



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

9 **POWERS OF BOARD OF TRUSTEES**

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



1 administrator of the Office of Hawaiian Affairs, who shall be  
2 appointed by the board."

3 By Act 273, Session Laws of Hawaii 1980, the legislature  
4 provided that "[t]wenty per cent of all funds derived from the  
5 public land trust, . . . shall be expended by the office of  
6 Hawaiian affairs . . . for the purposes of this chapter." This  
7 legislative directive has led to a series of lawsuits concerning  
8 the practical application of the twenty per cent apportionment  
9 the legislature established to implement article XII, sections 4  
10 and 6, of the Hawaii Constitution.

11 In *Trustees of the Office of Hawaiian Affairs v. Yamasaki*,  
12 69 Haw. 154, 737 P.2d 446 (1987), the Hawaii supreme court  
13 concluded that the issue of how the apportionment is formulated  
14 is a political question for the legislature to determine.

15 In response to the *Yamasaki* decision, the legislature  
16 enacted Act 304, Session Laws of Hawaii 1990, to clarify the  
17 extent and scope of the twenty per cent portion.

18 On September 12, 2001, the Hawaii supreme court ruled in  
19 *Office of Hawaiian Affairs v. State of Hawaii*, 96 Haw. 388, 31  
20 P.3d 901 (2001), that Act 304 was effectively repealed by its  
21 own terms, so that once again, it was necessary for the



1 legislature to specify the apportionment to be managed and  
2 administered by the office of Hawaiian affairs.

3 In its decision, the Hawaii supreme court affirmed  
4 *Yamasaki*, observing:

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

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

17 *Office of Hawaiian Affairs v. State of Hawaii*, 96 Haw. at 401,  
18 31 P.3d at 914 (citations omitted).

19 In reviewing the entire history of the issue of the State's  
20 obligation to transmit to the office of Hawaiian affairs a part  
21 of the income and proceeds from the public land trust, the  
22 legislature finds that the issue has evolved into two principal



1 aspects, one looking to the past, the other looking to the  
2 future.

3 With regard to the past, the legislature finds that in  
4 addition to the amounts of income and proceeds previously paid  
5 to the office of Hawaiian affairs, further resources should be  
6 provided to the office of Hawaiian affairs that represent a re-  
7 examination and final determination by the legislature for the  
8 period between November 7, 1978 (the ratification date of  
9 article XII, sections 4, 5, and 6 of the Hawaii Constitution,  
10 and July 1, 2008, with regard to income and proceeds from the  
11 lands in the public trust referred to in article XII, section 4,  
12 of the Hawaii Constitution. Additionally, the legislature finds  
13 that the dollar value of \$ represents the  
14 legislature's re-examination and final determination of the  
15 resources that should be provided to the office of Hawaiian  
16 affairs for the period between November 7, 1978, and July 1,  
17 2008.

18 The legislature also finds that the resources valued at  
19 \$ will be provided to the office of Hawaiian affairs  
20 in two phases. In the first phase, the legislature by this Act  
21 conveys to the office of Hawaiian affairs the fee simple  
22 interest in a certain parcel of real property in the city and



1 county of Honolulu with a tax assessed value for 2007-2008 of  
2 \$ (certain property in Kakaako on Oahu). In the  
3 second phase, the legislature in 2010 will pass an act that  
4 conveys to the office of Hawaiian affairs resources totaling  
5 \$ in value, in the form of conveyance of real  
6 property in fee simple.

7 With regard to the future, the legislature finds that the  
8 public interest is best served by the legislature's deferring  
9 temporarily a re-examination of what amount of income and  
10 proceeds from the lands in the public trust referred to in  
11 article XII, section 4, of the Hawaii Constitution should be  
12 provided to the office of Hawaiian affairs annually beginning on  
13 July 1, 2008. In this light, the annual amount will, for the  
14 time being, continue to be set by Act 178, Session Laws of  
15 Hawaii 2006, which stated:

16 ". . . [U]ntil further action is taken by the legislature  
17 for this purpose, the income and proceeds from the pro rata  
18 portion of the public land trust under article XII, section  
19 6, of the state constitution for expenditure by the office  
20 of Hawaiian affairs for the betterment of the conditions of  
21 native Hawaiians for each fiscal year beginning with fiscal  
22 year 2005-2006 shall be \$15,100,000."



