

TESTIMONY

SB 475



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

ON THE FOLLOWING MEASURE:

S.B. NO. 475, RELATING TO LANDS CONTROLLED BY THE STATE.

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

Chair Hee and Members of the Committee:

The Department of Attorney General opposes this bill.

This bill provides that its purpose is to "prohibit the sale and exchange of certain public lands considered to be ceded lands." The prohibition remains in effect "until the claims of the native Hawaiian people to the public land trust lands have been resolved or until the legislature finds that the State no longer supports reconciliation between the State and the native Hawaiian people."

We oppose the 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 adopted, 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 therefore respectfully ask the Committees 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 475
RELATING TO LANDS CONTROLLED BY THE STATE**

Senate Bill 475 proposes to prohibit the sale or exchange of certain public lands considered to be ceded lands. 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 CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT

ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAILOOLAWA 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>

From: Joel Fischer [jfischer@hawaii.edu]
Sent: Monday, February 02, 2009 3:30 PM
To: WTLTestimony
Subject: SB475;WTL;2/4/09; 2:45PM; Rm 229

Importance: High

SB475, Relating to Lands Controlled by the State
WTL; Chair, Sen Hee

PLEASE PASS THIS BILL!

What Lingle and Bennett are trying to do to Native land is scandalous!

HEWA!!!

Trying to cell ceded lands, especially after the State Supreme Court decision, is like driving a dagger into the heart of Native Hawaiian people. This is not, however, only an issue for Native people. It is an issue for all of us who support the rights and claims of the Kanaka Maoli, and who support human rights for all.

Lingle and Bennett know nothing about the history of these lands if they truly think they have the rights to them. When lands are stolen from a people, and then returned with restrictions, those people and their supporters are not bound by those restrictions. Ceded lands? NO! They are **stolen** lands!!

Linge and Bennett actually assert that the Native people have a MORAL claim to those lands. If lingle and her gang act in opposite ways to that which is moral, then their behaviors are hewa, i.e., immoral.

Please save the stolen lands and return them to the people.

Thank you.

Aloha, joel

Dr. Joel Fischer, ACSW
President, 19-3, Democratic Party

Professor
University of Hawai'i, School of Social Work
Henke Hall
Honolulu, HI 96822

"It is reasonable that everyone who asks justice should DO justice."
Thomas Jefferson

"There comes a time when one must take a position that is neither safe, nor politic, nor popular, but one must take it because one's conscience tells one that it is right."

Dr. Martin Luther King, Jr.

"Never, never, never quit."
Winston Churchill

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 -475 Relating to Lands Controlled by the State**
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 475-relating to lands controlled by the State. This bill prohibits the sale of exchange of certain public lands considered to be ceded lands. It also expires on decision of the U.S. Supreme court on pending appeal relating to the Hawaii Supreme Court's case. 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 475.

Sincerely,
Kali Watson

Kali Watson
Chairman of Economic Development


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
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 Liann Y. Ebesugawa
 Cathy Lowenberg
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 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 475: Relating to Lands Controlled by the State
 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 475, relating to lands controlled by the State of Hawai'i.

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. SB 475 continues to recognize that the State of Hawai'i has an obligation to the Native Hawaiians to recognize past injustice and accept responsibility for repairing such harm. Therefore, we urge your support of SB 475.

Sincerely,

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

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

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.

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

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

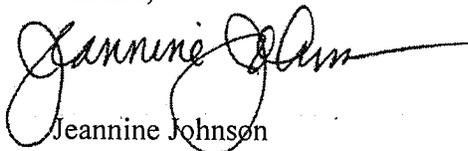
The current status of the Crown Lands, as simply part of the Public Lands Trust, ignores the significance of these lands to Native Hawaiians and their strong claim to them.

...

