
A BILL FOR AN ACT

RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA
SHARE OF PUBLIC LAND TRUST FUNDS.

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

1 SECTION 1. The legislature finds that in 1978, the state
2 constitution was amended to establish the office of Hawaiian
3 affairs and its board of trustees.

4 Article XII, sections 4, 5, and 6, of the state
5 constitution provide as follows:

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

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



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 . . . as provided by law. . . . There shall be not
 5 less than nine members of the board of trustees;
 6 provided that each of the following Islands have one
 7 representative: Oahu, Kauai, Maui, Molokai and Hawaii.
 8 The board shall elect a chairperson from its members.

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



1 control over the Office of Hawaiian Affairs through its
2 executive officer, the administrator of the Office of
3 Hawaiian Affairs, who shall be appointed by the board.
4 Act 273, Session Laws of Hawaii 1980, enacted section
5 10-13.5, Hawaii Revised Statutes, to implement the office of
6 Hawaiian affairs' pro rata share and provide that "[t]wenty per
7 cent of all funds derived from the public land trust . . . shall
8 be expended by the [Office of Hawaiian Affairs] . . . for the
9 purposes of this chapter."

10 This legislative directive has led to a series of lawsuits
11 concerning the office of Hawaiian affairs' constitutional pro
12 rata share and the statutory allocation of twenty per cent of
13 all funds that the legislature established to implement article
14 XII, sections 4 and 6, of the state constitution. In *Trustees*
15 *of the Office of Hawaiian Affairs v. Yamasaki*, 69 Haw. 154, 737
16 P.2d 446 (1987), the Hawaii supreme court concluded that it was
17 unable to determine the parameters of section 10-13.5, Hawaii
18 Revised Statutes, because the issue of how the twenty per cent
19 apportionment is formulated was a political question for the
20 legislature to determine.



1 In response to the *Yamasaki* decision, the office of
2 Hawaiian affairs and the governor's office entered into lengthy
3 negotiations and submitted to the legislature an agreement to
4 clarify the extent and scope of the twenty per cent portion.
5 The legislature, based on this agreement, enacted Act 304,
6 Session Laws of Hawaii 1990.

7 In a memorandum dated April 28, 1993, the office of
8 Hawaiian affairs and the State memorialized the results of their
9 negotiations and noted that "[the office of state planning] and
10 [the Office of Hawaiian Affairs] recognize and agree that the
11 amount specified in section 1 hereof does not include several
12 matters regarding revenue which [the Office of Hawaiian Affairs]
13 has asserted is due [the Office of Hawaiian Affairs] and which
14 [the office of state planning] has not accepted and agreed to."
15 These disagreements led to litigation. The office of Hawaiian
16 affairs specified that it was seeking its pro rata share of
17 revenues received by the State based on:

- 18 (1) Waikiki Duty Free receipts (in connection with the
19 lease of ceded lands at the Honolulu international
20 airport);
21 (2) Hilo hospital patient services receipts;



- 1 (3) Receipts from the Hawaii housing authority and the
- 2 housing finance and development corporation for
- 3 projects situated on ceded lands; and
- 4 (4) Interest earned on withheld revenues.

5 On October 24, 1996, the trial court granted the office of
6 Hawaiian affairs' motion for partial summary judgment on each of
7 its aforementioned claims, finding that:

- 8 (1) The State is required to pay the office of Hawaiian
- 9 affairs its pro rata portion of rents or fees
- 10 collected from the Duty Free concessions at the
- 11 State's airports;
- 12 (2) The State's activities of providing affordable housing
- 13 are proprietary in nature and subject to the office of
- 14 Hawaiian affairs' pro rata share;
- 15 (3) Patient service fees, cafeteria sales, and rental
- 16 income at Hilo hospital "is clearly a proprietary
- 17 rather than sovereign exercise of power" which does
- 18 not shield the Hilo hospital's income from being
- 19 characterized as revenue subject to the office of
- 20 Hawaiian affairs' pro rata share; and

1 (4) "The State is required to pay [the Office of Hawaiian
2 Affairs] its pro rata share of the interest earned by
3 the State from ceded land revenues derived from the
4 Public Land Trust."

