

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Hawaiian Affairs

From: Cheryl Kakazu Park, Director

Date: February 9, 2021, 1:00 p.m.
Via Videoconference

Re: Testimony on S.B. No. 1317
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) takes no position regarding the substance of this bill, but offers a **technical amendment and comments** regarding the Committee's exemption from chapter 92, HRS, at bill page 13, lines 10-11.

First, as a technical note, the Sunshine Law makes up only part I of chapter 92, HRS. The remainder of the chapter includes miscellaneous provisions relating to records, fees, political subdivision of the State, and neighborhood boards. Thus, an exemption from the Sunshine Law, which was presumably the intent, **should specifically state that the Committee is exempt from part I of chapter 92**, rather than the entire chapter.

Second, OIP recommends that the purpose clause for this bill include an explanation of why the Legislature finds a complete Sunshine Law exemption warranted for this Committee. OIP recognizes the sensitive nature of the anticipated negotiations, but given the high public interest in this topic, it would be best for the Legislature to acknowledge and state its apparent conclusion that the sensitivity of the negotiations precludes public participation in the process.

Thank you for the opportunity to testify.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Hawaiian Affairs
February 9, 2021 at 1:00 p.m.

by
Kalbert K. Young
Vice President for Budget and Finance/Chief Financial Officer
University of Hawai'i System

SB 1317 – RELATING TO PUBLIC LAND TRUST FUNDS

Chair Shimabukuro, Vice Chair Keohokalole, and members of the Committee:

Thank you for the opportunity to submit our strong concerns with SB 1317. 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.

In addition, the University has embraced its mission to become a model indigenous-serving university and greatly appreciates the financial support from and

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

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 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.



SB1317
RELATING TO PUBLIC LAND TRUST FUNDS
Ke Kōmike ‘Aha Kenekoa o ke Kuleana Hawai‘i

Pepeluali 9, 2021

1:00 p.m.

Hālāwai Keleka‘a‘ike

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment will recommend that the OHA Board of Trustees **OPPOSE** SB1317, due to its unconstitutional diversion of funds derived from the Public Land Trust that are set aside for native Hawaiians and Hawaiians.

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 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 homesteading for native Hawaiians. 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 this measure may purport to leave OHA's interests under Act 178 (SLH 2006) unaffected, SB1317 expressly states that it applies to "the Office of Hawaiian Affairs' constitutional pro rata share of the public land trust for the betterment of the conditions of native Hawaiians."

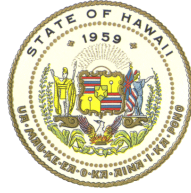
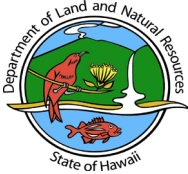
By halting the transfer of Public Land Trust revenues to OHA, this measure would thereby abdicate the State's constitutional obligations under the Public Land Trust. Moreover, by instead diverting these revenues to DHHL, this measure could be interpreted to supplant the State's separate and independent constitutional obligation to sufficiently fund the administration and operation of DHHL. **Accordingly, this measure may only lead to the further abdication of the State's obligations to the Hawaiian community.**

To the extent that this bill seeks to provide DHHL with funds derived from the Public Land Trust, but which are not subject to expenditure by the OHA Board of Trustees for the betterment of the conditions of native Hawaiians, OHA respectfully requests that the aforementioned sections of this measure be addressed and the following language be inserted as a new section:

"Nothing in this Act shall diminish the revenues owed to the office of Hawaiian affairs pursuant to Act 178, session laws of Hawai'i 2006, or any other law providing for the office of Hawaiian affairs' pro rata portion of the public land trust, pursuant to article XII, section 6, of the Hawai'i state constitution."

For these reasons provided, OHA respectfully urges the Committee to **HOLD** SB1317, or to adopt the amendment provided above. Mahalo nui loa for the opportunity to testify on this measure.

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 Committee on
HAWAIIAN AFFAIRS**

**Tuesday, February 9, 2021
1:00 PM
State Capitol, Via Videoconference**

**In consideration of
SENATE BILL 1317
RELATING TO INCREASING THE PAYMENT AMOUNT FOR THE OFFICE OF
HAWAIIAN AFFAIRS' PRO RATA SHARE OF THE PUBLIC LAND TRUST**

Senate Bill 1317 proposes to: (1) Require agencies that collect receipts for any disposition of the public land trust to 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) Require the return to OHA of certain moneys previously claimed as public land trust overpayments to OHA; and (3) Establish a public land trust revenues negotiating committee. **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 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

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

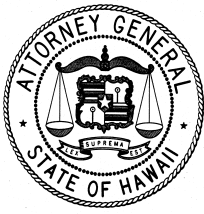
ROBERT K. MASUDA
FIRST DEPUTY

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

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.



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

S.B. NO. 1317, RELATING TO PUBLIC LAND TRUST FUNDS.

BEFORE THE:

SENATE COMMITTEE ON HAWAIIAN AFFAIRS

DATE: Tuesday, February 9, 2021 **TIME:** 1:00 p.m.

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Craig Y. Iha or
Ryan Kanaka'ole, Deputy Attorneys General, at 587-3072)

Chair Shimabukuro and Members of the Committee:

The Department of the Attorney General provides the following comments on this bill.

This bill requires state departments and agencies that collect receipts from the use of lands described in article XII, section 4 of the Hawai'i Constitution, to transfer twenty per cent of such receipts to the Department of Hawaiian Home Lands (DHHL) on a quarterly basis. If DHHL refuses, the receipts must be given to the Office of Hawaiian Affairs (OHA). If a quarterly minimum amount of \$3,775,000 is not transferred to DHHL, the Director of Finance must transfer funds to DHHL or OHA to make up the shortfall, from sources that are not identified and thus would presumably have to come from the general fund. This bill also requires the Department of Budget and Finance (B&F) to transfer to DHHL all funds in fiscal year 2012-2013 through fiscal year 2020-2021 from the carry-forward trust holding account established under Executive Order No. 06-06 (EO 06-06), plus any additional funds deposited in that holding account in fiscal years 2021-2022 and 2022-2023. Finally, this bill creates a committee to resolve what OHA's share of the receipts from the article XII, section 4's trust will be going forward, and what DHHL would continue to receive from those same receipts pursuant to this bill, if it is enacted.

Article XII, section 4 of the Hawai'i Constitution provides:

The lands granted to the State of Hawaii by Section 5(b) of the Admission Act and pursuant to Article XVI, Section 7, of the State Constitution, excluding therefrom lands defined as "available lands" by Section 203 of the Hawaiian Homes Commission Act, 1920, as amended, shall be held by the State as a public trust for native Hawaiians and the general public.

Section 4 only refers to and describes the *land* to be held as a "public trust for native Hawaiians and the general public," *i.e.*, the Government and Crown lands that the Republic of Hawai'i seized upon the overthrow of the Hawaiian Kingdom, and later ceded to the United States upon annexation in 1898. *See Office of Hawaiian Affairs v. State*, 96 Hawai'i 388, 389-90 (2001). These lands comprise the corpus of what is commonly referred to as the "public land trust". Section 4 does not refer to the income, proceeds, or receipts collected from those lands, nor does it direct the State to transfer a share, or any portion of the income, proceeds, or receipts from those lands to OHA or DHHL.

Section 5(f) of the Admission Act, however, does require these lands, and the income and proceeds from these lands, to be used only for one of five purposes: (1) public schools and other public educational institutions; (2) the betterment of the conditions of native Hawaiians; (3) the development of farm and home ownership; (4) the making of public improvements; and (5) the provision of lands for public use.

Notably, article XII, section 6 of the Hawai'i Constitution designates OHA as the receiving agency for **all** of the pro rata portion of receipts that go toward the betterment of the conditions of native Hawaiians:

The board of trustees of the Office of Hawaiian Affairs shall exercise power as provided by law: to manage and administer the proceeds from the sale or other disposition of the lands, natural resources, minerals and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in section 4 of this article for native Hawaiians

However, there is no analogous provision in the Hawai'i Constitution that provides DHHL with any portion of the receipts collected from the lands of the public land trust. Moreover, the Hawai'i Constitution does not specify the amount, percentage, or nature of the income or proceeds from the lands referred to in article XII, section 4 of the Hawai'i Constitution that must be transferred to OHA. In fact, both the Hawai'i

Constitution and section 5(f) of the Admission Act are silent on how receipts from the public land trust must or should be apportioned to support any of the five trust purposes. And, the Hawai'i Supreme Court has held that the Legislature determines how the State satisfies the provisions of article XII, section 6. See, e.g., *Office of Hawaiian Affairs v. Yamasaki*, 69 Haw. 154 (1987).

