

JAN 20 2023

S.B. NO. 736

A BILL FOR AN ACT

RELATING TO HOUSING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the State must
2 fulfill its trust responsibilities to native Hawaiians,
3 consistent with governmental actions across the United States
4 and internationally to address and remedy injustices against
5 indigenous peoples. As native Hawaiians are recognized as
6 indigenous people both by the United States and the State, it is
7 incumbent upon the legislature to enact legislation that upholds
8 the State's trust responsibilities and duty of care to native
9 Hawaiians to:

- 10 (1) Account for all ceded lands in the public lands trust
11 inventory;
- 12 (2) Account for all income and proceeds derived from the
13 public land trust;
- 14 (3) Transfer the full twenty per cent pro rata share of
15 income and proceeds from the public land trust
16 annually to the office of Hawaiian affairs to be used
17 for the betterment of the conditions of native



1 Hawaiians, including the fair and just amounts of past
2 due revenues; and

3 (4) Address and correct the unfairness and injustice
4 created by the overvaluation of the lands transferred
5 to the office of Hawaiian affairs pursuant to Act 15,
6 Sessions Laws of Hawaii 2012 (Act 15), and thereby
7 allow the State to meet its constitutional obligation
8 to native Hawaiians under article XII, sections 4 and
9 6, of the Hawaii State Constitution, for amounts past
10 due for the period between November 7, 1978, up to and
11 including June 30, 2012.

12 The legislature also finds that, in upholding the State's
13 constitutional trust obligation and duty to native Hawaiians, it
14 must enact additional legislation that takes into account the
15 information, data, and facts provided to the legislature, to
16 make pono the intent of Act 15.

17 History of Hawaii's Public Land Trust

18 The legislature finds that the genesis and source of the
19 State's public land trust responsibility to native Hawaiians are
20 the historical events that led to the illegal overthrow of the
21 Kingdom of Hawaii; the transfer of approximately 1,800,000 acres



1 of crown, government, and public lands to the United States
2 under the joint resolution of annexation, approved July 7, 1898
3 (30 Stat. 750), without the consent of and without compensation
4 to the native Hawaiian people or their sovereign government; the
5 admission of Hawaii as the fiftieth state of the Union in 1959,
6 with the State's trust responsibility and requirement explicitly
7 set forth in section 5(f) of the Admission Act, P.L. 86-3
8 (Admission Act), that one of the five purposes for which the
9 income and proceeds from the public land trust shall be used is
10 "for the betterment of the conditions of native Hawaiians"; and
11 the 1978 constitutional convention's recognition that native
12 Hawaiians are one of the beneficiaries of the public land trust
13 and the creation of the office of Hawaiian affairs to manage and
14 administer the specific allocation of "all income and proceeds
15 from that pro rata portion of the [public land] trust ... for
16 native Hawaiians". Article XII, section 6, Hawaii State
17 Constitution. The United States and state courts have
18 consistently affirmed the trust nature of the government and
19 crown lands, including large tracts of ceded lands used for
20 military or other purposes under federal control.



1 Specifically, in 1959, as a condition of its admission into
2 the Union, the State of Hawaii agreed to hold certain lands
3 granted to the State by the United States in trust for the
4 public and native Hawaiians for the five purposes delineated in
5 section 5(f) of the Admission Act, which provides in relevant
6 part:

7 The lands granted to the State of Hawaii by subsection
8 (b) of this section and public lands retained by the
9 United States under subsections (c) and (d) and later
10 conveyed to the State under subsection (e), together
11 with the proceeds from the sale or other disposition of
12 any such lands and the income therefrom, *shall be held*
13 *by said State as a public trust [(1)]* for the support of
14 the public schools and other public educational
15 institutions, [(2)] *for the betterment of the conditions*
16 *of native Hawaiians, as defined in the Hawaiian Homes*
17 *Commission Act, 1920, as amended, [(3)]* for the
18 development of farm and home ownership on as widespread
19 a basis as possible [(4)] for the making of public
20 improvements, and [(5)] for the provision of lands for
21 public use. Such lands, proceeds, and income shall be



1 managed and disposed of for one or more of the foregoing
2 purposes in such manner as the constitution and laws of
3 said State may provide, and their use for any other
4 object shall constitute a breach of trust for which suit
5 may be brought by the United States.

