
A BILL FOR AN ACT

RELATING TO LANDS CONTROLLED BY THE STATE.

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

1 SECTION 1. In January 2008, the Hawaii Supreme Court in
2 Office of Hawaiian Affairs v. Housing and Community Development
3 Corporation of Hawaii, 117 Hawaii 174, 177 P.3d 884 (2008),
4 enjoined the State from selling or otherwise transferring to
5 third parties any ceded lands from the public lands trust until
6 the claims of the native Hawaiian people to the ceded lands have
7 been resolved.

8 In April 2008, the governor directed the attorney general
9 to petition the United States Supreme Court for a writ of
10 certiorari on whether the passage of Public Law 103-150,
11 otherwise known as the Apology Resolution, strips the State of
12 Hawaii of the authority to sell, exchange, or transfer ceded
13 lands unless or until the State reaches a political settlement
14 with native Hawaiians about the status of these lands. In
15 October 2008, the United States Supreme Court granted the
16 State's petition for certiorari in the foregoing case.

1 In light of these developments, the legislature believes
2 that it is necessary to reassert its constitutional authority in
3 that it has the sole authority to resolve this issue on behalf
4 of the State and to dispose of lands under the control of the
5 State as it deems appropriate.

6 The purpose of this Act is to require the adoption of a
7 concurrent resolution by two-thirds majority vote of each house
8 of the legislature to sell or exchange ceded lands.

9 SECTION 2. Chapter 171, Hawaii Revised Statutes, is
10 amended by adding a new part to be appropriately designated and
11 to read as follows:

12 **"PART . CEDED LANDS**

13 **§171-A Sale of ceded lands under the control of state**
14 **departments and agencies; legislative approval required. (a)**

15 This section applies to the following lands:

- 16 (1) Land defined as public lands under section 171-2;
17 (2) Land set aside pursuant to law for the use of the
18 United States;
19 (3) Land to which the United States relinquished the
20 absolute fee and ownership under section 91 of the
21 Organic Act prior to the admission of Hawaii as a
22 state of the United States unless subsequently placed

- 1 under the control of the board of land and natural
2 resources and given the status of public lands in
3 accordance with the state constitution, or other laws;
- 4 (4) Land to which the University of Hawaii holds title;
- 5 (5) Land to which the Hawaii housing finance and
6 development corporation in its corporate capacity
7 holds title;
- 8 (6) Land to which the department of agriculture holds
9 title by way of foreclosure, voluntary surrender, or
10 otherwise, to recover moneys loaned or to recover
11 debts otherwise owed the department under chapter 167;
- 12 (7) Land that is set aside by the governor to the Aloha
13 Tower development corporation; land leased to the
14 Aloha Tower development corporation by any department
15 or agency of the State; or land to which the Aloha
16 Tower development corporation holds title in its
17 corporate capacity;
- 18 (8) Land that is set aside by the governor to the
19 agribusiness development corporation; land leased to
20 the agribusiness development corporation by any
21 department or agency of the State; or land to which

1 the agribusiness development corporation in its
2 corporate capacity holds title; or
3 (9) Land to which the high technology development
4 corporation in its corporate capacity holds title.
5 (b) Notwithstanding any law to the contrary, no sale of
6 lands under subsection (a) in fee simple, including land sold
7 for roads and streets, shall occur without the prior approval of
8 the sale by the legislature by concurrent resolution to be
9 adopted by each house by at least a two-thirds majority vote of
10 the members to which each house is entitled in a regular or
11 special session at which a concurrent resolution is submitted
12 for approval of the sale; provided that the provisions of this
13 section shall not apply to the sale of remnants, as defined in
14 section 171-52, or portions thereof; and provided further that
15 this section shall not apply to the issuance of licenses,
16 permits, easements, and leases in conformance with the
17 applicable law for lands listed in subsection (a).
18 (c) The state department or agency proposing to sell any
19 state land listed under subsection (a) shall submit for
20 introduction to the legislature a concurrent resolution for
21 review of any sale of state land. The concurrent resolution
22 shall contain a list of all sales of state land proposed by the

1 state department or agency. The concurrent resolution shall
2 contain the following information:

- 3 (1) The location and area of the parcels of land to be
4 sold;
- 5 (2) The appraisal value of the land to be sold;
- 6 (3) The names of all appraisers performing appraisals of
7 the land to be sold;
- 8 (4) The date of the appraisal valuation;
- 9 (5) The purpose for which the land is being sold; and
- 10 (6) A detailed summary of any development plans for the
11 land to be sold.

