



EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

June 7, 2006

**GOV. MSG. NO. 717**

The Honorable Robert Bunda, President  
and Members of the Senate  
Twenty-Third State Legislature  
State Capitol, Room 003  
Honolulu, Hawaii 96813

Dear Mr. President and Members of the Senate:

This is to inform you that on June 7, 2006, the following bill was signed into law:

SB2948 SD1 HD2 CD1

A BILL FOR AN ACT RELATING TO  
THE PUBLIC LAND TRUST.  
(ACT 178)

Sincerely,

A handwritten signature in black ink that reads "Georgina K. Kawamura".

GEORGINA K. KAWAMURA  
Acting Governor

THE SENATE  
TWENTY-THIRD LEGISLATURE, 2006  
STATE OF HAWAII

**S.B. NO.** 2948  
S.D. 1  
H.D. 2  
C.D. 1

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# A BILL FOR AN ACT

RELATING TO THE PUBLIC LAND TRUST.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

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

16           In response to the *Yamasaki* decision, the legislature  
17 enacted Act 304, Session Laws of Hawaii 1990 (Act 304), to  
18 clarify the extent and scope of the State's constitutional



1 obligation to provide a portion of the revenues derived from the  
2 public land trust to the office of Hawaiian affairs.

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5 P.3d 901 (2001), that Act 304 was effectively repealed by its  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

11 [T]he State's obligation to native Hawaiians is  
12 firmly established in our constitution. How the  
13 State satisfies that constitutional obligation  
14 requires policy decisions that are primarily within  
15 the authority and expertise of the legislative  
16 branch. As such, it is incumbent upon the  
17 legislature to enact legislation that gives effect  
18 to the right of native Hawaiians to benefit from the  
19 ceded lands trust. See Haw. Const. art. XVI, §7.  
20 Although this court cannot and will not judicially  
21 legislate a means to give effect to the  
22 constitutional rights of native Hawaiians, we will

1 not hesitate to declare unconstitutional those  
2 enactments that do not comport with the mandates of  
3 the constitution. At this juncture, we believe it  
4 fitting to quote then-state Senator Neil  
5 Abercrombie's prophetic statement to the legislature  
6 at the time HRS §10-13.5 was first enacted:

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

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

18 Now, more than twenty years later, as we  
19 continue to struggle with giving effect to that  
20 enactment, we trust that the legislature will  
21 re-examine the State's constitutional obligation to  
22 native Hawaiians and the purpose of HRS § 10-13.5 and



1           enact legislation that most effectively and  
2           responsibly meets those obligations. (*Office of*  
3           *Hawaiian Affairs v. State of Hawai'i*, 96 Haw. at 401,  
4           31 P.3d at 914 (citations omitted; emphasis in  
5           original)).

6           The legislature acknowledges that the State's obligation to  
7           native Hawaiians is firmly established in the state  
8           constitution. (See Haw. Const. art. XII.) While many complex  
9           issues require the legislature's further attention and  
10          consideration in the wake of the repeal of Act 304, the  
11          legislature finds, in furtherance of the decision in *Yamasaki*,  
12          that immediate action should be taken to clearly designate the  
13          pro rata share of revenues derived from the public land trust  
14          that the office of Hawaiian affairs is to receive annually.

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



1           Accordingly, the specific purposes of this Act are to:

2           (1) Provide interim measures to ensure that an adequate  
3           amount of income and proceeds is made available to the  
4           office of Hawaiian affairs from the pro rata portion  
5           of the public land trust, for the betterment of the  
6           conditions of native Hawaiians; and

7           (2) Identify revenue-generating public trust lands and the  
8           amounts derived from those lands by requiring that the  
9           department of land and natural resources provide an  
10          annual accounting to the legislature.

