

**TESTIMONY**

**SB 1677**



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 1677, RELATING TO LANDS CONTROLLED BY THE STATE.

**BEFORE THE:**

SENATE COMMITTEE ON WATER, LAND, AGRICULTURE AND HAWAIIAN AFFAIRS  
AND ON JUDICIARY AND GOVERNMENT OPERATIONS

**DATE:** Wednesday, February 4, 2009 **TIME:** 4:00 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 the Attorney General offers the following comments on this bill.

While nothing stands in the way of lawsuits being filed in the federal courts challenging this bill's constitutionality, were it to be enacted, we believe this bill does not facilitate the types of challenges that other bills to prohibit the sale or exchange of ceded lands would generate, were they to be enacted. However, we recommend amendments to certain provisions of the bill.

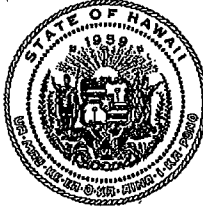
This bill conditions the sale or exchange of the lands listed in the bill upon the department or other state agency proposing the sale or exchange first securing the Legislature's approval of the sale or exchange, as evidenced by the adoption of a concurrent resolution by at least a two-thirds majority of the members of each house.

We suggest that the bill be amended to be consistent with statutes like sections 171-41 and 171-50, Hawaii Revised Statutes, which subject exchanges of certain state lands and sales for certain purposes, to legislative disapproval, rather than pre-approval, by a two-thirds vote of either the House or the Senate, or by a majority vote of each of the houses at a regular or special session following the date of disposition.

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."

If the Committee passes this bill, we respectfully ask that it be passed with the recommended amendments.

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  
and  
JUDICIARY AND GOVERNMENT OPERATIONS**

**Wednesday, February 4, 2009  
4:00 PM  
State Capitol, Conference Room 229**

**In consideration of  
SENATE BILL 1677  
RELATING TO LANDS CONTROLLED BY THE STATE**

Senate Bill 1677 proposes to require two-thirds majority vote of the Legislature to adopt concurrent resolution to sell or exchange certain public 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  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**Sovereign Councils  
of the**



**Hawaiian Homelands  
Assembly**

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

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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**

**Senator Brian Taniguchi, Chair**  
**Senator Dwight Takamine, Vice Chair & Members of the**  
**Committee of Judiciary & Government Operations**

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

Re: **Hearing on SB -1677 Relating to Lands Controlled by the State**  
**February 4, 2009 at 4:00pm**  
**Conference Room 229, State Capitol**

**TESTIMONY IN SUPPORT**

Dear Chairs Hee & Taniguchi, Vice Chairs Tokuda & Takamine and  
Members:

Thank you for the opportunity to provide testimony in support to SB 1677-  
relating to lands controlled by the State. This bill provides needed legislative  
oversight on the sale or exchange of State lands. It allows the legislature 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 possible transfer of "Ceded Lands" under the  
purview and control of our State's elected leaders, rather than the whims and  
easily influenced discretion of State bureaucrats.

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 1677.

Sincerely,  
*Kali Watson*

Kali Watson  
Chairman of Economic Development

TO: COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS;  
Senator Clayton Hee, Chair, Senator Jill N. Tokuda, Vice Chair; and  
COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS;  
Senator Brian Taniguchi, Chair; Senator Dwight Takamine, Vice Chair

Re: SB 1677 For hearing Wednesday, February 4, 2009 4:00 p.m Room 229

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

Aloha Chairs Hee and Taniguchi, Vice Chairs Tokuda and Takamine; committee members, and members of the public.

What makes this bill different from the other ceded land bills is the provision to require a 2/3 vote of the Legislature before ceded lands can be sold. However, the Legislature in session this year cannot bind any Legislatures of future years. Any future Legislature could, by simple majority vote, repeal this 2/3 requirement and make its own decision whether to sell ceded lands and by what voting process to authorize such a sale. The only way to bind future Legislatures is to pass a Constitutional amendment.

This proposal is terribly unbalanced, because it restricts the state or any of its agencies from selling any ceded lands, but it does not impose any restriction on the state transferring public lands to the control of OHA or to the control of a future Akaka tribe aka "Native Hawaiian Governing Entity."

I find it legally unconstitutional and morally reprehensible for the State of Hawaii, or any of its agencies, to give any public lands to any government or private entity which practices racial discrimination or exclusion, even if such racial discrimination occurs under the euphemism of "indigenous people." Please at least amend this bill to add the following concept: The State of Hawaii, and its agencies, are hereby prohibited from selling, giving away, or leasing any of Hawaii's public lands (including the ceded lands) to any government or private agency or institution which practices racial discrimination or racial exclusion, including providing benefits or services to beneficiaries who are restricted according to race, gender, or national origin.

Now let me tell you a few things about the ceded lands which you might not have heard before, including 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 Lili'uokalani 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>



**Senate Bill No. 1677  
RELATING TO LANDS CONTROLLED BY THE STATE**

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

**Senate Committee on Judiciary and Government Operations**

February 4, 2009  
Room 229

4:00 p.m.

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Aloha Chairs Hee and Taniguchi, Vice Chairs Tokuda and Takamine, and Members.

The decision by OHA's Trustees to seek moratorium 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. OHA believes that any moratorium legislation should reflect and be consistent with the Hawai'i Supreme Court's ruling.

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,

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 1677**

**(END)**