

**TESTIMONY**

**SB 1085**



**TESTIMONY OF THE STATE ATTORNEY GENERAL  
TWENTY-FIFTH LEGISLATURE, 2009**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 1085, RELATING TO CEDED LANDS.

**BEFORE THE:**

SENATE COMMITTEE ON WATER, LAND, AGRICULTURE AND HAWAIIAN AFFAIRS

**DATE:** Wednesday, February 4, 2009 **TIME:** 2:45 PM

**LOCATION:** State Capitol, Room 229

**TESTIFIER(S):** Mark J. Bennett, Attorney General

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Chair Hee and Members of the Committee:

The Department of Attorney General opposes this bill.

This bill amends chapter 171, Hawaii Revised Statutes, to permanently bar the Board of Land and Natural Resources from selling, exchanging, or otherwise alienating ceded lands.

We oppose this bill on both legal and policy grounds.

As to legal issues, the bill raises the potential for additional federal court lawsuits against the State by persons opposed to government programs that provide benefits to Native Hawaiians. Such lawsuits have been and continue to be filed. New lawsuits might claim, for example, that this legislation violates the Admission Act, which establishes a trust whose provisions and obligations are interpreted under federal common law, because a reasonable trustee would never foreclose in advance selling or exchanging land, no matter how favorable the circumstances, no matter how much the sale or exchange would advance the purposes of the Admission Act's public trust, and no matter how much the sale or exchange would benefit the trust's beneficiaries, particularly for the reasons specified or implied by the bill.

New lawsuits might also challenge the legislation as violating the Fourteenth Amendment to the United States Constitution. Were this

legislation to be enacted, such challenges might well not be subject to the procedural bars regarding, for example, standing and joining the United States as a party, that previous challenges have faced.

Similar issues could be raised with respect to the Hawaii State Constitution.

We also believe that it makes sense as a policy matter for the State to retain flexibility as to the use and management of its land. It is impossible to say in advance that beneficial opportunities for sales or exchanges cannot arise. Office of Hawaiian Affairs v. Housing and Community Development Corporation of Hawaii itself arose from the Legislature's specific direction to sell ceded land to implement the Admission Act's third purpose: developing "home ownership on as widespread a basis as possible," a purpose also embodied in Hawaii's Constitution, Article XI, section 10: "The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible, in accordance with procedures and limitations prescribed by law."

We believe the Legislature should also consider a structural revision to the bill to provide an exemption for the sale or exchange of remnants, such as by adding the following language to each of the sections this bill adds to the Hawaii Revised Statutes: "The provisions of this section shall not apply to the sale (or exchange, as appropriate) of remnants, as that term is defined in section 171-52, or portions thereof."

We therefore respectfully ask the Committee to hold this bill.

LINDA LINGLE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
LAURA H. THIELEN  
Chairperson**

**Before the Senate Committee on  
WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS**

**Wednesday, February 4, 2009  
2:45 PM  
State Capitol, Conference Room 229**

**In consideration of  
SENATE BILL 1085  
RELATING TO CEDED LANDS**

Senate Bill 1085 proposes to prohibit the Board of Land and Natural Resources from selling, exchanging, or otherwise alienating ceded lands in the public land trust. The Department of Land and Natural Resources defers to the Department of the Attorney General with regard to providing specific comments on this measure.

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCIS  
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

TO: COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS;  
Senator Clayton Hee, Chair, Senator Jill N. Tokuda, Vice Chair

Re: SB (1085) ~~SB 475, SB 476~~ RELATING TO CEDED LAND SALES  
For hearing Wednesday, February 4, 2009 2:45 p.m Room 229

TESTIMONY IN OPPOSITION, By:  
Kenneth R. Conklin, Ph.D.  
e-mail Ken\_Conklin@yahoo.com

Aloha Chair Hee, Vice Chair Tokuda; members, and public.

I oppose SB 1085, ~~SB 475, and SB 476~~

Books, scholarly articles, and legal briefs have been written about the ceded lands and their history. There's no way I can summarize all that and tell my own position in only a few pages; nor would you be interested in reading that.

But I will tell you a few things you might not have heard before, including a reminder of some things you are obligated to believe if you wish to continue in your position as a Legislator of the State of Hawaii.

#### HAWAII REALLY IS A PART OF THE UNITED STATES

Before briefly recalling the history, let me remind you that if you do not believe Hawaii is legally and morally a part of the United States, then you must immediately resign your position in the Legislature. Before you could run as a candidate or be seated, you were required to take an oath including "I will support and defend the Constitution of the United States." There's no room for quibbling here.

Hawaiian sovereignty activists claim that the revolution of 1893 that overthrew the monarchy was "illegal." They claim that the presence of 162 U.S. peacekeepers constituted an armed invasion (like China invading Tibet or Germany invading Poland), and that the U.S. apology resolution of 1893 is a confession of a crime under international law. They claim the annexation of 1898 was illegal (for many reasons, all

bogus). They claim the Statehood vote of 1959 was illegal. They claim the apology resolution of 1993 is a confession of a crime under international law which requires the U.S. to withdraw from Hawaii and provide huge reparations for 116 years of belligerent military occupation of the Hawaiian indigenous homeland.

My dear Legislator, if you believe any of those things you should immediately resign. You are violating your oath of office if you give credence to any of those assertions and, giving the benefit of the doubt to them, you then pass legislation that basically says "here's what we must do just in case this is true." You must stand firm, in public, in front of God and your fellow citizens, and you must say "I am proud to be an American, I have no doubt that Hawaii is the 50th State of the United States, and I will never support any legislation based on any doubt of that or which would in any way violate the U.S. Constitution."

Here are a few places where you can get more information about specific topics addressed above:

Historical Issues Related to Hawaiian Sovereignty -- Revolution (Overthrow of monarchy), Annexation, Statehood, Indigenous Status, Hawaiian Language Ban, Ceded Lands, Etc. This is a webpage whose purpose is to provide links to other webpages on specific historical topics.

<http://tinyurl.com/3323rz>

What Does the United States Owe to Native Hawaiians? Two reports commissioned by Congress contain the answers (Morgan Report of 1894 about the revolution of 1893, and Native Hawaiians Study Commission report of 1983). Links to the full text of both reports, which are many hundreds of pages and well-documented.

<http://tinyurl.com/b6lakw>

The 1993 apology resolution is filled with factual errors and distortions. Constitutional law scholar, attorney Bruce Fein, wrote a monograph which includes extensive, point-by-point refutation of it. See "Hawaii Divided Against Itself Cannot Stand" at

<http://tinyurl.com/7d6xq>

Following the creation of the Republic of Hawaii in July 1894 by publication of its Constitution, there were Emperors, Kings, Queens, and Presidents of 20 nations on 4 continents who personally signed official letters recognizing the Republic as the rightful government of Hawaii de jure. Photos of the original letters in the state archives, plus Liliuokalani's letter of abdication and oath of loyalty to the Republic, can all be seen at

<http://tinyurl.com/4wtwdz>

Lili'uokalani Loses A Big One (The Crown Lands) -- Liliuokalani v. United States, 45 Ct. Cl. 418 (1910)

<http://tinyurl.com/56czl>

THE PUBLIC LANDS OF HAWAII (INCLUDING THE "CEDED LANDS") BELONGED TO ALL THE SUBJECTS (CITIZENS) OF THE MULTIRACIAL KINGDOM OF HAWAII AND THE REPUBLIC OF HAWAII WITHOUT RACIAL DISTINCTION; WERE SET ASIDE BY THE U.S. AS A PUBLIC TRUST SOLELY TO BENEFIT ALL THE PEOPLE OF HAWAII WITHOUT RACIAL DISTINCTION DURING THE TERRITORIAL PERIOD; AND ONCE AGAIN BELONG TO ALL THE CITIZENS OF THE STATE OF HAWAII WITHOUT RACIAL DISTINCTION.

The Crown lands originally were set aside in the Mahele (1838) as the King's private property. But in 1865 the Kingdom Legislature passed a law to take government ownership of the crown lands in return for the government's issuance of bonds to pay off a mortgage the King had placed on the crown lands, which mortgage was in danger of foreclosure; and the King happily signed that law.

From that point forward the crown lands were merged with the government lands and became jointly the "public lands" except that the income from the crown lands was set aside by statute for the purpose of financing the official functions of the head of state (at that time the King). After the revolution there was no more monarch, so the "crown land" revenues went to support the functions of government in the same way as the old "government land" revenues.

Please note that throughout the history of the Kingdom of Hawaii there was never any racial set-aside of any lands communally for native Hawaiians as a group. There were crown lands, government lands, and private lands; but there were never any "Native Hawaiian" lands.

In 1909 ex-queen Lili'uokalani filed a lawsuit in the U.S. Court of Claims demanding money for herself as compensation for the "confiscation" of "her" crown lands resulting from the annexation. In 1910 the court ruled that Liliuokalani had never personally owned the crown lands and therefore was not entitled to any compensation. Today's Hawaiian activists would do well to note that their hero Lili'uokalani never asserted that the ceded lands belonged communally to ethnic Hawaiians; and if she had won her lawsuit the money would have been paid to her personally and not to ethnic Hawaiians communally.

**SECTION 5(f) OF THE 1959 STATEHOOD ADMISSION ACT DOES NOT REQUIRE THAT ONE PENNY MUST BE SPENT SPECIFICALLY FOR ETHNIC HAWAIIANS TO THE EXCLUSION OF OTHERS. ETHNIC HAWAIIANS HAVE ZERO CLAIM TO ANY RACIAL SET-ASIDES.**

Section 5(f) says ceded land revenues can be spent for ANY ONE OR MORE of 5 purposes. One of those purposes is public education; and for the first 20 years of statehood virtually all the ceded land revenues was given to the public schools. Since 26% of the school children were ethnic Hawaiians, therefore ethnic Hawaiians received 26% of the ceded land revenues without any explicit racial set-aside.

One of the five purposes identified in section 5(f) is "for the betterment of native Hawaiians as defined in the Hawaii Homes Commission Act of 1921." The reason for including that among the 5 purposes was to allow ceded land revenues to be used to support the Hawaiian Homesteads, which are restricted to Hawaiians of at least 50% native blood quantum.

It may well be that HHCA of 1921 was unconstitutional. It is likely that section 5(f) of the Admission Act is unconstitutional to the extent that it is construed as giving the State of Hawaii permission to violate

the 14th Amendment by setting aside some or all of the ceded land revenues to be used for a racially exclusionary purpose.

In any case, the racial set-aside apparently allowed under section 5(f) is exclusively for Hawaiians of 50% native blood quantum, and does not require or even contemplate any racial set-aside for all "one-drop" Hawaiians (the class eligible to sign up for Kau Inoa and join the much-anticipated Akaka tribe).

It is ludicrous to imagine that "Hawaiians" or "Native Hawaiians" as a group (as defined by statute according to the one-drop rule) have any legal or moral claim to the ceded lands. There are no legal or moral race-based claims which needs to be resolved before parcels of ceded lands can be sold. The only way such claims might be established is if you, the Legislature, decide to create such claims. Please don't do that. Just say no.

#### THE BIG PICTURE

I believe the single most important issue facing Hawai'i in the foreseeable future is the imminent and continuing threat that the lands, resources, government and people of Hawai'i will be divided along racial lines.

The Legislature has repeatedly passed resolutions favoring the Akaka bill to create a racially exclusionary government empowered to negotiate with YOU, the legislators. It is expected that you will give away massive amounts of land, money, and jurisdictional authority.

Numerous bills in the Legislature in recent years have tried to implement massive give-aways even before the tribe is created, and before any negotiations have started. That's absurd! No responsible negotiator gives away important concessions before the opponents even arrive at the table.

Please read "Hawaiian Apartheid: Racial Separatism and Ethnic Nationalism in the Aloha State" at <http://tinyurl.com/2a9fqa>

My name is Alyssa Murphy and I reside on the island of Oahu, and I have lived in the Moiliili area for the past two years. I work in the website production industry. I have a Bachelor's Degree in Education from American University, in Washington D.C. I am not of Native Hawaiian ancestry.

I have lived in various parts of the world and am convinced that the Hawaiian islands are perhaps among the most, if not "the most", special places on this Earth. I was born in Pennsylvania, but moved to Tokyo, Japan shortly after my birth and I lived there for 18 years. I enrolled at American University for college. After finishing college, I accepted a job opportunity in Hawaii. A few years later, I moved to the island of Saipan. Prior to my return to Hawaii in 2006, I lived in San Francisco.

Last month, I attended an informational session and I am convinced that the ceded lands should not be sold until the unrelinquished claims of Native Hawaiians are resolved. The event I attended featured a number of notable speakers that included:

- former Governor **John Waihee**,
- Attorney General **Mark Bennett**,
- Senator **Clayton Hee**,
- attorney **Bill Meheula**.

The event was a rare opportunity to hear two opposing attorneys discuss their perspectives on the case, in equal time, and have the audience ask questions shortly after. The complete video of the event can be watched at <http://tinyurl.com/dx9rpe>.

Although I may not have lived here in Hawaii for as long as most of the legislators who will vote on the proposed moratorium bills, I have taken opportunities to learn about Hawaii's unique history and various cultures. The event I mentioned above provided Mark Bennett an opportunity to refute arguments made by Bill Meheula. Although Mr. Bennett articulated his arguments well, it was clear to me and many others in attendance, he could not, and did not, explain why the Lingle Administration's actions are just.

At that same event, Mark Bennett stated that the Hawaii Supreme Court's decision has had an impact on the states' fiscal situation, more specifically, the state's bonds. However, I found that a News Release that pre-dates Mr. Bennett's comments by a mere few weeks actually says differently. "The three top bond rating firms have reaffirmed Hawaii's bond ratings, which are at their highest level in State history," said Governor Lingle as reported in the release. The release is available at <http://tinyurl.com/ac2uew>. Reasonable people will assume from this News Release that the state's fiscal situation is actually good or unaffected by the Hawaii Supreme Court's decision.

Lastly, this past Sunday, I took the opportunity to go hiking. While I can't be sure that the location I hiked is on ceded lands, considering that the ceded lands in dispute consists of 1.2 million acres, it seems likely that there are other similar areas to where I hiked. During my hike, I was reminded as to how special this place is. This place is special because of its unique history. We have to keep it special. One way to do that is

to support & pass Senate Bill 1085 and work towards restoring justice. In a delicate place such as Hawaii, where land and other natural resources are limited, we have to make good on our obligations not just to the environment, but to the community of which much was taken from.

Alyssa Murphy  
Moiiliili, Oahu.  
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2330 Ainaola Drive  
Hilo, Hawai'i 96720

Hawai'i State Legislature  
415 South Beretania Street  
Honolulu, Hawai'i 96813

February 2, 2009

Dear Honorable Senators,

Aloha kakou. My name is Brennan Takayama, and I was born and raised in Hilo on Hawai'i island and currently am living in Honolulu. I am a former Hawai'i State Board of Education member (2001-2002) and Hawai'i State Student Council member (2000-2002). I am a graduate of Stanford University (BA, 2006, MA in Education, 2007) and currently am working in educational research and as a minister with a Christian organization at the University of Hawai'i at Manoa, although I am writing in my personal capacity and not as a representative of any organization of which I am affiliated. I am writing to request your support of Senate Bill 1085 that prohibits the sale of "ceded"/seized lands.

I appeal to you on a sense of justice and aloha. I myself am not Native Hawaiian, although my family has been in Hawai'i for several generations. Growing up in Hawai'i, I learned that a common value that many of us share is standing for what is right even when doing so is inconvenient. I am half-Japanese and half-Chinese and recognize the struggles my predecessors had to face in Hawai'i and in the United States. I also realize the injustices of which people like me have committed upon others, particularly the indigenous people of Hawai'i – Native Hawaiians. We have remained silent on the iniquities inflicted upon our Native brothers and sisters and have upheld a system that denies them the basics of honor, dignity, and respect. I do not need to share with you the legal basis for preserving land that was taken from the Hawaiian government; many others have probably already shared such information with you. It is not convenient for me to stand for a cause that does not necessarily benefit me or "my people," but justice knows no boundaries. Injustice anywhere is a threat to justice everywhere.

I humbly request of you: please, do what is right. As a public servant myself I know that we are often faced with many difficult decisions. Though issues may be complicated, we often know what is right when we listen to our gut and heart. Please do what is right and support Senate Bill 1085.

Mahalo a nui loa for your time. Please feel free to contact me with any questions.

Me ka ha'aha'a,

Brennan Takayama  
Cell: 808-292-1692  
Email: [brenkeke@stanfordalumni.org](mailto:brenkeke@stanfordalumni.org)

"I have shown you O people what is good and what the Lord requires of you: to act justly, to love mercy, and to walk humbly with your God." –Micah 6:8

Dear Members of the Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs,

My name is Derek Kauanoë and I am a 2008 graduate of the William S. Richardson School of Law at the University of Hawaii. I graduated with a specialized certificate in Native Hawaiian Law. I am not yet licensed to practice law but, based on my education and experiences with the law, I must urge each of you to pass Senate Bill 1085.

### **MORATORIUM LEGISLATION IS IMPORTANT TO OUR STATE AND FURTHERS RECONCILIATION EFFORTS WITH NATIVE HAWAIIANS.**

Passage of legislation like Senate Bill 1085 is both necessary and important to the future of our great state. Our state government has previously committed itself to the reconciliation process with Native Hawaiians. The Hawaii Attorney General, the Hawaii Supreme Court, and the Office of Hawaiian Affairs have all agreed that the political-legislative process is the appropriate process for dealing with Native Hawaiian claims to the “ceded” lands.<sup>1</sup>

### **LEGISLATIVE ACTS TOWARDS RECONCILIATION.**

The Hawaii State legislature, through a number of acts, has committed itself to a reconciliation process with the Native Hawaiian community. These acts include:

- **Act 340** passed in 1993, and affirmed 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.”
- **Act 354** also passed in 1993 and it pledged “continued support to the native community by taking steps to promote the restoration of the rights and dignity of native Hawaiians.”
- **Act 359** also passed in 1993, and concluded that the United States annexed Hawaii as a territory in 1898 without the consent of or compensation to the Native Hawaiian people or their sovereign government. In addition the Act also recognized that Native Hawaiians “were denied the mechanism for expression of their inherent sovereignty through self-government and self-determination, their lands, and their ocean resources.”
- **Act 329** passed in 1997, the Act established an interim revenue amount due to the Office of Hawaiian Affairs. The Act also required the Department of Land and Natural Resources to complete an inventory of the public land trust.

Passage of Senate Bill 1805 will further the legislature’s commitment to addressing historical wrongs, never corrected, by ensuring that the very lands taken without the consent of, or compensation to, the Native Hawaiian people or their government will not be sold.

### **THE LEGISLATIVE PROCESS IS APPROPRIATE FOR DEALING WITH “CEDED” LANDS ISSUES.**

Statements made by different and independent parties show that legislative action is the agreed upon process for dealing with Native Hawaiian claims.

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<sup>1</sup> The “ceded” lands are the Crown and government lands of the Hawaiian Kingdom. In 1893 the Hawaiian Kingdom was illegally overthrown by a few traitors who sought to transfer possession and control of the islands to the United States. These traitors called themselves the Provisional Government. In 1893, President Grover Cleveland acknowledged the illegality of the actions of the United States by one of its agents. President Cleveland called this an “act of war” and called for the restoration of the Hawaiian monarchy. After its unsuccessful attempt to transfer Hawaii to the United States, the Provisional Government changed its name to the Republic of Hawaii for the purpose of shedding its appearance as an oligarchy. In 1898, through a questionable process even by U.S law, the Republic of Hawaii purported to transfer the Hawaiian Islands to the United States.

In 1993, the 103rd Congress recognized and acknowledged important facts surrounding the illegal overthrow, namely that lands were taken without compensation to or the compensation of the Native Hawaiian people or their lawful and sovereign government.

- “We believed, and continue to believe, that the claims that Native Hawaiians have should be addressed through the legislative process— through the Legislature and the Congress . . . but not in the courts.”<sup>2</sup>
- “[T]he OHA plaintiffs admit that the ‘ultimate resolution of the [n]ative Hawaiian claims must be through the political processes,’ and it is actively engaged in these processes.”<sup>3</sup>
- “We conclude that the plaintiffs have established that injunctive relief is proper pending final resolution of native Hawaiian claims through the political process.”<sup>4</sup>

Two disputing parties, (the Hawaii Attorney General & the Office of Hawaiian Affairs) and an independent judiciary, the Hawaii Supreme Court, agree that the legislative process is appropriate for dealing with these issues.

**A DECISION TO NOT PASS MORATORIUM LEGISLATION, PROTECTING THE CEDED LANDS, IS LIKELY TO STIFLE RECONCILIATION WITH NATIVE HAWAIIANS BECAUSE RESOLVING LAND CLAIMS IS CRUCIAL TO THE RECONCILIATION PROCESS.**

The Lingle Administration has previously been supportive of the Native Hawaiian community and committed itself to settling the ceded lands issue, “here at home in Hawaii I will continue to work with you and with the Hawaiian community to **resolve the ceded lands issue once and for all.**”<sup>5</sup> The Lingle Administration has also lobbied Congress to pass the Akaka Bill.<sup>6</sup>

Hawaiian Homes Commission chairman Micah Kane, while lobbying Congress, explained why federal recognition is necessary, and was quoted as saying, “these troubling and unsettled issues relate to property title, ceded-land claims and rights to natural resources” and that “without federal recognition of Native Hawaiians, the state of Hawaii will spend thousands of unnecessary man-hours and millions of taxpayer dollars defending and clarifying Native Hawaiian rights.” In her own advocacy, the Star-Bulletin quoted Governor Lingle as stating that the Akaka bill “is vital to the continued character of our state, and it is vital to providing parity and consistency in federal policy for all native peoples in America”.<sup>7</sup>

The Lingle Administration has put the state in an untenable position in the State of Hawaii v. Office of Hawaiian Affairs case now pending at the United States Supreme Court. The Hawaii Supreme Court placed a moratorium on the sale of ceded lands until Native Hawaiian land claims are resolved. The Lingle Administration's stance on this case is untenable because, at its core, it is at odds with the administration's previous and current support of Native Hawaiian federal recognition.

<sup>2</sup> Honolulu Advertiser: Lands Focus of Rally, Gordon Pang, Page 31A, November 23, 2008.

<sup>3</sup> Office of Hawaiian Affairs v. Housing and Community Development Corporation of Hawaii, 117 Haw. 174, 209 (2008).

<sup>4</sup> Id. at 217.

<sup>5</sup> Honolulu Star-Bulletin: State of the State Address, Governor Linda Lingle, January 21, 2003. Emphasis added. Available online at <http://archives.starbulletin.com/2003/01/22/news/index1.html>

<sup>6</sup> Contrary to popular belief, the Akaka Bill does not grant federal recognition to the Native Hawaiian people. Instead, the bill only provides a process for pursuing federal recognition.

<sup>7</sup> Honolulu Star-Bulletin: Inouye: Gov Key to Akaka bill; The Senator says Lingle will be instrumental in getting the Hawaiian rights bill approved. Richard Borreca, February 25, 2003. Available online at <http://archives.starbulletin.com/2003/02/25/news/index1.html>

**RESOLVING LAND CLAIMS WITH NATIVE GROUPS IS NOT UNCOMMON IN OTHER STATES.**

It is common in the United States, for native groups pursuing federal recognition, to resolve land claims with state governments. Selling ceded lands, before resolving native claims to those lands, conflicts with the Lingle administration's support of Native Hawaiian federal recognition because Native Hawaiians will be at a great disadvantage with less land available to resolve claims. Remember that in 2003, Micah Kane told U.S. Senators that federal recognition was important to ceded land claims and for clarifying Native Hawaiian rights. What we have here are inconsistent policies regarding very important issues affecting our island home.

Supreme Court Justice Clarence Thomas once described Federal Indian Law as schizophrenic because of the stark inconsistencies within that area of law. Here in Hawaii, where our communities are so interconnected both physically and culturally we cannot afford schizophrenic policies and contradictory decision-making.

Reconciliation efforts with the Native Hawaiian community will be stifled if our state legislature does not act to protect the "ceded" lands from being sold before the unrelinquished claims of Native Hawaiians are resolved.

**THE HAWAII LEGISLATURE IS IN A UNIQUE POSITION TO TIP THE BALANCE OF POWER TOWARDS JUSTICE AND EQUITY.**

In its January 31, 2008, landmark ruling, the Hawaii Supreme Court stated,  
*[t]he continued diminishment of the public lands trust means that any land sold or transferred to third parties will be lost and, thus, unavailable for settlement purposes. As such, native Hawaiians would be placed in an unfair and disadvantaged position inasmuch as they may, ultimately, be forced to accept less-than-desirable settlement terms and make concessions that they would not have otherwise made had certain ceded lands, for example, been kept in the public lands trust.*<sup>8</sup>

By appealing to the United States Supreme Court, with the intent of having our Hawaii Supreme Court's decision overturned, the Lingle Administration shows its disagreement with the decision of our state's highest court. As a result, we have two of the three branches of government in disagreement. Our legislature, as a third branch of government, is well-poised to ensure that justice and righteousness continue in the pursuit of reconciliation.

Groups and organizations often seek justice through the legal system. We must now rely on our legislature to solidify that just ruling. We need you to support and pass a moratorium, Senate Bill 1085, on the sale of ceded lands until the unrelinquished claims of Native Hawaiians are resolved.

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<sup>8</sup> Office of Hawaiian Affairs v. Housing and Community Development Corporation of Hawaii, 117 Haw. 174, 216 (2008). Emphasis added.

Dear Senator Clayton Hee, Senator Jill Tokuda, Senator Robert Bunda, Senator Carol Fukunaga, Senator Russell Kokubun, Senator Dwight Takamine, and Senator Fred Hemmings,

I am submitting written testimony to support SB1085. I understand that the bill seeks to protect ceded land from sale. Ceded land is an important part in Native Hawaiian culture and history. While ceded land is public land, the Hawaii State Government's relationship to the land differ from the relationships other state governments have with public lands, because the Hawaii State Government obtained the land as a result of the illegal overthrow of the Hawaiian monarchy. States usually have fully sovereignty over public lands, but the power of the Hawaii State Government should be curtailed regarding ceded lands given the unique situation. In addition, the Native Hawaiians have a special relationship to land that differs from the American relationship to land. Without protection of ceded lands, Native Hawaiians may lose bargaining power as they seek redress for the injustices they have faced. Once the land is sold it will never be returned. Please carefully consider this bill as land is a very precious resource and cultural artifact in this state. Perhaps the ceded land should only be sold after sufficient redress has been made. I appreciate your time to consider my testimony. Thank you.

Sincerely,  
Connie Liu

Kupu'āina Coalition  
[www.stopsellingcededlands.com](http://www.stopsellingcededlands.com)

February 2, 2009

Hawai'i State Senate  
Committee on Water, Land, Agriculture, and Hawaiian Affairs  
State Capitol  
415 South Beretania Street

Aloha Chair Senator Clayton Hee, Vice Chair Senator Jill N. Tokuda, and Senators Bunda, Fukunaga, Kokubun, Takamine, and Hemmings,

Kupu'āina Coalition would like to express our strong support for S.B. 1085.

On January 31, 2008, in a **unanimous** decision, the Hawai'i Supreme Court, in *The Office of Hawaiian Affairs v. Housing and Community Development Corporation of Hawai'i* ("OHA v. HCDCH"), ruled that the State of Hawai'i can not sell Hawai'i's "ceded" lands until the unrelinquished rights of Native Hawaiians are resolved.

Despite the fact that Hawai'i's highest court resolved a completely local issue the Lingle Administration appealed this case to the U.S. Supreme Court. Such a decision threatens to divest Native Hawaiians of our unrelinquished claims to land and opens the door to future litigation.

As we saw in *Rice v. Cayetano*, the U.S. Supreme Court does not understand our history and the unique laws created by the people of Hawai'i to address the historical injustices of the Native Hawaiian people. The U.S. Supreme Court's misunderstandings could cripple reconciliation efforts, and lay the foundation for dismantling all Native Hawaiian programs.

We applaud this committee for moving quickly to support a moratorium and confirm the decision of our State's highest court, the Hawai'i Supreme Court, the Court most familiar with Hawai'i's unique laws and policies. S.B. 1085 is consistent with the State's policy and commitment to reconciliation with the Native Hawaiian people.

The Hawai'i State Legislature should feel comforted in knowing that the result of S.B. 1085 would benefit all of Hawai'i's people, including our non-Hawaiian 'ohana. It would serve all of us well to understand what comprises the Public Land Trust. The state currently does not have a complete inventory of "ceded" lands and as a fiduciary would be furthering its own responsibilities by understanding the trust corpus before allowing the sale of land.

The people of Hawai'i, particularly the Native Hawaiian people, have a special connection with the 'āina (land). We endeavor to protect these lands and S.B. 1085 would help provide that additional protection.

Mahalo Nui,

Kupu'āina Coalition, Jocelyn Doane, Derek Kauanoë, Davis Price

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 02, 2009 2:44 PM  
**To:** WTLTestimony  
**Cc:** omcreations@riseup.net  
**Subject:** Testimony for SB1085 on 2/4/2009 2:45:00 PM

Testimony for WTL 2/4/2009 2:45:00 PM SB1085

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: Robert Kinslow  
Organization: Individual  
Address:  
Phone:  
E-mail: [omcreations@riseup.net](mailto:omcreations@riseup.net)  
Submitted on: 2/2/2009

**Comments:**

As a taxpayer, and property owner, I strongly support allowing Kanaka maoli to recover their lands and to govern themselves. I support making amends and remediating their claims.

I do not support the state of Hawaii transferring title to lands to which the state DOES NOT have title.

The kingdom of Hawaii is still in existence. Respect our host ancestors. All of us, incl. the military benefit from the mistakes of our political forefathers. This system which gives us roads, schools and harbors must pay allegiance and remedy wrongs done to our host ancestors and their progeny.

I support a moratorium on the sale of "ceded" lands until the unrelinquished claims of Native Hawaiians are resolved. Let us inspire our children by our right actions. Let our generation make choices that affirm Kanaka claims to this aina.

---

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 02, 2009 8:45 PM  
**To:** WTLTestimony  
**Cc:** geesey@hawaii.edu  
**Subject:** Testimony for SB1085 on 2/4/2009 2:45:00 PM

Testimony for WTL 2/4/2009 2:45:00 PM SB1085

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: Yvonne Geesey  
Organization: Individual  
Address: PO Box 62245 HI  
Phone: (808) 227-9361  
E-mail: [geesey@hawaii.edu](mailto:geesey@hawaii.edu)  
Submitted on: 2/2/2009

**Comments:**

I am in support of a full moratorium on any action regarding the "ceded" lands.

---

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 02, 2009 10:38 PM  
**To:** WTLTestimony  
**Cc:** ileana@hawaii.edu  
**Subject:** Testimony for SB1085 on 2/4/2009 2:45:00 PM

Testimony for WTL 2/4/2009 2:45:00 PM SB1085

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: Ileana Haunani Ruelas  
Organization: Individual  
Address: 87-137 Kelikipi St. Waianae, HI 96792  
Phone: 808.342.8490  
E-mail: [ileana@hawaii.edu](mailto:ileana@hawaii.edu)  
Submitted on: 2/2/2009

Comments:

---

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 02, 2009 10:41 PM  
**To:** WTLTestimony  
**Cc:** jstodgel@hawaii.edu  
**Subject:** Testimony for SB1085 on 2/4/2009 2:45:00 PM

Testimony for WTL 2/4/2009 2:45:00 PM SB1085

Conference room: 229  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Joseph S Stodgel  
Organization: Individual  
Address: 2644 Oahu Ave Honolulu, HI  
Phone:  
E-mail: [jstodgel@hawaii.edu](mailto:jstodgel@hawaii.edu)  
Submitted on: 2/2/2009

Comments:  
I strongly oppose the selling of 'ceded' lands.

**Sovereign Councils  
of the**



**Hawaiian Homelands  
Assembly**

---

89-188 Farrington Highway  
Wai'anae, Hawai'i 96792  
Phone & Fax: (808) 668-0441

---

Kamaki Kanahele  
Chair  
O'ahu

Leah K. Pereira  
Vice-Chair  
Kaua'i

M. Kammy Purdy  
Secretary  
Moloka'i

M. Kanani Kapuniai  
Treasurer  
Hawai'i

Richard Soo  
Executive Director

**February 3, 2009**

**To: Senator Clayton Hee, Chair  
Senator Jill N. Tokuda, Vice Chair & Members of the  
Committee on Water, Land, Agriculture & Hawaiian Affairs**

**From: Kali Watson  
Chairman of Statewide Economic Development Committee  
SCHHA  
Honolulu, Hawaii 96792**

**Re: Hearing on SB -1085 Relating to Ceded Lands  
February 4, 2009 at 2:45pm  
Conference Room 229, State Capitol**

**TESTIMONY IN SUPPORT**

Dear Chair Hee, Vice Chair Tokuda and Members:

Thank you for the opportunity to provide testimony in support to SB 1085-relating to ceded lands. This bill prohibits the board of land and natural resources from selling, exchanging, or otherwise alienating ceded lands in the public land trust. The bill basically places a moratorium on ceded lands.

If this bill should become law, it forces the State to carry out its fiduciary responsibilities to all the people of Hawaii, but especially to its indigenous Hawaiian people. The SCHHA supports the obvious intent to place the State in the position of addressing and resolving the theft of lands from the Hawaiian people. If these "Ceded Lands" were lost forever through sales and transfers, then any settlement would be meaningless and empty for it is the "aina" or land that truly makes a nation whole and righteous.

The Sovereign Councils of the Hawaiian Homelands Assembly, formerly the State Council of Hawaiian Homestead Associations was founded more than 20 years ago to unite homestead communities and to advocate for the beneficiaries of the Hawaiian Homes Commission Act of 1921. The SCHHA is the oldest statewide advocacy organization representing the interests of more than 30,000 beneficiaries and families residing in the communities of the Hawaiian Home Land Trust. Its mission is to promote the self determination of native Hawaiians and the well being of homestead communities. DHHL lands are part of the ceded lands inventory.

I urge you to please pass this measure, SB 1085.

Sincerely,

*Kali Watson*

Kali Watson  
Chairman of Economic Development

720 Mahi'ai Street, Apt. E  
Honolulu, Hawai'i 96826-5635  
February 3, 2009

Senator Clayton Hee  
State Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs  
Hawai'i State Capitol  
415 South Beretania Street  
Honolulu, Hawai'i 96813

Dear Senator Hee,

Please accept my testimony **in support of SB 1085**, prohibiting sale of "ceded" lands.

Although I am haole, not Hawaiian, I find it extremely offensive that the Governor's office is trying to sell these lands. The claims of Native Hawaiians to these lands must first be resolved. It is unethical for the government to try to sell these lands. The Hawai'i State Supreme Court's ruling is pono.

I wholeheartedly support Native Hawaiians in their pursuit of a fair and just settlement of this issue. The "ceded" lands must not be sold until the Native Hawaiian claims to these lands have been resolved.

I strongly urge your committee to vote in favor of this bill.

Mahalo!

Sincerely,

Eileen Cain  
Honolulu

**JEANNINE JOHNSON**

5648 Pia Street, Honolulu, Hawai'i 96821

Phone: 373-2874 (h) / 537-7261 (w)

February 1, 2009

COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

Senator Clayton Hee, Chair

Senator Jill N. Tokuda, Vice Chair

Hearing:

**SB 1085**

Wednesday, February 4, 2009 at 2:45 p.m. in Conference Room 229

RELATING TO CEDED LANDS.

Prohibits the board of land and natural resources from selling, exchanging, or otherwise alienating ceded lands in the public land trust.

**SB 475**

RELATING TO LANDS CONTROLLED BY THE STATE.

Prohibits the sale or exchange of certain public lands considered to be ceded lands. Expires on decision of U.S. Supreme Court on pending appeal of related case.

Aloha Chair Hee, Vice Chair Tokuda and Honorable Committee Members,

I strongly support both of the above bills for the following reasons:

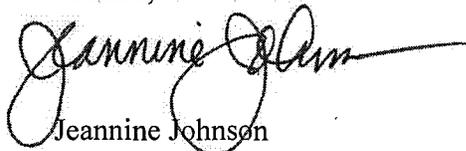
The current status of the Crown Lands, as simply part of the Public Lands Trust, ignores the significance of these lands to Native Hawaiians and their strong claim to them.

...

The State of Hawai'i's role as trustee of the Public Lands Trust for the benefit of Native Hawaiians is spelled out in Hawai'i's Constitution and was explained by the District Court in its Rice decisions. The Hawai'i Supreme Court has stated that "Article XII, Section 4 [of the Hawai'i State Constitution] imposes a fiduciary duty on Hawai'i's officials to hold ceded lands in accordance with the Section 5(f) trust provisions, and the citizens of the state must have a means to enforce compliance. **The State as trustee of the Public Land Trust is held to the same strict standards applicable to private trustees, and "the beneficiaries of this trust should not be left powerless to prevent the State from allegedly neglecting its obligations."** "Who Owns The Crown Lands of Hawai'i?" by Jon M. Van Dyke (emphasis added).

I humbly request your support for both of these important bills.

Mahalo,



Jeannine Johnson

cc: Sen. Sam Slom  
Rep. Lyla Berg  
Rep. Barbara Marumoto

---

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 03, 2009 8:01 AM  
**To:** WTLTestimony  
**Cc:** ppchawaii@yahoo.com  
**Subject:** Testimony for SB1085 on 2/4/2009 2:45:00 PM

Testimony for WTL 2/4/2009 2:45:00 PM SB1085

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: Judith A. Mick  
Organization: Individual  
Address: 1132 Ilikala Place Kailua, Hawaii  
Phone: 808-254-3357  
E-mail: [ppchawaii@yahoo.com](mailto:ppchawaii@yahoo.com)  
Submitted on: 2/3/2009

Comments:

It is imperative that DLNR be prohibited from jeopardizing the status of Hawaiian ceded lands by selling or exchanging any of that property. The indigenous people have unsettled claims that must be addressed first. We owe them that respect and the time to deal with their concerns. Thank you for your consideration. Aloha, Judy Mick

---

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 03, 2009 8:10 AM  
**To:** WTLTestimony  
**Cc:** glen.venezio@gmail.com  
**Subject:** Testimony for SB1085 on 2/4/2009 2:45:00 PM

Testimony for WTL 2/4/2009 2:45:00 PM SB1085

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: Glen Venezia  
Organization: Individual  
Address: San Juan, Puerto Rico  
Phone:  
E-mail: [glen.venezio@gmail.com](mailto:glen.venezio@gmail.com)  
Submitted on: 2/3/2009

Comments:

TO HAWAI'I'S LEGISLATORS:

I am writing you from halfway around the world away from Hawai'i, from the US territory of Puerto Rico, to say that I strongly support a moratorium on the sale of ceded lands, and hope that all legislators in Hawai'i do all they can to ensure that a moratorium is passed. This is the only "pono" option for the Hawaiian people. The world is watching you--- this issue is of interest to many people outside of Hawai'i, as evidenced by not only receiving my testimony from all the way in Puerto Rico, but also by seeing the international media coverage that this issue has received. For those of us like myself watching and waiting from far away to see what will happen, we know that the only way you can properly serve the people of Hawai'i, is to pass such a moratorium to ensure that all land claims will ultimately be resolved before anything else can occur there. The people of Hawai'i deserve nothing less. Thank you for your attention, and please see below an excerpt of an email that I sent to the office of Governor Lingle in late December.

Sincerely yours,

(Mr.) Glen Venezia  
a friend of the Kanaka Maoli/Hawai'ian people San Juan, Puerto Rico

Excerpt from an email that I sent to the office of Governor Lingle when she announced that she was appealing the ceded lands issue to the US Supreme Court:

(this letter was emailed to Governor Lingle, with copies to the Hawaiian State Senators and Representatives on Dec. 31, 2008. After receiving a reply the same day from the Governor's Communications Chief, Lois Hamaguchi, who sent me a copy of the Governor's Statement on the Ceded Lands, I wrote back again. I also received a very positive reply from Senator Suzanne Chun Oakland, who was kind enough to reply and say that she and many others feel the same way as I do.)

Governor Lingle,

Many people all over the world disagree strongly with what you are doing regarding the ceded lands. The ceded lands case should be withdrawn, you are creating a mess for the Hawai'ian people who have been suffering for so long under bad policies, and now your case continues the assault even further. Thank you for listening, this issue is not limited to your "state", many people from all over the world outside of Hawai'i, including myself, are very interested to see what you are doing in terms of the ceded lands, and so far what you are doing is clearly WRONG all the way around. I hope and pray that you will realize the mess you are making for Hawai'ian people, and withdraw the ceded lands case in the US Supreme Court. One rarely sees the colonizer doing the right thing for the colonized in today's modern world, but why would you want to be yet another "colonizer" making bad decisions that will continue the bad legacy of relations with Hawai'ian people?? Please do the right thing in this new year of 2009.

Thank you kindly for your attention and time, and much peace and happiness to you and your family in the New Year!

Sincerely yours,  
(Mr.) Glen Venezia  
San Juan, Puerto Rico

--


**JAPANESE AMERICAN CITIZENS LEAGUE**
**HONOLULU CHAPTER**
**P.O. BOX 1291, HONOLULU, HAWAII 96807**
**PHONE: 523-8464**
*Working For A Greater America*
**Board Members**

 Shawn L.M. Benton  
 President

 David Forman  
 Vice President

 Michael Murata  
 Treasurer

 Sean Ibara  
 Secretary

 Susan Arnett  
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 Liann Y. Ebcugawa  
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 Sonyei Matsuura  
 Trisha Nakamura  
 Karen Nakasone  
 Marcia Sakamoto-Wong  
 Yoshie Tanabe

**Legal Counsel**  
 Benjamin Kudo

**Advisory Council**  
 Allicyn Hikida-Tasaka  
 Clayton Ikei  
 William Kaneko  
 Colbert Matsumoto  
 Alan Murakami

**SB 1085: Relating to Ceded Lands  
 Testimony in Support**
**Hearing: Wednesday, February 4, 2009 at 2:45 p.m. in Conf. Rm 229**

 To: The Honorable Clayton Hee, Chair  
 The Honorable Jill N. Tokuda, Vice Chair  
 Members of the Committee on Water, Land, Agriculture, and Hawaiian Affairs

The JACL Hawai'i, Honolulu Chapter strongly supports SB 1085, prohibiting the Board of Land and Natural Resources from selling, exchanging, or otherwise alienating ceded lands in the public land trust.

Founded in 1929, the Japanese American Citizens League is the nation's oldest and largest Asian Pacific American Civil Rights organization made up of over 20,000 members. Locally, we are a strong civil rights organization committed to the protection of civil and human rights of all. The Honolulu chapter is a staunch supporter of the human and civil rights of Native Hawaiians, including their right to self-determination. We have been, and are, alarmed by the erosion of Native Hawaiian rights.

We were among the many groups supporting the 1993 Apology Bill, which acknowledged the illegal overthrow of the Kingdom of Hawai'i on January 17, 1993. The Apology Bill also acknowledged that 1.8 million acres of crown, government and public lands in the Kingdom of Hawai'i was ceded without the consent of or compensation to the Native Hawaiian people or their sovereign government. Native Hawaiians are the indigenous people of Hawai'i.

We recognize that while Japanese Americans have received redress and reparations for the injustice of the evacuation and internment, Native Hawaiians have received only an apology for the denial of their sovereign rights and the deprivations they have suffered. The JACL National Council adopted a resolution supporting reparations for Native Hawaiians at its 1984 Convention in Honolulu. Recently, JACL National, who represents all JACL chapters nationwide, filed a joint amicus brief on January 29, 2008, along with other national civil rights organizations supporting protection of the ceded lands. We feel that the State should not be able to unilaterally sell, exchange or alienate the ceded lands because the Native Hawaiians alone remain as beneficiaries of such lands. Therefore, we urge your support of SB 1085.

Sincerely,

 Shawn L.M. Benton  
 President, JACL Hawai'i, Honolulu Chapter  
 Japanese American Citizens League

---

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 03, 2009 10:22 AM  
**To:** WTLTestimony  
**Cc:** kwalk@hawaii.edu  
**Subject:** Testimony for SB1085 on 2/4/2009 2:45:00 PM

Testimony for WTL 2/4/2009 2:45:00 PM SB1085

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: Ka'ano'i Walk  
Organization: Individual  
Address: 45-359 Nakulu'ai St. Kane'ohe, Hawai'i  
Phone: 808-247-9869  
E-mail: [kwalk@hawaii.edu](mailto:kwalk@hawaii.edu)  
Submitted on: 2/3/2009

Comments:

Aloha,

He Hawai'i 'oiwi au a makemake au e kako'o i keia Pila. I am of Native descent and support a moratorium on the selling of any ceded lands until the issues surrounding the lands is resolved. The legislature is currently in a position to be a part of a landmark act that will send ripples for many generations after us. I pray that these comments find all with respect and humility but also with a deep sense of aloha 'aina. Let us do what is pono.

Aloha,  
Ka'ano'i Walk

THE TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2009

COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

Senator Clayton Hee, Chair  
Senator Jill N. Tokuda, Vice Chair

DATE: Wednesday, February 4, 2009  
TIME: 2:45 p.m.  
PLACE: State Capitol --- Conference Room 229  
415 South Beretania Street

**ALOHA, MY NAME IS: LEONA M. KALIMA**

**I AM IN SUPPORT OF THE FOLLOWING SENATE BILLS.....MAHALO**

SB 580

RELATING TO FORFEITURE.

Clarifies that the forfeiture laws apply to violations of conservation and resources statutes and rules and to protection of caves, historic preservation, and the Kaho'olawe island reserve.

SB 582

RELATING TO KULEANA LANDS.

Makes the office of Hawaiian affairs the trustee of any unclaimed kuleana lands. Prohibits quieting title to kuleana lands or claiming kuleana lands by adverse possession.

SB 1085

RELATING TO CEDED LANDS.

Prohibits the board of land and natural resources from selling, exchanging, or otherwise alienating ceded lands in the public land trust.

SB 475

RELATING TO LANDS CONTROLLED BY THE STATE.

Prohibits the sale or exchange of certain public lands considered to be ceded lands. Expires on decision of U.S. Supreme Court on pending appeal of related case.

SB 476

RELATING TO LANDS CONTROLLED BY THE STATE.

Requires two-thirds majority vote of the legislature to adopt concurrent resolution to sell or exchange certain public lands.



# LIFE OF THE LAND

76 North King Street, Suite 203

Honolulu, Hawai'i 96817

Phone: 533-3454; E: [kat.lifeoftheland@gmail.com](mailto:kat.lifeoftheland@gmail.com)

## **COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS**

Sen. Clayton Hee, Chair

Sen. Jill Tokuda, Vice Chair

Wednesday, February 4, 2009

2:45 PM

Room 229

### **STRONG SUPPORT**

**SB 1085 – Prohibits Sale of Seized, Not Ceded Lands**

**[WLTTestimony@capitol.hawaii.gov](mailto:WLTTestimony@capitol.hawaii.gov)**

Aloha Chair Hee, Vice Chair Tokuda and Members of the Committee!

My name is Kat Brady and I am the Assistant Executive Director of Life of the Land, Hawai'i's own energy, environmental and community action group advocating for the people and `aina for almost four decades. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

- SB 1085 prohibits the Board of Land and Natural Resources from selling, exchanging, or otherwise alienating 'ceded' lands in the public trust.

Life of the Land stands in STRONG SUPPORT of these bills and the Kanaka Maoli. We are saddened that this administration has decided to take this case to the U.S. Supreme Court, levying yet another insult upon the Hawaiian community who have suffered so many injustices already.

We emphasize 'seized', not 'ceded' because of the circumstances of the overthrow of Queen Lili'uokalani. When the guns of U.S. Marines were aimed at Iolani Palace to threaten the Queen, it's impossible to believe that the lands were given freely. That would be saying that individuals who commit the offense of robbery, were just given the property they stole at gunpoint.

What more can be taken from the Kanaka Maoli? The connection between the `aina and the Kanaka Maoli is indelible, and begs the question: Why would the Governor and the Attorney General, who profess to support the native people of this land, try to pave to way for another loss of culture? It boggles the mind.

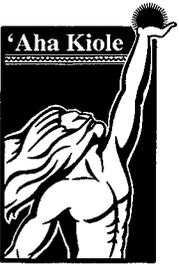
At the Hawaiian Caucus meeting, AG Bennett said that when becoming Hawai'i's Attorney General, he took an oath to uphold all Hawai'i laws and the Hawai'i State Constitution. He was then asked, "If the Legislature enacted a law for a moratorium on the sale of 'ceded' lands, would he drop the case? He emphatically stated, "NO!" So, there you have it.

The true history the Hawaiian nation is finally emerging, including the fact that Hawai'i had 145 trade agreements with nations across the globe. The Hawaiian Islands were known as the Switzerland of the Pacific for our neutrality. The Apology Bill finally acknowledged the illegal overthrow of the Hawaiian monarchy by the United States.

Don't let this hewa stand.

Please pass a prohibition on the sale or exchange of seized land – the birthright of every Kanaka Maoli.

Mahalo for this opportunity to testify in STRONG SUPPORT of Kanaka Maoli!



TESTIMONY OF  
AHA KIOLE ADVISORY COMMITTEE

Senate Committee on Water, Land, Agriculture and Hawaiian Affairs  
Conference Room 229, 2:45 p.m.

February 4, 2008

**IN SUPPORT OF**  
**SB 1085**

**Description:**

Prohibits the board of land and natural resources from selling, exchanging, or otherwise alienating ceded lands in the public land trust.

Aloha Chair Hee and Members of the Committee:

The Aha Kiole Advisory Committee (AKAC) was created through Act 212 in Legislative Session 2007 to create a system of best practices based upon the indigenous resource management practices of traditional moku (regional) boundaries that acknowledges the natural contours of land and the specific resources located within those areas, and the methodology necessary to sustain those resources and the community.

Since its inception in 2007, the AKAC has strived to restore the Aha Moku System, an ancient proven system of traditional land and ocean resource management used universally in Hawaii prior to the 9<sup>th</sup> century A.D. This restored system is to aide government in its goal of ecosystem sustainability in Hawaii today.

Just as the protection of natural and cultural resources are the inherited responsibility of the Hawaiian people from their ancestors, the ceded lands and Public Land Trust are the inherited responsibility of the State of Hawaii to hold in trust for its people. Holding in trust does not mean selling, exchanging, or otherwise alienating the ceded lands from the State responsibility.

SB 1085 supports the wishes of the Native Hawaiian community – no sale in fee-simple of ceded lands; no exchange of lands in the Public Land Trust for private land!

The Aha Kiole Advisory Committee representing the islands of Hawaii, Maui, Molokai, Lanai, Kahoolawe, Oahu, Kauai and Niihau are in support of HB 1805 as stated. Thank you for your consideration in hearing this testimony and we urge passage of this bill.

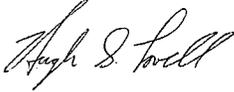
Respectfully,



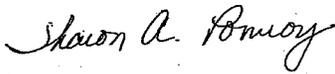
Vanda Hanakahi, Moloka'i, Chair



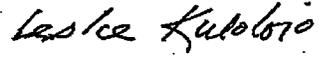
Timothy Bailey, Maui



Hugh Lovell, Hawai'i



Sharon Pomroy, Kaua'i



Leslie Kuloloio, Kahoolawe, Vice-Chair



Winifred Basques, Lana'i



Charles Kapua, O'ahu



Jean Ilei Beniamina, Ni'ihau

**PLEASE PASS THIS BILL SB1085!!!**

Hawaiian lands were never ceded, they were stolen and taken illegally. Not only was this action illegal, it was immoral, as well. The State of Hawaii has no jurisdiction over these "ceded lands" and should have no say over what is done with them. I urge that SB1085 be passed so that the sale of "ceded lands" is prohibited.

Think about the values that you want our children and the next generations to be raised with. By allowing the State of Hawaii to sell these "ceded lands" we are teaching our children that is acceptable to lie, deceive, and steal. I know I don't want my children growing up under a government that values those things.

Please pass SB1085, for our future as Hawaiians depends on it.

Mahalo nui,

Kelly Anne Beppu, Graduate Student

Myron B. Thompson School of Social Work

PLEASE PASS THIS BILL SB1085

Hawaiian lands were never given away. They were stolen and renamed “ceded lands” to justify the theft. These lands still belong to Native Hawaiians and should be returned to the Native Hawaiians.

The State of Hawai'i has made money off the backs of Native Hawaiians for too long, and this needs to stop. The State of Hawai'i has a legal and moral obligation to return these lands to the Native Hawaiians, and we can accomplish this goal by passing SB 1085, which prohibits the sale of ceded lands.

Mahalo nui,  
Brandee Aukai, Graduate Student  
Myron B. Thompson School of Social Work

---

**From:** Bob & Paulette Moore [mailto:[rjmppm@hawaiiantel.net](mailto:rjmppm@hawaiiantel.net)]  
**Sent:** Tuesday, February 03, 2009 1:51 PM  
**To:** Sen. Clayton Hee  
**Subject:** Support for Senate Bill 1085

Aloha Senator Hee

We strenuously support Senate Bill 1085 dealing with disposition of ceded lands. We support the Hawaii Supreme Court decision of January 2008 that required that the State to not sell ceded lands pending resolution of Native Hawaiian claims to those lands through a political reconciliation process. The Akaka Bill has perhaps its brightest prospect of passage through this session of the U.S. Congress, and it would provide one avenue for this reconciliation process. It therefore becomes crucial that we preserve the status quo of these ceded lands to allow land disposition to be determined only through legislative means, and not solely through independent administrative action by the governor. SB 1085 accomplishes this purpose.

Mahalo

Robert and Paulette Moore

2035 Aamomi Street

Pearl City, HI 96782

808.455-2737

[rjmppm@hawaiiantel.net](mailto:rjmppm@hawaiiantel.net)



**Senate Bill No. 1085  
RELATING TO CEDED LANDS**

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

February 4, 2009  
Room 229

2:45 p.m.

---

Aloha Chair Hee, Vice Chair Tokuda, and Members. **OHA**  
**strongly supports Senate Bill No. 1085** Relating to Ceded Lands.

This bill would enact public policy for a moratorium on the sale and exchange of ceded lands. The decision by OHA's Trustees to seek such legislation emerged following the state administration's appeal to the U.S. Supreme Court of a unanimous ruling by the Hawai'i Supreme Court that the State possesses a fiduciary duty to preserve the corpus of the public land trust, specifically the ceded lands, until such time as the "unrelinquished claims" of Native Hawaiians to these lands are resolved.

This bill is a means of maintaining the status quo and ensuring that the public land trust is preserved in order to ensure a fair and just settlement leading to reconciliation with the Native Hawaiian people. The bill serves as a legislative vehicle to implement the policy of the State's highest court

We urge your Committee to respond favorably to this bill.

Mahalo for the opportunity to testify.



February 3, 2009

Senator Clayton Hee, Chair, Committee on Water, Land, Agriculture and Hawaii Affairs  
Senator Brian T. Taniguchi, Chair, Committee on Judiciary and Government Operations  
c/o Committee clerk, Room 228, State Capitol

Dear Chairmen Hee and Taniguchi and members of the WTL and JGO Committees:

Re: **SB1085, ~~SB475 and SB476~~, and SB1677**

The Maunalua Hawaiian Civic Club supports the reconciliation between the State of Hawaii and the descendants and beneficiaries of the Hawaiian Kingdom. The ceded lands should not be alienated without consultation with the beneficiaries and survivors of the Hawaiian Kingdom. Clear title to land means that lands were transferred through legal transactions all the way back to when title was created. Ceded lands are special lands held in trust for descendants of the Kingdom of Hawaii.

As trustee for the Public and Native Hawaiians the State must be held to a high standard of Trust administration. By challenging the findings of their own high court, it is clear that the administration, despite all of her campaign promises, is against Native Hawaiians, native rights and the native trust. The administration is willing to attempt to undermine their own high court decision and their own authority by asking an outside authority, the US Supreme Court, to rule in their favor against the decision of their own court.

We ask the Hawaii Legislature to take the lead in this matter. Judge Healey stated in the original decision, some 14 years ago, that this is an issue that needs a political solution. Since the Executive will not do it, we ask the Legislature to take the lead and in this moratorium on the sale of ceded lands to begin the process of reconciliation.

Mahalo,

Kitty M. Simonds  
President

Maunalua Hawaiian Civic Club  
P.O. Box 240388, Aina Haina Station  
Honolulu, Hawai'i 96824

Aloha,

My name is JR Keonekapu Williams and I am in support of SB 1085, I think the trust should be left alone for future generations in the state of Hawaii. Why is it every program gets there fair share of monies excluding the Native Hawaiians from that trust. I strongly urge the state legislature to forbid DNLR with the State to sell these lands that was put into a public land trust. Under federal law some of that trust was for the Native Hawaiians but since statehood 1959 it seems everyone under that trust has got something but the Native Hawaiian Community. I urge you to support and pass this bill. Mahalo Nui.

JR Keonekapu Williams

**TESTIMONY**

**SB 1085**

**(END)**