

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 House Committee on
WATER & LAND

Friday, February 12, 2016
9:30 AM
State Capitol, Conference Room 325

In consideration of
HOUSE BILL 2200, HOUSE DRAFT 1
RELATING TO NATIVE HAWAIIAN RESOURCES

House Bill 2200, House Draft 1 proposes to authorize the Chairperson of the Board of Land and Natural Resources (“BLNR”) 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 cannot support this bill and offers the following comments and explanation.**

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, the current Senate Bill 2124 proposes to increase the ceded land payment amount to OHA from the fixed annual \$15.1 million to 20% of gross receipts from the use or disposition of ceded lands by all state departments or agencies. This does 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 (DOT), or are otherwise used to fulfill one of the other trust purposes under Section 5(f) of The Admission Act. If these divisions and agencies were to be assessed 20% of their gross receipts, the result would be \$15.2 million dollars that the state would have to come up with and pay to OHA in addition to the 20% that would be paid to OHA by the other state departments. In other words, there would be “shortage” of about \$15.2 million after all the other agencies pay over to OHA 20% of their public land trust proceeds.

Considering the significant fiscal implications if Senate Bill 2124 becomes law, the Department cannot support additional designations for the use of public land trust revenues at this time, but

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

instead would respectfully suggest an alternative source of funding such as an annual general fund appropriation to the Kahoolawe Rehabilitation Trust Fund.

Summary of Receipts from Lands Described in Section 5(f) of the Admissions Act by Department
For Fiscal Year 2014-2015
Act 178, Session Laws of Hawaii 2006

Agency	Amount Retained by the State	Amount Transferred to OHA	Gross Receipt	Note	Reference
Accounting and General Services (DAGS)					
Automotive Management and Parking Control	\$103,577.00	\$20,716.00	\$124,293.00		Attachment 3
Agriculture (DOA)					
Agricultural Resources Management (ARM)	\$946,393.03	\$236,598.26	\$1,182,991.29		Attachment 4
Agribusiness Development Corporation (ADC)	\$789,131.67	\$197,282.92	\$986,414.59		Attachment 5
Business, Economic Development, and Tourism (DBEDT)					
Foreign Trade Zone (FTZ)	\$35,230.08	\$8,807.52	\$44,037.60		Attachment 6
Hawaii Community Development Authority (HCDA)	\$757,716.99	\$189,429.25	\$947,146.24		Attachment 7
Hawaii Housing Finance and Development (HHFDC)	\$3,459,981.14	\$40,411.85	\$5,752,970.99		Attachment 8
Natural Energy Laboratory of Hawaii (NELHA)	\$1,371,920.82	\$342,980.10	\$1,714,901.13		Attachment 9
Defense (DOD)	\$4,877.60	\$1,219.40	\$6,097.00		Attachment 10
Education (DOE)	\$2,189,929.00	\$112,921.00	\$2,302,228.00		Attachment 11
Hawaiian Home Lands (DHHL)				No Report	
Health (DOH)					
Hawaii Health Systems Corporation (HHSC)	\$1,311,326.00	\$0.00	\$1,639,157.00		Attachment 12
Human Services (DHS)					
Hawaii Public Housing Authority (HPHA)	\$3,066,987.37	\$0.00	\$3,066,987.37		Attachment 13
Office of Youth Services (OYS)				No Report	
Land and Natural Resources (DLNR)					
Boating and Ocean Recreation (DOBOR)	\$5,845,318.64	\$1,372,028.91	\$7,217,347.55		Attachment 14
Forestry and Wildlife (DOFAW)	\$211,064.58	\$29,240.25	\$240,304.83		Attachment 15
Land Division (LD)	\$8,882,354.56	\$2,233,732.64	\$11,116,087.20		Attachment 15
State Parks (SP)	\$3,005,748.52	\$749,162.82	\$3,754,911.34		Attachment 15
Transportation (DOT)					
Airports Division (DOTA)	\$71,275,380.00	\$0.00	\$71,275,380.00		Attachment 18
Harbors Division	\$50,735,634.56	\$12,683,923.58	\$63,419,558.14		Attachment 19
Highways	\$36,000.00	\$0.00	\$36,000.00		Attachment 20
University of Hawaii (UH)	\$2,573,157.92	\$643,289.48	\$3,216,447.40		Attachment 21
Totals	\$156,601,729.48	\$18,861,743.98	\$178,043,260.67		



