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# A BILL FOR AN ACT

RELATING TO 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 Hawaii  
2 State Constitution was amended to include article XII, sections  
3 4, 5, and 6, which established the office of Hawaiian affairs  
4 and its board of trustees.

5           The legislature further finds that Act 273, Session Laws of  
6 Hawaii 1980, enacted as section 10-13.5, Hawaii Revised  
7 Statutes, implements the office of Hawaiian affairs' pro rata  
8 share and provides that "[t]wenty per cent of all funds derived  
9 from the public land trust . . . shall be expended by the office  
10 . . . for the purposes of this chapter."

11           This legislative directive has led to a series of lawsuits  
12 concerning the office of Hawaiian affairs' constitutional pro  
13 rata share and the statutory allocation of twenty per cent of  
14 all funds that the legislature established to implement article  
15 XII, sections 4 and 6, of the Hawaii State Constitution. In  
16 *Trustees of the Office of Hawaiian Affairs v. Yamasaki*, 737 P.2d  
17 446 (1987), the Hawaii supreme court concluded that it was



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

5 In response to *Yamasaki*, the office of Hawaiian affairs and  
6 the governor's office entered into lengthy negotiations and  
7 submitted to the legislature an agreement to clarify the extent  
8 and scope of the twenty per cent portion. The legislature,  
9 based on this agreement, enacted Act 304, Session Laws of Hawaii  
10 1990.

11 In a memorandum dated April 28, 1993, the office of  
12 Hawaiian affairs and the State memorialized the results of their  
13 negotiations and noted that the office of state planning and the  
14 office of Hawaiian affairs "recognize and agree that the amount  
15 specified does not include several matters regarding revenue  
16 which [the office of Hawaiian affairs] has asserted is due [the  
17 office of Hawaiian affairs] and which the [office of state  
18 planning] has not accepted and agreed to."

19 These disagreements led to litigation. The office of  
20 Hawaiian affairs specified that it was seeking its pro rata  
21 share of revenues received by the State based on:



- 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. The State appealed.

12 On September 12, 2001, the Hawaii supreme court ruled in  
13 *Office of Hawaiian Affairs v. State of Hawaii*, 31 P.3d 901  
14 (2001) ("OHA I"), that Act 304 was effectively repealed by its  
15 own terms, so that once again, it was necessary for the  
16 legislature to clarify the office of Hawaiian affairs'  
17 constitutional pro rata share and the statutory allocation of  
18 twenty per cent of all funds to be managed and administered by  
19 the office of Hawaiian affairs. In its decision, the Hawaii  
20 supreme court affirmed *Yamasaki*, observing:



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

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

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



1 Subsequently, Act 178, Session Laws of Hawaii 2006 (Act  
2 178), which took effect on June 7, 2006, stated:

3 "The legislature acknowledges that the State's obligation  
4 to native Hawaiians is firmly established in the state  
5 constitution. (See Haw. Const. art XII)."

6 While finding that "many complex issues require the  
7 legislature's further attention and consideration in the wake of  
8 the repeal of Act 304," Act 178 was enacted with a stated  
9 purpose of providing "interim measures to ensure that an  
10 adequate amount of income and proceeds is made available to the  
11 office of Hawaiian affairs from the pro rata portion of the  
12 public land trust, for the betterment of the conditions of  
13 native Hawaiians." Act 178 carried out this purpose by  
14 requiring:

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



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

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

17           Act 178 remained in effect as a purely interim legislative  
18 measure setting the office of Hawaiian affairs' annual income  
19 and proceeds from the public land trust for the betterment of  
20 the conditions of native Hawaiians at \$15,100,000 beginning in



1 fiscal year 2005-2006, pending further legislative action on the  
2 subject.

