiating Committee to determine the increase to the amount of the income and proceeds from the Public Land Trust that OHA receives annually, requires the Department of Budget and Finance to conduct a financial review of revenue generated in fiscal year 2017-2018 from the Public Land Trust, and requires the State Auditor to conduct a comprehensive review of all programs that serve Hawaiians and are administered by state agencies.

OHA is well aware of the recent failure of the Public Land Trust Revenues Negotiating Committee established by House Concurrent Resolution 188 (2016) to make



meaningful progress on updating Native Hawaiians' annual pro rata share from the Public Land Trust. Nevertheless, we are hopeful that a similar negotiating committee in the Proposed SD2, will succeed through its establishment under state law and supported by the information in a financial review that will provide a complete and accurate accounting of Public Land Trust revenue collected by state agencies in state fiscal year 2017-2018. Such a financial review by the State would support the deliberations of the Public Land Trust Revenues Negotiating Committee and compliment the financial review undertaken by OHA of Public Land Trust receipt reporting by state agencies for fiscal year 2015-2016.

We do wish to identify one area of the bill that could benefit from clarification. Page 11, line 5 mentions developing state programs, but the concept of development is not carried through to the operative provisions of the bill. We would respectfully recommend that such language be deleted, as follows:

. . . [~~to develop~~] and to comprehensively assess the state programs that provide services to native Hawaiians.

Mahalo nui loa for the opportunity to testify.

April 4, 2019

**SENATE COMMITTEE ON WAYS AND MEANS**

Hearing Date: April 5, 2019

Time: 5:00 p.m.

Location: Conference Room 211, Hawaii State Capitol

**Re: HB 402, HD1, SD1 Relating to Increasing the Office of Hawaiian Affairs Pro Rata Share of Public Land Trust Funds.**

To the Honorable Chair, Vice Chair, and Members of the Senate Committee on Ways and Means:

Before launching into the details of our testimony, the Council for Native Hawaiian Advancement (CNHA) would like to express our great appreciation and gratitude to the Ways and Means Chair, Senator Dela Cruz, for scheduling this bill for a hearing.

**Our position is as follows: CNHA Supports Passage of HB 402, HD 1, SD 1, and now proposed SD 2.** We will be offering some comments on the latest draft now before the Ways and Means Committee.

By way of background, CNHA incorporates by reference its previous testimony which is already a part of the record in the House Committees which heard this bill and is also now a part of the record in the Senate Committees on Hawaiian Affairs and Higher Education which recently heard this bill and advanced it. While we are thankful for the work of these House and Senate committees in advancing this bill through the legislature, we continue to support and prefer HB 402 as originally introduced.

The proposed draft of the Ways and Means committee appears to attempt to resolve the question of how much money is due and owing to OHA- -a political question for the legislature to decide based on Supreme Court rulings- - by establishing a negotiating committee and mandating studies and reports be completed as a matter of law.

The legislature has been down this road before when it passed a resolution several years ago establishing a negotiating committee comprised of a member from the House, a member from the Senate, a member from the Office of Hawaiian Affairs, and the director of the Department of Budget and Finance (B and F) representing the Governor's Office. B and F was responsible for convening the meetings, for providing the background data needed to inform these negotiations, and for identifying the issues in a report back to the legislature.

Unfortunately, this Legislative-Resolution-established-negotiating committee quickly bogged down and little progress was made. Obviously there is an equal risk of failure here, were this draft amendment to become law, especially given the fact that OHA has raised well documented inconsistencies in the reporting and the characterization of revenues derived from the State's management of the Public Land Trust, yet no methodology or plan was able to be fashioned to enable the State and OHA to define these disputed issues and attempt to reach an accord on each of them.

Query: given this history, what is the likelihood that the passage of a state statute as opposed to a Legislative Resolution will lead to a different result?

While some would argue that a Legislative Resolution from several years ago does not have the force and effect of a state statute, and that the passing of a statute now would increase the likelihood that all the parties would approach these future meetings with an increased commitment, there is a new wrinkle to the Legislature's approach set forth in proposed SD2's sections 2 and 3 that could prove successful and lead to a more informed and productive negotiation between the State and the Office of Hawaiian Affairs over the amounts due and owing Hawaiians from the Public Land Trust.

This new legislative wrinkle is the proposed creation of a negotiating committee housed within the Office of State Planning comprised of a representative from OHA, from the House, from the Senate, and from the Governor's Office. The new proposal also mandates a review by B and F of the amounts being generated from the Public Land Trust due and owing to OHA, empowers OHA and its auditors, upon making a request to B and F, to be able to review these data and question the methodology being used by the State (with the aid and assistance of its own audit reports) to make these PLT revenue determinations due and owing to OHA. A report by both agencies is due to the Legislature before the start of the 2020 legislative session (See SD2's proposed sections 2 and 3).

From CNHA's perspective, the issues in contention between the State and OHA have already been clearly defined in the working papers and audits that OHA has completed and reported to the public. To save time, these reports and audits must be included and used as the starting point for any studies, reports, and negotiations that will ensue between OHA, the House, the Senate, the Governor, and the Department of Budget and Finance.

Moving on to Section 4, WAM proposes language that the . . . "Auditor shall. . . [c]onduct a comprehensive review of all programs that serve Hawaiians and are administered by State agencies."

What exactly does this mean?

Why is such a requirement being proposed?

Is the Legislature intending that for each program which serves a Hawaiian, the auditor will be able to analyze, assess, evaluate, conclude and report on how many Hawaiians are being served - - as well as whether Hawaiians have been and are being well served by each and every program being run by the State?

And, how could such a report ever be completed by the beginning of the 2020 legislative session?

To argue that Section 4 is overbroad on its face, is, at a minimum, to engage in huge understatement.

If the Legislature believes that mandating the auditor enquire into the number of Hawaiians being served and the cost to the state to provide that given service or benefit to that Hawaiian is a worthwhile enquiry, then it should also enquire and report on the amount of money (taxes, fees, revenues, intergovernmental and non-intergovernmental transfers to the State) being generated to each program by, from, or in the name of Hawaiians. For example, if the Auditor were to audit expenditures and programs at the University of Hawaii for Hawaiians then it should, at a minimum,

also audit and track the fees and tuition paid by each and every Hawaiian student and by the non-governmental and federal intergovernmental transfers to University programs for the benefit of Hawaiian students. As regards the University of Hawaii, it should and must also report the amount of fees generated by the Institute of Astronomy for its activities on Mauna Kea since these activities are occurring on Public Land Trust lands.

CNHA suggests that proposed section 4 be deleted because it is vague, ambiguous, and unable to be accomplished in a timely fashion.

In summary, CNHA commends the Ways and Means committee for hearing this bill and recommends SB 402 HD1, SD2 be passed out of the Ways and Means committee and onto the floor of the Senate for third reading.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Kunio Lewis', with a stylized flourish at the end.

