



GOV. MSG. NO. 1115

EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

April 11, 2012

The Honorable Shan Tsutsui, President  
and Members of the Senate  
Twenty-Sixth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker  
and Members of the House  
Twenty-Sixth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on April 11, 2012, the following bill was signed into law:

SB2783

RELATING TO THE PUBLIC TRUST LANDS.  
**Act 015 (12)**

*Sincerely,*  
  
NEIL ABERCROMBIE  
Governor, State of Hawaii

Approved by the Governor  
on APR 11 2012

ACT 015

S.B. NO. 2783

JAN 25 2012

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## A BILL FOR AN ACT

RELATING TO THE PUBLIC TRUST LANDS.

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

1           SECTION 1. In 1978, the Constitution of the State of  
2 Hawaii was amended to include article XII, sections 4, 5, and 6,  
3 which established the office of Hawaiian affairs and its board  
4 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  
18 shall be held in trust for native Hawaiians and

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

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

S.B. NO. 2783

1 control over the Office of Hawaiian Affairs through  
2 its executive officer, the administrator of the Office  
3 of Hawaiian Affairs, who shall be appointed by the  
4 board.

5 In Trustees of the Office of Hawaiian Affairs v. Yamasaki,  
6 69 Haw. 154, 737 P.2d 446 (1987), the Hawaii Supreme Court  
7 concluded that the issue of what constitutes the portion of the  
8 income and proceeds derived from the public land trust for the  
9 office of Hawaiian affairs pursuant to article XII, section 6 of  
10 the Hawaii Constitution, is a political question for the  
11 legislature to determine.

12 In response to the Yamasaki decision, the legislature  
13 enacted Act 304, Session Laws of Hawaii 1990, to clarify the  
14 extent and scope of the State's obligation to provide a portion  
15 of the funds derived from the public land trust to the office of  
16 Hawaiian affairs.

17 On September 12, 2001, the Hawaii Supreme Court ruled in  
18 Office of Hawaiian Affairs v. State of Hawaii, 96 Haw. 388, 31  
19 P.3d 901 (2001), that Act 304 was effectively repealed by its  
20 own terms, so that it was necessary for the legislature to  
21 specify what portion of which funds, from which lands the office  
22 of Hawaiian affairs was to receive under the State Constitution.

S.B. NO. 2783

1 In its decision, the Supreme Court affirmed Yamasaki,  
2 observing:

3 [T]he State's obligation to native Hawaiians is firmly  
4 established in our constitution. How the State satisfies  
5 that constitutional obligation requires policy decisions  
6 that are primarily within the authority and expertise of  
7 the legislative branch. As such, it is incumbent upon the  
8 legislature to enact legislation that gives effect to the  
9 right of native Hawaiians to benefit from the ceded lands  
10 trust. See Haw. Const. art. XVI, §7. . . .

11 . . . we trust that the legislature will re-examine the  
12 State's constitutional obligation to native Hawaiians and  
13 the purpose of HRS § 10-13.5 and enact legislation that  
14 most effectively and responsibly meets those obligations.

15 Office of Hawaiian Affairs v. State of Hawaii, 96 Haw. at 401,  
16 31 P.3d at 914 (citations omitted)

17 One of the purposes of this Act is to resolve and  
18 extinguish, finally and completely, any and all claims, disputes  
19 and controversies the office of Hawaiian affairs, or any other  
20 person or entity claiming by, through, or under the office, has  
21 asserted or raised, or could otherwise assert or raise, relating  
22 to the portion of the income and proceeds from the public land  
23 trust lands under sections 4 and 6 of article XII of the State

S.B. NO. 2783

1 Constitution or any related statute or act, the office of  
2 Hawaiian affairs received between November 7, 1978, up to and  
3 including June 30, 2012.

4 Another purpose of this Act is to effectively and  
5 responsibly fulfill the constitutional obligation to native  
6 Hawaiians under article XII, sections 4 and 6, of the State  
7 Constitution between November 7, 1978, up to and including June  
8 30, 2012, by re-examining the amount of money the office of  
9 Hawaiian affairs received under article XII, section 6 of the  
10 Constitution, determining whether the office received what it  
11 should have received as its share of the income and proceeds  
12 from public land trust lands between 1978 and 2012, and  
13 providing additional resources to the office in the form of fee  
14 simple title to certain parcels of land to completely and  
15 finally fulfill the State's constitutional obligations relating  
16 to the office of Hawaiian affairs' portion of the income and  
17 proceeds from the public land trust lands under article XII,  
18 sections 4 and 6, of the State Constitution or any related  
19 statute or act, between November 7, 1978, up to and including  
20 June 30, 2012.