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

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~~

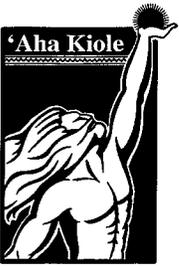
~~RELATING TO CEDED LANDS.
Prohibits the board of land and natural resources from selling,
exchanging, or otherwise alienating ceded lands in the public land
trust.~~

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.~~



TESTIMONY OF
AHA KIOLE ADVISORY COMMITTEE

IN SUPPORT OF
SB 475

Description:

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.

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

February 4, 2008

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 9th 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.

We believe that the will of the Native Hawaiian community is to oppose any sale in fee-simple of ceded lands and to oppose any exchange of lands in the Public Lands Trust.

The Aha Kiole Advisory Committee representing the islands of Hawaii, Maui, Molokai, Lanai, Kahoolawe, Oahu, Kauai and Niihau are in support of SB 475 as stated. Thank you for your consideration in hearing this testimony and we urge passage of this bill.

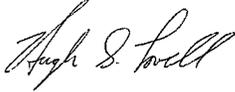
Respectfully,



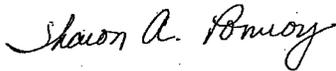
Vanda Hanakahi, Moloka'i, Chair



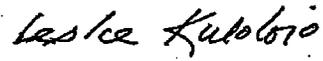
Timothy Bailey, Maui



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

Kupu'āina Coalition
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. 475 with amendments, which are attached.

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. 475 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. 475 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. 475 would help provide that additional protection.

Mahalo Nui,

Kupu'āina Coalition, Jocelyn Doane, Derek Kauano'e, Davis Price

RELATING TO LANDS CONTROLLED BY THE STATE.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

~~SECTION 1. In 1978, the Constitution of the State of
2 Hawaii was amended to include Article XII, sections 4, 5, and 6,
3 which established the office of Hawaiian affairs and its board
4 of trustees.~~

~~5 Sections 4, 5, and 6 of the State Constitution provide:~~

~~6 "SECTION 4. The lands granted to the State of
7 Hawaii by Section 5(b) of the Admission Act and
8 pursuant to Article XVI, Section 7, of the State
9 Constitution, excluding therefrom lands defined as
10 "available lands" by Section 203 of the Hawaiian Homes
11 Commission Act, 1920, as amended, shall be held by the
12 State as a public trust for native Hawaiians and the
13 general public.~~

~~14 SECTION 5. There is hereby established an Office
15 of Hawaiian Affairs. The Office of Hawaiian Affairs
16 shall hold title to all the real and personal property
17 now or hereafter set aside or conveyed to it which~~

~~1 shall be held in trust for native Hawaiians and
2 Hawaiians. There shall be a board of trustees for the
3 Office of Hawaiian Affairs elected by qualified voters
4 who are Hawaiians, as provided by law. The board
5 members shall be Hawaiians. There shall be not less
6 than nine members of the board of trustees; provided
7 that each of the following Islands have one
8 representative: Oahu, Kauai, Maui, Molokai and
9 Hawaii. The board shall select a chairperson from its
10 members.~~

~~11 SECTION 6. The board of trustees of the Office
12 of Hawaiian Affairs shall exercise power as provided
13 by law: to manage and administer the proceeds from
14 the sale or other disposition of the lands, natural
15 resources, minerals and income derived from whatever
16 sources for native Hawaiians and Hawaiians, including
17 all income and proceeds from that pro rata portion of
18 the trust referred to in section 4 of this article for
19 native Hawaiians; to formulate policy relating to
20 affairs of native Hawaiians and Hawaiians; and to
21 exercise control over real and personal property set
22 aside by state, federal or private sources and~~

~~1 transferred to the board for native Hawaiians and
2 Hawaiians. The board shall have the power to exercise
3 control over the Office of Hawaiian Affairs through
4 its executive officer/ the administrator of the Office
5 of Hawaiian Affairs/ who shall be appointed by the
6 board. "~~

