

ACT 304

H.B. NO. 2896

A Bill for an Act Relating to the Office of Hawaiian Affairs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Act 273, Session Laws of Hawaii 1980, amended chapter 10, Hawaii Revised Statutes, to authorize the office of Hawaiian affairs to expend twenty per cent of all funds derived from the public land trust, as described in section 10-3, for the betterment of the conditions of native Hawaiians. In the Trustees of the Office of Hawaiian Affairs v. Yamasaki, 69 Hawaii 154, 737 P.2d 446 (1987), certiorari denied, 108 S.Ct. 234, 484 U.S. 898, 98 L.Ed.2d 192 (1987), the Hawaii supreme court ruled that section 10-3 did not support the claim of the office of Hawaiian affairs to twenty per cent of a settlement reached by the State in its litigation with Molokai Ranch and that legislative clarification of section 10-13.5, Hawaii Revised Statutes, was necessary to resolve facial statutory inconsistencies and to establish the funding of the office of Hawaiian affairs under chapter 10 because of a lack of judicially discoverable or manageable standards adequate to permit a judicial determination thereof. The legislature further finds that as a consequence thereof the office of Hawaiian affairs has been provided only a portion of the funds contemplated upon enactment of section 10-13.5 in 1980. Chapter 10 provides that the beneficiary of the public trust entrusted upon the office of Hawaiian affairs means native Hawaiians and Hawaiians. This Act addresses only the native Hawaiian beneficiary. Discussions are still occurring regarding the provision of benefits to the Hawaiian beneficiary under the public trust entrusted upon the office of Hawaiian affairs. The legislature finds that there is no evidence to support payment of any past due revenues to Hawaiians as beneficiaries under the public land trust entrusted upon the office of Hawaiian affairs.

The purposes of this Act are to:

- (1) Clarify the lands comprising the public land trust under chapter 10, Hawaii Revised Statutes;

- (2) Clarify the revenues derived from the public land trust which shall be considered to establish the amount of funding to the office of Hawaiian affairs for the purpose of the betterment of the conditions of native Hawaiians; and
- (3) Provide for a process to determine the actual amounts payable to the office under the clarified standards enacted and for the formulation of a plan for payment of that sum consistent with the restrictions and limitations under the existing federal and state laws and regulations, and bond and contractual obligations.

This Act is not intended to replace or affect the claims of native Hawaiians and Hawaiians with regard to reparations from the federal government.

SECTION 2. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1990-1991 to be exceeded by \$7,700,000, or 0.30 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

SECTION 3. Section 10-2, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§10-2]]~~ **Definitions.** In this chapter, if not inconsistent with the context:

“Administrator” means the administrator of the office of Hawaiian affairs[;].

“Beneficiary of the public trust entrusted upon the office” means native Hawaiians and Hawaiians[;].

“Board” means the board of trustees[;].

“Hawaiian” means any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii[;].

“Native Hawaiian” means any descendant of not less than one-half part of the races inhabiting the Hawaiian Islands previous to 1778, as defined by the Hawaiian Homes Commission Act, 1920, as amended; provided that the term identically refers to the descendants of such blood quantum of such aboriginal peoples which exercised sovereignty and subsisted in the Hawaiian Islands in 1778 and which peoples thereafter continued to reside in Hawaii[;].

“Office” means the office of Hawaiian affairs.

“Public land trust” means those lands:

- (1) Which were ceded to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July 7, 1898 (30 Stat. 750), or acquired in exchange for lands so ceded, and which were conveyed to the State of Hawaii by virtue of section 5(b) of the Act of March 18, 1959 (73 Stat. 4, the Admission Act), (excluding therefrom lands and all proceeds and income from the sale, lease, or disposition of lands defined as “available lands” by section 203 of the Hawaiian Homes Commission Act, 1920, as amended);
- (2) Retained by the United States under sections 5(c) and 5(d) of the Act of March 18, 1959, and later conveyed to the State under section 5(e) of the Act of March 18, 1959; and

- (3) Which were ceded to and retained by the United States under section 5(c) and 5(d) of the Act of March 18, 1959 and later conveyed to the State pursuant to the Act of December 23, 1963 (P.L. 88-233, 77 Stat. 472).

