UNIVERSITY OF HAWAIʻI SYSTEM
Legislative Testimony

Testimony Presented Before the
Senate Committee on Ways and Means
February 23, 2018 at 10:30 a.m.
by
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SB 2136 SD1 – RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF PUBLIC LAND TRUST FUNDS

Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the committee:

Thank you for the opportunity to submit comments with strong concerns on SB 2136 SD1. The educational mission of the University of Hawaiʻi (UH), as set forth in Board of Regents Policy, includes embracing, as the only provider of public higher education in Hawaiʻi, its unique responsibilities to the indigenous people of Hawaiʻi and to Hawaiʻi's indigenous language and culture. To fulfill this responsibility, UH ensures active support for the participation of Native Hawaiians at the University and support vigorous programs of study and support for the Hawaiian language, history, and culture. That said, the UH has serious concerns with SB 2136 SD1 in its current form, on the basis that this measure promotes foreseeable increased fiscal impacts to the University and its students and programs in particular, as well as taxpayers more generally.

This bill replaces the annual fixed amount with a blank amount paid to the Office of Hawaiian Affairs (OHA) on an interim basis as its pro rata share of income and proceeds from the public land trust, with a blank amount for the annual share beginning in fiscal year 2018-2019 on State agencies to pay OHA including all "receipts for the use, sale, lease, or other disposition of the public land trust" on a quarterly basis. UH is concerned that the term "receipts" is not clearly defined or appropriately limited by SB 2136 SD1 as currently drafted, and may be construed to include UH funds such as student tuition and fees that are currently, and properly, excluded from the computation of amounts due from UH toward OHA's pro rata share of the public land trust. The term "receipts" may also imply gross receipts as opposed to net receipts thereby jeopardizing the financial stability of campus bookstores.

UH, as a public institution of higher education and also a beneficiary of the Public Land Trust, serves one of the express purposes, and in fact the first-mentioned purpose of the Public Land Trust established by the Admission Act. Under current law, as interpreted and applied by the Office of the Attorney General, receipts from the University's educational programs and ancillary services are not subject to apportionment to OHA. Such receipts include student tuition and fees, services of educational departments, and student housing. The University also receives federal and other research grants and contracts, federal reimbursements of UH research overhead expenses, philanthropic gifts, and other funding streams, in addition to the support provided by the Legislature.

Currently, in accordance with past discussions with the Office of the Attorney General, OHA has been determined to be entitled to a pro rata share of specific types of University revenues as described in Conference Committee Report No. 101 to SB 2948, which became Act 178, Session Laws of Hawaiʻi (SLH) 2006. Recently, the University has made the following payments to OHA: FY 2015- 643,289.48; FY 2016- $650,480.96; and FY 2017- $620,302.18. Those revenue sources are: UH Mānoa and UH Hilo parking, faculty housing, non-student housing rentals, including food and vending machines, telephone commissions/collections, and UH Hilo Bookstore logo products, sundries but not books or school supply items.

UH acknowledges the requirements set forth by Act 178, SLH 2006, regarding OHA's allocated share of public land trust receipts. However, given recent positions taken by OHA, the University is deeply concerned that the use of the undefined term "receipts" in SB 2136 SD1 could lead to claims that other types of University funds are also subject to OHA's pro rata share. For example, increasing the pro rata share of $15.1 million of existing revenues to OHA to $35 million (as contemplated in the original SB 2136) would potentially increase the University's obligation to more than $1.1 million. The difference would require funding from other University revenues and diminish funding for existing University educational programs. This would lead to potentially unmanageable financial impacts to the University, students, and taxpayers relating to all State services.

Thank you for your time and consideration.