21 The legislature recognizes that the governor and the office  
22 of Hawaiian affairs have reached an agreement with respect to  
23 conveyances of land and all issues relating to the office of

**S.B. NO. 2783**

1 Hawaiian affairs' portion of the income and proceeds from the  
2 public land trust lands under sections 4 and 6 of article XII of  
3 the Constitution, between November 7, 1978, up to and including  
4 June 30, 2012.

5 The legislature finds that the agreement between the State  
6 and the office of Hawaiian affairs represents a joint  
7 recommendation as to the policy the legislature should adopt, to  
8 satisfy the State's constitutional obligations to native  
9 Hawaiians under article XII, sections 4 and 6 of the  
10 Constitution for the period between November 7, 1978, up to and  
11 including June 30, 2012, relating to the office of Hawaiian  
12 affairs' portion of the income and proceeds from the public land  
13 trust lands. Conveyance of the fee simple interest to the lands  
14 the governor and the trustees of the office of Hawaiian affairs  
15 identified for conveyance will allow the State to effectively  
16 and responsibly meet said constitutional obligations to native  
17 Hawaiians.

18 This Act, therefore, is an expression of legislative  
19 policy, not a settlement or a contract. This legislation is a  
20 legislative act without distinction from any other legislative  
21 act. As it is neither a settlement nor a contract, it can give  
22 rise to no lawsuits or claims other than an action to compel  
23 compliance with this Act's terms, nor to any claim that any

S.B. NO. 2783

1 future legislation is barred in any way, or leads to liability  
2 in any way, because it somehow conflicts with a settlement,  
3 settlement agreement, contract, or the provisions of this Act.

4 SECTION 2. Notwithstanding any other law to the contrary,  
5 the fee simple interest to the following parcels of land with  
6 the existing improvements thereon (hereinafter "the Properties")  
7 (but not including submerged land, accreted land, or any land  
8 makai of the shoreline), is conveyed to the office of Hawaiian  
9 affairs as grantee, as of July 1, 2012, as is, where is:

- 10 (1) Lots 1, 2, 3, 4, 5, 6(portion), and 9 of File Plan  
11 2471 filed at the Bureau of Conveyances, State of  
12 Hawaii, on February 23, 2010;  
13 (2) TMK (1) 2-1-15-61; and  
14 (3) TMK (1) 2-1-15-51.

15 As directed by the attorney general, the appropriate  
16 boards, agencies, officers, and employees of the State shall (1)  
17 prepare and execute deeds warranting title only, and such other  
18 instruments appropriate and necessary to convey fee title and  
19 interest to the above-listed parcels with all existing  
20 improvements, to the office of Hawaiian affairs, as grantee, and  
21 (2) record the deeds and such other instruments within a  
22 reasonable period of time after the effective date of this Act,  
23 in the land court or bureau of conveyances, as appropriate. The



1 aforesaid executed deeds and other instruments shall be  
2 delivered to the office by the State no later than \_\_\_\_ days  
3 after they are recorded. As these are conveyances in which the  
4 State and its agencies are the only parties, the tax imposed by  
5 section 247-1, Hawaii Revised Statutes, shall not apply to them.

6 For purposes of this section and this Act, "as is, where  
7 is" means that the office of Hawaiian affairs is accepting the  
8 Properties in their existing condition as of March 1, 2012, the  
9 close of the office's period for due diligence, without  
10 representations or warranties of any kind or nature. Except as  
11 set forth in the aforesaid deeds, the State makes no warranty or  
12 representation of any kind or nature, either express or implied,  
13 or arising by operation of law, including, but not limited to,  
14 any warranty of quantity, quality, condition, habitability,  
15 reliability, merchantability, workmanlike construction,  
16 suitability or fitness for a particular purpose, about the  
17 parcels of real property described in this section, any building  
18 or other improvement located on those parcels of land, any  
19 environmental contamination or conditions of those parcels of  
20 land, and the soil conditions related to those parcels of land.

21 The office of Hawaiian affairs has completed all due  
22 diligence investigations of the parcels necessary to satisfy  
23 itself as to the physical, environmental, economic and legal

1 conditions relating to the parcels of land, and has indicated  
2 that it relied solely on the information it secured from its due  
3 diligence, and not on any information provided by or on behalf  
4 of the State to determine whether it wished to accept and  
5 acquire title to those parcels of land. All claims and  
6 liabilities against the State, if any, which the office of  
7 Hawaiian affairs has, may have had, or may have in the future,  
8 regarding any injury, loss, cost, damage or liability, including  
9 reasonable attorney's fees, concerning the physical,  
10 environmental, soil, economic and legal conditions of the  
11 Properties, are released, waived and extinguished.