1           The legislature recognizes that in January 2008, the  
2 governor and the office of Hawaiian affairs reached a settlement  
3 agreement with respect to all issues relating to the portion of  
4 the income and proceeds from the lands in the public trust for  
5 the period between November 7, 1978, and July 1, 2008, that the  
6 office of Hawaiian affairs was to receive. However, the  
7 settlement agreement did not take effect because it was  
8 conditioned on certain legislative action that did not occur.

9           This Act is an expression of legislative policy and not a  
10 settlement or a contract. This legislation is a legislative act  
11 without distinction from any other legislative act. As it is  
12 neither a settlement nor a contract, it can give rise to no  
13 lawsuits or claims to enforce it, nor to any claim in the future  
14 that any future legislation is barred in any way, or leads to  
15 liability in any way, because it somehow conflicts with a  
16 settlement, settlement agreement, or contract.

17           The purpose of this Act is to allow the State to most  
18 effectively and responsibly make progress toward meeting part of  
19 its constitutional obligation to native Hawaiians by addressing  
20 the additional amount of income and proceeds that the office of  
21 Hawaiian affairs is to receive from the public trust pursuant to



1 article XII, sections 4 and 6, of the Hawaii Constitution, for  
2 the period from November 7, 1978, to July 1, 2008, by:

- 3 (1) Conveying a certain parcel of real property in fee  
4 simple to the office of Hawaiian affairs; and  
5 (2) Supporting the conveyance with appropriate provisions,  
6 such as exempting the land conveyed from the  
7 definition of "public lands" in chapter 171, Hawaii  
8 Revised Statutes, and exempting the land conveyed from  
9 the authority of the Hawaii community development  
10 authority under chapter 206E, Hawaii Revised Statutes.

11 SECTION 2. Section 171-2, Hawaii Revised Statutes, as  
12 amended to read as follows:

13 "§171-2 Definition of public lands. "Public lands" means  
14 all lands or interest therein in the [~~State~~] state classed as  
15 government or crown lands previous to August 15, 1895, or  
16 acquired or reserved by the government upon or subsequent to  
17 that date by purchase, exchange, escheat, or the exercise of the  
18 right of eminent domain, or in any other manner; including  
19 accreted lands not otherwise awarded, submerged lands, and lands  
20 beneath tidal waters which are suitable for reclamation,  
21 together with reclaimed lands which have been given the status  
22 of public lands under this chapter, except:



- 1 (1) Lands designated in section 203 of the Hawaiian Homes  
2 Commission Act, 1920, as amended;
- 3 (2) Lands set aside pursuant to law for the use of the  
4 United States;
- 5 (3) Lands being used for roads and streets;
- 6 (4) Lands to which the United States relinquished the  
7 absolute fee and ownership under section 91 of the  
8 Hawaiian Organic Act prior to the admission of Hawaii  
9 as a state of the United States unless subsequently  
10 placed under the control of the board of land and  
11 natural resources and given the status of public lands  
12 in accordance with the [State] Hawaii Constitution,  
13 the Hawaiian Homes Commission Act, 1920, as amended,  
14 or other laws;
- 15 (5) Lands to which the University of Hawaii holds title;
- 16 (6) Lands to which the Hawaii housing finance and  
17 development corporation in its corporate capacity  
18 holds title;
- 19 (7) Lands to which the Hawaii community development  
20 authority in its corporate capacity holds title;
- 21 (8) Lands to which the department of agriculture holds  
22 title by way of foreclosure, voluntary surrender, or



1 otherwise, to recover moneys loaned or to recover  
2 debts otherwise owed the department under chapter 167;

3 (9) Lands which are set aside by the governor to the Aloha  
4 Tower development corporation; lands leased to the  
5 Aloha Tower development corporation by any department  
6 or agency of the State; or lands to which the Aloha  
7 Tower development corporation holds title in its  
8 corporate capacity;

9 (10) Lands which are set aside by the governor to the  
10 agribusiness development corporation; lands leased to  
11 the agribusiness development corporation by any  
12 department or agency of the State; or lands to which  
13 the agribusiness development corporation in its  
14 corporate capacity holds title; [~~and~~]

15 (11) Lands to which the high technology development  
16 corporation in its corporate capacity holds title[-];  
17 and

18 (12) Land conveyed to the office of Hawaiian affairs  
19 pursuant to Act , Session Laws of Hawaii 2009."