3       The second purpose of Act 178 was the identification of  
4 "revenue-generating public trust lands and the amounts derived  
5 from those lands by requiring that the department of land and  
6 natural resources provide an annual accounting to the  
7 legislature." For fiscal years 2011-2012, 2012-2013, 2013-2014,  
8 2014-2015, 2015-2016, 2016-2017, 2017-2018, 2018-2019, 2019-  
9 2020, and 2020-2021, the State reported to the legislature total  
10 gross public land trust revenues in the amounts of \$150,939,203,  
11 \$159,971,589, \$163,322,176, \$178,043,261, \$177,617,893,  
12 \$202,528,564, \$225,079,055, \$289,767,657, and \$229,631,870,  
13 respectively, or an average of \$197,433,474 over the ten fiscal  
14 years. Twenty per cent of the average reported gross revenue  
15 for fiscal years 2011-2012 through 2020-2021 is \$39,486,695.  
16 The current overpayments to the office of Hawaiian affairs for  
17 fiscal years 2011-2012 through 2020-2021 total approximately  
18 \$25,000,000.

19       The legal basis for the establishment of the department of  
20 Hawaiian home lands is the Hawaiian Homes Commission Act (HHCA).  
21 The HHCA provides for the rehabilitation of the native Hawaiian



1 people through a government-sponsored homesteading program.  
2 Native Hawaiians are beneficiaries under the HHCA are defined as  
3 individuals having at least fifty per cent of Hawaiian blood  
4 quantum.

5 The department of Hawaiian home lands provides direct  
6 benefits to native Hawaiians in the form of ninety-nine-year  
7 homestead leases at an annual rent of \$1. Homestead leases are  
8 for residential, agricultural, or pastoral purposes. The intent  
9 of the homesteading program is to provide for economic self-  
10 sufficiency of native Hawaiians through the provision of land.

11 Despite constitutional obligations to the department of  
12 Hawaiian home lands and Hawaiian homes commission under article  
13 XII, section 1, of the Hawaii State Constitution, the State has  
14 failed to provide sufficient funds to the department of Hawaiian  
15 home lands to minimize the number and waiting time on its  
16 waiting lists for homesteads to a reasonable level. The State  
17 has provided \$20,000,000 in its actual appropriation for fiscal  
18 year 2021, despite its budget request for \$145,900,000.

19 The department of Hawaiian home lands does not currently  
20 receive sufficient funding to develop house lots for all  
21 applicants on the waiting list. Additionally, the department of



1 Hawaiian home lands does not currently receive sufficient  
2 funding to meet its goal in reducing the waiting list by ninety  
3 per cent over the next decade. The department of Hawaiian home  
4 lands has stated that it would take one hundred eighty-two years  
5 to meet the demand of the waitlist at its current rate. The  
6 department has provided a conservative estimate of  
7 \$4,500,000,000 of infrastructure costs alone to develop twenty-  
8 eight thousand lots, without accounting for new land  
9 acquisition.

10 The legislature finds that it is now in the best interests  
11 of the office of Hawaiian affairs, the department of Hawaiian  
12 home lands, its beneficiaries, the State, and all citizens of  
13 Hawaii to enact a purely interim legislative measure regarding  
14 the office of Hawaiian affairs' constitutional pro rata share of  
15 the public land trust for the betterment of the conditions of  
16 native Hawaiians, in light of the information, data, and facts  
17 provided to the legislature by state agencies over the last ten  
18 fiscal years.

19 The legislature further finds that a public land trust  
20 revenues negotiating committee within the office of Hawaiian  
21 affairs is necessary to resolve these outstanding questions.



1 Given the sensitive nature of the anticipated negotiations and  
2 the respective positions of the parties, including the  
3 membership of the governor or the governor's representative, the  
4 legislature finds it necessary to provide an exemption from part  
5 I, chapter 92, Hawaii Revised Statutes, thereby precluding  
6 public participation in the process. Moreover, the ultimate  
7 settlement and details resulting from the public land trust  
8 negotiating committee shall be approved by the legislature,  
9 which process shall be open to public comment.

