



1 affairs of native Hawaiians and Hawaiians; and to  
2 exercise control over real and personal property set  
3 aside by state, federal or private sources and  
4 transferred to the board for native Hawaiians and  
5 Hawaiians. The board shall have the power to exercise  
6 control over the Office of Hawaiian Affairs through  
7 its executive officer, the administrator of the Office  
8 of Hawaiian Affairs, who shall be appointed by the  
9 board"; and

10  
11 WHEREAS, through Act 273, Session Laws of Hawaii 1980, the  
12 Legislature provided that "[t]wenty percent of all funds derived  
13 from the public land trust . . . shall be expended by the office  
14 of Hawaiian affairs . . . for the purposes of this chapter"; and  
15

16 WHEREAS, this legislative directive has led to a series of  
17 lawsuits concerning the practical application of the twenty  
18 percent apportionment that the Legislature established to  
19 implement article XII, sections 4 and 6, of the Hawaii State  
20 Constitution; and  
21

22 WHEREAS, in *Trustees of the Office of Hawaiian Affairs v.*  
23 *Yamasaki*, 737 P.2d 446 (1987), the Hawaii Supreme Court  
24 concluded that the issue of how the apportionment is formulated  
25 is a political question for the Legislature to determine; and  
26

27 WHEREAS, in response to the *Yamasaki* decision, the  
28 Legislature enacted Act 304, Session Laws of Hawaii 1990, to  
29 clarify the extent and scope of the twenty percent portion; and  
30

31 WHEREAS, on September 12, 2001, the Hawaii Supreme Court  
32 ruled in *Office of Hawaiian Affairs v. State of Hawaii*, 31 P.3d  
33 901 (2001), ("OHA I") that Act 304 was effectively repealed by  
34 its own terms, so that once again, it was necessary for the  
35 Legislature to specify the apportionment to be managed and  
36 administered by the Office of Hawaiian Affairs; and  
37

38 WHEREAS, in its decision, the Hawaii Supreme Court affirmed  
39 *Yamasaki*, observing:  
40

41 "[T]he State's obligation to native Hawaiians is  
42 firmly established in our constitution. How the State  
43 satisfies that constitutional obligation requires  
44 policy decisions that are primarily within the



1 authority and expertise of the legislative branch. As  
2 such, it is incumbent upon the legislature to enact  
3 legislation that gives effect to the right of native  
4 Hawaiians to benefit from the ceded lands trust. See  
5 Haw. Const. art. XVI, section 7 . . . [W]e trust that  
6 the legislature will re-examine the State's  
7 constitutional obligation to native Hawaiians and the  
8 purpose of HRS §10-13.5 and enact legislation that  
9 most effectively and responsibly meets those  
10 obligations."

11  
12 *Office of Hawaiian Affairs v. State of Hawaii*, 31 P.3d  
13 at 914 (citations omitted); and  
14

15 WHEREAS, on April 28, 2006, the Hawaii Supreme Court ruled  
16 in *Office of Hawaiian Affairs v. State of Hawaii*, 133 P.3d 767,  
17 795 (2006) ("OHA II"), that consistent with its ruling in OHA I,  
18 "it is incumbent upon the legislature to enact legislation that  
19 gives effect to the right of native Hawaiians to benefit from  
20 the ceded lands trust"; and  
21

22 WHEREAS, in January 2008, the Chairperson of the Office of  
23 Hawaiian Affairs and the Governor, following the vote of  
24 approval by the Office of Hawaiian Affairs Board of Trustees,  
25 signed a negotiated Settlement Agreement between the State and  
26 the Office of Hawaiian Affairs "to resolve and settle, finally  
27 and completely, any and all claims and disputes" relating to the  
28 portion of income and proceeds from the lands of the public land  
29 trust for use by the Office of Hawaiian Affairs, between  
30 November 7, 1978, and July 1, 2008; and  
31

32 WHEREAS, contingent on the enactment of legislation the  
33 parties drafted and attached to the Settlement Agreement, the  
34 State agreed to pay cash and transfer three parcels of land  
35 totaling \$200,000,000 to the Office of Hawaiian Affairs, and the  
36 Office of Hawaiian Affairs agreed that the Settlement Agreement  
37 would have the effect of res judicata and that the Office of  
38 Hawaiian Affairs "releases, waives, and forever discharges any  
39 and all claims of any kind concerning, relating to, or arising  
40 out of controversies at law and in equity, known or unknown, now  
41 existing or hereafter arising, established, or inchoate, arising  
42 out of or in any way related to any right the Office of Hawaiian  
43 Affairs or any other person or entity may have to income and  
44 proceeds of any kind or nature whatsoever, or the equivalents of



1 such income and proceeds of any kind or nature whatsoever, from  
2 the lands held by the State as a public trust under sections 4  
3 and 6 of Article XII of the Hawaii State Constitution or any  
4 statute or act between November 7, 1978, and July 1, 2008"; and  
5

6 WHEREAS, the Settlement Agreement did not take effect  
7 because the legislation drafted by the parties was not enacted;  
8 and  
9

10 WHEREAS, the Legislature continues to believe that it is in  
11 the best interests of the Office of Hawaiian Affairs, its  
12 beneficiaries, the State, and all citizens of Hawaii that a fair  
13 and just resolution of outstanding issues relating to the income  
14 and proceeds from the lands of the public land trust between  
15 November 7, 1978, and July 1, 2008, be attained; and  
16

17 WHEREAS, the Legislature also believes it is important that  
18 the Office of Hawaiian Affairs and the Administration of  
19 Governor Neil Abercrombie enter into discussions to lay the  
20 foundation for appropriate legislative action; now, therefore,  
21

22 BE IT RESOLVED by the House of Representatives of the  
23 Twenty-sixth Legislature of the State of Hawaii, Regular Session  
24 of 2011, the Senate concurring, that the Office of Hawaiian  
25 Affairs and the Executive Branch are encouraged to engage in  
26 discussions to formulate and submit a recommendation to the  
27 Legislature for resolving all claims and disputes between the  
28 State and the Office of Hawaiian Affairs regarding the amount of  
29 the income and proceeds from the lands of the public land trust  
30 that the Office of Hawaiian Affairs should receive under the  
31 Hawaii State Constitution and state law, between November 7,  
32 1978, and July 1, 2008; and  
33

34 BE IT FURTHER RESOLVED that at a minimum, any  
35 recommendation to the Legislature specify the amount in cash  
36 payments, parcels of land, or a combination thereof, that the  
37 Legislature shall appropriate and authorize the State to pay or  
38 transfer to the Office of Hawaiian Affairs; and  
39

40 BE IT FURTHER RESOLVED that certified copies of this  
41 Concurrent Resolution be transmitted to the Governor, Attorney  
42 General, Chairperson of the Board of Land and Natural Resources,  
43 and Chairperson of the Board of Trustees of the Office of  
44 Hawaiian Affairs.