12 (d) If the legislature fails to approve the concurrent
13 resolution by at least a two-thirds majority vote of both
14 houses, the transaction shall not be consummated by the state
15 department or agency.

16 **§171-B Exchange of lands under the control of state**
17 **departments and agencies for private land; legislative approval**
18 **required.** (a) This section applies to the following lands:

- 19 (1) Land defined as public land under section 171-2;
- 20 (2) Land set aside pursuant to law for the use of the
21 United States;

- 1 (3) Land to which the United States relinquished the
2 absolute fee and ownership under section 91 of the
3 Organic Act prior to the admission of Hawaii as a
4 state of the United States unless subsequently placed
5 under the control of the board of land and natural
6 resources and given the status of public lands in
7 accordance with the state constitution, or other laws;
- 8 (4) Land to which the University of Hawaii holds title;
- 9 (5) Land to which the Hawaii housing finance and
10 development corporation in its corporate capacity
11 holds title;
- 12 (6) Land to which the department of agriculture holds
13 title by way of foreclosure, voluntary surrender, or
14 otherwise, to recover moneys loaned or to recover
15 debts otherwise owed the department under chapter 167;
- 16 (7) Land that is set aside by the governor to the Aloha
17 Tower development corporation; land leased to the
18 Aloha Tower development corporation by any department
19 or agency of the State; or land to which the Aloha
20 Tower development corporation holds title in its
21 corporate capacity;

1 (8) Land that is set aside by the governor to the
2 agribusiness development corporation; land leased to
3 the agribusiness development corporation by any
4 department or agency of the State; or land to which
5 the agribusiness development corporation in its
6 corporate capacity holds title; or

7 (9) Land to which the high technology development
8 corporation in its corporate capacity holds title.

9 (b) Notwithstanding any law to the contrary, no exchange
10 of lands under subsection (a), including land being used for
11 roads and streets, shall occur without the prior approval of the
12 exchange by the legislature by concurrent resolution to be
13 adopted by each house by at least a two-thirds majority vote of
14 the members to which each house is entitled in a regular or
15 special session at which a concurrent resolution is submitted
16 for approval of the exchange; provided that the provisions of
17 this section shall not apply to the exchange of remnants, as
18 defined in section 171-52, or portions thereof; and provided
19 further that this section shall not apply to the issuance of
20 licenses, permits, easements, and leases in conformance with the
21 applicable law for lands listed in subsection (a).

1 (c) The state department or agency proposing the exchange
2 shall submit for introduction to the legislature a concurrent
3 resolution for review of any exchange. The concurrent
4 resolution shall contain a list of all exchanges proposed by the
5 state department or agency and shall be submitted with the
6 proposed exchange deeds for the exchanges to be executed by the
7 parties, together with the following information:

8 (1) The location and area of the parcels of land to be
9 exchanged;

10 (2) The appraisal value of the lands to be conveyed by the
11 State and the private party;

12 (3) The names of all appraisers performing appraisals of
13 the parcels of land to be exchanged;

14 (4) The date of the appraisal valuation;

15 (5) The purpose for which the parcels of land are being
16 exchanged; and

17 (6) A detailed summary of any development plans for the
18 parcels of land to be exchanged.

19 (d) If the legislature fails to approve the concurrent
20 resolution by at least a two-thirds majority vote of both
21 houses, the transaction shall not be consummated by the state
22 department or agency."

1 SECTION 3. In codifying the new sections added by section
2 2 of this Act, the revisor of statutes shall substitute
3 appropriate section numbers for the letters used in designating
4 the new sections in this Act.

5 SECTION 4. This Act shall take effect upon its approval.

Report Title:

Ceded Lands; Public Lands; Sale

Description:

Requires two-thirds majority vote of the legislature to adopt a concurrent resolution to sell or exchange certain public lands.
(SD1)