



SB1363
RELATING TO INCREASING THE OFFICE OF HAWAIIAN
AFFAIRS' PRO RATA SHARE OF PUBLIC LAND TRUST FUNDS

Senate Committee on Hawaiian Affairs
Senate Committee on Water and Land

February 7, 2019

1:16 p.m.

Conference Room 016

The Administration of the Office of Hawaiian Affairs (OHA) will recommend that the OHA Board of Trustees **STRONGLY SUPPORT** SB1363. This measure is consistent with years of state accounting information, generated pursuant to Act 178 (Reg. Sess. 2006), that clearly demonstrate the need to update the amount set aside annually for Native Hawaiians as their constitutional share of the income and proceeds from the Public Land Trust. SB1363 would update Native Hawaiians' annual share of the Public Land Trust as \$35 million; transfer to OHA a lump sum of \$139 million, as an amount that should have been set aside for Native Hawaiians as their 20% share of Public Land Trust receipts over the past seven years; continue the state agency receipt reporting requirements established under Act 178 (2006); and convene a Public Land Trust Revenues Committee every six years to make recommendations for updating the amount of Native Hawaiians' fair share of the Public Land Trust.

As background, the Hawai'i Admission Act and the State Constitution established 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 land of the Kingdom of Hawai'i, seized as part of the Kingdom's unlawful overthrow. The Hawai'i Constitution entrusts OHA with the responsibility to manage and administer Public Land Trust funds set aside for Native Hawaiians, which state law reaffirms as 20% of all funds from the Trust.

After decades of disagreement as to how to determine this 20%, in 2006, OHA and the state agreed to an interim annual amount of \$15.1 million, to be transferred to OHA as a reflection of Native Hawaiians' Public Land Trust share, "until further action is taken by the legislature." As part of this agreement, the state was to compile annual reports on all receipts generated from the Public Land Trust, for the purpose of revisiting the interim annual amount with better data.

With years of state data now available, OHA strongly agrees that it is time to revisit Native Hawaiians' fair share of the Public Land Trust. Despite the ostensibly temporary nature of the 2006 legislation, and despite years of state reporting showing that

20% of Public Land Trust receipts far exceeds the \$15.1 million set aside annually for Native Hawaiians, Native Hawaiians' "interim" share has not been updated in over a decade. OHA's research shows that the \$35 million annual share now proposed in this measure is consistent with 20% of reported receipts from most, but not all, historically undisputed Public Land Trust revenue streams, including:

- Revenue sources that state agencies currently transfer to OHA,
- Revenue sources not currently transferred by state agencies to OHA due to accounting errors,
- Revenue sources inconsistently transferred by agencies (for example, an agency transfers receipts from one of its parking lots on Public Land Trust land but not from another lot on Public Land Trust land),
- Revenue sources not currently transferred to OHA even though the same agency has transferred receipts from the same source in the past, and
- Revenue sources not currently transferred to OHA, but which fall within historically agreed upon categories of revenues that have been transferred to OHA.

This \$35 million amount would not appear to include revenue streams from hospital patient fees generated from state hospitals on Public Land Trust land or from residential unit rents and charges from state public housing on Public Land Trust land, nor does it appear to consider unknown receipts that were withheld by certain state agencies, namely the University of Hawai'i. Nonetheless, while 20% of Public Land Trust receipts likely exceeds the \$35 million provided for under this measure, OHA believes that updating the interim annual amount to \$35 million pending more complete information and further discussion¹ is a prudent, fair, and long-awaited step towards better fulfilling the state's constitutional and moral obligations to Native Hawaiians.

Notably, Public Land Trust revenue is the primary source of funding for programs, grants, and services that benefit both the Native Hawaiian and larger communities. OHA has a proven track record of investing in strategic, innovative, and award-winning programs and services, that seek and explore solutions to systemic issues and challenges faced by Native Hawaiians and other Hawai'i residents. OHA-funded programs, grants, and services have won national recognition for moving people off the streets and into

¹ Most recently, a Public Land Trust negotiating committee was established by the Legislature in 2016 to discuss updating Native Hawaiians' interim Public Land Trust share; however, the committee was only convened once by the Governor and failed to make any meaningful progress in its work. OHA has sought and will continue to seek to engage in good faith discussions regarding Native Hawaiians' fair share of the Public Land Trust, as envisioned by the 2006 agreement, and has introduced a bill in its legislative package (HB173/SB191) that would ensure more complete and accurate revenue reporting to inform such discussions. However, given the length of time that has passed since the interim agreement was reached, and the lack of meaningful progress towards updating the 2006 "interim" amount, OHA believes that increasing Native Hawaiians' interim Public Land Trust share to an amount minimally reflecting existing state records is a timely and prudent action.

housing; helped small businesses and entrepreneurs get started, stay afloat, and thrive; sent students to college and beyond; and engaged grassroots communities with government agencies and landowners in the stewardship and sustainability of our natural resources and environment. Raising Native Hawaiians' annual Public Land Trust share to \$35 million will support a wider range of strategic and innovative OHA-run and OHA-funded programs and activities specifically designed to improve the conditions of Native Hawaiians and Hawai'i in such vital areas as education, health, economic self-sufficiency, culture, land, governance, and access to justice.

OHA further understands that this measure's proposed lump sum back payment of \$139 million from state general funds reflects the difference between the proposed \$35 million annual share and the \$15.1 million OHA currently receives, then multiplying the difference by seven to represent the last seven fiscal years in which Native Hawaiians' Public Land Trust interim share has not been updated. OHA agrees that this is also a fair and commendable acknowledgement of the state's constitutional and moral obligations to Native Hawaiians under the Public Land Trust.

Finally, this bill sets up a periodic, collaborative review process between the Legislature, Administration, and OHA to take place every six years, to better ensure that Native Hawaiians' share of Public Land Trust revenue remains up-to-date and consistent with the law. OHA notes that its legislative package companion measures, HB173 and SB191, would provide this review process with more consistent and complete information regarding Public Land Trust revenues.

Accordingly, we respectfully urge your Committee to pass this measure. Mahalo nui loa for the opportunity to testify.



KAMEHAMEHA SCHOOLS®

Senate Committee on Hawaiian Affairs;
Senate Committee on Water and Land

Time: 1:16 p.m.

Date: Peleluali 7, 2019

Where: State Capitol Room 016

TESTIMONY

RE: **SB 1363, Relating to Increasing the Office of Hawaiian Affairs' pro rata share of the Public Land Trust funds**

E ka Luna Ho'omalū Shimabukuro, ka Luna Ho'omalū Kahele, ka Hope Luna Ho'omalū Keith-Agaran, a me nā Kenekoa 'ē a'e o kēia Kōmike, aloha!

Kamehameha Schools **SUPPORTS SB 1363**, which increases the Office of Hawaiian Affairs' pro rata share of Public Land Trust funds revenues.

We believe this measure is an important step to improve the ability of the Office of Hawaiian Affairs to serve the intergenerational needs of the Native Hawaiian population.

We strongly believe that the Office of Hawaiian Affairs should receive full and fair funding from the public land trust, as designated by Hawai'i's Constitution.