“Revenue” means all proceeds, fees, charges, rents, or other income, or any portion thereof, derived from any sale, lease, license, permit, or other similar proprietary disposition, permitted use, or activity, that is situated upon and results from the actual use of lands comprising the public land trust, and including any penalties or levies exacted as a result of a violation of the terms of any proprietary disposition, but excluding any income, proceeds, fees, charges, or other moneys derived through the exercise of sovereign functions and powers including:

- (1) Taxes;
- (2) Regulatory or licensing fees;
- (3) Fines, penalties, or levies;
- (4) Registration fees;
- (5) Moneys received by any public educational institution, including the University of Hawaii, and the community college system, from its educational programs and ancillary services, such as tuition, registration fees, meals, books, grants, or scholarships;
- (6) Interagency and intra-agency administrative fees or assessments;
- (7) Moneys derived from or provided in support of penal institutions and programs;
- (8) Grants, carry-overs, and pass-throughs;
- (9) Federal moneys, including federal-aid, grants, subsidies, and contracts;
- (10) Moneys collected from the sale or dissemination of government publications; and
- (11) Department of defense proceeds on state-improved lands.”

SECTION 4. Section 10-3, Hawaii Revised Statutes, is amended to read as follows:

“[§10-3] Purpose of the office. The purposes of the office of Hawaiian affairs include:

- (1) The betterment of conditions of native Hawaiians[. A pro rata portion of all¹ funds derived from the public land trust shall be funded in an amount to be determined by the legislature for this purpose, and shall be held and used solely as a public trust for the betterment of the conditions of native Hawaiians. For the purpose of this chapter, the public land trust shall be all proceeds and income from the sale, lease, or other disposition of lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July 7, 1898 (30 Stat. 750), or acquired in exchange for lands so ceded, and conveyed to the State of Hawaii by virtue of section 5(b) of the Act of March 18, 1959 (73 Stat. 4, the Admissions Act), (excluding therefrom lands and all proceeds and income from the sale, lease, or disposition of lands defined as “available lands” by section 203 of the Hawaiian Homes Commission Act, 1920, as amended), and all proceeds and income from the sale, lease, or other disposition of lands retained by the United States under sections 5(c) and 5(d) of the Act of March 18, 1959, later conveyed to the State under section 5(e)];
- (2) The betterment of conditions of Hawaiians;

- (3) Serving as the principal public agency in this State responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; except that the Hawaiian Homes Commission Act, 1920, as amended, shall be administered by the Hawaiian homes commission;
- (4) Assessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians;
- (5) Applying for, receiving, and disbursing, grants and donations from all sources for native Hawaiian and Hawaiian programs and services; and
- (6) Serving as a receptacle for reparations.”

SECTION 5. Section 10-5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§10-5]]~~ **Board of trustees; powers and duties.** The board shall have the power in accordance with law to:

- (1) Manage, invest, and administer the proceeds from the sale or other disposition of lands, natural resources, minerals, and income derived from whatever sources for native Hawaiians and Hawaiians, including all [income and proceeds from] moneys received by the office equivalent to that pro rata portion of the [trust] revenue derived from the public land trust referred to in section [10-3, of this chapter;] 10-2;
- (2) Exercise control over real and personal property set aside to the office by the State of Hawaii, the United States of America, or any private sources, and transferred to the office for native Hawaiians and Hawaiians;
- (3) Collect, receive, deposit, withdraw, and invest money and property on behalf of the office;
- (4) Formulate policy relating to the affairs of native Hawaiians and Hawaiians, provided that such policy shall not diminish or limit the benefits of native Hawaiians under Article XII, section 4, of the state Constitution;
- (5) Otherwise act as a trustee as provided by law;
- (6) Delegate to the administrator, its officers and employees such powers and duties as may be proper for the performance of the powers and duties vested in the board;
- (7) Provide grants to public or private agencies for pilot projects, demonstrations, or both, where [such] those projects or demonstrations fulfill criteria established by the board;
- (8) Make available technical and financial assistance and advisory services to any agency or private organization for native Hawaiian and Hawaiian programs, and for other functions pertinent to the purposes of the office of Hawaiian affairs. Financial assistance may be rendered through contractual arrangements as may be agreed upon by the board and any such agency or organization; and
- (9) Adopt and use a common seal by which all official acts shall be authenticated.”

