

MAR 14 2007

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## SENATE RESOLUTION

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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  
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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  
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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17 388, 31 P.3d 901 (2001), that Act 304 was effectively repealed  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:  
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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:  
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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  
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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

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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.

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18  
19 OFFERED BY: \_\_\_\_\_

By Request

