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A BILL FOR AN ACT

RELATING TO NATIVE HAWAIIANS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. In 1978, the Constitution of the State of
2 Hawai`i was amended to include Article XII, sections 4, 5, and
3 6, which established the office of Hawaiian affairs and its
4 board of trustees.

5 Sections 4, 5, and 6 of the State Constitution provide:

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

14 SECTION 5. There is hereby established an Office
15 of Hawaiian Affairs. The Office of Hawaiian Affairs
16 shall hold title to all the real and personal property
17 now or hereafter set aside or conveyed to it which

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1 shall be held in trust for native Hawaiians and
2 Hawaiians. There shall be a board of trustees for the
3 Office of Hawaiian Affairs elected by qualified voters
4 who are Hawaiians, as provided by law. The board
5 members shall be Hawaiians. There shall be not less
6 than nine members of the board of trustees; provided
7 that each of the following Islands have one
8 representative: Oahu, Kauai, Maui, Molokai and
9 Hawaii. The board shall select a chairperson from its
10 members.

11 SECTION 6. The board of trustees of the Office
12 of Hawaiian Affairs shall exercise power as provided
13 by law: to manage and administer the proceeds from
14 the sale or other disposition of the lands, natural
15 resources, minerals and income derived from whatever
16 sources for native Hawaiians and Hawaiians, including
17 all income and proceeds from that pro rata portion of
18 the trust referred to in section 4 of this article for
19 native Hawaiians; to formulate policy relating to
20 affairs of native Hawaiians and Hawaiians; and to
21 exercise control over real and personal property set
22 aside by state, federal or private sources and

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1 transferred to the board for native Hawaiians and
2 Hawaiians. The board shall have the power to exercise
3 control over the Office of Hawaiian Affairs through
4 its executive officer, the administrator of the Office
5 of Hawaiian Affairs, who shall be appointed by the
6 board.

7 In Act 354 (1993), the legislature stated:

8 Until the provisional government was recognized by
9 John L. Stevens, the Kingdom of Hawaii was recognized as an
10 independent nation by the United States, France, and Great
11 Britain. Many native Hawaiians and others view the
12 overthrow of 1893 and subsequent actions by the United
13 States, such as supporting establishment of the provisional
14 government and later the Republic of Hawaii, the
15 designation of the crown and government lands as public
16 lands, annexation, and the ceding of public lands to the
17 federal government without the consent of native Hawaiians,
18 as illegal. Because the actions taken by the United States
19 were viewed as illegal and done without the consent of
20 native Hawaiians, many native Hawaiians feel there is a
21 valid legal claim for reparations. Many native Hawaiians
22 believe that the lands taken without their consent should

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1 be returned and if not, monetary reparations made, and that
2 they should have the right to sovereignty, or the right to
3 self-determination and self-government as do other native
4 American peoples.

5 The legislature has also acknowledged that the
6 actions by the United States were illegal and immoral,
7 and pledges its continued support to the native
8 Hawaiian community by taking steps to promote the
9 restoration of the rights and dignity of native
10 Hawaiians.

11 In Act 359 (1993), the legislature stated:

12 Throughout the 19th century and until 1893, the United
13 States:

14 (A) Recognized the independence of the Hawaiian
15 Nation;

16 (B) Extended full and complete diplomatic recognition
17 to the Hawaiian government; and

18 (C) Entered into treaties with the Hawaiian
19 government to govern commerce and navigation in 1826, 1842,
20 1849, 1875 and 1887.

21 In pursuit of that conspiracy, the United States
22 Minister and the naval representative of the United States

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1 caused armed forces of the United States to invade the
2 sovereign Hawaiian Nation in support of the overthrow of
3 the indigenous and lawful government, and the United States
4 Minister thereupon extended diplomatic recognition to the
5 provisional government formed by the conspirators without
6 the consent of the native Hawaiian people or the lawful
7 Government of Hawaii in violation of treaties between the
8 two nations and of international law.

9 In 1898, Hawaii was annexed to the United States
10 through the Newlands Resolution without the consent of
11 or compensation to the indigenous people of Hawaii or
12 their sovereign government. As a result, the
13 indigenous people of Hawaii were denied the mechanism
14 for expression of their inherent sovereignty through
15 self-government and self-determination, their lands
16 and their ocean resources.

