

JAN 21 2022

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 of Hawaiian affairs . . . 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 engaged in lengthy negotiations and
7 submitted to the legislature an agreement to clarify the extent
8 and scope of the twenty per cent apportionment. The
9 legislature, based on this agreement, enacted Act 304, Session
10 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 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 planning
18 and sustainable development] has not accepted and agreed to."

19 These disagreements again 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. On October 24,
9 1996, the trial court granted the office of Hawaiian
10 affairs' motion for partial summary judgment on each
11 of 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 own
15 terms, so that once again, it was necessary for the legislature
16 to clarify the office of Hawaiian affairs' constitutional pro
17 rata share and the statutory allocation of twenty per cent of
18 all funds to be managed and administered by the office of
19 Hawaiian affairs. In its decision, the Hawaii supreme court
20 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 *OHA I*, 31 P.3d at 914 (citations omitted).

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

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



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

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

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

20 Subsequently, addressing past-due amounts owed to the
21 office of Hawaiian affairs, Act 15, Session Laws of Hawaii 2012



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

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

15 Act 178 remained in effect as a purely interim legislative
16 measure, setting the office of Hawaiian affairs' annual income
17 and proceeds from the public land trust for the betterment of
18 the conditions of native Hawaiians at \$15,100,000 beginning in
19 fiscal year 2005-2006, pending further legislative action on the
20 subject.



1 The second purpose of Act 178 was the identification of
2 "revenue-generating public trust lands and the amounts derived
3 from those lands by requiring that the department of land and
4 natural resources provide an annual accounting to the
5 legislature." For fiscal years 2011-2012, 2012-2013, and 2013-
6 2014, the State reported to the legislature total gross public
7 land trust revenues in the amounts of \$150,939,203,
8 \$159,971,589, and \$163,322,176 respectively, or an average of
9 \$158,077,656 over the three fiscal years. Twenty per cent of
10 the average reported gross revenue for fiscal years 2011-12
11 through 2013-2014 is \$31,615,531.

12 The legal basis for the establishment of the department of
13 Hawaiian home lands is the Hawaiian Homes Commission Act (HHCA).
14 The HHCA provides for the rehabilitation of the native Hawaiian
15 people through a government-sponsored homesteading program. The
16 HHCA defines native Hawaiian beneficiaries as individuals having
17 at least fifty per cent of Hawaiian blood quantum.

18 The department of Hawaiian home lands provides direct
19 benefits to native Hawaiians in the form of ninety-nine year
20 homestead leases at an annual rent of \$1. Homestead leases are
21 for residential, agricultural, or pastoral purposes. The intent



1 of the homesteading program is to provide for economic self-
2 sufficiency of native Hawaiians through the provision of land.

3 Despite constitutional obligations to the department of
4 Hawaiian home lands and Hawaiian homes commission under article
5 XII, section 1, of the Hawaii State Constitution, the State has
6 failed to provide sufficient funds to the department of Hawaiian
7 home lands to minimize the number and waiting time on its
8 waiting lists for homesteads to a reasonable level. The State
9 has provided \$20,000,000 in its actual appropriation for fiscal
10 year 2021, despite its budget request for \$145,900,000.

11 The department of Hawaiian home lands does not currently
12 receive sufficient funding to develop house lots for all
13 applicants on the waiting list. Additionally, the department of
14 Hawaiian home lands does not currently receive sufficient
15 funding to meet its goal in reducing the waiting list by ninety
16 per cent over the next decade. The department of Hawaiian home
17 lands has stated that it would take one hundred eighty-two years
18 to meet the demand of the waitlist at its current rate. The
19 department has provided a conservative estimate of
20 \$4,500,000,000 of infrastructure costs alone to develop twenty-



1 eight thousand lots, without accounting for new land
2 acquisition.

3 The legislature finds that it is now in the best interests
4 of the office of Hawaiian affairs, the department of Hawaiian
5 home lands, its beneficiaries, the State, and all citizens of
6 Hawaii to again enact a purely interim 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 over the last nine fiscal years.

