



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Finance
April 4, 2022 at 2:30 p.m.

by
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SB 2021 SD1 HD1 – RELATING TO INCREASING THE PAYMENT AMOUNT FOR THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF THE PUBLIC LAND TRUST

Chair Luke, Vice Chair Yamashita, and members of the committee:

The University of Hawai'i (University) supports SB 2021 SD1 HD1, but recommends revisions to the extent that it recognizes the University's and Department of Education's constitutionally established educational mission and unique relationship to the public land trust as beneficiaries under Section 5(f) of the Admissions Act. The University continues to be firmly committed to the betterment of Native Hawaiians, which make up its Section 5(f) beneficiaries, and the University has a deep respect for the constitutional role of the Office of Hawaiian Affairs (OHA).

As previously noted in our testimony on SD1, the proposed changes to Section 2 of SD1 HD1 are concerning. First, the general statement that "net receipts" should exclude "any income, proceeds, fees, charges, or other moneys derived through the exercise of sovereign functions and powers" was removed from the original version of SB 2021. It should be reinserted. Second, specific monies for carrying out the University's responsibilities to its Section 5(f) beneficiaries were removed, including the following:

- "Moneys received by any public educational institution, including the University of Hawaii, and the community college system, from its educational programs and ancillary services, such as tuition, registration fees, meals, books, grants, or scholarships,"
- "Grants, carry-overs, and pass-throughs," and
- "Federal moneys, including federal-aid, grants, subsidies, and contracts."

The above exceptions that were removed in SD1 should be reinserted. Third, as stated in our testimony to the original version of SB 2021, "ancillary services" should be more broadly defined. The University, as with other departments, have operations that rely on funding from many auxiliary services, including among others, revenues from university housing, research awards, bookstores, and student parking.

The University also provides its university-generated revenue towards Native Hawaiian students and programs above what it currently provides to OHA as shared revenues. If this bill seeks to fairly and equitably account for pro rata contributions, then the bill should credit and recognize the University for this contribution.

The University and OHA were both established by the Hawai'i State Constitution, the University in 1959 and OHA in 1978. The Hawai'i State Constitution further and expressly directs that University lands be used solely for its purposes. Article X, Section 5, states that the University "shall have title to all the real and personal property now or hereafter set aside or conveyed to it, which shall be held in public trust for its purposes[.]" See Hawai'i State Constitution, Article X, Section 5.

The United States Congress through Section 5(f) of the Admissions Act designated five categories to benefit from the public land trust. Public educational institutions are the first of the five categories to benefit from the trust. The Admissions Act states:

(f) ***The lands granted to the State of Hawai'i by subsection (b) of this section and public lands retained by the United States under subsections (c) and (d) and later conveyed to the State under subsection (e), together with the proceeds from the sale or other disposition of any such lands and the income therefrom, shall be held by said State as a public trust [1] for the support of the public schools and other public educational institutions, [2] for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended, [3] for the development of farm and [4] home ownership on as widespread a basis as possible for the making of public improvements, and [5] for the provision of lands for public use... The schools and other educational institutions supported, in whole or in part out of such public trust shall forever remain under the exclusive control of said State[.]***

The Admission Act, §5(f) (1959); emphasis, ellipsis, brackets, and numbering added.

The University strives to maximize the impact of all its resources as it works to provide public higher education across the islands to ensure that all of Hawai'i's students, including Native Hawaiians, have the knowledge, skills, capacity and tenacity to meet the challenges and opportunities facing Hawai'i's families and communities in today's dynamic environment.

Independent from payments made pursuant to Act 178, SLH 2006, the University currently provides millions of dollars per year in direct tuition benefits from its own

resources to Native Hawaiian students. In each academic year from 2014-2015 through and including 2020-2021, the University has provided in excess of \$7,000,000 to Native Hawaiian students in tuition waivers and non-resident tuition differentials.

As we have articulated in years past and as SB 2021 SD1 HD1 confirms, given that the University is a beneficiary of the public land trust, the University should be able to use proceeds from its lands for its educational mission, and should not be required to provide receipts from the public land trust to another beneficiary entity. Accordingly, the University supports SB 2021 SD1 HD1 to the extent that it ends the University's obligation to provide receipts from the University's lands to OHA.

Thank you for your time and consideration.