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

4 Sections 4, 5, and 6 of the state constitution provide:

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

13 *SECTION 5. There is hereby established an Office*
14 *of Hawaiian Affairs. The Office of Hawaiian Affairs*
15 *shall hold title to all the real and personal property*
16 *now or hereafter set aside or conveyed to it which*
17 *shall be held in trust for native Hawaiians and*
18 *Hawaiians. There shall be a board of trustees for the*



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

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



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

6 Act 354, Session Laws of Hawaii 1993, stated in pertinent
7 part in section 1:

8 *Until the provisional government was recognized by*
9 *John L. Stevens, the Kingdom of Hawaii was recognized as an*
10 *independent nation by the United States, France, and Great*
11 *Britain. Many native Hawaiians and others view the*
12 *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*
15 *designation of the crown and government lands as public*
16 *lands, annexation, and the ceding of public lands to the*
17 *federal government without the consent of native Hawaiians,*
18 *as illegal. Because the actions taken by the United States*
19 *were viewed as illegal and done without the consent of*
20 *native Hawaiians, many native Hawaiians feel there is a*
21 *valid legal claim for reparations. Many native Hawaiians*



1 believe that the lands taken without their consent should
2 be returned and if not, monetary reparations made, and that
3 they should have the right to sovereignty, or the right to
4 self-determination and self-government as do other native
5 American peoples.

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

11 Act 359, Session Laws of Hawaii 1993, stated in pertinent
12 part in section 1:

13 (4) Throughout the 19th century and until 1893, the United
14 States:

15 (A) Recognized the independence of the Hawaiian
16 Nation;

17 (B) Extended full and complete diplomatic recognition
18 to the Hawaiian government; and

19 (C) Entered into treaties with the Hawaiian
20 government to govern commerce and navigation in
21 1826, 1842, 1849, 1875, and 1887;



1 * * *

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

13 * * *

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



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

3 *Whereas, from 1826 until 1893, the United States*
4 *recognized the independence of the Kingdom of Hawaii,*
5 *extended full and complete diplomatic recognition to*
6 *the Hawaiian Government, and entered into treaties and*
7 *conventions with the Hawaiian monarchs to govern*
8 *commerce and navigation in 1826, 1842, 1849, 1875, and*
9 *1887;*

10 * * *

11 *Whereas, on July 4, 1894, the Provisional*
12 *Government declared itself to be the Republic of*
13 *Hawaii;*

14 * * *

15 *Whereas, through the Newlands Resolution, the*
16 *self-declared Republic of Hawaii ceded sovereignty*
17 *over the Hawaiian Islands to the United States;*

18 *Whereas, the Republic of Hawaii also ceded*
19 *1,800,000 acres of crown, government and public lands*
20 *of the Kingdom of Hawaii, without the consent of or*



1 *compensation to the Native Hawaiian people of Hawaii*
2 *or their sovereign government;*

3 *Whereas the Congress, through the Newlands*
4 *Resolution, ratified the cession, annexed Hawaii as*
5 *part of the United States, and vested title to the*
6 *lands in Hawaii in the United States;*

7 ** * **

8 *Whereas the indigenous Hawaiian people never*
9 *directly relinquished their claims to their inherent*
10 *sovereignty as a people or over their national lands*
11 *to the United States, either through their monarchy or*
12 *through a plebiscite or referendum;*

13 ** * **

14 *SECTION 1. ACKNOWLEDGMENT AND APOLOGY.*

15 *The Congress -*

16 *(1) on the occasion of the 100th anniversary of*
17 *the illegal overthrow of the Kingdom of Hawaii on*
18 *January 17, 1893, acknowledges the historical*
19 *significance of this event which resulted in the*
20 *suppression of the inherent sovereignty of the Native*
21 *Hawaiian people;*



1 * * *

2 (3) apologizes to Native Hawaiians on behalf of
3 the people of the United States for the overthrow of
4 the Kingdom of Hawaii on January 17, 1893 with the
5 participation of agents and citizens of the United
6 States, and the deprivation of the rights of Native
7 Hawaiians to self-determination;

8 (4) expresses its commitment to acknowledge the
9 ramifications of the overthrow of the Kingdom of
10 Hawaii, in order to provide a proper foundation for
11 reconciliation between the United States and the
12 Native Hawaiian people; and

13 (5) urges the President of the United States to
14 also acknowledge the ramifications of the overthrow of
15 the Kingdom of Hawaii and to support reconciliation
16 efforts between the United States and the Native
17 Hawaiian people.

18 In 1993, the legislature also adopted Concurrent
19 Resolution 93-2 that included almost all of the parts of
20 the Apology Resolution including the finding that:



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

6 Act 329, Session Laws of Hawaii 1997, stated in pertinent
7 part in section 1:

8 *The legislature finds that the events of history*
9 *relating to Hawaii and Native Hawaiians, including*
10 *those set forth in . . . [the Apology Resolution]*
11 *continue to contribute today to a deep sense of*
12 *injustice among many Native Hawaiians and others. The*
13 *legislature recognizes that the lasting reconciliation*
14 *so desired by all people of Hawaii is possible only if*
15 *it fairly acknowledges the past while moving into*
16 *Hawaii's future.*

17 *The legislature further finds that over the last*
18 *few decades, the people of Hawaii through amendments*
19 *to their state constitution, the acts of their*
20 *legislature, and other means, have moved substantially*
21 *toward this permanent reconciliation. Foremost among*



1 *these achievements have been the creation of the*
2 *office of Hawaiian affairs and the allocation by*
3 *legislative action to the office of Hawaiian affairs*
4 *of substantial funds out of a portion of the public*
5 *land trust established by section 5(f) of the*
6 *Admission Act. The overriding purpose of this Act is*
7 *to continue this momentum, through further executive*
8 *and legislative action in conjunction with the people*
9 *of Hawaii, toward a comprehensive, just, and lasting*
10 *resolution.*

11 In 2001, S. 746, the federal legislation commonly referred
12 to as the "Akaka bill" was passed out of the Senate Committee on
13 Indian Affairs. Senate Committee Report No. 107-66, on the
14 Akaka bill explains that its purpose:

15 *. . . is to authorize a process for the reorganization of a*
16 *Native Hawaiian government and to provide for the*
17 *recognition of the Native Hawaiian government by the United*
18 *States for the purpose of carrying on a government-to-*
19 *government relationship.*

20 The Akaka bill authorizes the federal government to
21 negotiate with the State and the reorganized native Hawaiian



1 government for a transfer of land and resources to a native
2 Hawaiian government. The native Hawaiian government would thus
3 have a land base and resources and a status similar to that of
4 other native peoples in the United States. The committee report
5 on the Akaka bill explains that:

6 . . . it is the Committee's intent that the references to
7 'land, resources, and assets dedicated to native Hawaiian
8 use' include, but not be limited to lands set aside under
9 the Hawaiian Homes Commission Act and ceded lands.

10 In 2007, H.R. 505, the latest version of the Akaka bill,
11 passed the United States House of Representatives. Section 8 of
12 H.R. 505 also includes a provision authorizing the United States
13 and State of Hawaii to:

14 enter into negotiations with the Native Hawaiian governing
15 entity designed to lead to an agreement addressing such
16 matters as the transfer of lands, natural resources, and
17 other assets, and the protection of existing rights related
18 to such lands or resources.

19 In January 2008, the Hawaii Supreme Court in *Office of*
20 *Hawaiian Affairs v. Housing And Community Development*
21 *Corporation Of Hawaii*, 117 Hawaii 174, 177 P.3d 884 (2008),



1 enjoined the State from selling or otherwise transferring to
 2 third parties any ceded lands from the public lands trust until
 3 the claims of the native Hawaiian people to the ceded lands have
 4 been resolved. In October 2008, the United States Supreme Court
 5 granted the State's petition for certiorari in the foregoing
 6 case.

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

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

13 "PART . CEDED LANDS

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

16 This section applies to the following lands:

- 17 (1) Land defined as public lands under section 171-2;
- 18 (2) Land set aside pursuant to law for the use of the
 19 United States;
- 20 (3) Land to which the United States relinquished the
 21 absolute fee and ownership under section 91 of the



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



1 (8) Land that is set aside by the governor to the
2 agribusiness development corporation; land leased to
3 the agribusiness development corporation by any
4 department or agency of the State; or land to which
5 the agribusiness development corporation in its
6 corporate capacity holds title; or

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

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

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



1 agency. The concurrent resolution shall contain the following
2 information:

- 3 (1) The location and area of the parcels of land to be
4 sold;
- 5 (2) The appraisal value of the land to be sold;
- 6 (3) The names of all appraisers performing appraisals of
7 the land to be sold;
- 8 (4) The date of the appraisal valuation;
- 9 (5) The purpose for which the land is being sold; and
- 10 (6) A detailed summary of any development plans for the
11 land to be sold.

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

16 **§171- Exchange of lands under the control of state**
17 **departments and agencies for private land; legislative approval**
18 **required.** (a) This section applies to the following lands:

- 19 (1) Land defined as public land under section 171-2;
- 20 (2) Land set aside pursuant to law for the use of the
21 United States;



- 1 (3) Land to which the United States relinquished the
2 absolute fee and ownership under section 91 of the
3 Organic Act prior to the admission of Hawaii as a
4 state of the United States unless subsequently placed
5 under the control of the board of land and natural
6 resources and given the status of public lands in
7 accordance with the Hawaii Constitution, or other
8 laws;
- 9 (4) Land to which the University of Hawaii holds title;
- 10 (5) Land to which the Hawaii housing finance and
11 development corporation in its corporate capacity
12 holds title;
- 13 (6) Land to which the department of agriculture holds
14 title by way of foreclosure, voluntary surrender, or
15 otherwise, to recover moneys loaned or to recover
16 debts otherwise owed the department under chapter 167;
- 17 (7) Land that is set aside by the governor to the Aloha
18 Tower development corporation; land leased to the
19 Aloha Tower development corporation by any department
20 or agency of the State; or land to which the Aloha



1 Tower development corporation holds title in its
2 corporate capacity;

3 (8) Land that is set aside by the governor to the
4 agribusiness development corporation; land leased to
5 the agribusiness development corporation by any
6 department or agency of the State; or land to which
7 the agribusiness development corporation in its
8 corporate capacity holds title; or

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

11 (b) Notwithstanding any law to the contrary, no exchange
12 of lands under subsection (a), including land being used for
13 roads and streets, shall occur without the prior approval of the
14 sale by the legislature by concurrent resolution to be adopted
15 by each house by at least a two-thirds majority vote of the
16 members to which each house is entitled in a regular or special
17 session at which a concurrent resolution is submitted for
18 approval of the exchange.

19 (c) The state department or agency proposing the exchange
20 shall submit for introduction to the legislature a concurrent
21 resolution for review of any exchange. The concurrent



1 resolution shall contain a list of all exchanges proposed by the
2 state department or agency and shall be submitted with the
3 proposed exchange deeds for the exchanges to be executed by the
4 parties, together with the following information:

- 5 (1) The location and area of the parcels of land to be
6 exchanged;
- 7 (2) The appraisal value of the lands to be conveyed by the
8 State and the private party;
- 9 (3) The names of all appraisers performing appraisals of
10 the parcels of land to be exchanged;
- 11 (4) The date of the appraisal valuation;
- 12 (5) The purpose for which the parcels of land are being
13 exchanged; and
- 14 (6) A detailed summary of any development plans for the
15 parcels of land to be exchanged.

16 (d) If the legislature fails to approve the concurrent
17 resolution by at least a two-thirds majority vote of both
18 houses, the transaction shall not be consummated by the state
19 department or agency."

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



Report Title:

Ceded Lands; Public Lands; Sale

Description:

Requires adoption of a concurrent resolution by two-thirds majority vote of each house of the Legislature in order to sell or exchange ceded lands. (HB1805 HD1)