J. Kunio Lewis  
Chief Executive Officer



*Native Hawaiian Chamber of Commerce*

P.O. Box 597, Honolulu, Hawai'i 96809  
nativehawaiianchamberofcommerce.com • nhccoahu@gmail.com

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**COMMITTEE ON WAYS AND MEANS**

Senator Donovan M. Dela Cruz, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair

April 05, 2019

5:00pm, Conference Room 211, State Capitol

**HB402 HD1 Relating to Increasing the Office of Hawaiian Affairs' Pro Rata Share of Public Land Trust Funds**

Aloha Chair Donovan Dela Cruz, Vice Chair Gilbert Keith-Agaran, and members of the Committee on Ways and Means,

The Native Hawaiian Chamber of Commerce (NHCC), STRONGLY SUPPORTS HB402 HD1 SD1 which seeks to ensure that the state's constitutional and statutory Public Land Trust (PLT) obligations to Native Hawaiians are more properly fulfilled. NHCC believes that an updated interim annual amount of \$35 million, as proposed in the original version of HB402 HD1 SD1 is a prudent, fair, and long-awaited step towards better fulfilling the state's constitutional and ethical obligations to Native Hawaiians.

Native Hawaiians' PLT share is the primary source of funding for programs, grants, and services that benefit both Native Hawaiians and the larger community. Raising Native Hawaiians' annual share 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.

We respectfully request the \$35 million annual amount be restored. After years of unjustified delay, it is finally time to revisit Native Hawaiians' fair share of PLT revenues.

For these reasons, we respectfully urge the Committee to PASS HB402 HD1 SD1.

Mahalo,

Joseph Lapilio  
President



*NHCC is a business chamber representing the Hawaiian business voice of 300 members. Our mission is to connect and strengthen Native Hawaiian businesses and professions by building on a foundation of relationships, resources and Hawaiian values.*



4 April 2019

SENATE COMMITTEE ON WAYS AND MEANS

Senator Donovan M. Dela Cruz, Chair

Senator Gilbert S.C. Keith-Agaran, Vice Chair

Date of Hearing: Friday, April 5, 2019, 5:00pm

Hawaii State Capitol, Conference Room 211

Re: HB 402 HD1 SD1 - Relating to Increasing the Office of Hawaiian Affairs' Pro Rata Share of Public Land Trust Funds

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee,

The Hawaii Republican Party (HRP) **supports the intent** of HB 402 HD1 SD1. This measure will help to fulfill the constitutional and statutory responsibility the State of Hawaii has to her native people. HRP fully supports the pro rata share of Public Land Trust (PLT) revenue of **20%**, as codified in HRS section 10-13.5.

Moreover, HB 402 aligns with the Hawaii Republican Party's platform. Specifically:

**CELEBRATE NATIVE HAWAIIANS**

*The Republican Party of Hawai'i recognizes and affirms the philosophy and efforts of Prince Jonah Kuhio Kalaniana'ole, a Republican and the first prince and native Hawaiian elected to U.S. Congress. In his 19-years of service, he supported legislation for native Hawaiian rights to a land base for housing, farming, and preservation of traditional and cultural practices [...].*

Kuhio's most notable accomplishments in Congress included funding to dredge and improve Honolulu Harbor, expand the Pearl Harbor naval base, and the passage of the

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Hawaiian Homes Commission Act. Throughout his 19-years of service, Kuhio fought tirelessly for the resources to make Hawaii, and her native people, flourish.

Accordingly, the Hawaii Republican Party supports the intent of HB 402 HD1 SD1 to return the resources to native Hawaiians that are rightfully theirs. We respectfully urge the passage of this measure and **request that the appropriations from the original form of the bill be reinstated.**

Mahalo for the opportunity to testify,

A handwritten signature in black ink, appearing to read "Shirlene", is placed on a light beige rectangular background.

Shirlene Dela Cruz Ostrov  
Chairman, Hawaii Republican Party

**HB-402-SD-1**

Submitted on: 4/4/2019 3:47:37 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lea Hong	Testifying for The Trust for Public Land	Support	No

Comments:

Aloha Chair Dela Cruz and Vice-Chair Keith-Agaran -

Mahalo for hearing HB402, HD1, SD1. The Trust for Public Land has worked with the Office of Hawaiian Affairs on several land conservation projects -- Wao Kele O Puna, Waimea Valley, Kukaniloko/Galbraith, Kuamo'o Battlified and Burial Grounds, and Mu'olea Point -- that protect significant cultural and natural resources throughout the State.

The Trust for Public Land supports an increase in the amount of Public Land Trust (PLT) revenue appropriated to Native Hawaiians through their constitutionally designated trustee, the Office of Hawaiian Affairs (OHA). OHA (and through it, Native Hawaiian beneficiaries) should receive a fair and accurate share of PLT revenues, as required by our state constitution.

In 2018, OHA provided grants and funding for 131 organizations serving Native Hawaiian communities. Raising the payment amount will drastically increase the amount of funding available for these and other organizations that provide direct services to the Native Hawaiian community.

Mahalo for this opportunity to testify. I apologize that I will be unable to testify in person at the hearing due to a scheduling conflict.

Lea Hong, Hawaiian Islands State Director

The Trust for Public Land



200 North Vineyard Boulevard, A300  
Honolulu, HI 96817  
Ph: 808-587-7886  
Toll Free: 1-866-400-1116  
[www.hawaiiancommunity.net](http://www.hawaiiancommunity.net)

April 4, 2019

Senate Committee on Ways and Means  
Friday, April 5, 2019, 5:00pm  
Conference Room 211

### **HB402, HD1, SD1 – SUPPORT**

Aloha Committee Chairs, Vice Chairs, and and Committee Members:

I am submitting testimony on behalf of Hawaiian Community Assets (HCA), Hawaii's largest Department of Housing and Urban Development counseling agency and community development financial institution, to **STRONGLY SUPPORT HB402, HD1, SD1**.

HB402 would seek to ensure that Office of Hawaiian Affairs' (OHA) **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) increasing the pro rata share of the annual receipts from the use of the lands of the public land trust transferred to the OHA from \$15,100,000 to an unspecified amount; (2) transfer an unspecified amount for underpayment of the public land trust funds for the period from July 1, 2012 to June 30, 2019 to OHA; and (3) require an annual detailed audit of all funds derived from receipts from lands described in Section 5(f) of 10 of the Admission Act.

#### **OHA's Investment in Housing Services Makes Impact**

As a nonprofit organization that serves thousands of Native Hawaiian families annually to assist them in obtaining rentals, purchasing homes, and preventing homelessness, **we urge the Committee to pass HB402, HD1, SD1**. This bill will ensure OHA is able to invest in housing services that are critical to Native Hawaiians in your district and across the state.

OHA has been the primary grant funding source for our organization's housing services work since 2011. From 2011 to through 2019, OHA has awarded our organization more than \$1.5 million in funding to increase the capacity of low- and moderate-income Native Hawaiians to rent or own homes through the delivery of financial literacy education, housing counseling, individual development accounts, and micro-loans. This funding has led to extraordinary outcomes for our Native Hawaiian community:

- OHA's investment has helped establish the State's first-and-only HUD-approved Renter Education and Counseling Program targeting Native Hawaiians experiencing or at-risk of homelessness.

