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# A BILL FOR AN ACT

RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS.

**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5 P.3d 901 (2001), that Act 304 was effectively repealed by its  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 State  
13 satisfies that constitutional obligation requires  
14 policy decisions that are primarily within the  
15 authority and expertise of the legislative branch. As  
16 such, it is incumbent upon the legislature to enact  
17 legislation that gives effect to the right of native  
18 Hawaiians to benefit from the ceded lands trust. See  
19 Haw. Const. art. XVI, § 7. Although this court cannot  
20 and will not judicially legislate a means to give  
21 effect to the constitutional rights of native  
22 Hawaiians, we will not hesitate to declare



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

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

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

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



1           most effectively and responsibly meets those  
2           obligations.

3    *Office of Hawaiian Affairs v. State of Hawai'i*, 96 Haw. at 401,  
4    31 P.3d at 914 (Citations omitted) (Emphasis in original).

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

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

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



- 1        1.    Provide interim measures to ensure that an adequate  
2            amount of income and proceeds is made available to the  
3            office of Hawaiian affairs from the pro rata portion  
4            of the public land trust, for the betterment of the  
5            conditions of native Hawaiians; and
- 6        2.    Identify revenue-generating public trust lands and the  
7            amounts derived from those lands by requiring that the  
8            department of land and natural resources provide an  
9            annual accounting to the legislature.

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

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



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

17 SECTION 4. There is appropriated out of the general  
18 revenues of the State of Hawaii the sum of \$17,500,000 or so  
19 much thereof as may be necessary for fiscal year 2005-2006 to  
20 pay to the office of Hawaiian affairs amounts received from the  
21 use of lands in the public land trust that the legislature has  
22 determined were underpaid between July 1, 2001, through June 30,



1 2005. The sum appropriated shall be expended by the department  
2 of budget and finance.

3 SECTION 5. Not later than January 1 of each year, the  
4 department of land and natural resources, with the cooperation  
5 of the department of budget and finance and any other state  
6 department or agency that uses or manages public lands, shall  
7 provide an accounting of all receipts from lands described in  
8 section 5(f) of the Admission Act for the prior fiscal year.

9 With respect to each receipt, the department of land and natural  
10 resources shall identify:

- 11 (1) The total gross amount;
- 12 (2) The amount transferred to the office of Hawaiian  
13 affairs;
- 14 (3) The amount retained by the State;
- 15 (4) The account or fund in which the amount specified in  
16 paragraph (3) was transferred or deposited;
- 17 (5) The parcel of section 5(f) land that generated the  
18 receipt, whether by tax map key number, department of  
19 land and natural resources inventory number, or other  
20 recognizable description; and
- 21 (6) The state department or agency that received the total  
22 gross amount identified in paragraph (1).



1 The accounting shall also indicate whether any parcel of land  
2 described in section 5(f) was sold or exchanged in the prior  
3 fiscal year, and the amount of consideration that the State  
4 received for the respective parcels.

5 SECTION 6. There is appropriated out of the general  
6 revenues of the State of Hawaii the sum of \$250,000 or so much  
7 thereof as may be necessary for fiscal year 2005-2006 to carry  
8 out the purpose of section 5.

9 The sum appropriated shall be expended by the department of  
10 land and natural resources.

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

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





**Report Title:**

OHA; Interim Revenue

**Description:**

Establishes the amount of interim revenue to be expended by OHA each fiscal year beginning with fiscal year 2005-2006, to better the conditions of native Hawaiians at \$15,100,000. Appropriates \$17,500,000 as the amount of revenues owed to OHA for the underpayment of OHA's pro rata portion of the public land trust between July 1, 2001 and June 30, 2005. Requires DLNR to provide an accounting of revenues from the public land trust. (HB2204 HD1)