In 2006, the Legislature enacted Act 178, Session Laws of Hawaii 2006 (Act 178), as an interim measure to set the annual amount of OHA's pro rata share of income and proceeds from the lands of the public land. It set the amount at \$15.1 million annually, to be dispersed in quarterly payments of \$3.775 million and until modified by further legislation. The Legislature adopted this amount based on actual receipts transferred to OHA in the three years prior to its enactment, and "negotiation and fairness considerations" reached as a result of negotiations between the Attorney General and OHA. See S. Conf. Comm. Rpt. No. 101-06 on S.B. No. 2948. As section 3 of Act 178 directs, Governor Lingle issued EO 06-06 to outline how each and every applicable agency was to transfer its portion of the quarterly payments of \$3.775 million to OHA. EO 06-06 also established a carry-forward trust holding account, not to override, but to accomplish the Legislature's determination of OHA's pro rata share of receipts.

Section 2(1) of this bill requires state agencies to transfer twenty percent of the receipts from the public land trust first to DHHL on a quarterly basis. Redirecting such receipts to DHHL is not required by the Hawai'i Constitution and may impede the State's obligation under article XII, section 6 of the Hawai'i Constitution, which provides that "**all** income and proceeds from that pro rata portion of the [public land trust] . . . for native Hawaiians" is to be managed and administered by **OHA's** board of trustees. (emphasis added); see *also* AG Opinion No. 03-04 at 10-14. The plain language of article XII, section 6 of the Hawai'i Constitution designates OHA, not DHHL, as the agency with exclusive authority over any and all receipts from the public land trust earmarked for the betterment of native Hawaiians. DHHL administers an entirely different trust comprised of different lands, defined as the "available lands" identified in the Hawaiian Homes

Commission Act, 1920. Moreover, DHHL receives funding pursuant to article XII, section 1 of the Hawai'i Constitution.

This bill also requires state agencies to transfer twenty percent of “each receipt” – or **gross** income – derived from the public land trust. See page 11, lines 6-8. As the Legislative Auditor determined in a December 1986 report on the public land trust, transferring twenty percent of **gross** income “could adversely affect important governmental programs.” See Office of the Legislative Auditor, *Final Report on the Public Land Trust*, Report No. 86-17 (December 1986) at p. 116. The Auditor explained:

Except where expressly established for the purpose of raising revenue for the State or county, a public enterprise is generally limited to be no more than self supporting. The revenues of the enterprise are expected to do no more than defray the cost of its operation and maintenance and the cost of making improvements to the facilities of the enterprise. Government strives to set fees at a level sufficient to cover costs, and many public enterprises are subsidized from the general fund of the State or the county. If the 20 per cent provision of chapter 10 is applied to the gross income of these enterprises, the fees will need to be raised or additional subsidies will need to be made.

Id. Such increases could be in the form of higher lease rents in affordable housing projects, higher fees at state harbors, and higher prices at concessions and services operated by the State on public lands. These increased fees and general fund subsidies would result in additional burdens on consumers, businesses, and taxpayers – all of whom are themselves beneficiaries of the public land trust as native Hawaiians and members of the general public. This bill’s prescribed additional transfer of receipts to DHHL could further impede the State’s ability to use funds from the public land trust for accomplishing the four other purposes of Section 5(f) of the Admission Act. As trustee of the public land trust, the State must exercise a level of care and skill in administering the trust as a person of ordinary prudence would in dealing with her own property. See Restatement of Trusts (Second) § 174. Transferring twenty percent of gross income without consideration of the detrimental impact to the trust and the enterprises thereon would not be an exercise of ordinary prudence.

While the State clearly owes constitutional obligations to native Hawaiians, the State also has a constitutional obligation to the general public. Care must be taken to

fairly allocate the income and proceeds from the public land trust so that the beneficiaries comprising the general public are not unfairly disadvantaged. See Restatement of Trusts (Second) § 183 (“When there are two or more beneficiaries of a trust, the trustee is under a duty to deal impartially with them”).

