

JAN 23 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 1978, the Constitution of the State of  
2 Hawaii was amended to include Article XII, sections 4, 5, and 6,  
3 which established the office of Hawaiian affairs and its board  
4 of trustees.

5           Sections 4, 5, and 6 of the State Constitution provide:

6                   "SECTION 4. The lands granted to the State of  
7 Hawaii by Section 5(b) of the Admission Act and  
8 pursuant to Article XVI, Section 7, of the State  
9 Constitution, excluding therefrom lands defined as  
10 "available lands" by Section 203 of the Hawaiian Homes  
11 Commission Act, 1920, as amended, shall be held by the  
12 State as a public trust for native Hawaiians and the  
13 general public.

14           SECTION 5. There is hereby established an Office  
15 of Hawaiian Affairs. The Office of Hawaiian Affairs  
16 shall hold title to all the real and personal property  
17 now or hereafter set aside or conveyed to it which



1 shall be held in trust for native Hawaiians and  
2 Hawaiians. There shall be a board of trustees for the  
3 Office of Hawaiian Affairs elected by qualified voters  
4 who are Hawaiians, as provided by law. The board  
5 members shall be Hawaiians. There shall be not less  
6 than nine members of the board of trustees; provided  
7 that each of the following Islands have one  
8 representative: Oahu, Kauai, Maui, Molokai and  
9 Hawaii. The board shall select a chairperson from its  
10 members.

11 SECTION 6. The board of trustees of the Office  
12 of Hawaiian Affairs shall exercise power as provided  
13 by law: to manage and administer the proceeds from  
14 the sale or other disposition of the lands, natural  
15 resources, minerals and income derived from whatever  
16 sources for native Hawaiians and Hawaiians, including  
17 all income and proceeds from that pro rata portion of  
18 the trust referred to in section 4 of this article for  
19 native Hawaiians; to formulate policy relating to  
20 affairs of native Hawaiians and Hawaiians; and to  
21 exercise control over real and personal property set  
22 aside by state, federal or private sources and



1 transferred to the board for native Hawaiians and  
2 Hawaiians. The board shall have the power to exercise  
3 control over the Office of Hawaiian Affairs through  
4 its executive officer, the administrator of the Office  
5 of Hawaiian Affairs, who shall be appointed by the  
6 board."

7 Act 354, Session Laws of Hawaii 1993, stated in pertinent  
8 part in section 1: "Until the provisional government was  
9 recognized by John L. Stevens, the Kingdom of Hawaii was  
10 recognized as an independent nation by the United States,  
11 France, and Great Britain. Many native Hawaiians and others  
12 view the overthrow of 1893 and subsequent actions by the United  
13 States, such as supporting establishment of the provisional  
14 government and later the Republic of Hawaii, the designation of  
15 the crown and government lands as public lands, annexation, and  
16 the ceding of public lands to the federal government without the  
17 consent of native Hawaiians, as illegal. Because the actions  
18 taken by the United States were viewed as illegal and done  
19 without the consent of native Hawaiians, many native Hawaiians  
20 feel there is a valid legal claim for reparations. Many native  
21 Hawaiians believe that the lands taken without their consent  
22 should be returned and if not, monetary reparations made, and



1 that they should have the right to sovereignty, or the right to  
2 self-determination and self-government as do other native  
3 American peoples.

4 The legislature has also acknowledged that the actions by  
5 the United States were illegal and immoral, and pledges its  
6 continued support to the native Hawaiian community by taking  
7 steps to promote the restoration of the rights and dignity of  
8 native Hawaiians."

9 Act 359, Session Laws of Hawaii 1993, stated in pertinent  
10 part in section 1:

11 "(4) Throughout the 19th century and until 1893, the United  
12 States:

13 (A) Recognized the independence of the Hawaiian  
14 Nation;

15 (B) Extended full and complete diplomatic recognition  
16 to the Hawaiian government; and

17 (C) Entered into treaties with the Hawaiian  
18 government to govern commerce and navigation in  
19 1826, 1842, 1849, 1875, and 1887;

20 \* \* \*

21 (6) In pursuit of that conspiracy, the United States  
22 Minister and the naval representative of the United



1 States caused armed forces of the United States to  
2 invade the sovereign Hawaiian Nation in support of the  
3 overthrow of the indigenous and lawful government, and  
4 the United States Minister thereupon extended  
5 diplomatic recognition to the provisional government  
6 formed by the conspirators without the consent of the  
7 native Hawaiian people or the lawful Government of  
8 Hawaii in violation of treaties between the two  
9 nations and of international law;

10 \* \* \*

11 (9) In 1898, Hawaii was annexed to the United States  
12 through the Newlands Resolution without the consent of  
13 or compensation to the indigenous people of Hawaii or  
14 their sovereign government. As a result, the  
15 indigenous people of Hawaii were denied the mechanism  
16 for expression of their inherent sovereignty through  
17 self-government and self-determination, their lands,  
18 and their ocean resources."

19 In 1993, Congress passed Public Law 103-150, the Apology  
20 Resolution, which stated in pertinent part:

21 Whereas, from 1826 until 1893, the United States  
22 recognized the independence of the Kingdom of Hawaii,



1 extended full and complete diplomatic recognition to  
2 the Hawaiian Government, and entered into treaties and  
3 conventions with the Hawaiian monarchs to govern  
4 commerce and navigation in 1826, 1842, 1849, 1875, and  
5 1887;

6 \* \* \*

7 Whereas, on July 4, 1894, the Provisional  
8 Government declared itself to be the Republic of  
9 Hawaii;

10 \* \* \*

11 Whereas, through the Newlands Resolution, the  
12 self-declared Republic of Hawaii ceded sovereignty  
13 over the Hawaiian Islands to the United States;

14 Whereas, the Republic of Hawaii also ceded  
15 1,800,000 acres of crown, government and public lands  
16 of the Kingdom of Hawaii, without the consent of or  
17 compensation to the Native Hawaiian people of Hawaii  
18 or their sovereign government;

19 Whereas the Congress, through the Newlands  
20 Resolution, ratified the cession, annexed Hawaii as  
21 part of the United States, and vested title to the  
22 lands in Hawaii in the United States;



1 \* \* \*

2           Whereas the indigenous Hawaiian people never  
3 directly relinquished their claims to their inherent  
4 sovereignty as a people or over their national lands  
5 to the United States, either through their monarchy or  
6 through a plebiscite or referendum;

7 \* \* \*

8           SECTION 1. ACKNOWLEDGMENT AND APOLOGY.

9           The Congress -

10           (1) on the occasion of the 100th anniversary of  
11 the illegal overthrow of the Kingdom of Hawaii on  
12 January 17, 1893, acknowledges the historical  
13 significance of this event which resulted in the  
14 suppression of the inherent sovereignty of the Native  
15 Hawaiian people;

16 \* \* \*

17           (3) apologizes to Native Hawaiians on behalf of  
18 the people of the United States for the overthrow of  
19 the Kingdom of Hawaii on January 17, 1893 with the  
20 participation of agents and citizens of the United  
21 States, and the deprivation of the rights of Native  
22 Hawaiians to self-determination;



1           (4) expresses its commitment to acknowledge the  
2 ramifications of the overthrow of the Kingdom of  
3 Hawaii, in order to provide a proper foundation for  
4 reconciliation between the United States and the  
5 Native Hawaiian people; and

6           (5) urges the President of the United States to  
7 also acknowledge the ramifications of the overthrow of  
8 the Kingdom of Hawaii and to support reconciliation  
9 efforts between the United States and the Native  
10 Hawaiian people."

11           In 1993, the legislature also adopted Concurrent  
12 Resolution 93-2 that included almost all of the parts of  
13 the Apology Resolution including the finding that:  
14 "Whereas the indigenous Hawaiian people never directly  
15 relinquished their claims to their inherent sovereignty as  
16 a people or over their national lands to the United States,  
17 either through their monarchy or through a plebiscite or  
18 referendum".

19           Act 329, Session Laws of Hawaii 1997, stated in pertinent  
20 part in section 1:

21           "The legislature finds that the events of history  
22 relating to Hawaii and Native Hawaiians, including





1 those set forth in . . . [the Apology Resolution]  
2 continue to contribute today to a deep sense of  
3 injustice among many Native Hawaiians and others. The  
4 legislature recognizes that the lasting reconciliation  
5 so desired by all people of Hawaii is possible only if  
6 it fairly acknowledges the past while moving into  
7 Hawaii's future.

8 The legislature further finds that over the last  
9 few decades, the people of Hawaii, through amendments  
10 to their state constitution, the acts of their  
11 legislature, and other means, have moved substantially  
12 toward this permanent reconciliation. Foremost among  
13 these achievements have been the creation of the  
14 office of Hawaiian affairs and the allocation by  
15 legislative action to the office of Hawaiian affairs  
16 of substantial funds out of a portion of the public  
17 land trust established by section 5(f) of the  
18 Admission Act. The overriding purpose of this Act is  
19 to continue this momentum, through further executive  
20 and legislative action in conjunction with the people  
21 of Hawaii, toward a comprehensive, just, and lasting  
22 resolution."



1           In 2001, S. 746, the federal legislation commonly referred  
2 to as the "Akaka bill" was passed out of the Senate Committee on  
3 Indian Affairs. Senate Committee Report No. 107-66, on the  
4 Akaka bill explains that its purpose "is to authorize a process  
5 for the reorganization of a Native Hawaiian government and to  
6 provide for the recognition of the Native Hawaiian government by  
7 the United States for the purpose of carrying on a government-  
8 to-government relationship." The Akaka bill authorizes the  
9 federal government to negotiate with the State and the  
10 reorganized native Hawaiian government for a transfer of land  
11 and resources to a native Hawaiian government. The native  
12 Hawaiian government would thus have a land base and resources  
13 and a status similar to that of other native peoples in the  
14 United States. The committee report on the Akaka bill explains  
15 that "it is the Committee's intent that the references to 'land,  
16 resources, and assets dedicated to native Hawaiian use' include,  
17 but not be limited to lands set aside under the Hawaiian Homes  
18 Commission Act and ceded lands."

19           In 2007, H.R. 505, the latest version of the Akaka bill,  
20 passed the United States House of Representatives. Section 8 of  
21 H.R. 505 also includes a provision authorizing the United States  
22 and State of Hawaii to "enter into negotiations with the Native



1 Hawaiian governing entity designed to lead to an agreement  
2 addressing such matters as the transfer of lands, natural  
3 resources, and other assets, and the protection of existing  
4 rights related to such lands or resources."

5 In January 2008, the Hawaii Supreme Court in Office of  
6 Hawaiian Affairs v. Housing And Community Development  
7 Corporation Of Hawaii, 117 Hawaii 174, 177 P.3d 884 (2008),  
8 enjoined the State from selling or otherwise transferring to  
9 third parties any ceded lands from the public lands trust until  
10 the claims of the native Hawaiian people to the ceded lands have  
11 been resolved. In October 2008, the United States Supreme Court  
12 granted the State's petition for certiorari in the foregoing  
13 case.

14 The purpose of this Act is to prohibit the sale and  
15 exchange of certain public lands considered to be ceded lands.

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

19 **"PART . CEDED LANDS**

20 **"§171- Sale of lands in the public land trust. (a)**

21 Notwithstanding any law to the contrary, no sale in fee simple  
22 shall be made of:



- 1           (1) Lands ceded to the United States by the Republic of  
2           Hawaii under the joint resolution of annexation,  
3           approved July 7, 1898 (30 Stat. 750), or acquired in  
4           exchange for lands so ceded, and granted to the State  
5           of Hawaii by virtue of section 5(b) of the Admission  
6           Act of 1959; or
- 7           (2) Lands retained by the United States under section 5(c)  
8           and (d) of the Admission Act of 1959 and later  
9           conveyed to the State under section 5(e) or under the  
10          Act of December 23, 1963 (Pub. Law 88-233, 77 Stat.  
11          472).

12           **§171- Exchange of lands in the public land trust for**  
13 **private land.** (a) Notwithstanding any law to the contrary, no  
14 exchange shall be made of:

- 15           (1) Lands ceded to the United States by the Republic of  
16           Hawaii under the joint resolution of annexation,  
17           approved July 7, 1898 (30 Stat. 750), or acquired in  
18           exchange for lands so ceded, and granted to the State  
19           of Hawaii by virtue of section 5(b) of the Admission  
20           Act of 1959; or
- 21           (2) Lands retained by the United States under section 5(c)  
22           and (d) of the Admission Act of 1959 and later



1 conveyed to the State under section 5(e) or under the  
2 Act of December 23, 1963 (Pub. Law 88-233, 77 Stat.  
3 472)."

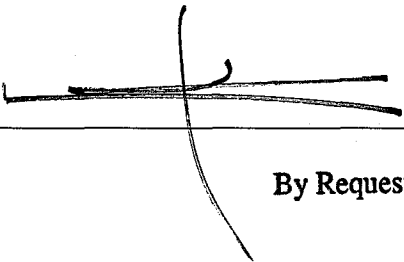
4 SECTION 3. This Act does not affect the state practice of  
5 transferring remnants, and issuing licenses, permits, easements  
6 and leases.

7 SECTION 4. This Act shall remain in effect until the  
8 claims of the native Hawaiian people to the public land trust  
9 lands have been resolved or until the legislature finds that the  
10 state no longer supports reconciliation between the State and  
11 the native Hawaiian people.

12 SECTION 5. This Act shall take effect upon its approval.

13

INTRODUCED BY:

  
By Request

**Report Title:**

Ceded Lands; Public Lands; Sale; Exchange; Prohibition

**Description:**

Prohibits the sale or exchange of certain public lands considered to be ceded lands. Expires on decision of U.S. Supreme Court on pending appeal of related case.