6 (Emphasis added.)

7 In 1978, the people of Hawaii affirmed the State's trust
8 obligation to native Hawaiians by ratifying constitutional
9 amendments from the constitutional convention. Specifically,
10 article XII, section 4, of the Hawaii State Constitution,
11 confirms the State's trust responsibilities by providing as
12 follows:

13 *The lands granted to the State of Hawaii by Section 5(b)*
14 *of the Admission Act and pursuant to Article XVI,*
15 *Section 7, of the State Constitution, ... [excluding*
16 *Hawaiian Homes Commission Act lands] ... shall be held*
17 *by the State as a public trust for native Hawaiians and*
18 *the general public.*

19 (Emphasis added.)

20 Article XII, section 5, of the Hawaii State Constitution,
21 establishes the office of Hawaiian affairs, and specifically



1 requires the office to "hold title to all the real and personal
2 property now or hereafter set aside or conveyed to it which
3 shall be held in trust for native Hawaiians and Hawaiians." The
4 delegates to the 1978 constitutional convention conferred upon
5 the office of Hawaiian affairs a unique status. The office was
6 created as a semiautonomous agency and was intended to be
7 "unique and special", Stand. Comm. Rep. No.59 in 1 Proceedings
8 of the Constitutional Convention of Hawaii of 1978 (1980), at
9 645, and to provide Hawaiian people with a vehicle for "self-
10 determination and self-government". Comm. of the Whole Rep.
11 No. 13 in 1 Proceedings of the Constitutional Convention of
12 Hawaii of 1978 (1980), at 1017. Furthermore, "[t]he
13 establishment by the Constitution of the Office of Hawaiian
14 Affairs with power to govern itself through a board of trustees
15 ... results in the creation of a separate entity independent of
16 the executive branch of the government." Stand. Comm. Rep.
17 No.59, *supra*. Article XII, section 5, of the Hawaii State
18 Constitution, also required the office of Hawaii affairs to have
19 a board of trustees elected by qualified voters who are
20 Hawaiians, as provided by law.



1 Article XII, section 6, of the Hawaii State Constitution,
2 allows the board of trustees to exercise various powers, as
3 provided by law, including the powers:

4 *[T]o manage and administer the proceeds from the sale or*
5 *other disposition of the lands, . . . , and income*
6 *derived from whatever sources for native Hawaiians and*
7 *Hawaiians, including all income and proceeds from that*
8 *pro rata portion of the trust referred to in section 4*
9 *of this article for native Hawaiians;*

10 * * *

11 and to exercise control over real and personal property
12 set aside by state, federal or private sources and
13 transferred to the board for Native Hawaiians and
14 Hawaiians.

15 (Emphasis added.) The Hawaii State Constitution does not define
16 "pro rata portion", *i.e.*, the percentage of the public land
17 trust income and proceeds the office of Hawaiian affairs should
18 receive -- that determination was left to the legislature.

19 Article XVI, section 7, of the Hawaii State Constitution, also
20 provides that "any trust provisions which the Congress shall
21 impose, upon the admission of this State, in respect of the



1 lands patented to the State by the United States or the proceeds
2 and income therefrom, shall be complied with by appropriate
3 legislation[.]"

4 In 1979, the legislature passed Act 196, Session Laws of
5 Hawaii 1979 (Act 196), to implement article XII, sections 4, 5,
6 and 6, of the Hawaii State Constitution. Section 2 of Act 196
7 was codified at chapter 10 of the Hawaii Revised Statutes,
8 entitled "Office of Hawaiian Affairs", which includes provisions
9 setting forth the purposes of office of Hawaiian affairs and the
10 powers and duties of its board of trustees.

