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# HOUSE CONCURRENT RESOLUTION

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REQUESTING THE OFFICE OF HAWAIIAN AFFAIRS AND THE EXECUTIVE  
BRANCH TO DISCUSS PROPOSALS AND SUBMIT A JOINT REPORT WITH  
SUGGESTIONS AND RECOMMENDATIONS REGARDING THE INCOME AND  
PROCEEDS FROM THE PUBLIC LAND TRUST TO AID THE LEGISLATURE  
IN DETERMINING HOW BEST TO FACILITATE THE STATE'S  
CONSTITUTIONAL OBLIGATIONS TO NATIVE HAWAIIANS.

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 issues involving the pro rata portion of  
4        all the income and proceeds derived from the public land trust  
5        arising from Article XII, section 6 of the Hawaii State  
6        Constitution to be managed and administered by the Office of  
7        Hawaiian Affairs (OHA) are "of a peculiarly political nature and  
8        therefore not meet for judicial determination"; and  
9

10       WHEREAS, in response to the *Yamasaki* decision, the  
11       Legislature enacted Act 304, Session Laws of Hawaii 1990, to:  
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13       (1) Clarify the lands comprising the public land trust  
14       under Chapter 10, Hawaii Revised Statutes;  
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16       (2) Clarify the revenues derived from the public land  
17       trust, which shall be considered to establish the  
18       amount of funding to OHA for the purpose of the  
19       betterment of the conditions of native Hawaiians; and  
20

21       (3) Provide for a process to determine the actual amounts  
22       payable to OHA under the clarified standards enacted  
23       and for the formulation of a plan for payment of that  
24       sum ...;  
25

26       and



1 WHEREAS, on September 12, 2001, the Hawaii Supreme Court  
2 ruled in *Office of Hawaiian Affairs v. State of Hawaii*, 96 Haw.  
3 388, 31 P.3d 901 (2001), that Act 304 was effectively repealed  
4 by its own terms, so that once again, it was necessary for the  
5 Legislature to determine how best to fulfill the State's  
6 constitutional obligations to native Hawaiians; and  
7

8 WHEREAS, in its decision, the Supreme Court affirmed the  
9 ruling in *Yamasaki*, observing:  
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11 [T]he State's obligation to native Hawaiians is firmly  
12 established in our constitution. How the State  
13 satisfies that constitutional obligation requires  
14 policy decisions that are primarily within the  
15 authority and expertise of the legislative branch. As  
16 such, it is incumbent upon the legislature to enact  
17 legislation that gives effect to the right of native  
18 Hawaiians to benefit from the ceded lands trust. See  
19 Haw. Const. art. XVI, §7 ... [W]e trust that the  
20 legislature will re-examine the State's constitutional  
21 obligation to native Hawaiians and the purpose of HRS  
22 §10-13.5 and enact legislation that most effectively  
23 and responsibly meets those obligations. (*OHA v.*  
24 *State*, 96 Haw. at 401, 31 P.3d at 914 (emphasis in  
25 original));  
26

27 and  
28

29 WHEREAS, the Hawaii Supreme Court affirmed the *Yamasaki*  
30 decision again in 2006 (*OHA v. State of Hawaii*, 110 Haw. 338,  
31 133 P.3d 767 (2006)) and reiterated the constitutional  
32 obligation to native Hawaiians; and  
33

34 WHEREAS, the Hawaii Supreme Court, in these cases,  
35 specifically designated the Legislature as the appropriate  
36 governmental branch to carry out the State's constitutional  
37 obligation to native Hawaiians by enacting legislation to give  
38 effect to the right of native Hawaiians to benefit from the  
39 ceded lands trust; and



1 WHEREAS, due to:

- 2
- 3 (1) The lack of complete and accurate information  
4 regarding the ceded lands comprising the public land  
5 trust res;
- 6
- 7 (2) The lack of complete and accurate information  
8 regarding the revenues derived from the public land  
9 trust;
- 10
- 11 (3) The complexity of the numerous legal and fiscal  
12 issues; and
- 13
- 14 (4) The effect of the legal and fiscal issues on all  
15 parties concerned with the use and distribution of  
16 revenues generated from ceded lands,

17  
18 the enormity of the undertaking is overwhelming, as recognized  
19 by the court in *Yamasaki*, and crafting any legislation to  
20 determine the appropriate boundaries of the trust is a  
21 significant responsibility, even for the Legislature; now,  
22 therefore,

23  
24 BE IT RESOLVED by the House of Representatives of the  
25 Twenty-fourth Legislature of the State of Hawaii, Regular  
26 Session of 2007, the Senate concurring, that OHA and the  
27 Executive Branch are requested to continue to discuss proposals  
28 regarding the income and proceeds from the public land trust and  
29 submit to the Legislature no later than 20 days prior to the  
30 convening of the Regular Session of 2008, a joint report of  
31 suggestions and recommendations on how the Legislature can best  
32 facilitate the State's constitutional obligation to native  
33 Hawaiians; and

34  
35 BE IT FURTHER RESOLVED that it is requested that the joint  
36 report include, to the extent the agencies believe it relevant,  
37 the following, as well as such other matters the agencies  
38 believe ought to be included:

- 39
- 40 (1) All amounts previously paid to OHA in trust for the  
41 benefit of native Hawaiians;



1 (2) Recommended actions that are fair, practical, and  
2 feasible to implement the State's constitutional  
3 obligation to native Hawaiians;  
4

5 (3) The reasoning behind and basis for the  
6 recommendations; and  
7

8 (4) Proposed legislation;  
9

10 and  
11

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

