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# A BILL FOR AN ACT

RELATING TO PUBLIC LANDS.

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

1 SECTION 1. Section 171-13, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§171-13 **Disposition of public lands.** Except as otherwise  
4 provided by law and subject to other provisions of this chapter,  
5 the board may:

6 (1) Dispose of public land in fee simple, by lease, lease  
7 with option to purchase, license, or permit; provided  
8 that no disposition of public lands shall violate  
9 section 171-18; and

10 (2) Grant easement by direct negotiation or otherwise for  
11 particular purposes in perpetuity on [~~such~~] terms as  
12 may be set by the board, subject to reverter to the  
13 State upon termination or abandonment of the specific  
14 purpose for which it was granted, provided the sale  
15 price of [~~such~~] the easement shall be determined  
16 pursuant to section 171-17(b).

17 No person shall be eligible to purchase or lease public lands,  
18 or to be granted a license, permit, or easement covering public

1 lands, who has had during the five years preceding the date of  
2 disposition a previous sale, lease, license, permit, or easement  
3 covering public lands cancelled for failure to satisfy the terms  
4 and conditions thereof."

5 SECTION 2. Section 171-18, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "**§171-18 Public land trust.** (a) All funds derived from  
8 the sale or lease or other disposition of public lands shall be  
9 appropriated by the laws of the State; provided that all  
10 proceeds and income from the sale, lease, or other disposition  
11 of lands ceded to the United States by the Republic of Hawaii  
12 under the joint resolution of annexation, approved July 7, 1898  
13 (30 Stat. 750), or acquired in exchange for lands so ceded, and  
14 returned to the State of Hawaii by virtue of section 5(b) of the  
15 Act of March 18, 1959 [~~(73 Stat. 6)~~,] (73 Stat. 5) and all  
16 proceeds and income from the sale, lease, or other disposition  
17 of lands retained by the United States under sections 5(c) and  
18 5(d) of the Act and later conveyed to the State under section  
19 5(e) shall be held as a public trust for the support of the  
20 public schools and other public educational institutions, for  
21 the betterment of the conditions of native Hawaiians as defined  
22 in the Hawaiian Homes Commission Act, 1920, as amended, for the

1 development of farm and home ownership on as widespread a basis  
2 as possible, for the making of public improvements, and for the  
3 provision of lands for public use.

4 (b) Notwithstanding any law to the contrary, all funds,  
5 proceeds, and income from the disposition of public trust lands  
6 as described in subsection (a), whether by sale, lease, or other  
7 disposition, shall be deposited into the public trust as set  
8 forth in subsection (a). The funds, proceeds, and income shall  
9 be held and used solely for the acquisition of lands, to be set  
10 aside for the purposes set forth in subsection (a), with respect  
11 to lands ceded to the United States under the joint resolution  
12 of annexation or acquired in exchange for lands so ceded and  
13 returned to the State, and lands retained under section 5(c) and  
14 5(d) of the Act of March 18, 1959 (73 Stat. 5), in order that  
15 the public land trust be maintained and not diminished.

16 (c) Except as provided in subsection (d), the State shall  
17 not dispose of any public trust lands in fee simple, including  
18 any disposition by lease with option to purchase; provided that  
19 the State may dispose of public trust lands upon one of the  
20 following occurrences:

- 1        (1) The claims of the native Hawaiian people, as defined  
2        in the United States Apology Resolution, Pub. L. No.  
3        103-150 (1993), have been resolved; or
- 4        (2) The legislature finds pursuant to a concurrent  
5        resolution adopted by at least two-thirds majority  
6        vote of the members to which each house is entitled  
7        that the State no longer supports reconciliation  
8        between the State and the native Hawaiian people.
- 9        (d) The limitations on the sale and transfer of lands  
10      pursuant to subsection (c) shall not prevent the State from:
- 11      (1) Disposing of remnants, as defined in section 171-52;  
12      (2) Providing easements to public utilities and government  
13      agencies pursuant to section 171-95;  
14      (3) Engaging in land exchanges pursuant to sections 171-50  
15      and 171-51;  
16      (4) Disposing of public trust lands that are part of  
17      negotiations between the office of Hawaiian affairs  
18      and the State with respect to issues relating to the  
19      income and proceeds from the lands in the public  
20      trust;  
21      (5) Disposing of public trust lands after December 31,  
22      2014; provided that the disposition is approved by the

1           legislature by concurrent resolution adopted by at  
2           least two-third majority vote of the members to which  
3           each house is entitled; and

4        (6) Disposing of public trust lands, provided that all of  
5        the following conditions are met:

6           (A) The State establishes a compelling state interest  
7           for the disposition;

8           (B) There is no reasonable alternate means to  
9           accomplish the compelling state interest;

10          (C) The disposition is limited to accomplishing the  
11          compelling state interest; and

12          (D) The disposition is approved by the legislature by  
13          concurrent resolution adopted by at least two-  
14          thirds majority vote of the members to which each  
15          house is entitled."

16           SECTION 3. This Act does not affect rights and duties that  
17   matured, penalties that were incurred, and proceedings that were  
18   began before its effective date.

19           SECTION 4. If any provision of this Act, or the  
20   application thereof to any person or circumstance is held  
21   invalid, the invalidity does not affect other provisions or  
22   applications of the Act, which can be given effect without the

1 invalid provision or application, and to this end the provisions  
2 of this Act are severable.

3 SECTION 5. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 6. This Act shall take effect on July 1, 2009.

**Report Title:**

Ceded Lands; Public Land Trust; Management

**Description:**

Prohibits the sale or transfer of ceded lands until the unrelinquished claims of the native Hawaiian people are resolved or reconciliation between the State and the native Hawaiian people is no longer supported, whichever occurs first; except in the following circumstances: disposing of remnants, providing easements to public utilities and government agencies as provided by law, land exchanges as provided by law, dispositions that are a part of the ceded lands negotiations between OHA and the State, dispositions after December 31, 2014 that are approved by a 2/3 vote of both houses of the legislature, or when a compelling state interest for the disposition is established. (SD1)