

JAN 28 2009

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# A BILL FOR AN ACT

RELATING TO LANDS CONTROLLED BY THE STATE.

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

1           SECTION 1. In January 2008, the Hawaii Supreme Court in  
2 Office of Hawaiian Affairs v. Housing and Community Development  
3 Corporation of Hawaii, 117 Hawaii 174, 177 P.3d 884 (2008),  
4 enjoined the State from selling or otherwise transferring to  
5 third parties any ceded lands from the public lands trust until  
6 the claims of the native Hawaiian people to the ceded lands have  
7 been resolved.

8           In April 2008, the governor directed the attorney general  
9 to petition the United States Supreme Court for a writ of  
10 certiorari on whether the passage of Public Law 103-150,  
11 otherwise known as the Apology Resolution, strips the State of  
12 Hawaii of the authority to sell, exchange, or transfer ceded  
13 lands unless or until the State reaches a political settlement  
14 with native Hawaiians about the status of these lands. In  
15 October 2008, the United States Supreme Court granted the  
16 State's petition for certiorari in the foregoing case.



1 In light of these developments, the legislature believes  
2 that it is necessary to reassert its constitutional authority in  
3 that it has the sole authority to resolve this issue on behalf  
4 of the State and to dispose of lands under the control of the  
5 State as it deems appropriate.

6 The purpose of this Act is to require the adoption of a  
7 concurrent resolution by two-thirds majority vote of each house  
8 of the legislature to sell or exchange ceded lands.

9 SECTION 2. Chapter 171, Hawaii Revised Statutes, is  
10 amended by adding a new part to be appropriately designated and  
11 to read as follows:

12 "PART . CEDED LANDS

13 §171- Sale of ceded lands under the control of state  
14 departments and agencies; legislative approval required. (a)

15 This section applies to the following lands:

- 16 (1) Land defined as public lands under section 171-2;  
17 (2) Land set aside pursuant to law for the use of the  
18 United States;  
19 (3) Land to which the United States relinquished the  
20 absolute fee and ownership under section 91 of the  
21 Organic Act prior to the admission of Hawaii as a  
22 state of the United States unless subsequently placed



- 1 under the control of the board of land and natural  
2 resources and given the status of public lands in  
3 accordance with the state constitution, or other laws;
- 4 (4) Land to which the University of Hawaii holds title;
- 5 (5) Land to which the Hawaii housing finance and  
6 development corporation in its corporate capacity  
7 holds title;
- 8 (6) Land to which the department of agriculture holds  
9 title by way of foreclosure, voluntary surrender, or  
10 otherwise, to recover moneys loaned or to recover  
11 debts otherwise owed the department under chapter 167;
- 12 (7) Land that is set aside by the governor to the Aloha  
13 Tower development corporation; land leased to the  
14 Aloha Tower development corporation by any department  
15 or agency of the State; or land to which the Aloha  
16 Tower development corporation holds title in its  
17 corporate capacity;
- 18 (8) Land that is set aside by the governor to the  
19 agribusiness development corporation; land leased to  
20 the agribusiness development corporation by any  
21 department or agency of the State; or land to which



1 the agribusiness development corporation in its  
2 corporate capacity holds title; or

3 (9) Land to which the high technology development  
4 corporation in its corporate capacity holds title.

5 (b) Notwithstanding any law to the contrary, no sale of  
6 lands under subsection (a) in fee simple, including land sold  
7 for roads and streets, shall occur without the prior approval of  
8 the sale by the legislature by concurrent resolution to be  
9 adopted by each house by at least a two-thirds majority vote of  
10 the members to which each house is entitled in a regular or  
11 special session at which a concurrent resolution is submitted  
12 for approval of the sale.

13 (c) The state department or agency proposing to sell state  
14 land under subsection (b) shall submit for introduction to the  
15 legislature a concurrent resolution for review of any sale of  
16 state land. The concurrent resolution shall contain a list of  
17 all sales of state land proposed by the state department or  
18 agency. The concurrent resolution shall contain the following  
19 information:

20 (1) The location and area of the parcels of land to be  
21 sold;

22 (2) The appraisal value of the land to be sold;



1 (3) The names of all appraisers performing appraisals of  
2 the land to be sold;

3 (4) The date of the appraisal valuation;

4 (5) The purpose for which the land is being sold; and

5 (6) A detailed summary of any development plans for the  
6 land to be sold.

7 (d) If the legislature fails to approve the concurrent  
8 resolution by at least a two-thirds majority vote of both  
9 houses, the transaction shall not be consummated by the state  
10 department or agency.

11 §171- Exchange of lands under the control of state  
12 departments and agencies for private land; legislative approval  
13 required. (a) This section applies to the following lands:

14 (1) Land defined as public land under section 171-2;

15 (2) Land set aside pursuant to law for the use of the  
16 United States;

17 (3) Land to which the United States relinquished the  
18 absolute fee and ownership under section 91 of the  
19 Organic Act prior to the admission of Hawaii as a  
20 state of the United States unless subsequently placed  
21 under the control of the board of land and natural



- 1 resources and given the status of public lands in  
2 accordance with the state constitution, or other laws;
- 3 (4) Land to which the University of Hawaii holds title;
- 4 (5) Land to which the Hawaii housing finance and  
5 development corporation in its corporate capacity  
6 holds title;
- 7 (6) Land to which the department of agriculture holds  
8 title by way of foreclosure, voluntary surrender, or  
9 otherwise, to recover moneys loaned or to recover  
10 debts otherwise owed the department under chapter 167;
- 11 (7) Land that is set aside by the governor to the Aloha  
12 Tower development corporation; land leased to the  
13 Aloha Tower development corporation by any department  
14 or agency of the State; or land to which the Aloha  
15 Tower development corporation holds title in its  
16 corporate capacity;
- 17 (8) Land that is set aside by the governor to the  
18 agribusiness development corporation; land leased to  
19 the agribusiness development corporation by any  
20 department or agency of the State; or land to which  
21 the agribusiness development corporation in its  
22 corporate capacity holds title; or



1           (9) Land to which the high technology development  
2                   corporation in its corporate capacity holds title.

3           (b) Notwithstanding any law to the contrary, no exchange  
4 of lands under subsection (a), including land being used for  
5 roads and streets, shall occur without the prior approval of the  
6 sale by the legislature by concurrent resolution to be adopted  
7 by each house by at least a two-thirds majority vote of the  
8 members to which each house is entitled in a regular or special  
9 session at which a concurrent resolution is submitted for  
10 approval of the exchange.

11           (c) The state department or agency proposing the exchange  
12 shall submit for introduction to the legislature a concurrent  
13 resolution for review of any exchange. The concurrent  
14 resolution shall contain a list of all exchanges proposed by the  
15 state department or agency and shall be submitted with the  
16 proposed exchange deeds for the exchanges to be executed by the  
17 parties, together with the following information:

18           (1) The location and area of the parcels of land to be  
19                   exchanged;

20           (2) The appraisal value of the lands to be conveyed by the  
21                   State and the private party;



- 1 (3) The names of all appraisers performing appraisals of
- 2 the parcels of land to be exchanged;
- 3 (4) The date of the appraisal valuation;
- 4 (5) The purpose for which the parcels of land are being
- 5 exchanged; and
- 6 (6) A detailed summary of any development plans for the
- 7 parcels of land to be exchanged.
- 8 (d) If the legislature fails to approve the concurrent
- 9 resolution by at least a two-thirds majority vote of both
- 10 houses, the transaction shall not be consummated by the state
- 11 department or agency."

SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY:

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S.B. NO. 1677

Shanna Chun Oakland



**Report Title:**

Ceded Lands; Public Lands; Sale

**Description:**

Requires two-thirds majority vote of the legislature to adopt concurrent resolution to sell or exchange certain public lands.

