

MAR 14 2007

SENATE CONCURRENT RESOLUTION

ENCOURAGING THE OFFICE OF HAWAIIAN AFFAIRS AND THE EXECUTIVE
BRANCH TO NEGOTIATE A SETTLEMENT REGARDING THE INCOME AND
PROCEEDS FROM THE PUBLIC LAND TRUST.

1 WHEREAS, in *Trustees of the Office of Hawaiian Affairs v.*
2 *Yamasaki*, 69 Haw. 154, 737 P.2d 446 (1987), the Hawaii Supreme
3 Court concluded that the issue of what constitutes the Office of
4 Hawaiian Affairs' pro rata portion of all the income and
5 proceeds derived from the public land trust pursuant to Article
6 XII, Section 6 of the Hawaii Constitution, is a political
7 question for the Legislature to determine; and

8
9 WHEREAS, in response to the *Yamasaki* decision, the
10 Legislature enacted Act 304, Session Laws of Hawaii 1990, to
11 clarify the extent and scope of the State's constitutional
12 obligation to provide a portion of the funds derived from the
13 public land trust to the Office of Hawaiian Affairs; and

14
15 WHEREAS, on September 12, 2001, the Hawaii Supreme Court
16 ruled in *Office of Hawaiian Affairs v. State of Hawaii*, 96 Haw.
17 388, 31 P.3d 901 (2001), that Act 304 was effectively repealed
18 by its own terms, so that once again, it was necessary for the
19 Legislature to specify what portion of which funds, from which
20 lands the Office of Hawaiian Affairs was to receive under the
21 State Constitution; and

22
23 WHEREAS, in its decision, the Supreme Court affirmed the
24 ruling in *Yamasaki*, observing:

25
26 [T]he State's obligation to native Hawaiians is firmly
27 established in our constitution. How the State
28 satisfies that constitutional obligation requires
29 policy decisions that are primarily within the
30 authority and expertise of the legislative branch. As
31 such, it is incumbent upon the legislature to enact
32 legislation that gives effect to the right of native



1 Hawaiians to benefit from the ceded lands trust. See
 2 Haw. Const. art. XVI, §7. . . we trust that the
 3 legislature will re-examine the State's constitutional
 4 obligation to native Hawaiians and the purpose of HRS
 5 §10-13.5 and enact legislation that most effectively
 6 and responsibly meets those obligations. (*Office of*
 7 *Hawaiian Affairs v. State of Hawai'i*, 96 Haw. at 401,
 8 31 P.3d at 914 [citations omitted; emphasis in
 9 original]); and

10
 11 WHEREAS, the Hawaii Supreme Court affirmed the *Yamasaki*
 12 decision again in 2006 (*OHA v. State of Hawaii*, 110 Haw. 338;
 13 133 P.3d 767 (2006)) and reiterated the legislative obligation
 14 to native Hawaiians; and

15
 16 WHEREAS, in Act 178, Session Laws of Hawaii 2006, the
 17 Legislature stated in section 2:

18
 19 Notwithstanding the provisions of chapter 10, Hawai'i
 20 Revised Statutes, including section 10-13.5, Hawai'i
 21 Revised Statutes, and until further action is taken by
 22 the legislature for this purpose, the income and
 23 proceeds from the pro rata portion of the public land
 24 trust under article XII, section 6, of the state
 25 constitution for expenditure by the office of Hawaiian
 26 affairs for the betterment of the conditions of native
 27 Hawaiians for each fiscal year beginning with fiscal
 28 year 2005-2006 shall be \$15,100,000; and

29
 30 WHEREAS, Act 178 stated in section 4:

31
 32 There is appropriated out of the general revenues of
 33 the State of Hawai'i the sum of \$17,500,000 or so much
 34 thereof as may be necessary for fiscal year 2005-2006
 35 to pay to the office of Hawaiian affairs amounts
 36 received from the use of lands in the public land
 37 trust that the legislature has determined were
 38 underpaid between July 1, 2001, through June 30, 2005
 39 . . . ; and

40
 41 WHEREAS, Act 178 stated in section 7:

42
 43 Nothing in [Act 178] shall resolve or settle, or be
 44 deemed to acknowledge the existence of, the claims of



1 native Hawaiians to the income and proceeds of a pro
2 rata portion of the public land trust under article
3 XII, section 6, of the state constitution; and
4

5 WHEREAS, Act 178 effectuated most of the agreement that the
6 Office of Hawaiian Affairs and the executive branch reached
7 after more than a year of negotiations; and
8

