
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 state
2 constitution was amended to include article XII, sections 4, 5,
3 and 6, which established the public land trust, office of
4 Hawaiian affairs, and the office's board of trustees and charged
5 the board of trustees with managing and administering, among
6 other things, all income and proceeds from that pro rata portion
7 of the public land trust for the benefit of native Hawaiians.

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

15 This legislative directive has led to a series of lawsuits
16 concerning the office of Hawaiian affairs' constitutional pro
17 rata share and the statutory allocation of twenty per cent of



1 all funds that the legislature established to implement article
2 XII, sections 4 and 6, of the state constitution. In *Trustees*
3 *of the Office of Hawaiian Affairs v. Yamasaki*, 737 P.2d 446
4 (1987), the Hawaii supreme court concluded that it was unable to
5 determine the parameters of section 10-13.5, Hawaii Revised
6 Statutes, because the issue of how the twenty per cent
7 apportionment is formulated was a political question for the
8 legislature to determine.

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

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



1 office of Hawaiian affairs] and which the [office of state
2 planning] has not accepted and agreed to."

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

6 (1) Waikiki Duty Free receipts (in connection with the
7 lease of ceded lands at the Honolulu international
8 airport);

9 (2) Hilo hospital patient services receipts;

10 (3) Receipts from the Hawaii housing authority and the
11 housing finance and development corporation for
12 projects situated on ceded lands; and

13 (4) Interest earned on withheld revenues. On October 24,
14 1996, the trial court granted the office of Hawaiian
15 affairs' motion for partial summary judgment on each
16 of its aforementioned claims. The State appealed.

17 On September 12, 2001, the Hawaii supreme court ruled in
18 *Office of Hawaiian Affairs v. State of Hawaii*, 31 P.3d 901
19 (2001) ("OHA I"), that Act 304 was effectively repealed by its
20 own terms, so that once again, it was necessary for the
21 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
6 firmly established in our constitution. How the State
7 satisfies that constitutional obligation requires policy
8 decisions that are primarily within the authority and
9 expertise of the legislative branch. As such, it is
10 incumbent upon the legislature to enact legislation that
11 gives effect to the right of native Hawaiians to benefit
12 from the ceded lands trust. See Haw. Const. art. XVI,
13 section 7 . . . [W]e trust that the legislature will re-
14 examine the State's constitutional obligation to native
15 Hawaiians and the purpose of HRS §10-13.5 and enact
16 legislation that most effectively and responsibly meets
17 those obligations. *Office of Hawaiian Affairs v. State of*
18 *Hawaii*, 31 P.3d at 914 (citations omitted)."

19 On April 28, 2006, the Hawaii supreme court ruled in *Office*
20 *of Hawaiian Affairs v. State of Hawaii*, 133 P.3d 767, 795 (2006)
21 (OHA II), that consistent with its ruling in OHA I, "it is



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

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

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

9 While finding that "many complex issues require the
10 legislature's further attention and consideration in the wake of
11 the repeal of Act 304," Act 178 was enacted with a stated
12 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 purpose by
17 requiring:

18 "[Until] further action is taken by the legislature
19 for this purpose, the income and proceeds from the pro rata
20 portion of the public land trust under article XII, section
21 6, of the state constitution for expenditure by the office



1 of Hawaiian affairs for the betterment of the conditions of
2 native Hawaiians for each fiscal year beginning with fiscal
3 year 2005-2006 shall be \$15,100,000."

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

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

20 Act 178 remained in effect as a purely interim legislative
21 measure setting the office of Hawaiian affairs' annual income



1 and proceeds from the public land trust for the betterment of
2 the conditions of native Hawaiians at \$15,100,000 beginning in
3 fiscal year 2005-2006, pending further legislative action on the
4 subject.

5 The second purpose of Act 178 was the identification of
6 "revenue-generating public trust lands and the amounts derived
7 from those lands by requiring that the department of land and
8 natural resources provide an annual accounting to the
9 legislature." For fiscal years 2011-2012, 2012-2013, 2013-2014,
10 2014-2015, 2015-2016, 2016-2017, 2017-2018, 2018-2019, 2019-
11 2020, and 2020-2021, the State reported to the legislature an
12 average of \$158,077,656 over the ten fiscal years. The current
13 overpayments to the office of Hawaiian affairs for fiscal years
14 2011-2012 through 2020-2021 total approximately \$25,000,000.

