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 HAWAI'I:

SECTION 1. The legislature finds that in 1978, the state constitution was amended to establish the office of Hawaiian affairs and its board of trustees.

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

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

Section 5. There is hereby established an Office of Hawaiian Affairs. The Office of Hawaiian Affairs shall hold title to all the real and personal property now or hereafter set aside or conveyed to it which
shall be held in trust for native Hawaiians and
Hawaiians. There shall be a board of trustees for the
Office of Hawaiian Affairs elected by qualified voters
. . . as provided by law. . . . There shall be not
less than nine members of the board of trustees;
provided that each of the following Islands have one
representative: Oahu, Kauai, Maui, Molokai and Hawaii.
The board shall elect a chairperson from its members.

Section 6. The board of trustees of the Office of
Hawaiian Affairs shall exercise power as provided by law:
to manage and administer the proceeds from the sale or
other disposition of the lands, natural resources, minerals
and income derived from whatever sources for native
Hawaiians and Hawaiians, including all income and proceeds
from that pro rata portion of the trust referred to in
section 4 of this article for native Hawaiians; to
formulate policy relating to affairs of native Hawaiians
and Hawaiians; and to exercise control over real and
personal property set aside by state, federal or private
sources and transferred to the board for native Hawaiians
and Hawaiians. The board shall have the power to exercise
control over the Office of Hawaiian Affairs through its executive officer, the administrator of the Office of Hawaiian Affairs, who shall be appointed by the board. Act 273, Session Laws of Hawaii 1980, enacted section 10-13.5, Hawaii Revised Statutes, to implement the office of Hawaiian affairs' pro rata share and provide that "[t]wenty per cent of all funds derived from the public land trust . . . shall be expended by the [Office of Hawaiian Affairs] . . . for the purposes of this chapter."

This legislative directive has led to a series of lawsuits concerning the office of Hawaiian affairs' constitutional pro rata share and the statutory allocation of twenty per cent of all funds that the legislature established to implement article XII, sections 4 and 6, of the state constitution. In Trustees of the Office of Hawaiian Affairs v. Yamasaki, 69 Haw. 154, 737 P.2d 446 (1987), the Hawaii supreme court concluded that it was unable to determine the parameters of section 10-13.5, Hawaii Revised Statutes, because the issue of how the twenty per cent apportionment is formulated was a political question for the legislature to determine.
In response to the Yamasaki decision, the office of Hawaiian affairs and the governor's office entered into lengthy negotiations and submitted to the legislature an agreement to clarify the extent and scope of the twenty per cent portion. The legislature, based on this agreement, enacted Act 304, Session Laws of Hawaii 1990.

In a memorandum dated April 28, 1993, the office of Hawaiian affairs and the State memorialized the results of their negotiations and noted that "[the Office of Hawaiian Affairs] and [the Office of Hawaiian Affairs] recognize and agree that the amount specified in section 1 hereof does not include several matters regarding revenue which [the Office of Hawaiian Affairs] has asserted is due [the Office of Hawaiian Affairs] and which [the office of state planning] has not accepted and agreed to."

These disagreements led to litigation. The office of Hawaiian affairs specified that it was seeking its pro rata share of revenues received by the State based on:

(1) Waikiki Duty Free receipts (in connection with the lease of ceded lands at the Honolulu international airport);

(2) Hilo hospital patient services receipts;
(3) Receipts from the Hawaii housing authority and the housing finance and development corporation for projects situated on ceded lands; and

(4) Interest earned on withheld revenues.

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

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

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

(3) Patient service fees, cafeteria sales, and rental income at Hilo hospital "is clearly a proprietary rather than sovereign exercise of power" which does not shield the Hilo hospital's income from being characterized as revenue subject to the office of Hawaiian affairs' pro rata share; and
(4) "The State is required to pay [the Office of Hawaiian Affairs] its pro rata share of the interest earned by the State from ceded land revenues derived from the Public Land Trust."

The State appealed.