Importantly, this bill does not recognize, let alone distinguish between, the different trust purposes for which the lands in the public land trust are to be used. By requiring the transfer to DHHL or OHA of an additional twenty percent of the receipts from the use of Section 5(f)’s lands, including from *lands being used for one of the public trust purposes*, the State could run afoul of its other trust obligations to the other beneficiaries. For example, the receipts could include University of Hawai’i (UH) tuition payments, which could have an adverse impact on the general public as well as native Hawaiian UH students. Also, UH, in addition to OHA, uses proceeds from the public land trust for the purpose of bettering the condition of native Hawaiians. UH provides scholarships to native Hawaiian students and funds Hawaiian Studies programs. The transfer of twenty percent of receipts from UH, *in addition* to the programs it provides for the betterment of native Hawaiians using lands in the public land trust, does not make sense. Indeed, it begs the question of whether the State should address the overlap by having OHA assume these obligations from UH and fund these UH programs through its pro rata allocation.

Requiring all agencies – including those that effectuate the other express purposes of the Section 5(f) trust – to indiscriminately transfer twenty percent of all receipts from the public land trust could impede the State’s obligation to accomplish all five purposes of Section 5(f). It also could violate federal law. In *OHA v. State*, 96 Hawai’i 388, 31 P.3d 901 (2001), the Hawai’i Supreme Court ruled that a twenty percent transfer requirement as applied to the Department of Transportation’s airport revenues conflicted with federal transportation statutes. This bill’s return to a twenty percent transfer requirement for all agencies could again raise similar preemption issues.

Determining what must be transferred to OHA *pro rata* from the public land trust involves resolving issues such as the amount, percentage, and nature of the income or proceeds from the public land trust intended to accomplish the five purposes of Section

5(f). The establishment of an interim, set annual payment amount of \$15.1 million under Act 178, was meant to be temporary until such issues were resolved. Leaving these issues unresolved, and instead installing a blanket, twenty percent transfer requirement on all receipts from the public land trust, could impede the State's obligation to meet all of its trust obligations to all beneficiaries of the public land trust, especially during the present fiscal crisis that finds public schools – one of the Section 5(f) public land trust purposes – facing a budget shortfall of \$123 million.

Finally, regarding the transfer of funds from the carry-forward trust holding account required by section 3 of this bill, it is important to note that Act 178 did not prescribe or require the account to be established or for the funds in excess of \$15.1 million each fiscal year to be transferred to OHA. Because Act 178 requires OHA to receive \$3.775 million after the end of each fiscal quarter, for a total of \$15.1 million each fiscal year, the Director of Finance established the holding account (with the Governor's approval) as a reserve account to make up any shortfall in the \$3,775,000 quarterly payments. As long as the \$15.1 million payment is satisfied, the State should be allowed to use the money in this account to the benefit of all beneficiaries of the public land trust. Given the State's current financial shortfalls, as well as the financial challenges its lessees and taxpayers are experiencing now and likely into the future, it may not be an exercise of ordinary prudence to make a commitment the State is not required to make, and which may prevent it from allocating funds to accomplish its other trust responsibilities.

Thank you for the opportunity to provide these comments.

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

**TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE COMMITTEE ON HAWAIIAN AFFAIRS

TUESDAY, FEBRUARY 9, 2021

1:00 P.M.

Via VIDEOCONFERENCE

**SENATE BILL NO. 1317
RELATING TO PUBLIC LAND TRUST FUNDS**

Chairperson Shimabukuro and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill 1317. This measure requires agencies that collect receipts for any disposition of the public land trust shall each fiscal quarter transfer to the Office of Hawaiian Affairs twenty per cent of each receipt from the disposition. Returns to the Office of Hawaiian Affairs certain moneys previously claimed as public land trust overpayments to the office. Establishes a public land trust revenues negotiating committee. The Department offers comments and concerns regarding this bill.

The Department respectfully requests that the minimum amount be deleted. Should gross revenues decline, the percentage share would increase above the 20% agreement which would place an undue hardship on our program. We defer to the Office of Hawaiian Affairs and the Department of Hawaiian Homelands for the appropriate recipient of the funds.



