



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTIETH LEGISLATURE, 2020**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2387, RELATING TO HAWAIIAN HOME LANDS.

**BEFORE THE:**

SENATE COMMITTEE ON HAWAIIAN AFFAIRS

**DATE:** Thursday, January 30, 2020      **TIME:** 1:17 p.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** Clare E. Connors, Attorney General, or  
Jason W. Hirata, Deputy Attorney General

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Chair Shimabukuro and Members of the Committee:

The Department of the Attorney General provides the following comments.

This bill makes two appropriations from the State's general fund: one to the Department of Hawaiian Home Lands for its operating and administrative expenses; and the other to the Office of Hawaiian Affairs (OHA).

The title of this bill is, "Relating to Hawaiian Home Lands". The appropriation to OHA, however, could be used for any public purpose consistent with OHA's mission, and is not limited to expenditures relating to Hawaiian Home Lands. The bill therefore potentially violates the subject-title requirement of article III, section 14 of the Hawai'i Constitution, which limits each bill to "but one subject, which shall be expressed in its title". When the contents of a bill exceed its title, the bill violates article III, section 14, and is void.

To address this concern, we recommend amending page 3, lines 7-8, of the bill to read: "The sum appropriated shall be expended by the office of Hawaiian affairs for ~~[the]~~ purposes ~~[of this Act]~~ related to Hawaiian home lands."

Thank you for the opportunity to provide these comments.



**SB2387**  
RELATING TO HAWAIIAN HOME LANDS  
Senate Committee on Hawaiian Affairs

January 30, 2020

1:17 p.m.

Room 016

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment will recommend that the Board of Trustees **SUPPORT** SB2387, which appropriates fiscal year 2020-2021 general funds for the operating and administrative expenses of the Department of Hawaiian Home Lands (DHHL) and for funding equal to twenty percent of funds derived from the Public Land Trust for OHA. **We applaud the Senate Native Hawaiian Caucus for taking steps to address these historical areas of underfunding by the State.**

OHA has long-sought to update the amount set aside annually for Native Hawaiians as their constitutional share of the income and proceeds from the Public Land Trust. The Hawai'i Admission Act and the state constitution established the Public Land Trust for the betterment of the conditions of native Hawaiians and for the general public. The Hawai'i Constitution also entrusts OHA with the responsibility to manage and administer those funds derived from the Public Land Trust for native Hawaiians, which state law (Hawaii Revised Statutes section 10-13.5) specifies as 20% of all funds from the Trust. After decades of disagreement, in 2006, OHA and the state set an interim annual amount of \$15.1 million, to be transferred to OHA as a reflection of Native Hawaiians' share, "until further action is taken by the legislature." This amount, however, has remained unchanged for the past fourteen years.

The state's data and OHA's own research and analysis show that this temporary \$15.1 million annual amount set in 2006 falls nowhere near 20% of the present-day receipts generated from the Public Land Trust. Instead, this amount should be at least \$35 million annually, based on an analysis of receipts generated in state fiscal year 2015-2016 from certain historically agreed-upon categories of revenues that have been transferred to OHA in the past. We would welcome an opportunity to discuss the resolution of these matters further with the legislature, including the use of the carry-forward trust holding account established by Executive Order 06-06, as an alternative to the use of general funds for this appropriation.

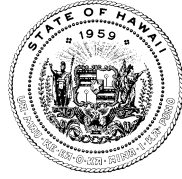
Additionally, OHA supports funding to assist DHHL to fulfill its mission. OHA has committed to providing \$3 million annually until 2032 (refinancing has resulted in payments of less than \$3 million for two years) to support DHHL housing development projects, and we appreciate this efforts to identify additional sources of funding for their operating and administrative expenses.

Finally, we note a potential conflict in the bill title of SB2387 and the bill's effect of appropriating funds to OHA, in addition to DHHL. While OHA is appreciative of the Senate's efforts to use this bill to address the underfunding of two native Hawaiian-serving agencies, we would not want to jeopardize DHHL funding should an impermissible conflict be found at the late stages of this bill's consideration.

For the above reasons, OHA respectfully requests that this Committee **PASS** SB2387. Mahalo for the opportunity to testify on this measure.

DAVID Y. IGE  
GOVERNOR  
STATE OF HAWAII

JOSH GREEN  
LT. GOVERNOR  
STATE OF HAWAII



WILLIAM J. AILA, JR.  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES  
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879  
HONOLULU, HAWAII 96805

TESTIMONY OF WILLIAM J. AILA, JR, CHAIRMAN  
HAWAIIAN HOMES COMMISSION  
BEFORE THE SENATE COMMITTEE ON HAWAIIAN AFFAIRS  
HEARING ON JANUARY 30, 2020 AT 1:17PM IN CR 016

**SB 2387 RELATING TO HAWAIIAN HOME LANDS**

January 29, 2019

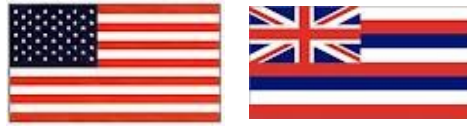
Aloha Chair Shimabukuro, Vice Chair Kahele, and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) supports this bill appropriating funds for the Department of Hawaiian Home Lands.

