



SCR57

URGING THE STATE OF HAWAI'I TO PROVIDE NATIVE HAWAIIANS WITH THEIR FAIR SHARE OF THE PUBLIC LAND TRUST REVENUE

Senate Committee on Hawaiian Affairs

March 10, 2020

1:15 p.m.

Room 016

The Administration of the Office of Hawaiian Affairs (OHA) will recommend that the Board of Trustees **SUPPORT** SCR57. **OHA strongly agrees that it is time to revisit Native Hawaiians' fair share of the Public Land Trust.**

As background, the Hawai'i Admission Act and the State Constitution established the Public Land Trust for the betterment of the conditions of native Hawaiians and for the general public. The Public Land Trust comprises over one million acres of former government and crown land of the Kingdom of Hawai'i, seized as part of the Kingdom's unlawful overthrow. The Hawai'i Constitution entrusts OHA with the responsibility to manage and administer Public Land Trust funds set aside for Native Hawaiians, which state law reaffirms as 20% of all funds from the Trust.

In further support of the action called for in this measure, **OHA urges the Legislature to pass SB1363 SD1** with amendments to update Native Hawaiians' annual share of the Public Land Trust to \$35 million and transfer to OHA a lump sum of \$159 million as an amount that should have been set aside for Native Hawaiians as their 20% share of Public Land Trust receipts over the past eight years. This is consistent with years of state accounting information, generated pursuant to Act 178 (Reg. Sess. 2006), that clearly demonstrate the need 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 Legislature can also support the transfer to OHA of the funds contained in the carry-forward trust holding account, established by Executive Order 06-06. This account, which is controlled by the Director of Finance, holds Public Land Trust funds received by OHA in past years from various state sources, but which OHA had to send back to the State, after having exceeded the "interim" annual amount set by the Legislature over a decade ago. The return to OHA of these funds, which originally came from undisputed Public Land Trust revenue sources to which OHA is entitled, would demonstrate that the State is indeed committed to fulfilling its Public Land Trust obligations owed to Native Hawaiians.

OHA's Pro Rata Share

After decades of disagreement as to how to determine this 20%, in 2006, OHA and the state agreed to an interim annual amount of \$15.1 million, to be transferred to OHA as a reflection of Native Hawaiians' Public Land Trust share, "until further action is taken by the legislature." As part of this agreement, the state was to compile annual reports on all receipts generated from the Public Land Trust, for the purpose of revisiting the interim annual amount with better data. 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 Native Hawaiians' fair share of the Public Land Trust. Despite the expressly temporary nature of the agreement in Act 178, and despite years of state reporting showing that 20% of Public Land Trust receipts far exceeds the \$15.1 million set aside annually for Native Hawaiians, Native Hawaiians' "interim" share has not been updated since 2006. OHA's research shows that the \$35 million annual share, as proposed in the original draft of this measure, is consistent with 20% of reported receipts from most, but not all, historically undisputed Public Land Trust revenue streams, including:

- Revenue sources that state agencies currently transfer to OHA;
- Revenue sources not currently transferred to OHA, but which fall within historically agreed upon categories of revenues that have been transferred to OHA as well as smaller amounts due to accounting errors or inconsistent transfers.

Public Land Trust revenue is the primary source of funding for programs, grants, and services that benefit both the Native Hawaiian and larger communities. OHA has a proven track record of investing in strategic, innovative, and award-winning programs and services, that seek and explore solutions to systemic issues and challenges faced by Native Hawaiians and other Hawai'i residents. 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 SCR57**. OHA also urges the Legislature to support other related efforts, such as the passage of SB1363 SD1 with OHA's recommended amendments, alternatively transfer the trust funds in the carry-forward trust holding account funds to OHA. Mahalo nui loa for the opportunity to testify on this measure.

SCR-57

Submitted on: 3/6/2020 7:35:50 PM

Testimony for HWN on 3/10/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Leimomi Khan	Testifying for Democratic Party of Hawaii, Hawaiian Affairs Caucu	Support	Yes

Comments:

Strongly support this measure, though we are hopeful that it will not be necessary, since there is at least one other bill flowing through the legislature to get the PLT revenue pro rata share to OHA resolved. Years of data are now available to the Governor, the legislature, and OHA that clearly support an increase in the pro-rata share of the Public Land Trust revenues to OHA.

