

FEB 28 2013

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# SENATE 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

11  
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

15  
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

24  
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  
29 periods of time prior to or after the date of enactment of that  
30 law; and

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1 WHEREAS, Public Law No. 105-66 supercedes state law,  
2 resulting in a prohibition on the transfer of airport ceded  
3 lands revenues to the Office of Hawaiian Affairs; and  
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5 WHEREAS, the Hawaii Supreme Court in the case of *Office of*  
6 *Hawaiian Affairs v. State of Hawaii*, 110 Hawaii 338 (2006), an  
7 action brought by the Office of Hawaiian Affairs against the  
8 State alleging breach of settlement and breach of trust and  
9 seeking a share of revenues that the State collected from ceded  
10 lands, including the airport, ruled on a procedural matter  
11 rather than reaching the substance of the complaint; and  
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13 WHEREAS, the Hawaii Supreme Court in its decision in *Office*  
14 *of Hawaiian Affairs v. State of Hawaii* concluded, however, that  
15 "we would do a disservice to all parties involved if we did not  
16 acknowledge" the State's continuing trust obligation to native  
17 Hawaiians. (citation omitted) We have repeatedly stated that  
18 the legislative branch is vested with the authority to determine  
19 how the State satisfies its constitutional trust obligations"  
20 (at page 33); and  
21

22 WHEREAS, in addition to requesting that the United States  
23 Congress repeal section 340 of Public Law No. 105-66, as  
24 described herein, the United States Congress should also be  
25 requested to approve a transfer of airport revenues to the  
26 Office of Hawaiian Affairs since repeal of section 340 is  
27 insufficient by itself to accomplish the transfer; now,  
28 therefore,  
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30 BE IT RESOLVED by the Senate of the Twenty-seventh  
31 Legislature of the State of Hawaii, Regular Session of 2013,  
32 that the United States Congress is requested to repeal section  
33 340 of Public Law No. 105-66 prohibiting the transfer of airport  
34 revenue to the Office of Hawaiian Affairs and to affirmatively  
35 authorize the Hawaii State Department of Transportation to  
36 transfer a portion of the airport revenues to the Office of  
37 Hawaiian Affairs; and  
38

39 BE IT FURTHER RESOLVED that Hawaii's Congressional  
40 delegation is respectfully requested to introduce legislation  
41 and support legislation to repeal section 340 of Public Law No.  
42 105-66 prohibiting the transfer of airport revenue to the Office  
43 of Hawaiian Affairs and to affirmatively authorize the Hawaii

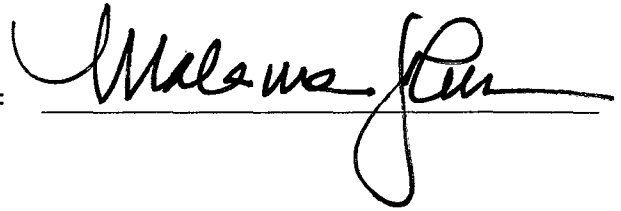


1 State Department of Transportation to transfer a portion of the  
2 airport revenues to the Office of Hawaiian Affairs; and

3  
4 BE IT FURTHER RESOLVED that certified copies of this  
5 Resolution be transmitted to the Governor, President Pro Tempore  
6 of the United States Senate, Speaker of the United States House  
7 of Representatives, each member of Hawaii's Congressional  
8 delegation, and Director of Transportation.

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OFFERED BY: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Malsus J. Lee", is written over a horizontal line. The signature is cursive and extends above and below the line.