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

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



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

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



1           aside by state, federal or private sources and  
2           transferred to the board for native Hawaiians and  
3           Hawaiians. The board shall have the power to exercise  
4           control over the Office of Hawaiian Affairs through  
5           its executive officer, the administrator of the Office  
6           of Hawaiian Affairs, who shall be appointed by the  
7           board.

8           Act 273, Session Laws of Hawaii 1980, enacted section  
9           10-13.5, Hawaii Revised Statutes, to implement the office of  
10          Hawaiian affairs' pro rata share and provide that "[t]wenty per  
11          cent of all funds derived from the public land trust . . . shall  
12          be expended by the office of Hawaiian affairs . . . for the  
13          purposes of this chapter."

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



1 Revised Statutes, because the issue of how the twenty per cent  
2 apportionment is formulated was a political question for the  
3 legislature to determine.

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

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



- 1 (1) Waikiki Duty Free receipts (in connection with the  
2 lease of ceded lands at the Honolulu international  
3 airport);
- 4 (2) Hilo hospital patient services receipts;
- 5 (3) Receipts from the Hawaii housing authority and the  
6 housing finance and development corporation for  
7 projects situated on ceded lands; and
- 8 (4) Interest earned on withheld revenues.

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

- 12 (1) The State is required to pay the office of Hawaiian  
13 affairs its pro rata portion of rents or fees  
14 collected from the Duty Free concessions at the  
15 State's airports;
- 16 (2) The State's activities of providing affordable housing  
17 are proprietary in nature and subject to the office of  
18 Hawaiian affairs' pro rata share;
- 19 (3) Patient service fees, cafeteria sales, and rental  
20 income at Hilo hospital "is clearly a proprietary  
21 rather than sovereign exercise of power" which does



1 not shield the Hilo hospital's income from being  
2 characterized as revenue subject to the office of  
3 Hawaiian affairs' pro rata share; and

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

8 The State appealed.

9 On October 27, 1997, the United States Congress enacted the  
10 Department of Transportation and Related Agencies Appropriations  
11 Act, 1998, Public Law 105-66, which provided that moneys paid  
12 for claims related to ceded lands and diverted from airport  
13 revenues were not subject to repayment. Public Law 105-66  
14 provided further that nothing in the Act was to affect the  
15 obligations of the State of Hawaii to Native Hawaiians in  
16 connection with ceded lands, except to make clear that airport  
17 revenues may not be used to satisfy those obligations directly.  
18 The office of Hawaiian affairs had previously been paid  
19 \$28,200,000 from airport revenue funds.

20 On September 12, 2001, the Hawaii supreme court ruled in  
21 *Office of Hawaiian Affairs v. State of Hawai'i*, 96 Haw. 388, 31



1 P.3d 901 (2001), ("OHA I") that Act 304, Session Laws of Hawaii  
2 1990, was effectively repealed by its own terms, so that once  
3 again, it was necessary for the legislature to clarify the  
4 office of Hawaiian affairs' constitutional pro rata share and  
5 the statutory allocation of twenty per cent of all funds to be  
6 managed and administered by the office of Hawaiian affairs. In  
7 its decision, the Hawaii supreme court affirmed *Yamasaki*,  
8 observing:

9 [T]he State's obligation to native Hawaiians is  
10 firmly established in our constitution. How the State  
11 satisfies that constitutional obligation requires  
12 policy decisions that are primarily within the  
13 authority and expertise of the legislative branch. As  
14 such, it is incumbent upon the legislature to enact  
15 legislation that gives effect to the right of native  
16 Hawaiians to benefit from the ceded lands trust. See  
17 Haw. Const. art. XVI, section 7. . . . [W]e trust  
18 that the legislature will re-examine the State's  
19 constitutional obligation to native Hawaiians and the  
20 purpose of HRS §10-13.5 and enact legislation that



1 most effectively and responsibly meets those  
2 obligations.

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

4 On April 28, 2006, the Hawaii supreme court ruled in *Office*  
5 *of Hawaiian Affairs v. State of Hawai'i*, 110 Haw. 338, 366, 133  
6 P.3d 767, 795 (2006) ("OHA II"), that consistent with its ruling  
7 in OHA I, "it is incumbent upon the legislature to enact  
8 legislation that gives effect to the right of native Hawaiians  
9 to benefit from the ceded lands trust."

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

15 While the legislature found that "many complex issues  
16 require the legislature's further attention and consideration in  
17 the wake of the repeal of Act 304," Act 178 was enacted with a  
18 stated purpose of providing "interim measures to ensure that an  
19 adequate amount of income and proceeds is made available to the  
20 office of Hawaiian affairs from the pro rata portion of the  
21 public land trust, for the betterment of the conditions of





1 native Hawaiians." Act 178 carried out this interim purpose by  
2 requiring "the income and proceeds from the pro rata portion of  
3 the public land trust under article XII, section 6, of the state  
4 constitution for expenditure by the office of Hawaiian affairs  
5 for the betterment of the conditions of native Hawaiians for  
6 each fiscal year beginning with fiscal year 2005-2006 shall be  
7 \$15,100,000." Specifically, Act 178 noted this interim amount  
8 was "[until] further action is taken by the legislature for this  
9 purpose." This \$15,100,000 was based, in part, on certain  
10 ancillary receipts from the state airports.