~~7 Act 354/ Session Laws of Hawaii 1993/ stated in pertinent
8 part in section 1: "Until the provisional government was
9 recognized by John L. Stevens/ the Kingdom of Hawaii was
10 recognized as an independent nation by the united States/
11 France/ and Great Britain. Many native Hawaiians and others
12 view the overthrow of 1893 and subsequent actions by the United
13 States/ such as supporting establishment of the provisional
14 government and later the Republic of Hawaii/ the designation of
15 the crown and government lands as public lands/ annexation/ and
16 the ceding of public lands to the federal government without the
17 consent of native Hawaiians/ as illegal. Because the actions
18 taken by the United States were viewed as illegal and done
19 without the consent of native Hawaiians/ many native Hawaiians
20 feel there is a valid legal claim for reparations. Many native
21 Hawaiians believe that the lands taken without their consent
22 should be returned and if not/ monetary reparations made/ and~~

~~1 that they should have the right to sovereignty, or the right to
2 self-determination and self-government as do other native
3 American peoples.~~

~~4 The legislature has also acknowledged that the actions by
5 the United States were illegal and immoral, and pledges its
6 continued support to the native Hawaiian community by taking
7 steps to promote the restoration of the rights and dignity of
8 native Hawaiians."~~

~~9 Act 359, Session Laws of Hawaii 1993, stated in pertinent
10 part in section 1:~~

~~11 " (4) Throughout the 19th century and until 1893, the United
12 States:~~

~~13 (A) Recognized the independence of the Hawaiian
14 Nation;~~

~~15 (B) Extended full and complete diplomatic recognition
16 to the Hawaiian government; and~~

~~17 (C) Entered into treaties with the Hawaiian
18 government to govern commerce and navigation in
19 1826, 1842, 1849, 1875, and 1887;~~

~~20 * * *~~

~~21 (6) In pursuit of that conspiracy, the United States
22 Minister and the naval representative of the United~~

~~1 States caused armed forces of the United States to
2 invade the sovereign Hawaiian Nation in support of the
3 overthrow of the indigenous and lawful government, and
4 the United States Minister thereupon extended
5 diplomatic recognition to the provisional government
6 formed by the conspirators without the consent of the
7 native Hawaiian people or the lawful Government of
8 Hawaii in violation of treaties between the two
9 nations and of international law;~~

~~10 * * *~~

~~11 (9) In 1898, Hawaii was annexed to the United States
12 through the Newlands Resolution without the consent of
13 or compensation to the indigenous people of Hawaii or
14 their sovereign government. As a result, the
15 indigenous people of Hawaii were denied the mechanism
16 for expression of their inherent sovereignty through
17 self-government and self-determination, their lands,
18 and their ocean resources."~~

~~19 In 1993, Congress passed Public Law 103-150, the Apology
20 Resolution, which stated in pertinent part:~~

~~21 Whereas, from 1826 until 1893, the United States
22 recognized the independence of the Kingdom of Hawaii,~~

~~1 extended full and complete diplomatic recognition to
2 the Hawaiian Government, and entered into treaties and
3 conventions with the Hawaiian monarchs to govern
4 commerce and navigation in 1826, 1842, 1849, 1875, and
5 1887;~~

~~6 * * *~~

~~7 Whereas, on July 4, 1894, the Provisional
8 Government declared itself to be the Republic of
9 Hawaii;~~

~~10 * * *~~

~~11 Whereas, through the Newlands Resolution, the
12 self-declared Republic of Hawaii ceded sovereignty
13 over the Hawaiian Islands to the United States;
14 Whereas, the Republic of Hawaii also ceded
15 1,800,000 acres of crown, government and public lands
16 of the Kingdom of Hawaii, without the consent of or
17 compensation to the Native Hawaiian people of Hawaii
18 or their sovereign government;
19 Whereas the Congress, through the Newlands
20 Resolution, ratified the cession, annexed Hawaii as
21 part of the United States, and vested title to the
22 lands in Hawaii in the United States;~~