12         The Properties are and shall remain (even after conveyance  
13 to the office) under the jurisdiction and authority of the  
14 Hawaii community development authority, with respect to zoning,  
15 land use conditions and all other matters over which the  
16 authority has jurisdiction and authority to act. If in the  
17 future, the jurisdiction and authority over zoning and land use  
18 conditions over the Properties is transferred to, changed to, or  
19 vested in another department of agency of the State, then the  
20 Properties shall be under the jurisdiction and authority of such  
21 other department or agency.

22         The conveyances required to be made by this section shall  
23 not and do not include the rights of native tenants, or any of

1 the State's rights to minerals and metallic mines, including all  
2 geothermal rights, submerged lands, surface or ground water, or  
3 the State's regulatory and ownership rights (if any) over, or to  
4 historic properties, aviation artifacts, burial sites, and  
5 prehistoric and historic remains under chapter 6E, Hawaii  
6 Revised Statutes.

7       The Properties conveyed shall be and remain subject to all  
8 encumbrances (whether or not of record), the rights of native  
9 tenants, leases, contracts, agreements, permits, easements,  
10 profits, licenses, rights-of-way or other instruments applicable  
11 to any of the Properties effective or on-going on the effective  
12 date of this Act unless they expire or are terminated pursuant  
13 to their respective terms. These rights and encumbrances shall  
14 be set forth in the deeds conveying the Properties to the office  
15 or set forth in a license or similar agreement, a memorandum of  
16 which may be recorded concurrently with the deeds conveying the  
17 Properties to the office. Effective July 1, 2012, every  
18 reference to the present title-holder or the head of the  
19 department or agency in each such instrument, if the title-  
20 holder is a department or an agency, shall be construed as a  
21 reference to the office of Hawaiian affairs or its board of  
22 trustees.

S.B. NO. 2783

1           The Properties shall be subject to all laws, except  
2 sections 206E-8, 206E-10, 206E-34, Hawaii Revised Statutes, and  
3 as otherwise provided in this Act, provided that the Hawaii  
4 community development authority may acquire by condemnation,  
5 pursuant to chapter 101, Hawaii Revised Statutes, easements,  
6 rights-of-way, rights of entry, or other rights of access in  
7 favor of lands adjoining the Properties conveyed that are under  
8 the control and management of public agencies, provided the  
9 office of Hawaiian affairs is paid just compensation for the  
10 same. The office of Hawaiian affairs shall administer the  
11 Properties in accordance with its duties under the Hawaii  
12 Constitution and as provided by law.

13           The instruments of conveyance executed and recorded  
14 pursuant to this Act shall specify that the office of Hawaiian  
15 affairs and any successor owner of any of the Properties shall  
16 cooperate with the State and its agencies to designate and grant  
17 such access rights and easements to the State or its agencies as  
18 may be reasonably necessary for the benefit and use of  
19 properties owned by the State or its agencies and which are  
20 adjacent to one or more of the Properties. Each of the  
21 instruments creating such access rights or granting such  
22 easements shall provide that the office, or any successor owner  
23 of the servient property, shall have the right to reasonably

**S.B. NO. 2783**

1 relocate any such access areas or easements so granted. The  
2 cost of initially identifying such access areas or designating  
3 and granting any such easements shall be paid by the State. The  
4 cost of relocating any such access areas or easements shall be  
5 paid by the office or any such successor owner, as the case may  
6 be. Each of the instruments creating such access rights or  
7 granting such easements also shall provide that the State and  
8 its agencies shall be responsible for only a reasonable share of  
9 the cost of maintaining any such access areas and easement  
10 areas, as the case may be, and that the office, its tenants,  
11 licensees, concessionaires, successors, and assigns shall not be  
12 liable for injuries or damages arising from the use of such  
13 access areas or easement areas and caused by the acts or  
14 omissions of the State, its agencies or employees, or their  
15 invitees.