20 SECTION 3. Section 206E-32, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           "**§206E-32 District; established, boundaries.** The Kakaako  
2 community development district is established. The district  
3 shall include that area bounded by King Street; Piikoi Street  
4 from its intersection with King Street to Ala Moana Boulevard;  
5 Ala Moana Boulevard, inclusive, from Piikoi Street to its  
6 intersection with the Ewa boundary of Ala Moana Park also  
7 identified as the Ewa boundary of tax map key 2-3-37:01; the Ewa  
8 boundary of tax map key 2-3-37:01 from its intersection with Ala  
9 Moana Boulevard to the shoreline; the shoreline from its  
10 intersection with the property line representing the Ewa  
11 boundary of property identified by tax map key 2-3-37:01 to the  
12 property line between Pier 2 and Pier 4; the property line  
13 between Pier 2 and Pier 4 from its intersection with the  
14 shoreline to Ala Moana Boulevard; Ala Moana Boulevard from its  
15 intersection with the property line between lands identified by  
16 Pier 2 and Pier 4 to Punchbowl Street; and Punchbowl Street to  
17 its intersection with King Street; provided that the following  
18 parcels at Pier 1 and Pier 2 shall be deleted from the Kakaako  
19 community development district boundaries and conveyed to the  
20 department of land and natural resources to be set aside for the  
21 department of transportation and the foreign-trade zone division  
22 of the department of business, economic development, and



1 tourism, to ensure continued maritime and foreign commerce use:  
 2 all of lot 3 and parcels 2, 3-A, A, and B of the Forrest Avenue  
 3 subdivision, as shown on the map filed with the bureau of  
 4 conveyances of the State of Hawaii as file plan 2335; and lots  
 5 A-1 and A-2, as shown on map 2, filed in the office of the  
 6 assistant registrar of the land court of the State of Hawaii  
 7 with land court application 1328; and provided further that all  
 8 existing easements affecting and appurtenant to the parcels to  
 9 be deleted from the Kakaako community development district  
 10 boundaries shall not be affected by this change.

11 The district shall also include that parcel of land  
 12 identified by tax map key 2-1-14:16, situated mauka of Pier 6  
 13 and Pier 7 and makai of Nimitz Highway, being the site for the  
 14 existing Hawaiian Electric power plant and related facilities.

15 Notwithstanding any other provision of this section or of  
 16 this chapter, the Kakaako community development district shall  
 17 not include any land conveyed in fee simple to the office of  
 18 Hawaiian affairs pursuant to Act , Session Laws of Hawaii  
 19 2009; provided that this land shall not be subject to any of the  
 20 provisions of this chapter."

21 SECTION 4. Section 10-13.3, Hawaii Revised Statutes, is  
 22 repealed.



1           ~~["§10-13.3] Interim revenue.~~ Notwithstanding the  
2 definition of revenue contained in this chapter and the  
3 provisions of section 10-13.5, and notwithstanding any claimed  
4 invalidity of Act 304, Session Laws of Hawaii 1990, the income  
5 and proceeds from the pro rata portion of the public land trust  
6 under article XII, section 6 of the state constitution for  
7 expenditure by the office of Hawaiian affairs for the betterment  
8 of the conditions of native Hawaiians for each of fiscal year  
9 1997-1998 and fiscal year 1998-1999 shall be \$15,100,000."]

10           SECTION 5. (a) Subject to the rights of the office of  
11 Hawaiian affairs set forth in section 8 of this Act, including  
12 the right to inspect and reject the property described in this  
13 section, all right, title, and interest in the following parcel  
14 of land with the existing improvements thereon, except for  
15 submerged land, accreted land, or any land makai of the  
16 shoreline, shall be conveyed in accordance with section 8 of  
17 this Act in fee simple to the office of Hawaiian affairs:

18           Kakaako Makai: (Lots 2, 3, 4, 5, and 9 as identified on the  
19 final Kakaako park subdivision map dated October 15, 2007,  
20 approved by the city and county of Honolulu department of  
21 planning and permitting on November 9, 2007).



