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H.B. NO. 2207

A Bill for an Act Relating to the Public Land Trust.

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

SECTION 1. The legislature finds that the events of history relating to Hawaii and Native Hawaiians, including those set forth in Public Law 103-150 (November 23, 1993), continue to contribute today to a deep sense of injustice among many Native Hawaiians and others. The legislature recognizes that the lasting reconciliation so desired by all people of Hawaii is possible only if it fairly acknowledges the past while moving into Hawaii's future.

The legislature further finds that over the last few decades, the people of Hawaii, through amendments to their state constitution, the acts of their legislature, and other means, have moved substantially toward this permanent reconciliation. Foremost among these achievements have been the creation of the office of Hawaiian affairs and the allocation by legislative action to the office of Hawaiian affairs of substantial funds out of a portion of the public land trust established by section 5(f) of the Admission Act. The overriding purpose of this Act is to continue this momentum, through further executive and legislative action in conjunction with the people of Hawaii, toward a comprehensive, just, and lasting resolution.

The legislature finds, however, that despite its many efforts to provide for and clarify the proper management and disposition of the lands subject to the public land trust and the proceeds and income therefrom, and to effectuate article XII, section 6 of the Hawaii Constitution, there remains substantial controversy with respect to such matters. Existing and foreseeable areas of controversy include but are not limited to:

- (A) Exactly which lands currently comprise the public land trust;
- (B) What constitutes a pro rata portion of the trust;
- (C) The legislature's intent in defining "revenue" and the "public land trust" for purposes of effectuating article XII, section 6; and
- (D) The composition and amount of "revenue", if any, payable to the office of Hawaiian affairs.

These controversies have been reflected in several instances. In one lawsuit, for example, denoted Office of Hawaiian Affairs v. State of Hawaii, Circuit Court of the First Circuit, State of Hawaii Civil No. 94-0205-01, the office of Hawaiian affairs claimed entitlement to additional revenues from the public land trust. As more fully discussed in the accompanying conference committee report, which is specifically incorporated into this Act by reference, the court, in pretrial rulings, specifically misinterpreted the scope and applicability of the legislature's statutory definition of "revenue" under section 10-2, Hawaii Revised Statutes, in part by:

- (A) Failing to adopt the legislative differentiation between proceeds arising from the actual use of public trust lands and proceeds from the use of nontrust lands or from improvements located on lands;
- (B) Failing to adopt the legislative differentiation between improvements constructed with public trust land proceeds and income and improvements constructed with other moneys;
- (C) Failing to give proper effectuation to the legislature's distinction between: (1) "sovereign" functions benefitting not only native Hawaiians, but also the other beneficiary of the public trust, the "general public," such as state affordable housing development and rental projects, and community hospitals and health care systems; and (2) "proprietary" functions; and
- (D) Failing to recognize that the list of sovereign functions in the definition of revenue is exemplary rather than exclusive.

The results of these ongoing controversies include but are not limited to:

- (A) Presently unasserted and unliquidated claims, or both, against the state for past amounts due which by some estimates could exceed one billion dollars;
- (B) As a result of judicial interpretations of chapter 10, Hawaii Revised Statutes, which have created uncertainty as to the application of chapter 10, serious deterioration in the confidence of the bond markets in state government financing inclusive of a downgrading in the state's bond rating with attendant lower bond marketability and the risk of higher interest expenses; and
- (C) Substantial difficulty encountered by the executive and legislative branches, particularly in this difficult economic period, in adequately balancing competing claims to scarce state resources and in responsibly planning for future obligations.

It is in the public interest that existing ambiguities be clarified, legislative intent be reiterated, immediate threats to the state's overall financial condition be mitigated, the ability of the state to carry out its sovereign functions be preserved, a responsible and comprehensive state budget process be assured, and a mechanism be established for the resolution of all outstanding issues between the executive and legislative branches and the office of Hawaiian affairs outside of the litigation process and which involves representatives of each.

It is in the public interest that, during the period in which the state and the office of Hawaiian affairs are utilizing in good faith an established mechanism for the non-litigation resolution of outstanding issues and as part of that mechanism:

- (A) An inventory of the public trust lands describing those lands with sufficient specificity be undertaken and completed; and
- (B) The office of Hawaiian affairs be assured an adequate level of funding with which to accomplish its goals.

It is in the public interest that the relevant issues relating to the global resolution described in the initial paragraphs of this section, including but not limited to issues currently under litigation between the state and the office of Hawaiian affairs, be addressed within and remain under the control of the executive and legislative branches of state government as essentially political questions within the spirit of the Supreme Court of Hawaii's opinion in Office of Hawaiian Affairs v. Yamasaki, 69 Haw. 154 (1987).

The specific purposes of this Act are to address the above findings and implement the above public interests by, among other actions:

- (1) Dispelling uncertainty of legislative intent as to revenue from the public land trust by reiterating legislative purpose with respect to:

- (A) The definition of “revenue” in section 10-2, Hawaii Revised Statutes, specifically, the differentiation between proceeds, and fees, charges, rents, or other income, derived from proprietary activities occurring on or resulting from the actual use of lands in the public trust and therefore subject to the requirement of section 10-13.5, Hawaii Revised Statutes, and proceeds, and fees, charges, rents, or other income, derived from the exercise of sovereign functions and powers on those lands and therefore excluded from that requirement;
 - (B) The distinction between proceeds, and fees, charges, rents, or other income, derived from activities actually located on public land trust lands, and proceeds, and fees, charges, rents, or other income, derived from activities actually located on non-public land trust lands;
 - (C) The fact that the list of sovereign function exclusions at the end of the definition of revenue in section 10-2, Hawaii Revised Statutes, is non-exclusive; and
 - (D) Other issues currently under dispute in Office of Hawaiian Affairs v. State of Hawaii, Circuit Court of the First Circuit, State of Hawaii, Civil No. 94-0205-01;
- (2) Establishing a process to gather information, facilitate discussion, and secure recommendations to more clearly address within the executive and legislative branches specific issues as to which clarification of legislative intent may be beneficial as well as broader issues relating to the public land trust;
 - (3) Providing interim measures to ensure that adequate income and proceeds from a pro rata portion of the public trust continue to be available to the office of Hawaiian affairs for the betterment of native Hawaiians while the contemplated process to address issues relating to the public trust is underway;
 - (4) Facilitating the identification of the public trust lands by requiring that a comprehensive inventory and mapping of such lands be completed, maintained, and used to guide implementation of the public trust requirements and a global resolution of all related issues; and
 - (5) Taking such other actions as are necessary to effectuate fully the legislature’s intent.

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

“**§10- Interim revenue.** Notwithstanding the definition of revenue contained in this chapter and the provisions of section 10-13.5, and notwithstanding any claimed invalidity of Act 304, Session Laws of Hawaii 1990, the income and proceeds from the pro rata portion of the public land trust under article XII, section 6 of the state constitution for expenditure by the office of Hawaiian affairs for the betterment of the conditions of native Hawaiians for each of fiscal year 1997-1998 and fiscal year 1998-1999 shall be \$15,100,000.”

SECTION 3. (a) There is established a joint committee to study and make recommendations on all outstanding and anticipated issues identified by the joint committee as currently or potentially relating to the public land trust, including whether lands should be transferred to the office of Hawaiian affairs in partial or full satisfaction of any past or future obligations under article XII, section 6 of the Hawaii Constitution.

(b) The joint committee shall consist of eight members, of which the senate president, the speaker of the house of representatives, the office of Hawaiian affairs,

and the governor shall each appoint two members. All members of the committee shall be appointed by no later than thirty days after the effective date of this Act, and the joint committee shall convene its initial meeting within thirty days after appointment of the last member. The committee shall conduct public hearings throughout the State to facilitate discussions and formulate recommendations on issues within the joint committee's purview. The committee shall be subject to the requirements of part I of chapter 92, Hawaii Revised Statutes, only when such public hearings are being scheduled or conducted.

(c) The joint committee shall:

- (1) Submit a progress report to the legislature no later than twenty days prior to the convening of the regular session of 1998;
- (2) Submit a final report to the legislature no later than twenty days prior to the convening of the regular session of 1999; and
- (3) Cease to exist on June 30, 1999.

SECTION 4. (a) By December 31, 1998, the department of land and natural resources, with the cooperation as requested by the department of land and natural resources of the office of Hawaiian affairs and any other state department and agency that uses or manages public lands, shall complete a comprehensive inventory and map database of all lands currently subject to section 5(f) of the Admission Act. The inventory shall include but not be limited to:

- (1) Identification of fast land parcels by tax map key number;
- (2) Identification of submerged lands;
- (3) Identification of the agency that has legal jurisdiction of each parcel;
- (4) Land use and zoning designations;
- (5) Program uses;
- (6) Terms of any leases or other dispositions; and
- (7) Revenues generated by amount, category, and source.

(b) In undertaking the inventory and mapping provided in subsection (a), the department of land and natural resources shall coordinate with the joint committee referenced in section 3 and, to the extent feasible, shall comply with the joint committee's requests.

(c) In complying with the requirements of this section, the department shall be exempt from the provisions of chapters 76, 77, and 103D, Hawaii Revised Statutes.

(d) The department of land and natural resources shall submit:

- (1) A progress report to the legislature no later than twenty days prior to the convening of the regular session of 1998; and
- (2) A final report to the legislature with copies of the inventory and maps by December 31, 1998.

SECTION 5. 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 1997-1998 and the sum of \$500,000 or so much thereof as may be necessary for fiscal year 1998-1999 to carry out the following purposes:

- (1) The sum of \$75,000 in each fiscal year shall be used for the operating purposes of the joint committee as specified in section 3; and
- (2) The sum of \$425,000 in each fiscal year shall be used to conduct the public lands inventory as specified in section 4;

provided that no funds shall be released unless funds are matched dollar-for-dollar by the office of Hawaiian affairs to conduct the inventory as specified in section 4; provided further that to the extent any lands subject to inventory and mapping under section 4 are under the control of the department of Hawaiian home lands, the department of Hawaiian home lands shall provide out of the Hawaiian home

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administration account, up to but not exceeding the amounts appropriated under section 6, a pro rata portion of the total amounts required to accomplish the purposes of section 4. The sums appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 6. There is appropriated out of the Hawaiian home administration account the sum of \$100,000 or so much thereof as may be necessary for fiscal year 1997-1998 and the sum of \$100,000 or so much thereof as may be necessary for fiscal year 1998-1999 to enable the department of Hawaiian home lands to provide its pro rata portion of the total amounts required, if any, to accomplish the purposes of section 4. The sums appropriated shall be expended by the department of Hawaiian home lands for the purposes of this Act.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$15,100,000 or so much thereof as may be necessary for fiscal year 1997-1998 and \$15,100,000 or so much thereof as may be necessary for fiscal year 1998-1999 to be transferred to and expended by the office of Hawaiian affairs for the purposes of section 2 of this Act.

SECTION 8: This Act's expression of the purpose, objective, and intent of the legislature in enacting section 3 of Act 304, Session Laws of Hawaii 1990, shall guide the proper interpretation of section 3 of Act 304 as originally enacted.

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 10. This Act shall take effect upon its approval; provided that sections 5, 6, and 7 shall take effect on July 1, 1997.

(Approved June 30, 1997.)

Note

1. Edited pursuant to HRS §23G-16.5.