11 Subsequently, addressing past-due amounts owed to the  
12 office of Hawaiian affairs, Act 15, Session Laws of Hawaii 2012  
13 (Act 15), was enacted to implement an agreement between the  
14 State and the office of Hawaiian affairs for the State to convey  
15 certain lands in Kakaako makai on Oahu valued at approximately  
16 \$200,000,000 to allow the State to give effect to the right of  
17 native Hawaiians to benefit from the public land trust and to  
18 fulfill its constitutional obligations under article XII,  
19 sections 4 and 6 of the state constitution for the period  
20 between November 7, 1978, up to and including June 30, 2012,



1 relating to the office of Hawaiian affairs' portion of the  
2 income and proceeds from the public land trust.

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

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

14       The legislature also finds that more than a decade has  
15 passed since the enactment of Act 178, Session Laws of Hawaii  
16 2006, and that it is now appropriate for the State and the  
17 office of Hawaiian affairs to re-examine the annual interim  
18 figure of \$15,100,000 and to issue a written report to the  
19 legislature recommending the annual amount of income and  
20 proceeds from the public land trust that the office of Hawaiian  
21 affairs shall receive annually, including any additional amounts



1 or the transfer of lands to the office of Hawaiian affairs that  
2 may be warranted under the circumstances.

3 The purpose of this Act is to establish a public land trust  
4 revenues committee whose function shall be to study and make  
5 written recommendations on the proposed annual amount of interim  
6 income and proceeds from the public land trust that the office  
7 of Hawaiian affairs shall receive annually, including any  
8 proposed recommendations for additional amounts or the transfer  
9 to the office of Hawaiian affairs of lands that may be warranted  
10 under the circumstances.

11 SECTION 2. Section 26-8, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 **"§26-8 Department of budget and finance.** (a) The  
14 department of budget and finance shall be headed by a single  
15 executive to be known as the director of finance.

16 (b) The department shall:

- 17 (1) Undertake the preparation and execution of the  
18 executive budget of the state government;
- 19 (2) Conduct a systematic and continuous review of the  
20 finances, organization, and methods of each department  
21 of the State to assist each department in achieving



1           the most effective expenditure of all public funds and  
2           to determine that such expenditures are in accordance  
3           with the budget laws and controls in force;

4           (3) Have custody of state funds and be responsible for the  
5           safekeeping, management, investment, and disbursement  
6           thereof; and

7           (4) Administer state debts.

8           (c) The functions and authority heretofore exercised by  
9           the bureau of the budget (except for insurance management,  
10          surplus property management, and central purchasing transferred  
11          to the department of accounting and general services) and the  
12          funds custody, cash management, debt management, and  
13          administering of veterans loan functions of the treasurer as  
14          heretofore constituted are transferred to the department of  
15          budget and finance established by this chapter.

16          (d) The employees' retirement system as constituted by  
17          chapter 88 is placed within the department of budget and finance  
18          for administrative purposes. The functions, duties, and powers,  
19          subject to the administrative control of the director of  
20          finance, and the composition of the board of trustees of the



1 employees' retirement system shall be as heretofore provided by  
2 law.

3 (e) There is established within the department of budget  
4 and finance a public land trust revenues committee consisting  
5 of:

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

8 (2) The president of the senate or the president's  
9 designee;

10 (3) The speaker of the house of representatives or the  
11 speaker's designee; and

12 (4) The chairperson of the board of trustees of the office  
13 of Hawaiian affairs or the chairperson's designee.

14 (f) The public land trust revenues committee shall study  
15 and develop recommendations on the proposed annual amount of  
16 interim income and proceeds from the public land trust that the  
17 office of Hawaiian affairs shall receive annually.

18 (g) No later than sixty days prior to the convening of  
19 each regular session, the public land trust revenues committee  
20 shall submit a report to the legislature containing its  
21 findings, recommendations, and proposed legislation, if any,



1 regarding the proposed annual amount of interim income and  
2 proceeds from the public land trust that the office of Hawaiian  
3 affairs shall receive annually, including, if recommended, any  
4 additional income or proceeds and the transfer of lands to the  
5 office of Hawaiian affairs warranted under the circumstances."

6 SECTION 3. New statutory material is underscored.

7 SECTION 4. This Act shall take effect on July 1, 2050.



**Report Title:**

OHA Package; Public Land Trust; Pro Rata Share; BUF;  
Appropriation

**Description:**

Establishes a committee within the Department of Budget and Finance to recommend the annual amount of the income and proceeds from the public land trust that the Office of Hawaiian Affairs shall receive annually. 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.*