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

- 12 (1) Remove the annual and quarterly maximum amounts that  
13 Act 178 imposed on payments of income and proceeds  
14 from the public land trust to the department of  
15 Hawaiian home lands or the office of Hawaiian affairs;
- 16 (2) Return to the department of Hawaiian home lands or the  
17 office of Hawaiian affairs certain moneys that the  
18 office of Hawaiian affairs transferred to the State in  
19 response to claims by the department of budget and  
20 finance that the moneys constituted overpayments of  
21 public land trust receipts to the office of Hawaiian



1           affairs for fiscal years 2012-2013, 2013-2014, and  
2           2014-2015, 2015-2016, 2016-2017, 2017-2018, 2018-2019,  
3           2019-2020, and 2020-2021; establish that any claimed  
4           overpayments to the office of Hawaiian affairs for  
5           fiscal years 2021-2022 and 2021-2022 are not required  
6           to be returned to the State;

7           (3) Ensure that any shortfalls in quarterly amounts paid  
8           to the office of Hawaiian affairs under this Act are  
9           timely paid to the department of Hawaiian home lands  
10          or the office of Hawaiian affairs upon discovery of  
11          the shortfall; and

12          (4) Establish a public land trust revenues negotiating  
13          committee to make recommendations to the legislature  
14          for resolving the matter of the amount of the income  
15          and proceeds from the public land trust that the  
16          department of Hawaiian home lands or office of  
17          Hawaiian affairs shall receive annually.

18          SECTION 2. Notwithstanding the provisions of Act 178,  
19          Session Laws of Hawaii 2006; chapter 10, Hawaii Revised  
20          Statutes, and the requirements of executive order 06-06;  
21          beginning in fiscal year 2021-2022:



1           (1) All departments and agencies that collect receipts for  
2           the use, sale, lease, or other disposition of the  
3           public land trust shall each fiscal quarter transfer  
4           to the department of Hawaiian home lands twenty per  
5           cent of each receipt derived from the use, sale,  
6           lease, or other disposition of the public land trust  
7           subject to federal law; provided that in no event  
8           shall the total amount of receipts transferred to the  
9           department of Hawaiian home lands for any fiscal  
10          quarter be less than \$           . If the department  
11          of Hawaiian home lands refuses to accept the offer of  
12          the use, sale, lease or other disposition of the  
13          public land trust, the funds shall be given to the  
14          department of Hawaiian home lands or the office of  
15          Hawaiian affairs; and

16          (2) If at any time the department of budget and finance,  
17          office of Hawaiian affairs, department of Hawaiian  
18          home lands, or any other state agency discovers that  
19          the total amount of receipts transferred to the  
20          department of Hawaiian home lands for any fiscal  
21          quarter fell short of the amount required by this Act,



1           the director of finance or the director's designee  
2           shall ensure that within ten days of the discovery of  
3           the shortfall, an amount equal to the shortfall be  
4           transferred to the department of Hawaiian home lands  
5           or the office of Hawaiian affairs.

6           For the purposes of this section, "receipt" means all  
7           proceeds, fees, charges, rents, or other income, or any portion  
8           thereof, derived from any sale, lease, license, permit, or other  
9           similar proprietary disposition, permitted use, or activity,  
10          that is situated upon and results from the actual use of lands  
11          comprising the public land trust, and including any penalties or  
12          levies exacted as a result of a violation of the terms of any  
13          proprietary disposition, but excluding any income, proceeds,  
14          fees, charges, or other moneys derived through the exercise of  
15          sovereign functions and powers including:

- 16           (1) Taxes;
- 17           (2) Regulatory or licensing fees;
- 18           (3) Fines, penalties, or levies;
- 19           (4) Registration fees;
- 20           (5) Moneys received by any public educational institution,  
21          including the University of Hawaii, and the community



- 1 college system, from its educational programs and
- 2 ancillary services, such as tuition, registration
- 3 fees, meals, books, grants, or scholarships;
- 4 (6) Interagency and intra-agency administrative fees or
- 5 assessments;
- 6 (7) Moneys derived from or provided in support of penal
- 7 institutions and programs;
- 8 (8) Grants, carry-overs, and pass-throughs;
- 9 (9) Federal moneys, including federal-aid, grants,
- 10 subsidies, and contracts;
- 11 (10) Moneys collected from the sale or dissemination of
- 12 government publications; and
- 13 (11) Department of defense proceeds on state-improved
- 14 lands.