The Hawaiian Homes Commission approved the “Sufficient Sums” budget request, which DHHL submitted to the Governor and the Legislature as detailed in our budget testimony that can be reviewed at: [https://www.capitol.hawaii.gov/session2020/testimony/Info\\_Testimony\\_WAM-HWN\\_01-13-20\\_HHL.pdf](https://www.capitol.hawaii.gov/session2020/testimony/Info_Testimony_WAM-HWN_01-13-20_HHL.pdf). While DHHL’s obligation to make this request is clear, the operating budget included in the Governor’s Supplemental Budget request is an appropriate base line given our current staffing levels and funding.

We are most appreciative of the support given by the Legislature to the Hawaiian homes program. Thank you for your consideration of our testimony.

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Unity, Equality, Aloha for all



To: SENATE COMMITTEE ON HAWAIIAN AFFAIRS

For hearing Thursday, January 30, 2020

Re: SB 2387 RELATING TO HAWAIIAN HOME LANDS.  
Appropriates funds for the Department of Hawaiian Home Lands and Office of Hawaiian Affairs as mandated by the Constitution of the State of Hawaii and Hawaii Revised Statutes.

TESTIMONY IN OPPOSITION

Four points are briefly discussed below:

1. Bill title is inconsistent with bill contents;
2. "Financial autonomy" of the "native Hawaiian community"?
3. "Sufficient funds" and DHHL dictates how much money that is?
4. 20% of ceded lands revenue for OHA -- exercise your power to repeal that statute!

1. This poorly written bill is probably contrary to the state Constitution because its title does not correspond to its contents. The title merely says "RELATING TO HAWAIIAN HOME LANDS" but half the content is relating to the Office of Hawaiian Affairs. Either the title must be broadened to refer to both DHHL and OHA or else all the content providing justification and funding for OHA must be removed.

2. The first sentence in Section 1 states that the legislature supports the "financial autonomy of the native Hawaiian community." But such a sentiment is contradicted by the fact that there has never been proposed legislation that would foster financial autonomy of that ethnic group -- on the contrary there have been decades of legislation appropriating hundreds of millions of dollars for OHA and DHHL, with no expectation of repayment and with full expectation that such appropriations will continue forever and will grow ever-larger as the years go by. That sentence is more than disingenuous -- it is intentionally misleading (dare we use the word "lie"?).

3. This bill says "the legislature shall make sufficient sums available for the administration and operating budget of the department" DHHL. The phrase "sufficient funds" has been the subject of litigation in recent years specifically regarding DHHL. The courts ordered the legislature to appropriate sufficient funds and the legislature pointed out that the phrase is vague and non-justiciable; and the legislature also gave serious consideration to retaliatory legislation that would penalize the judiciary regarding salaries, budgets, and numbers of positions. It would be bad policy for the legislature to re-enter this swamp. Furthermore, this bill would undermine the authority of the legislature by requiring the appropriation of however much money DHHL demands -- the bill specifically says "The purpose of this Act is to appropriate, from the general fund: (1) An amount equal to the

budget request (for operating and administrative expenses) that is annually submitted by the department of Hawaiian home lands ..." Do you legislators really want to sign a blank check for however much money is demanded by the bloated, inefficient, and scandal-ridden bureaucracy at DHHL?

4. This bill says "In accordance with section 10-13.5, Hawaii Revised Statutes, the State is obligated to provide the office of Hawaiian affairs with twenty per cent of the funds derived from the public land trust."

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 40 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.

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.

The Ceded Lands Trust costs the State many times more annually for operating expense than the 1.2 million acres bring in. 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 <https://tinyurl.com/62qs2>

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.

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.

**SB-2387**

Submitted on: 1/27/2020 8:02:27 PM

Testimony for HWN on 1/30/2020 1:17:00 PM

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

Comments:



**SB-2387**

Submitted on: 1/27/2020 11:49:27 PM

Testimony for HWN on 1/30/2020 1:17:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
kenneth kudo	Individual	Oppose	No

Comments:

1. I am against OHA, DHHL, and any other state agency, bill, or project favoring only native Hawaiians as it is racism and a violation to our U.S. Constitution. Please repeal this statute.

2, Bill title is inconsistent with bill contents; Please repeal this statute.

2. On behalf of the majority population of Hawaii who do not have a drop of native Hawaiian blood, I am opposed to "Financial autonomy" of the "native Hawaiian community". Please repeal this statute.

3. "Sufficient funds" and DHHL dictates how much money that is? Please repeal this statute.

4. 20% of ceded lands revenue for OHA -- Please repeal that statute!

5. Taxpayers should not pay 1 penny of money allocated to OHA or benefiting in any way native Hawaiians. Repeal this statute!

**SB-2387**

Submitted on: 1/28/2020 10:24:27 AM

Testimony for HWN on 1/30/2020 1:17:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Regina Gregory	Individual	Support	No

Comments:

**SB-2387**

Submitted on: 1/29/2020 12:09:13 AM

Testimony for HWN on 1/30/2020 1:17:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kamakana Aquino	Individual	Support	No

Comments:

I support DHHL and OHA receiving appropriate and adequate funding needed to fulfill their missions.