

OFFICE OF INFORMATION PRACTICES

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To: Senate Committees on Ways and Means and on Judiciary

From: Cheryl Kakazu Park, Director

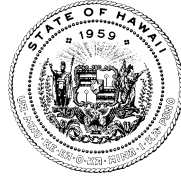
Date: March 3, 2021, 10:35 a.m.
Via Videoconference

Re: Testimony on S.B. No. 1317, S.D. 1
Relating to Public Land Trust Funds

Thank you for the opportunity to submit testimony on this bill, which would, among other things, establish a four-member Public Land Trust Revenues Negotiating Committee, consisting of a representative each from the Senate, the House, the Governor, and the Office of Hawaiian Affairs. The Office of Information Practices (OIP) notes that the bill's purpose clause now includes an explanation of the Committee's exemption from part I of chapter 92, HRS. Because the decision to preclude public participation in the negotiation process is intertwined with the policy considerations regarding those negotiations, OIP takes no further position regarding this bill.

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 COMMITTEES ON WAYS AND MEANS & JUDICIARY
DECISION MAKING ON MARCH 3, 2021 AT 10:35AM VIA VIDEOCONFERENCE

SB 1317, SD 1, RELATING TO PUBLIC LAND TRUST FUNDS

March 3, 2021

Aloha Chair Dela Cruz, Chair Rhoads, and members of the Committees:

The Department of Hawaiian Home Lands (DHHL) submits comments on this bill which requires agencies that collect receipts for any disposition of the public land trust to transfer to DHHL or the Office of Hawaiian Affairs (OHA) twenty per cent of each receipt from the disposition; provides to DHHL certain moneys previously claimed as public land trust overpayments to OHA; and establishes a public land trust revenues negotiating committee exempted from part I of Chapter 92, HRS.

DHHL appreciates the motivation behind this bill and the acknowledgement that despite constitutional obligations to DHHL, the Department does not currently receive sufficient funding to develop house lots for all applicants on the waiting list. Nevertheless, the State Constitution established OHA 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 public trust for native Hawaiians.

Thank you for your consideration of our testimony.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Ways and Means
and

Senate Committee on Judiciary
March 3, 2021 at 10:35 a.m.

by

Kalbert K. Young

Vice President for Budget and Finance/Chief Financial Officer
University of Hawai'i System

SB 1317 SD1 – RELATING TO PUBLIC LAND TRUST FUNDS

Chairs Dela Cruz and Rhoads, Vice Chairs Keith-Agaran and Keohokalole, and members of the Committees:

Thank you for the opportunity to submit our strong concerns with SB 1317 SD1. Like the Office of Hawaiian Affairs (OHA), the University of Hawai'i (University) has a unique relationship to the public land trust requiring special consideration.

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

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

Furthermore, independent from Act 178, SLH 2006, the University currently provides millions of dollars per year in direct tuition benefits from its own resources to native Hawaiian students. In each academic year from 2014-2015 through and including 2019-2020, the University has provided in excess of \$7,000,000 to native Hawaiian students in tuition waivers and non-resident tuition differentials.

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

In addition, the University has embraced its mission to become a model indigenous-serving university and greatly appreciates the financial support from and many partnerships with OHA (along with the Ali'i Trusts and other organizations) to advance native Hawaiian people, language, culture and history.

The University serves one of the same purposes as provided for under the Admissions Act. The University must focus its resources to provide all of its students with the educational tools, training, and tenacity to meet the challenges in today's competitive local, national, and global workforce.

The University respectfully requests that SB 1317 SD1 be amended to exclude the University from any obligations to OHA.

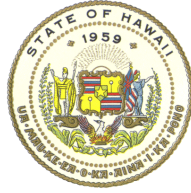
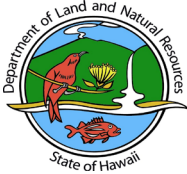
In the alternative, the University respectfully requests that the bill include language from Act 178, SLH 2006, Section 3, Page 703, that provides:

The governor is expressly authorized to fix the amounts each agency shall transfer to the office of Hawaiian affairs in each quarter by executive order to implement the provisions of this section.

Lastly, the State's current economic condition and uncertainty should serve as an example as to why the Governor should maintain the flexibility afforded by Act 178 to adjust each department's contribution as needed. This approach could also be beneficial to the OHA as well.

Thank you for your time and consideration.