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Unity, Equality, Aloha for all



To: SENATE COMMITTEE ON HAWAIIAN AFFAIRS

For hearing Tuesday, March 10, 2020

Re: SCR57 URGING THE STATE OF HAWAI'I TO PROVIDE NATIVE HAWAIIANS WITH THEIR FAIR SHARE OF THE PUBLIC LAND TRUST REVENUE.

TESTIMONY IN OPPOSITION

The "whereas" preambles in this resolution are so filled with distortions and falsehoods that refutation of them would require a book-length rebuttal. But to avoid causing boredom with too many details, this testimony chooses to

(1) focus on one "whereas" example whose falsehood is especially simple, easy to understand, and very important.

(2) After the example exposing falsehood, I shall point out that the law mandating that 20% of ceded land revenue must go to OHA is merely an ordinary statute passed by the legislature in 1979, it is not a part

of the Admissions Act and is not part of the state Constitution; therefore the legislature has the power to rescind that law AND SHOULD RESCIND IT TO AVOID ANOTHER 40 YEARS OF LITIGIOUSNESS AND RACIAL DIVISIVENESS. If the legislature unwisely decides not to introduce a Constitutional amendment to abolish OHA, then OHA should be funded through the same annual or biennial appropriations process as any other agency of the state government.

(1) Example of falsehoods in the preambles:

WHEREAS, as part of the incorporation of Hawai'i as a State of the Union, in section 5(f) of the Admissions Act the State of Hawai'i's public trust responsibilities to native Hawaiians is clarified whereby "[t]he lands granted to the State of Hawaii...shall be held by said State as a public trust for the support of...native Hawaiians"

Whoa! The author of this resolution wants you to believe the whole purpose of ceded land revenue is "for the support of native Hawaiians" with just three little dots "of ... native Hawaiians" indicating that some superfluous verbiage has been conveniently left out to make it easier for you to read. Whoa! Let's look at what section 5(f) of the Admissions Act really says. Here it is, in full. Look carefully to see how the "whereas" item cited above totally distorts the clear intent of what section 5(f) actually says. What's hidden in those three little dots?

"(f) The lands granted to the State of Hawaii by subsection (b) of this section and public lands retained by the United States under subsections (c) and (d) and later conveyed to the State under subsection (e), together with the proceeds from the sale or other disposition of any such lands and the income therefrom, shall be held by said State as a public trust 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. Such lands, proceeds, and income shall be managed and disposed of for one or more of the foregoing purposes in such manner as the constitution and laws of said State may provide, and their use for any other object shall constitute a breach of trust for which suit may be brought by the United States. The schools and other educational institutions supported, in whole or in part out of such public trust shall forever remain under the exclusive control of said State; and no part of the proceeds or income from the lands granted under this Act shall be used for the support of any sectarian or denominational school, college, or university."

There are clearly 5 purposes for using ceded land revenue:

- (1) support of the public schools and other public educational institutions;
- (2) betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act;
- (3) development of farm and home ownership on as widespread a basis as possible;
- (4) for the making of public improvements;
- (5) for the provision of lands for public use.

Please notice that the first, primary purpose was to support public schools and public universities; and that the only one of the 5 purposes to receive detailed attention was to ensure that schools and universities must be public and not religious or sectarian.

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 should be getting its 20% portion to maintain our parks and fill our potholes; etc.

For the first 20 years of statehood (1959-1979), 100% of ceded land revenue was given to the public schools. Nobody complained. That's because section 5(f) clearly says "Such lands, proceeds, and income shall be managed and disposed of for one or more of the foregoing purposes in such manner as the constitution and laws of said State may provide ..." Did you see that? It says FOR ONE OR MORE OF THE FOREGOING PURPOSES." There was never any requirement to spend even one penny for any particular racial group. It would be perfectly OK for the legislature to now choose to spend all the ceded land revenue for landscaping and related infrastructure to help the thirty-meter telescope consortium with its construction project on Mauna Kea, thus implementing purposes (4) and (5).

(2) The law mandating that 20% of ceded land revenue must go to OHA is merely an ordinary statute passed by the legislature in 1979 -- it is not a part of the Admissions Act and is not part of the state Constitution; therefore the legislature has the power to rescind that law AND SHOULD RESCIND IT TO AVOID ANOTHER 40 YEARS OF LITIGIOUSNESS AND RACIAL DIVISIVENESS. If the legislature unwisely decides not to introduce a Constitutional amendment to abolish OHA, then OHA should be funded through the same annual or biennial appropriations process as any other agency of the state government.