**Department of Land and Natural Resources
Aha Moku Advisory Committee
State of Hawaii
Post Office Box 621
Honolulu, Hawaii 96809**

Testimony of
Leslie Kuloloio
Aha Moku Advisory Committee – Moku O Kanaloa (Kahoolawe)

Before the House Committee on
Water and Land

Friday, February 12, 2016
9:30 AM
State Capitol, Conference Room 325

**In Consideration of
HOUSE BILL 2200 HD 1
RELATING TO NATIVE HAWAIIAN RESOURCES**

House Bill 2200 HD 1 authorizes the BLNR Chairperson to transfer public land trust funds to the Kaho’olawe Rehabilitation Trust Fund. It authorizes the Office of Hawaiian Affairs to expend public land trust funds for purposes consistent with those of the Kaho’olawe Rehabilitation Trust Fund.
Aha Moku SUPPORTS this measure.

Aha Moku encompasses the eight main Hawaiian Islands, which in turn is comprised of 47 moku and 607 ahupua’a. The Aha Moku, created by the Legislature, assists the State through its attachment to the Department of Land and Natural Resources, in the protection and sustainability of its unique natural and cultural resources by bringing forward Native Hawaiian generational and traditional resource methodology. Each Island, with its own moku and ahupuaa, is distinctive and has its own exclusive resources unique to the history and culture of that island.

In the case of Kahoolawe, its place in Hawaiian history is assured and the promise of the United States and the State of Hawaii to return the island to the Hawaiian people must be upheld. Portions of that promise have already lapsed since the Navy did not complete the cleansing of all unexploded ordinances on the island.

As the Po’o of the Aha Moku Advisory Committee representing the Island of Kahoolawe, I and the generational families and communities of Honuaua, the traditional moku attached to Kahoolawe, are strongly behind Aha Moku who supports this measure. Our direct ancestors gave all of the place names to the island. It is we who hold the knowledge of the ancient history and lineage of the ahupua’a on the island, of the ocean, the currents, the winds, the water – every resource that is on or linked to the island. The State of Hawaii cannot allow their protection of Kahoolawe to dwindle into uncertainty and neglect.

OHA cannot allow their priorities to exclude Kahoolawe. By their own mission statement, OHA is mandated to “better the conditions for native Hawaiians”. Expending their public land trust funds to assist the Kahoolawe Island falls within that role.



KŪKULU KE EA A KANALOA
KAHO`OLAWE ISLAND RESERVE COMMISSION

811 Kolu Street, Suite 201, Wailuku, HI 96793
Telephone (808) 243-5020 Fax (808) 243-5885
Website: <http://kahoolawe.hawaii.gov>

COMMISSION MEMBERS

MICHELE MCLEAN
Chairperson
AMBER NĀMAKA WHITEHEAD
Vice-Chair

C. KALIKO BAKER, PhD
SUZANNE CASE
HŌKŪLANI HOLT
JOSHUA KAAKUA, Ed.D.
CARMEN HULU LINDSEY

Michael K. Nāho`opi`i
Executive Director

Testimony of
MICHAEL K. NAHO`OPTI
Executive Director

Before the House Committee on

WATER & LAND

Friday, February 12, 2016
9:30 AM
State Capitol, Conference Room 325

In consideration of
HOUSE BILL 2200
RELATING TO NATIVE HAWAIIAN RESOURCES

House Bill 2200 authorizes the chairperson of the board of land and natural resources to transfer funds from the department of land and natural resources' public land trust accounts to the Kaho`olawe rehabilitation trust fund and authorizes the office of Hawaiian affairs to expend a portion of its public land trust revenues for purposes consistent with those of the Kaho`olawe rehabilitation trust fund. The Kaho`olawe Island Reserve Commission (KIRC) strongly supports this measure.

The Kaho`olawe rehabilitation trust fund (trust fund) was the primary source of funding for the KIRC to carry out its stated purposes in Hawaii Revised Statute Chapter 6K, the control and management of the Kaho`olawe Island Reserve. In the twenty-two years of the KIRC's existence, the KIRC has used the trust fund to protect and restore the natural and cultural resources of the Kaho`olawe Island Reserve from the ravages of its past environmental damage and years of neglect. Over the years, the KIRC has been able to implement innovative restoration projects, plant over 400,000 native plants and safely escort over 11,000 volunteers to Kaho`olawe through the use of the trust fund.