15 SECTION 3. Notwithstanding the provisions of Act 178,  
 16 Session Laws of Hawaii 2006; chapter 10, Hawaii Revised  
 17 Statutes, and the requirements of executive order 06-06; the  
 18 department of budget and finance shall provide to the department  
 19 of Hawaiian home lands the moneys in the carry-forward trust  
 20 holding account established pursuant to executive order 06-06 to  
 21 which the office of Hawaiian affairs transferred moneys in



1 response to claims by the department of budget and finance that  
2 the moneys constituted overpayments of public-land-trust  
3 receipts to the office of Hawaiian affairs for fiscal year 2012-  
4 2013, fiscal year 2013-2014, fiscal year 2014-2015, fiscal year  
5 2015-2016, fiscal year 2016-2017, fiscal year 2017-2018, fiscal  
6 year 2018-2019, fiscal year 2019-2020, and fiscal year 2020-  
7 2021, plus any overpayment moneys the office of Hawaiian affairs  
8 transfers to the carry-forward trust holding account for fiscal  
9 year 2021-2022 and fiscal year 2022-2023. There shall be  
10 \$ to be left in the holding account to act as  
11 contingency payments to meet the minimum \$ quarterly  
12 payment.

13 SECTION 4. There is established a public land trust  
14 revenues negotiating committee consisting of the president of  
15 the senate or the president's designee, the speaker of the house  
16 of representatives or the house speaker's designee, the governor  
17 or the governor's designee, the chairperson of the office of  
18 Hawaiian affairs or the chairperson's designee, and the  
19 chairperson of the Hawaiian homes commission or the  
20 chairperson's designee. The committee shall be exempt from the  
21 requirements of part I of chapter 92, Hawaii Revised Statutes.



1           The committee shall engage in discussions with the purpose  
2 of resolving the matter of the amount of the income and proceeds  
3 from the public land trust that the department of Hawaiian home  
4 lands or the office of Hawaiian affairs shall receive annually  
5 under the Hawaii State Constitution and other state law. The  
6 committee shall submit a status report on the progress of the  
7 committee's discussions to the legislature no later than twenty  
8 days prior to the convening of the regular session of 2022, and  
9 shall submit a final report containing the committee's findings  
10 and recommendations, including any proposed legislation, to the  
11 legislature no later than twenty days prior to the convening of  
12 the regular session of 2023.

13           SECTION 5. Nothing in this Act shall diminish the revenues  
14 owed to the office of Hawaiian affairs pursuant to Act 178,  
15 session laws of Hawaii 2006, or any other law providing for the  
16 office of Hawaiian affairs' pro rata portion of the public land  
17 trust under article XII, section 6 of the Hawaii State  
18 Constitution

19           SECTION 6. This Act shall take effect upon its approval.



**Report Title:**

Office of Hawaiian Affairs; Department of Hawaiian Home Lands;  
Public Land Trust; Transfer of Moneys; Public Land Trust  
Revenues Negotiating Committee

**Description:**

Requires agencies that collect receipts for any disposition of the public land trust shall each fiscal quarter transfer to the department of Hawaiian home lands or the Office of Hawaiian Affairs twenty per cent of each receipt from the disposition. Provides to the department of Hawaiian home lands certain moneys previously claimed as public land trust overpayments to the office of Hawaiian affairs. Establishes a public land trust revenues negotiating committee exempted from part I of chapter 92, Hawaii Revised Statutes. (SD1)

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

