
A BILL FOR AN ACT

RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA
SHARE OF PUBLIC LAND TRUST FUNDS.

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 establish the office of Hawaiian
3 affairs and its board of trustees.

4 Article XII, sections 4, 5, and 6 of the state constitution
5 provide as follows:

6 **Section 4.** The lands granted to the State of Hawaii
7 by Section 5(b) of the Admission Act and pursuant to
8 Article XVI, Section 7, of the State Constitution,
9 excluding therefrom lands defined as "available lands" by
10 Section 203 of the Hawaiian Homes Commission Act, 1920, as
11 amended, shall be held by the State as a public trust for
12 native Hawaiians and the general public.

13 **Section 5.** There is hereby established an Office of
14 Hawaiian Affairs. The Office of Hawaiian Affairs shall
15 hold title to all the real and personal property now or
16 hereafter set aside or conveyed to it which shall be held



1 in trust for native Hawaiians and Hawaiians. There shall
 2 be a board of trustees for the Office of Hawaiian Affairs
 3 elected by qualified voters . . . as provided by law
 4 There shall be not less than nine members of the
 5 board of trustees; provided that each of the following
 6 Islands have one representative: Oahu, Kauai, Maui,
 7 Molokai and Hawaii. The board shall elect a chairperson
 8 from its members.

9 **Section 6.** The board of trustees of the Office of
 10 Hawaiian Affairs shall exercise power as provided by law:
 11 to manage and administer the proceeds from the sale or
 12 other disposition of the lands, natural resources, minerals
 13 and income derived from whatever sources for native
 14 Hawaiians and Hawaiians, including all income and proceeds
 15 from that pro rata portion of the trust referred to in
 16 section 4 of this article for native Hawaiians; to
 17 formulate policy relating to affairs of native Hawaiians
 18 and Hawaiians; and to exercise control over real and
 19 personal property set aside by state, federal or private
 20 sources and transferred to the board for native Hawaiians
 21 and Hawaiians. The board shall have the power to exercise



1 control over the Office of Hawaiian Affairs through its
2 executive officer, the administrator of the Office of
3 Hawaiian Affairs, who shall be appointed by the board.
4 Act 273, Session Laws of Hawaii 1980, enacted section
5 10-13.5, Hawaii Revised Statutes, to implement the office of
6 Hawaiian affairs' pro rata share and provide that "[t]wenty per
7 cent of all funds derived from the public land trust . . . shall
8 be expended by the [Office of Hawaiian Affairs] . . . for the
9 purposes of this chapter."

10 This legislative directive has led to a series of lawsuits
11 concerning the office of Hawaiian affairs' constitutional pro
12 rata share and the statutory allocation of twenty per cent of
13 all funds that the legislature established to implement article
14 XII, sections 4 and 6, of the state constitution. In *Trustees*
15 *of the Office of Hawaiian Affairs v. Yamasaki*, 69 Haw. 154, 737
16 P.2d 446 (1987), the Hawaii supreme court concluded that it was
17 unable to determine the parameters of section 10-13.5, Hawaii
18 Revised Statutes, because the issue of how the twenty per cent
19 apportionment is formulated was a political question for the
20 legislature to determine.



1 In response to the *Yamasaki* decision, the office of
2 Hawaiian affairs and the governor's office entered into lengthy
3 negotiations and submitted to the legislature an agreement to
4 clarify the extent and scope of the twenty per cent portion.
5 The legislature, based on this agreement, enacted Act 304,
6 Session Laws of Hawaii 1990.

7 In a memorandum dated April 28, 1993, the office of
8 Hawaiian affairs and the State memorialized the results of their
9 negotiations and noted that "[the office of state planning] and
10 [the Office of Hawaiian Affairs] recognize and agree that the
11 amount specified in section 1 hereof does not include several
12 matters regarding revenue which [the Office of Hawaiian Affairs]
13 has asserted is due [the Office of Hawaiian Affairs] and which
14 [the office of state planning] has not accepted and agreed to."
15 These disagreements led to litigation. The office of Hawaiian
16 affairs specified that it was seeking its pro rata share of
17 revenues received by the State based on:

- 18 (1) Waikiki Duty Free receipts (in connection with the
19 lease of ceded lands at the Honolulu international
20 airport);
21 (2) Hilo hospital patient services receipts;



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

4 (4) Interest earned on withheld revenues.

5 On October 24, 1996, the trial court granted the office of
6 Hawaiian affairs' motion for partial summary judgment on each of
7 its aforementioned claims, finding that:

8 (1) The State is required to pay the office of Hawaiian
9 affairs its pro rata portion of rents or fees
10 collected from the Duty Free concessions at the
11 State's airports;

12 (2) The State's activities of providing affordable housing
13 are proprietary in nature and subject to the office of
14 Hawaiian affairs' pro rata share;

15 (3) Patient service fees, cafeteria sales, and rental
16 income at Hilo hospital "is clearly a proprietary
17 rather than sovereign exercise of power" which does
18 not shield the Hilo hospital's income from being
19 characterized as revenue subject to the office of
20 Hawaiian affairs' pro rata share; and



1 (4) "The State is required to pay [the Office of Hawaiian
2 Affairs] its pro rata share of the interest earned by
3 the State from ceded land revenues derived from the
4 Public Land Trust."

5 The State appealed.

6 On October 27, 1997, the United States Congress enacted the
7 Department of Transportation and Related Agencies Appropriations
8 Act of 1998, Public Law 105-66, which provided that monies paid
9 for claims related to ceded lands and diverted from airport
10 revenues were not subject to repayment. Public Law 105-66
11 provided further that nothing in the Act was to affect the
12 obligations of the State of Hawaii to Native Hawaiians in
13 connection with ceded lands, except to make clear that airport
14 revenues may not be used to satisfy such obligations directly.
15 The office of Hawaiian affairs had previously been paid
16 \$28,200,000 from airport revenue funds.

17 On September 12, 2001, the Hawaii supreme court ruled in
18 *Office of Hawaiian Affairs v. State of Hawai'i*, 96 Haw. 388, 31
19 P.3d 901 (2001), ("OHA I") that Act 304 (1990) was effectively
20 repealed by its own terms, so that once again, it was necessary
21 for the 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 firmly
6 established in our constitution. How the State satisfies
7 that constitutional obligation requires policy decisions
8 that are primarily within the authority and expertise of
9 the legislative branch. As such, it is incumbent upon the
10 legislature to enact legislation that gives effect to the
11 right of native Hawaiians to benefit from the ceded lands
12 trust. See Haw. Const. art. XVI, section 7. . . . [W]e
13 trust that the legislature will re-examine the State's
14 constitutional obligation to native Hawaiians and the
15 purpose of HRS §10-13.5 and enact legislation that most
16 effectively and responsibly meets those obligations.

17 *OHA I*, 96 Haw. At 401, 31 P.3d at 914 (citations omitted).

18 On April 28, 2006, the Hawaii supreme court ruled in *Office*
19 *of Hawaiian Affairs v. State of Hawai'i*, 110 Haw. 338, 366, 133
20 P.3d 767, 795 (2006) ("OHA II"), that consistent with its ruling
21 in OHA I, "it is incumbent upon the legislature to enact



1 legislation that gives effect to the right of native Hawaiians
2 to benefit from the ceded lands trust."

3 Subsequently, the legislature enacted Act 178, Session Laws
4 of Hawaii 2006, which took effect on June 7, 2006, and
5 specifically acknowledged that "the State's obligation to native
6 Hawaiians is firmly established in the state constitution. (See
7 Haw. Const. art XII)."

8 While the legislature found that "many complex issues
9 require the legislature's further attention and consideration in
10 the wake of the repeal of Act 304," Act 178 was enacted with a
11 stated purpose of providing "interim measures to ensure that an
12 adequate amount of income and proceeds is made available to the
13 [Office of Hawaiian Affairs] from the pro rata portion of the
14 public land trust, for the betterment of the conditions of
15 native Hawaiians." Act 178 carried out this interim purpose by
16 requiring "the income and proceeds from the pro rata portion of
17 the public land trust under article XII, section 6, of the state
18 constitution for expenditure by the office of Hawaiian affairs
19 for the betterment of the conditions of native Hawaiians for
20 each fiscal year beginning with fiscal year 2005-2006 shall be
21 \$15,100,000." Specifically, Act 178 noted this interim amount



1 was "[until] further action is taken by the legislature for this
2 purpose." This \$15,100,000 was based, in part, on certain
3 ancillary receipts from the state airports.

4 Subsequently, addressing past-due amounts owed to the
5 office of Hawaiian affairs, Act 15, Session Laws of Hawaii 2012,
6 was enacted to implement an agreement between the State and the
7 office of Hawaiian affairs for the State to convey certain lands
8 in Kakaako Makai on Oahu valued at approximately \$200,000,000 to
9 allow the State to give effect to the right of native Hawaiians
10 to benefit from the public land trust and to fulfill its
11 constitutional obligations under article XII, sections 4 and 6
12 of the state constitution for the period between November 7,
13 1978, up to and including June 30, 2012, relating to the office
14 of Hawaiian affairs' portion of the income and proceeds from the
15 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 generated after June 30,
20 2012.



1 Act 178, Session Laws of 2006, remained in effect as an
2 interim legislative measure setting the office of Hawaiian
3 affairs' annual income and proceeds from the public land trust
4 for the betterment of the conditions of native Hawaiians at
5 \$15,100,000 beginning in fiscal year 2005-2006, pending further
6 legislative action on the subject.

7 The second purpose of Act 178 was identifying "revenue-
8 generating public trust lands and the amounts derived from those
9 lands by requiring that the department of land and natural
10 resources provide an annual accounting to the legislature."
11 Based on the annual accounting of the amounts derived from the
12 public trust and additional research commissioned by the office
13 of Hawaiian affairs of receipts from the public land trust in
14 fiscal year 2015-2016, the office of Hawaiian affairs has
15 determined the minimum amount of total gross public land trust
16 receipts from sources that the office of Hawaiian affairs has a
17 past or current claim was found to be \$174,816,220 in fiscal
18 year 2015-2016. Twenty per cent of this amount from fiscal year
19 2015-2016 is \$34,963,244.

20 The legislature finds that it is now in the best interests
21 of the office of Hawaiian affairs, its beneficiaries, the State,



1 and all citizens of Hawaii to further discussions between the
2 governor, legislative leadership and the office of Hawaiian
3 affairs regarding the office of Hawaiian affairs' constitutional
4 pro rata share of the public land trust for the betterment of
5 the conditions of native Hawaiians; to develop and to
6 comprehensively assess the state programs that provide services
7 to native Hawaiians.

8 Accordingly, the purpose of this Act is to serve as an
9 interim measure to:

- 10 (1) Require that all grants and contracts awarded by the
11 office of Hawaiian affairs shall be subject to
12 approval by the board of trustees;
- 13 (2) Reduce the university of Hawaii's portion of receipts
14 from the use, sale, lease, or other disposition of
15 lands within the public land trust to be collected
16 during each fiscal year to the amount equal to the
17 university of Hawaii's receipts derived from tuition
18 and special funds utilized for native Hawaiian
19 programs;
- 20 (3) Establish a public land trust revenues negotiating
21 committee to determine the increase to the annual



1 amount of the income and proceeds from the public land
2 trust that the office of Hawaiian affairs shall
3 receive annually under the state constitution and
4 other state law;

5 (4) Require and appropriate funds for the department of
6 budget and finance to conduct a financial review of
7 the amounts of revenue generated from the public land
8 trust;

9 (5) Require and appropriate funds for the auditor to
10 conduct a comprehensive review of programs
11 administered by the State that serve Hawaiians and
12 submit a report to the legislature on its findings;
13 and

14 (6) Prohibit any increases proposed by the public land
15 trust revenues negotiating committee that are not
16 already approved for use by or appropriated to the
17 office of Hawaiian affairs until the fiscal and
18 comprehensive reviews conducted pursuant to this Act,
19 and as approved by the board of trustees of the office
20 of Hawaiian affairs, are completed and complete and
21 accurate copies are provided to the legislature.



