

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committees on
HAWAIIAN AFFAIRS
And
WATER AND LAND**

**Thursday, February 7, 2019
1:16 PM
State Capitol, Conference Room 016**

**In consideration of
SENATE BILL 191
RELATING TO STRENGTHENING THE FOUNDATION FOR ENSURING A FAIR
AND JUST PAYMENT AMOUNT FOR THE OFFICE OF HAWAIIAN AFFAIRS' PRO
RATA SHARE OF THE PUBLIC LAND TRUST**

Senate Bill 191 proposes to require the Department of Land and Natural Resources (Department) to use certain reporting and accountability procedures in implementing the public land trust reporting requirements of Act 178, Session Laws of Hawaii 2006. The measure also proposes to require the Department to consult with the Office of Hawaiian Affairs (OHA) to ensure that the accounting and reporting is accurate and inclusive. **The Department of Land and Natural Resources (Department) strongly opposes this measure.**

Each year the Department collects the ceded land revenue information from the executive agencies pursuant to Act 178 and submits a report to the Legislature. Act 178 provides that the executive agencies are to cooperate with the Department in this endeavor, but does not make the Department an auditor or "bill collector" of other agencies' revenues. Rather, with respect to information reported by other agencies, the Department relies on the accounting such agencies provide and conducts no independent verification of their revenue figures. The Department opposes this provision to the extent that it imposes additional requirements upon the reporting process. The Department does not have the necessary staff resources and expertise to audit or otherwise confirm the accuracy of information provided by other agencies.¹

¹ There is no legitimate reason for the Department to be tasked with compiling the financial records from the various agencies into what is known as the annual Act 178 report. And there ought not to be a question of whether the land is ceded or not, because almost all State lands are ceded (97%-98%) and each agency managing those lands is aware whether their land is ceded or not (or a combination thereof). As such, the Department offers no special expertise in compiling the accounting records of the various agencies into a report.

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

The measure imposes an unreasonable burden by forcing the Department into the role of forensic accountant of all public trust land revenues received by all other departments and agencies of the State of Hawaii. The Department is in no position to provide an accounting of public trust land receipts generated by other departments or agencies, other than for itself. The accessibility to and accuracy of the information contained in the report is determined largely by the accounting practices of other agencies and departments involved with managing public land trust revenues, of which the Department has no control or oversight.

Furthermore, the Department notes that not all public trust lands are held or managed by the Department. Other than the Department, the Departments of Transportation, Education, Agriculture, and Hawaiian Home Lands, University of Hawaii, Agribusiness Development Corporation, Aloha Tower Development Corporation, Barbers Point Naval Air Station Redevelopment Commission, Convention Center Authority, Hawaii Community Development Authority, Hawaii Health Systems Corporation, High Technology Development Corporation, Hawaii Housing Finance and Development Corporation, Natural Energy Laboratory of Hawaii Authority, and OHA are also empowered to hold or manage public trust lands as part of their respective missions. Additionally, the formulae for determining rents for leases and revocable permits encumbered public trust lands can vary significantly by agency or department, and contribute to the difficulty in obtaining and summarizing the information required by this measure.

This measure serves as an egregious deviation from the Department's core mission: the preservation and stewardship of the State's natural resources. The Department does not have the staff with the necessary expertise to comply with the requirements of this measure beyond its current level of participation. To do so would require the Department to expend its limited resources in capitulation of its public trust obligations to all of the State's residents. If OHA believes that the current reporting is deficient and incomplete, then OHA should assume responsibility for the accounting and reporting of ceded land revenues. OHA would then have the autonomy to determine and implement an accounting methodology they deem fit to satisfy the obligations to their beneficiaries.

Thank you for the opportunity to comment on this measure.



SB191

**RELATING TO STRENGTHENING THE FOUNDATION FOR ENSURING A FAIR AND JUST
PAYMENT AMOUNT FOR THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF THE
PUBLIC LAND TRUST**

Senate Committee on Hawaiian Affairs
Senate Committee on Water and Land

February 7, 2019

1: 16 p .m.

Conference Room 016

The Office of Hawaiian Affairs (OHA) **STRONGLY SUPPORTS** SB191, which seeks to facilitate reliable and accurate reporting of state Public Land Trust (PLT) receipts. By codifying fundamental reporting mechanisms and requirements, this measure would help to resolve longstanding reporting discrepancies and improve PLT data gathering critical for decision-making and assessment of Native Hawaiians' fair share of the PLT.

