
SENATE 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 and the Governor, following the vote of
 20 approval by the Office of Hawaiian Affairs Board of Trustees,
 21 signed a negotiated Settlement Agreement between the State and
 22 the Office of Hawaiian Affairs "to resolve and settle, finally
 23 and completely, any and all claims and disputes" relating to the
 24 portion of income and proceeds from the lands of the public land
 25 trust for use by the Office of Hawaiian Affairs, between
 26 November 7, 1978, 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
 31 totaling \$200,000,000 to the Office of Hawaiian Affairs, and the
 32 Office of Hawaiian Affairs agreed that the Settlement Agreement
 33 would have the effect of res judicata and that the Office of
 34 Hawaiian Affairs "releases, waives, and forever discharges any
 35 and all claims of any kind concerning, relating to, or arising
 36 out of 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", between November
 44 7, 1978, and July 1, 2008; and



1
2 WHEREAS, the Settlement Agreement did not take effect
3 because the legislation drafted by the parties was not enacted;
4 and
5

6 WHEREAS, the Legislature continues to believe that it is in
7 the best interests of the Office of Hawaiian Affairs, its
8 beneficiaries, the State, and all citizens of Hawaii that a fair
9 and just resolution of outstanding issues relating to the income
10 and proceeds from the lands of the public land trust between
11 November 7, 1978, and July 1, 2008, be attained; and
12

13 WHEREAS, the Legislature also believes it is important that
14 the Office of Hawaiian Affairs and the Administration of
15 Governor Neil Abercrombie enter into discussions to lay the
16 foundation for appropriate legislative action; now, therefore,
17

18 BE IT RESOLVED by the Senate of the Twenty-sixth
19 Legislature of the State of Hawaii, Regular Session of 2011, the
20 House of Representatives concurring, that the Office of Hawaiian
21 Affairs and the Executive Branch are encouraged to engage in
22 discussions to formulate and submit a recommendation to the
23 Legislature for resolving all claims and disputes between the
24 State and the Office of Hawaiian Affairs regarding the amount of
25 the income and proceeds from the lands of the public land trust
26 that the Office of Hawaiian Affairs should receive under the
27 Hawaii State Constitution and state law, between November 7,
28 1978, and July 1, 2008; and
29

30 BE IT FURTHER RESOLVED that at a minimum, any
31 recommendation to the Legislature specify the amount in cash
32 payments, parcels of land, or a combination thereof, that the
33 Legislature shall appropriate and authorize the State to pay or
34 transfer to the Office of Hawaiian Affairs; and
35

36 BE IT FURTHER RESOLVED that certified copies of this
37 Concurrent Resolution be transmitted to the Governor, Attorney
38 General, Chairperson of the Board of Land and Natural Resources,
39 Chairperson of the Board of Trustees of the Office of Hawaiian
40 Affairs, President of the Senate, and Speaker of the House of
41 Representatives.
42
43
44