1 SECTION 2. Section 10-5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§10-5 Board of trustees; powers and duties. The board
4 shall have the power in accordance with law to:

5 (1) Manage, invest, and administer the proceeds from the
6 sale or other disposition of lands, natural resources,
7 minerals, and income derived from whatever sources for
8 native Hawaiians and Hawaiians, including all income
9 and proceeds from that pro rata portion of the trust
10 referred to in section 10-3;

11 (2) Exercise control over real and personal property set
12 aside to the office by the State of Hawaii, the United
13 States of America, or any private sources, and
14 transferred to the office for native Hawaiians and
15 Hawaiians;

16 (3) Collect, receive, deposit, withdraw, and invest money
17 and property on behalf of the office;

18 (4) Formulate policy relating to the affairs of native
19 Hawaiians and Hawaiians, provided that such policy
20 shall not diminish or limit the benefits of native



- 1 Hawaiians under article XII, section 4, of the state
2 Constitution;
- 3 (5) Otherwise act as a trustee as provided by law;
- 4 (6) Delegate to the administrator, its officers and
5 employees such powers and duties as may be proper for
6 the performance of the powers and duties vested in the
7 board;
- 8 (7) Provide grants to individuals, and public or private
9 organizations to better the conditions of native
10 Hawaiians and Hawaiians consistent with the standards
11 set forth in section 10-17; provided that each grant
12 provided or contract entered into pursuant to this
13 section shall be subject to a separate vote for
14 approval by the board;
- 15 (8) Make available technical and financial assistance and
16 advisory services to any agency or private
17 organization for native Hawaiian and Hawaiian
18 programs, and for other functions pertinent to the
19 purposes of the office of Hawaiian affairs. Financial
20 assistance may be rendered through contractual



1 arrangements as may be agreed upon by the board and
2 any such agency or organization; and

3 (9) Adopt and use a common seal by which all official acts
4 shall be authenticated."

5 SECTION 3. Section 10-17, Hawaii Revised Statutes, is
6 amended by amending subsection (e) to read as follows:

7 "(e) [~~Grants~~] A grant made by the office under this
8 chapter may be made without regard to chapters 103D and 103F[~~-~~],
9 and shall be subject to a separate vote for approval for each
10 grant by the board."

11 SECTION 4. Notwithstanding the provisions of chapter 10,
12 Hawaii Revised Statutes, including section 10-13.5, Hawaii
13 Revised Statutes, beginning in fiscal year 2019-2020, the
14 university of Hawaii shall determine and transfer to the office
15 of Hawaiian affairs that portion of their receipts from the use,
16 sale, lease, or other disposition of lands within the public
17 land trust collected during each fiscal year, necessary to
18 ensure that a total of \$ of receipts generated by the
19 public land trust is transferred to the office of Hawaiian
20 affairs within thirty days of the close of each fiscal year;
21 provided that the portion of receipts from the use, sale, lease,



1 or other disposition of lands within the public land trust
2 collected during each fiscal year by the university of Hawaii
3 shall be reduced by an amount equal to university receipts
4 derived from tuition and special funds utilized for native
5 Hawaiian programs.

6 SECTION 5. (a) There is established a public land trust
7 revenues negotiating committee within the office of state
8 planning for administrative purposes. The purpose of the public
9 land trust revenues negotiating committee is to determine the
10 increase to the annual amount of the income and proceeds from
11 the public land trust that the office of Hawaiian affairs shall
12 receive annually under the state constitution and other state
13 law.

14 (b) The public land trust revenues negotiating committee
15 shall consist of:

16 (1) The governor or the governor's designee, who shall
17 serve as chairperson of the committee;

18 (2) The president of the senate or the president's
19 designee;

20 (3) The speaker of the house of representatives or the
21 speaker's designee;



1 (4) The chairperson of the office of Hawaiian affairs or
2 the chairperson's designee;

3 (5) One representative that shall be selected by the
4 president of the senate; and

5 (6) One representative that shall be selected by the
6 speaker of the house of representatives.

7 (c) The public land trust revenues negotiating committee
8 shall submit a report to the legislature detailing the status of
9 its discussions no later than twenty days prior to the convening
10 of the regular session of 2020.

11 (d) The public land trust revenues negotiating committee
12 shall study and submit to the legislature its recommendations,
13 including any proposed legislation, regarding the increase to
14 the annual amount of the income and proceeds from the public
15 land trust that the office of Hawaiian affairs shall receive
16 annually under the state constitution and other state law no
17 later than twenty days prior to the convening of the regular
18 session of 2021.

19 (e) The public land trust revenues committee shall not be
20 subject to the requirements of chapter 92, Hawaii Revised
21 Statutes.



1 SECTION 6. The department of budget and finance shall
2 conduct a financial review of the amounts of revenue generated
3 in fiscal year 2018 from the public land trust, established
4 pursuant to section 5(f) of the Admission Act, inclusive of
5 those lands conveyed to the State pursuant to the Act to Revise
6 the Procedures Established by the Hawaii Statehood Act, Public
7 Law 86-3, for the Conveyance of Certain Lands to the State of
8 Hawaii, and for Other Purposes, P.L. 88-233, and payable to the
9 office pursuant to section 10-13.5, Hawaii Revised Statutes;
10 provided that "revenue" shall be defined as provided in section
11 3 of Act 304, Session Laws of Hawaii 1990. Upon request, the
12 office of Hawaiian affairs, along with any independent auditor
13 selected by the office, shall be provided with all data relating
14 to lands that comprise the public land trust and to the revenue
15 derived therefrom, including the methodology for determining
16 this revenue and the office of Hawaiian affairs' pro rata
17 portion.

18 The department of budget and finance shall submit to the
19 legislature the results of its financial review of the amounts
20 of revenue generated from the public land trust no later than
21 twenty days before the convening of the regular session of 2020.



1 SECTION 7. The auditor shall:

2 (1) Conduct a comprehensive review of all programs that
3 serve Hawaiians and are administered by state
4 agencies; and

5 (2) Submit a report of this review to the legislature no
6 later than twenty days prior to the convening of the
7 regular session of 2020.

8 SECTION 8. There is appropriated out of the general
9 revenues of the State of Hawaii the sum of \$ or so
10 much thereof as may be necessary for fiscal year 2019-2020 to
11 effectuate the purposes of section 6 of this Act.

12 The sum appropriated shall be expended by the department of
13 budget and finance for the purposes of this Act.

14 SECTION 9. There is appropriated out of the general
15 revenues of the State of Hawaii the sum of \$ or so
16 much thereof as may be necessary for fiscal year 2019-2020 to
17 effectuate the purposes of section 7 of this Act.

18 The sum appropriated shall be expended by the office of the
19 auditor for the purposes of this Act.

20 SECTION 10. Any increases proposed by the public land
21 trust revenues negotiating committee that are not already



1 approved for use by or appropriated to the office of Hawaiian
2 affairs shall not be authorized until:

3 (1) The fiscal and comprehensive reviews conducted
4 pursuant to this Act, and as approved by the board of
5 trustees of the office of Hawaiian affairs, are
6 completed; and

7 (2) Complete and accurate copies are provided to the
8 legislature.

9 SECTION 11. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 12. This Act shall take effect on July 1, 2050.



Report Title:

OHA; Public Land Trust; Pro Rata Share; Department of Budget and Finance; Auditor; Appropriations

Description:

Requires that all grants and contracts awarded by the Office of Hawaiian Affairs shall be subject to be individually approved by the board of trustees. Reduces the University of Hawaii's portion of receipts from the use, sale, lease, or other disposition of lands within the public land trust to be collected during each fiscal year to the amount equal to the University of Hawaii's receipts derived from tuition and special funds utilized for Native Hawaiian programs. Establishes a public land trust revenues negotiating committee to determine the increase to the annual amount of the income and proceeds from the public land trust that the Office of Hawaiian Affairs shall receive annually under the state constitution and other state law. Requires the Department of Budget and Finance to conduct a financial review of the amounts of revenue generated from the public land trust. Requires the Auditor to report to the Legislature on a comprehensive review of programs administered by the State that serve Hawaiians. Appropriates funds. Prohibits any increases proposed by the public land trust revenues negotiating committee that are not already approved for use by or appropriated to the Office of Hawaiian Affairs until the fiscal and comprehensive reviews required by this measure are completed and submitted to the Legislature. Effective 7/1/2050. (SD2)

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