11 In 1980, the legislature passed Act 273, Session Laws of
12 Hawaii 1980, codified at section 10-13.5, Hawaii Revised
13 Statutes, setting the "pro rata portion" of the public land
14 trust to be managed and administered by the office of Hawaiian
15 affairs as "[t]wenty per cent of all funds derived from the
16 public land trust[.]" This legislative directive that addressed
17 the State's constitutional mandate led to a series of lawsuits
18 and legislative enactments concerning the office of Hawaiian
19 affair's constitutional pro rata share of the public land trust,
20 and the State and office of Hawaiian affairs labored to resolve
21 this political issue.



1 Adding to the controversy was the lack of an accurate
2 inventory of the lands held in public trust. In September 1981,
3 the department of land and natural resources completed an
4 initial inventory of trust lands, listing approximately
5 1,271,652 acres, which fell woefully short of its duty to
6 provide a complete inventory of the public land trust lands,
7 submerged lands, and resources. Additionally, the state land
8 information management system does not include all lands and
9 submerged lands held by all state entities. Following a couple
10 of lawsuits, in which the Hawaii Supreme Court invalidated
11 legislative measures enacted to resolve the political issue,
12 payments to the office of Hawaiian affairs were suspended.

13 In 2006, the legislature enacted Act 178, Session Laws of
14 Hawaii 2006 (Act 178), setting an interim fixed amount of
15 \$15,100,000 as the office of Hawaiian affair's pro rata share of
16 the public land trust income and proceeds to be expended by the
17 office for the betterment of the conditions of native Hawaiians,
18 until further action is taken by the legislature for this
19 purpose. Act 178 also transferred to the office of Hawaiian
20 affairs, a one-time payment of \$17,500,000 for underpayments of
21 trust revenues between July 1, 2001, through June 30, 2005; and



1 required the department of land and natural resources to provide
2 an annual accounting of all receipts from lands described in
3 section 5(f) of the Admission Act for the prior fiscal year.
4 Subsequently, Governor's Executive Order No. 06-06 (Sept. 20,
5 2006) set specific procedures for state entities to follow in
6 reporting public land trust revenues.

7 In 2012, the office of Hawaiian affairs and the State
8 reached a settlement to resolve all claims for back revenues
9 pertaining to the income and proceeds from the public land trust
10 past-due to the office of Hawaiian affairs that accumulated
11 during the period between November 7, 1978, up to and including
12 June 30, 2012. The settlement, approved by the legislature and
13 enacted as Act 15, Session Laws of Hawaii 2012 (Act 15),
14 resolved the back revenue claims by conveying to the office of
15 Hawaiian affairs nine parcels of land on the island of Oahu,
16 located in the Kakaako community development district makai of
17 Ala Moana boulevard and between Kewalo Basin and the foreign
18 trade zone, known as the Kakaako Makai area.

19 **Recognition of Native Hawaiians as Indigenous People**

20 The legislature recognizes the growing international movement
21 for the protection of the rights of the world's indigenous



1 peoples. In 2007, the United Nations General Assembly adopted
2 the United Nations Declaration on the Rights of Indigenous
3 Peoples (UNDRIP) by a vote of one hundred forty-four nations in
4 favor thereof. In 2011, President Barack Obama announced
5 support for UNDRIP by the United States, and in 2022, President
6 Joseph Biden reiterated the United States' support thereof.

7 Pursuant to the declaration:

8 Indigenous peoples have the right to self-determination.

9 By virtue of that right they freely determine their
10 political status and freely pursue their economic,
11 social and cultural development.

12 UNDRIP, art. 3.

13 Indigenous peoples, in exercising their right to self-
14 determination, have the right to autonomy or self-
15 government in matters relating to their internal and
16 local affairs, as well as ways and means for financing
17 their autonomous functions.

18 *Id.*, art. 4.

19 Indigenous peoples have the right to maintain and
20 strengthen their distinct political, legal, economic,
21 social and cultural institutions, while retaining their



1 right to participate fully, if they so choose, in the
2 political, economic, social and cultural life of the
3 State.