9 WHEREAS, as Act 178 represented only part of the work to be
10 completed, the Office of Hawaiian Affairs and the executive
11 branch have moved ahead with additional negotiations; and
12

13 WHEREAS, the Legislature believes that it is in the best
14 interests of the Office of Hawaiian Affairs, its beneficiaries,
15 the State and all citizens of Hawaii that a fair and just
16 settlement be attained; now, therefore,
17

18 BE IT RESOLVED by the Senate of the Twenty-fourth
19 Legislature of the State of Hawaii, Regular Session of 2007, the
20 House of Representatives concurring, that the Office of Hawaiian
21 Affairs and the executive branch are encouraged to continue
22 their negotiations and to try to agree upon a proposal to settle
23 all outstanding differences regarding claims of the Office of
24 Hawaiian Affairs to income and proceeds from the public land
25 trust; and
26

27 BE IT FURTHER RESOLVED that if the Office of Hawaiian
28 Affairs and the executive branch are able to reach a settlement,
29 they are requested to jointly prepare a report outlining the
30 settlement proposal and describing the key elements of what
31 would be a fair, just, and permanent settlement of the claims of
32 the Office of Hawaiian Affairs to income and proceeds from the
33 public land trust; and
34

35 BE IT FURTHER RESOLVED that in crafting any proposed
36 settlement, the parties are urged to be realistic, thoughtful,
37 thorough, reasonable, and creative so as to enhance the
38 prospects of an enduring settlement; and
39

40 BE IT FURTHER RESOLVED that it is requested that any report
41 include, to the extent the parties believe it relevant, the
42 following, as well as such other matter the parties believe
43 ought to be included:
44



- 1 (1) The legal foundation for the State's obligation to
2 allocate a pro rata portion of the income and proceeds
3 from the public land trust to the Office of Hawaiian
4 Affairs;
5
- 6 (2) A narrative history and summarized chronology of the
7 efforts to implement and satisfy this obligation, for
8 example the laws enacted, the litigation pursued, the
9 past and current negotiations undertaken, and all
10 amounts previously paid;
11
- 12 (3) Proposed key elements of any settlement, between the
13 Office of Hawaiian Affairs and the State, of the
14 claims of the Office of Hawaiian Affairs to income and
15 proceeds from the public land trust, including, as
16 appropriate, a mixture of cash to be paid to the
17 Office of Hawaiian Affairs, state real estate to be
18 conveyed to the Office of Hawaiian Affairs, and
19 entitlements, which may, but do not necessarily
20 include:
 - 21 (a) The total dollar value of any proposed
22 settlement;
23
 - 24 (b) A process by which real estate can be identified
25 and transferred in fee simple to the Office of
26 Hawaiian Affairs;
27
 - 28 (c) The amount of cash proposed to be included in the
29 settlement;
30
 - 31 (d) Entitlements, if any, proposed to be accorded as
32 part of the settlement;
33
 - 34 (e) The impact, if any, upon the State's financial
35 picture and bond rating;
36
 - 37 (f) Language concerning waivers and other underlying
38 prerequisites and conditions for the proposed
39 settlement; and
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 - 41 (g) Recommended actions to implement the settlement,
42 and, if appropriate, proposed enabling
43 legislation; and
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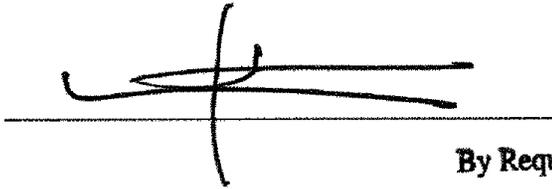
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2 BE IT FURTHER RESOLVED that if there is a settlement, the
3 parties are requested to prepare a report and submit it to the
4 Legislature not later than twenty days prior to the convening of
5 the Regular Session of 2008; and

6
7 BE IT FURTHER RESOLVED that the Office of Hawaiian Affairs,
8 as it determines in its best judgment, is requested to
9 adequately inform its beneficiaries of its progress in carrying
10 out this Concurrent Resolution; and

11
12 BE IT FURTHER RESOLVED that certified copies of this
13 Concurrent Resolution be transmitted to the Governor, the
14 President of the Senate, the Speaker of the House of
15 Representatives, the Chairperson of the Board of Trustees of the
16 Office of Hawaiian Affairs, the Attorney General, and the
17 Chairperson of the Board of Land and Natural Resources.

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OFFERED BY: _____



By Request