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' constitutional pro-rata share of the income and proceeds from the PLT, "until further action is taken by the legislature." Pursuant to this agreement, embodied in Act 178 (2006), the state was to also compile annual reports on all receipts generated from PLT lands, so future legislative action could be informed by this annual reporting of PLT receipts.

Despite the explicitly temporary nature of the 2006 legislation, and despite numerous indicators that Native Hawaiians' 20% share of PLT receipts is actually far more than the \$15.1 million established under Act 178, this "interim" amount still has not been updated. **Moreover, incomplete and inaccurate PLT receipt reporting by most state agencies has hindered efforts to gather data about what is actually being generated from the PLT, undermining the process that the Legislature established to later update Native Hawaiians' constitutionally mandated pro rata share.**

SB191 seeks to improve PLT receipt reporting by enacting five modest but key statutory requirements. First, the measure codifies the existing PLT receipt annual reporting requirements established in Act 178. Second, SB191 explicitly affirms the applicability of Act 178's reporting requirements to all gross PLT receipts, regardless of whether a receipt category was previously transferred to, or claimed by, OHA. Third, this measure explicitly affirms the University of Hawai'i's reporting responsibilities, by specifically naming the University as an agency which must report all receipts generated from the use of its PLT lands. Fourth, SB191 requires an agency or department explanation for each PLT receipt from which 20% of its gross value was not transferred to OHA. Finally, this measure expands the consultation process between the Department of Land and Natural Resources and OHA to ensure the accuracy, inclusivity, and continued improvement of the annual PLT receipt reporting process.

The provisions of SB191 will help to allay any controversy or confusion as to the accuracy of each state agency's annual PLT reporting, addressing longstanding deficiencies that have confounded a proper evaluation of the state's PLT receipts, including Native Hawaiians' pro rata share. Research and financial reviews by OHA and its contracted third-party accounting firms show that many state entities may conspicuously under-report or even fail to report their PLT receipts and revenue streams. Wide variations in reporting between agencies and between years also persist, either through inadvertent omissions or conscious disregard of the reporting requirements of Act 178. For example, the Department of Accounting and General Services reports parking receipts generated at several state-owned parking lots, but not from parking lots for the Department of Taxation and the Department of Labor and Industrial Relations (Hale 'Auhau and Ke'elikōlani Building), Department of Human Services (OR&L Building), and 'Iolani Palace, which are all located on PLT lands. As another example, the University of Hawai'i only reports PLT receipts from five limited receipt categories (parking; vending machines; faculty housing; bookstore receipts for food, sundries and souvenirs, and insignia clothing; and Maunakea tour fees), but omits all other PLT receipts, such as those generated at the Maunakea Visitor Center. Given the longstanding and growing nature of these reporting issues, legislative intervention as proposed by SB191 is now necessary to ensure that state agencies more properly account for trust receipts generated for the benefit of Native Hawaiians and the public.

SB191's proposed reporting requirements is a first step to finally updating the provisional \$15.1 million amount set by Act 178. Again, Act 178's first stated purpose was to "provide interim measures to ensure that an adequate amount of income and proceeds is made available to the office of Hawaiian affairs from the pro rata portion of the public land trust, for the betterment of the conditions of native Hawaiians" (emphasis added). Accurate PLT receipt reporting, as envisioned under Act 178, is critical to updating Act 178's "interim" annual dollar amount, which would better reflect Native Hawaiians' pro rata share of the PLT. As such, SB191 is an important step to improve on the collection of data for the state, OHA, and general public to understand what updated amount would more fairly and adequately reflect Native Hawaiians' pro rata PLT share.

While the state approaches the thirteenth year since Act 178's passage, OHA, on behalf of Native Hawaiians, continues to press for a fair and just PLT pro rata share. For the reasons set forth above, OHA urges the Committee to **PASS** SB191, which will enable a more full and accurate assessment of the state's constitutional obligation to Native Hawaiians under the PLT. Accordingly, these amendments represent a good-faith step toward the accurate and responsible fulfillment of the state's constitutional obligations.

Mahalo ā nui for the opportunity to testify.