17 In 1993, Congress passed Public Law 103-150, the Apology
18 Resolution, which stated:

19 Whereas, from 1826 until 1893, the United States
20 recognized the independence of the Kingdom of Hawaii,
21 extended full and complete diplomatic recognition to
22 the Hawaiian Government, and entered into treaties and

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1 conventions with the Hawaiian monarchs to govern
2 commerce and navigation in 1826, 1842, 1849, 1875, and
3 1887;

4 Whereas, on July 4, 1894, the Provisional
5 Government declared itself to be the Republic of
6 Hawaii;

7 Whereas, through the Newlands Resolution, the
8 self-declared Republic of Hawaii ceded sovereignty
9 over the Hawaiian Islands to the United States;

10 Whereas, the Republic of Hawaii also ceded
11 1,800,000 acres of crown, government and public lands
12 of the Kingdom of Hawaii, without the consent of or
13 compensation to the Native Hawaiian people of Hawaii
14 or their sovereign government;

15 Whereas the Congress, through the Newlands
16 Resolution, ratified the cession, annexed Hawaii as
17 part of the United States, and vested title to the
18 lands in Hawaii in the United States;

19 Whereas the indigenous Hawaiian people never
20 directly relinquished their claims to their inherent
21 sovereignty as a people or over their national lands

1 to the United States, either through their monarchy or
2 through a plebiscite or referendum; . . .

3 SECTION 1. ACKNOWLEDGMENT AND APOLOGY.

4 The Congress -

5 (1) on the occasion of the 100th anniversary of
6 the illegal overthrow of the Kingdom of Hawaii on
7 January 17, 1893, acknowledges the historical
8 significance of this event which resulted in the
9 suppression of the inherent sovereignty of the Native
10 Hawaiian people; . . .

11 (3) apologizes to Native Hawaiians on behalf of
12 the people of the United States for the overthrow of
13 the Kingdom of Hawaii on January 17, 1893 with the
14 participation of agents and citizens of the United
15 States, and the deprivation of the rights of Native
16 Hawaiians to self-determination;

17 (4) expresses its commitment to acknowledge the
18 ramifications of the overthrow of the Kingdom of
19 Hawaii, in order to provide a proper foundation for
20 reconciliation between the United States and the
21 Native Hawaiian people; and

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1 (5) urges the President of the United States to
2 also acknowledge the ramifications of the overthrow of
3 the Kingdom of Hawaii and to support reconciliation
4 efforts between the United States and the Native
5 Hawaiian people.

6 In 1993, the legislature also adopted House Concurrent
7 Resolution No. 179 that included almost all of the parts of
8 the Apology Resolution including the finding that: "Whereas
9 the indigenous Hawaiian people never directly relinquished
10 their claims to their inherent sovereignty as a people or
11 over their national lands to the United States, either
12 through their monarchy or through a plebiscite or
13 referendum".

14 In 1997, the legislature enacted Act 329, which stated:

15 The legislature finds that the events of history
16 relating to Hawai'i and Native Hawaiians, including
17 those set forth in [the Apology Resolution] continue
18 to contribute today to a deep sense of injustice among
19 many Native Hawaiians and others. The legislature
20 recognizes that the lasting reconciliation so desired
21 by all people of Hawai'i is possible only if it fairly

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1 acknowledges the past while moving into Hawaii's
2 future.

3 The legislature further finds that over the last
4 few decades, the people of Hawai'i through amendments
5 to their state constitution, the acts of their
6 legislature, and other means, have moved substantially
7 toward this permanent reconciliation. Foremost among
8 these achievements have been the creation of the
9 [O]ffice of Hawaiian [A]ffairs and the allocation by
10 legislative action to the [O]ffice of Hawaiian
11 [A]ffairs of substantial funds out of a portion of the
12 public land[s] trust established by section 5(f) of
13 the Admission Act. The overriding purpose of this Act
14 is to continue this momentum, through further
15 executive and legislative action in conjunction with
16 the people of Hawai'i, toward a comprehensive, just,
17 and lasting resolution.

18 In 2001, S. 746, the federal legislation commonly referred
19 to as the "Akaka Bill" was passed out of the Senate Committee on
20 Indian Affairs. Senate Committee Report No. 107-66, on the Akaka
21 Bill explains that its purpose "is to authorize a process for
22 the reorganization of a Native Hawaiian government and to

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1 provide for the recognition of the Native Hawaiian government by
2 the United States for the purpose of carrying on a government-
3 to-government relationship." The Akaka Bill, authorizes the
4 federal government to negotiate with the State and the
5 reorganized native Hawaiian government for a transfer of land
6 and resources to a native Hawaiian government. The native
7 Hawaiian government would thus have a land base and resources
8 and a status similar to that of other native peoples in the
9 United States. The Committee Report on the Akaka Bill explains
10 that "it is the Committee's intent that the references to 'land,
11 resources, and assets dedicated to [n]ative Hawaiian use'
12 include, but not be limited to lands set aside under the
13 Hawaiian Homes Commission Act and ceded lands."

14 In 2007, H.R. 505, the latest version of the Akaka Bill,
15 passed the U.S. House of Representatives. Section 8 of H.R. 505
16 also includes a provision authorizing the United States and
17 State of Hawai'i to "enter into negotiations with the Native
18 Hawaiian governing entity designed to lead to an agreement
19 addressing such matters as the transfer of lands, natural
20 resources, and other assets, and the protection of existing
21 rights related to such lands or resources[;]."