1           The land described in this section shall be held in trust  
2 pursuant to article XII, sections 4, 5, and 6, of the Hawaii  
3 Constitution, and shall be subject to all laws, including  
4 section 171-58, Hawaii Revised Statutes, except as otherwise  
5 provided in this Act.

6           Because this is a conveyance in which the State and its  
7 agencies are the only parties, the tax imposed by section 247-1,  
8 Hawaii Revised Statutes, shall not apply.

9           The property conveyed shall be subject to all encumbrances,  
10 whether or not of record, rights of native tenants, leases,  
11 contracts, agreements, permits, easements, profits, licenses,  
12 rights-of-way, or other instruments applicable to any land  
13 conveyed by this section effective or ongoing on the effective  
14 date of this Act, which shall remain in full force and effect.  
15 These encumbrances may be set forth in the instruments conveying  
16 the property to the office of Hawaiian affairs or set forth in a  
17 license or similar agreement, a memorandum of which may be  
18 recorded concurrently with the instruments conveying the  
19 property to the office of Hawaiian affairs. Effective upon  
20 conveyance of the property to the office of Hawaiian affairs  
21 pursuant to this Act, every reference to the current title-  
22 holder or the head of the department or agency in each such



1 instrument, if the title-holder is a department or an agency,  
2 shall be construed to be a reference to the office of Hawaiian  
3 affairs or its board of trustees.

4 After the conveyance occurs, the property shall be subject  
5 to all laws, except as otherwise provided in this Act. The  
6 office shall administer the property in accordance with its  
7 duties under the Hawaii Constitution and as provided by law.

8 (b) The office of Hawaiian affairs shall cooperate with  
9 other state agencies to designate and grant access rights and  
10 easements as may be reasonably necessary for the benefit and use  
11 of adjoining properties owned by the State. Each of the  
12 instruments creating access rights or granting easements shall  
13 provide that the office of Hawaiian affairs, or any successor  
14 owner of the servient property, shall have the right to  
15 reasonably relocate any access areas or easements so granted.  
16 The cost of initially identifying such access areas or  
17 designating and granting any easements shall not be the  
18 responsibility of the office of Hawaiian affairs. The cost of  
19 relocating any access areas or easements shall be paid by the  
20 office of Hawaiian affairs or any successor owner, as the case  
21 may be. Each of the instruments creating access rights or  
22 granting easements shall also provide that the office of



1 Hawaiian affairs shall only be responsible for a reasonable  
2 share of the cost of maintaining any access areas and easement  
3 areas, as the case may be, and that the office, its tenants,  
4 licensees, concessionaires, successors, and assigns shall not be  
5 liable for injuries or damages arising from the use of the  
6 access areas or easement areas by other state agencies or their  
7 invitees.

8 (c) Notwithstanding subsection (b), the office of Hawaiian  
9 affairs shall not be required to approve any access rights or  
10 grant any access easements to other state agencies that would  
11 materially diminish the value of the servient property or that  
12 would materially interfere with the use of the servient property  
13 by the office or any lessee, tenant, licensee, concessionaire,  
14 or other occupant of the property, unless otherwise provided by  
15 law.

16 (d) The conveyance made by this section shall not include  
17 any of the State's rights to minerals or surface or ground  
18 water. As directed by the attorney general, the appropriate  
19 boards, agencies, officers, and employees of the State shall:

20 (1) Execute instruments of conveyance as may be necessary  
21 and proper to the office of Hawaiian affairs, as  
22 grantee, to convey the interest and title of the State



1           and its boards and commissions to this land and to  
2           improvements in fee simple; and

3           (2) Record the instruments in the land court or bureau of  
4           conveyances, as appropriate.

5           (e) This section shall not limit the power of the  
6           legislature to enact any laws.

7           SECTION 6. The real property conveyance made under this  
8           Act shall be deemed income and proceeds from the lands in the  
9           public trust referred to in article XII, sections 4 and 6, of  
10          the Hawaii Constitution, as if it had been paid out of the  
11          income and proceeds from such lands pursuant to article XII,  
12          sections 4 and 6, of the Hawaii Constitution. With regard to  
13          any property conveyed to the office of Hawaiian affairs under  
14          this Act that is part of the public land trust referred to in  
15          article XII, sections 4 and 6, of the Hawaii Constitution,  
16          nothing in this Act shall remove that property from that public  
17          land trust.

