

JAN 21 2016

A BILL FOR AN ACT

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

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 include article XII, sections 4, 5,
3 and 6, which established the office of Hawaiian affairs and its
4 board of trustees.

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

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

14 **Section 5.** There is hereby established an Office of
15 Hawaiian Affairs. The Office of Hawaiian Affairs shall
16 hold title to all the real and personal property now or



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

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



1 and Hawaiians. The board shall have the power to exercise
2 control over the Office of Hawaiian Affairs through its
3 executive officer, the administrator of the Office of
4 Hawaiian Affairs, who shall be appointed by the board.
5 Act 273, Session Laws of Hawaii 1980, enacted section
6 10-13.5, Hawaii Revised Statutes, to implement the office of
7 Hawaiian affairs' pro rata share and provide that "[~~€~~]wenty per
8 cent of all funds derived from the public land trust . . . shall
9 be expended by the office of Hawaiian affairs . . . for the
10 purposes of this chapter."

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



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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
16 Hawaiian affairs specified that it was seeking its pro rata
17 share of revenues received by the State based on: (1) Waikiki
18 Duty Free receipts (in connection with the lease of ceded lands
19 at the Honolulu International Airport); (2) Hilo Hospital
20 patient services receipts; (3) receipts from the Hawaii housing
21 authority and the housing finance and development corporation



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1 for projects situated on ceded lands; and (4) interest earned on
2 withheld revenues. On October 24, 1996, the trial court granted
3 the office of Hawaiian affairs' motion for partial summary
4 judgment on each of its aforementioned claims. The State
5 appealed.

6 On September 12, 2001, the Hawaii supreme court ruled in
7 Office of Hawaiian Affairs v. State of Hawaii, 31 P.3d 901
8 (2001), ("OHA I") that Act 304 was effectively repealed by its
9 own terms, so that once again, it was necessary for the
10 legislature to clarify the office of Hawaiian affairs'
11 constitutional pro rata share and the statutory allocation of
12 twenty per cent of all funds to be managed and administered by
13 the office of Hawaiian affairs. In its decision, the Hawaii
14 supreme court affirmed Yamasaki, observing:

15 [T]he State's obligation to native Hawaiians is firmly
16 established in our constitution. How the State satisfies
17 that constitutional obligation requires policy decisions
18 that are primarily within the authority and expertise of
19 the legislative branch. As such, it is incumbent upon the
20 legislature to enact legislation that gives effect to the
21 right of native Hawaiians to benefit from the ceded lands



1 trust. See Haw. Const. art. XVI, section 7 . . . [W]e
2 trust that the legislature will re-examine the State's
3 constitutional obligation to native Hawaiians and the
4 purpose of HRS §10-13.5 and enact legislation that most
5 effectively and responsibly meets those obligations.

6 Office of Hawaiian Affairs v. State of Hawaii, 31 P.3d at
7 914 (citations omitted).

8 On April 28, 2006, the Hawaii supreme court ruled in Office
9 of Hawaiian Affairs v. State of Hawaii, 133 P.3d 767, 795 (2006)
10 ("OHA II"), that consistent with its ruling in OHA I, "it is
11 incumbent upon the legislature to enact legislation that gives
12 effect to the right of native Hawaiians to benefit from the
13 ceded lands trust."

14 Subsequently, Act 178, Session Laws of Hawaii 2006, which
15 took effect on June 7, 2006, stated:

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

19 While finding that "many complex issues require the
20 legislature's further attention and consideration in the wake of
21 the repeal of Act 304," Act 178 was enacted with a stated



1 purpose of providing "interim measures to ensure that an
2 adequate amount of income and proceeds is made available to the
3 office of Hawaiian affairs from the pro rata portion of the
4 public land trust, for the betterment of the conditions of
5 native Hawaiians." Act 178 carried out this purpose by
6 requiring:

7 [Until] further action is taken by the legislature for
8 this purpose, the income and proceeds from the pro rata
9 portion of the public land trust under article XII, section
10 6, of the state constitution for expenditure by the office
11 of Hawaiian affairs for the betterment of the conditions of
12 native Hawaiians for each fiscal year beginning with fiscal
13 year 2005-2006 shall be \$15,100,000.

14 Subsequently, addressing past-due amounts owed to the
15 office of Hawaiian affairs, Act 15, Session Laws of Hawaii 2012,
16 was enacted to implement an agreement between the State and the
17 office of Hawaiian affairs for the State to convey certain lands
18 in Kakaako Makai on Oahu valued at approximately \$200,000,000 to
19 allow the State to give effect to the right of native Hawaiians
20 to benefit from the public land trust and to fulfill its
21 constitutional obligations under article XII, sections 4 and 6



1 of the state constitution for the period between November 7,
2 1978, up to and including June 30, 2012, relating to the office
3 of Hawaiian affairs' portion of the income and proceeds from the
4 public land trust.

5 However, Act 15 did not address the State's constitutional
6 obligations under article XII, sections 4 and 6 relating to the
7 office of Hawaiian affairs' pro rata share of the income and
8 proceeds from the public land trust after June 30, 2012.

9 Act 178, Session Laws of 2006, remained in effect as a
10 purely interim legislative measure setting the office of
11 Hawaiian affairs' annual income and proceeds from the public
12 land trust for the betterment of the conditions of native
13 Hawaiians at \$15,100,000 beginning in fiscal year 2005-2006,
14 pending further legislative action on the subject.

