
A BILL FOR AN ACT

RELATING TO PUBLIC LAND TRUST REVENUES.

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
11 Homes Commission Act, 1920, as amended, shall be
12 held by the State as a public trust for native
13 Hawaiians and the general public.

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



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

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



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

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

15 This constitutional directive has led to a series of
16 lawsuits concerning the office of Hawaiian affairs' pro rata
17 share and the statutory allocation of twenty per cent of all
18 funds that the legislature establishes to implement article XII,
19 sections 4 and 6, of the Hawaii State Constitution. In Trustees
20 of the Office of Hawaiian Affairs v. Yamasaki, 69 Haw. 154, 737
21 P.2d 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 the Yamasaki decision, the office of
6 Hawaiian affairs and the governor's office entered into lengthy
7 negotiations and submitted to the legislature an agreement to
8 clarify the extent and scope of the twenty per cent portion.
9 The legislature, based on this agreement, enacted Act 304,
10 Session Laws of Hawaii 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 planning and office of
14 Hawaiian affairs "recognize and agree that the amount specified
15 in section 1 [thereof] does not include several matters
16 regarding revenue which [the office of Hawaiian affairs] has
17 asserted is due [the office of Hawaiian affairs] and which [the
18 office of planning] has not accepted and agreed to." These
19 disagreements led to litigation. The office of Hawaiian affairs
20 specified that it was seeking its pro rata share of revenues
21 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
9 firmly established in our constitution. How the
10 State satisfies that constitutional obligation
11 requires policy decisions that are primarily within
12 the authority and expertise of the legislative
13 branch. As such, it is incumbent upon the
14 legislature to enact legislation that gives effect
15 to the right of native Hawaiians to benefit from the
16 ceded lands trust. See Haw. Const. art. XVI,
17 section 7. . . . [W]e trust that the legislature
18 will re-examine the State's constitutional
19 obligation to native Hawaiians and the purpose of
20 HRS §10-13.5 and enact legislation that most
21 effectively and responsibly meets those obligations.



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

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

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

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



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

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



1 However, Act 15 did not address the State's constitutional
2 obligations under article XII, sections 4 and 6 relating to the
3 office of Hawaiian affairs' pro rata share of the income and
4 proceeds from the public land trust generated after June 30,
5 2012.

6 Act 178, Session Laws of 2006, remained in effect as an
7 interim legislative measure setting the office of Hawaiian
8 affairs' annual income and proceeds from the public land trust
9 for the betterment of the conditions of native Hawaiians at
10 \$15,100,000 beginning in fiscal year 2005-2006, pending further
11 legislative action on the subject.

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



1 was found to be \$174,816,220 in fiscal year 2015-2016. Twenty
2 per cent of this amount from fiscal year 2015-2016 is
3 \$34,963,244.

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

13 The purpose of this Act is to annually transfer the excess
14 funds in the administratively established carry-forward trust
15 holding account to the office of Hawaiian affairs.

16 SECTION 2. Chapter 10, Hawaii Revised Statutes, is amended
17 by adding a new section to be appropriately designated and to
18 read as follows:

19 "§10- Carry-forward trust holding account; annual
20 transfer. Notwithstanding the provisions of Act 178, Session
21 Laws of Hawaii 2006, this chapter, and the requirements of



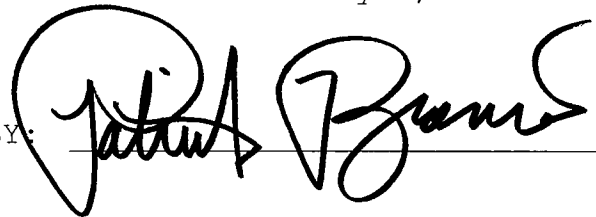
1 executive order 06-06, the department of budget and finance
2 shall annually provide to the office of Hawaiian affairs all the
3 moneys in the carry-forward trust holding account established
4 pursuant to executive order 06-06 that are in excess of
5 \$15,100,000."

6 SECTION 3. Nothing in this Act shall resolve or settle the
7 claims of native Hawaiians to the income and proceeds of a pro
8 rata portion of the public land trust under article XII,
9 section 6, of the Hawaii State Constitution.

10 SECTION 4. New statutory material is underscored.

11 SECTION 5. This Act shall take effect on July 1, 2022.

12 INTRODUCED BY:



JAN 26 2022



H.B. NO. 2450

Report Title:

OHA; Carry-Forward Trust Holding Account; Ceded Lands; Transfer of Excess Funds

Description:

Requires that all funds in the administratively established carry-forward trust holding account in excess of \$15,100,000 be transferred to the Office of Hawaiian Affairs each year.

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