5 The State appealed.

6 On October 27, 1997, the United States Congress enacted the
7 Department of Transportation and Related Agencies Appropriations
8 Act, 1998, Public Law 105-66, which provided that moneys paid
9 for claims related to ceded lands and diverted from airport
10 revenues were not subject to repayment. Public Law 105-66
11 provided further that nothing in the Act was to affect the
12 obligations of the State of Hawaii to Native Hawaiians in
13 connection with ceded lands, except to make clear that airport
14 revenues may not be used to satisfy such obligations directly.
15 The office of Hawaiian affairs had previously been paid
16 \$28,200,000 from airport revenue funds.

17 On September 12, 2001, the Hawaii supreme court ruled in
18 *Office of Hawaiian Affairs v. State of Hawai'i*, 96 Haw. 388, 31
19 P.3d 901 (2001), ("OHA I") that Act 304 (1990) was effectively
20 repealed by its own terms, so that once again, it was necessary
21 for the legislature to clarify the office of Hawaiian affairs'



1 constitutional pro rata share and the statutory allocation of
2 twenty per cent of all funds to be managed and administered by
3 the office of Hawaiian affairs. In its decision, the Hawaii
4 supreme court affirmed *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, section 7. . . . [W]e
13 trust that the legislature will re-examine the State's
14 constitutional obligation to native Hawaiians and the
15 purpose of HRS §10-13.5 and enact legislation that most
16 effectively and responsibly meets those obligations.

17 *OHA I*, 96 Haw. At 401, 31 P.3d at 914 (citations omitted;
18 emphasis in original).

19 On April 28, 2006, the Hawaii supreme court ruled in *Office*
20 *of Hawaiian Affairs v. State of Hawai'i*, 110 Haw. 338, 366, 133
21 P.3d 767, 795 (2006) ("*OHA II*"), that consistent with its ruling



1 in OHA I, "it is incumbent upon the legislature to enact
2 legislation that gives effect to the right of native Hawaiians
3 to benefit from the ceded lands trust."

4 Subsequently, the legislature enacted Act 178, Session Laws
5 of Hawaii 2006, which took effect on June 7, 2006, and
6 specifically acknowledged that "the State's obligation to native
7 Hawaiians is firmly established in the state constitution. (See
8 Haw. Const. art XII)."

9 While the legislature found that "many complex issues
10 require the legislature's further attention and consideration in
11 the wake of the repeal of Act 304," Act 178 was enacted with a
12 stated purpose of providing "interim measures to ensure that an
13 adequate amount of income and proceeds is made available to the
14 [Office of Hawaiian Affairs] from the pro rata portion of the
15 public land trust, for the betterment of the conditions of
16 native Hawaiians" Act 178 carried out this interim
17 purpose by requiring "the income and proceeds from the pro rata
18 portion of the public land trust under article XII, section 6,
19 of the state constitution for expenditure by the office of
20 Hawaiian affairs for the betterment of the conditions of native
21 Hawaiians for each fiscal year beginning with fiscal year 2005-



1 2006 shall be \$15,100,000." Specifically, Act 178 noted this
2 interim amount was "until further action is taken by the
3 legislature for this purpose." This \$15,100,000 was based, in
4 part, on certain ancillary receipts from the state airports.

5 Subsequently, addressing past-due amounts owed to the
6 office of Hawaiian affairs, Act 15, Session Laws of Hawaii 2012,
7 was enacted to implement an agreement between the State and the
8 office of Hawaiian affairs for the State to convey certain lands
9 in Kakaako Makai on Oahu valued at approximately \$200,000,000 to
10 allow the State to give effect to the right of native Hawaiians
11 to benefit from the public land trust and to fulfill its
12 constitutional obligations under article XII, sections 4 and 6
13 of the state constitution for the period between November 7,
14 1978, up to and including June 30, 2012, relating to the office
15 of Hawaiian affairs' portion of the income and proceeds from the
16 public land trust.

17 However, Act 15 did not address the State's constitutional
18 obligations under article XII, sections 4 and 6, relating to the
19 office of Hawaiian affairs' pro rata share of the income and
20 proceeds from the public land trust generated after June 30,
21 2012.



1 Act 178, Session Laws of Hawaii 2006, remained in effect as
2 an interim legislative measure setting the office of Hawaiian
3 affairs' annual income and proceeds from the public land trust
4 for the betterment of the conditions of native Hawaiians at
5 \$15,100,000 beginning in fiscal year 2005-2006, pending further
6 legislative action on the subject.

7 The second purpose of Act 178 was identifying "revenue-
8 generating public trust lands and the amounts derived from those
9 lands by requiring that the department of land and natural
10 resources provide an annual accounting to the legislature."
11 Based on the annual accounting of the amounts derived from the
12 public trust and additional research commissioned by the office
13 of Hawaiian affairs of receipts from the public land trust in
14 fiscal year 2015-2016, the minimum amount of total gross public
15 land trust receipts from sources that the office of Hawaiian
16 affairs has a past or current claim was found to be \$174,816,220
17 in fiscal year 2015-2016. Twenty per cent of this amount from
18 fiscal year 2015-2016 is \$34,963,244.

19 The legislature finds that it is now in the best interests
20 of the office of Hawaiian affairs, its beneficiaries, the State,
21 and all citizens of Hawaii to enact another interim legislative



1 measure regarding the office of Hawaiian affairs' constitutional
2 pro rata share of the public land trust for the betterment of
3 the conditions of native Hawaiians, in light of the information,
4 data, and facts provided to the legislature by state agencies
5 since the enactment of Act 178, Session Laws of Hawaii 2006,
6 more than a decade ago.

7 Accordingly, the purpose of this Act is to serve as an
8 interim measure to:

- 9 (1) Establish \$ as the office of Hawaiian
10 affairs' annual share of the income and proceeds of
11 the public land trust beginning in fiscal year
12 2020-2021. This amount does not include patient
13 service fees generated from state hospitals on public
14 land trust land and residential rental payments and
15 fees generated from state housing facilities on public
16 land trust land, to which the office of Hawaiian
17 affairs has not disclaimed an interest therein;
- 18 (2) Transfer to the office of Hawaiian affairs a sum of
19 \$ to pay the office of Hawaiian affairs
20 amounts received from the use of the public land trust
21 that the legislature has determined were underpaid



1 between July 1, 2012, and June 30, 2020. This amount
 2 does not include patient service fees generated from
 3 state hospitals on public land trust land and
 4 residential rental payments and fees generated from
 5 state housing facilities on public land trust land, to
 6 which the office of Hawaiian affairs has not
 7 disclaimed an interest therein;

8 (3) Require the continued annual accounting of all
 9 receipts from lands described in section 5(f) of the
 10 Admission Act; and

11 (4) Establish a public land trust revenues committee to
 12 study and make recommendations every six years
 13 regarding the amount of the income and proceeds from
 14 the public land trust that the office of Hawaiian
 15 affairs shall receive annually.

16 SECTION 2. Notwithstanding the provisions of chapter 10,
 17 Hawaii Revised Statutes, including section 10-13.5, Hawaii
 18 Revised Statutes, and until further action is taken by the
 19 legislature for this purpose, the income and proceeds from the
 20 pro rata portion of the public land trust under article XII,
 21 section 6, of the state constitution for expenditure by the



1 office of Hawaiian affairs for the betterment of the conditions
2 of native Hawaiians for each fiscal year beginning with fiscal
3 year 2020-2021 shall be \$.

4 SECTION 3. Notwithstanding the provisions of chapter 10,
5 Hawaii Revised Statutes, including section 10-13.5, Hawaii
6 Revised Statutes, beginning in fiscal year 2020-2021, the
7 departments of agriculture; accounting and general services;
8 business, economic development, and tourism; defense; education;
9 health; land and natural resources; and transportation (for its
10 harbors and highways divisions), and any other department or
11 agency that collects receipts from the lands within the public
12 land trust, including the university of Hawaii, shall determine
13 and transfer to the office of Hawaiian affairs that portion of
14 their receipts from the use, sale, lease, or other disposition
15 of lands within the public land trust collected during each
16 fiscal quarter, necessary to ensure that a total of \$
17 of receipts generated by the public land trust is transferred to
18 the office of Hawaiian affairs within thirty days of the close
19 of each fiscal quarter; provided that for fiscal year 2020-2021,
20 the departments shall have until thirty days after the close of
21 the fiscal year to transfer a total of \$ from their



1 receipts from the use, sale, or exchange of lands within the
2 public land trust collected during fiscal year 2020-2021 to the
3 office of Hawaiian affairs by the procedures set forth in this
4 Act.

5 The governor may fix the amounts each agency shall transfer
6 to the office of Hawaiian affairs in each quarter by executive
7 order to implement the provisions of this section.

8 SECTION 4. No later than twelve days after the close of
9 each fiscal quarter, the director of finance or the director's
10 designee shall determine the total amount of receipts
11 transferred by any department or agency that collects receipts
12 from the lands within the public land trust to the office of
13 Hawaiian affairs during the immediately prior fiscal quarter.

14 If the total amount of receipts transferred to the office
15 of Hawaiian affairs is less than \$ in the immediately
16 prior fiscal quarter, and unless the governor fixes the amounts
17 each agency shall transfer to the office of Hawaiian affairs,
18 the director of finance or the director's designee shall:

- 19 (1) Make up the difference between \$ and the
20 amount of receipts transferred in the immediately
21 prior fiscal quarter by transferring up to the entire



1 amount on deposit in the carry-forward trust holding
2 account established by the director of finance
3 pursuant to executive order 06-06; or

4 (2) Make up the difference between \$ and the
5 amount of receipts transferred in the immediately
6 prior fiscal quarter by establishing the additional
7 amount of receipts that each agency must transfer to
8 the office of Hawaiian affairs pursuant to section 3
9 of this Act.

10 If the total amount of receipts transferred to the office
11 of Hawaiian affairs is more than \$ in the immediately
12 prior fiscal quarter, the director of finance shall notify the
13 office of Hawaiian affairs and request that the office of
14 Hawaiian affairs transfer the amount in excess of \$
15 into the carry-forward trust holding account established by the
16 director of finance pursuant to executive order 06-06. This
17 subsection shall not apply to a transfer of receipts at the
18 close of fiscal year 2020-2021.

19 SECTION 5. There is appropriated out of the general
20 revenues of the State of Hawaii the sum of \$, less the
21 funds in the carry-forward trust holding account established by



1 the director of finance pursuant to executive order 06-06, or so
2 much thereof as may be necessary for fiscal year 2020-2021 to
3 pay to the office of Hawaiian affairs amounts received from the
4 use of lands in the public land trust that the legislature has
5 determined were underpaid between July 1, 2012 through June 30,
6 2020.

7 The sum appropriated shall be expended by the department of
8 budget and finance.

9 The director of finance shall transfer the funds in the
10 carry-forward trust holding account established by the director
11 of finance pursuant to executive order 06-06, to the office of
12 Hawaiian affairs.

13 SECTION 6. Not later than January 1 of each year, the
14 department of land and natural resources, with the cooperation
15 of the department of budget and finance and any other department
16 or agency that collects receipts from the lands within the
17 public land trust, including the University of Hawaii, shall
18 provide an accounting of all receipts from lands described in
19 section 5(f) of the Admission Act for the prior fiscal year.
20 With respect to each receipt, the department of land and natural
21 resources shall identify:



- 1 (1) The total gross amount;
- 2 (2) The amount transferred to the office of Hawaiian
- 3 affairs;
- 4 (3) The amount retained by the State;
- 5 (4) The account or fund in which the amount specified in
- 6 paragraph (3) was transferred or deposited;
- 7 (5) The parcel of land subject to section 5(f) of the
- 8 Admission Act that generated the receipt, whether by
- 9 tax map key number, department of land and natural
- 10 resources inventory number, or other recognizable
- 11 description; and
- 12 (6) The state department or agency that received the total
- 13 gross amount identified in paragraph (1).

14 The accounting shall also indicate whether any parcel of land
15 described in section 5(f) of the Admission Act was sold or
16 exchanged in the prior fiscal year and, if so, the amount of
17 consideration that the State received for the respective
18 parcels.

19 The office of Hawaiian affairs shall be consulted by the
20 department of land and natural resources in determining the
21 method in which the accounting shall be conducted and in



1 ensuring that the accounting is accurate and inclusive of all
2 receipts generated by the public land trust.

3 SECTION 7. (a) There is established within the department
4 of land and natural resources a public land trust revenues
5 committee consisting of:

6 (1) The governor, who shall serve as chairperson of the
7 committee;

8 (2) The president of the senate;

9 (3) The speaker of the house of representatives; and

10 (4) The chairperson of the office of Hawaiian affairs.

11 (b) No later than one hundred eighty days prior to the
12 convening of the regular session of 2024, and every six years
13 thereafter, the public land trust revenues committee shall study
14 and make recommendations to the governor and the legislature,
15 including any proposed legislation, regarding the annual amount
16 of the income and proceeds from the public land trust that the
17 office of Hawaiian affairs shall receive annually under the
18 state constitution and other state law.

19 (c) The public land trust revenues committee shall submit
20 its findings and recommendations, including any proposed
21 legislation, to the legislature no later than twenty days prior



1 to the convening of the regular session of 2024, and every six
2 years thereafter.

3 (d) The public land trust revenues committee shall not be
4 subject to the requirements of chapter 92, Hawaii Revised
5 Statutes.

6 SECTION 8. Nothing in this Act shall resolve or settle, or
7 be deemed to acknowledge the existence of, the claims of native
8 Hawaiians to the income and proceeds of a pro rata portion of
9 the public land trust under article XII, section 6, of the state
10 constitution.

11 SECTION 9. Any funds transferred pursuant to this Act
12 shall be deemed income and proceeds from the public land trust,
13 just as if the funds had been paid out of the income and
14 proceeds from the public land trust pursuant to article XII,
15 section 6, of the state constitution.

16 SECTION 10. This Act shall take effect on July 1, 2050;
17 provided that section 5 shall take effect on July 1, 2050.



Report Title:

Public Land Trust; OHA; Pro Rata Share; DLNR; Appropriation

Description:

Establishes \$ _____ as the Office of Hawaiian Affairs' pro rata share of the public land trust. Transfers \$ _____ less certain funds to the Office of Hawaiian Affairs for underpayment of the public land trust funds for 7/1/2012 to 6/30/2019. Requires the Director of Finance to make up the difference between a specified minimum amount and an amount of public land trust receipts from an agency to the Office of Hawaiian Affairs by transferring the difference into the carry-forward trust holding account. Requires the Department of Land and Natural Resources to provide an annual accounting of receipts from lands described in section 5(f) of the Admission Act. Establishes a committee to recommend the annual amount of the income and proceeds from the public land trust that the Office of Hawaiian Affairs shall receive annually. Appropriates funds. Effective 7/1/2050. (SD2)

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