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

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



1 finance that the moneys constituted overpayments of
2 public land trust receipts to the office of Hawaiian
3 affairs for fiscal years 2012-2013, 2013-2014, and
4 2014-2015, 2015-2016, 2016-2017, 2017-2018, 2018-2019,
5 2019-2020, 2020-2021, and 2021-2022; establish that
6 any claimed overpayments to the office of Hawaiian
7 affairs for fiscal year 2022-2023 are not required to
8 be returned to the State;

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

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

20 SECTION 2. Notwithstanding the provisions of Act 178,
21 Session Laws of Hawaii 2006; chapter 10, Hawaii Revised



1 Statutes, and the requirements of executive order 06-06;

2 beginning in fiscal year 2022-2023:

3 (1) All departments and agencies that collect receipts for
4 the use, sale, lease, or other disposition of the
5 public land trust shall each fiscal quarter transfer
6 to the department of Hawaiian home lands twenty per
7 cent of each receipt derived from the use, sale,
8 lease, or other disposition of the public land trust;
9 provided that in no event shall the total amount of
10 receipts transferred to the department of Hawaiian
11 home lands for any fiscal quarter be less than
12 \$3,775,000. If the department of Hawaiian home lands
13 refuses to accept the offer of the use, sale, lease or
14 other disposition of the public land trust, the funds
15 shall be given to the office of 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 the department of budget and finance,
2 or the director's designee, shall ensure that within
3 ten days of the discovery of the shortfall, an amount
4 equal to the shortfall be transferred to the
5 department of Hawaiian home lands or the office of
6 Hawaiian affairs.

7 SECTION 3. Notwithstanding the provisions of Act 178,
8 Session Laws of Hawaii 2006; chapter 10, Hawaii Revised
9 Statutes, and the requirements of executive order 06-06; the
10 department of budget and finance shall provide to the department
11 of Hawaiian home lands the moneys in the carry-forward trust
12 holding account established pursuant to executive order 06-06 to
13 which the office of Hawaiian affairs transferred moneys in
14 response to claims by the department of budget and finance that
15 the moneys constituted overpayments of public-land-trust
16 receipts to the office of Hawaiian affairs for fiscal year 2012-
17 2013, fiscal year 2013-2014, fiscal year 2014-2015, fiscal year
18 2015-2016, fiscal year 2016-2017, fiscal year 2017-2018, fiscal
19 year 2018-2019, fiscal year 2019-2020, fiscal year 2020-2021,
20 and fiscal year 2021-2022, plus any overpayment moneys the



1 office of Hawaiian affairs transfers to the carry-forward trust
2 holding account for fiscal year 2022-2023.

3 SECTION 4. There is established a public land trust
4 revenues negotiating committee consisting of the president of
5 the senate or the president's designee, the speaker of the house
6 of representatives or the house speaker's designee, the governor
7 or the governor's designee, the chairperson of the office of
8 Hawaiian affairs or the chairperson's designee, and the
9 chairperson of the Hawaiian homes commission or the
10 chairperson's designee. The committee shall not be subject to
11 the requirements of chapter 92, Hawaii Revised Statutes.

12 The committee shall engage in discussions with the purpose
13 of resolving the matter of the amount of the income and proceeds
14 from the public land trust that the department of Hawaiian home
15 lands or the office of Hawaiian affairs shall receive annually
16 under the Hawaii State Constitution and other state law. The
17 committee shall submit a status report on the progress of the
18 committee's discussions to the legislature no later than twenty
19 days prior to the convening of the regular session of 2023, and
20 shall submit a final report containing the committee's findings
21 and recommendations, including any proposed legislation, to the



1 legislature no later than twenty days prior to the convening of
2 the regular session of 2024.

3 SECTION 5. This Act shall take effect upon its approval.

4

INTRODUCED BY: _____

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S.B. NO. 2594

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. Returns certain moneys previously claimed as public land trust overpayments to the office of Hawaiian affairs. Establishes a public land trust revenues negotiating committee.

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