On October 27, 1997, the United States Congress enacted the Department of Transportation and Related Agencies Appropriations Act of 1998, Public Law 105-66, which provided that monies paid for claims related to ceded lands and diverted from airport revenues were not subject to repayment. Public Law 105-66 provided further that nothing in the Act was to affect the obligations of the State of Hawaii to Native Hawaiians in connection with ceded lands, except to make clear that airport revenues may not be used to satisfy such obligations directly.

The office of Hawaiian affairs had previously been paid $28,200,000 from airport revenue funds.

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), ("OHA I") that Act 304 (1990) was effectively repealed by its own terms, so that once again, it was necessary for the legislature to clarify the office of Hawaiian affairs'
constitutional pro rata share and the statutory allocation of twenty per cent of all funds to be managed and administered by the office of Hawaiian affairs. In its decision, the Hawaii 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, section 7. . . . [W]e 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.

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

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

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

While the legislature found that "many complex issues
require the legislature's further attention and consideration in
the wake of the repeal of Act 304," Act 178 was enacted with a
stated purpose of providing "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." Act 178 carried out this interim purpose by
requiring "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." Specifically, Act 178 noted this interim amount
was "[until] further action is taken by the legislature for this purpose." This $15,100,000 was based, in part, on certain ancillary receipts from the state airports.

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

However, Act 15 did not address the State's constitutional obligations under article XII, sections 4 and 6 relating to the office of Hawaiian affairs' pro rata share of the income and proceeds from the public land trust generated after June 30, 2012.
Act 178, Session Laws of Hawaii 2006, remained in effect as an interim legislative measure setting the office of Hawaiian affairs' annual income and proceeds from the public land trust for the betterment of the conditions of native Hawaiians at $15,100,000 beginning in fiscal year 2005-2006, pending further legislative action on the subject.

The second purpose of Act 178 was identifying "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."

Based on the annual accounting of the amounts derived from the public trust and additional research commissioned by the office of Hawaiian affairs of receipts from the public land trust in fiscal year 2015-2016, the minimum amount of total gross public land trust receipts from sources that the office of Hawaiian affairs has a past or current claim was found to be $174,816,220 in fiscal year 2015-2016. Twenty per cent of this amount from fiscal year 2015-2016 is $34,963,244.

The legislature finds that it is now in the best interests of the office of Hawaiian affairs, its beneficiaries, the State, and all citizens of Hawaii to enact another interim legislative
measure regarding the office of Hawaiian affairs' constitutional pro rata share of the public land trust for the betterment of the conditions of native Hawaiians, in light of the information, data, and facts provided to the legislature by state agencies since the enactment of Act 178, Session Laws of Hawaii 2006, more than a decade ago.

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

(1) Establish $ as the office of Hawaiian affairs' annual share of the income and proceeds of the public land trust beginning in fiscal year 2019-2020. This amount does not include patient service fees generated from state hospitals on public land trust land and residential rental payments and fees generated from state housing facilities on public land trust land, to which the office of Hawaiian affairs has not disclaimed an interest therein;

(2) Transfer to the office of Hawaiian affairs a sum of $ to pay the office of Hawaiian affairs amounts received from the use of the public land trust that the legislature has determined were underpaid
between July 1, 2012, and June 30, 2019. This amount does not include patient service fees generated from state hospitals on public land trust land and residential rental payments and fees generated from state housing facilities on public land trust land, to which the office of Hawaiian affairs has not disclaimed an interest therein;

(3) Require the continued annual accounting of all receipts from lands described in section 5(f) of the Admission Act; and

(4) Establish a public land trust revenues committee to study and make recommendations every six years regarding the amount of the income and proceeds from the public land trust that the office of Hawaiian affairs shall receive annually.

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 2019-2020 shall be $ .