- It has brought free, culturally-relevant financial education and housing counseling to 2,216 low- and moderate-income Native Hawaiians across the state.
- It has incentivized 342 Native Hawaiians to save more than \$600,000 to receive \$485,000 in matching funds for first month's rent/deposit, down payment/closing costs, and mortgage debt reduction.
- It has capitalized HCA's Department of Treasury certified community development financial institution, Hawaii Community Lending, which now offers consumer loans for credit building, credit repair, and housing emergencies to Native Hawaiians who are unable to qualify for financing at a bank or credit union.
- **In just 8 years, OHA's investment in HCA has resulted in 1,414 low- and moderate-income Native Hawaiian children and adults successfully renting or owning homes.**
- Showing the power of leveraging Native Hawaiian trust dollars, OHA funding has been the catalyst for HCA to attract \$3.75 million in additional funding from Federal, State, County, and private sources.
- Finally, OHA's investment has made it possible for HCA to show the nation that Native Hawaiians are leaders in finance and asset building. In October 2017, Brandeis University completed a case study of Hawaiian Community Assets and the findings spoke for themselves: Brandeis identified HCA's approach is a national best practice in culturally-relevant financial education and asset building for native communities and communities of color across the nation.

**All of this would never have been possible without the commitment, support, and investment of OHA. While HCA is able to report extraordinary outcomes for our Native Hawaiian participants, it is important to know we are just one of hundreds of organizations OHA has funded over the last several years.**

Our State needs to provide OHA its constitutional and statutory pro rata share of the state's Public Land Trust obligations. These funds will ensure organizations like HCA and other Native Hawaiian serving entities and programs are not only able to meet the economic, social, cultural, and environmental needs of Native Hawaiians as residents of the State of Hawaii, but also attract additional public and private capital for greater collective impact. **PASS HB402, HD1, SD1.**

Mahalo for your time, leadership and consideration. Please contact me directly at 808.587.7653 or jeff@hawaiiancommunity.net should you have any questions or need additional information.

Sincerely,



Jeff Gilbreath  
Executive Director





## KAMEHAMEHA SCHOOLS®

Senate Committee on Ways and Means

Time: 5:00 p.m.

Date: ‘Apelila 5, 2019

Where: Capitol Room 211

### TESTIMONY

By: Kau‘i Burgess

Director of Community and Government Relations

**RE: HB402, HD1, SD1, Relating to Increasing the Office of Hawaiian Affairs’ pro rata share of the Public Land Trust Funds**

E ka Luna Ho‘omalua Dela Cruz, ka Hope Luna Ho‘omalua Keith-Agaran, a me nā Kenekoa ‘ē a‘e o kēia mau Kōmike, aloha!

Kamehameha Schools **SUPPORTS** HB402, HD1, SD1. We believe that this measure is an important step in the right direction in increasing the ability of the Office of Hawaiian Affairs to serve the intergenerational needs of the Native Hawaiian population.

We believe that the Office of Hawaiian Affairs should receive full and fair funding from the public land trust, as required under the State Constitution.

Consistent with our strategic plan for 2015-2020 and vision for a thriving Lāhui by the year 2040, we view the Office of Hawaiian Affairs as a valuable partner in serving Native Hawaiians and all of our community.

In the last six fiscal years (2011-2018), OHA awarded over \$110 million in programmatic funding, grants, and sponsorships, that address our state’s most critical issues, including environmental stewardship, food security, housing and homelessness, education, and health care. Of this amount, OHA awarded over \$30 million for educational purposes, including over \$2.5 million in FY17-18 alone.

As a result of this funding, OHA’s strategic and innovative programs and services have the capacity to help people secure housing, develop local small businesses, send students to college, engage communities in sustainable resource management in partnership with government agencies and landowners, and much more. PLT revenue is the primary source of funding for such programs, grants, and services that benefit both the Hawaiian and larger community.

Founded in 1887, Kamehameha Schools is an educational organization striving to restore our people through education and advance a thriving Lāhui where all Native Hawaiians are successful, grounded in traditional values, and leading in the local and global communities. We believe that community success is individual success, Hawaiian culture-based education leads to academic success and local leadership drives global leadership.

With this testimony, Kamehameha Schools request this committee to **PASS** HB402, HD1, SD1.

‘A‘ohe hana nui ke alu ‘ia. No task is too large when we all work together! Mahalo nui.



**Ali'i Pauahi Hawaiian Civic Club**

*Ka Ikaika A Ka Mana`o A Me Ke Kino A Me Ka `Uhane*

*Strong in Mind, Body and Spirit*

Testimony in Support of HB 402 HD1 SD1

Committee on Ways and Means

Conference Room 211, State Capitol

Friday, April 5, 2019, 5:00 PM

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran and Members of the Committee on Ways and Means. Mahalo nui loa for hearing this most important legislation.

My name is Kehaulani Lum, and I am the Pelekikena (President) of the Ali'i Pauahi Hawaiian Civic Club, a chartered member of the Association of Hawaiian Civic Clubs, since 1973. Our members reside across the Hawaiian Islands and on the continent and individually, and collectively, perpetuate the culture and practices of Hawai'i's indigenous people and Hawai'i Nei.

**HB 402 HD1 SD1** manifests the State's spirit of Aloha for the native people of Hawai'i. It is a modest request, relative to the profound role that Native Hawaiian culture and people play in

protecting and preserving the beauty, vitality and essence of Hawai`i Nei, which attracts millions of visitors to visit our ancestral homeland every year.

Ali`i Pauahi **STRONGLY SUPPORTS HB402 HD1 SD1**, which seeks to ensure that the state's constitutional and statutory Public Land Trust (PLT) obligations to Native Hawaiians are more properly fulfilled. **Accordingly, OHA believes that an updated interim annual amount of \$35 million, as proposed in the original version of HB402 HD1 SD1 is a prudent, fair, and long-awaited step towards better fulfilling the state's constitutional and moral obligations to Native Hawaiians.**

**We respectfully request the \$35 million annual amount be restored.**

**Similarly, we respectfully request that the measure's proposed lump sum back payment of \$139 million from state general funds be re-inserted into this measure** for underpaid PLT revenues between July 1, 2012 and June 30, 2019, and restore continued annual accounting of revenues of PLT revenue.

After years of unjustified delay, it is finally time to revisit Native Hawaiians' fair share of PLT revenues. Importantly, Native Hawaiians' PLT share is the primary source of funding for programs, grants, and services that benefit both Native Hawaiians and the larger community. Raising Native Hawaiians' annual share 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 HB402 HD1 SD1, with the recommended amendments.**

Mahalo nui loa.

**HB-402-SD-1**

Submitted on: 4/2/2019 1:53:40 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jeannine Johnson	Individual	Support	No

Comments:

I strongly support HB402 and OHA's 20% pro rata share of public land trust revenue from the State of Hawai'i. According to the testimony by Roderick K. Becker, Director, Dept. of Budget and Finance on 2/28/19, OHA's 20% share in 2018 was \$45,015,811.06. That seems like a fair number to me. If the State of Hawai'i doesn't want to pay OHA a 20% share of public land trust revenue, then give these lands back to the Hawaiian people. That would be fair too.

**HB-402-SD-1**

Submitted on: 4/2/2019 9:50:14 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mike Golojuch	Individual	Support	No

Comments:

I strongly support HB402. It is time to make up for past mistakes. Please pass HB402.

Mike Golojuch, Sr.