16 SECTION 3. The passage of this Act is in full  
17 satisfaction, resolution, and discharge of any and all claims,  
18 disputes, controversies, actions, causes of action, demands,  
19 claims for relief, liability, liabilities, costs, compensations,  
20 injuries, losses, damages or expenses of any kind or nature,  
21 whether known or unknown, contingent or uncertain, patent or  
22 latent, whether at law or in equity, now existing or hereafter  
23 arising, established or inchoate, including any claim or action

S.B. NO. 2783

1 under chapter 661, Hawaii Revised Statutes, or for breach of  
2 trust under chapter 673, Hawaii Revised Statutes, that have been  
3 asserted or could have been asserted, or could be asserted in  
4 the future against the State by the office of Hawaiian affairs  
5 or any other person or entity claiming by, through, or under the  
6 office, in any manner arising out of, growing out of, connected  
7 with or traceable either directly or indirectly to, concerning  
8 or in any way related to any right the office of Hawaiian  
9 affairs or any other person or entity claiming by, through, or  
10 under the office may have or may have had to the portion of  
11 income and proceeds, or any other tangible right, item, or  
12 benefit related to said income and proceeds, from the public  
13 land trust lands under sections 4 and 6 of article XII of the  
14 Constitution or any related statute or act, between November 7,  
15 1978, up to and including June 30, 2012.

16 All claims, disputes, controversies, actions, causes of  
17 action, demands, claims for relief, liabilities, costs,  
18 compensations, injuries, losses, damages or expenses of any kind  
19 or nature, whether known or unknown, contingent or uncertain,  
20 patent or latent, whether at law or in equity, now existing or  
21 hereafter arising, established, or inchoate, including any claim  
22 or action under chapter 661, Hawaii Revised Statutes, or for  
23 breach of trust under chapter 673, Hawaii Revised Statutes, that

S.B. NO. 2783

1 have been asserted or could have been asserted, or could be  
2 asserted in the future against the State by the office or any  
3 other person or entity claiming by, through, or under the  
4 office, in any manner arising out of, growing out of, connected  
5 with or traceable either directly or indirectly to, concerning  
6 or in any way related to, any right the office of Hawaiian  
7 affairs or any other person or entity claiming by, through, or  
8 under the office may have or may have had to the portion of  
9 income and proceeds, or any other tangible right, item, or  
10 benefit related to said income and proceeds, from the public  
11 land trust lands under sections 4 and 6 of article XII of the  
12 Constitution or any related statute or act, between November 7,  
13 1978, up to and including June 30, 2012, are released, waived,  
14 and forever discharged and extinguished.

15 Each and every claim or suit that is predicated in any way  
16 upon an act or omission that arises out of or is in any way  
17 related to any right the office of Hawaiian affairs, or any  
18 other person or entity claiming by, through or under the office  
19 may have or may have had to the income and proceeds, or any  
20 other tangible right, item, benefit or claim or action under  
21 chapter 661, Hawaii Revised Statutes, or for breach of trust  
22 under chapter 673, Hawaii Revised Statutes, related to said  
23 income and proceeds, from the public land trust lands under

S.B. NO. 2783

1 sections 4 and 6 of article XII of the Constitution or any  
2 related statute or act, between November 7, 1978, up to and  
3 including June 30, 2012, is forever extinguished and barred and  
4 may not be brought by the office, or by any other person or  
5 entity claiming by, through, or under the office.

6 The passage of this Act shall have the effect of *res*  
7 *judicata*, collateral estoppel, and claim and issue preclusion as  
8 to the office of Hawaiian affairs and all persons and entities  
9 claiming by, through, or under the office, and all claims,  
10 issues and defenses which have been at issue, or which could  
11 have been, or could in the future be, at issue, including any  
12 claim or action under chapter 661, Hawaii Revised Statutes, or  
13 for breach of trust under chapter 673, Hawaii Revised Statutes,  
14 whether brought against the State or its departments, agencies,  
15 officials, or employees, directly or indirectly, by subrogation,  
16 derivative or third party action, tender, federal action, or by  
17 any other means whatsoever, arising out of or in any way related  
18 to any right the office of Hawaiian affairs, or any other person  
19 or entity claiming by, through, or under the office, to the  
20 portion of income and proceeds, and/or any other tangible right,  
21 item, or benefit related to said income and proceeds, from the  
22 public land trust lands under sections 4 and 6 of article XII of



S.B. NO. 2783

1 the Constitution or any related statute or act between November  
2 7, 1978, up to and including June 30, 2012.