SB-191

Submitted on: 2/1/2019 7:14:28 PM

Testimony for WTL on 2/7/2019 1:16:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Karen Winslow	Testifying for Hawaii Farmers Union	Support	No

Comments:

SB-191

Submitted on: 2/5/2019 1:31:13 PM

Testimony for WTL on 2/7/2019 1:16:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
John Thatcher	Testifying for Connections PCS	Support	No

Comments:

Article XII, section 4 of the Hawaii Constitution specifies that the lands granted to the State by section 5(b) of the Admission Act, with the exception of Hawaiian Home Lands, are to be held by the State as a public trust for two beneficiaries: Native Hawaiians and the general public. As a public school, Connections Public Charter School (CPCS) was able to secure a lease for approximately 72 acres of land in Kaumana for \$480 a year. We hope that \$96 a year is being given to OHA as the law requires. This land is Crown Land. Unfortunately, we have been blocked from using this property by the County of Hawaii. A few months ago, a delegation from Connections met with Mayor Harry Kim. Our principal was chastised for “not giving up the fight.” Mayor Kim told him that his friends are the ones opposing the school using the land. The school will continue to “fight” for the right to use the land. The school also strongly supports OHA’s constitutional and statutory right to a pro rata share of the revenues we generate. The money we hope is being given to OHA should support funding for programs, grants and services that benefit the Native Hawaiian community (the largest ethnic group at our school). Please support the passage of SB 191.

SB-191

Submitted on: 2/6/2019 3:13:36 AM

Testimony for WTL on 2/7/2019 1:16:00 PM

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

Comments:

WE STRONGLY SUPPORT THIS BILL. IF THE LEGISLATURE CAN THROW 75-80 MILLION TO THE HAWAII TOURISM AUTHORITY, WHICH IS THIS STATE HAS NO FIDUCIARY DUTY TO, THEN THIS BODY SHOULD STOP BEING A DEAD BEAT & FULFILL ITS FIDUCIARY DUTY TO NATIVE HAWAIIANS BY PASSING THIS BILL.



THE ASSOCIATION OF HAWAIIAN CIVIC CLUBS

Senate Committee on Water and Land
Senate Committee on Hawaiian Affairs

Pō‘ahā, Pepeluali 7, 2019
Lumi ‘Aha Kūkā 016
Ke Kapikala Moku ‘āina
415 South Beretānia Street

Re: SB191 - RELATING TO STRENGTHENING THE FOUNDATION FOR ENSURING A FAIR AND JUST PAYMENT AMOUNT FOR THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF THE PUBLIC LAND TRUST

Aloha Luna Ho ‘omalu Kaiali‘i Kahele, Hope Luna Ho ‘omalu Gilbert S.C. Keith-Agaran, Luna Ho ‘omalu Maile Shimabukuro, Hope Luna Ho ‘omalu Kaiali‘i Kahele, and members of the Senate Committees on Water and Land and Hawaiian Affairs:

The Association of Hawaiian Civic Clubs **SUPPORTS** SB191. This bill requires the Department of Land and Natural Resources (DLNR) to use certain reporting and accountability procedures in implementing the public land trust reporting requirements of Act 178, Session Laws of Hawai‘i 2006 and requires DLNR to consult with the Office of Hawaiian Affairs (OHA) to ensure that the accounting and reporting is accurate and inclusive. At its 57th annual convention, the Association adopted resolution 2016-1 which calls for a more equitable annual allocation of Public Land Trust (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 emphasizing that the University of Hawai‘i is subject to the requirements; 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 DLNR 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, the Association respectfully urges the committees to **PASS** SB191.

The civic club movement was founded in 1918 by Congressional Delegate Prince Jonah Kūhiō Kalaniana‘ole with the creation of the Hawaiian Civic Club; 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 57th annual convention at Las Vegas, Nevada this 19th 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 19th day of November 2016, at the 57th Annual Convention of the Association of Hawaiian Civic Clubs in Las Vegas, Nevada.

Annelle C. Amaral

Annelle C. Amaral, President



Luna O Na Papa Alakai

Pelekikena
A. Makana Paris

Hope Pekekikena
Ekahi
Randi Fernandez

Hope Pelekikena
Elua
Matthew Gumapac

Puuku
Denise Kekuna

Kakauolelo Hoopaa
Sai Furukawa

Kakauolelo Hooholo
Palapala
Kamuela Werner

Pelekikena Hala
Koke
Yvonne 'PeeWee'
Ryan

Luna Alakai
Kuni Agard
Puamana Crabbe
Kanani Pali
Marlene Sai
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Founded in 1964
by Liliuokalani
Kawananakoa Morris

Hawaiian Affairs
Water and Land
Thursday, February 7, 2019
1:16 pm Conference Room 016
State Capitol

Re: SB1363 & SB191

Aloha Chair Shimabukuro, Vice-Chair Kahele, Chair Kahele, Vice-Chair Keith-Agaran and honorable members:

The Prince Kūhiō Hawaiian Civic Club (PKHCC) **SUPPORTS** SB1363 & SB191. These bills 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.