4 *Id.*, art. 5.

5 The United States Congress has repeatedly recognized native
6 Hawaiians as indigenous peoples. See e.g., Native Hawaiian
7 Health Care Improvement Act, P.L. 100-579, § 6202(1) (42 U.S.C.
8 § 11701(1)) (congressional finding that "[n]ative Hawaiians
9 comprise a distinct and unique indigenous people with a
10 historical continuity to the original inhabitants of the
11 Hawaiian archipelago whose society was organized as a Nation
12 prior to the arrival of the first nonindigenous people in
13 1778"); American Homeownership and Economic Opportunity Act of
14 2000, P.L. 106-569, §§ 512(13)(B) and (D) (congressional
15 findings that "[c]ongress does not extend services to Native
16 Hawaiians because of their race, but because of their unique
17 status as the indigenous people of a once sovereign nation as to
18 whom the United States has established a trust relationship" and
19 "the political status of Native Hawaiians is comparable to that
20 of American Indians and Alaska Natives"); Native Hawaiian



1 Education Act §§ 6202(12)(B) and (D) (20 U.S.C. §§ 7512(12)(B)
2 and (D)) (same).

3 Furthermore, the Joint Resolution to acknowledge the 100th
4 anniversary of the January 17, 1893, overthrow of the Kingdom of
5 Hawaii, and to offer an apology to Native Hawaiians on behalf of
6 the United States for the overthrow of the Kingdom of Hawaii,
7 P.L. 103-150 ("Apology Resolution"), approved on November 23,
8 1993, makes the following findings:

9 Whereas the Republic of Hawaii also ceded 1,800,000
10 acres of crown, government and public lands of the
11 Kingdom of Hawaii, without the consent of or
12 compensation to the Native Hawaiian people of Hawaii or
13 their sovereign government;

14 * * *

15 Whereas the indigenous Hawaiian people never directly
16 relinquished their claims to their inherent sovereignty
17 as a people or over their national lands to the United
18 States, either through their monarchy or through a
19 plebiscite or referendum;

20 Apology Resolution, ¶¶ 25, 29.



1 Hawaii law also acknowledges that native Hawaiians are the
2 aboriginal peoples of Hawaii. Specifically, section 10-1(a),
3 Hawaii Revised Statute, provides that:

4 The people of the State of Hawaii and the United States
5 of America as set forth and approved in the Admission
6 Act, established a public trust which includes among
7 other responsibilities, betterment of conditions for
8 native Hawaiians. The people of the State of Hawaii
9 reaffirmed their solemn trust obligation and
10 responsibility to *native Hawaiians* and furthermore
11 declared in the state constitution that there be an
12 office of Hawaiian affairs to address the needs of the
13 *aboriginal class of people of Hawaii*.

14 (Emphasis added.) Section 10-2, Hawaii Revised Statutes,
15 provides that:

16 "Hawaiian" means any descendant of the aboriginal
17 peoples inhabiting the Hawaiian Islands which exercised
18 sovereignty and subsisted in the Hawaiian Islands in
19 1778, and which peoples thereafter have continued to
20 reside in Hawaii.



1 "Native Hawaiian" means any descendant of not less
2 than one-half part of the races inhabiting the Hawaiian
3 Islands previous to 1778, as defined by the Hawaiian
4 Homes Commission Act, 1920, as amended; provided that
5 the term identically refers to the descendants of such
6 blood quantum of such aboriginal peoples which exercised
7 sovereignty and subsisted in the Hawaiian Islands in
8 1778 and which peoples thereafter continued to reside in
9 Hawaii.

10 Unfairness and Injustice Created by the Overvaluation of the
11 Lands Transferred to the Office Of Hawaiian Affairs Pursuant to

12 Act 15

13 Act 15, which the legislature described as expression of
14 legislative policy, clarified that the purpose of the Act, in
15 addition to resolving back revenue claims, was to:

16 [E]ffectively and responsibly fulfill the constitutional
17 obligation to native Hawaiians under article XII,
18 sections 4 and 6, of the State Constitution between
19 November 7, 1978, up to and including June 30, 2012, by
20 ... providing additional resources to the Office in the
21 form of fee simple title to certain parcels of land[.]