15 The second purpose of Act 178 was the identification of
16 "revenue-generating public trust lands and the amounts derived
17 from those lands by requiring that the department of land and
18 natural resources provide an annual accounting to the
19 legislature." For fiscal years 2011-2012, 2012-2013, and 2013-
20 2014, the State reported to the legislature total gross public
21 land trust revenues in the amounts of \$150,939,203,



1 \$159,971,589, and \$163,322,176 respectively, or an average of
2 \$158,077,656 over the three fiscal years. Twenty per cent of
3 the average reported gross revenue for fiscal years 2011-12
4 through 2013-2014 is \$31,615,531.

5 The legislature finds that it is now in the best interests
6 of the office of Hawaiian affairs, its beneficiaries, the State,
7 and all citizens of Hawaii to enact another purely interim
8 legislative measure regarding the office of Hawaiian affairs'
9 constitutional pro rata share of the public land trust for the
10 betterment of the conditions of native Hawaiians, in light of
11 the information, data, and facts provided to the legislature by
12 state agencies over the last three fiscal years.

13 Accordingly, the purpose of this Act is to serve as a
14 purely interim measure to:

- 15 (1) Remove the annual and quarterly maximum amounts that
16 Act 178, Session Laws of Hawaii 2006 imposed on
17 payments of income and proceeds from the public land
18 trust to the office of Hawaiian affairs;
- 19 (2) Return to the office of Hawaiian affairs certain
20 moneys that the office of Hawaiian affairs transferred
21 to the State in response to claims by the department



1 of budget and finance that the moneys constituted
2 overpayments of public land trust receipts to the
3 office of Hawaiian affairs for fiscal years 2012-2013,
4 2013-2014, and 2014-2015; establish that any claimed
5 overpayments to the office of Hawaiian affairs for
6 fiscal years 2015-2016 and 2016-2017 are not required
7 to be returned to the State; and ensure that any
8 shortfalls in quarterly amounts paid to the office of
9 Hawaiian affairs under this Act are timely paid to the
10 office of Hawaiian affairs upon discovery of the
11 shortfall; and

- 12 (3) Establish a public land trust revenues negotiating
13 committee to make recommendations to the legislature
14 for resolving the matter of the amount of the income
15 and proceeds from the public land trust that the
16 office of Hawaiian affairs shall receive annually.

17 SECTION 2. Notwithstanding the provisions of Act 178,
18 Session Laws of Hawaii 2006; chapter 10, Hawaii Revised
19 Statutes, including section 10-13.5, Hawaii Revised Statutes;
20 and the requirements of executive order 06-06; beginning in
21 fiscal year 2016-2017:



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1 (1) All departments and agencies that collect receipts for
2 the use, sale, lease, or other disposition of the
3 public land trust shall each fiscal quarter transfer
4 to the office of Hawaiian affairs twenty per cent of
5 each receipt derived from the use, sale, lease, or
6 other disposition of the public land trust; provided
7 that in no event shall the total amount of receipts
8 transferred to the office of Hawaiian affairs for any
9 fiscal quarter be less than \$3,775,000; and

10 (2) If at any time the department of finance, the office
11 of Hawaiian affairs, or any other state agency
12 discovers that the total amount of receipts
13 transferred to the office of Hawaiian affairs for any
14 fiscal quarter fell short of the amount required by
15 this Act, the director of finance or the director's
16 designee shall ensure that within ten days of the
17 discovery of the shortfall, an amount equal to the
18 shortfall be transferred to the office of Hawaiian
19 affairs.

20 SECTION 3. Notwithstanding the provisions of Act 178,
21 Session Laws of Hawaii 2006; chapter 10, Hawaii Revised



1 Statutes, including section 10-13.5, Hawaii Revised Statutes;
2 and the requirements of executive order 06-06; the department of
3 budget and finance shall return to the office of Hawaiian
4 affairs the moneys in the carry-forward trust holding account
5 established pursuant to executive order 06-06 to which the
6 office of Hawaiian affairs transferred moneys in response to
7 claims by the department of budget and finance that the moneys
8 constituted overpayments of public-land-trust receipts to the
9 office of Hawaiian affairs for fiscal year 2012-2013, fiscal
10 year 2013-2014, and fiscal year 2014-2015, plus any overpayment
11 moneys the office of Hawaiian affairs transfers to the carry-
12 forward trust holding account for fiscal year 2015-2016 or
13 fiscal year 2016-2017.

14 SECTION 4. There is established a public land trust
15 revenues negotiating committee consisting of the president of
16 the senate or the senate president's designee, the speaker of
17 the house of representatives or the house speaker's designee,
18 the governor or the governor's designee, and the chairperson of
19 the office of Hawaiian affairs or the chairperson's designee.
20 The committee shall not be subject to the requirements of
21 chapter 92, Hawaii Revised Statutes.



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Report Title:

OHA Package; Public Land Trust; Transfer of Moneys; Public Land Trust Revenues Negotiating Committee

Description:

Requires agencies that collect receipts for any disposition of the public land trust shall each fiscal quarter transfer to the office of Hawaiian affairs twenty per cent of each receipt from the disposition. Returns to the office of Hawaiian affairs certain moneys previously claimed as public land trust overpayments to the office. Establishes a public land trust revenues negotiating committee.

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