The initial investment into the trust fund were a series of federal appropriation, last made in 2004 that provided a considerable fund to begin the long task of restoring this natural and cultural treasure. In an 1994 agreement, signed between the United States Navy and the State of Hawaii, the Navy was responsible for the removal of unexploded ordnance from Kaho`olawe, while the State accepted the task to restore the damaged environment of Kaho`olawe caused by centuries of uncontrolled ranching and goat populations. Even though the initial funding was significant, it was not enough to permanently fund the entire restoration effort. The Navy did not complete the unexploded ordnance clearance to the level agreed upon.

Additionally, the Kaho`olawe Island Reserve is held in trust by the State provided that the State shall transfer management and control of the island and its waters to the sovereign native Hawaiian entity upon its recognition by the United States and the State of Hawaii.

Since 2009, the KIRC has projected that without any further investments into the trust fund, the trust fund will be depleted by 2015. Since 2009, the KIRC has worked with the legislature and administration to identify a viable source of revenue that could sustain the continued restoration of Kaho`olawe. Past proposals include a Molokini user fees, outdoor recreation fees, portions of the conveyance tax and general fund appropriations. In 2015, a general fund appropriation authorized in Act 84 ensured the continuing function of the KIRC for fiscal year 2016 and 2017.

This measure further explores a possible future funding source that could sustain the continued restoration of a damaged and previously neglected island, protects the unique cultural and natural resources of Kaho`olawe and prepares the island for its future intended uses.

Center for Hawaiian Sovereignty Studies
46-255 Kahuhipa St. Suite 1205
Kane'ohe, HI 96744
Tel/Fax (808) 247-7942
Kenneth R. Conklin, Ph.D. Executive Director
e-mail Ken_Conklin@yahoo.com
Unity, Equality, Aloha for all



To: HOUSE COMMITTEE ON WATER & LAND
For hearing Friday, February 12, 2016

Re: HB2200, HD1 RELATING TO NATIVE HAWAIIAN RESOURCES.
Authorizes the BLNR Chairperson to transfer public land trust funds to the Kaho‘olawe Rehabilitation Trust Fund.
Authorizes the Office of Hawaiian Affairs to expend public land trust funds for purposes consistent with those of the Kaho‘olawe Rehabilitation Trust Fund.

TESTIMONY IN OPPOSITION

The concept of this bill is misguided, for reasons that will be explained below. But if the legislature unwisely chooses to enact the concept, please delete the leading sentence/paragraph because it is factually false.

Here are the four main points to be explained below.

1. The first sentence/paragraph of HB2200 is factually false and should be deleted.
2. 20% of ceded land revenue is already being given to OHA for the betterment of Native Hawaiians; therefore the other 80% should not be additionally diverted to that purpose.
3. Kaho'olawe is already set aside by law to become property of the Hawaiian tribe as soon as that tribe has received state and federal recognition, which is now underway. Therefore no state government money should be given to rehabilitate land which is already in the process of being given away to another "nation."
4. Let OHA give whatever funding is necessary to rehabilitate Kaho'olawe. OHA has \$620 Million in assets including \$350 Million in its investment portfolio. OHA can afford to pay for Kaho'olawe; the State cannot afford it.

1. The first sentence/paragraph of HB2200 is false and should be deleted.

There was never a federal law that mandated 20% of ceded land revenue to be used for the betterment of the conditions of native Hawaiians. In 1898 Article 2 of the Treaty of Annexation said ceded

land revenues "shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes." -- there was no mention of betterment of Native Hawaiians.

Section 5(f) of the Statehood Act of 1959 identified 5 purposes for ceded land revenues, with all or part of the money to be used for any one or more of the five purposes. One of those purposes was "betterment of the conditions of native Hawaiians as defined in the Hawaiian Homes Commission Act of 1920)" The purpose of that provision was obviously to ensure that some of the ceded land money COULD be (but was not required to be) used to support the implementation of the Hawaiian Homes Commission Act of 1920.

2. 20% of ceded land revenue is already being given to OHA for the betterment of Native Hawaiians; therefore the other 80% should not be additionally diverted to that purpose.

By setting aside 20% of ceded land revenue for OHA, the clear intention was that the other 80% of ceded land revenue should go to the general fund for the benefit of all the citizens of Hawaii (indeed, Native Hawaiians should be excluded from any of the benefits flowing from that 80%, since they already got their own 20% first).

However, if this bill HB2200 is enacted, then additional money from the ceded land revenue would be transferred to the Kaho'olawe Island Reserve Commission, where it would be used exclusively for the benefit of Native Hawaiians (explanation below), thereby depriving the other 80% of Hawaii's people of money that is rightfully theirs. Amazingly, nobody complains when Native Hawaiians demand "their" 20% of

ceded land revenue and then selfishly push for more through legislation such as this bill. Perhaps it's time for the rest of us to stand up for our own rights.

3. Kaho'olawe is already set aside by law to become property of the Hawaiian tribe as soon as that tribe has received state and federal recognition, which is now underway. Therefore no state government money should be given to rehabilitate land which is already in the process of being given away to another "nation."

Language in this bill explains why money going to KIRC is exclusively for the benefit of Native Hawaiians, because "... since its return to the State in 1993, the resources and waters of Kaho'olawe have been held in trust as part of the public land trust; provided that the State shall transfer management and control of the island and its waters to the sovereign native Hawaiian entity upon its recognition by the United States and the State of Hawai'i."

In Act 195 (2011) this legislature set in motion a process now underway to create a Hawaiian tribe; and the U.S. Department of Interior has now proposed a regulation whereby that tribe can get federal recognition. Both Act 195 and the Department of Interior regulation insist that the Hawaiian tribe must be exclusively for Native Hawaiians, and that anyone lacking a drop of the magic blood must be ruthlessly excluded. If events unfold as intended, a Native Hawaiian "nation" will become a federally recognized Indian tribe before President Obama's term in office comes to an end. As soon as

recognition happens, according to the language cited in this bill, the island of Kaho'olawe will be ripped away from the State of Hawaii and handed over to the Hawaiian tribe, to which people with no native blood are forbidden to belong.

4. Let OHA give whatever funding is necessary to rehabilitate Kaho'olawe

This bill proposes to authorize OHA to give money to assist the rehabilitation of Kaho'olawe. But no such authorization is necessary. OHA's primary mission is "the betterment of Native Hawaiians", and OHA has given millions of dollars in gifts (grants) to provide funding for various organizations devoted to helping Native Hawaiians (usually to the exclusion of all other people). Since Kaho'olawe is destined to become the property of the Hawaiian tribe, and OHA has loudly pledged to dissolve itself and transfer its assets to the forthcoming tribe, then the state should let OHA fulfill its responsibility.



LATE

HB2200 HD1
RELATING TO NATIVE HAWAIIAN RESOURCES
House Committee on Water & Land

February 12, 2016

9:30 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) **OPPOSES** HB2200 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 assisted KIRC with navigating the congressional appropriation request process last year, and we are still waiting for KIRC’s response to our April 8, 2015 request for additional information to support KIRC’s initial budget request to OHA.

Unfortunately, the funding mechanism in Section 3 of the bill could undermine OHA’s constitutional right to a pro rata share of the public land trust. Section 3 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 3 risks being interpreted in a way that would reduce the annual trust moneys that would be transferred to OHA if either HB1655 or SB2124 of the current session is enacted. Those bills would require that state departments and agencies transfer 20 percent of their public land trust receipts to OHA and that the state return to OHA certain “overages” claimed by the state in trust moneys previously transferred to OHA. Furthermore, Section 4 of HB2200 would seemingly elevate the needs of Kaho‘olawe 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.

We look forward to being part of the discussion on how best to word this bill. Mahalo for the opportunity to testify.

DAVID Y. IGE
GOVERNOR



LATE

WESLEY K. MACHIDA
DIRECTOR

RODERICK K. BECKER
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**

P.O. BOX 150
HONOLULU, HAWAII 96810-0150

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

TESTIMONY BY WESLEY K. MACHIDA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON WATER AND LAND
ON
HOUSE BILL NO. 2200, H.D. 1

February 12, 2016
9:30 a.m.

RELATING TO NATIVE HAWAIIAN RESOURCES

House Bill No. 2200, H.D. 1, authorizes the Chairperson of the Board of Land and Natural Resources to transfer funds up to \$3,000,000 from the department's land trust accounts to the Kahoolawe Rehabilitation Trust Fund.

The Department of Budget and Finance would like to point out that the land trust accounts are general revenue receipts, so the proposed transfers to the Kahoolawe Rehabilitation Trust Fund would have a general fund impact.