1 Act 15, § 1. The legislature also stated that:

2 Conveyance of the fee simple interest to the lands ...
3 will allow the State to effectively and responsibly meet
4 [the] constitutional obligations to native Hawaiians
5 [under article XII, sections 4 and 6 of the Hawaii State
6 Constitution for the period between November 7, 1978, up
7 to and including June 30, 2012].

8 *Id.* Particularly pertinent to the satisfaction of the purposes
9 of Act 15 is language in section 6 of the measure, which states:

10 The [p]roperties conveyed by this Act shall be deemed
11 income and proceeds from the public land trust, as if
12 the [p]roperties had been paid out of the income and
13 proceeds from the public land trust pursuant to article
14 XII, section 6 of the State Constitution.

15 The property conveyed to the office of Hawaiian affairs
16 pursuant to Act 15 was valued at approximately \$200,000,000;
17 however, this amount was subsequently found to be inaccurate, as
18 the valuation failed to consider the development restrictions
19 encumbering the lands.

20 Section 2 of Act 15 stated that the "the fee simple
21 interest to the ... parcels of land with the existing



1 improvements thereon ... is conveyed to the office of Hawaiian
2 affairs as grantee, as of July 1, 2012, as is, where is", and
3 that "as is, where is" means that "the office of Hawaiian
4 affairs is accepting the [p]roperties in their existing
5 condition as of March 1, 2012, the close of the office's period
6 for due diligence, without representations or warranties of any
7 kind or nature." Section 2 of Act 15 also provided that the
8 conveyed properties "are and shall remain (even after conveyance
9 to the office) under the jurisdiction and authority of the
10 Hawaii community development authority, with respect to zoning,
11 land use conditions and all other matters over which the
12 authority has jurisdiction and authority to act" and "shall be
13 subject to all laws, except sections 206E-8, 206E-10, 206E-34,
14 Hawaii Revised Statutes, and as otherwise provided in this
15 Act[.]" (Act 15 also failed to address the twenty per cent pro
16 rata share of the income and proceeds from the public land trust
17 generated after June 30, 2012, that is due to the office of
18 Hawaiian affairs. Pursuant to Act 178, the office of Hawaiian
19 affairs continues to receive the interim revenue amount of
20 \$15,100,000 annually from the public land trust. Attempts to
21 fully implement article XII, section 6, of the Hawaii State



1 Constitution and provide the office of Hawaiian affairs with the
2 actual amount that constitutes a twenty per cent share of the
3 public land trust are ongoing. In 2022, the legislature passed
4 Act 226, Session Laws of Hawaii 2022, which increased the
5 interim fixed payment amount to the office of Hawaiian affairs
6 to \$21,500,000. However, notably, a 2015-2016 financial review
7 initiated by the office of Hawaiian affairs found that the
8 minimum amount of total gross receipts generated from sources
9 that the office has historically claimed was approximately
10 \$394,322,163 in the fiscal year 2015-2016 -- twenty per cent of
11 this gross amount is approximately \$78,900,000.)

12 The legislature finds that the office of Hawaiian Affairs
13 has the right to use the nine parcels of land that were conveyed
14 to the office pursuant to Act 15, consisting of approximately
15 thirty acres in the Kakaako community development district to
16 benefit the Hawaiian people. The legislature understands that
17 these lands are Hawaiian lands and that the Hawaiian people are
18 owed money from the ceded lands.

19 The legislature also understands that the ongoing
20 transformation of the Kakaako community development district
21 into a place where people can live, work, and play, increases



1 the revenue generating potential of the parcels of land conveyed
2 to the office of Hawaiian affairs pursuant to Act 15, which
3 would enable the office of Hawaiian affairs to increase and
4 expand the number of programs and types of services it can offer
5 to benefit the native Hawaiian people. The office of Hawaiian
6 affairs would be able to further increase and expand its
7 services to better the conditions of native Hawaiians if it is
8 allowed to develop some or all of the parcels of land conveyed
9 to the office of Hawaiian affairs pursuant to Act 15 for
10 residential use as part of a master plan with retail and other
11 commercial uses.

