

April 14, 198

Testimony
to the
Senate Ways and Means Committee
on H.B. No. 1853-80, S.D. 1
entitled

"A Bill for an Act Relating to the
Office of Hawaiian Affairs"

by the Native Hawaiian Legal Corporation
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Article XII, section 4, of the Constitution of the State of Hawaii states that:

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

Our State Constitution thus specifically states that native Hawaiians are entitled to benefits from the lands ceded to the United States at the time of annexation, in addition to the benefits of the Hawaiian Home Lands.

Article XII, section 6, then states that the Office of Hawaiian Affairs is empowered:

to manage and administer the proceeds from the sale or other disposition of the lands, natural resources, minerals and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion for the trust referred to in section 4 of this article for native Hawaiians...

This section thus assumes that the legislature would assign a specific percentage of the profits from public trust lands to the native Hawaiians.

The 1978 Constitutional Convention's Standing Committee Report No. 57 on these amendments states that:

The Committee members felt that the proportion should rightfully be based either on equal division or at least on a percentage of the five purposes. The committee was unanimous in deciding that the pro rata share should not be based on population census or a percentum thereof.

During the discussions this session, proposals have been made to allocate various percentage to O.H.A. for this purpose, including 50 percent, 30 percent, and 20 percent. The House bill (H.B. 1853-80) settled upon 20 percent as the appropriate percentage for the present. The Senate version, however, moves from a percentage figure to a fixed allocation of \$1,000,000. This change was made because:

your Committee believes that a dollar amount assignment of proceeds from the public trust is more appropriate at this time in light of the yet unclear role and nature of activities of the Office of Hawaiian Affairs. (Standing Committee Report No. 956-80, page 4).

Although the Senate committee's concern for the financial integrity and stability of this new Office would certainly be understandable in another context, the attempt to maintain close legislative supervision and scrutiny over the Office of Hawaiian Affairs and the public trust money allocatable to native Hawaiians is inconsistent with the constitutional purpose in establishing O.H.A. Standing Committee Report No. 59 says explicitly that the purpose of establishing O.H.A. is to promote self-determination and self-sufficiency of the Hawaiian people:

your Committee concluded that this Sections 5 and 6 (of Article XII) taken together are of utmost importance for they provide for accountability, self-determination, methods for self-sufficiency through assets and a land base, and the unification of all native Hawaiian people.

The goals of self sufficiency and self determination can only be obtained if the Hawaiians have authority over their rightful land base and the profits therefrom, just as do all other native peoples within the United States.

We strongly urge, therefore, that the legislature return to the House formulation and allocate the 20 percent of the funds from the public land trust to the Office of Hawaiian Affairs.