

STAND. COM. REP. NO.

2486

Honolulu, Hawaii

FEB 15 2008

RE: S.B. No. 2733
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

Madam:

Your Committees on Agriculture and Hawaiian Affairs and Water and Land and Judiciary and Labor, to which was referred S.B. No. 2733 entitled:

"A BILL FOR AN ACT RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT, "

beg leave to report as follows:

The purpose of this measure is to:

- (1) Finally and completely resolve any and all claims and disputes relating to the portion of income and proceeds from the lands of the public land trust for use by the Office of Hawaiian Affairs, including under sections 4 and 6 of article XII of the State Constitution and any relevant statute or act, between November 7, 1978 and July 1, 2008; and
- (2) Fix, prospectively, the minimum amount of income and proceeds from the lands of the public land trust that are to be paid to the Office of Hawaiian Affairs to use under section 6 of article XII of the Constitution at \$15,100,000 each fiscal year.

Testimony in support of this measure was submitted by the Office of Hawaiian Affairs, Chaminade University, Ko'olaupoko Hawaiian Civic Club, Native Hawaiian Hospitality Association, Hawaiian Civic Club of Honolulu, Association of Hawaiian Civic Clubs, Kaumakapili Church, Historic Hawaii Foundation, Japanese

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American Citizens League, TJ Mahoney & Associates, Kulia Na Mamo, Building Industry Association - Hawaii, Filipino American Citizens League, Pauline Worsham Marketing, Department of Hawaiian Home Lands, Hawaii Government Employees Association, Department of the Attorney General, Catholic Charities Hawaii, Trust for Public Lands, Hawaii State Teachers Association, Institute for Native Pacific Education and Culture, Ko'olau Foundation, Kamehameha Schools, Puakala Farms, and thirty-four individuals. Testimony in opposition to this measure was submitted by Hawaii Political Action Council of Hawaii, Aloha for All, and fourteen individuals.

Your Committees find that in 1978, the Constitution of the State of Hawaii was amended to include article XII, sections 4, 5, and 6, which established the Office of Hawaiian Affairs and authorized it to hold lands defined as "available lands" in the Admission Act in public trust for Native Hawaiians and the general public. The issue of the proportion of public trust lands that is to be for the benefit of Native Hawaiians has been a long standing issue.

In Trustees of the Office of Hawaiian Affairs v. Yamasaki, 69 Haw. 154, 737 P.2d 446 (1987), the Hawaii Supreme Court concluded, *inter alia*, that the issue of what constitutes the portion of the income and proceeds derived from the public land trust for the Office of Hawaiian Affairs pursuant to article XII, section 6 of the State Constitution, is a political question for the Legislature to determine.

In response to the Yamasaki decision, the Legislature enacted Act 304, Session Laws of Hawaii 1990, to clarify the extent and scope of the State's obligation to provide a portion of the funds derived from the public land trust to the Office of Hawaiian Affairs.

Subsequently, on September 12, 2001, the Hawaii Supreme Court ruled in Office of Hawaiian Affairs v. State of Hawai'i, 96 Haw. 388, 31 P.3d 901 (2001), that Act 304 was effectively repealed by its own terms, so that once again, it was necessary for the Legislature to specify the portion of which funds, generated from which lands the Office of Hawaiian Affairs was to receive under the State Constitution.

In its decision, the Hawaii Supreme Court affirmed Yamasaki, observing that:



[T]he State's obligation to native Hawaiians is firmly established in our constitution. How the State satisfies that constitutional obligation requires policy decisions that are primarily within the authority and expertise of the legislative branch. As such, it is incumbent upon the legislature to enact legislation that gives effect to the right of native Hawaiians to benefit from the ceded lands trust. See Haw. Const. art. XVI, §7. . . .

[W]e trust that the legislature will re-examine the State's constitutional obligation to native Hawaiians and the purpose of HRS § 10-13.5 and enact legislation that most effectively and responsibly meets those obligations.

Office of Hawaiian Affairs v. State of Hawai'i, 96 Haw. at 401, 31 P.3d at 914 (citations omitted).

This measure represents the terms and conditions proposed by the Governor and the Office of Hawaiian Affairs in an attempt to settle and establish the State's constitutional obligations with regard to lands within the public land trust. Your Committees recognize that the terms and conditions proposed by this measure are not a complete and satisfactory solution. Further, your Committees express their strong concern over the lack of opportunity that the Native Hawaiian community at-large has had to provide its input into the terms of settlement provided by this measure. Nevertheless, your Committees realize the importance of keeping this measure alive for continued consideration by this Legislature. By Senate Concurrent Resolution No. 49 (2008) the Senate requested that the Governor and the Office of Hawaiian Affairs reach out to the Native Hawaiian community to obtain its input and opinions regarding this measure and the terms proposed by it, and to submit a written report of their findings and recommendations to the Legislature by no later than March 26, 2008.

Therefore, in order to provide the opportunity for the continued consideration of this measure by the Legislature, your Committee has made the following amendments:

- (1) Making the appropriation an unspecified amount; and
- (2) Amending the effective date to July 1, 2050.



As affirmed by the records of votes of the members of your Committees on Agriculture and Hawaiian Affairs and Water and Land and Judiciary and Labor that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2733, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2733, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on behalf of the members of the Committees on Agriculture and Hawaiian Affairs and Water and Land and Judiciary and Labor,

Clayton Hee w/k

CLAYTON HEE, Chair

Jill Tokuda

JILL TOKUDA, Chair


Brian T. Taniguchi

BRIAN T. TANIGUCHI, Chair



The Senate
 Twenty-Fourth Legislature
 State of Hawaii

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:*	Committee Referral:	Date:		
SB 2733	AHW/WTL/JDL, WAM	2-13-08		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310		
<input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
TANIGUCHI, BRIAN T. (C)	✓			
HEE, Clayton (VC)				✓
GABBARD, Mike	✓			
KOKUBUN, Russell S.				✓
NISHIHARA, Clarence K.	✓			
SLOM, Sam		✓		
TOTAL	3	1	0	2
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy	

*Only one measure per Record of Votes