Consistent with our strategic plan for 2015-2020 and vision for a thriving Lāhui by the year 2040, we view the Office of Hawaiian Affairs as a valuable partner in serving Native Hawaiians and all of our community.

In the last six fiscal years (2011-2018), OHA awarded over \$110 million in programmatic funding, grants, and sponsorships, that address our state's most critical issues, including environmental stewardship, food security, housing and homelessness, education, and health care. Of this amount, OHA awarded over \$30 million for educational purposes, including over \$2.5 million in FY17-18 alone.

As a result of this funding, OHA's strategic and innovative programs and services have the capacity to help people secure housing, develop local small businesses, send students to college, engage communities in sustainable resource management in partnership with government agencies and landowners, and much more. PLT revenue is the primary source of funding for such programs, grants, and services that benefit both the Hawaiian and larger community.

Founded in 1887, Kamehameha Schools is an educational organization striving to restore our people through education and advance a thriving Lāhui where all Native Hawaiians are successful, grounded in traditional values, and leading in the local and global communities. We believe that community success is individual success, Hawaiian culture-based education leads to academic success and local leadership drives global leadership.

With this testimony, Kamehameha Schools **SUPPORTS SB 1363**.

‘A‘ohe hana nui ke alu ‘ia. No task is too large when we all work together! Mahalo nui.



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SENATE COMMITTEE ON HAWAIIAN AFFAIRS
SENATE COMMITTEE ON WATER AND LAND

Wednesday, February 7, 2019, 1:15 pm, Conference Room 016
SB 1363, Relating to Increasing the Office of Hawaiian Affairs' Pro Rata Share of Public Land Trust Funds

TESTIMONY

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

Chairs Shimabukuro and Kahele, Vice-Chair Keith-Agaran and Committee Members:

The League of Women Voters of Hawaii requests amendment of SB 1363.

The League has no expertise or position concerning OHA's fair share of revenues. However, we request amendment of SB 1363 so that the proposed public lands trust revenue 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.

SB-1363

Submitted on: 2/1/2019 7:13:49 PM

Testimony for HWN on 2/7/2019 1:16:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Karen Winslow	Testifying for Hawaii Farmers Union	Support	No

Comments:

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Unity, Equality, Aloha for all



To: SENATE COMMITTEE ON HAWAIIAN AFFAIRS
AND SENATE COMMITTEE ON WATER AND LAND

For hearing Thursday, February 7, 2019

Re: SB 1363

RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF PUBLIC LAND TRUST FUNDS. Establishes \$35,000,000 as the Office of Hawaiian Affairs' pro rata share of the public land trust. Transfers \$139,000,000 less certain funds to the Office of Hawaiian Affairs for underpayment of the public land trust funds for 7/1/2012 to 6/30/2019. Requires the Department of Land and Natural Resources to provide an annual accounting of receipts from lands described in section 5(f) of the Admissions Act. Establishes a committee to recommend the annual amount of the income and proceeds from the public land trust that the Office of Hawaiian Affairs shall receive annually. Appropriates funds.

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, and 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. This bill would require an absurd quarterly payout of OHA's share of ceded land gross revenues from each department of government without regard to ceded land deficits (capital investment or operating expenses) incurred by that department in other quarters or deficits incurred by other departments of the State government. Any corporation that irretrievably paid its taxes quarterly for profitable business lines and was never able to offset profits with losses would quickly go bankrupt.

5. 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.

6. 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.

7. 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.

8. The dollar amount for future annual payments as specified in 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.

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. Therefore, this law can be amended by the

legislature at any time to reduce the percentage; or the law can be rescinded entirely.

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.

OHA currently has over \$662 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. This bill would require that " ... the departments [named] ... shall determine and transfer to the office of Hawaiian affairs that portion of their receipts from the use, sale, lease, or other disposition of lands within the public land trust collected during each fiscal quarter ... is transferred to the office of Hawaiian affairs, within thirty days of the close of each fiscal quarter ..." This piecemeal attack on each individual department and agency would impose a heavy burden of staff time and accounting. More importantly, it would cause the disappearance of net losses from the overall accounting regarding departments and agencies whose capital expenditures and operating expenses for the ceded lands under their control exceed the revenue generated by those ceded lands. Let's say that more clearly. If a department has a profit for a calendar quarter, it must immediately pay 20% to OHA; but if it has a loss in another calendar quarter, that loss cannot be used to offset the profit in any previous or subsequent quarter; and also, if a department has a loss, that loss cannot be used by any other department or agency to offset its profit. Profits have 20% skimmed off immediately and sent to OHA, whereas losses get swept under the rug. The correct way to do the accounting should be annually not quarterly, and should be done overall for the totality of ceded land revenue from all departments rather than individually for each department separately. A corporation does not send the government irretrievable taxes quarterly for each profitable line of its business while "eating" and ignoring that business line's losses in other quarters and ignoring the losses of other business lines. Any corporation that did its accounting in such a manner would soon go bankrupt (just like the State of Hawaii is on track to do!). As noted in item (3), annual accounting for all departments jointly would then discover that net income is zero or negative, and 20% of zero would be zero dollars for OHA. Indeed, if net ceded land income is negative then OHA should be required pay 20% of that to the State general fund as its rightful share of the loss. Shouldn't OHA help to paddle our collective canoe?

5. 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?

6. 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>

7. 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."

OHA currently has over \$662 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!

8. The dollar amount for future annual payments as specified in 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.

This bill 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 this bill would transfer to the office of Hawaiian affairs a sum of \$139,000,000 to pay the office of Hawaiian affairs 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.

SB-1363

Submitted on: 2/5/2019 1:44:03 PM

Testimony for HWN on 2/7/2019 1:16:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
John Thatcher	Testifying for Connections PCS	Support	No

Comments:

Article XII, section 4 of the Hawaii Constitution specifies that the lands granted to the State by section 5(b) of the Admission Act, with the exception of Hawaiian Home Lands, are to be held by the State as a public trust for two beneficiaries: Native Hawaiians and the general public. As a public school, Connections Public Charter School (CPCS) was able to secure a lease for approximately 72 acres of land in Kaumana for \$480 a year. We hope that \$96 a year is being given to OHA as the law requires. This land is Crown Land. Unfortunately, we have been blocked from using this property by the County of Hawaii. A few months ago, a delegation from Connections met with Mayor Harry Kim. Our principal was chastised for “not giving up the fight.” Mayor Kim told him that his friends are the ones opposing the school using the land. The school will continue to “fight” for the right to use the land. The school also strongly supports OHA’s efforts to ensure that the state’s constitutional and statutory Public Land Trust obligations to Native Hawaiians are more properly fulfilled. The money we are paying (and hope is being given to OHA) should support funding for programs, grants and services that benefit the Native Hawaiian community (the largest ethnic group at our school). Please support the passage of SB 1363.



Sens. Maile Shimabukuro and Kaiali'i Kahele
Senate Hawaiian Affairs and Water and Land committees
State Capitol
Honolulu, HI

Re: Senate Bill 1363

Chairwoman Shimabukuro, Chairman Kahele and Committee Members:

The Hawaii Professional Chapter of the Society of Professional Journalists takes no position on the merits of this measure.

