



HB622 HD1
RELATING TO THE PUBLIC TRUST LAND
House Committee on Finance

February 24, 2017

2:00 p.m.

Room 308

The Office of Hawaiian Affairs (OHA) **OPPOSES** HB622 HD1, which may arbitrarily prioritize the use of public land trust revenues set aside for the betterment of native Hawaiians.

Commendably, this bill seeks to facilitate the continuing preservation, restoration, and appropriate use of the Kaho‘olawe Island Reserve.

Kaho‘olawe, a kinolau of Kanaloa, remains a piko of Hawaiian culture, yet still retains visible scars from decades of previous mismanagement. Kaho‘olawe was critical to the Hawaiian cultural renaissance and continues to serve as an integral educational center for traditional navigation, hula, natural resource management and other cultural traditions and disciplines. In light of this, OHA has provided funding over the years to the Protect Kaho‘olawe ‘Ohana, including a current \$129,000 grant to facilitate cultural practitioner trips to the island to conduct Makahiki ceremonies, document kupuna fishing knowledge, and host workdays, which involve environmental restoration projects. In addition, OHA has recently assisted KIRC with navigating the congressional appropriation request process, and we understand that KIRC has also submitted an OHA grant proposal that is currently pending review.

Unfortunately, the funding mechanism in Section 2 of this bill could undermine OHA’s constitutional right to a pro rata share of the public land trust. Section 2 authorizes the BLNR chair to transfer to the Kaho‘olawe Rehabilitation Trust Fund up to \$3 million annually from DLNR’s “public land trust accounts set aside . . . for the betterment of native Hawaiians.” While it is unclear precisely which accounts would be involved, Section 2 risks being interpreted in a way that could reduce the annual trust moneys transferred to OHA, if and when the \$15.1 million cap on OHA’s pro rata share of public land trust revenues is lifted or revisited. Furthermore, Section 4 of this measure would seemingly elevate the needs of KIRC to a higher status than the plethora of other Hawaiian needs that compete for OHA’s public land trust funds, including housing, education, health, income, and the protection and preservation of ‘āina and cultural practices across Ka Pae ‘Āina Hawai‘i.

Accordingly, OHA urges the Committee to **HOLD** this measure. Mahalo for the opportunity to testify.

DAVID Y. IGE
GOVERNOR OF HAWAII



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

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
FINANCE**

**Friday, February 24, 2017
2:00 PM
State Capitol, Room 308**

**In consideration of
HOUSE BILL 622, HOUSE DRAFT 1
RELATING TO PUBLIC TRUST LAND**

House Bill 622, House Draft 1 proposes to authorize the Chairperson of the Board of Land and Natural Resources to transfer public land trust funds to the Kahoolawe Rehabilitation Trust Fund. The measure also proposes to authorize the Office of Hawaiian Affairs (OHA) to expend public land trust funds for purposes consistent with those of the Kahoolawe Rehabilitation Trust Fund. **The Department of Land and Natural Resources (Department) appreciates the intent of this bill, but respectfully opposes it pending the outcome of larger state discussions regarding OHA funding.**

Pursuant to Act 178, Session Laws of Hawaii 2006, the annual payment to OHA from the use and disposition of ceded lands is currently fixed at \$15.1 million per year. However, in recent years there have been various attempts to increase that amount. The Department understands that a task force has been convened to examine the potential of raising the amount of the annual payment to OHA, as much as doubling the amount to \$30 million per year. Additionally, there have been attempts in past legislative sessions that have proposed to increase the ceded land payment amount to OHA from the fixed annual \$15.1 million to a flat 20% of gross receipts from the use or disposition of ceded lands by all state departments and agencies. Those past measures did not take into account that some receipts are prohibited by law from being transferred to OHA, such as those received by the Airports Division of the Department of Transportation, or are otherwise used to fulfill one of the other trust purposes under Section 5(f) of The Admission Act. 20% of Airport ceded land revenues would result in the State having to come up with another \$14 million dollars. See 2017 Act 178 Report, Summary of Receipts. In other words, there would be "shortage" of about \$14 million after all the other agencies pay OHA 20% of their public land trust proceeds.

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

KEKOA KALUHIWA
FIRST DEPUTY

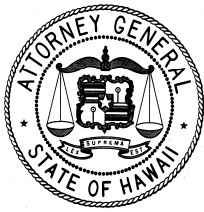
JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

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

Considering the significant fiscal implications of the foregoing, the Department has serious reservations about additional designations for the use of public land trust revenues at this time, but instead would respectfully suggest an alternative source of funding such as general fund appropriations to the Kaho‘olawe Rehabilitation Trust Fund as deemed appropriate.

