

STAND. COM. REP. NO. 140

Honolulu, Hawaii

FEB 18 2009

RE: S.B. No. 1677
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Madam:

Your Committees on Water, Land, Agriculture, and Hawaiian Affairs and Judiciary and Government Operations, to which was referred S.B. No. 1677 entitled:

"A BILL FOR AN ACT RELATING TO LANDS CONTROLLED BY THE STATE,"

beg leave to report as follows:

The purpose of this measure is to require the adoption of a concurrent resolution by two-thirds majority vote of each house of the Legislature when the State administration sells, transfers, or exchanges ceded lands.

Testimony in support of this measure was submitted by three organizations and one public citizen. Three state agencies submitted comments, and testimony in opposition was submitted by one public citizen. Copies of written testimony are available for review on the Legislature's website.

In January 2008, the Hawaii State Supreme Court in *Office of Hawaiian Affairs v. Housing and Community Development Corporation of Hawaii*, 117 Hawaii 174 (2008), enjoined the State from selling or otherwise transferring to third parties any ceded lands from the public lands trust until the claims of the Native Hawaiian people to the ceded lands have been resolved.

The Court stated, that "[b]ased on a plain reading of the . . . [Apology Resolution], we believe Congress has clearly recognized that the native Hawaiian people have unrelinquished



claims over the ceded lands, which were taken without consent or compensation and which the native Hawaiian people are determined to preserve, develop, and transmit to future generations." The Court further held, ". . . we believe and, therefore, hold that the Apology Resolution and related state legislation . . . give rise to the State's fiduciary duty to preserve the corpus of the public lands trust, specifically, the ceded lands, until such time as the unrelinquished claims of the native Hawaiians have been resolved. Such duty is consistent with the State's 'obligation to use reasonable skill and care' in managing the public lands trust and Ahuna court's declaration that the State's conduct 'should . . . be judged by the most exacting fiduciary standards.'" 117 Haw. at 193.

In April 2008, the Governor directed the Attorney General to petition the United States Supreme Court for a writ of certiorari on whether the passage of Public Law 103-150, otherwise known as the Apology Resolution, strips the State of Hawaii of the authority to sell, exchange, or transfer ceded lands unless or until the State reaches a political settlement with the Native Hawaiian people about the status of these lands. In October 2008, the United States Supreme Court granted the State's petition for certiorari in the foregoing case.

In light of these developments, your Committees believe that it is necessary to reassert the Legislature's constitutional authority that it has the sole authority to resolve the ceded lands issue on behalf of the State and to dispose of lands under the control of the State as it deems appropriate.

Your Committees find that this measure allows the Legislature to carry out its fiduciary responsibilities to all the people of Hawaii, and ensures the preservation of the public land trust corpus for the benefit of the Native Hawaiian people.

Your Committees have amended this measure by:

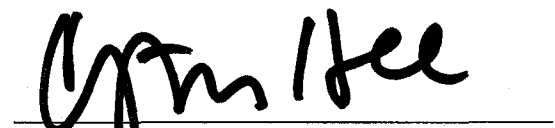
- (1) Adopting the recommendation of the Attorney General to allow for the sale or exchange of remnants, as defined in section 171-52, Hawaii Revised Statutes; and
- (2) Making technical, nonsubstantive amendments for clarity, style, and consistency.



As affirmed by the records of votes of the members of your Committees on Water, Land, Agriculture, and Hawaiian Affairs and Judiciary and Government Operations that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 1677, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 1677, S.D. 1, and be placed on the calendar for Third Reading.

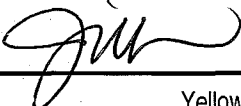
Respectfully submitted on behalf of the members of the Committees on Water, Land, Agriculture, and Hawaiian Affairs and Judiciary and Government Operations,


BRIAN T. TANIGUCHI, Chair


CLAYTON HEE, Chair

The Senate
Twenty-Fifth Legislature
State of Hawaii


Record of Votes
Committee on Water, Land, Agriculture and Hawaiian Affairs
WTL

Bill / Resolution No.:*	Committee Referral:	Date:		
SB1677	WTL/JGO	2/4/09		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
TOKUDA, Jill N. (VC)	✓			
BUNDA, Robert	✓			
FUKUNAGA, Carol	✓			
KOKUBUN, Russell S.	✓			
TAKAMINE, Dwight Y.				✓
HEMMINGS, Fred	✓			
TOTAL	6	0	0	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes

The Senate
 Twenty-Fifth Legislature
 State of Hawaii

Record of Votes
Committee on Judiciary and Government Operations
JGO

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SB 1677	WTL/JGO	2-4-09		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
TANIGUCHI, Brian T. (C)	✓			
TAKAMINE, Dwight Y. (VC)				✓
BUNDA, Robert	✓			
GABBARD, Mike	✓			
NISHIHARA, Clarence K.				
SLOM, Sam		✓		
TOTAL	4	1	1	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

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