However, the chapter opposes a provision in the bill to allow the committee that would establish how much money OHA is owed and other related issues to act outside the Sunshine Law.

We maintain that no committee creating such policy recommendations on the use of public funds should be allowed to meet in secrecy.

Thank you for your time and attention,

Stirling Morita
Hawaii Chapter SPJ

SB-1363

Submitted on: 2/6/2019 3:05:18 AM

Testimony for HWN on 2/7/2019 1:16:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Testifying for Ho'omanapono Political Action Committee (HPAC)	Support	Yes

Comments:



O`ahu County Committee on Legislative Priorities (OCCLP)

COMMITTEE ON HAWAIIAN AFFAIRS
Senator Maile S.L. Shimabukuro, Chair
Senator Kaiali`i Kahele, Vice Chair

COMMITTEE ON WATER AND LAND
Senator Kaiali`i Kahele, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

DATE: Thursday, February 7, 2019

TIME: 1:16 p.m.

PLACE: Conference Room 016 State Capitol

RE: SB 1363 Relating to Increasing the OHA Pro Rata Share of Public Land Trust Funds

To the Honorable Maile S.L. Shimabukuro, Chair; the Honorable Kaiali`i Kahele, Vice Chair; and Members of the Committee on Hawaiian Affairs; and to the Honorable Kaiali`i Kahele, Chair; and the Honorable Gilbert S.C. Keith-Agaran, Vice Chair, and Members of the Committee on Water and Land:

The O`ahu County Committee on Legislative Priorities (OCCLP) of the Democratic Party of Hawaii`i (DPH) hereby submits its testimony in **SUPPORT of SB 1363 relating to Increasing the OHA Pro Rata Share of Public Land Trust Funds.**

SB 1363 establishes \$35,000,000 as the Office of Hawaiian Affairs' pro rata share of the public land trust and it transfers \$139,000,000 less certain funds to the Office of Hawaiian Affairs for underpayment of the public land trust funds for 7/1/2012 to 6/30/2019. HB 403 requires the Department of Land and Natural Resources to provide an annual accounting of receipts from lands described in section 5(f) of the Admissions Act and it establishes a committee to recommend the annual amount of the income and proceeds from the public land trust that the Office of Hawaiian Affairs shall receive annually. Further, SB 1363 appropriates funds.

The Democratic Party of Hawaii's 2018 Platform makes is clear that DPH demands that the OHA be reinstated of its "full percentage of Public Land Trust Revenues set aside for the

betterment of Native Hawaiians (20% of public land trust revenues).” *Democratic Party of Hawai`i Platform (2018)*, p. 2, ln. 17-19.

For the foregoing reasons, i.e., that OHA is to receive the full percentage (20%) of Public Land Trust Revenues set aside for the betterment of Native Hawaiians, OCCLP supports SB 1363 and urges its passage out of the Committee on Hawaiian Affairs and the Committee on Water and Land.

Mahalo nui loa
Me ka `oia`i`o

/s/ Melodie Aduja

Melodie Aduja

Chair, O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i

Ph. (808) 258-8889

Email: legislativepriorities@gmail.com

**Association of Hawaiian Civic Clubs
Moku o Keawe – Hawai'i Council**

P.O. Box 7164
Hilo, HI 96720

**LEGISLATIVE TESTIMONY
IN SUPPORT OF SB 1363
RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA
SHARE OF PUBLIC LAND TRUST FUNDS.**

Senate Committee on Hawaiian Affairs & Water and Land
Thursday, February 7, 2019 1:16PM Room #016

Aloha Hawaiian Affairs Chair Shimabukuro and Water and Land Chair Kahele and respective members of these committees,

Moku o Keawe – Hawai'i Council of the Association of Hawaiian Civic Clubs is one of five Councils of the Association of Hawaiian Civic Clubs. Moku o Keawe – Hawai'i Council **SUPPORTS SB1363.**

1. The 28th Legislature in 2016, the Senate adopted concurrent H.C.R. No. 188 H.D.1, S.D.1, requesting the Governor to convene a Public Land Trust Revenues Negotiating Committee.
2. The State of Hawai'i has an obligation to the betterment of native Hawaiians, and further entrusted OHA with the responsibility to manage and administer Public Land Trust funds set aside for Native Hawaiians, which state law reaffirms 20% of all funds from the Trust. (Admission Act 1959)
3. The Association of Hawaiian Civic Clubs passed Resolution 16-1 (2016 – see attached) urging the Governor to convene a Public Lands Trust Revenue Committee, to address the pro-rata share of 20% due to OHA. (Act 273, S.L.H. 1980, codified as HRS§ 10-13.5)

Many Native Hawaiian programs in rural communities rely heavily on OHA's support and contribution. These programs stretch to the general public in areas of agriculture, cultural and natural resource and conservation management, Hawaiian language based schools, mental health care, mediation services, rehabilitation and re-integration programs, housing, financial literacy, and many more. We encourage your support for SB1363.

Mahalo,



Shane Palacat-Nelsen
AHCC – Moku o Keawe
Pelekikena

***ASSOCIATION OF HAWAIIAN
CIVIC CLUBS***

A RESOLUTION

16 - 1

**URGING THE GOVERNOR OF THE STATE OF HAWAI'I TO CONVENE THE
PUBLIC LAND TRUST REVENUES NEGOTIATING COMMITTEE**

WHEREAS, the House of Representatives of the Twenty-eighth Legislature of the State of Hawai'i, Regular Session of 2016, the Senate concurring, adopted a concurrent H.C.R. No. 188 H.D. 1 S.D. 1, requesting the Governor convene a Public Land Trust Revenues Negotiating Committee (Committee); and

WHEREAS, the Committee is to discuss the income and proceeds from the public land trust that the Office of Hawaiian Affairs (OHA) should receive annually pursuant to the State Constitution and other State laws; and

WHEREAS, the Committee is to be comprised of the Governor or designee, the President of the Senate or designee, the Speaker of the House of Representatives or designee, the Chairperson of the OHA or designee; and

WHEREAS, the State of Hawai'i has fiduciary responsibilities as the trustee of the public land trust established by section 5(f) of the Admission Act of 1959; and

WHEREAS, in 1978 the people of Hawai'i overwhelmingly ratified amendments to the constitution, including Article XII, section 6, which established OHA; and

WHEREAS, OHA has a right to receive a pro rata portion of the public land trust for one of the five express purposes of the public land trust – the betterment of the conditions of Native Hawaiians; and

WHEREAS, pursuant to its fiduciary obligations, the state of Hawai'i enacted Act 273, S.L.H. 1980, codified as Hawaii Revised Statute (HRS) section 10-13.5, which defined OHA's pro rata share as "twenty percent of all funds derived from the public land trust"; and

WHEREAS, OHA and the State litigated over the scope of revenue subject to OHA's pro rata share starting in the 1980s, which ultimately led to a dismissal by the court because HRS section 10-13.5 did not provide the court sufficient "judicially discoverable and manageable standards" and therefore could not be decided without initial policy determinations by the legislature; and

WHEREAS, for decades OHA and the State have disagreed on how to calculate OHA's pro rata share of the public land trust as well as whether certain revenue streams should be subject to OHA's minimum twenty percent share; and

WHEREAS, Act 178, SLH 2006, temporarily established OHA's pro rata share of the income and proceeds of the public land trust for the betterment of the conditions of Native Hawaiians at \$15,100,000 annually and required State agencies to report public land trust revenues to the legislature each year; and

WHEREAS, the State's annual payments to OHA for its portion of the public land trust, which are calculated using historically-undisputed revenue streams, have resulted in overages over the temporary \$15,100,000 allotment requiring OHA to return millions of dollars to the State starting in fiscal year 2013; and

WHEREAS, a decade has passed since the enactment of Act 178, SLH 2006, it is now appropriate for the State and the OHA to re-examine the annual figure of \$15,100,000 in light of information, data, and facts provided to the Legislature by State agencies over the last three fiscal years concerning revenues of the public land trust; and

WHEREAS, the Hawai'i Supreme Court has repeatedly held that the Legislature has a constitutional obligation to clarify the pro rata portion of revenues derived from the public land trust to which OHA is entitled for the benefit of Native Hawaiians under Article XII, sections 4 and 6 of the Hawai'i State Constitution; and

WHEREAS, OHA relies substantially on revenues derived from the public land trust to manage over 27,000 acres of conservation and agricultural lands, advocate for policies that better the conditions of Native Hawaiians, monitor government actions to ensure their compliance with environmental laws and the public trust, and provide community grants and scholarships; and

WHEREAS, the convening of the Committee would be a positive step towards improving the civic, economic, social welfare, and health of Native Hawaiians and the larger State community.

NOW, THEREFORE, BE IT RESOLVED, by the Association of Hawaiian Civic Clubs at its 57th annual convention at Las Vegas, Nevada this 19th day of November 2016, that it urges the Governor of the State of Hawai'i to convene the Public Land Trust Revenues Negotiating Committee; and

BE IT FURTHER RESOLVED, that as part of the negotiated settlement the State shall provide at least twenty percent of all public land trust revenue to OHA moving forward; and

BE IT FURTHER RESOLVED, that the State shall provide all back funds based on the minimum twenty-percent pro rata share that has not been transferred to OHA since its Constitutional creation; and

BE IT FURTHER RESOLVED, that OHA and the State introduce legislation to formalize such agreement by the 2018 legislative session; and

BE IT FURTHER RESOLVED, that the Legislature determine the policy for judicially discoverable and manageable standards; and

BE IT FURTHER RESOLVED, that a certified copy of this resolution be transmitted to the Governor of the State of Hawai'i, President of the State Senate, Speaker of the State House of Representatives, Chair of the State Senate Committee on Hawaiian Affairs, Chair of the State House Committee on Ocean, Marine Resources, & Hawaiian Affairs, Chair of the Board of Trustees of the Office of Hawaiian Affairs, and all County Mayors.



The undersigned hereby certifies that the foregoing Resolution was duly adopted on the 19th day of November 2016, at the 57th Annual Convention of the Association of Hawaiian Civic Clubs in Las Vegas, Nevada.

Annelle C. Amaral

Annelle C. Amaral, President



THE ASSOCIATION OF HAWAIIAN CIVIC CLUBS

Senate Committee on Hawaiian Affairs
Senate Committee on Water and Land

Pō‘ahā, Pepeluali 7, 2019
Lumi ‘Aha Kūkā 016
Ke Kapikala Moku ‘āina
415 South Beretānia Street

Re: SB1363 - RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF PUBLIC LAND TRUST FUNDS

Aloha Luna Ho ‘omalu Maile Shimabukuro, Hope Luna Ho ‘omalu Kaiali‘i Kahele, Luna Ho ‘omalu Kaiali‘i Kahele, Hope Luna Ho ‘omalu Gilbert S.C. Keith-Agaran, and members of the Senate Committees on Hawaiian Affairs and Water and Land:

The Association of Hawaiian Civic Clubs **SUPPORTS** SB1363. This bill will help the State better fulfill its trust responsibilities to the Native Hawaiian community, especially through providing OHA with a higher percentage of its constitutional and statutory pro rata share of the Public Land Trust (PLT) revenue. At its 57th annual convention, the Association passed resolution 2016-1, which calls for a more equitable annual allocation of PLT revenue to OHA for its pro rata share and for the State to provide funds to address the years of underpayment.

This bill transfers \$139 million to OHA to make up for some of the underpayment of PLT revenues from July 1, 2012 to June 30, 2019; establishes \$35 million as the new interim pro rata share allocation to OHA; requires the continued annual accounting of all receipts from lands described in section 5(f) of the Admission Act; and establishes a committee to recommend the annual amount of the income and proceeds from the public land trust that OHA shall receive annually.

The Native Hawaiian community has been denied access to its fair share of trust resources for decades. The OHA pro rata share of PLT revenue is the primary source of funding for programs, grants and services that benefit the Native Hawaiian community, and has a positive impact on all of Hawai‘i. Raising the annual appropriation to \$35 million will support a wider range of strategic and innovative programs--including in the areas of housing, health care, education,

business opportunities, and job opportunities--that will improve the well-being and conditions of Native Hawaiians and, indeed, all of Hawai'i.

Thus, the Association respectfully urges the committees to **PASS** SB1363.

The civic club movement was founded in 1918 by Congressional Delegate Prince Jonah Kūhiō Kalaniana'ole with the creation of the Hawaiian Civic Club; the Association was formally organized in 1959 and has grown to a confederation of over sixty (60) Hawaiian Civic Clubs located throughout the State of Hawai'i and the United States. The Association is the oldest Hawaiian community-based grassroots organization. The Association is governed by a 16-member Board of Directors; advocates for improved welfare of Native Hawaiians in culture, health, economic development, education, social welfare, and nationhood; and perpetuates and preserves language, history, music, dance and other Native Hawaiian cultural traditions.

Mahalo for allowing us to share our *mana'o*.

Me ka 'oia'i'o,

Hailama Farden
Pelekikena

***ASSOCIATION OF HAWAIIAN
CIVIC CLUBS***

A RESOLUTION

16 - 1

**URGING THE GOVERNOR OF THE STATE OF HAWAI'I TO CONVENE THE
PUBLIC LAND TRUST REVENUES NEGOTIATING COMMITTEE**

WHEREAS, the House of Representatives of the Twenty-eighth Legislature of the State of Hawai'i, Regular Session of 2016, the Senate concurring, adopted a concurrent H.C.R. No. 188 H.D. 1 S.D. 1, requesting the Governor convene a Public Land Trust Revenues Negotiating Committee (Committee); and

WHEREAS, the Committee is to discuss the income and proceeds from the public land trust that the Office of Hawaiian Affairs (OHA) should receive annually pursuant to the State Constitution and other State laws; and

WHEREAS, the Committee is to be comprised of the Governor or designee, the President of the Senate or designee, the Speaker of the House of Representatives or designee, the Chairperson of the OHA or designee; and

WHEREAS, the State of Hawai'i has fiduciary responsibilities as the trustee of the public land trust established by section 5(f) of the Admission Act of 1959; and

WHEREAS, in 1978 the people of Hawai'i overwhelmingly ratified amendments to the constitution, including Article XII, section 6, which established OHA; and

WHEREAS, OHA has a right to receive a pro rata portion of the public land trust for one of the five express purposes of the public land trust – the betterment of the conditions of Native Hawaiians; and

WHEREAS, pursuant to its fiduciary obligations, the state of Hawai'i enacted Act 273, S.L.H. 1980, codified as Hawaii Revised Statute (HRS) section 10-13.5, which defined OHA's pro rata share as "twenty percent of all funds derived from the public land trust"; and

WHEREAS, OHA and the State litigated over the scope of revenue subject to OHA's pro rata share starting in the 1980s, which ultimately led to a dismissal by the court because HRS section 10-13.5 did not provide the court sufficient "judicially discoverable and manageable standards" and therefore could not be decided without initial policy determinations by the legislature; and

WHEREAS, for decades OHA and the State have disagreed on how to calculate OHA's pro rata share of the public land trust as well as whether certain revenue streams should be subject to OHA's minimum twenty percent share; and

WHEREAS, Act 178, SLH 2006, temporarily established OHA's pro rata share of the income and proceeds of the public land trust for the betterment of the conditions of Native Hawaiians at \$15,100,000 annually and required State agencies to report public land trust revenues to the legislature each year; and

WHEREAS, the State's annual payments to OHA for its portion of the public land trust, which are calculated using historically-undisputed revenue streams, have resulted in overages over the temporary \$15,100,000 allotment requiring OHA to return millions of dollars to the State starting in fiscal year 2013; and

WHEREAS, a decade has passed since the enactment of Act 178, SLH 2006, it is now appropriate for the State and the OHA to re-examine the annual figure of \$15,100,000 in light of information, data, and facts provided to the Legislature by State agencies over the last three fiscal years concerning revenues of the public land trust; and

WHEREAS, the Hawai'i Supreme Court has repeatedly held that the Legislature has a constitutional obligation to clarify the pro rata portion of revenues derived from the public land trust to which OHA is entitled for the benefit of Native Hawaiians under Article XII, sections 4 and 6 of the Hawai'i State Constitution; and

WHEREAS, OHA relies substantially on revenues derived from the public land trust to manage over 27,000 acres of conservation and agricultural lands, advocate for policies that better the conditions of Native Hawaiians, monitor government actions to ensure their compliance with environmental laws and the public trust, and provide community grants and scholarships; and

WHEREAS, the convening of the Committee would be a positive step towards improving the civic, economic, social welfare, and health of Native Hawaiians and the larger State community.

NOW, THEREFORE, BE IT RESOLVED, by the Association of Hawaiian Civic Clubs at its 57th annual convention at Las Vegas, Nevada this 19th day of November 2016, that it urges the Governor of the State of Hawai'i to convene the Public Land Trust Revenues Negotiating Committee; and

BE IT FURTHER RESOLVED, that as part of the negotiated settlement the State shall provide at least twenty percent of all public land trust revenue to OHA moving forward; and

BE IT FURTHER RESOLVED, that the State shall provide all back funds based on the minimum twenty-percent pro rata share that has not been transferred to OHA since its Constitutional creation; and

BE IT FURTHER RESOLVED, that OHA and the State introduce legislation to formalize such agreement by the 2018 legislative session; and

BE IT FURTHER RESOLVED, that the Legislature determine the policy for judicially discoverable and manageable standards; and

BE IT FURTHER RESOLVED, that a certified copy of this resolution be transmitted to the Governor of the State of Hawai'i, President of the State Senate, Speaker of the State House of Representatives, Chair of the State Senate Committee on Hawaiian Affairs, Chair of the State House Committee on Ocean, Marine Resources, & Hawaiian Affairs, Chair of the Board of Trustees of the Office of Hawaiian Affairs, and all County Mayors.



The undersigned hereby certifies that the foregoing Resolution was duly adopted on the 19th day of November 2016, at the 57th Annual Convention of the Association of Hawaiian Civic Clubs in Las Vegas, Nevada.

Annelle C. Amaral

Annelle C. Amaral, President



Luna O Na Papa Alakai

Pelekikena
A. Makana Paris

Hope Pekekikena
Ekahi
Randi Fernandez

Hope Pelekikena
Elua
Matthew Gumapac

Puuku
Denise Kekuna

Kakauolelo Hoopaa
Sai Furukawa

Kakauolelo Hooholo
Palapala
Kamuela Werner

Pelekikena Hala
Koke
Yvonne 'PeeWee'
Ryan

Luna Alakai
Kuni Agard
Puamana Crabbe
Kanani Pali
Marlene Sai
Jennifer Smythe
Bruce Wong

Mailing Address:
P.O. Box 4728
Honolulu ~ Hawaii
96812

www.pkhcc.org

Founded in 1964
by Liliuokalani
Kawananakoa Morris

Hawaiian Affairs
Water and Land
Thursday, February 7, 2019
1:16 pm Conference Room 016
State Capitol

Re: SB1363 & SB191

Aloha Chair Shimabukuro, Vice-Chair Kahele, Chair Kahele, Vice-Chair Keith-Agaran and honorable members:

The Prince Kūhiō Hawaiian Civic Club (PKHCC) **SUPPORTS** SB1363 & SB191. These bills will allow the State to more fully act upon its trust *kuleana* (responsibility) to Native Hawaiians by allocating to the Office of Hawaiian Affairs (OHA) a more just pro rata share of the Public Land Trust revenue.

SB1363 transfers \$139 million to OHA for back funds owed from July 1, 2012 to June 30, 2019; establishes \$35 million as the new interim pro rata share allocation to OHA; requires the better accounting of revenue generation on 5(f) lands; and creates a public land trust revenue committee to make recommendations on the appropriate pro rata share that OHA shall receive annually every six years. Native Hawaiians enjoy a trust relationship with the State. OHA is the entity in which Native Hawaiians as trust beneficiaries are able to access their trust resources in the form of grants, services, programs, scholarships, and loans. By raising the annual appropriation to \$35 million, and by granting the back underpayments of approximately \$139 million, the Native Hawaiians community will be able to access more of their trust resources and will be able improve their well-being and better the conditions for all of Hawai'i.

SB191 provides for a more accurate means of accounting for Public Land Trust revenue. By providing better accounting, a more just and fair Public Land Trust revenue stream can be determined.

Founded in 1964, PKHCC was organized to promote the education and social welfare of people of Hawaiian ancestry and objectives include supporting high ethical standards in business, industry and the professional fields of enterprise.

PKHCC urges the committees to **PASS** SB1363 & SB191.

Me ke aloha,


A. Makana Paris
Pelekikena

SB-1363

Submitted on: 2/4/2019 12:30:40 PM

Testimony for HWN on 2/7/2019 1:16:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kea Kala	Individual	Support	No

Comments:

DEMOCRATIC PARTY OF HAWAII
Hawaiian Affairs Caucus

TESTIMONY IN SUPPORT OF
SB1363, RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS'
PRO RATA SHARE OF PUBLIC LAND TRUST FUNDS.
Hearing: Thursday, Feb 7, 1:16 p.m., Room 016

[COMMITTEE ON HAWAIIAN AFFAIRS](#)

Kenekoa/Senator Maile S.L. Shimabukuro, Luna Ho‘omalu/Chair
Kenekoa/Senator Kaiali‘i Kahele, Hope Luna Ho‘omalu/Vice Chair

[COMMITTEE ON WATER AND LAND](#)

Kenekoa/Senator Kaiali‘i Kahele, Luna Ho‘omalu/Chair
Kenekoa/Senator Gilbert S.C. Keith-Agaran, Hope Luna Ho‘omalu/Vice Chair

Aloha, Kenekoa Shimabukuro, Kenekoa Kahele, and members of the Committee on Hawaiian Affairs and the Committee on Water and Land

The Democratic Party of Hawai‘i, Hawaiian Affairs Caucus, submits testimony in **strong support of SB 1363, that** establishes \$35,000,000 as the Office of Hawaiian Affairs' pro rata share of the public land trust. Transfers \$139,000,000 less certain funds to the Office of Hawaiian Affairs for underpayment of the public land trust funds for 7/1/2012 to 6/30/2019. Requires the Department of Land and Natural Resources to provide an annual accounting of receipts from lands described in section 5(f) of the Admissions Act. Establishes a committee to recommend the annual amount of the income and proceeds from the public land trust that the Office of Hawaiian Affairs shall receive annually. Appropriates funds.

Years of data are now available to the Governor, the legislature, and OHA that clearly support an increase in the pro-rata share of the Public Land Trust revenues to OHA. We also fully support the requirement for an annual accounting of receipts since testimonies by state Departments themselves, as well as OHA’s own contracted audit reflect errors and/or misunderstanding about the receipts to be reported.

Lastly, the establishment of a Public Land Trust Revenues Committee to study and make recommendations every six years regarding the amount of the income and proceeds from the public land trust that the OHA shall receive annually is forward thinking and prudent given the evolving nature of the economics of this state and turnover in state leadership positions.

In conclusion, for the last several years, we have been at these hearings advocating for bills in support of OHA’s constitutional share of the income and proceeds from the Public Land Trust. We are hopeful that this will be the year where bold legislative leadership will be exhibited by passage of a bill to assure a just pro rata share of the public land trust to OHA.

Mahalo,

LEIMOMI KHAN, CHAIR

SB-1363

Submitted on: 2/5/2019 12:45:15 PM

Testimony for HWN on 2/7/2019 1:16:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kehaulani Shintani	Individual	Support	No

Comments:

Right the negligence and what is due the OHA.

SB-1363

Submitted on: 2/5/2019 2:04:05 PM

Testimony for HWN on 2/7/2019 1:16:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Bianca Isaki	Individual	Support	No

Comments:

Aloha Committee members,

I strongly **SUPPORT** SB1363, which seeks to ensure that the state's constitutional and statutory Public Land Trust (PLT) obligations to Native Hawaiians are more properly fulfilled, by: (1) Establishing \$35 million as an interim reflection of the 20% of PLT revenues that should be transferred annually to OHA for the benefit of Native Hawaiians; (2) Transferring \$139 million to OHA for underpaid PLT revenues between July 1, 2012 and June 30, 2019; (3) Requiring continued annual accounting of revenues from PLT lands; and (4) Convening a Public Land Trust Revenues Committee every six years, to review and make recommendations regarding OHA's portion of PLT revenues. After years of unjustified delay, it is finally time to revisit Native Hawaiians' fair share of PLT revenues.

Importantly, Native Hawaiians' PLT share is the primary source of funding for programs, grants, and services that benefit both Native Hawaiians and the larger community. Raising Native Hawaiians' annual share to \$35 million will support a wider range of strategic and innovative programs and activities designed to improve the well-being and conditions of Native Hawaiians and Hawai'i. Therefore, I respectfully urge the Committee to PASS SB1363.

Yours,

Bianca Isaki

SB-1363

Submitted on: 2/5/2019 2:37:03 PM

Testimony for HWN on 2/7/2019 1:16:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Laurencia Burdett	Individual	Support	No

Comments:

I strongly **SUPPORT** SB1363, which seeks to ensure that the state's constitutional and statutory Public Land Trust (PLT) obligations to Native Hawaiians are more properly fulfilled, by: (1) Establishing \$35 million as an interim reflection of the 20% of PLT revenues that should be transferred annually to OHA for the benefit of Native Hawaiians; (2) Transferring \$139 million to OHA for underpaid PLT revenues between July 1, 2012 and June 30, 2019; (3) Requiring continued annual accounting of revenues from PLT lands; and (4) Convening a Public Land Trust Revenues Committee every six years, to review and make recommendations regarding OHA's portion of PLT revenues. After years of unjustified delay, it is finally time to revisit Native Hawaiians' fair share of PLT revenues.

Importantly, Native Hawaiians' PLT share is the primary source of funding for programs, grants, and services that benefit both Native Hawaiians and the larger community. Raising Native Hawaiians' annual share to \$35 million will support a wider range of strategic and innovative programs and activities designed to improve the well-being and conditions of Native Hawaiians and Hawai'i. Therefore, I respectfully urge the Committee to PASS SB1363.

SB-1363

Submitted on: 2/5/2019 2:37:30 PM

Testimony for HWN on 2/7/2019 1:16:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
aaron	Individual	Support	No

Comments:

I strongly **SUPPORT** SB1363, which seeks to ensure that the state's constitutional and statutory Public Land Trust (PLT) obligations to Native Hawaiians are more properly fulfilled, by: (1) Establishing \$35 million as an interim reflection of the 20% of PLT revenues that should be transferred annually to OHA for the benefit of Native Hawaiians; (2) Transferring \$139 million to OHA for underpaid PLT revenues between July 1, 2012 and June 30, 2019; (3) Requiring continued annual accounting of revenues from PLT lands; and (4) Convening a Public Land Trust Revenues Committee every six years, to review and make recommendations regarding OHA's portion of PLT revenues. After years of unjustified delay, it is finally time to revisit Native Hawaiians' fair share of PLT revenues.

Importantly, Native Hawaiians' PLT share is the primary source of funding for programs, grants, and services that benefit both Native Hawaiians and the larger community. Raising Native Hawaiians' annual share to \$35 million will support a wider range of strategic and innovative programs and activities designed to improve the well-being and conditions of Native Hawaiians and Hawai'i. Therefore, I respectfully urge the Committee to PASS SB1363.

SB-1363

Submitted on: 2/5/2019 2:47:22 PM

Testimony for HWN on 2/7/2019 1:16:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Diane Kanealii	Individual	Support	No

Comments:

I strongly **SUPPORT** SB1363, which seeks to ensure that the state’s constitutional and statutory Public Land Trust (PLT) obligations to Native Hawaiians are more properly fulfilled, by: (1) Establishing \$35 million as an interim reflection of the 20% of PLT revenues that should be transferred annually to OHA for the benefit of Native Hawaiians; (2) Transferring \$139 million to OHA for underpaid PLT revenues between July 1, 2012 and June 30, 2019; (3) Requiring continued annual accounting of revenues from PLT lands; and (4) Convening a Public Land Trust Revenues Committee every six years, to review and make recommendations regarding OHA’s portion of PLT revenues. After years of unjustified delay, it is finally time to revisit Native Hawaiians' fair share of PLT revenues.

Importantly, Native Hawaiians’ PLT share is the primary source of funding for programs, grants, and services that benefit both Native Hawaiians and the larger community. Raising Native Hawaiians’ annual share to \$35 million will support a wider range of strategic and innovative programs and activities designed to improve the well-being and conditions of Native Hawaiians and Hawai’i. Therefore, I respectfully urge the Committee to PASS SB1363.

SB-1363

Submitted on: 2/5/2019 3:08:58 PM

Testimony for HWN on 2/7/2019 1:16:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Donna K Santos	Individual	Support	No

Comments:

Aloha,

I am a Native Hawaiian from the Puna Moku on the island of Kaua`i and I SUPPORT SB1363.

After years of unjustified delay, it is time to revisit Native Hawaiians' fair share of the Public Land Trust revenues and I respectfully urge the Committee to PASS SB1363.

Mahalo,

Donna K. Santos

SB-1363

Submitted on: 2/5/2019 3:20:16 PM

Testimony for HWN on 2/7/2019 1:16:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nicole Correa	Individual	Support	No

Comments:

SB-1363

Submitted on: 2/5/2019 5:20:59 PM

Testimony for HWN on 2/7/2019 1:16:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carol Titcomb	Individual	Support	No

Comments:

I strongly **SUPPORT** SB1363, which seeks to ensure that the state's constitutional and statutory Public Land Trust (PLT) obligations to Native Hawaiians are more properly fulfilled, by: (1) Establishing \$35 million as an interim reflection of the 20% of PLT revenues that should be transferred annually to OHA for the benefit of Native Hawaiians; (2) Transferring \$139 million to OHA for underpaid PLT revenues between July 1, 2012 and June 30, 2019; (3) Requiring continued annual accounting of revenues from PLT lands; and (4) Convening a Public Land Trust Revenues Committee every six years, to review and make recommendations regarding OHA's portion of PLT revenues. After years of unjustified delay, it is finally time to revisit Native Hawaiians' fair share of PLT revenues.

Importantly, Native Hawaiians' PLT share is the primary source of funding for programs, grants, and services that benefit both Native Hawaiians and the larger community. **As a Native Hawaiian physician working in a Community Health Center that serves a largely Hawaiian population, I know the impact of this funding on initiatives that improve the health and social outcomes of our community.** Raising Native Hawaiians' annual share to \$35 million will support a wider range of strategic and innovative programs and activities designed to improve the well-being and conditions of Native Hawaiians and Hawai'i. Therefore, I respectfully urge the Committee to PASS SB1363.

Melody Kapilialoha MacKenzie, Esq.
579 Kāne'apu Place ♦ Kailua, Hawai'i 96734
melodykmackenzie@gmail.com

S.B. 1363
Relating to Increasing the Office of Hawaiian Affairs'
Pro Rata Share of Public Land Trust Funds

COMMITTEE ON HAWAIIAN AFFAIRS
Senator Maile S.L. Shimabukuro, Chair
Senator Kaiali'i Kahele, Vice Chair

COMMITTEE ON WATER AND LAND
Senator Kaiali'i Kahele, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

Hearing on Thursday, February 7, 2019, at 1:16 p.m.

Mahalo for this opportunity to submit testimony in **strong support** of S.B. 1363, Relating to Increasing the Office of Hawaiian Affairs' Pro Rata Share of Public Land Trust Funds. I am a professor at the William S. Richardson School of Law and the founding director of Ka Huli Ao Center for Excellence in Native Hawaiian Law. I submit this testimony, however, in my personal capacity as a private citizen and an attorney who has worked, litigated, and written extensively on Native Hawaiian legal controversies, and particularly on the Public Land Trust. Indeed, I was a member of the legal team that represented the Office of Hawaiian Affairs (OHA) in a major dispute with the State over the sale and alienation of trust lands.

In my classes, I teach, review, and analyze all of the constitutional provisions, statutes, and cases affecting the Public Land Trust and I believe the findings in this bill succinctly and accurately lay out this long and complicated history, as well as good faith efforts to give full effect to the constitutional and statutory requirements that a "pro rata" portion of the income and proceeds from the Public Land Trust go to OHA to benefit the Native Hawaiian community. As you know, in 1980, the Legislature set that pro rata share at twenty per cent (codified at Haw. Rev. Stat. § 10-13.5). Numerous questions immediately arose: What constituted income and proceeds? Should the calculation be based on gross or net income? Which lands should be included in the calculation – just those under the jurisdiction of the Dept. of Land and Natural Resources, or those held by other departments? Indeed, a major issue was determining exactly which state-held lands were part of the Public Land Trust!

After years of effort, including litigation and legislative initiatives, I am encouraged to see the progress that has been made in reaching a true and accurate determination of the pro rata share that should go to OHA. Since 2006, when the Legislature set OHA's annual share at \$15.1 million as an interim measure, the relevant State departments have been required to and, for the most part, have complied in reporting their revenue from the Public Land Trust. As the bill

notes, there are still unresolved and disputed issues, but the progress has been significant.

Based on the information compiled over these years as well as independent studies undertaken by OHA, the true pro rata share due to OHA can be calculated more accurately and with greater certainty. Thus, this bill requests that the annual amount of trust land income and proceeds allocated to OHA be increased to \$35 million, a figure that more correctly reflects the twenty per cent pro rata share set in 1980. In addition, this bill seeks a back payment from July 1, 2012, to June 30, 2019, in the amount of \$139 million based on the actual income and proceeds from the Public Land Trust that the State has received during that time period. The bill also continues the current annual accounting of receipts from the trust lands. Finally, the bill establishes a Public Land Trust Revenues Committee to study and make recommendations every six years on the amount that OHA should receive annually as its share from the Public Land Trust.

Overall, this is a reasonable bill that seeks to provide fairness and justice to the Native Hawaiian community and allows the State to honor its commitments – commitments made in both the State Constitution and in the 1980 legislation setting OHA’s pro rata share at twenty per cent. Resolving this issue is one of the most impactful and important actions this Legislature could take. It will result in increased opportunities for the Native Hawaiian community – funding for Hawaiian culture-focused and immersion schools, scholarships for Native Hawaiian students, greater emphasis on Hawaiian health and ola, support for many non-profits working to revitalize our ‘āina and restore wahi pana (storied places), help for Native Hawaiian businesses and start-ups, and funding for much needed housing opportunities.