**HB-402-SD-1**

Submitted on: 4/3/2019 10:52:04 AM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kamuela Werner MPH	Individual	Support	No

Comments:

Aloha:

I support the intent of HB402 HD1 SD1. This measure will help the State better fulfill its trust responsibilities to the Native Hawaiian community, especially through providing their trustee, the Office of Hawaiian Affairs, with the constitutional and statutory pro rata share of the Public Land Trust revenue at 20%. This is a matter of Justice for Native Hawaiians and Reconciliation for all of Hawai'i. At nearly every juncture since the illegal invasion of the Hawaiian Kingdom in 1893, Native Hawaiians have been denied what is rightfully theirs -- their ancestral lands. Moreover, the Hawai'i State constitution and the State Supreme Court made it clear that Native Hawaiians are entitled to a portion of the Public Land Trust revenue.

Thus, I respectfully urge the committee to PASS HB402 HD1 SD1.

Me ke aloha,

Kamuela Werner, MPH

Wai'anae Resident

**HB-402-SD-1**

Submitted on: 4/3/2019 3:17:35 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Keola Limkin	Individual	Support	No

Comments:

Hello Chairman Dela Cruz and the Senate Committee of Ways and Means,

My name is Keola Limkin and I urge you of the passing of **HB402 HD1 SD1** which seeks to ensure that the state's constitutional and statutory Public Land Trust (PLT) obligations to Native Hawaiians are more properly fulfilled. Unfortunately, I witnessed many struggles in my family and community and many of them were part Native Hawaiian. As a trauma survivor who has chosen to live up to higher standards in my life such as higher education, I have learned to speak up on issues that can help all of our communities reach equity.

I humbly ask that the Committee pass **HB402 HD1 SD1**.

Be well,

Keola Limkin

**HB-402-SD-1**

Submitted on: 4/3/2019 12:19:37 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez	Individual	Support	No

Comments:

**HB-402-SD-1**

Submitted on: 4/3/2019 3:55:51 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kehaulani Shintani	Individual	Support	No

Comments:

Aloha e ke kĀ• mike ho'olohe,

O au no o Kehaulani Shintani e leka nei i ke kĀ• ko'o ho'i i ka pila **HB402 HD1 SD1** e hooia ana i ka hooko o ka Mokuaina o Hawaii i ko lakou kuleana e like me ka mea i palapala ia ma ke kumukanawai o Hawaii. E hoonui hoi i ka **\$35 miliona (\$35 million)** e like me ka mea i palapala ia ma ka pila mua loa. Loihi ke kali ana i keia hooonopono ia ana.

He mahalo hoi keia i ko oukou **kakoo** ana.

Me ka haahaa,

Na Kehaulani Shintani

**HB-402-SD-1**

Submitted on: 4/3/2019 6:42:03 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Justin Keliipaakaua	Individual	Support	No

Comments:

**HB-402-SD-1**

Submitted on: 4/3/2019 8:32:35 AM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lahela Jarrett Holmwood	Individual	Support	No

Comments:

I strongly support this Bill, HB 402. The State of Hawaii MUST live up to its obligations to OHA for the benefit of all Native Hawaiian beneficiaries.



**HB-402-SD-1**

Submitted on: 4/3/2019 4:53:45 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Kapela Davis	Individual	Support	No

Comments:

**I STRONGLY SUPPORT HB 402 HD1 SD1** which seeks to ensure that the state's constitutional and statutory Public Land Trust (PLT) obligations to Native Hawaiians are more properly fulfilled. **Accordingly, OHA believes that an updated interim annual amount of \$35 million, as proposed in the original version of HB402 HD1 SD1 is a prudent, fair, and long-awaited step towards better fulfilling the state's constitutional and moral obligations to Native Hawaiians.**

**I respectfully request the \$35 million annual amount be restored.**

**Similarly, I respectfully request that the measure's proposed lump sum back payment of \$139 million from state general funds be re-inserted into this measure** for underpaid PLT revenues between July 1, 2012 and June 30, 2019, and restore continued annual accounting of revenues of PLT revenue.

After years of unjustified delay, it is finally time to revisit Native Hawaiians' fair share of PLT revenues. Importantly, Native Hawaiians' PLT share is the primary source of funding for programs, grants, and services that benefit both Native Hawaiians and the larger community. Raising Native Hawaiians' annual share 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 HB402 HD1 SD1.**

**HB-402-SD-1**

Submitted on: 4/3/2019 7:58:25 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lynn Robinson-Onderko	Individual	Support	No

Comments:

Aloha Chair and Committee Members,

I am writing in strong support for HB402 HD1SD1 to ensure Native Hawaiians get their 20% of the Public Land Trust revenue through their trustee, the Office Of Hawaiian Affairs. Mahalo for your time and consideration of this matter.

Lynn Robinson-Onderko, Ewa Beach

**HB-402-SD-1**

Submitted on: 4/3/2019 9:07:49 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michaellyn Burke	Individual	Support	No

Comments:

Welina mai kākou,

I support HB402 HD1SD1 and ensuring Native Hawaiians get their 20% of the Public Land Trust revenue through their trustee, the Office Of Hawaiian Affairs. Mahalo for your time and consideration.

Michaellyn Burke

Lahaina, Maui

Melody Kapilialoha MacKenzie, Esq.  
melodykmackenzie@gmail.com

**Testimony in Support of H.B. 402, H.D. 1, S.D. 1, Proposed S.D. 2  
Relating to Increasing the Office of Hawaiian Affairs'  
Pro Rata Share of Public Land Trust Funds**

**Committee on Ways and Means**  
Senator Donovan M. Dela Cruz, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair

Hearing on Friday, April 5, 2019, at 5:00 p.m.  
Conference Room 211

Mahalo for this opportunity to submit testimony in **support** of H.B. 402, H.D. 1, S.D. 1, Proposed S.D. 2, Relating to Increasing the Office of Hawaiian Affairs' Pro Rata Share of Public Land Trust Funds. I am a professor at the William S. Richardson School of Law and the founding director of Ka Huli Ao Center for Excellence in Native Hawaiian Law. I submit this testimony, however, in my personal capacity as a private citizen and as an attorney who has worked, litigated, and written extensively on Native Hawaiian legal controversies, and particularly on the Public Land Trust. Indeed, I was a member of the legal team that represented the Office of Hawaiian Affairs (OHA) in a major dispute with the State over the sale and alienation of trust lands.

Our Supreme Court, in reviewing the Public Land Trust revenue issue, has acknowledged that the State's obligation to Native Hawaiians is firmly established in the State Constitution. The Court has concluded that, "it is incumbent upon the legislature to enact legislation that gives effect to the rights of native Hawaiians to benefit from the ceded lands trust."<sup>1</sup>

I wish to emphasize that the lands in the Public Land Trust are the Crown and Government Lands of the Hawaiian Kingdom. Kamehameha III set aside the Government Lands in the 1848 Māhele for the benefit of the chiefs and people. The Crown Lands, reserved to the King, provided a source of income and support for the Crown and, in turn, were a resource for the Hawaiian people. Although the fee-simple ownership system instituted by the Māhele and the laws that followed drastically changed Hawaiian land tenure, the Government and Crown Lands were held for the benefit of the Hawaiian people. They marked a continuation of the trust concept that the sovereign held and managed the 'āina for the benefit of the people.

