
A BILL FOR AN ACT

RELATING TO THE PUBLIC LANDS TRUST.

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 public lands trust and the office of Hawaiian affairs in the
4 constitution. Article XII, section 4 provides:

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

13 Article XII, sections 5 and 6 provide:

14 *"The Office of Hawaiian Affairs shall hold title*
15 *to all the real and personal property now or hereafter*
16 *set aside or conveyed to it which shall be held in*
17 *trust for native Hawaiians and Hawaiians . . .*



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

14 In Act 354, Session Laws of Hawaii (SLH) 1993, the
15 legislature stated:

16 *"Until the provisional government was recognized*
17 *by John L. Stevens, the Kingdom of Hawaii was*
18 *recognized as an independent nation by the United*
19 *States, France, and Great Britain. Many native*
20 *Hawaiians and others view the overthrow of 1893 and*
21 *subsequent actions by the United States, such as*
22 *supporting establishment of the provisional government*



1 *and later the Republic of Hawaii, the designation of*
2 *the crown and government lands as public lands,*
3 *annexation, and the ceding of public lands to the*
4 *federal government without the consent of native*
5 *Hawaiians, as illegal. Because the actions taken by*
6 *the United States were viewed as illegal and done*
7 *without the consent of native Hawaiians, many native*
8 *Hawaiians feel there is a valid legal claim for*
9 *reparations. Many native Hawaiians believe that the*
10 *lands taken without their consent should be returned*
11 *and if not, monetary reparations made, and that they*
12 *should have the right to sovereignty, or the right to*
13 *self-determination and self-government as do other*
14 *native American peoples.*

15 *"The legislature has also acknowledged that the*
16 *actions by the United States were illegal and immoral,*
17 *and pledges its continued support to the native*
18 *Hawaiian community by taking steps to promote the*
19 *restoration of the rights and dignity of native*
20 *Hawaiians."*

21 *In Act 359 Session Laws of Hawaii 1993, the legislature*
22 *stated:*



1 *"Throughout the 19th century and until 1893, the United*
2 *States:*

3 *(A) Recognized the independence of the Hawaiian*
4 *Nation;*

5 *(B) Extended full and complete diplomatic*
6 *recognition to the Hawaiian government; and*

7 *(C) Entered into treaties with the Hawaiian*
8 *government to govern commerce and navigation*
9 *in 1826, 1842, 1849, 1875, and 1887. . .*

10 *In pursuit of that conspiracy, the United States*
11 *Minister and the naval representative of the United*
12 *States caused armed forces of the United States to*
13 *invade the sovereign Hawaiian Nation in support of the*
14 *overthrow of the indigenous and lawful government, and*
15 *the United States Minister thereupon extended*
16 *diplomatic recognition to a provisional government*
17 *formed by the conspirators without the consent of the*
18 *native Hawaiian people or the lawful Government of*
19 *Hawaii in violation of treaties between the two*
20 *nations and of international law . . .*

21 *In 1898, Hawaii was annexed to the United States*
22 *through the Newlands Resolution without the consent of*



1 *or compensation to the indigenous people of Hawaii or*
2 *their sovereign government. As a result, the*
3 *indigenous people of Hawaii were denied the mechanism*
4 *for expression of their inherent sovereignty through*
5 *self-government and self-determination, their lands*
6 *and their ocean resources."*

7 In 1993, Congress passed Public Law 103-150, the Apology
8 Resolution, which stated:

9 *"Whereas, from 1826 until 1893, the United States*
10 *recognized the independence of the Kingdom of Hawaii,*
11 *extended full and complete diplomatic recognition to the*
12 *Hawaiian Government, and entered into treaties and*
13 *conventions with the Hawaiian monarchs to govern commerce*
14 *and navigation in 1826, 1842, 1849, 1875, and 1887; . . .*

15 *Whereas, on July 4, 1894, the Provisional Government*
16 *declared itself to be the Republic of Hawaii; . . .*

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

20 *Whereas, the Republic of Hawaii also ceded 1,800,000*
21 *acres of crown, government and public lands of the Kingdom*
22 *of Hawaii, without the consent of or compensation to the*



1 Native Hawaiian people of Hawaii or their sovereign
2 government;

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

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

12 SECTION 1. Acknowledgment and Apology.

13 The Congress -

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

20 (3) apologizes to Native Hawaiians on behalf of the people
21 of the United States for the overthrow of the Kingdom
22 of Hawaii on January 17, 1893 with the participation



1 *of agents and citizens of the United States, and the*
2 *deprivation of the rights of Native Hawaiians to self-*
3 *determination;*

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

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

14 In 1993, the legislature also adopted House Concurrent
15 Resolution No. 179 that included almost all of the parts of the
16 Apology Resolution, including the finding that:

17 *"Whereas the indigenous Hawaiian people never*
18 *directly relinquished their claims to their inherent*
19 *sovereignty as a people or over their national lands*
20 *to the United States, either through their monarchy or*
21 *through a plebiscite or referendum."*



1 In 1997, the Hawaii legislature enacted Act 329, which
2 stated:

3 ". . . The legislature finds that the events of history
4 relating to Hawaii and Native Hawaiians, including
5 those set forth in Public Law 103-150 (November 23,
6 1993), continue to contribute today to a deep sense of
7 injustice among many Native Hawaiians and others. The
8 legislature recognizes that the lasting reconciliation
9 so desired by all people of Hawaii is possible only if
10 it fairly acknowledges the past while moving into
11 Hawaii's future.

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



1 *momentum, through further executive and legislative*
2 *action in conjunction with the people of Hawaii, toward*
3 *a comprehensive, just, and lasting resolution."*

4 In January 2008, the Hawaii Supreme Court in *Office of*
5 *Hawaiian Affairs v. Housing and Community Development*
6 *Corporation of Hawai'i*, 117 Haw. 174, 177 P.3d 884 (2008),
7 (HCDCH case) enjoined the State from:

8 *". . . selling or otherwise transferring to third*
9 *parties . . . any . . . ceded lands from the Public*
10 *Lands Trust until the claims of the native Hawaiians to*
11 *the ceded lands have been resolved."*

12 In October 2008, the United States Supreme Court granted the
13 State's petition for certiorari in the HCDCH case.

14 The legislature finds that the claims of the native Hawaiians
15 to the ceded lands in the public lands trust should be resolved.
16 There should be an end to the ongoing and costly litigation
17 concerning these lands, and a reconciliation between the agencies of
18 the executive branch, including the Office of Hawaiian Affairs, as
19 well as between the State and the native Hawaiian people. The
20 legislature finds that this Act will ensure that lands in the
21 public lands trust are identified and preserved, so as to
22 provide the basis for a fair and just settlement resolving the claims



1 of the native Hawaiian people to the ceded lands in the public
2 lands trust.

3 SECTION 2. Disposition of lands in the public lands trust.

4 Notwithstanding any law to the contrary, no sale in fee simple to a
5 private entity, exchange for private land, or lease that may result
6 in alienation of the lands leased shall be made of:

7 (1) Lands ceded to the United States by the Republic of
8 Hawaii under the joint resolution of annexation, approved
9 July 7, 1898 (30 Stat. 750), or acquired in exchange for
10 lands so ceded, and granted to the State of Hawaii by
11 virtue of section 5(b) of the Admission Act of 1959;

12 (2) Lands retained by the United States under section 5(c)
13 and (d) of the Admission Act of 1959 and later conveyed
14 to the State under section 5(e) or under the Act of
15 December 23, 1964 (Pub. Law 88-233, 77 Stat. 472); and

16 (3) Lands falling within paragraph (1) or (2) that have been
17 transferred by the office of Hawaiian affairs to limited
18 liability corporations.

19 For the purposes of this section:

20 "Alienation" means a transfer in fee simple from state
21 government to a private entity.



1 "State government" includes the State and any political
2 subdivision, agency, or instrumentality, corporate or otherwise,
3 of the State.

4 SECTION 3. The department of land and natural resources
5 shall conduct a public lands trust inventory of:

- 6 (1) The lands comprising the public lands trust as of
7 August 21, 1959;
- 8 (2) The lands acquired after August 21, 1959, in exchange
9 for lands comprising the public lands trust on or after
10 August 21, 1959; and
- 11 (3) The lands transferred to the State by the United States
12 after August 21, 1959, pursuant to section 5(e) of the
13 Admission Act or Pub. L. 88-233.

14 All state and county agencies shall assist the department of
15 land and natural resources in making its inventory and shall
16 comply with any and all requests the department may make for
17 information and services pertinent to the completion of the
18 inventory.

19 The department of land and natural resources shall submit
20 progress reports to the legislature no later than twenty days
21 prior to the convening of the regular sessions of 2010 and 2011.
22 These progress reports shall outline what needs to be done to



1 complete the public lands trust inventory and include any
2 legislation the department deems necessary to facilitate the
3 expeditious completion of the inventory.

4 The inventory shall be completed by December 31, 2012,
5 unless the department of land and natural resources advises
6 otherwise in a progress report.

7 For the purposes of this section "public lands trust" means
8 the public lands trust established in section 5(f) of the
9 Admission Act.

10 SECTION 4. Not later than six weeks after enactment of this
11 Act, the office of Hawaiian affairs shall begin holding a series
12 of informational meetings on this Act on the islands of Kauai,
13 Oahu, Molokai, Lanai, Maui, and Hawaii. Notice of each meeting
14 shall be published statewide and for the county in which the
15 meeting will be held, at least once a week for two consecutive
16 weeks. The office of Hawaiian affairs shall provide information
17 in the notice about where copies of this Act may be obtained or
18 viewed, and shall also distribute copies of this Act to the
19 public at each meeting.

20 SECTION 5. There is appropriated out of the general
21 revenues of the State of Hawaii the sum of \$ or so much
22 thereof as may be necessary for fiscal year 2009-2010 to be



1 expended by the department of land and natural resources to
2 inventory lands in the public lands trust; provided that no funds
3 appropriated shall be expended unless separately matched on a
4 dollar-for-dollar basis by the office of Hawaiian affairs.

5 The sum appropriated shall be expended by the department of
6 land and natural resources for the purposes of section 3 of this
7 Act.

8 SECTION 6. This Act shall take effect upon its approval;
9 provided that section 5 shall take effect on July 1, 2009.

10

INTRODUCED BY: *Mele Carroll*
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JAN 28 2009



Report Title:

Public Lands Trust; Moratorium; Inventory

Description:

Prohibits the sale, exchange or other permanent transfer of lands in the public lands trust to a private entity; requires the Department of Land and Natural Resources to make an inventory of lands in the public lands trust; appropriates funds for the inventory, to be matched by the Office of Hawaiian Affairs.