Our Supreme Court, in reviewing the revenue issue, has acknowledged that the State’s obligation to Native Hawaiians is firmly established in the State Constitution, and has concluded, “it is incumbent upon the legislature to enact legislation that gives effect to the rights of native Hawaiians to benefit from the ceded lands trust.”¹ I call upon these Committees and the Legislature as a whole to seek a resolution and keep the promise made over forty years ago that a pro rata share of the income and proceeds from the Public Land Trust – lands that were originally the Crown and Government lands of the Hawaiian Kingdom – go to OHA to benefit the Native Hawaiian community. Your action now would truly set us on the path to justice.

Mahalo for the opportunity to present this testimony in **strong support** of S.B. 1363.

¹ Office of Hawaiian Affairs v. State, 96 Hawai’i 388, 41, 31 P.3d 901, 914 (2001).

TESTIMONY IN SUPPORT OF
SB1363, Relating to Increasing OHA's Pro Rata Share of Public Land Trust funds
Hearing: February 7, 2019, 1:16 p.m., Room 016

COMMITTEE ON HAWAIIAN AFFAIRS

Senator Maile S. L. Shimabukuro, Chair

Senator Kaiali'i Kahele, Vice Chair

Welina mai ke aloha Honorable Chairs Shimabukuro and Kahele and members of the Committee on Hawaiian Affairs,

I strongly **SUPPORT** SB1363, which seeks to ensure that the state's constitutional and statutory Public Land Trust (PLT) obligations to Native Hawaiians are more properly fulfilled, by: (1) Establishing \$35 million as an interim reflection of the 20% of PLT revenues that should be transferred annually to OHA for the benefit of Native Hawaiians; (2) Transferring \$139 million to OHA for underpaid PLT revenues between July 1, 2012 and June 30, 2019; (3) Requiring continued annual accounting of revenues from PLT lands; and (4) Convening a Public Land Trust Revenues Committee every six years, to review and make recommendations regarding OHA's portion of PLT revenues. After years of unjustified delay, it is finally time to revisit Native Hawaiians' fair share of PLT revenues.

Importantly, Native Hawaiians' PLT share is the primary source of funding for programs, grants, and services that benefit both Native Hawaiians and the larger community. Raising Native Hawaiians' annual share to \$35 million will support a wider range of strategic and innovative programs and activities designed to improve the well-being and conditions of Native Hawaiians and Hawai'i. Therefore, I respectfully urge the Committee to PASS SB1363.

'O au iho nō me ka ha'aha'a,
Māpuana de Silva

SB-1363

Submitted on: 2/6/2019 5:19:27 AM

Testimony for HWN on 2/7/2019 1:16:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kamuela Werner	Individual	Support	No

Comments:

Aloha:

I strongly **SUPPORT** SB1363.

Me ke aloha,

Kamuela Werner

Wai'anae, O'ahu

SB-1363

Submitted on: 2/6/2019 9:30:21 AM

Testimony for HWN on 2/7/2019 1:16:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
S. Joe Estores	Individual	Support	No

Comments:

I strongly **SUPPORT** SB1363, which seeks to ensure that the state's constitutional and statutory Public Land Trust (PLT) obligations to Native Hawaiians are more properly fulfilled, by: (1) Establishing \$35 million as an interim reflection of the 20% of PLT revenues that should be transferred annually to OHA for the benefit of Native Hawaiians; (2) Transferring \$139 million to OHA for underpaid PLT revenues between July 1, 2012 and June 30, 2019; (3) Requiring continued annual accounting of revenues from PLT lands; and (4) Convening a Public Land Trust Revenues Committee every six years, to review and make recommendations regarding OHA's portion of PLT revenues. After years of unjustified delay, it is finally time to revisit Native Hawaiians' fair share of PLT revenues.

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Native Hawaiian Chamber of Commerce

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**Senate Committee on Hawaiian Affairs
Senate Committee on Water and Land**

Time: 1:16 PM

Date: Pepeluali 7, 2019

Location: Conference Room 016

SB1363 Relating to Increasing the Office of Hawaiian Affairs' Pro Rata Share of Public Land Trust Funds

Aloha e Luna Ho'omalū Shimabukuro, Luna Ho'omalū Kahele, a me Kōmike Hawaiian Affairs a me Kōmike Water and Land,

The Native Hawaiian Chamber of Commerce SUPPORTS SB1363. This bill will help the State better fulfill its trust responsibilities to the Native Hawaiian community, especially through providing OHA with a higher percentage of its constitutional and statutory pro rata share of the Public Land Trust (PLT) revenue.

This bill transfers \$139 million to OHA to make up for some of the underpayment of PLT revenues from July 1, 2012 to June 30, 2019, and establishes \$35 million as the new interim pro rata share allocation to OHA. It also requires the continued annual accounting of all receipts from lands described in section 5(f) of the Admission Act and establishes a committee to recommend the annual amount of the income and proceeds from the public land trust that OHA will receive annually.

Native Hawaiians have been denied access to their fair share of trust resources for decades. The OHA pro rata share of PLT revenue is the primary source of funding for programs, grants, and services that benefit the Native Hawaiian community, and has a positive impact on all of Hawai'i. Raising the annual appropriation to \$35 million will support a wider range of strategic and innovative programs in the areas of housing, health care, education, jobs and economic development that will improve the well-being of Native Hawaiians and all of Hawai'i.

NHCC respectfully urges the committee to PASS SB1363 and we mahalo you for the opportunity to submit this testimony.

NHCC is a business chamber representing the Hawaiian business voice of 300 members. Our mission is to connect and strengthen Native Hawaiian businesses and professions by building on a foundation of relationships, resources and Hawaiian values.

Debra Medeiros
PO Box 478
Hawi, Hawaii 96719

I, Debra Medeiros strongly **SUPPORT** SB1363, which seeks to ensure that the state's constitutional and statutory Public Land Trust (PLT) obligations to Native Hawaiians are more properly fulfilled, by:

(1) Establishing \$35 million as an interim reflection of the 20% of PLT revenues that should be transferred annually to OHA for the benefit of Native Hawaiians;

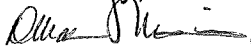
(2) Transferring \$139 million to OHA for underpaid PLT revenues between July 1, 2012 and June 30, 2019;

(3) Requiring continued annual accounting of revenues from PLT lands;
and

(4) Convening a Public Land Trust Revenues Committee every six years, to review and make recommendations regarding OHA's portion of PLT revenues. After years of unjustified delay, it is finally time to revisit Native Hawaiians' fair share of PLT revenues.

Importantly, Native Hawaiians' PLT share is the primary source of funding for various programs, grants, and services that benefit both Native Hawaiians and the larger community. Raising Native Hawaiians' annual share to \$35 million will support a wider range of strategic and innovative programs and activities designed to improve the well-being and conditions of Native Hawaiians and Hawai'i. Therefore, I respectfully urge the Committee to PASS SB1363.

Sincerely,



Debra Medeiros
Indigenous Hawaiian & Supporter

LATE

SB-1363

Submitted on: 2/6/2019 4:29:15 PM

Testimony for HWN on 2/7/2019 1:16:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kilia Purdy-Avelino	Individual	Support	No

Comments: