



UNIVERSITY OF HAWAII SYSTEM Legislative Testimony

Testimony Presented Before the
House Committee on Water, Land, & Ocean Resources
and

House Committee on Judiciary
2 p.m. Friday, March 13, 2009
Conference Room 325

by
Gene Awakuni
Chancellor, University of Hawai'i – West O'ahu

SB 1677 SD1 – RELATING TO LANDS CONTROLLED BY THE STATE

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

Good afternoon Chairs Ito and Karamatsu, and Vice Chair Har, and members of the joint committees,

My name is Gene Awakuni, Chancellor of the University of Hawai'i West O'ahu. I am not here to speak against the intent of SB 1677 SD1 but rather to address what I believe are unintended consequences contained in the draft bill that have grave implications for UHWO's ability to move forward with its plan to raise revenue through the sale of land to which it holds title. Our land is not ceded land but in the opinion of our legal counsel, the language of SB 1677 which revises HRS Chapter 171 is so broad that it infers our land would be bound by the same requirement as ceded land. That is to say, before we could sell our land, we would need the adoption of a concurrent resolution by two-thirds majority vote of each house of the legislature. This would bring to a halt our effort to get Phase I of our new campus built by 2011 as planned to ensure compliance with the Campbell Estate covenants which were agreed upon when the land was conveyed to the university.

I urge you to consider a small revision that allows us the opportunity to sell a portion of our land for the purpose of building our campus as authorized by HRS 304A-2166.

Thank you.

ro-401ab

House of Representatives

LATE TESTIMONY

Committee on Water, Land & Ocean Resources

Rep.Ken Ito, Chair

Rep.Sharon E. Har, Vice Chair

Committee on Judiciary

Rep.Jon Riki Karamatsu, Chair

Rep, Ken Ito, Vice Chair

Date: March 13, 2009

Time: 2:00 p.m.

Place: Conference Rm, 329

State Capitol

415 S.Beretania Street

Aloha Mr. Chairman and distinguished committee members.

On behalf of Ali'I Nui Clifford Hashimoto, Grandmaster of the Royal Order of Kamehameha I.

I am speaking for the members of the Royal Order of Kamehameha I, which has participating chapters on the islands of Kauai, Maui, Oahu and Hawaii. We speak in support of SB 1667, SD1, HSCCR 976. This legislation calls for a moratorium on ceded lands. Why? To protect the integrity of the reconciliation process and to uphold the spirit of the law passed by Congress.

The former Crown and Government lands of the Kingdom of Hawaii were unlawfully transferred without proper authority from the Republic of Hawaii government (traitors to the then legitimate government of the Hawaiian Kingdom), then "ceded" to the United States government in 1898 by way of a joint resolution. That joint resolution was utilized, after proponents had tried not once but two times in failed attempts to annex the Kingdom of Hawaii and acquire its lands by way of a treaty of annexation. There is no authority under U.S. Constitution that allows annexation without securing a treaty between the parties. It is an uncontroverted historical fact and also part of the Congressional record that the U.S. never passed a treaty of annexation. Notwithstanding, the lands that were stolen ("ceded lands") by the U.S. in 1898, were later transferred (in large part) to the State of Hawaii in 1959.

Furthermore, the Apology resolution passed by U.S. Congress in 1993, Public Law 103-150 says in relevant part that "Native Hawaiians never relinquished control of their sovereignty or claims over their national lands". Indeed, this federal law called for a commitment to acknowledge the

ramifications of the illegal overthrow of the Kingdom of Hawaii, in order to provide a proper foundation for reconciliation between the U.S. and the Native Hawaiian people. Likewise, this resolution went on further to state that "it is proper and timely...to support the reconciliation efforts of the State...with Native Hawaiians. As such, there was a reasonable expectation that the proper parties would work toward an amicable solution.

Notwithstanding, the State of Hawaii has chosen the opposite path by appealing the case of OHA v. State of Hawaii, to entice the U.S. Supreme court to decide the question of title to the ceded lands. Such an action is totally contrary to the spirit of the law cited above, and sends a negative message to all Native Hawaiians that (instead of finding ways to reconcile) that it chooses instead to ignore the historical wrongs of the illegal theft of the ceded lands from Native Hawaiians.

To put this in perspective, let us take an example: If you get your car stolen, and the thief decides to return the same car (61) years later to you, Daniel, and Sam, we must ask: What is wrong with that picture? Logic and common sense dictates that the car should be returned to the original owner, you. It should NOT be returned to Daniel and Sam, but to you. However, incredibly the State of Hawaii is now arguing that when the Statehood Act was passed in 1959 making Hawaii the 50th State in the Union, the "ceded" lands were given by the U.S. and that it was the intent to give such lands to ALL of the people of Hawaii. In response, this argument has absolutely no merit.

First, we reject the concept that the State of Hawaii has any more rights than those who illegally claimed the lands at the time of the overthrow and illegal occupation.

Second, the U.S. did not have authority to transfer the "ceded lands" because it had not properly acquired these lands by use of a treaty, nor had it paid just compensation for the unlawful taking. It was a unilateral act without the consent of the Hawaiian Kingdom or Native Hawaiians.

Third, the U.S. Congress has clearly acknowledged the historical wrong by passing the Apology Resolution, and has also confirmed that Native Hawaiians never relinquished control of their sovereignty or claims over their national lands.

Fourth, we submit that that when the ceded lands were conveyed to the State of Hawaii in 1959 it was intended that the State would hold the ceded lands in trust, until an agreement with Native Hawaiians could be reached. Accordingly, the preferred way to reconcile this particular situation is to allow "good faith" negotiations to occur to permit both sides to reach a reasoned settlement on the ceded lands issue.

SB 1667, SD1, HSCCR 976, "requires two-thirds majority vote of the legislature to adopt a concurrent resolution to sell or exchange certain public lands. To be clear, it is our first and preferred position that a complete moratorium be imposed for any sale or exchange of "ceded

lands". However, this legislation represents a compromise of a complete moratorium. If the other bills pertaining specifically to a moratorium somehow do not pass this session, then we will support this particular legislation, as a backup.

Furthermore, we would like the Legislature to preserve the process of negotiations between Native Hawaiians and the State. If the State is allowed to sell, exchange or alienate ceded lands the practical result is that specific portion of ceded lands inventory will never be returned. It is important that the process of reconciliation be protected for to take portions of the ceded lands inventory off the table and to transfer to third parties even before we get to the table or reach any resolution is not only premature, but simply unjust.

President Barack Obama, we believe, reflected Hawaiian values when he said that the measure of a society is its ability to make the right decisions when times are tough. We ask you to make the right decisions; decisions that are "pono" in keeping with our shared values.

Mahalo nui loa for allowing us this time to present this statement to you.

State of Hawai'i govt. in the real estate business?

Alapaki Luke [REDACTED]

LATE TESTIMONY

Sent: Friday, March 13, 2009 10:03 AM**To:** WLOtestimony; JUDtestimony; Mailing List; Rep. Ken Ito; Rep. Sharon Har; Rep. Rida Cabanilla; Rep. Jerry Chang; Rep. Pono Chong; Rep. Denny Coffman; Rep. Robert Herkes; Rep. Chris Kalani Lee; Rep. Sylvia Luke; Rep. Hermina Morita; Rep. Roland Sagum; Rep. Corinne Ching; Rep. Cynthia Thielen; Rep. Jon Karamatsu; Rep. Della Belatti; Rep. Mele Carroll; Rep. Angus McKelvey; Rep. John Mizuno; Rep. Blake Oshiro; Rep. Joseph Souki; Rep. Clifton K. Tsuji; Rep. Glenn Wakai; Rep. Barbara Marumoto

Honorable Representatives of the State of Hawai'i
House Committee on Water, Land & Ocean Resources
House Committee on Judiciary
Friday, March 13, 2009 at 2:00pm
SB 1677

Dear Committee Chair Ken Ito, Madame Vice-Chair Sharon Har and members of the Committee on Water, Land, & Ocean Resources,

Dear Committee Chair Jon Karamatsu, Vice-Chair Ken Ito, and members of the Committee on Judiciary,

My name is Mark Alapaki Luke. I submit testimony in support of Senate Bill 1677 on the condition that SB 1677 be amended to better reflect the Hawai'i Legislature's policy as defined in Senate Concurrent Resolution 40, passed by the Senate and adopted by the House of Representatives last month. I'm not sure why the Governor is set on transferring title of State lands, even if it's for affordable housing. What happened to the idea of leasing land? Isn't that a more sustainable method of developing the lands? Once it is sold or transferred, it will be gone forever, to be speculated even further by profit hungry entities around the world.

Through Senate Concurrent Resolution 40, as members of the Legislature, you

- urged the Governor to "withdraw the appeal to the United States Supreme Court of the Hawai'i State Supreme Court decision" in the "ceded" lands case, and
- declared "the public policy of the State of Hawai'i is to honor the decision of the Hawai'i Supreme Court."

Passing SB 1677, in its current form, does not reflect the public policy described in Senate Concurrent Resolution 40.

I urge you to add the language below to SB 1677:

Chapter 171, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§171- Limitation on sale and transfers. The State shall not dispose of any lands in the public land trust, as described in subsection 171-18(a), whether by lease with option to purchase, sale, or exchange, except as provided in subsection 171-18(d); provided that the State may dispose of lands in the public land trust pursuant to subsection 171-18(c), if one of the following conditions is met:

(1) The claims of the native Hawaiian people, as defined in the United States Apology Resolution, Pub. L. No. 103-150, 107 Stat. 1510 (1993), have been resolved;

(2) The legislature finds pursuant to a concurrent resolution adopted by at least two-thirds majority vote of the members to which each house is entitled that the State no longer supports reconciliation between the State and the native Hawaiian people; or

___ (3) The approval of the disposition of the public lands trust land by lease with option to purchase, sale, or exchange occurs after December 31, 2014."

In addition to the above language, I also urge you to add the language below:

Notwithstanding any law to the contrary, the State, its political subdivisions, boards, agencies, departments, and entities created pursuant to state law, may hold or manage public land trust lands, as described in subsection (a), by lease, permit, license, easement, exchange, or set aside. In addition, upon the occurrence of an event as described in section 171- (1), (2), or (3), the State, its political subdivisions, boards, agencies, departments, and any other state entity may dispose of public land trust lands, whether by lease with option to purchase, sale, or exchange, provided that all of the following conditions are met:

- ___ (1) The State establishes a compelling state interest for the disposition;
- ___ (2) There is no reasonable alternate means to accomplish the compelling state interest;
- ___ (3) The disposition is limited to accomplishing the compelling state interest; and
- ___ (4) The disposition is approved by the legislature by concurrent resolution adopted by at least two-thirds majority vote of the members to which each house is entitled.

___ The conditions described in subsection (c)(1) to (4) shall not prevent the State from:

- ___ (1) Disposing of remnants, as defined in section 171-52;
- ___ (2) Providing easements to public utilities and government agencies pursuant to section 171-95; or
- ___ (3) Engaging in land exchanges pursuant to sections 171-50 and 171-51."

The above proposed language better reflects the public policy of our Legislature. Any and all text in the current form of SB 1677 that contradicts this proposed language should be omitted/stricken so as to recognize that the proposed language above is the language recognized in the Bill.

I urge you to pass 1677 only with amendments. I also urge you to schedule a hearing for SB 1085 which better reflects the public policy declared by our legislature.

Thank you for this opportunity to submit testimony.

Mark S. Alapaki Luke
Kumu (Teacher)
University of Hawai'i at Mānoa (Hawaiian Studies) & Honolulu Community College (Hawaiian Studies & Geography) &
Lo'i Assistant @ Ka Papa Lo'i o Kānewai

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Davis A. K. Price
House Committee on Water, Land & Ocean Resources
House Committee on Judiciary
Friday, March 13, 2009 at 2:00pm
SB 1677

Dear Committee Chair Ken Ito, Madame Vice-Chair Sharon Har and members of the Committee on Water, Land, & Ocean Resources,

Dear Committee Chair Jon Karamatsu, Vice-Chair Ken Ito, and members of the Committee on Judiciary,

My name is Davis Price and I am submitting testimony to support SB 1677 with amendments. I hope that you will consider amending SB 1677 or moving it forward while also moving SB 1085 forward when it comes to your committee for hearing. In passing SCR 40 earlier this session, it was this Legislature's position to support the Hawai`i Supreme Court's decision in the *OHA v. HCDCH* case. SB 1677 is not wholly consistent with the court's decision.

It is obvious that the two-thirds requirement will work to preserve the corpus of public lands, but it does not explicitly address the issue of reconciliation or self-determination for Native Hawaiian people. SB 1085 is a much more rounded bill covering all of the issues.

SB 1085 also imposes a two-thirds requirement, but only after reconciliation takes place or is no longer desired, or after a 5-year complete moratorium on the sale of any lands. This 5-year requirement is good for a number of reasons.

Coming into this process, I was supportive of a complete, indefinite moratorium, and still am supportive of that. To bar all sales of public lands is a wise move on the part of the State, because land is such a limited and valued resource in Hawai`i. A complete bar on all sales is also what the Hawai`i Court ordered. I understand that as the policy makers, you may not be ready to make such a deep commitment at this time. As a compromise between no moratorium and a complete moratorium, SB 1085 is the best bill.

The 5-year limitation also puts pressure on those involved to move forward and address the issue of reconciliation. This needs to be addressed, and I think that this case opened a lot of people's eyes and has "woken" them up. The momentum is there in the Native Hawaiian

Community and in the Legislature, the time is now, to bring everyone together and hash these issues out. The 5-year limitation should keep the momentum going on this issue. If a bill is passed with only the two-thirds requirement, there is no pressure on either side to act, thus we will continue to waste time and money in the courts fighting over issues that could be addressed as part of the reconciliation process.

I ask that you please amend SB 1677 to include the 5-year moratorium that is found in SB 1085. I have included the language below.

Mahalo,
Davis A. K. Price
William S. Richardson School of Law c/o 2010.

"§171- Limitation on sale and transfers. The State shall not dispose of any lands in the public land trust, as described in subsection 171-18(a), whether by lease with option to purchase, sale, or exchange, except as provided in subsection 171-18(d); provided that the State may dispose of lands in the public land trust pursuant to subsection 171-18(c), if one of the following conditions is met:

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