SB-1317

Submitted on: 2/8/2021 12:22:00 PM

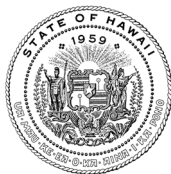
Testimony for HWN on 2/9/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ian Hirokawa	Testifying for DLNR	Oppose	No

Comments:

I would like to provide back-up oral testimony for DLNR. Please allow me Zoom access. Thank you!

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
DIRECTOR

ROBERT YU
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

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

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON HAWAIIAN AFFAIRS
ON
SENATE BILL NO. 1317

February 9, 2021
1:00 p.m.
Via Videoconference

RELATING TO PUBLIC LAND TRUST FUNDS

Senate Bill (S.B.) No. 1317 proposes the following:

- Establishes a permanent revenue stream for the Department of Hawaiian Home Lands (DHHL) from the Public Land Trust by requiring all departments and agencies to transfer 20 per cent of **each receipt they collect** for the **use, sale, lease, or other disposition** of the lands of the Public Land Trust to DHHL in a manner similar to transfers of Public Land Trust receipts to the Office of Hawaiian Affairs (OHA).
- Sets a minimum amount of receipts to be transferred to DHHL each quarter of \$3.775 million which is the quarterly amount of transfers set for OHA by Act 178, SLH 2006.
- Requires the Department of Budget and Finance (B&F) to transfer all funds currently held in the carry-forward trust holding account established pursuant to Executive Order (E.O.) No. 06-06 for payments to OHA in excess of \$15.1 million per year for FYs 13, 14, 15, 16, 17, 18, 19, 20, and 21, plus any overpayment moneys OHA transfers to the carry-forward trust holding account for FY 22 or FY 23, to DHHL.

- Establishes a Public Land Trust Revenues Negotiating Committee (PLTRNC) consisting of the President of the Senate or the President's designee, the Speaker of the House of Representatives or the Speaker's designee, the Governor or the Governor's designee, the Chairperson of OHA or the Chairperson's designee, and the Chairperson of the Hawaiian Homes Commission or the Chairperson's designee, for the purpose of resolving the amount of income and proceeds from the Public Land Trust that DHHL or OHA is to receive annually under the State Constitution and any other State law.
- Requires PLTRNC to submit a status report on the progress of its discussions to the Legislature no later than 20 days prior to the convening of the regular session of 2022, and to submit a final report containing its findings and recommendations, including any proposed legislation, to the Legislature no later than 20 days prior to the convening of the regular session of 2023.

B&F notes several concerns with S.B. No. 1317. First, this bill would, in effect, double the required transfers that departments and agencies must make from ceded land revenues. Most affected departments would be transferring 40 per cent of **each receipt they collect** for the **use, sale, lease, or other disposition** of the lands of the Public Land Trust – 20 per cent to OHA and 20 per cent to DHHL. This will leave only 60 per cent of revenues for operations of the affected programs, which could result in cost-cutting measures that have significant adverse impacts on program service levels and/or result in significant increases in fees and charges to Hawai'i residents who utilize the program's services. However, if there are fixed land leases or other contractual obligations that would restrict passing on the additional 20 per cent payment or limit program cost-cutting measures, then the general fund may have to make up program revenue shortfalls due to new ceded land payments to DHHL.

Attachment 1 is an illustration of the impact of this bill on the departments and agencies based on OHA ceded land payments (not accounting for any excess payments) pursuant to Act 178 for FY 20. As can be seen, the Department of Land and Natural Resources' Boating program and Department of Transportation's Harbors program (which represent over 73% of OHA ceded land revenues) will bear the bulk of the proposed increases in ceded land payments under this bill. This could result in service level reductions or fee increases for the Boating program and increased wharfage charges to water cargo shippers which would likely be passed on to Hawai'i consumers. B&F defers to the affected departments and agencies as to their issues and concerns with doubling the required ceded land payments.

Second, this bill does not provide a framework for administering the transfer of ceded land payments to DHHL. Unlike Act 178, which authorizes administering the OHA ceded land payment process through an E.O., this bill is silent and appears to presume that a process comparable to Act 178 will be established. As the department that would presumably be responsible for coordinating and overseeing the ceded lands payment process to DHHL, B&F recommends that the bill be amended to specify an amount of required payment to DHHL and authorize administration of the DHHL payment process through an E.O. in a manner similar to Act 178.