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1 In January 2008, the Hawai`i Supreme Court in Office of
2 Hawaiian Affairs v. Housing And Community Development
3 Corporation Of Hawai`i (HCDCH), 117 Hawai'i 174, 177 P.3d 884
4 (2008), enjoined the State from selling or otherwise
5 transferring to third parties any ceded lands from the public
6 lands trust until the claims of the native Hawaiian people to
7 the ceded lands have been resolved. The plaintiffs in the HCDCH
8 case and the legislature agree that based on the language of the
9 HCDCH decision, the Hawaii Supreme Court intended that the
10 injunction would remain in place until the native Hawaiian claim
11 to the ceded lands is resolved unless, prior to any such
12 resolution, the legislature no longer desires reconciliation
13 between the state and the native Hawaiian people. In other
14 words, if prior to any resolution, the legislature no longer
15 desired reconciliation, regardless of the Apology Resolution,
16 the injunction would no longer be appropriate.

17 In October 2008, the United States Supreme Court granted
18 the State's petition for certiorari in the HCDCH case.

19 The legislature supports this bill as a means of preserving
20 the status quo and ensuring that the public lands trust is
21 preserved in order to ensure a fair and just settlement leading
22 to reconciliation with the native Hawaiian people.

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1 SECTION 2. Chapter 171, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:

4 "**§171-A Sale of lands in the public land trust.** (a)
5 Notwithstanding any law to the contrary, no sale in fee simple
6 shall be made of:

7 (1) Lands ceded to the United States by the Republic of
8 Hawaii under the joint resolution of annexation,
9 approved July 7, 1898 (30 Stat. 750), or acquired in
10 exchange for lands so ceded, and granted to the State
11 of Hawaii by virtue of section 5(b) of the Admission
12 Act of 1959; or

13 (2) Lands retained by the United States under section 5(c)
14 and (d) of the Admission Act of 1959 and later
15 conveyed to the State under section 5(e) or under the
16 Act of December 23, 1964 (Pub. Law 88-233, 77 Stat.
17 472).

18
19 **§171-B Exchange of lands in the public land trust for**
20 **private land.** (a) Notwithstanding any law to the contrary, no
21 exchange shall be made of:

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1 (1) Lands ceded to the United States by the Republic of
2 Hawaii under the joint resolution of annexation,
3 approved July 7, 1898 (30 Stat. 750), or acquired in
4 exchange for lands so ceded, and granted to the State
5 of Hawaii by virtue of section 5(b) of the Admission
6 Act of 1959; or

7 (2) Lands retained by the United States under section 5(c)
8 and (d) of the Admission Act of 1959 and later
9 conveyed to the State under section 5(e) or under the
10 Act of December 23, 1964 (Pub. Law 88-233, 77 Stat.
11 472)

12 SECTION 3. Section 171-13, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§171-13 Disposition of public lands.** Except as otherwise
15 provided by law and subject to other provisions of this chapter,
16 the board may:

17 (1) Dispose of public land in fee simple, by lease, lease
18 with option to purchase, license, or permit~~[r]~~, except that
19 dispositions that result in or may result in alienation of the
20 fee of lands ceded to the United States by the Republic of
21 Hawaii under the joint resolution of annexation, approved July
22 7, 1898 (30 Stat. 750), or acquired in exchange for lands so

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1 ceded, and granted to the State of Hawaii by virtue of section
2 5(b) of the Admission Act of 1959, or lands retained by the
3 United States under section 5(c) and (d) of the Admission Act of
4 1959 and later conveyed to the State under section 5(e) or under
5 the Act of December 23, 1964 (Pub. Law 88-233, 77 Stat. 472),
6 are subject to section 171-A and 171-B; and

7 (2) Grant easement by direct negotiation or otherwise for
8 particular purposes in perpetuity on such terms as may
9 be set by the board, subject to reverter to the State
10 upon termination or abandonment of the specific
11 purpose for which it was granted, provided the sale
12 price of such easement shall be determined pursuant to
13 section 171-17(b).

14 No person shall be eligible to purchase or lease public lands,
15 or to be granted a license, permit, or easement covering public
16 lands, who has had during the five years preceding the date of
17 disposition a previous sale, lease, license, permit, or easement
18 covering public lands cancelled for failure to satisfy the terms
19 and conditions thereof."

20 SECTION 4. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

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1 SECTION 5. This Act does not affect the state practice of
2 transferring remnants, and issuing licenses, permits, easements
3 and leases.

4 SECTION 6. This Act shall remain in effect until the
5 claims of the native Hawaiian people to the public land trust
6 lands have been resolved or until the legislature finds that the
7 state no longer supports reconciliation between the state and
8 the native Hawaiian people.

9 SECTION 7. This Act shall take effect upon its approval.

10

11

INTRODUCED BY: _____

12

By Request