Finally, the measure would set a dubious precedent, allowing for sizable expenditures outside of a request through the Executive Budget. This would result in bypassing the customary oversight and prioritization authority delegated to the Department of Budget and Finance, as well as the legislative budget committees. Furthermore, this exemption would only apply to a single entity attached administratively to the Department, the Kaho‘olawe Island Reserve Commission (Commission), while other Department divisions, as well as other state agencies, would still be subject to the standard budget requests. The Department notes the inclusion of a general fund appropriation of \$1,065,147.00 in each of Fiscal Years 2017-2018 and 2018-2019 to fund 15 full time temporary positions and cover operating expenses in the Administration’s Biennium Budget request. The Department appreciates and supports the appropriation of general fund revenues to the Commission.

Thank you for the opportunity to comment on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

H.B. NO. 622, H.D. 1, RELATING TO THE PUBLIC TRUST LAND.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Friday, February 24, 2017

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Daniel A. Morris, Deputy Attorney General

Chair Luke and Members of the Committee:

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

The purpose of the bill is to authorize the Chairperson of the Board of Land and Natural Resources to transfer public land trust funds to the Kaho`olawe Rehabilitation Trust Fund. The bill also authorizes the Office of Hawaiian Affairs to expend those transferred funds for purposes consistent with those of the Kaho`olawe Rehabilitation Trust Fund.

Section 4 of this bill amends section 10-13.5, Hawaii Revised Statutes, which refers to the purposes for which "[t]wenty per cent of all funds derived from the public land trust" shall be expended by the Office of Hawaiian Affairs. However, pursuant to Act 178, Session Laws of Hawaii 2006, the annual payment to the Office of Hawaiian Affairs is currently fixed at \$15.1 million per year. The Public Land Trust Negotiating Committee, established during the 2016 legislative session, is also discussing possible long-term approaches to this funding issue. Accordingly, section 4 of this bill might be unenforceable or ineffective without a more precise description of the funding source and a more specific definition of the fund to be used.

Therefore, we recommend deleting section 4 of this bill to avoid a potential challenge raising the enforceability of section 10-13.5.

DAVID Y. IGE
GOVERNOR



WESLEY K. MACHIDA
DIRECTOR

LAUREL A. JOHNSTON
DEPUTY DIRECTOR

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

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

WRITTEN ONLY
TESTIMONY BY WESLEY K. MACHIDA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON FINANCE
ON
HOUSE BILL NO. 622, H.D. 1

February 24, 2017
2:00 p.m.
Room 308

LATE

RELATING TO THE PUBLIC TRUST LAND

House Bill No. 622, H.D. 1, authorizes the Board of Land and Natural Resources Chairperson to transfer public land trust funds to the Kahoolawe Rehabilitation Trust Fund not to exceed an annual amount of \$3,000,000. The bill authorizes the Office of Hawaiian Affairs to expend the public land trust funds for purposes consistent with the Kahoolawe Rehabilitation Trust Fund.

The Department of Budget and Finance offers the following comments. This proposal may be premature due to ongoing discussions by the Public Land Trust Negotiating Committee established during the 2016 legislative session. Further, allowing the Board of Land and Natural Resources to direct funds to the Kahoolawe Island Reserve Commission circumvents the Executive and Legislative budget process.

Thank you for your consideration of our comments.



LATE

BEFORE THE HOUSE COMMITTEE ON FINANCE
February 23, 2017

House Bill No. 622 HD1
Relating to the Public Trust Land
Aloha Chair Luke, Vice Chair Cullen, and Members of the Committee:

KPAC submits the following testimony in opposition to HB 622 HD1 which authorizes the BLNR Chairperson to transfer public land trust funds to the Kahoʻolawe Rehabilitation Trust Fund and authorizes the Office of Hawaiian Affairs to expend public land trust funds for purposes consistent with those of the Kahoʻolawe Rehabilitation Trust Fund.

This proposal to utilize public land trust funds for the US military's failure to clean up Kahoolawe directly contradicts its intended purpose as detailed below and could also potentially be determined to be a breach of trust.

By way of background, Professor Williamson Chang of the UH Law School has detailed his analysis that the Joint Resolution was incapable of acquiring Hawaii at http://blog.hawaii.edu/aplpj/files/2015/09/APLPJ_16_2_Chang.pdf. Despite this analysis, the former Crown and government lands of the Kingdom of Hawaii were illegally transferred to the US and as a condition of Statehood was transferred to the State of Hawaii to be held as a public trust for 5 purposes including the betterment of the conditions of native Hawaiians as defined in the Hawaiian Homes Commission Act, 1920. The Admissions Act further states that any other object besides the 5 purposes shall constitute a breach of trust for which suit may be brought by the United States. The Article XII Constitutional provisions further establish that the lands are held as a public trust for native Hawaiians as defined in the Hawaiian Homes Commission Act, 1920 and should be used solely for that purpose.

The Ka Lāhui Hawaiʻi Political Action Committee (KPAC) affirms and defends our Hawaiian peoples' right to over 1.8 million acres of our national lands.

Respectfully submitted,

M. Healani Sonoda-Pale
Chair, KPAC