12 The legislature understands that the office of Hawaiian
13 affairs intends to develop the parcels of land conveyed thereto
14 pursuant to Act 15 with focus on native Hawaiian culture, arts,
15 and practices, including the establishment of Hawaii's first
16 cultural center specifically dedicated to native Hawaiian
17 culture. The legislature also understands that the office of
18 Hawaiian affairs is interested in creating long-term,
19 sustainable solutions that would benefit not only native
20 Hawaiians but also the general public through the development of
21 additional housing units for local people and an improved,



1 vibrant gathering space in the Kakaako Makai area for all. The
2 legislature further understands that the office of Hawaiian
3 affairs aspires to provide more affordable housing at lower area
4 medium income (AMI) levels than required by existing rules
5 adopted by the Hawaii community development authority.

6 However, under existing laws and regulations, the parcels
7 of land conveyed to the office of Hawaiian affairs pursuant to
8 Act 15 cannot be developed for residential use, including
9 affordable housing.

10 Furthermore, the legislature finds that the value of the
11 parcels of land conveyed to the office of Hawaiian affairs
12 pursuant to Act 15 has eroded even further due to pre-existing
13 conditions and significant deferred maintenance by the State.
14 To fulfill the purpose of Act 15, which was to ensure that the
15 office of Hawaiian affairs is made whole for its pro rata share
16 of income and proceeds from the public land trust that were past
17 due, the State should provide the funds necessary to pay for
18 required infrastructure repairs, including repairs to bulkhead
19 retaining walls and revetments, estimated to cost \$65,000,000,
20 to the office of Hawaiian affairs.



1 The legislature also recognizes that the conveyance of the
2 nine parcels of land to the office of Hawaiian affairs pursuant
3 to Act 15 in 2012, was in lieu of a \$200,000,000 cash payment to
4 resolve the office's back revenue claims. Had the office of
5 Hawaiian affairs received and invested that money in 2012, it
6 would now have had \$400,000,000, even at a conservative return
7 rate of seven per cent. Therefore, to deliver the full value of
8 the parcels of land conveyed to the office of Hawaiian affairs
9 pursuant to Act 15, the State should also consider providing the
10 office of Hawaiian affairs with a supplemental allowance of
11 \$150,000,000, in the form of additional lands or cash.

12 Finally, the legislature finds that in as much as this Act
13 furthers one of the principal purposes for which the office of
14 Hawaiian affairs was established, the provisions of this Act
15 should be deemed consistent with and not in violation of article
16 XI, section 5, of the Hawaii State Constitution.

17 The purpose of this Act is to enhance the revenue
18 generating capacity of the nine parcels of land that were
19 conveyed to the office of Hawaiian affairs pursuant to Act 15
20 by:



- 1 (1) Allowing the Hawaii community development authority to
2 approve residential development on the nine parcels;
- 3 (2) Raising the building height limit and increasing the
4 floor area ratio for residential development on three
5 of the nine parcels;
- 6 (3) Exempting the residential developments on the nine
7 parcels from the requirement to dedicate public
8 facilities of land or facilities, or cash payments in
9 lieu thereof, as a condition of development;
- 10 (4) Exempting the residential developments on the nine
11 parcels from the prohibitions on sale or assignment of
12 fee simple interest in land in the Kakaako community
13 development district and residential development in
14 the Kakaako Makai area;
- 15 (5) Appropriating funds to the office of Hawaiian affairs
16 to make repairs to bulkheads and revetments located in
17 the nine parcels; and
- 18 (6) Appropriating funds to compensate the office of
19 Hawaiian affairs for the difference between the
20 \$200,000,000 owed to the office of Hawaiian affairs as
21 its pro rata portion of income and proceeds from the



1 public land trust that accumulated during the period
2 between November 7, 1978, up to and including June 30,
3 2012, and the actual value of the nine parcels of
4 land.

