

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

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

SECTION 1. In *Trustees of the Office of Hawaiian Affairs v. Yamasaki*, 69 Haw. 154, 737 P.2d 446 (1987), the Hawaii supreme court concluded that the issue of what constitutes the office of Hawaiian affairs' pro rata portion of all the revenues derived from the public land trust pursuant to article XII, section 6 of the Hawaii Constitution, is a political question for the legislature to determine. In *Yamasaki*, the office of Hawaiian affairs sought a pro rata portion of revenues arising out of the illegal mining of sand on Molokai and sales, leases, and other disposition of lands surrounding state harbors, and lands on Sand Island, the Honolulu International Airport, and the Aloha Tower complex. The supreme court declined to rule upon the substance of the case because it presented issues "of a peculiarly political nature and therefore not meet for judicial determination." *Id.*, at 175, 737 P.2d at 459.

In response to the *Yamasaki* decision, the legislature enacted Act 304, Session Laws of Hawaii 1990 (Act 304), to clarify the extent and scope of the State's constitutional obligation to provide a portion of the revenues derived from the public land trust to the office of Hawaiian affairs.

On September 12, 2001, the Hawaii supreme court ruled in *Office of Hawaiian Affairs v. State of Hawai'i*, 96 Haw. 388, 31 P.3d 901 (2001), that Act 304 was effectively repealed by its own terms, so that once again, it was necessary for the legislature to specify what portion of which receipts, from which lands the office of Hawaiian affairs was to receive a portion of the revenues under the state constitution. In its decision, the supreme court affirmed *Yamasaki*, observing:

[T]he State's obligation to native Hawaiians is firmly established in our constitution. How the State satisfies that constitutional obligation requires policy decisions that are primarily within the authority and expertise of the legislative branch. As such, it is incumbent upon the legislature to enact legislation that gives effect to the right of native Hawaiians to benefit from the ceded lands trust. See Haw. Const. art. XVI, §7. Although this court cannot and will not judicially legislate a means to give effect to the constitutional rights of native Hawaiians, we will not hesitate to declare unconstitutional those enactments that do not comport with the mandates of the constitution. At this juncture, we believe it fitting to quote then-state Senator Neil Abercrombie's prophetic statement to the legislature at the time HRS §10-13.5 was first enacted:

I fear that for those who are interested in seeing [OHA] move forward that they have won a Pyrrhic victory, that this is merely a skirmish in a very large battle.

[A]lthough I would be delighted to say otherwise, I regret to say that I expect that the moment this passes into statute, there will be a suit and that the business of the Office of Hawaiian Affairs is, as a result, going to be tied up in court for God-knows how many years.

Now, more than twenty years later, as we continue to struggle with giving effect to that enactment, we trust that the legislature will re-examine the State's constitutional obligation to native Hawaiians and the purpose of HRS §10-13.5 and enact legislation that most effectively and responsibly meets those obligations. (*Office of Hawaiian Affairs v. State of Hawai'i*, 96 Haw. at 401, 31 P.3d at 914 (citations omitted; emphasis in original)).

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

complex issues require the legislature's further attention and consideration in the wake of the repeal of Act 304, the legislature finds, in furtherance of the decision in *Yamasaki*, that immediate action should be taken to clearly designate the pro rata share of revenues derived from the public land trust that the office of Hawaiian affairs is to receive annually.

The legislature also finds that information pertaining to revenue generated by the public land trust should be consolidated within a single state department or agency. In prior years, it has been difficult to account for revenues generated by the public land trust because basic revenue-generating data was and is dispersed among multiple state agencies. A single state department should be responsible for compiling and providing an accounting of such information.

Accordingly, the specific purposes of this Act are to:

- (1) Provide interim measures to ensure that an adequate amount of income and proceeds is made available to the office of Hawaiian affairs from the pro rata portion of the public land trust, for the betterment of the conditions of native Hawaiians; and
- (2) Identify revenue-generating public trust lands and the amounts derived from those lands by requiring that the department of land and natural resources provide an annual accounting to the legislature.

SECTION 2. Notwithstanding the provisions of chapter 10, Hawaii Revised Statutes, including section 10-13.5, Hawaii Revised Statutes, and until further action is taken by the legislature for this purpose, 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 fiscal year beginning with fiscal year 2005-2006 shall be \$15,100,000.

SECTION 3. Notwithstanding the provisions of chapter 10, Hawaii Revised Statutes, or the requirements of Executive Order No. 03-03, beginning in fiscal year 2005-2006, the departments of agriculture, accounting and general services, business, economic development, and tourism, education, land and natural resources, and transportation (for its harbors division), and any other department or agency that collects receipts from the lands within the public land trust, shall determine and transfer to the office of Hawaiian affairs that portion of their receipts from the use of lands within the public land trust collected during each fiscal quarter, necessary to ensure that a total of \$3,775,000 of revenues generated by the public land trust is transferred to the office of Hawaiian affairs, within thirty days of the close of each fiscal quarter; provided that for fiscal year 2005-2006, the departments shall have until thirty days after the close of the fiscal year to transfer a total of \$15,100,000 from their receipts from the use of lands within the public land trust collected during fiscal year 2005-2006, to the office of Hawaiian affairs whether by the procedures set out in Executive Order No. 03-03 or this Act.

The governor is expressly authorized to fix the amounts each agency shall transfer to the office of Hawaiian affairs in each quarter by executive order to implement the provisions of this section.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$17,500,000 or so much thereof as may be necessary for fiscal year 2005-2006 to pay to the office of Hawaiian affairs amounts received from the use of lands in the public land trust that the legislature has determined were underpaid between July 1, 2001, through June 30, 2005. The sum appropriated shall be expended by the department of budget and finance.

SECTION 5. Not later than January 1 of each year, the department of land and natural resources, with the cooperation of the department of budget and finance and any other state department or agency that uses or manages public lands, shall provide an accounting of all receipts from lands described in section 5(f) of the Admission Act for the prior fiscal year. With respect to each receipt, the department of land and natural resources shall identify:

- (1) The total gross amount;
- (2) The amount transferred to the office of Hawaiian affairs;
- (3) The amount retained by the State;
- (4) The account or fund in which the amount specified in paragraph (3) was transferred or deposited;
- (5) The parcel of land subject to section 5(f) of the Admission Act that generated the receipt, whether by tax map key number, department of land and natural resources inventory number, or other recognizable description; and
- (6) The state department or agency that received the total gross amount identified in paragraph (1).

The accounting shall also indicate whether any parcel of land described in section 5(f) of the Admission Act was sold or exchanged in the prior fiscal year and, if so, the amount of consideration that the State received for the respective parcels.

The office of Hawaiian affairs shall be consulted by the department of land and natural resources in determining the method in which the accounting shall be conducted.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2006-2007 to carry out the purpose of section 5.

The sum appropriated shall be expended by the department of land and natural resources. Should any additional funds be necessary to carry out the purpose of section 5 after the department of land and natural resources has expended the \$250,000 appropriated out of the general revenues of the State of Hawaii, the office of Hawaiian affairs shall provide the additional funds up to \$250,000.

SECTION 7. Nothing in this Act shall resolve or settle, or be deemed to acknowledge the existence of, the claims of native Hawaiians to the income and proceeds of a pro rata portion of the public land trust under article XII, section 6, of the state constitution.

SECTION 8. This Act shall take effect upon its approval.

(Approved June 7, 2006.)