

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
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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
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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
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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
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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31 901 (2001), ("OHA I") that Act 304 was effectively repealed by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
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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."
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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
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1 WHEREAS, the Settlement Agreement did not take effect
2 because the legislation drafted by the parties was not enacted;
3 and
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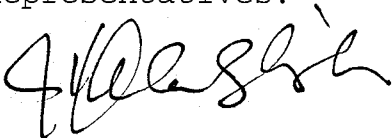
5 WHEREAS, the Legislature continues to believe that it is in
6 the best interests of the Office of Hawaiian Affairs, its
7 beneficiaries, the State, and all citizens of Hawaii that a fair
8 and just resolution of outstanding issues relating to the income
9 and proceeds from the lands of the public land trust between
10 November 7, 1978, and July 1, 2008, be attained; and
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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,
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17 BE IT RESOLVED by the Senate of the Twenty-sixth
18 Legislature of the State of Hawaii, Regular Session of 2011, the
19 House of Representatives 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.
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OFFERED BY:



