
A BILL FOR AN ACT

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

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

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

4 Article XII, sections 4, 5, and 6 of the Hawaii State
5 Constitution provide as follows:

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



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

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



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

8 The legislature also finds that Act 273, Session Laws of
9 Hawaii 1980, enacted section 10-13.5, Hawaii Revised Statutes,
10 to implement the office of Hawaiian affairs' pro rata share and
11 provide that "[t]wenty per cent of all funds derived from the
12 public land trust . . . shall be expended by the office of
13 Hawaiian affairs . . . for the purposes of this chapter."

14 This legislative directive has led to a series of lawsuits
15 concerning the office of Hawaiian affairs' constitutional pro
16 rata share and the statutory allocation of twenty per cent of
17 all funds that the legislature establishes to implement article
18 XIII, sections 4 and 6, of the Hawaii State Constitution. In
19 Trustees of the Office of Hawaiian Affairs v. Yamasaki, 69 Haw.
20 154, 737 P.2d 446 (1987), the Hawaii supreme court concluded
21 that it was unable to determine the parameters of section



1 10-13.5, Hawaii Revised Statutes, because the issue of how the
2 twenty per cent apportionment is formulated was a political
3 question for the legislature to determine.

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

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



1 (1) Waikiki Duty Free receipts, in connection with the
2 lease of ceded lands at the Honolulu international
3 airport;

4 (2) Hilo hospital patient services receipts;

5 (3) Receipts from the Hawaii housing authority and the
6 housing finance and development corporation for
7 projects situated on ceded lands; and

8 (4) Interest earned on withheld revenues.

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

12 (1) The State is required to pay the office of Hawaiian
13 affairs its pro rata portion of rents or fees
14 collected from the duty free concessions at the
15 State's airports;

16 (2) The State's activities of providing affordable housing
17 are proprietary in nature and subject to the office of
18 Hawaiian affairs' pro rata share;

19 (3) Patient service fees, cafeteria sales, and rental
20 income at Hilo hospital "is clearly a proprietary
21 rather than sovereign exercise of power" which does



1 not shield the Hilo hospital's income from being
2 characterized as revenue subject to the office of
3 Hawaiian affairs' pro rata share; and

4 (4) "[t]he State is required to pay [the office of
5 Hawaiian affairs] its pro rata share of the interest
6 earned by the State from ceded land revenues derived
7 from the Public Land Trust."

8 The State appealed.

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

20 On September 12, 2001, the Hawaii supreme court ruled in
21 *Office of Hawaiian Affairs v. State of Hawai'i*, 96 Haw. 388, 31



1 P.3d 901 (2001), ("OHA I") that Act 304 (1990) was effectively
2 repealed by its own terms, so that once again, it was necessary
3 for the legislature to clarify the office of Hawaiian affairs'
4 constitutional pro rata share and the statutory allocation of
5 twenty per cent of all funds to be managed and administered by
6 the office of Hawaiian affairs. In its decision, the Hawaii
7 supreme court affirmed *Yamasaki*, observing:

8 [T]he State's obligation to native Hawaiians is firmly
9 established in our constitution. How the State satisfies
10 that constitutional obligation requires policy decisions
11 that are primarily within the authority and expertise of
12 the legislative branch. As such, it is incumbent upon the
13 legislature to enact legislation that gives effect to the
14 right of native Hawaiians to benefit from the ceded lands
15 trust. See Haw. Const. art. XVI, section 7. . . . [W]e
16 trust that the legislature will re-examine the State's
17 constitutional obligation to native Hawaiians and the
18 purpose of HRS §10-13.5 and enact legislation that most
19 effectively and responsibly meets those obligations.

20 *OHA I*, 96 Haw. at 401, 31 P.3d at 914 (citations omitted;
21 emphases in original).



1 On April 28, 2006, the Hawaii supreme court ruled in *Office*
2 *of Hawaiian Affairs v. State of Hawai'i*, 110 Haw. 338, 366, 133
3 P.3d 767, 795 (2006) ("OHA II"), that consistent with its ruling
4 in OHA I, "it is incumbent upon the legislature to enact
5 legislation that gives effect to the right of native Hawaiians
6 to benefit from the ceded lands trust."

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

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



1 constitution for expenditure by the office of Hawaiian affairs
2 for the betterment of the conditions of native Hawaiians for
3 each fiscal year beginning with fiscal year 2005-2006 shall be
4 \$15,100,000." Specifically, Act 178 noted this interim amount
5 was "until further action is taken by the legislature for this
6 purpose". This \$15,100,000 was based, in part, on certain
7 ancillary receipts from the state airports.

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

20 However, Act 15 did not address the State's constitutional
21 obligations under article XII, sections 4 and 6 relating to the



1 office of Hawaiian affairs' pro rata share of the income and
2 proceeds from the public land trust generated after June 30,
3 2012.

4 Act 178, Session Laws of 2006, remained in effect as an
5 interim legislative measure setting the office of Hawaiian
6 affairs' annual income and proceeds from the public land trust
7 for the betterment of the conditions of native Hawaiians at
8 \$15,100,000 beginning in fiscal year 2005-2006, pending further
9 legislative action on the subject.

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



1 The legislature finds that it is now in the best interests
2 of the office of Hawaiian affairs, its beneficiaries, the State,
3 and all citizens of Hawaii to enact another interim legislative
4 measure regarding the office of Hawaiian affairs' constitutional
5 pro rata share of the public land trust for the betterment of
6 the conditions of native Hawaiians, in light of the information,
7 data, and facts provided to the legislature by state agencies
8 since the enactment of Act 178, Session Laws of Hawaii 2006,
9 more than a decade ago.

10 Accordingly, the purpose of this Act is to serve as an
11 interim measure to:

- 12 (1) Establish \$20,000,000 as the office of Hawaiian
13 affairs' annual share of the income and proceeds of
14 the public land trust beginning in fiscal year
15 2021-2022. This amount does not include patient
16 service fees generated from state hospitals on public
17 land trust land and residential rental payments and
18 fees generated from state housing facilities on public
19 land trust land, to which the office of Hawaiian
20 affairs has not disclaimed an interest therein; and



1 (2) Require an annual detailed audit of all funds derived
2 from receipts from lands described in section 5(f) of
3 the Admission Act.

4 SECTION 2. Notwithstanding the provisions of chapter 10,
5 Hawaii Revised Statutes, including section 10-13.5, Hawaii
6 Revised Statutes, and until further action is taken by the
7 legislature for this purpose, the income and proceeds from the
8 pro rata portion of the public land trust under article XII,
9 section 6 of the Hawaii state constitution for expenditure by
10 the office of Hawaiian affairs for the betterment of the
11 conditions of native Hawaiians for each fiscal year beginning
12 with fiscal year 2021-2022 shall be \$20,000,000.

13 SECTION 3. 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 SECTION 4. Nothing in this Act shall resolve or settle, or
20 be deemed to acknowledge the existence of, the claims of native
21 Hawaiians to the income and proceeds of a pro rata portion of

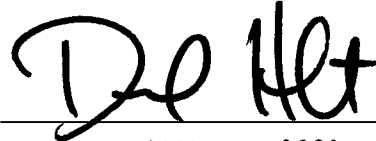


1 the public land trust under article XII, section 6, of the
2 Hawaii state constitution.

3 SECTION 5. This Act shall take effect on July 1, 2021.

4

INTRODUCED BY:



JAN 27 2021



H.B. NO. 1265

Report Title:

OHA; DLNR; Public Land Trust; Pro Rata Share

Description:

Establishes the office of Hawaiian affairs' pro rata share of the funds derived from the public land trust. Requires the department of land and natural resources to provide an annual accounting of receipts from public land trust lands.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