~~***~~

~~2 Whereas the indigenous Hawaiian people never
3 directly relinquished their claims to their inherent
4 sovereignty as a people or over their national lands
5 to the United States, either through their monarchy or
6 through a plebiscite or referendum;~~

~~7 ***~~

~~8 SECTION 1. ACKNOWLEDGMENT AND APOLOGY.~~

~~9 The Congress—~~

~~10 (1) on the occasion of the 100th anniversary of
11 the illegal overthrow of the Kingdom of Hawaii on
12 January 17, 1893, acknowledges the historical
13 significance of this event which resulted in the
14 suppression of the inherent sovereignty of the Native
15 Hawaiian people;~~

~~16 ***~~

~~17 (3) apologizes to Native Hawaiians on behalf of
18 the people of the United States for the overthrow of
19 the Kingdom of Hawaii on January 17, 1893 with the
20 participation of agents and citizens of the United
21 States, and the deprivation of the rights of Native
22 Hawaiians to self-determination;~~

~~(4) expresses its commitment to acknowledge the
2 ramifications of the overthrow of the Kingdom of
3 Hawaii, in order to provide a proper foundation for
4 reconciliation between the United States and the
5 Native Hawaiian people; and
6 (5) urges the President of the United States to
7 also acknowledge the ramifications of the overthrow of
8 the Kingdom of Hawaii and to support reconciliation
9 efforts between the United states and the Native
10 Hawaiian people. H~~

~~11 In 1993, the legislature also adopted Concurrent
12 Resolution 93-2 that included almost all of the parts of
13 the Apology Resolution including the finding that:
14 HWhereas the indigenous Hawaiian people never directly
15 relinquished their claims to their inherent sovereignty as
16 a people or over their national lands to the United States,
17 either through their monarchy or through a plebiscite or
18 referendumH~~

~~19 Act 329, Session Laws of Hawaii 1997, stated in pertinent
20 part in section 1:
21 liThe legislature finds that the events of history
22 relating to Hawaii and Native Hawaiians, including~~

~~those set forth in [the Apology Resolution]
2 continue to contribute today to a deep sense of
3 injustice among many Native Hawaiians and others. The
4 legislature recognizes that the lasting reconciliation
5 so desired by all people of Hawaii is possible only if
6 it fairly acknowledges the past while moving into
7 Hawaii's future.~~

~~8 The legislature further finds that over the last
9 few decades, the people of Hawaii, through amendments
10 to their state constitution, the acts of their
11 legislature, and other means, have moved substantially
12 toward this permanent reconciliation. Foremost among
13 these achievements have been the creation of the
14 office of Hawaiian affairs and the allocation by
15 legislative action to the office of Hawaiian affairs
16 of substantial funds out of a portion of the public
17 land trust established by section 5(f) of the
18 Admission Act. The overriding purpose of this Act is
19 to continue this momentum, through further executive
20 and legislative action in conjunction with the people
21 of Hawaii, toward a comprehensive, just, and lasting~~

~~In 2001, S. 746, the federal legislation commonly referred
2 to as the "Akaka bill" was passed out of the Senate Committee on
3 Indian Affairs. Senate Committee Report No. 107-66, on the
4 Akaka bill explains that its purpose "is to authorize a process
5 for the reorganization of a Native Hawaiian government and to
6 provide for the recognition of the Native Hawaiian government by
7 the United States for the purpose of carrying on a government-
8 to-government relationship." The Akaka bill authorizes the
9 federal government to negotiate with the State and the
10 reorganized native Hawaiian government for a transfer of land
11 and resources to a native Hawaiian government. The native
12 Hawaiian government would thus have a land base and resources
13 and a status similar to that of other native peoples in the
14 United States. The committee report on the Akaka bill explains
15 that "it is the Committee's intent that the references to 'land,
16 resources, and assets dedicated to native Hawaiian use' include,
17 but not be limited to lands set aside under the Hawaiian Homes
18 Commission Act and ceded lands."
19 In 2007, H.R. 505, the latest version of the Akaka bill,
20 passed the United States House of Representatives. Section 8 of
21 H.R. 505 also includes a provision authorizing the United States
22 and State of Hawaii to "enter into negotiations with the Native~~