Here is another "whereas" item in this resolution that needs to be examined more closely:

WHEREAS, the Legislature determined that native Hawaiians should get at least twenty percent of the public land trust revenue (section IO-13.5, Hawaii Revised Statutes)

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>

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.

It's time for the legislature to exercise your power to rescind a bad law enacted by a previous legislature. Rescind Act 273 (1980), encoded as section IO-13.5, Hawaii Revised Statutes. Stop feeding the beast (OHA). Stop sending megabucks to finance identity politics and racial separatism. OHA has more than \$650 Million in assets which it has hoarded over many years. It's time for the legislature to treat that as a "special fund" and raid it the same way you raid the Highway Fund or the Hurricane Fund when you need money to balance the budget, especially at this time when tax revenues are likely to fall far short of projections due to the coronavirus crisis, its impact on tourism, and need for heightened expenditures on public health.



KAMEHAMEHA SCHOOLS®

Senate Committee on Hawaiian Affairs

Time: 1:15 p.m.
Date: Malaki 10, 2019
Where: State Capitol Room 016

TESTIMONY

by Kau'i Burgess

Director of Community & Government Relations

RE: SCR57, Urging the State of Hawai'i to provide Native Hawaiians with their fair share of the public land trust revenue

E ka Luna Ho'omalū Shimabukuro, ka Hope Luna Ho'omalū Kahele, a me nā Kenekoa 'ē a'e o kēia kōmike, aloha!

Kamehameha Schools **SUPPORTS SCR57**, which urges the State to provide Native Hawaiians with their fair share of the public land trust revenue.

We strongly believe that the Office of Hawaiian Affairs should receive full and fair funding from the public land trust, as designated by Hawai'i's Constitution, to improve its ability to serve the intergenerational needs of the Native Hawaiian population.

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 the community.

Between 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.

Through this funding, OHA's strategic and innovative programs and services have helped people secure housing, develop local small businesses, attend college, engage communities in sustainable resource management, 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.

For these reasons, Kamehameha Schools urges the committee to **PASS SCR57**.

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.

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

SCR-57

Submitted on: 3/6/2020 5:33:36 PM

Testimony for HWN on 3/10/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kapua Keliikoa-Kamai	Individual	Support	Yes

Comments:

Aloha Senate Hawaiian Affairs Chair Shimabukuro, Vice Chair Kahele and Committee Members,

I rise in SUPPORT of SCR 57 URGING THE STATE OF HAWAI'I TO PROVIDE NATIVE HAWAIIANS WITH THEIR FAIR SHARE OF THE PUBLIC LAND TRUST REVENUE.

While the Resolution states the facts of the matter and I fully appreciate the gesture, it falls short - there are no appropriations to this Resolution. To my limited knowledge, only a legislative Bill, with appropriations, approved by Hawaii's House and Senate legislators will result in Hawaiians receiving their "fair share of the public land trust (PLT) revenue", currently enumerated at \$34,963,244 (est.) as of fiscal year 2015-2016.

Therefore, if a legislative Bill hasn't already been initiated to effectuate Hawaiians receiving a fair share of the PLT revenue, please do so now. In the meantime, please pass SCR 57 out of your committee. Mahalo for your support!

Me ka haahaa,

Kapua Keliikoa-Kamai

Indigenous Hawaiian Still Waiting for A Fair Share

Concerned Waianae Resident

SCR-57

Submitted on: 3/7/2020 10:35:43 AM

Testimony for HWN on 3/10/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Regina Gregory	Individual	Support	No

Comments:

SCR-57

Submitted on: 3/8/2020 2:38:53 PM

Testimony for HWN on 3/10/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl B.	Individual	Support	No

Comments:

I support.. BUT really, why is this only an SCR? It should JUST be the way that it is..at some point, doesn't it have to get where the Kanaka Maoli are deciding where their monies go and not the State of Hawai'i? Just saying.

SCR-57

Submitted on: 3/9/2020 10:30:31 PM

Testimony for HWN on 3/10/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Don Aweau	Individual	Support	No

Comments: