

FEB 28 2013

SENATE CONCURRENT RESOLUTION

REQUESTING THE UNITED STATES CONGRESS TO REPEAL SECTION 340 OF PUBLIC LAW NO. 105-66 PROHIBITING THE TRANSFER OF AIRPORT REVENUE TO THE OFFICE OF HAWAIIAN AFFAIRS AND TO AFFIRMATIVELY AUTHORIZE THE HAWAII STATE DEPARTMENT OF TRANSPORTATION TO TRANSFER A PORTION OF THE AIRPORT REVENUES TO THE OFFICE OF HAWAIIAN AFFAIRS.

1 WHEREAS, section 10-13.5, Hawaii Revised Statutes, provides
2 that twenty percent of all funds derived from the public land
3 trust, which includes "all proceeds and income from the sale,
4 lease, or other disposition of lands ceded to the United States
5 by the Republic of Hawaii under the joint resolution of
6 annexation . . . or acquired in exchange for lands so ceded, and
7 conveyed to the State of Hawaii . . ." (section 103, Hawaii
8 Revised Statutes), shall be expended by the Office of Hawaiian
9 Affairs for the betterment of conditions of Native Hawaiians;
10 and

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12 WHEREAS, Honolulu International Airport sits on ceded lands
13 from which the lease revenue is due and owing to the Office of
14 Hawaiian Affairs as ceded lands revenue; and

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16 WHEREAS, Public Law No. 105-66, Department of
17 Transportation and Related Agencies Appropriations Act, 1998,
18 Sec. 340 (49 United States Code 47107), declares that monies
19 paid for claims related to ceded lands and diverted from airport
20 revenues and received prior to April 1, 1996, by only entity for
21 the betterment of Native Americans, Native Hawaiians, or Alaskan
22 Natives shall not be subject to repayment, and prohibits further
23 payment of such claims from airport revenues; and

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25 WHEREAS, Public Law No. 105-66 further provides that there
26 shall be no further payment of airport revenues for claims
27 related to ceded lands, whether characterized as operating
28 expenses, rent, or otherwise, and whether related to claims for



1 periods of time prior to or after the date of enactment of that
2 law; and

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4 WHEREAS, Public Law No. 105-66 supercedes state law,
5 resulting in a prohibition on the transfer of airport ceded
6 lands revenues to the Office of Hawaiian Affairs; and

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8 WHEREAS, the Hawaii Supreme Court in the case of *Office of*
9 *Hawaiian Affairs v. State of Hawaii*, 110 Hawaii 338 (2006), an
10 action brought by the Office of Hawaiian Affairs against the
11 State alleging breach of settlement and breach of trust and
12 seeking a share of revenues that the State collected from ceded
13 lands, including the airport, ruled on a procedural matter
14 rather than reaching the substance of the complaint; and

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16 WHEREAS, the Hawaii Supreme Court in its decision in *Office*
17 *of Hawaiian Affairs v. State of Hawaii* concluded, however, that
18 "we would do a disservice to all parties involved if we did not
19 acknowledge" the State's continuing trust obligation to native
20 Hawaiians. (citation omitted) We have repeatedly stated that
21 the legislative branch is vested with the authority to determine
22 how the State satisfies its constitutional trust obligations"
23 (at page 33); and

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25 WHEREAS, in addition to requesting that the United States
26 Congress repeal section 340 of Public Law No. 105-66; as
27 described herein, the United States Congress should also be
28 requested to approve a transfer of airport revenues to the
29 Office of Hawaiian Affairs since repeal of section 340 is
30 insufficient by itself to accomplish the transfer; now,
31 therefore,

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33 BE IT RESOLVED by the Senate of the Twenty-seventh
34 Legislature of the State of Hawaii, Regular Session of 2013, the
35 House of Representatives concurring, that the United States
36 Congress is requested to repeal section 340 of Public Law No.
37 105-66 prohibiting the transfer of airport revenue to the Office
38 of Hawaiian Affairs and to affirmatively authorize the Hawaii
39 State Department of Transportation to transfer a portion of the
40 airport revenues to the Office of Hawaiian Affairs; and

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42 BE IT FURTHER RESOLVED that Hawaii's Congressional
43 delegation is respectfully requested to introduce legislation
44 and support legislation to repeal section 340 of Public Law No.



1 105-66 prohibiting the transfer of airport revenue to the Office
2 of Hawaiian Affairs and to affirmatively authorize the Hawaii
3 State Department of Transportation to transfer a portion of the
4 airport revenues to the Office of Hawaiian Affairs; and
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6 BE IT FURTHER RESOLVED that certified copies of this
7 Concurrent Resolution be transmitted to the Governor, President
8 Pro Tempore of the United States Senate, Speaker of the United
9 States House of Representatives, each member of Hawaii's
10 Congressional delegation, and Director of Transportation.
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OFFERED BY: _____