SECTION 3. Notwithstanding the provisions of chapter 10, Hawaii Revised Statutes, including section 10-13.5, Hawaii Revised Statutes, beginning in fiscal year 2019-2020, the departments of agriculture; accounting and general services; business, economic development, and tourism; defense; education; health; land and natural resources; and transportation (for its harbors and highways divisions), and any other department or agency that collects receipts from the lands within the public land trust, including but not limited to the University of Hawaii, shall determine and transfer to the office of Hawaiian affairs that portion of their receipts from the use, sale, lease, or other disposition of lands within the public land trust collected during each fiscal quarter, necessary to ensure that a total of $ of receipts 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 2019-2020, the departments shall have until thirty days after the close of the fiscal year to transfer a
total of $ from their receipts from the use, sale, or exchange of lands within the public land trust collected during fiscal year 2019-2020 to the office of Hawaiian affairs by the procedures set forth in 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. No later than twelve days after the close of each fiscal quarter, the director of finance or the director's designee shall determine the total amount of receipts transferred by any department or agency that collects receipts from the lands within the public land trust to the office of Hawaiian affairs during the immediately prior fiscal quarter.

If the total amount of receipts transferred to the office of Hawaiian affairs is less than $ in the immediately prior fiscal quarter, and unless the governor fixes the amounts each agency shall transfer to the office of Hawaiian affairs, the director of finance or the director's designee shall:

(1) Make up the difference between $ and the amount of receipts transferred in the immediately
prior fiscal quarter by transferring up to the entire amount on deposit in the carry-forward trust holding account established by the director of finance pursuant to executive order 06-06; or

(2) Make up the difference between $ and the amount of receipts transferred in the immediately prior fiscal quarter by establishing the additional amount of receipts that each agency must transfer to the office of Hawaiian affairs pursuant to section 3 of this Act.

If the total amount of receipts transferred to the office of Hawaiian affairs is more than $ in the immediately prior fiscal quarter, the director of finance shall notify the office of Hawaiian affairs and request that the office of Hawaiian affairs transfer the amount in excess of $ into the carry-forward trust holding account established by the director of finance pursuant to executive order 06-06. This subsection shall not apply to a transfer of receipts at the close of fiscal year 2019-2020.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of $, less the
funds in the carry-forward trust holding account established by
the director of finance pursuant to executive order 06-06, or so
much thereof as may be necessary for fiscal year 2019-2020 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, 2012 through June 30,
2019.

The sum appropriated shall be expended by the department of
budget and finance.

The director of finance shall transfer the funds in the
carry-forward trust holding account established by the director
of finance pursuant to executive order 06-06, to the office of
Hawaiian affairs.

SECTION 6. 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 department
or agency that collects receipts from the lands within the
public land trust, including the University of Hawaii, 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 and in ensuring that the accounting is accurate and inclusive of all receipts generated by the public land trust.

SECTION 7. (a) There is established within the department of land and natural resources a public land trust revenues committee consisting of:

(1) The governor, who shall serve as chairperson of the committee;

(2) The president of the senate;

(3) The speaker of the house of representatives; and

(4) The chairperson of the office of Hawaiian affairs.

(b) No later than one hundred eighty days prior to the convening of the regular session of 2024, and every six years thereafter, the public land trust revenues committee shall study and make recommendations to the governor and the legislature, including any proposed legislation, regarding 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.
(c) The public land trust revenues committee shall submit its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2024, and every six years thereafter.

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

SECTION 8. 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 9. Any funds transferred pursuant to this Act shall be deemed income and proceeds from the public land trust, just as if the funds had been paid out of the income and proceeds from the public land trust pursuant to article XII, section 6, of the state constitution.

SECTION 10. This Act shall take effect upon its approval; provided that section 5 shall take effect on July 1, 2019.
Report Title:
Public Land Trust; OHA; Pro Rata Share; DLNR; Appropriation

Description:
Establishes $ as the Office of Hawaiian Affairs’ pro rata share of the public land trust. Transfers $ less certain funds to the Office of Hawaiian Affairs for underpayment of the public land trust funds for 7/1/2012 to 6/30/2019. Requires the Director of Finance to make up the difference between a specified minimum amount and an amount of public land trust receipts from an agency to the Office of Hawaiian Affairs by transferring the difference into the carry-forward trust holding account. Requires the Department of Land and Natural Resources to provide an annual accounting of receipts from lands described in section 5(f) of the Admission Act. Establishes a committee to recommend the annual amount of the income and proceeds from the public land trust that the Office of Hawaiian Affairs shall receive annually. Appropriates funds. (SD1)

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