18          SECTION 7. To the extent that the State has waived  
19          sovereign immunity for a suit, claim, cause of action, or right  
20          of action regarding the amount of income and proceeds the office  
21          of Hawaiian affairs is to receive from the public trust pursuant



1 to article XII, sections 4 and 6, of the Hawaii Constitution,  
2 that waiver is withdrawn.

3 SECTION 8. (a) During regular business hours, the State  
4 shall make available to the office of Hawaiian affairs and its  
5 authorized representatives the State's files that contain any of  
6 the following regarding property to be conveyed to the office  
7 pursuant to this Act:

- 8 (1) Copies of soil reports, site plans, engineering  
9 reports, archaeological and historical studies, plans,  
10 and surveys;
- 11 (2) Zoning entitlement and other land use documents and  
12 records including, without limitation, all current  
13 governmental permits, approvals, and authorizations;
- 14 (3) Copies of notices from governmental agencies regarding  
15 any violations of laws or ordinances;
- 16 (4) Copies of all leases and correspondence with any  
17 lessees under any of the leases;
- 18 (5) Copies of licenses and concession agreements and all  
19 correspondence with any of the parties to such  
20 licenses and concession agreements;



1 (6) Copies of any other agreements affecting or relating  
2 to any of the property, and correspondence with any of  
3 the parties to such other agreements;

4 (7) Copies of any existing surveys, and aerial photos; and

5 (8) Copies of all plans and other documents relating to  
6 any improvements on any of the property.

7 (b) The State shall permit the office of Hawaiian affairs  
8 and its authorized representatives to enter upon and conduct  
9 reasonable physical inspections of the property to be conveyed  
10 to the office of Hawaiian affairs under this Act, including  
11 subsurface investigations under the property and inspections of  
12 the buildings and other improvements located upon the property;  
13 provided that the entry and inspections shall be conducted in a  
14 manner that reasonably minimizes interference with the use of  
15 the property by the occupants of the property.

16 (c) The office of Hawaiian affairs shall have until the  
17 later of:

18 (1) October 1, 2009; or

19 (2) Six months after the State has provided the office  
20 with access to all the documents and property  
21 described in subsections (a) and (b),



1 to conduct a due diligence investigation of the property to be  
2 conveyed to the office pursuant to this Act.

3 (d) If the office of Hawaiian affairs determines in its  
4 sole and absolute discretion that there exists any condition  
5 with respect to any of the property to be conveyed to the office  
6 pursuant to this Act that makes the property unsuitable for the  
7 intended uses of the property by the office of Hawaiian affairs,  
8 the office may reject any or all of the property to be conveyed  
9 to it pursuant to this Act by written notice to the State given  
10 by October 1, 2009, or six months after the State has provided  
11 the office with access to all the documents and property  
12 described in subsections (a) and (b), whichever is later.

13 (e) Upon receipt of written notice from the office of  
14 Hawaiian affairs as and by the date provided in subsection (d)  
15 that any or all of the property, including any one or more lot  
16 or tax map key parcel, to be conveyed to the office is rejected,  
17 then the property identified by the office of Hawaiian affairs  
18 shall not be conveyed to the office pursuant to this Act, and  
19 the value of real property to be conveyed to the office of  
20 Hawaiian affairs in 2010, as described in section 1 of this Act,  
21 shall be increased by the city and county of Honolulu tax-  
22 assessed value for 2007-2008 for the property located in Kakaako



1 Makai and identified in section 3 of this Act but not conveyed  
2 to the office of Hawaiian affairs.

3 (f) The State shall convey to the office of Hawaiian  
4 affairs any property which has not been rejected by the office  
5 as provided in subsection (d) by not later than thirty days  
6 after the date by which the office of Hawaiian affairs was  
7 required to notify the State of the rejection as provided in  
8 subsection (d).

9 SECTION 9. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 10. This Act shall take effect on July 1, 2020,  
12 except that section 3 shall take effect on July 1, 2014.



**Report Title:**

Office of Hawaiian Affairs; Public Land Trust

**Description:**

Amends the law to provide for the Office of Hawaiian Affairs to receive a portion of the income and proceeds from land in the Public Land Trust. (HB901 HD2)