These lands were taken in the illegal overthrow of the Hawaiian Kingdom. In the 1993 Apology Resolution, the United States recognized the illegality of the 1893 overthrow of the Kingdom and acknowledged that: (1) the Crown, Government, and Public Lands of the Kingdom of Hawaii were ceded to the United States without the consent of or compensation to the Native Hawaiian people or their sovereign government; and, (2) the Native Hawaiian people never

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<sup>1</sup> Office of Hawaiian Affairs v. State, 96 Hawai'i 388, 41, 31 P.3d 901, 914 (2001).

directly relinquished their claims to their inherent sovereignty or over their national lands. Thus, the pro rata share of revenue designated for OHA is a way of bringing some equity and fairness to the Native Hawaiian community and recognizing our rights in the lands of our ancestors.

I would also point to the 2007 U.N. Declaration on the Rights of Indigenous Peoples that recognizes the right of Indigenous Peoples to “the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired”<sup>2</sup> and the right to compensation for the loss of those lands. Hawai‘i can be proud of its recognition and support for Native Hawaiian rights as expressed in the Constitution and our laws. As one concrete example, Art. XII, § 4, of our Constitution recognizes that the lands in the Public Land Trust are held in trust for “native Hawaiians and the general public.” While the revenue from the Public Land Trust is not “compensation” for the loss of the Crown and Government lands, that revenue does provide a measure of restorative justice for the Native Hawaiian community.

The approach taken in the original version of H.B. 402 was reasonable and sought to provide fairness and justice to the Native Hawaiian community and allowed the State to honor its commitments – commitments made in both the State Constitution and in the 1980 legislation setting OHA’s pro rata share at twenty per cent. Thus, **I strongly support the approach taken in the original version of H.B. 402** and urge the Legislature, in good faith, and while further information is being gathered, to increase the annual amount allocated to OHA from the Public Land Trust to \$35 million, a figure that more accurately reflects the twenty per cent pro rata share set in 1980.

I appreciate the efforts of the Legislature to provide a resolution and am hopeful that if this Committee passes this bill, there will be further fruitful discussion and negotiations that will ultimately result in a truly just resolution. Resolving this issue is one of the most impactful and important actions this Legislature could take. Your action now would help set us on the path to justice – ke ala pono. Mahalo.

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<sup>2</sup> G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), art. 26 and art. 28.

**HB-402-SD-1**

Submitted on: 4/4/2019 6:21:15 AM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Desmond Yap	Individual	Support	No

Comments:



**HB-402-SD-1**

Submitted on: 4/4/2019 9:58:52 AM

Testimony for WAM on 4/5/2019 5:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Constance Keoahunui Uale Warrington	Individual	Oppose	No

Comments:

Aloha,

I **STRONGLY SUPPORT HB402 HD1 SD1** which seeks to ensure that the state's constitutional and statutory Public Land Trust (PLT) obligations to Native Hawaiians are more properly fulfilled. **Accordingly, OHA believes that an updated interim annual amount of \$35 million, as proposed in the original version of HB402 HD1 SD1 is a prudent, fair, and long-awaited step towards better fulfilling the state's constitutional and moral obligations to Native Hawaiians.**

**I respectfully request the \$35 million annual amount be restored.**

**Similarly, I respectfully request that the measure's proposed lump sum back payment of \$139 million from state general funds be re-inserted into this measure** for underpaid PLT revenues [between July 1, 2012 and June 30, 2019](#), and restore continued annual accounting of revenues of PLT revenue.

After years of unjustified delay, it is finally time to revisit Native Hawaiians' fair share of PLT revenues. Importantly, Native Hawaiians' PLT share is the primary source of funding for programs, grants, and services that benefit both Native Hawaiians and the larger community. Raising Native Hawaiians' annual share 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 HB402 HD1 SD1**.

Mahalo,

Constance Keoahunui Uale Warrington

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

April 5, 2019  
5 pm Conference Room 211  
State Capitol  
415 South Beretania Street

HB402 HD1 SD1 - RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS'  
PRO RATA SHARE OF PUBLIC LAND TRUST FUNDS

Aloha Chair Dela Cruz, Vice-Chair Keith-Agaran and members of the Senate Committee on Ways and Means:

I, Matthew Gumapac, **SUPPORTS THE INTENT** of HB402 HD1 SD1. This bill will help the State better fulfill its trust responsibilities to the Native Hawaiian community through providing OHA with its constitutional and statutory right to a **20%** pro rata share of the Public Land Trust (PLT) revenue.

The Native Hawaiian community has been denied access to their trust resources for far too long. The OHA pro rata share of PLT revenue is the primary source of funding for programs, grants and services that benefit the Native Hawaiian community, and has positive effect on all of Hawai'i. Raising the interim annual appropriation to **20%** and providing the appropriate back payments will support programs that positively impact trust beneficiary housing, health care, education, business opportunities, and job opportunities. This will ultimately improve the well-being and conditions of Native Hawaiians and all of Hawai'i.

I, urge the committee to **PASS** HB402 HD1 SD1, and return to the Native Hawaiians what is theirs. Justice for Native Hawaiians and Hawai'i NOW!

**HB-402-SD-1**

Submitted on: 4/4/2019 11:23:47 AM

Testimony for WAM on 4/5/2019 5:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Rhonda Roldan	Individual	Support	No

Comments:

Mahalo for the opportunity to provide testimony in **STRONG SUPPORT of HB402 HD1 SD1**, which seeks to ensure that the state's constitutional and statutory Public Land Trust (PLT) obligations to Native Hawaiians are more properly fulfilled. **Accordingly, OHA believes that an updated interim annual amount of \$35 million, as proposed in the original version of HB402 HD1 SD1 is a prudent, fair, and long-awaited step towards better fulfilling the state's constitutional and moral obligations to Native Hawaiians.**

**I respectfully request the \$35 million annual amount be restored.**

**Similarly, I respectfully request that the measure's proposed lump sum back payment of \$139 million from state general funds be re-inserted into this measure** for underpaid PLT revenues between July 1, 2012 and June 30, 2019, and restore continued annual accounting of revenues of PLT revenue.

After years of unjustified delay, it is finally time to revisit Native Hawaiians' fair share of PLT revenues. Importantly, Native Hawaiians' PLT share is the primary source of funding for programs, grants, and services that benefit both Native Hawaiians and the larger community. Raising Native Hawaiians' annual share 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 HB402 HD1 SD1.**

**Mahalo for the opportunity to provide testimony!**

**Rhonda Roldan**

**HB-402-SD-1**

Submitted on: 4/4/2019 10:45:19 AM

Testimony for WAM on 4/5/2019 5:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mikiala Lidstone	Individual	Support	No

Comments:

**I STRONGLY SUPPORT HB402 HD1 SD1** which seeks to ensure that the state’s constitutional and statutory Public Land Trust (PLT) obligations to Native Hawaiians are more properly fulfilled. **Accordingly, OHA believes that an updated interim annual amount of \$35 million, as proposed in the original version of HB402 HD1 SD1 is a prudent, fair, and long-awaited step towards better fulfilling the state’s constitutional and moral obligations to Native Hawaiians.**

**I respectfully request the \$35 million annual amount be restored.**

**Similarly, I respectfully request that the measure’s proposed lump sum back payment of \$139 million from state general funds be re-inserted into this measure** for underpaid PLT revenues between July 1, 2012 and June 30, 2019, and restore continued annual accounting of revenues of PLT revenue.