Third, regarding Section 3 of the bill, which transfers funds from the carry-forward trust holding account to DHHL, B&F notes that the holding account under E.O. No. 06-06 was established for the purpose of ensuring OHA receives its annual share from the Public Land Trust set by Act 178. If amounts in the holding account are transferred to DHHL, there will be no contingency funds to meet the minimum \$3,775,000 quarterly payment established by Act 178. Having sufficient funds in the holding account to make the minimum payment requirement is especially important due

to the financial strain caused by the COVID-19 pandemic, which has had a negative impact on the ability of State agencies to collect revenue and may in turn result in insufficient sums to meet the minimum quarterly payment. B&F recommends adhering to the Executive Branch's purpose in setting up the holding account by amending Section 3 of the bill to provide a specific amount, as determined by the Committee, to be left in the holding account. Attachment 2 is a summary of amounts in the B&F Overpayment Collections on OHA Trust Account for the period FY 07 through the third quarter of FY 21.

Thank you for your consideration of our comments.

Attachments

Illustration of Potential Impact Due to Senate Bill No. 1317
Estimated FY 20XX Payments to OHA and DHHL for the Use of Public Land Trust Lands
Based on Act 178, SLH 2006, FY20 Actual Payments to OHA Without Accounting for Overages

<u>Department</u>	<u>FY 2020</u> Actual OHA Payments Without Accounting for Overages	<u>FY 20XX</u> Projected OHA Based on FY 2020	<u>FY 20XX</u> Projected DHHL Based on FY 2020	<u>FY 20XX</u> Projected Total Based on FY 2020
Accounting & Gen Sacs	36,922.00	36,922.00	36,922.00	73,844.00
Agriculture				
Non-Ag Park Lands (S-305)	225,124.88	225,124.88	225,124.88	450,249.76
Non-Ag Park Lands (S-305) (DLNR)	-	-	-	-
Agr Dev Corp (S-307-A)	43,287.45	43,287.45	43,287.45	86,574.90
Ag Park Lands (S-317-A)	90,458.23	90,458.23	90,458.23	180,916.46
Bus, Econ. Dev. & Tourism				
FTZ (S-302-B)	6,576.66	6,576.66	6,576.66	13,153.32
NELHA (S-345-B)	405,399.97	405,399.97	405,399.97	810,799.94
HCDA (S-352-B)	104,987.37	104,987.37	104,987.37	209,974.74
HHFDC (Honokowai Hale/Lailani) (T-906-B)	38,223.82	38,223.82	38,223.82	76,447.64
Defense	4,006.00	4,006.00	4,006.00	8,012.00
Education	90,907.00	90,907.00	90,907.00	181,814.00
HHSC	-	-	-	-
HMS - HPHA				
Land & Natural Resources	2,900,174.93	2,900,174.93	2,900,174.93	5,800,349.86
DOFAW				
DLNR - Land				
DLNR -Parks				
Boating	3,100,546.54	3,100,546.54	3,100,546.54	6,201,093.08
Transportation (Airports)				
Transportation (Harbors)	10,000,000.00	10,000,000.00	10,000,000.00	20,000,000.00
Transportation (Highways)	10,279.00	10,279.00	10,279.00	20,558.00
University of Hawaii	852,405.87	852,405.87	852,405.87	1,704,811.74
Total Transfers	17,909,299.72	17,909,299.72	17,909,299.72	35,818,599.44

Summary of the Overpayment Collections to OHA-Ceded Lands Trust Account

FY	Beginning Balance	Revenues	Expenditures	Ending Balance
2013	-	1,599,187.57		1,599,187.57
2014	1,599,187.57	4,098,157.50	690,081.57	5,007,263.50
2015	5,007,263.50	3,483,804.90	-	8,491,068.40
2016	8,491,068.40	1,821,965.97	6,467,088.95	3,845,945.42
2017	3,845,945.42	7,922,801.32	-	11,768,746.74
2018	11,768,746.74	2,205,986.60	-	13,974,733.34
2019	13,974,733.34	7,312,400.80	-	21,287,134.14
2020	21,287,134.14	2,483,304.63	-	23,770,438.77
2021*	23,770,438.77	351,616.31	-	24,122,055.08
Totals		<u>31,279,225.60</u>	<u>7,157,170.52</u>	