3 The office of Hawaiian affairs shall not, cannot, and is  
4 forever prohibited and barred, now and in the future, from (1)  
5 asserting, arguing, or claiming that the office was entitled to  
6 more receipts than it received pursuant to Act 178, Session Laws  
7 of Hawaii 2006, or any other duly enacted law establishing the  
8 portion of the income and proceeds from the public land trust  
9 lands the office of Hawaiian affairs is to receive under  
10 sections 4 and 6 of article XII of the Constitution, between  
11 November 7, 1978, up to and including June 30, 2012, (2)  
12 bringing an action for breach of trust under chapter 673, Hawaii  
13 Revised Statutes, to contest or claim a larger portion of the  
14 income and proceeds, and/or any other tangible right, item, or  
15 benefit related to said income and proceeds, from the public  
16 land trust lands under sections 4 and 6 of article XII of the  
17 Constitution for itself or its beneficiaries, or (3) asserting,  
18 arguing, or claiming that section 673-9, Hawaii Revised  
19 Statutes, does not bar a suit to contest or make a claim  
20 relating to the portion of the income and proceeds from the  
21 public land trust lands the office of Hawaiian affairs receives  
22 or is to receive under sections 4 and 6 of article XII of the  
23 Constitution. The prohibition and bar imposed by the

**S.B. NO. 2783**

1 immediately preceding sentence shall be applicable to any and  
2 all money transferred, or in the future to be transferred, to  
3 the office of Hawaiian affairs pursuant to Act 178, Session Laws  
4 of Hawaii 2006, or any other law enacted to give effect to the  
5 provisions of article XII, sections 4 and 6 of the Constitution  
6 relating to the office's portion of the income and proceeds from  
7 the public land trust lands under sections 4 and 6 of article  
8 XII of the Constitution, including, but not limited to, receipts  
9 from general leases, revocable permits, and licenses for the use  
10 of improved and unimproved parcels of public land trust lands,  
11 rents and fees for agricultural uses, rents and fees for retail,  
12 office, warehouse, medical and other uses of space in state-  
13 owned buildings and facilities, receipts from the sale of wood,  
14 rock, and other natural resources on public land trust lands,  
15 landing, docking and parking fees, rents and fees from the  
16 State's in-bond duty free, park, and other concessions, rents,  
17 fees, and reimbursements collected at state-operated hospitals  
18 and medical facilities, and fees and rents from the State's  
19 affordable housing development and rental public housing  
20 projects.

21 SECTION 4. To the extent that the State has made any  
22 waiver of sovereign immunity for a suit, claim, cause of action,  
23 or right of action regarding the amount of the income and

**S.B. NO. 2783**

1 proceeds the office of Hawaiian affairs is to receive from the  
2 public land trust lands pursuant to article XII, sections 4 and  
3 6 of the Hawaii Constitution, that waiver is withdrawn.

4 SECTION 5. The State, while not admitting the validity of  
5 any claims, hereby resolves and satisfies all controversies and  
6 claims described in section 3 of this Act by the conveyance of  
7 the Properties described in section 2 of this Act.

8 SECTION 6. The Properties conveyed by this Act shall be  
9 deemed income and proceeds from the public land trust, as if the  
10 Properties had been paid out of the income and proceeds from the  
11 public land trust pursuant to article XII, section 6 of the  
12 State Constitution.

13 SECTION 7. Notwithstanding any other law to the contrary,  
14 the State, and the state officials who may have participated in  
15 the preparation of the provisions or the enactment of this Act,  
16 including the office of Hawaiian affairs, each of the members of  
17 its board of trustees, and its staff, shall not be subject to  
18 suit because of their participation, except if an action is  
19 brought to compel compliance with a provision of this Act, in  
20 which case the action shall be brought only against the State or  
21 the office of Hawaiian affairs, or any official necessary to  
22 compel compliance with a provision of this Act.

S.B. NO. 2783

1 SECTION 8. If any provision of chapter 673, Hawaii Revised  
2 Statutes, is inconsistent with any provision of this Act, then  
3 the provisions of this Act shall prevail.

4 SECTION 9. (a) The provisions of this Act are not  
5 severable to the extent that if any provision of either section  
6 2 or section 3 of this Act is held invalid or unenforceable by a  
7 final judgment of the Hawaii Supreme Court or the United States  
8 Supreme Court that resolves all issues, this Act in its entirety  
9 shall be invalid, all interests in the Properties conveyed  
10 pursuant to the provisions of section 2 of this Act, shall be  
11 conveyed back to their respective grantors by the office of  
12 Hawaiian affairs.

13 (b) There is no waiver of sovereign immunity to bring any  
14 suit, claim, cause of action, or right of action to invalidate  
15 section 2 or 3 of this Act, or to enjoin their implementation or  
16 application, and to the extent any waiver of sovereign immunity  
17 for such a suit, claim, cause of action, or right of action  
18 exists, that waiver is withdrawn.

19 (c) Nothing in this Act limits the legislature's exclusive  
20 authority to enact laws.

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S.B. NO. 2783

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SECTION 10. This Act shall take effect on July 1, 2012.

APPROVED this 11 day of APR, 2012



GOVERNOR OF THE STATE OF HAWAII