After years of unjustified delay, it is finally time to revisit Native Hawaiians' fair share of PLT revenues. Importantly, Native Hawaiians’ PLT share is the primary source of funding for programs, grants, and services that benefit both Native Hawaiians and the larger community. Raising Native Hawaiians’ annual share 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 HB402 HD1 SD1.**

**HB-402-SD-1**

Submitted on: 4/4/2019 11:26:22 AM

Testimony for WAM on 4/5/2019 5:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kamakana Aquino	Individual	Support	No

Comments:

I **STRONGLY SUPPORT HB402 HD1 SD1** which seeks to ensure that the state's constitutional and statutory Public Land Trust (PLT) obligations to Native Hawaiians are more properly fulfilled. **Accordingly, OHA believes that an updated interim annual amount of \$35 million, as proposed in the original version of HB402 HD1 SD1 is a prudent, fair, and long-awaited step towards better fulfilling the state's constitutional and moral obligations to Native Hawaiians.**

**I respectfully request the \$35 million annual amount be restored.**

**Similarly, I respectfully request that the measure's proposed lump sum back payment of \$139 million from state general funds be re-inserted into this measure** for underpaid PLT revenues between July 1, 2012 and June 30, 2019, and restore continued annual accounting of revenues of PLT revenue.

After years of unjustified delay, it is finally time to revisit Native Hawaiians' fair share of PLT revenues. Importantly, Native Hawaiians' PLT share is the primary source of funding for programs, grants, and services that benefit both Native Hawaiians and the larger community. Raising Native Hawaiians' annual share 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 HB402 HD1 SD1.**

**HB-402-SD-1**

Submitted on: 4/3/2019 9:48:36 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kea Kala	Individual	Support	No

Comments:

**HB-402-SD-1**

Submitted on: 4/3/2019 9:21:48 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Tadia Rice	Individual	Support	No

Comments:

I **STRONGLY SUPPORT HB402 HD1 SD1** which seeks to ensure that the state's constitutional and statutory Public Land Trust (PLT) obligations to Native Hawaiians are more properly fulfilled. **Accordingly, OHA believes that an updated interim annual amount of \$35 million, as proposed in the original version of HB402 HD1 SD1 is a prudent, fair, and long-awaited step towards better fulfilling the state's constitutional and moral obligations to Native Hawaiians.**

**I respectfully request the \$35 million annual amount be restored.**

**Similarly, I respectfully request that the measure's proposed lump sum back payment of \$139 million from state general funds be re-inserted into this measure** for underpaid PLT revenues between July 1, 2012 and June 30, 2019, and restore continued annual accounting of revenues of PLT revenue.

After years of unjustified delay, it is finally time to revisit Native Hawaiians' fair share of PLT revenues. Importantly, Native Hawaiians' PLT share is the primary source of funding for programs, grants, and services that benefit both Native Hawaiians and the larger community. Raising Native Hawaiians' annual share 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 HB402 HD1 SD1.**



**HB-402-SD-1**

Submitted on: 4/3/2019 8:14:22 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michelle Ching	Individual	Support	No

Comments:

**HB-402-SD-1**

Submitted on: 4/4/2019 12:20:10 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Daryl Fujiwara	Individual	Support	No

Comments:

I, Daryl Fujiwara, support HB402 HD1SD1 and ensuring Native Hawaiians get their 20% of the Public Land Trust revenue through their trustee, the Office Of Hawaiian Affairs. Mahalo for your time and consideration of this matter.

Daryl Fujiwara, Wailuku, Maui, Hawaii

**HB-402-SD-1**

Submitted on: 4/4/2019 1:12:27 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Puni Kekauoha	Individual	Support	No

Comments:

I STRONGLY SUPPORT HB402 HD1 SD1 which seeks to ensure that the state's constitutional and statutory Public Land Trust (PLT) obligations to Native Hawaiians are more properly fulfilled. Accordingly, OHA believes that an updated interim annual amount of \$35 million, as proposed in the original version of HB402 HD1 SD1 is a prudent, fair, and long-awaited step towards better fulfilling the state's constitutional and moral obligations to Native Hawaiians. I respectfully request the \$35 million annual amount. Similarly, I respectfully request that the measure's proposed lump sum back payment of \$139 million from state general funds be re-inserted into this measure for underpaid PLT revenues between July 1, 2012 and June 30, 2019, and restore continued annual accounting of revenues of PLT revenue After years of unjustified delay, it is finally time to revisit Native Hawaiians' fair share of PLT revenues. Importantly, Native Hawaiians' PLT share is the primary source of funding for programs, grants, and services that benefit both Native Hawaiians and the larger community. Raising Native Hawaiians' annual share 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 HB402 HD1 SD1.

**HB-402-SD-1**

Submitted on: 4/4/2019 1:24:25 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jason Bradshaw	Individual	Support	No

Comments:

**HB-402-SD-1**

Submitted on: 4/4/2019 1:53:34 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Anthony Makana Paris	Individual	Support	No

Comments:

Aloha Senators:

I support the intent of HB402 HD1SD1 and ensuring Native Hawaiians get their 20% of the Public Land Trust revenue through their trustee the Office Of Hawaiian Affairs. Mahalo for your time and consideration of this matter.

Makana Paris, Papakolea, Oahu

I urge you to **pass HB402 HD1 SD1** because updating the “interim annual amount of \$35 million” is **an international human rights concern**. This international human rights concern is in addition to “the state’s constitutional and moral obligations to Native Hawaiians.”

Our state recognizes Native Hawaiians “as the only indigenous, aboriginal maoli people of Hawaii.”<sup>1</sup> “[I]ndigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples[.]”<sup>2</sup> “[T]he articulated collective rights derive from values of human dignity that are commonly associated with human rights.”<sup>3</sup>

According to international indigenous human rights expert S. James Anaya, [i]ndigenous peoples’ collective rights over traditional lands and resources . . . can be seen as derivative of the universal human right to property, as concluded by the inter-American human rights institutions, or as extending from the right to enjoy culture, as affirmed by the UN Human Rights Committee in light of the cultural significance of lands and resources to indigenous peoples.<sup>4</sup>

Native Hawaiians’ fair share of Public Land Trust revenues can, and should, be understood in the context of *benefit-sharing*. “The concept of benefit-sharing, which can be found in various international instruments regarding indigenous and tribal peoples’ rights, can be said to be inherent to the right of compensation recognized under Article 21(2) of the [American] Convention [on Human Rights.]”<sup>5</sup> “[P]ursuant to Article 21(2) of the Convention, benefit sharing may be understood as a form of reasonable equitable compensation resulting from the exploitation of traditionally owned lands and of those natural resources necessary for the survival of the [indigenous] people [involved].”<sup>6</sup>

“Native Hawaiians’ share of Hawaii’s public land trust revenues is essentially a form of benefit-sharing because Native Hawaiians had an interest in those lands during the Kingdom era and those lands were subsequently ‘confiscated, taken, occupied, used or damaged without their free, prior and informed consent.’”<sup>7</sup> “A reasonably broad reading of international human rights standards provides opportunities for Native Hawaiians to advocate for an appropriate increase in their share of public land trust revenues especially considering that the State of Hawai‘i permits and regulates the exploitation and use of public lands to which Native Hawaiians traditionally had rights.”<sup>8</sup>

<sup>1</sup> Act of July 6, 2011, No. 195, 2011 Haw. Sess. Laws 646 (codified at HAW. REV. STAT. ch. 10H (2013)).

<sup>2</sup> United Nations Declaration on the Rights of Indigenous Peoples, Preambular Para. [22].

<sup>3</sup> S. James Anaya, Keynote Address to the 52nd International Congress of Americanists: Why There Should Not Have to Be a Declaration on the Rights of Indigenous Peoples 3 (July 2006) *available at* [www.u.arizona.edu/~wbraynen/globalsocietyjustice/papers/anaya.pdf](http://www.u.arizona.edu/~wbraynen/globalsocietyjustice/papers/anaya.pdf) (hereinafter “Anaya keynote”).

<sup>4</sup> *Id.*, at 13 (internal citations omitted).

<sup>5</sup> *Saramaka People v. Suriname*, Inter-Am. Ct. H.R. (Ser. C) No. 172, [Para. 138] Judgment of November 28, 2007 (internal citations omitted) (citing the American Convention on Human Rights art. 21(2)).

<sup>6</sup> *Id.*, at [Para. 140].

<sup>7</sup> Derek H. Kauanoe, *Human Rights vs. States Rights: Prioritizing Strategies for Native Hawaiians*, 34 (Jan. 3, 2019) (unpublished paper, University of Arizona) (on file with author) (referencing text from the United Nations Declaration on the Rights of Indigenous Peoples, art. 28(1)).

<sup>8</sup> *Id.* (citing “[R]eceipts derived from ceded lands apportioned for native Hawaiians pursuant to article XII, §6 of the state constitution and this section may be transmitted directly to office of Hawaiian affairs by agencies that collect

Again, I urge you to pass HB402 HD1 SD1 and amended as recommended by the Office of Hawaiian Affairs.

Derek Kauanoe  
(808) 729-0289  
dkauanoe@gmail.com

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them, without legislative appropriation.” Haw. Op. Att’y Gen. 03-04 (May 30, 2003), *available at* <http://ag.hawaii.gov/wp-content/uploads/2013/01/03-04.pdf> (last visited Dec. 22, 2018)).



**LATE**

**HB-402-SD-1**

Submitted on: 4/4/2019 9:35:18 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kaimo Muhlestein	Testifying for Kalihi-Palama Hawaiian Civic Club	Support	Yes

Comments:

**LATE**



*Eric W. Gill, Financial Secretary-Treasurer*

*Gemma G. Weinstein, President*

*Godfrey Maeshiro, Senior Vice-President*

Thursday, April 4, 2019

Hawaii State Legislature  
Senate Committee on Ways & Means  
State Capitol  
415 South Beretania St.

Re: HB 402, HD 1, SD1

Aloha Chair Dela Cruz, Vice-Chair Keith-Agaran and members of the Senate Committee on Ways and Means:

UNITE HERE Local 5 – a local labor organization representing 11,000 hotel, health care and food service workers throughout Hawaii would like to offer comments supporting the intent of HB 402, HD1, SD1. It is our belief that HB 402 would help the State better fulfill its trust responsibilities to the Native Hawaiian community through providing OHA with its constitutional and statutory right to a **20%** pro rata share of the Public Land Trust (PLT) revenue.

The Native Hawaiian community has been denied access to their trust resources for far too long. The OHA pro rata share of PLT revenue is the primary source of funding for programs, grants and services that benefit the Native Hawaiian community, and has positive effect on all of Hawai'i. Raising the interim annual appropriation to **20%** and providing the appropriate back payments will support programs that positively impact trust beneficiary housing, health care, education, business opportunities, and job opportunities. This will ultimately improve the well-being and conditions of Native Hawaiians and all of Hawai'i.

Thank you for your consideration.

**LATE**

**HB-402-SD-1**

Submitted on: 4/5/2019 12:06:47 AM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Raytan K. Vares	Testifying for Democratic Party of Hawaii-Hawaiian Affairs Caucus	Support	No

Comments:

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

The Democratic Party of Hawaii Hawaiian Affairs Caucus (HAC) stands in support with comments of HB402 SD 2 Proposed. We appreciate the hard work of both the House and Senate to advance this measure to this point in the legislative process. With that said, we want to reaffirm our position of strongest support for the original version of HB402 that includes the annual pro rata share, as well as the past due amount owed to the Office of Hawaiian Affairs (OHA).

The HAC has strong concerns that the establishment of the public land trust revenues negotiating committee is simply a recreation of a failed process from the past. In 2016, the Legislature, through House Concurrent Resolution 188, established a public land trust revenues negotiating committee to resolve the matter of past due compensation since 2012 and determine the increase for the annual amount owed to OHA going forward. As the chair of that committee with the sole discretion to convene meetings, collect and provide the necessary data, and usher the process along, the Governor and his staff failed to fulfill the purpose of the committee, hence we are still here today with no clear definition of what the increased annual amount is. The HAC asks the Legislature for reassurance that this new committee not head down the same forgone conclusion.

Mahalo for your consideration.

**LATE**

**HB-402-SD-1**

Submitted on: 4/4/2019 11:39:24 PM  
Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melvin Paris	Individual	Support	No

Comments:

Aloha Senators:

I support the intent of HB402 HD1SD1 and want to make sure that Native Hawaiians get their 20% of the Public Land Trust revenue through their trustee, the Office Of Hawaiian Affairs. Mahalo for your time and consideration of this matter.

Melvin Paris, Papakolea, Oahu

**LATE**

**HB-402-SD-1**

Submitted on: 4/4/2019 11:36:15 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Henrietta Paris	Individual	Support	No

Comments:

Aloha:

I support the intent of HB402 HD1SD1 and making sure that Native Hawaiians get their 20% of the Public Land Trust revenue through their trustee, the Office Of Hawaiian Affairs. Mahalo for your time and consideration of this matter.

Henrietta Paris, Papakolea, Oahu

**LATE**

**HB-402-SD-1**

Submitted on: 4/4/2019 8:55:45 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Beverly Lee	Individual	Support	No

Comments:

I **STRONGLY SUPPORT HB402 HD1 SD1** which seeks to ensure that the state's constitutional and statutory Public Land Trust (PLT) obligations to Native Hawaiians are more properly fulfilled. **Accordingly, OHA believes that an updated interim annual amount of \$35 million, as proposed in the original version of HB402 HD1 SD1 is a prudent, fair, and long-awaited step towards better fulfilling the state's constitutional and moral obligations to Native Hawaiians.**

**I respectfully request the \$35 million annual amount be restored.**

**Similarly, I respectfully request that the measure's proposed lump sum back payment of \$139 million from state general funds be re-inserted into this measure for underpaid PLT revenues between July 1, 2012 and June 30, 2019, and restore continued annual accounting of revenues of PLT revenue.**

After years of unjustified delay, it is finally time to revisit Native Hawaiians' fair share of PLT revenues. Importantly, Native Hawaiians' PLT share is the primary source of funding for programs, grants, and services that benefit both Native Hawaiians and the larger community. Raising Native Hawaiians' annual share 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 HB402 HD1 SD1.**

**HB-402-SD-1**

Submitted on: 4/4/2019 7:49:22 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jennifer McGurn	Individual	Support	No

## Comments:

I STRONGLY SUPPORT HB402 AND HDI SD1. The Public Land Trust's obligations to Native Hawaiians have long been ignored. \$15 million per year doesn't even scratch the surface of what those lands are worth, and Native Hawaiians are the true owners of this land and deserve to benefit from it. Although \$35 million still doesn't cover the fair value, it is a step in the right direction, and the lump sum back payment of \$139 million will make a difference to Native Hawaiian programs. The kanaka maoli deserve better.