SECTION 6. Section 10-13, Hawaii Revised Statutes, is amended to read as follows:

“§10-13 Appropriations; accounts; reports. (a) Moneys appropriated by the legislature for the office shall be payable by the director of finance, upon vouchers approved by the board, or by any officer elected or appointed by the board and authorized by the board to approve [such] the vouchers on behalf of the board. All moneys received by or on behalf of the board shall be deposited with the director of finance and kept separate from moneys in the state treasury; except that any moneys received from the federal government or from private contributions shall be deposited and accounted for in accordance with conditions established by the agencies or persons from whom the moneys are received; and except that with the concurrence of the director of finance, moneys received from the federal government for research, training, and other related purposes of a transitory nature, and moneys in trust or revolving funds administered by the office, shall be deposited in depositories other than the state treasury and shall be reported on to the state comptroller under section 40-81, and rules prescribed thereunder.

(b) Income derived from the sale of goods or services and [income from lands and property as described in section 10-3,] all moneys received by the office equivalent to that pro rata portion of the revenue derived from the public land trust described in section 10-2, shall be credited to special or other funds; provided that upon the recommendation of the office, the comptroller shall establish such other separate accounts or special funds for other designated revenues as may be directed by the board or its authorized representative.”

SECTION 7. Section 10-13.5, Hawaii Revised Statutes, is amended to read as follows:

“[§10-13.5 Use of public land trust proceeds.] Twenty per cent of all [funds] revenue derived from the public land trust[, described in section 10-3,] shall be expended by the office[, as defined in section 10-2,] for the [purposes of this chapter.] betterment of the conditions of native Hawaiians.”

SECTION 8. The department of budget and finance and the office of Hawaiian affairs shall determine the actual amount equivalent to twenty per cent of the revenue under sections 10-2 and 10-13.5 which is payable to the office, less any moneys appropriated and received under section 10 of this Act, or received by the office from the department of land and natural resources, or any other agency, pursuant to sections 10-2 and 10-13.5 during the period of June 16, 1980 through June 30, 1991. Interest on such actual amount, at the rate of six per cent a year, compounded annually, from June 16, 1980 to June 17, 1982, and at the rate of ten per cent a year, compounded annually, from June 18, 1982, shall be added to such actual amount until paid.

Upon request of the office of Hawaiian affairs, all data relating to lands which comprise the public land trust and to the revenue derived therefrom, including the methodology for determining this revenue and the office of Hawaiian affairs' pro rata portion thereof, shall be subject to review by the office and an independent auditor selected by the office. The department of budget and finance shall respond to and, if appropriate, take action to resolve any concerns raised by the independent auditor.

The department of budget and finance shall submit to the legislature, not later than twenty days before the convening of the regular session of 1991, a proposed plan for the payment of such actual amount, including interest and for funding pursuant to sections 10-2 and 10-13.5, after June 30, 1991, and shall submit for introduction appropriate legislation to implement the plan.

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The plan and implementing legislation submitted by the department of budget and finance shall reflect the conveyance of any public land to the office by the department of land and natural resources proposed, in partial or full satisfaction of the actual amounts due the office, pursuant to section 9 of this Act.

SECTION 9. The department of land and natural resources, the office of state planning, and the office of Hawaiian affairs shall identify parcels of public land which may be conveyed to the office of Hawaiian affairs, in trust for the betterment of conditions of native Hawaiians, in full or partial satisfaction of the actual amounts determined by the department of budget and finance and the office of Hawaiian affairs to be payable to the office, including interest through June 30, 1991, pursuant to section 8 of this Act.