5 SECTION 2. Chapter 206E, Hawaii Revised Statutes, is
6 amended by adding a new section to part II, to be appropriately
7 designated and to read as follows:

8 "§206E- Kakaako Makai; residential development; public
9 hearing; height limit; floor area ratio; disclosures; nuisance
10 mitigation. (a) The authority may approve any plan or proposal
11 for any residential development in parcels in Kakaako,
12 identified by tax map key numbers (1) 2-1-58:129 (Lot A), (1) 2-
13 1-58:130 (Lot B), (1) 2-1-58:130 (Lot C), (1) 2-1-58:48 and 2-1-
14 60:27 (Lot D), (1) 2-1-58:6 (Lot E), (1) 2-1-60:26 (lot F/G),
15 (1) 2-1-15:61 (Lot I), (1) 2-1-60:28 (Lot K), and (1) 2-1-15:51
16 (Lot L); provided that the authorization for residential
17 development pursuant to this section shall apply to each of
18 these parcels regardless of whether a parcel's tax map key
19 number is amended; provided further that approval may be granted
20 only after the applicant seeking approval conducts a public
21 hearing held in accordance with subsection (b).



1 (b) An applicant seeking approval of a plan or proposal of
2 a residential development pursuant to this section shall, prior
3 to the submittal of the plan or proposal to the authority, hold
4 a public hearing that shall be exempt from chapter 91; provided
5 that the applicant shall publish a notice of the hearing in
6 accordance with section 1-28.5 no later than thirty days prior
7 to the day of the hearing; provided further that any interested
8 person shall be allowed to submit testimony on the residential
9 development plan or proposal, orally or in writing, at the
10 hearing. The notice of hearing shall include:

- 11 (1) The date, time, and place of the hearing;
12 (2) A statement of the topic of the hearing; and
13 (3) A description of where, when, and how the residential
14 development plan or proposal may be viewed by the
15 public.

16 (c) An applicant seeking approval of a plan or proposal of
17 a residential development pursuant to this section shall, prior
18 to the submittal of the plan or proposal to the authority, fully
19 address all issues or questions raised in oral or written
20 testimonies submitted at the hearing pursuant to subsection (b).



1 (d) The authority shall, prior to approving any plan or
2 proposal for residential development pursuant to this section:

3 (1) Hold a public hearing in accordance with chapter 91;
4 and

5 (2) Fully consider all written and oral testimony received
6 at the public hearings held by the applicant and the
7 authority.

8 (e) Notwithstanding any other law to the contrary, the
9 building height limit for any residential development approved
10 by the authority pursuant to this section on parcels identified
11 by tax map key numbers (1) 2-1-58:6 (Lot E), (1) 2-1-60:26 (Lot
12 F/G), and (1) 2-1-15:61 (Lot I), shall be four hundred feet;
13 provided that the four-hundred-foot building height limit for a
14 residential development on these parcels shall not be affected
15 by amendments to the tax map key numbers of these parcels.

16 (f) Notwithstanding any other law to the contrary, the
17 maximum floor area ratio for any residential development
18 approved by the authority pursuant to this section on parcels
19 identified by tax map key numbers (1) 2-1-58:6 (Lot E), (1) 2-1-
20 60:26 (Lot F/G), and (1) 2-1-15:61 (Lot I), shall be 6.0.



1 (g) Any plan or proposal for residential development
2 submitted to the authority for approval pursuant to this section
3 shall include an assessment and proposed mitigation plan for any
4 possible noise, odor, and other aircraft-related nuisances that
5 may affect the development. The office of Hawaiian affairs and
6 any person developing the residential development approved by
7 the authority pursuant to this section shall, before entering
8 into any lease agreement for any lot, parcel, structure, or unit
9 of a structure located within the development, provide written
10 notice to potential lessees and residents of the possible noise,
11 odor, and other aircraft-related nuisances."