I am not Native Hawaiian, but am married to one, and my children are hapa. I truly believe that a grave injustice has been taking place for years, and this is just one step in the right direction to turn things around and put things the way they should be.

I implore you to take steps to make things right for the true owners of this land we all are so fortunate to call home.

Please feel free to contact me if you have any questions. Thank you for your consideration.

Jennifer McGurn

Makawao, Maui

(808) 281-7386

jenniferswim@hotmail.com

**LATE**

**HB-402-SD-1**

Submitted on: 4/4/2019 7:01:13 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Fabian Kaulukukui-Heloca	Individual	Support	No

Comments:

I strongly support Bill HB402 which seeks to ensure that the state's constitutional and statutory Public Land Trust (PLT) obligations to Native Hawaiians are more properly fulfilled. **Accordingly, OHA believes that an updated interim annual amount of \$35 million, as proposed in the original version of HB402 HD1 SD1 is a prudent, fair, and long-awaited step towards better fulfilling the state's constitutional and moral obligations to Native Hawaiians.**

**I respectfully request the \$35 million annual amount be restored.**

**Similarly, I respectfully request that the measure's proposed lump sum back payment of \$139 million from state general funds be re-inserted into this measure** for underpaid PLT revenues between July 1, 2012 and June 30, 2019, and restore continued annual accounting of revenues of PLT revenue. Please stop pretending to fulfill your obligations to the native Hawaiian population while you do the exact opposite.

After years of unjustified delay, it is finally time to revisit Native Hawaiians' fair share of PLT revenues. Importantly, Native Hawaiians' PLT share is the primary source of funding for programs, grants, and services that benefit both Native Hawaiians and the larger community. Raising Native Hawaiians' annual share 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 HB402 HD1 SD1.**



**LATE**

**HB-402-SD-1**

Submitted on: 4/5/2019 8:29:59 AM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Shanyalyn Ke'alauala Lalawai	Individual	Support	No

Comments:

I **STRONGLY SUPPORT HB402 HD1 SD1** which seeks to ensure that the state's constitutional and statutory Public Land Trust (PLT) obligations to Native Hawaiians are more properly fulfilled. **Accordingly, OHA believes that an updated interim annual amount of \$35 million, as proposed in the original version of HB402 HD1 SD1 is a prudent, fair, and long-awaited step towards better fulfilling the state's constitutional and moral obligations to Native Hawaiians.**

**I respectfully request the \$35 million annual amount be restored.**

**Similarly, I respectfully request that the measure's proposed lump sum back payment of \$139 million from state general funds be re-inserted into this measure** for underpaid PLT revenues between July 1, 2012 and June 30, 2019, and restore continued annual accounting of revenues of PLT revenue.

After years of unjustified delay, it is finally time to revisit Native Hawaiians' fair share of PLT revenues. Importantly, Native Hawaiians' PLT share is the primary source of funding for programs, grants, and services that benefit both Native Hawaiians and the larger community. Raising Native Hawaiians' annual share 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 HB402 HD1 SD1.**

**LATE**

**HB-402-SD-1**

Submitted on: 4/5/2019 12:37:06 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Juanita Kawamoto Brown	Individual	Support	Yes

Comments:

Aloha Chair Dela Cruz and Vice Chair Kidani, esteemed committee members;

I strongly support this Bill and all its efforts to work towards the fiscal reparation owed the Hawaiian beneficiaries represented by the Office of Hawaiian Affairs. The monetary request for \$35,000,000.00 to be applied towards a much larger debt owed to our Native Hawaiian community is a reasonable effort. The future generations rely on what you do today. A genocide of our culture is currently suffering due to government ambivalence. Please do the right thing and pass this Bill.

Mahalo for the opportunity to testify in strong support.

**LATE**

**HB-402-SD-1**

Submitted on: 4/5/2019 1:39:00 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dante K. Carpenter	Individual	Support	No

Comments:

Chair Sen. Dela Cruz, V-C Sen. Keith-Agaran and Members of the Committee on Ways and Means:

As a former trustee of the Office of Hawaiian Affairs involved in the passage of ACT 178, Session Laws of 2006, I am in full support of HB 402 HD1 SD1.

Act 178 was to set an interim action model until a full acknowledgement of revenues due and owing for the Office of Hawaiian Affairs was determined by the appropriate Administrative, Judicial & Legislative Bodies going forward.

The Public Land Trust Revenues Negotiating Committee consisting of the Governor, or designee; the President of the Senate, or designee; the Speaker of the House, or designee; and the Chairperson of the Office of Hawaiian Affairs, or designee are appropriate designees of this very important Committee!

To be fair to OHA and the people of the State of Hawaii, Section 5 must appropriate for this session the known "back revenues" due and owing to the Office of Hawaiian Affairs, without any dissention amongst its decision makers! Mahalo a nui loa.

Respectfully submitted,

/s/ Dante  
Carpenter  
Former Trustee, OHA

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**LATE**

**HB-402-SD-1**

Submitted on: 4/5/2019 2:10:11 PM

Testimony for WAM on 4/5/2019 5:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
W. Mapuana Waipa	Individual	Support	No

Comments:

Aloha mai,

I am in support of HB402 SD1. The efforts and kako'o needed to operate and truly carry out the expectations put forth to the Office of Hawaiian Affairs needs to be supported fully with its intent and purpose. I humbly ask that you support the passage of this bill.

Me ka 'oia'i'o,

W. M. Waipa

I STRONGLY SUPPORT HB402 HD1 SD1 which seeks to ensure that the state’s constitutional and statutory Public Land Trust (PLT) obligations to Native Hawaiians are more properly fulfilled. Accordingly, OHA believes that an updated interim annual amount of \$35 million, as proposed in the original version of HB402 HD1 SD1 is a prudent, fair, and long-awaited step towards better fulfilling the state’s constitutional and moral obligations to Native Hawaiians. I respectfully request the \$35 million annual amount. Similarly, I respectfully request that the measure’s proposed lump sum back payment of \$139 million from state general funds be re-inserted into this measure for underpaid PLT revenues between July 1, 2012 and June 30, 2019, and restore continued annual accounting of revenues of PLT revenue After years of unjustified delay, it is finally time to revisit Native Hawaiians' fair share of PLT revenues. Importantly, Native Hawaiians’ PLT share is the primary source of funding for programs, grants, and services that benefit both Native Hawaiians and the larger community. Raising Native Hawaiians’ annual share 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 HB402 HD1 SD1.

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