SECTION 10. The office of state planning, in cooperation with affected agencies, shall: (1) review existing policies, practices, and procedures for the utilization and disposition of lands which comprise the public land trust and for the determination of the consideration for these utilizations or dispositions; (2) evaluate the effect of existing policies, practices, and procedures on the revenue otherwise due to the office of Hawaiian affairs under chapter 10, Hawaii Revised Statutes; and (3) develop and assist in the implementation of appropriately revised policies, practices, and procedures and to ensure that the office of Hawaiian affairs receives its revenue entitlement promptly. The office of state planning shall prepare and submit a report on its findings and recommendations, including recommendations for appropriate legislation, to the legislature not later than twenty days before the convening of the regular session of 1991.

SECTION 11. There is appropriated out of the general revenues of the State of Hawaii the sum of \$7,200,000, or so much thereof as may be necessary for fiscal year 1990-1991, to provide funds pursuant to sections 10-2 and 10-13.5. This appropriation shall be in addition to those moneys paid to the office by the department of land and natural resources pursuant to sections 10-2 and 10-13.5. The sum appropriated shall be expended by the office of Hawaiian affairs for the betterment of the conditions of native Hawaiians. The director of finance is authorized to deduct, from those special funds which derive revenue from lands identified in section 10-2, amounts which shall be transferred to the general fund of the State and become general realizations of the State for the purpose of reimbursing the general fund appropriation made for the fiscal year 1990-91. These transfers shall be made; provided that the director of finance determines that the expenditure of moneys from any such special fund is not contrary to any federal or state laws, or regulations, and is not contrary to any bond covenants, contractual commitments, grant agreements, or other limitations.

SECTION 12. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000, or so much thereof as may be necessary for fiscal year 1990-1991, to obtain land surveys, conduct public informational meetings, pay for transportation costs, and to otherwise carry out the purposes of this Act. The sum appropriated shall be expended by the office of state planning.

SECTION 13. Should the expenses for surveys and appraisals required under this Act exceed the general fund appropriation made under this section, the director of finance, with the approval of the governor, is authorized to utilize

savings as determined to be available from programs within the office of state planning.

SECTION 14. The office of Hawaiian affairs shall submit an annual report to the governor and the legislature not less than thirty days before the convening of each regular session. The report shall describe the use of the public land trust proceeds for the betterment of the conditions of the native Hawaiians and provide detailed information, including, but not limited to, the following:

- (1) Statements of statewide objectives and program objectives;
- (2) Program plans that describe the programs that implement the statewide objectives and program objectives;
- (3) Program performance reports that assess the effectiveness in attaining the objectives;
- (4) Program costs; and
- (5) Long-range financial plans.

SECTION 15. Nothing contained in this Act shall impair or be deemed to impair the rights and privileges of the holders of indebtedness outstanding as of the effective date of this Act and payable from moneys in any special fund, including the airport revenue fund, harbor special fund, or the second separate harbor special fund. If and to the extent the application of moneys in any special fund, as heretofore provided by any certificate securing any revenue bonds, including airport and harbor revenue bonds, is construed to be inconsistent with the provisions of this Act, such moneys shall continue to be applied in accordance with such certificate so long as any airport revenue bonds, including airport and harbor revenue bonds, secured thereby remain outstanding.

SECTION 16. The provisions of this Act shall be enforced to the extent they are not held to conflict with any federal or state law, rules, or regulations. The provisions of this Act are not severable and if any provision of the Act, or the application thereof to any person or circumstance is held to conflict with any federal or state law, rules, or regulations, this Act, in its entirety, shall be invalid and sections 10-2, 10-3, 10-5, 10-13 and 10-13.5, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the approval of this Act.

SECTION 17. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 18. This Act shall take effect upon its approval; provided that the provisions of sections 3, 4, 5, 6, and 7 of this Act shall be applied retroactively to June 16, 1980, and that sections 11 and 12 shall take effect on July 1, 1990.

(Approved July 3, 1990.)

Note

1. So in original.