15 The legislature finds that it is now in the best interests
16 of the office of Hawaiian affairs, its beneficiaries, the State,
17 and all citizens of Hawaii to enact another purely interim
18 legislative measure regarding the office of Hawaiian affairs'
19 constitutional pro rata share of the public land trust for the
20 betterment of the conditions of native Hawaiians, in light of



1 the information, data, and facts provided to the legislature by
2 state agencies over the last ten fiscal years.

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

5 (1) Return to the office of Hawaiian affairs certain
6 moneys that the office of Hawaiian affairs transferred
7 to the State in response to claims by the department
8 of budget and finance that the moneys constituted
9 overpayments of public land trust receipts to the
10 office of Hawaiian affairs for fiscal years 2012-2013,
11 2013-2014, 2014-2015, 2015-2016, 2016-2017, 2017-2018,
12 2018-2019, 2019-2020, and 2020-2021 and establish that
13 any claimed overpayments to the office of Hawaiian
14 affairs for fiscal years 2021-2022 and 2022-2023 are
15 not required to be returned to the State; and

16 (2) Establish a public land trust revenues committee to
17 make recommendations to the legislature for resolving
18 the matter of the amount of the income and proceeds
19 from the public land trust that the office of Hawaiian
20 affairs should receive annually.



1 SECTION 2. Notwithstanding the provisions of Act 178,
2 Session Laws of Hawaii 2006; chapter 10, Hawaii Revised
3 Statutes; and the requirements of executive order 06-06, the
4 department of budget and finance shall provide to the office of
5 Hawaiian affairs the moneys in the carry-forward trust holding
6 account established pursuant to executive order 06-06 to which
7 the office of Hawaiian affairs transferred moneys in response to
8 claims by the department of budget and finance that the moneys
9 constituted overpayments of public-land-trust receipts to the
10 office of Hawaiian affairs for fiscal year 2012-2013, fiscal
11 year 2013-2014, fiscal year 2014-2015, fiscal year 2015-2016,
12 fiscal year 2016-2017, fiscal year 2017-2018, fiscal year 2018-
13 2019, fiscal year 2019-2020, and fiscal year 2020-2021, plus any
14 overpayment moneys the office of Hawaiian affairs transfers to
15 the carry-forward trust holding account for fiscal year 2021-
16 2022 or fiscal year 2022-2023.

17 SECTION 3. Chapter 10, Hawaii Revised Statutes, is amended
18 by adding a new section to be appropriately designated and to
19 read as follows:



1 "§10- Public land trust revenues committee;
2 established; duties. (a) There is established a public land
3 trust revenues committee consisting of:
4 (1) The president of the senate, or the president's
5 designee;
6 (2) The speaker of the house of representatives, or the
7 speaker's designee;
8 (3) The chairperson of the office of Hawaiian affairs
9 board of trustees, or the chairperson's designee; and
10 (4) The chief executive officer of the office of Hawaiian
11 affairs, or the chief executive officer's designee.
12 (b) The public land trust revenues committee shall study
13 and determine the annual amount of income and proceeds from the
14 public land trust that the office should receive annually
15 pursuant to the state constitution and applicable state law.
16 (c) The public land trust revenues committee shall submit
17 its findings and recommendations, including any proposed
18 legislation, to the legislature no later than twenty days prior
19 to the convening of the regular session of 2027 and every fifth
20 regular session thereafter."

21 SECTION 4. New statutory material is underscored.

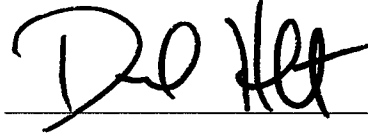


H.B. NO. 2430

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

2

INTRODUCED BY:



JAN 26 2022



H.B. NO. 2430

Report Title:

Office of Hawaiian Affairs; Public Land Trust; Transfer of Moneys; Carry-forward Trust Holding Account; Public Land Trust Revenues Committee

Description:

Returns to OHA certain moneys in the carry-forward trust holding account previously claimed as public land trust overpayments to the office. Establishes a public land trust revenues committee to periodically study and determine the annual amount of income and proceeds from the public land trust that OHA should receive annually.

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