12 SECTION 3. Section 206E-12, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§206E-12 Dedication for public facilities as condition to**
15 **development.** (a) The authority shall establish rules requiring
16 dedication for public facilities of land or facilities, or cash
17 payments in lieu thereof, by developers as a condition of
18 developing real property pursuant to the community development
19 plan. Where state and county public facilities dedication laws,
20 ordinances, or rules differ, the provision for greater
21 dedication shall prevail.



1 (b) Rules adopted by the authority pursuant to subsection
2 (a) shall not apply to residential developments approved by the
3 authority pursuant to section 206E- ."

4 SECTION 4. Section 206E-31.5, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§206E-31.5 Prohibitions. Anything contained in this
7 chapter to the contrary notwithstanding, and except as provided
8 in section 206E- (a), the authority is prohibited from:

9 (1) Selling or otherwise assigning the fee simple interest
10 in any lands in the Kakaako community development
11 district to which the authority in its corporate
12 capacity holds title, except with respect to:

- 13 (A) Utility easements;
- 14 (B) Remnants as defined in section 171-52;
- 15 (C) Grants to any state or county department or
16 agency;
- 17 (D) Private entities for purposes of any easement,
18 roadway, or infrastructure improvements; or
- 19 (E) Reserved housing as defined in section 206E-101;
- 20 or



1 (2) Approving any plan or proposal for any residential
2 development in that portion of the Kakaako community
3 development district makai of Ala Moana boulevard and
4 between Kewalo Basin and the foreign trade zone."

5 SECTION 5. There is appropriated out of the general
6 revenues of the State of Hawaii the sum of \$65,000,000 or so
7 much thereof as may be necessary for fiscal year 2023-2024 and
8 the same sum or so much thereof as may be necessary for fiscal
9 year 2024-2025 to pay to the office of Hawaiian affairs to be
10 used for making repairs to bulkheads and revetments located in
11 the parcels conveyed to the office of Hawaiian affairs pursuant
12 to Act 15, Session Laws of Hawaii 2012.

13 The sums appropriated shall be expended by the office of
14 Hawaiian affairs for the purposes of this Act.

15 SECTION 6. There is appropriated out of the general
16 revenues of the State of Hawaii the sum of \$ or so
17 much thereof as may be necessary for fiscal year 2023-2024 and
18 the same sum or so much thereof as may be necessary for fiscal
19 year 2024-2025 to pay the office of Hawaiian affairs to
20 compensate for the difference between the \$200,000,000 owed to
21 the office of Hawaiian affairs as its pro rata portion of income



1 and proceeds from the public land trust that accumulated during
2 the period between November 7, 1978, up to and including
3 June 30, 2012, and the actual value of the parcels of land
4 received by the office of Hawaiian affairs in lieu of that cash
5 amount, pursuant to Act 15, Session Laws of Hawaii 2012.

6 The sums appropriated shall be deposited into the native
7 Hawaiian trust fund and expended by the office of Hawaiian
8 affairs.

9 SECTION 7. New statutory material is underscored.

10 SECTION 8. This Act shall take effect on July 1, 2023.

11 INTRODUCED BY: *Thishake O Keolani*

S.B. NO. 736

Report Title:

Hawaii Community Development Authority; Office of Hawaiian Affairs; Residential Development; Kakaako Makai; Appropriation

Description:

Allows the Hawaii Community Development Authority to approve the residential development on the nine parcels conveyed to the Office of Hawaiian Affairs pursuant to Act 15, Session Laws of Hawaii 2012. Raises the building height limit and increases the maximum floor area ratio for residential development on three of the nine parcels. Exempts the residential developments on the nine parcels from the requirement to dedicate public facilities of land or facilities, or cash payments in lieu thereof, as a condition of development; the prohibition on sale or assignment of fee simple interest in land in the Kakaako Community Development District; and the prohibition on residential development in the Kakaako Makai area. Appropriates funds for repairs of certain structures located on the nine parcels and for compensation relating to the Office of Hawaiian Affairs' pro rata portion of income and proceeds from the public land trust.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

