

MAR 14 2007

SENATE 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17 388, 31 P.3d 901 (2001), that Act 304 was effectively repealed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
33 Hawaiians to benefit from the ceded lands trust. *See*
34 Haw. Const. art. XVI, §7. . . we trust that the
35 legislature will re-examine the State's constitutional



1 obligation to native Hawaiians and the purpose of HRS
2 §10-13.5 and enact legislation that most effectively
3 and responsibly meets those obligations. (*Office of*
4 *Hawaiian Affairs v. State of Hawai'i*, 96 Haw. at 401,
5 31 P.3d at 914 [citations omitted; emphasis in
6 original]); and
7

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

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

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

27 WHEREAS, Act 178 stated in section 4:
28

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

38 WHEREAS, Act 178 stated in section 7:
39

40 Nothing in [Act 178] shall resolve or settle, or be
41 deemed to acknowledge the existence of, the claims of
42 native Hawaiians to the income and proceeds of a pro
43 rata portion of the public land trust under article
44 XII, section 6, of the state constitution; and



1
2 WHEREAS, Act 178 effectuated most of the agreement that the
3 Office of Hawaiian Affairs and the executive branch reached
4 after more than a year of negotiations; and
5

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

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

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

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

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

36 BE IT FURTHER RESOLVED that it is requested that any report
37 include, to the extent the parties believe it relevant, the
38 following, as well as such other matter the parties believe
39 ought to be included:
40

- 41 (1) The legal foundation for the State's obligation to
42 allocate a pro rata portion of the income and proceeds
43 from the public land trust to the Office of Hawaiian
44 Affairs;



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



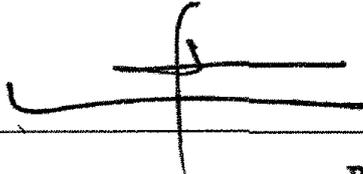
1 BE IT FURTHER RESOLVED that if there is a settlement, the
2 parties are requested to prepare a report and submit it to the
3 Legislature not later than twenty days prior to the convening of
4 the Regular Session of 2008; and

5
6 BE IT FURTHER RESOLVED that the Office of Hawaiian Affairs,
7 as it determines in its best judgment, is requested to
8 adequately inform its beneficiaries of its progress in carrying
9 out this Resolution; and

10
11 BE IT FURTHER RESOLVED that certified copies of this
12 Resolution be transmitted to the Governor, the President of the
13 Senate, the Speaker of the House of Representatives, the
14 Chairperson of the Board of Trustees of the Office of Hawaiian
15 Affairs, the Attorney General, and the Chairperson of the Board
16 of Land and Natural Resources.

17
18
19

OFFERED BY: _____



By Request