Notes:

- FY2014** Expenditure amount of \$690,081.57 includes a transfer to DBEDT - HCDA of \$118,104, to correct an overpayment to OHA due to the transfer of Kakaako Makai properties. The remaining \$571,977.57 was a transfer to OHA to make up a shortage in the quarterly payment of \$3,775,000.
- FY2016** Expenditures in FY 16 reflect the return of Dept of Transportation's pro rata share of overpayments for FY 13, FY 14, and FY 15.
- FY2019** Revenues in FY 19 Include the repayment of funds returned in FY 16 to Dept of Transportation of pro rata share of overpayments for FY 13, FY 14, and FY 15.

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 FEBRUARY 9, 2021 AT 1:00PM VIA VIDEOCONFERENCE

SB 1317, RELATING TO PUBLIC LAND TRUST FUNDS

February 9, 2021

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

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.

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.



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

"Quality Healthcare For All"

LATE

COMMITTEE ON HAWAIIAN AFFAIRS
Senator Maile S.L. Shimabukuro, Chair
Senator Jarrett Keohokalole, Vice Chair

February 9, 2021
1:00 p.m.
Hawaii State Capitol
Via Videoconference

**Testimony Providing Comments on S.B. 1317
RELATING TO INCREASING THE PAYMENT AMOUNT FOR THE OFFICE OF
HAWAIIAN AFFAIRS' PRO RATA SHARE OF THE PUBLIC LAND TRUST.
Requires agencies that collect receipts for any disposition of the public land trust
shall each fiscal quarter transfer to the Office of Hawaiian Affairs twenty per cent
of each receipt from the disposition. Returns to the Office of Hawaiian Affairs
certain moneys previously claimed as public land trust overpayments to the
office. Establishes a public land trust revenues negotiating committee.**

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** that requires agencies that collect receipts for any disposition of the public land trust shall, each fiscal quarter, transfer to the Office of Hawaiian Affairs (OHA) twenty per cent of each receipt from the disposition.

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.



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SENATE COMMITTEE ON HAWAIIAN AFFAIRS
Tuesday, February 9, 2021, 1 pm, Videoconference
SB 1317
Relating to Public Land Trust Funds

TESTIMONY

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

Chair Shimabukuro and Committee Members:

The League of Women Voters of Hawaii requests amendment of SB 1317.

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 land trust revenues negotiating committee is subject to Chapter 92, Hawaii Revised Statutes. There is no compelling justification to exempt the proposed committee from the Sunshine Law.

Thank you for the opportunity to submit testimony.

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Unity, Equality, Aloha for all



To: SENATE COMMITTEE ON HAWAIIAN AFFAIRS
For hearing Tuesday, February 9, 2021

Re: SB1317

RELATING TO INCREASING THE PAYMENT AMOUNT FOR THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF THE PUBLIC LAND TRUST. Requires agencies that collect receipts for any disposition of the public land trust shall each fiscal quarter transfer to the Office of Hawaiian Affairs twenty per cent of each receipt from the disposition. Returns to the Office of Hawaiian Affairs certain moneys previously claimed as public land trust overpayments to the office. Establishes a public land trust revenues negotiating committee.

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 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 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 unsupportable by facts. The dollar amount for makeup of alleged arrears is both unsupportable by facts and would violate previous agreements negotiated in good faith.

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 unsupported by facts. There is no inventory of the ceded lands, which is why the state Supreme Court several years ago dismissed OHA's lawsuit as non-justiciable -- there was no way for the court to calculate dollar amounts of ceded land revenues produced from lands for which there was no inventory list.

OHA previously reached a settlement with the State, enacted into law by the legislature, regarding annual payments in lieu of indeterminable ceded land revenues. State land in Kaka'ako valued by mutual agreement at \$200,000,000 was transferred to OHA. Comes now OHA crying that the agreed-upon dollar amount was too low. Boo-hoo! How much is enough? Political pressure to pass this bill, along with propaganda film broadcast repeatedly on TV, are evidence that no amount would ever be enough to satisfy the monster that is devouring Hawaii. Enough already! Stop feeding this beast.