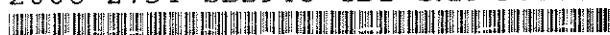
11          SECTION 2. Notwithstanding the provisions of chapter 10,  
12          Hawaii Revised Statutes, including section 10-13.5, Hawaii  
13          Revised Statutes, and until further action is taken by the  
14          legislature for this purpose, the income and proceeds from the  
15          pro rata portion of the public land trust under article XII,  
16          section 6, of the state constitution for expenditure by the  
17          office of Hawaiian affairs for the betterment of the conditions  
18          of native Hawaiians for each fiscal year beginning with fiscal  
19          year 2005-2006 shall be \$15,100,000.

20          SECTION 3. Notwithstanding the provisions of chapter 10,  
21          Hawaii Revised Statutes, or the requirements of Executive Order  
22          No. 03-03, beginning in fiscal year 2005-2006, the departments



1 of agriculture, accounting and general services, business,  
2 economic development, and tourism, education, land and natural  
3 resources, and transportation (for its harbors division), and  
4 any other department or agency that collects receipts from the  
5 lands within the public land trust, shall determine and transfer  
6 to the office of Hawaiian affairs that portion of their receipts  
7 from the use of lands within the public land trust collected  
8 during each fiscal quarter, necessary to ensure that a total of  
9 \$3,775,000 of revenues generated by the public land trust is  
10 transferred to the office of Hawaiian affairs, within thirty  
11 days of the close of each fiscal quarter; provided that for  
12 fiscal year 2005-2006, the departments shall have until thirty  
13 days after the close of the fiscal year to transfer a total of  
14 \$15,100,000 from their receipts from the use of lands within the  
15 public land trust collected during fiscal year 2005-2006, to the  
16 office of Hawaiian affairs whether by the procedures set out in  
17 Executive Order No. 03-03 or this Act.

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



1 SECTION 4. There is appropriated out of the general  
2 revenues of the State of Hawaii the sum of \$17,500,000 or so  
3 much thereof as may be necessary for fiscal year 2005-2006 to  
4 pay to the office of Hawaiian affairs amounts received from the  
5 use of lands in the public land trust that the legislature has  
6 determined were underpaid between July 1, 2001, through June 30,  
7 2005. The sum appropriated shall be expended by the department  
8 of budget and finance.

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

- 17 (1) The total gross amount;
- 18 (2) The amount transferred to the office of Hawaiian  
19 affairs;
- 20 (3) The amount retained by the State;
- 21 (4) The account or fund in which the amount specified in  
22 paragraph (3) was transferred or deposited;





1 (5) The parcel of land subject to section 5(f) of the  
2 Admission Act that generated the receipt, whether by  
3 tax map key number, department of land and natural  
4 resources inventory number, or other recognizable  
5 description; and

6 (6) The state department or agency that received the total  
7 gross amount identified in paragraph (1).

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

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

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

20 The sum appropriated shall be expended by the department of  
21 land and natural resources. Should any additional funds be  
22 necessary to carry out the purpose of section 5 after the

1 department of land and natural resources has expended the  
2 \$250,000 appropriated out of the general revenues of the State  
3 of Hawaii, the office of Hawaiian affairs shall provide the  
4 additional funds up to \$250,000.

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

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



GOVERNOR OF THE STATE OF HAWAII

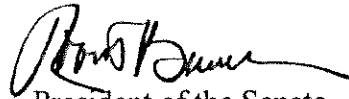
Approved this day: June 7, 2006




**THE SENATE OF THE STATE OF HAWAII**

Date: May 2, 2006  
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006.

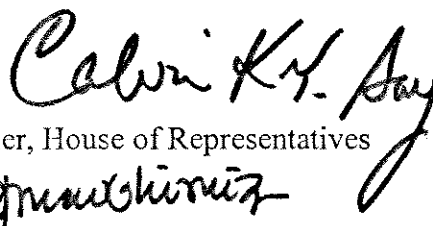

  
President of the Senate

  
Clerk of the Senate

**THE HOUSE OF REPRESENTATIVES  
OF THE STATE OF HAWAII**

Date: May 2, 2006  
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the House of Representatives of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006.

  
Speaker, House of Representatives  
  
Clerk, House of Representatives