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
WAYS AND MEANS
and
JUDICIARY**

**Wednesday, March 3, 2021
10:35 AM**

State Capitol, Via Videoconference, Conference Room 211

**In consideration of
SENATE BILL 1317, SENATE DRAFT 1
RELATING TO PUBLIC LAND TRUST FUNDS**

Senate Bill 1317, Senate Draft 1 proposes to: (1) Require agencies that collect receipts for any disposition of the public land trust shall each fiscal quarter transfer to the Department of Hawaiian Home Lands (DHHL) or the Office of Hawaiian Affairs (OHA) twenty per cent of each receipt from the disposition; (2) Provide to DHHL certain moneys previously claimed as public land trust overpayments to OHA; and (3) Establish a public land trust revenues negotiating committee exempted from part I of Chapter 92, Hawaii Revised Statutes (HRS). **The Department of Land and Natural Resources (Department) opposes this measure.**

The Department opposes paying DHHL or OHA any additional funds from ceded lands above the fixed annual payment of \$15.1 million currently paid to OHA, as established by legislative mandate via Act 178, Session Laws of Hawaii 2006, regardless of which agency actually receives the funds. The Department notes that DHHL is already entitled to thirty percent of receipts collected from the leasing of lands cultivated as sugar cane lands and water licenses pursuant to Article XII, Section I of the Hawaii State Constitution. If the Department were obligated to pay additional revenue to either DHHL or OHA, it would abrogate the Department's ability to adequately fund its natural, cultural, historical and recreational resource management and protection programs. In addition, the severe detrimental economic impact resulting from COVID either already has significantly constrained, or will significantly constrain the ability of State agencies, including the Department, to generate income from the public land trust, further diminishing natural and cultural resource protection.

The Department estimates the immediate impact of the bill if passed is an annual payment to DHHL in the amount of approximately \$38.1 million, about \$23 million more per year than the current \$15.1 million annual payment to OHA. Moreover, the new Section 5 added to Senate Draft

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

1 of this measure appears to require continuing, at minimum, the current \$15.1 million annual payment to OHA, in addition to payments to DHHL. Therefore, the State would be paying a total of approximately at least \$53.2 million annually to both DHHL and OHA from public land trust revenues. In addition to those sums, the measure also requires the past overpayments contained in the carry forward trust holding account also be paid to either DHHL or OHA, which the measure estimates at \$25 million. Therefore, the Department estimates that the initial amount paid to DHHL and OHA would total almost \$80 million.

The revenues collected by the Department's Land Division cover the entire annual operating budget for the Land Division, the Department's Office of Conservation and Coastal Lands, and the Dam Safety and Mineral Resources Programs of the Department. The revenues fund over 80 Department staff positions, including six (6) positions within the Commission on Water Resource Management, and provide funding support to the Division of State Parks and various resource protection programs administered by the Division of Forestry and Wildlife such as the protection of threatened and endangered species, removal of invasive species, wildland firefighting and lifeguard services. Revenues collected by other divisions have supported watershed protection, preservation of cultural and historical sites and public recreational resources. In addition, the Department has provided lands to other agencies in support of a variety of agricultural, educational, transportation and affordable housing projects, often at the expense of generating revenue to support its own programs. These collective efforts have contributed significantly to the betterment of native Hawaiians as well as the general public, in excess of the revenues paid to DHHL and OHA. It is also fair for DHHL and OHA to share in the sacrifice made by the State and its citizens during this time, especially when other critical public services face potentially severe budget reductions.

Thank you for the opportunity to comment on this measure.

Center for Hawaiian Sovereignty Studies
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Unity, Equality, Aloha for all



To: SENATE COMMITTEE ON WAYS AND MEANS AND
SENATE COMMITTEE ON JUDICIARY
For hearing Wednesday, March 3, 2021

Re: SB1317, SD1

RELATING TO PUBLIC LAND TRUST FUNDS.

Requires agencies that collect receipts for any disposition of the public land trust shall each fiscal quarter transfer to the department of Hawaiian home lands or the Office of Hawaiian Affairs twenty per cent of each receipt from the disposition. Provides to the department of Hawaiian home lands certain moneys previously claimed as public land trust overpayments to the office of Hawaiian affairs. Establishes a public land trust revenues negotiating committee exempted from part I of chapter 92, Hawaii Revised Statutes. (SD1)

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. Act 273 (1980) should be rescinded. OHA (and also DHHL) 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. The legislature often raids special funds such as the Highway fund or Hurricane Relief fund to balance the budget or transfer to other departments, so why should OHA (assets \$666 Million in 2020 annual report) be treated any differently?

7. Any dollar amount for future annual payments under this bill is unsupported by facts. The dollar amount for makeup of alleged arrears is both unsupported 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. It is not in the Statehood Admissions Act nor in the State Constitution. Therefore, this law can be amended by the legislature at any time to reduce the percentage; or the law can be rescinded entirely.

At this time of severe budget crisis, 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.

According to its 2020 Annual Report, OHA has \$666 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."

According to its annual report for 2020, OHA currently has over \$666 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. Any dollar amount for future annual payments under this bill is unsupported by facts. The dollar amount for makeup of alleged arrears is both unsupported by facts and would violate previous agreements negotiated in good faith.

In year 2019 the first draft of HB402, a bill comparable to this one, 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 that bill would transfer to the Office of Hawaiian affairs a sum of \$139,000,000 to pay OHA 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 propoganda film broadcast repeatedly on TV, are evidence that no amount would ever be enough to satisfy the monster that is devouring Hawaii.

A massive propoganda blitzkrieg in the Honolulu Star-Advertiser during October through December 2020, reciting twisted "Hawaaiian Studies" history and crying over the huge wait-list for DHHL homestead leases, is further evidence that the State can never satisfy the rapacious demands of OHA/DHHL. A large webpage documents the blitzkrieg, which was perfectly timed to shape public opinion a few weeks before the current session of this Legislature. See <https://tinyurl.com/y8qha8pq>

Enough already! Stop feeding this beast.



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
SENATE COMMITTEE ON JUDICIARY
Wednesday, March 3, 2021, 10:35 a.m., State Capitol Room 211
SB 1317, SD 1
Relating to Public Land Trust Funds

TESTIMONY

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Dela Cruz, Chair Rhoads, and Committee Members:

The League of Women Voters of Hawaii requests amendment of SB 1317, SD 1.

The League has no expertise or position concerning OHA's fair share of revenues. However, we request amendment of Section 4 of this bill so that the proposed public lands trust revenues negotiating committee is only exempted from §92-3, Hawaii Revised Statutes, but is not exempted from other provisions of the Sunshine Law.

§92-3 Open meetings. Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5; provided that the removal of any person or persons who wilfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited. The boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item. The boards may provide for reasonable administration of oral testimony by rule.

We understand why the public will not be allowed to attend and "participate" in meetings of the proposed public land trust revenues negotiating committee. However, SB 1317, SD 1 does not justify suspension of those parts of the Sunshine Law which concern preparation and public disclosure of agenda, board packets, and minutes. For that matter, we assume that UIPA would apply to these government records.

Thank you for the opportunity to submit testimony.



SB1317 SD1
RELATING TO PUBLIC LAND TRUST FUNDS
Ke Kōmike ‘Aha Kenekoa o ke Kuleana Hawai‘i
Senate Committee on Ways and Means
Ke Kōmike ‘Aha Kenekoa o ka Ho‘okolokolo
Senate Committee on Judiciary

Malaki 3, 2021

10:35 a.m.

Lumi 211

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB1317 SD1, due to its diversion of funds derived from the Public Land Trust that were set aside for native Hawaiians and Hawaiians, and which the constitution specifically entrusts to the OHA Board of Trustees to administer.

Despite recognizing OHA’s constitutional authority to administer the pro rata share of the Public Land Trust for the betterment of the conditions of native Hawaiians, this bill would transfer a portion of these revenues, along with the moneys held in the “overpayments” trust account maintained by the Department of Budget and Finance, to the Department of Hawaiian Home Lands (DHHL). **By doing so, this measure appears to conflate the State’s independent, constitutional obligations to DHHL and OHA, and may only lead to the further abdication of its obligations to the Hawaiian community.**

The Public Land Trust and the Hawaiian Home Lands Trust are Separate and Distinct

The Hawai‘i Admission Act and the Hawai‘i State Constitution establish 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 lands of the Kingdom of Hawai‘i, seized as part of the Kingdom’s unlawful overthrow and without compensation to, or consent by, the Hawaiian people. The Hawai‘i State Constitution specifically entrusts the OHA Board of Trustees with the responsibility to manage and administer Public Land Trust funds set aside for native Hawaiians, reaffirmed by state law as a 20% pro rata share of all funds from the Public Land Trust. Notably, the Public Land Trust expressly excludes “available lands” set aside under the Hawaiian Homes Commission Act.

The Hawaiian Homes Commission Act, enacted by Congress in 1920, set aside over two hundred thousand acres of former government and crown lands of the Kingdom of Hawai‘i in trust for native Hawaiian homesteading. These lands are not considered part of the Public Land Trust. As a condition of statehood, the State of Hawai‘i accepted

the trust obligations of the federal government under the Hawaiian Homes Commission Act. The Hawai'i State Constitution, through its adoption of the Hawaiian Homes Commission Act, entrusts the Hawaiian Homes Commission with responsibility over the Hawaiian Home Lands, and further specifies that funding made available by the state legislature and generated from Hawaiian Home Lands shall be spent on the enumerated purposes contained in the Hawaiian Homes Commission Act. The Hawai'i State Constitution also specifically requires the legislature to "make sufficient funds available" for enumerated purposes in furtherance of the Hawaiian Homes Commission Act, including for the administration and operation of DHHL.

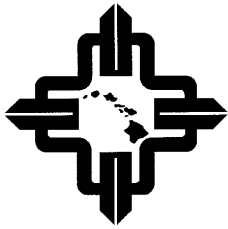
Although both OHA and DHHL have trusts rooted in the Admission Act and the Hawai'i State Constitution, and have a similar history of underfunding by the State, the basis for the State's obligation to each entity is distinct and the spending of each trust fund is separately overseen by each organization's governing body pursuant to the Hawai'i State Constitution.

By Conflating the Public Land Trust and the Hawaiian Home Lands Trust Bill, This Bill May Further Abdicate the State's Obligations to Native Hawaiians

Unfortunately, this measure would improperly divert the pro rata portion of the income and proceeds from the Public Land Trust set aside for native Hawaiians, which, pursuant to the Hawai'i State Constitution, must be managed and administered solely by the OHA Board of Trustees. Although OHA appreciates the incorporation of our suggested amendments to make clear that OHA's interests under Act 178 (SLH 2006) are unaffected, the SD1 version of this measure still transfers an unspecified amount from historic sources of Public Land Trust revenues to DHHL, along with the funds in the carry-forward trust holding account established pursuant to Executive Order 06-06. By diverting these revenues to DHHL, this measure could be interpreted to satisfy the State's separate and independent constitutional obligation to sufficiently fund the administration and operation of DHHL, by redirecting Public Land Trust revenues historically set aside for the benefit of native Hawaiians as claimed by OHA and agreed to by the State.

Further, this measure still places the Chairperson of DHHL on the Public Land Trust Revenues Negotiating Committee, suggesting that the measure still views DHHL's interests as being directly served or affected by OHA's negotiations with the State to receive a fair 20% share of the Public Land Trust that OHA is solely entitled to under the Hawai'i State Constitution.

For these reasons provided, OHA respectfully urges the Committees to **HOLD** SB1317 SD1. Mahalo nui loa for the opportunity to testify on this measure.



HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

"Quality Healthcare For All"

SENATE COMMITTEE ON WAYS AND MEANS
and
SENATE COMMITTEE ON JUDICIARY

March 3, 2021
10:35 a.m.
Hawaii State Capitol
Via Videoconference

**Testimony Providing Comments on S.B. 1317, S.D.1
RELATING TO PUBLIC LAND TRUST FUND.**

Requires agencies that collect receipts for any disposition of the public land trust shall each fiscal quarter transfer to the department of Hawaiian home lands or the Office of Hawaiian Affairs twenty per cent of each receipt from the disposition. Provides to the department of Hawaiian home lands certain moneys previously claimed as public land trust overpayments to the office of Hawaiian affairs. Establishes a public land trust revenues negotiating committee exempted from part I of chapter 92, Hawaii Revised Statutes.

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 S.B. 1317, SD1**

The practice of continuing to have HHSC continue to pay rental income on ceded lands has a significant operating impact on a health care system that is cash-strapped. For fiscal years 2022 and 2023, HHSC is projecting a budget deficit of \$(100,709,000) and \$(98,036,000), respectively, at the base general fund appropriation levels for those fiscal years. As a result, any potential increase in costs to HHSC will either result in a reduction of health care services that are essentially needed in the communities that we serve or require additional general fund appropriations in addition to what HHSC is already requesting. Further, HHSC believes that its revenues should not be subject to the OHA rental computation, as OHA's constituents directly benefit from the healthcare services that HHSC provides.

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