~~1 Hawaiian governing entity designed to lead to an agreement
2 addressing such matters as the transfer of lands, natural
3 resources, and other assets, and the protection of existing
4 rights related to such lands or resources."~~

~~5 In January 2008, the Hawaii Supreme Court in Office of
6 Hawaiian Affairs v. Housing And Community Development
7 Corporation Of Hawaii, 117 Hawaii 174, 177 P.3d 884 (2008),
8 enjoined the State from selling or otherwise transferring to
9 third parties any ceded lands from the public lands trust until
10 the claims of the native Hawaiian people to the ceded lands have
11 been resolved. In October 2008, the united States Supreme Court
12 granted the State's petition for certiorari in the foregoing
13 case.~~

14 The purpose of this Act is to prohibit the sale and
15 exchange of certain public lands considered to be ceded lands.

16 SECTION 2. Chapter 171, Hawaii Revised Statutes, is
17 amended by adding a new part to be appropriately designated and
18 to read as follows:

19 II PART CEDED LANDS

20 11§171- Sale of lands in the public land trust. (a)

21 Notwithstanding any law to the contrary, no sale in fee simple
22 shall be made of:

1 (1) Lands ceded to the united States by the Republic of
2 Hawaii under the joint resolution of annexation,
3 approved July 7, 1898 (30 Stat. 750), or acquired in
4 exchange for lands so ceded, and granted to the State
5 of Hawaii by virtue of section 5 {b) of the Admission
6 Act of 1959; or

7 (2) Lands retained by the United States under section 5 {c)
8 and (d) of the Admission Act of 1959 and later
9 conveyed to the State under section 5 {e) or under the
10 Act of December 23, 1963 {Pub. Law 88-233, 77 Stat.
11 472) .

12 §171- Exchange of lands in the public land trust for
13 private land. (a) Notwithstanding any law to the contrary, no
14 exchange shall be made of:

15 (1) Lands ceded to the United States by the Republic of
16 Hawaii under the joint resolution of annexation,
17 approved July 7, 1898 (30 Stat. 750), or acquired in
18 exchange for lands so ceded, and granted to the State
19 of Hawaii by virtue of section 5 {b) of the Admission
20 Act of 1959; or

21 (2) Lands retained by the United States under section 5 {c)
22 and (d) of the Admission Act of 1959 and later

1 conveyed to the State under section 5 {e) or under the
2 Act of December 23, 1963 (Pub. Law 88-233, 77 Stat.
3 472) . "

4 SECTION 3. This Act does not affect the state practice of
5 transferring remnants, and issuing licenses, permits, easements
6 and leases.

7 SECTION 4. This Act shall remain in effect until the
8 claims of the native Hawaiian people to the public land trust
9 lands have been resolved. ~~or until the legislature finds that the~~
~~10 state no longer supports reconciliation between the State and~~
~~11 the native Hawaiian people.~~

12 SECTION 5. This Act shall take effect upon its approval.

13

INTRODUCED BY:

By Request

Report Title:**Ceded Lands; Public Lands; Sale; Exchange; Prohibition on Disposition****Description:**

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.~~

PLEASE PASS THIS BILL SB 475

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 475, which prohibits the sale of ceded lands.

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

PLEASE PASS THIS BILL SB475!!!

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 SB475 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 SB475, for our future as Hawaiians depends on it.

Mahalo nui,

Kelly Anne Beppu, Graduate Student

Myron B. Thompson School of Social Work



**Senate Bill No. 475
RELATING TO LANDS CONTROLLED BY THE STATE**

**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. 475 Relating to Lands
Controlled by the State.

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: ~~SB1083, 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,

A handwritten signature in cursive script that reads "Kitty M. Simonds".

Kitty M. Simonds
President

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

TESTIMONY

SB 475

(END)