SB1363 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. 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.

SB191 provides for a more accurate means of accounting for Public Land Trust revenue. By providing better accounting, a more just and fair Public Land Trust revenue stream can be determined.

Founded in 1964, PKHCC was organized to promote the education and social welfare of people of Hawaiian ancestry and objectives include supporting high ethical standards in business, industry and the professional fields of enterprise.

PKHCC urges the committees to **PASS** SB1363 & SB191.

Me ke aloha,


A. Makana Paris
Pelekikena



O`ahu County Committee on Legislative Priorities (OCCLP)

COMMITTEE ON HAWAIIAN AFFAIRS
Senator Maile S.L. Shimabukuro, Chair
Senator Kaiali`i Kahele, Vice Chair

COMMITTEE ON WATER AND LAND
Senator Kaiali`i Kahele, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

DATE: Thursday, February 7, 2019

TIME: 1:16 p.m.

PLACE: Conference Room 016 State Capitol

RE: SB 191 Relating to Strengthening the Foundation for Ensuring a Fair and Just Payment Amount for the Office of Hawaiian Affairs' Pro Rata Share of the Public Land Trust

To the Honorable Maile S.L. Shimabukuro, Chair; the Honorable Kaiali`i Kahele, Vice Chair; and Members of the Committee on Hawaiian Affairs; and to the Honorable Kaiali`i Kahele, Chair; and the Honorable Gilbert S.C. Keith-Agaran, Vice Chair, and Members of the Committee on Water and Land:

The O`ahu County Committee on Legislative Priorities (OCCLP) of the Democratic Party of Hawai`i (DPH) hereby submits its testimony in **SUPPORT of SB 191 relating to strengthening the Foundation for Ensuring a Fair and Just Payment Amount for the Office of Hawaiian Affairs' Pro Rata share of Public Land Trust.**

SB 191 requires the Department of Land and Natural Resources to use certain reporting and accountability procedures in implementing the public land trust reporting requirements of Act 178, Session Laws of Hawaii 2006. It further requires the Department of Land and Natural Resources to consult with the Office of Hawaiian Affairs to ensure that the accounting and reporting is accurate and inclusive.

The Democratic Party of Hawaii's 2018 Platform makes it 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, i.e., that OHA is to receive the full percentage (20%) of Public Land Trust Revenues set aside for the betterment of Native Hawaiians; and therefore, an accounting and reporting would be necessary to determine the 20% amount of the Public Land Trust Funds that is due, OCCLP supports SB 191 and urges its passage out of the Committee on Hawaiian Affairs and the Committee on Water and Land.

Mahalo nui loa

Me ka `oia`i`o

/s/ Melodie Aduja

Melodie Aduja

Chair, O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i

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Unity, Equality, Aloha for all



To: SENATE COMMITTEE ON HAWAIIAN AFFAIRS
AND SENATE COMMITTEE ON WATER AND LAND

For hearing Thursday, February 7, 2019

Re: SB 191

RELATING TO STRENGTHENING THE FOUNDATION FOR ENSURING A FAIR AND JUST PAYMENT AMOUNT FOR THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF THE PUBLIC LAND TRUST.

Requires the Department of Land and Natural Resources to use certain reporting and accountability procedures in implementing the public land trust reporting requirements of Act 178, Session Laws of Hawaii 2006. Requires the Department of Land and Natural Resources to consult with the Office of Hawaiian Affairs to ensure that the accounting and reporting is accurate and inclusive.

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 and annual demands to the legislature regarding 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.

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>

SB-191

Submitted on: 2/6/2019 5:20:41 AM

Testimony for WTL on 2/7/2019 1:16:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kamuela Werner	Individual	Support	No

Comments:

Aloha:

I strongly **SUPPORT** SB191.

Me ke aloha,

Kamuela Werner

Wai'anae, O'ahu