

JAN 26 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           Hawai`i was amended to include article XII, sections 4, 5, and  
3           6, which established the office of Hawaiian affairs and its  
4           board 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  
18          shall be held in trust for native Hawaiians and



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

10           SECTION 6. The board of trustees of the Office  
11           of Hawaiian Affairs shall exercise power as provided  
12           by law: to manage and administer the proceeds from  
13           the sale or other disposition of the lands, natural  
14           resources, minerals and income derived from whatever  
15           sources for native Hawaiians and Hawaiians, including  
16           all income and proceeds from that pro rata portion of  
17           the trust referred to in section 4 of this article for  
18           native Hawaiians; to formulate policy relating to  
19           affairs of native Hawaiians and Hawaiians; and to  
20           exercise control over real and personal property set  
21           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 In Act 354, Session Laws of Hawaii 1993, the legislature  
8 stated:

9           Until the provisional government was recognized by  
10 John L. Stevens, the Kingdom of Hawaii was recognized as an  
11 independent nation by the United States, France, and Great  
12 Britain. Many native Hawaiians and others view the  
13 overthrow of 1893 and subsequent actions by the United  
14 States, such as supporting establishment of the provisional  
15 government and later the Republic of Hawaii, the  
16 designation of the crown and government lands as public  
17 lands, annexation, and the ceding of public lands to the  
18 federal government without the consent of native Hawaiians,  
19 as illegal. Because the actions taken by the United States  
20 were viewed as illegal and done without the consent of  
21 native Hawaiians, many native Hawaiians feel there is a



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

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

13 In Act 359, Session Laws of Hawaii 1993, the legislature  
14 stated:

15 (4) Throughout the 19th century and until 1893, the United

16 States:

17 (A) Recognized the independence of the Hawaiian  
18 Nation;

19 (B) Extended full and complete diplomatic recognition  
20 to the Hawaiian government; and



1 (C) Entered into treaties with the Hawaiian  
2 government to govern commerce and navigation in  
3 1826, 1842, 1849, 1875 and 1887;

4 . . . . .

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

16 . . . . .

17 (9) In 1898, Hawaii was annexed to the United States  
18 through the Newlands Resolution without the consent of  
19 or compensation to the indigenous people of Hawaii or  
20 their sovereign government. As a result, the  
21 indigenous people of Hawaii were denied the mechanism



1 for expression of their inherent sovereignty through  
2 self-government and self-determination, their lands  
3 and their ocean resources.

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

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

13 Whereas, on July 4, 1894, the Provisional  
14 Government declared itself to be the Republic of  
15 Hawaii;

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

19 Whereas, the Republic of Hawaii also ceded  
20 1,800,000 acres of crown, government and public lands  
21 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 Whereas the indigenous Hawaiian people never  
8 directly relinquished their claims to their inherent  
9 sovereignty as a people or over their national lands  
10 to the United States, either through their monarchy or  
11 through a plebiscite or referendum;

12 . . . . .

13 SECTION 1. ACKNOWLEDGMENT AND APOLOGY.

14 The Congress -

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

20 . . . . .



- 1 (3) Apologizes to Native Hawaiians on behalf of the people  
2 of the United States for the overthrow of the Kingdom  
3 of Hawaii on January 17, 1893 with the participation  
4 of agents and citizens of the United States, and the  
5 deprivation of the rights of Native Hawaiians to self-  
6 determination;
- 7 (4) Expresses its commitment to acknowledge the  
8 ramifications of the overthrow of the Kingdom of  
9 Hawaii, in order to provide a proper foundation for  
10 reconciliation between the United States and the  
11 Native Hawaiian people; and
- 12 (5) Urges the President of the United States to also  
13 acknowledge the ramifications of the overthrow of the  
14 Kingdom of Hawaii and to support reconciliation  
15 efforts between the United States and the Native  
16 Hawaiian people.

17 In 1993, the legislature also adopted House Concurrent  
18 Resolution No. 179 that included almost all of the parts of the  
19 Apology Resolution including the finding that: "Whereas the  
20 indigenous Hawaiian people never directly relinquished their  
21 claims to their inherent sovereignty as a people or over their





1 national lands to the United States, either through their  
2 monarchy or through a plebiscite or referendum".

3 In 1997, the legislature enacted Act 329, Session Laws of  
4 Hawaii 1997, which stated:

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

14 The legislature further finds that over the last  
15 few decades, the people of Hawaii through amendments  
16 to their state constitution, the acts of their  
17 legislature, and other means, have moved substantially  
18 toward this permanent reconciliation. Foremost among  
19 these achievements have been the creation of the  
20 [O]ffice of Hawaiian [A]ffairs and the allocation by  
21 legislative action to the [O]ffice of Hawaiian



1 [A]ffairs of substantial funds out of a portion of the  
2 public land[s] trust established by section 5(f) of  
3 the Admission Act. The overriding purpose of this Act  
4 is to continue this momentum, through further  
5 executive and legislative action in conjunction with  
6 the people of Hawaii, toward a comprehensive, just,  
7 and lasting resolution.

8 In 2001, S. 746, the federal legislation commonly referred  
9 to as the "Akaka Bill" was passed out of the Senate Committee on  
10 Indian Affairs. Senate Committee Report No. 107-66, on the  
11 Akaka Bill explains that its purpose "is to authorize a process  
12 for the reorganization of a Native Hawaiian government and to  
13 provide for the recognition of the Native Hawaiian government by  
14 the United States for the purpose of carrying on a government-  
15 to-government relationship." The Akaka Bill, authorizes the  
16 federal government to negotiate with the State and the  
17 reorganized native Hawaiian government for a transfer of land  
18 and resources to a native Hawaiian government. The native  
19 Hawaiian government would thus have a land base and resources  
20 and a status similar to that of other native peoples in the  
21 United States. The Committee Report on the Akaka Bill explains



1 that "it is the Committee's intent that the references to 'land,  
2 resources, and assets dedicated to [n]ative Hawaiian use'  
3 include, but not be limited to lands set aside under the  
4 Hawaiian Homes Commission Act and ceded lands."

5 In 2007, H.R. 505, the latest version of the Akaka Bill,  
6 passed the U.S. House of Representatives. Section 8 of H.R. 505  
7 also includes a provision authorizing the United States and  
8 State of Hawai'i to "enter into negotiations with the Native  
9 Hawaiian governing entity designed to lead to an agreement  
10 addressing such matters as the transfer of lands, natural  
11 resources, and other assets, and the protection of existing  
12 rights related to such lands or resources[;]."

13 In January 2008, the Hawai'i supreme court in Office of  
14 Hawaiian Affairs v. Housing And Community Development  
15 Corporation Of Hawai'i, 117 Hawai'i 174, 177 P.3d 884 (2008) (OHA  
16 v. HCDCH), enjoined the State from selling or otherwise  
17 transferring to third parties any ceded lands from the public  
18 lands trust until the claims of the native Hawaiian people to  
19 the ceded lands have been resolved. The plaintiffs in the OHA  
20 v. HCDCH case and the legislature agree that based on the  
21 language of the OHA v. HCDCH decision, the Hawaii supreme court



1 intended that the injunction would remain in place until the  
 2 native Hawaiian claim to the ceded lands is resolved unless,  
 3 prior to any such resolution, the legislature no longer desires  
 4 reconciliation between the State and the native Hawaiian people.  
 5 In other words, if prior to any resolution, the legislature no  
 6 longer desired reconciliation, regardless of the Apology  
 7 Resolution, the injunction would no longer be appropriate.

8 In October 2008, the United States Supreme Court granted  
 9 the State's petition for certiorari in the OHA v. HCDCH case.

10 The legislature supports this Act as a means of preserving  
 11 the status quo and ensuring that the public lands trust is  
 12 preserved in order to ensure a fair and just settlement leading  
 13 to reconciliation with the native Hawaiian people.

14 SECTION 2. Chapter 171, Hawaii Revised Statutes, is  
 15 amended by adding two new sections to be appropriately  
 16 designated and to read as follows:

17 "§171-A Sale of lands in the public land trust.  
 18 Notwithstanding any law to the contrary, no sale in fee simple  
 19 shall be made of:

20 (1) Lands ceded to the United States by the Republic of  
 21 Hawaii under the joint resolution of annexation,



1 approved July 7, 1898 (30 Stat. 750), or acquired in  
2 exchange for lands so ceded, and granted to the State  
3 of Hawaii by virtue of section 5(b) of the Admission  
4 Act of 1959; or

5 (2) Lands retained by the United States under section 5(c)  
6 and (d) of the Admission Act of 1959 and later  
7 conveyed to the State under section 5(e) or under the  
8 Act of December 23, 1964 (Pub. Law 88-233, 77 Stat.  
9 472).

10 **§171-B Exchange of lands in the public land trust for**  
11 **private land.** (a) Notwithstanding any law to the contrary, no  
12 exchange shall be made of:

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

19 (2) Lands retained by the United States under section 5(c)  
20 and (d) of the Admission Act of 1959 and later  
21 conveyed to the State under section 5(e) or under the



1 Act of December 23, 1964 (Pub. Law 88-233, 77 Stat.  
2 472)."

3 SECTION 3. Section 171-13, Hawaii Revised Statutes, is  
4 amended to read as follows:

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

8 (1) Dispose of public land in fee simple, by lease, lease  
9 with option to purchase, license, or permit [~~+~~and],  
10 except dispositions that result in or may result in  
11 alienation of the fee of lands:

12 (A) Ceded to the United States by the Republic of  
13 Hawaii under the joint resolution of annexation,  
14 approved July 7, 1898 (30 Stat. 750), or acquired  
15 in exchange for lands so ceded, and granted to  
16 the State of Hawaii by virtue of section 5(b) of  
17 the Admission Act of 1959; or

18 (B) Lands retained by the United States under section  
19 5(c) and (d) of the Admission Act of 1959 and  
20 later conveyed to the State under section 5(e) or  
21 under the Act of December 23, 1964 (Pub. Law 88-



1                    233, 77 Stat. 472), are subject to sections 171-A  
2                    and 171-B; and

3            (2) Grant easement by direct negotiation or otherwise for  
4            particular purposes in perpetuity on such terms as may  
5            be set by the board, subject to reverter to the State  
6            upon termination or abandonment of the specific  
7            purpose for which it was granted, provided the sale  
8            price of such easement shall be determined pursuant to  
9            section 171-17(b).

10 No person shall be eligible to purchase or lease public lands,  
11 or to be granted a license, permit, or easement covering public  
12 lands, who has had during the five years preceding the date of  
13 disposition a previous sale, lease, license, permit, or easement  
14 covering public lands cancelled for failure to satisfy the terms  
15 and conditions thereof."

16            SECTION 4. This Act does not affect the state practice of  
17 transferring remnants, and issuing licenses, permits, easements  
18 and leases.

19            SECTION 5. This Act shall remain in effect until the  
20 claims of the native Hawaiian people to the public land trust  
21 lands have been resolved or until the legislature finds that the



1 State no longer supports reconciliation between the State and  
2 the native Hawaiian people.

3 SECTION 6. In codifying the new sections added by section  
4 2 of this Act, the revisor of statutes shall substitute  
5 appropriate section numbers for the letters used in designating  
6 the new sections in this Act.

7 SECTION 7. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 8. This Act shall take effect upon its approval.

10

INTRODUCED BY: \_\_\_\_\_

~~\_\_\_\_\_~~  
By Request





**Report Title:**

Office of Hawaiian Affairs; Ceded Lands

**Description:**

Prohibits the disposition in fee simple of ceded lands.

