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# HOUSE CONCURRENT RESOLUTION

ENCOURAGING DISCUSSIONS TO PROPOSE RECOMMENDATIONS TO THE  
LEGISLATURE TO RESOLVE OUTSTANDING DIFFERENCES REGARDING  
CLAIMS OF THE OFFICE OF HAWAIIAN AFFAIRS TO INCOME AND  
PROCEEDS FROM THE PUBLIC LAND TRUST BETWEEN NOVEMBER 7,  
1978, AND JULY 1, 2008.

1 WHEREAS, in 1978, the Hawaii State Constitution was amended  
2 to include article XII, sections 4, 5, and 6 that, among other  
3 things, established the Office of Hawaiian Affairs and its Board  
4 of Trustees; and

5  
6 WHEREAS, sections 4 and 6 of article XII of the Hawaii  
7 State Constitution provide:

8  
9 "PUBLIC TRUST

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

18  
19 "POWERS OF BOARD OF TRUSTEES

20  
21 Section 6. The board of trustees of the Office of  
22 Hawaiian Affairs shall exercise power as provided by law:  
23 to manage and administer the proceeds from the sale or  
24 other disposition of the lands, natural resources, minerals  
25 and income derived from whatever sources for native  
26 Hawaiians and Hawaiians, including all income and proceeds  
27 from that pro rata portion of the trust referred to in  
28 section 4 of this article for native Hawaiians; to  
29 formulate policy relating to affairs of native Hawaiians  
30 and Hawaiians; and to exercise control over real and



1 personal property set aside by state, federal or private  
 2 sources and transferred to the board for native Hawaiians  
 3 and Hawaiians. The board shall have the power to exercise  
 4 control over the Office of Hawaiian Affairs through its  
 5 executive officer, the administrator of the Office of  
 6 Hawaiian Affairs, who shall be appointed by the board"; and  
 7

8 WHEREAS, through Act 273, Session Laws of Hawaii 1980, the  
 9 Legislature provided that "[t]wenty per cent of all funds  
 10 derived from the public land trust . . . shall be expended by  
 11 the office of Hawaiian affairs . . . for the purposes of this  
 12 chapter"; and  
 13

14 WHEREAS, this legislative directive has led to a series of  
 15 lawsuits concerning the practical application of the twenty  
 16 percent apportionment that the Legislature established to  
 17 implement article XII, sections 4 and 6, of the Hawaii State  
 18 Constitution; and  
 19

20 WHEREAS, in *Trustees of the Office of Hawaiian Affairs v.*  
 21 *Yamasaki*, 737 P.2d 446 (1987), the Hawaii Supreme Court  
 22 concluded that the issue of how the apportionment is formulated  
 23 is a political question for the Legislature to determine; and  
 24

25 WHEREAS, in response to the *Yamasaki* decision, the  
 26 Legislature enacted Act 304, Session Laws of Hawaii 1990, to  
 27 clarify the extent and scope of the twenty percent portion; and  
 28

29 WHEREAS, on September 12, 2001, the Hawaii Supreme Court  
 30 ruled in *Office of Hawaiian Affairs v. State of Hawaii*, 31 P.3d  
 31 901 (2001), ("OHA I") that Act 304 was effectively repealed by  
 32 its own terms, so that once again, it was necessary for the  
 33 Legislature to specify the apportionment to be managed and  
 34 administered by the Office of Hawaiian Affairs; and  
 35

36 WHEREAS, in its decision, the Hawaii Supreme Court affirmed  
 37 *Yamasaki*, observing:  
 38

39 "[T]he State's obligation to native Hawaiians is firmly  
 40 established in our constitution. How the State satisfies  
 41 that constitutional obligation requires policy decisions  
 42 that are primarily within the authority and expertise of  
 43 the legislative branch. As such, it is incumbent upon the  
 44 legislature to enact legislation that gives effect to the



1 right of native Hawaiians to benefit from the ceded lands  
 2 trust. See Haw. Const. art. XVI, §7 . . . [W]e trust that  
 3 the legislature will re-examine the State's constitutional  
 4 obligation to native Hawaiians and the purpose of HRS  
 5 §10-13.5 and enact legislation that most effectively and  
 6 responsibly meets those obligations."  
 7

8 *Office of Hawaiian Affairs v. State of Hawaii*, 31 P.3d at  
 9 914 (citations omitted); and  
 10

11 WHEREAS, on April 28, 2006, the Hawaii Supreme Court ruled  
 12 in *Office of Hawaiian Affairs v. State of Hawaii*, 133 P.3d 767,  
 13 795 (2006) ("OHA II"), that consistent with its ruling in OHA I,  
 14 "it is incumbent upon the legislature to enact legislation that  
 15 gives effect to the right of native Hawaiians to benefit from  
 16 the ceded lands trust"; and  
 17

18 WHEREAS, in January 2008, the Chairperson of the Office of  
 19 Hawaiian Affairs, following the vote of approval by the Office  
 20 of Hawaiian Affairs Board of Trustees, signed a negotiated  
 21 Settlement Agreement between the State and the Office of  
 22 Hawaiian Affairs "to resolve and settle, finally and completely,  
 23 any and all claims and disputes" relating to the portion of  
 24 income and proceeds from the lands of the public land trust for  
 25 use by the Office of Hawaiian Affairs, between November 7, 1978,  
 26 and July 1, 2008; and  
 27

28 WHEREAS, contingent on the enactment of legislation the  
 29 parties drafted and attached to the Settlement Agreement, the  
 30 State agreed to pay cash and transfer three parcels of land to  
 31 the Office of Hawaiian Affairs, and the Office of Hawaiian  
 32 Affairs agreed that the Settlement Agreement would have the  
 33 effect of res judicata and that the Office of Hawaiian Affairs  
 34 "releases, waives, and forever discharges any and all claims of  
 35 any kind concerning, relating to, or arising out of  
 36 controversies at law and in equity, known or unknown, now  
 37 existing or hereafter arising, established, or inchoate, arising  
 38 out of or in any way related to any right OHA or any other  
 39 person or entity may have to income and proceeds of any kind or  
 40 nature whatsoever, or the equivalents of such income and  
 41 proceeds of any kind or nature whatsoever, from the lands held  
 42 by the State as a public trust under sections 4 and 6 of Article  
 43 XII of the Constitution or any statute or act"; and  
 44



1 WHEREAS, the Settlement Agreement did not take effect  
2 because the legislation drafted by the parties was not enacted;  
3 and  
4

5 WHEREAS, the Legislature continues to believe that it is in  
6 the best interests of the Office of Hawaiian Affairs, its  
7 beneficiaries, the State, and all citizens of Hawaii that a fair  
8 and just resolution of outstanding issues relating to the income  
9 and proceeds from the lands of the public land trust between  
10 November 7, 1978, and July 1, 2008, be attained; and  
11

12 WHEREAS, the Legislature also believes it is important that  
13 the Office of Hawaiian Affairs and the Administration of  
14 Governor Neil Abercrombie enter into discussions to lay the  
15 foundation for appropriate legislative action; now, therefore,  
16

17 BE IT RESOLVED by the House of Representatives of the  
18 Twenty-sixth Legislature of the State of Hawaii, Regular Session  
19 of 2011, the Senate concurring, that the Office of Hawaiian  
20 Affairs and the Executive Branch are encouraged to engage in  
21 discussions to formulate and submit a recommendation to the  
22 Legislature for resolving all claims and disputes between the  
23 State and the Office of Hawaiian Affairs regarding the amount of  
24 the income and proceeds from the lands of the public land trust  
25 that the Office of Hawaiian Affairs should receive under the  
26 Hawaii State Constitution and state law, between November 7,  
27 1978, and July 1, 2008; and  
28

29 BE IT FURTHER RESOLVED that at a minimum, any  
30 recommendation to the Legislature specify the amount in cash  
31 payments, parcels of land, or a combination thereof, that the  
32 Legislature shall appropriate and authorize the State to pay or  
33 transfer to the Office of Hawaiian Affairs; and  
34

35 BE IT FURTHER RESOLVED that certified copies of this  
36 Concurrent Resolution be transmitted to the Governor, Attorney  
37 General, Chairperson of the Board of Land and Natural Resources,  
38 Chairperson of the Board of Trustees of the Office of Hawaiian  
39 Affairs, President of the Senate, and Speaker of the House of  
40 Representatives.  
41  
42  
43

OFFERED BY:

