

---

---

## A BILL FOR AN ACT

RELATING TO THE PUBLIC LAND TRUST.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that in Trustees of the  
2 Office of Hawaiian Affairs v. Yamasaki, 69 Haw. 154, 737 P.2d  
3 446 (1987), the Hawaii supreme court concluded that the laws the  
4 legislature had enacted to effectuate article XII, sections 4,  
5 5, and 6 of the state constitution, and to provide the office of  
6 Hawaiian affairs with a pro rata share of the revenues derived  
7 from the public land trust, were insufficient to allow the court  
8 to determine whether the office of Hawaiian affairs was owed  
9 additional moneys from the disposition of ceded lands.

10           In response to the Yamasaki decision, the legislature  
11 enacted Act 304, Session Laws of Hawaii 1990 (Act 304), to  
12 clarify the extent and scope of the State's constitutional  
13 obligation to provide a portion of the revenues derived from the  
14 public land trust to the office of Hawaiian affairs.

15           On September 12, 2001, the Hawaii supreme court ruled in  
16 Office of Hawaiian Affairs vs. State of Hawai'i, 96 Haw. 388, 31  
17 P.3d 901 (2001), that Act 304, Session Laws of Hawaii 1990, was  
18 effectively repealed by its own terms, so that once again, it



1 was necessary for the legislature to specify what portion of  
2 which receipts, from which lands the office of Hawaiian affairs  
3 was to receive under the state constitution. In its decision,  
4 the supreme court observed:

5 [T]he State's obligation to native Hawaiians is  
6 firmly established in our constitution. How the State  
7 satisfies that constitutional obligation requires  
8 policy decisions that are primarily within the  
9 authority and expertise of the legislative branch. As  
10 such, it is incumbent upon the legislature to enact  
11 legislation that gives effect to the right of native  
12 Hawaiians to benefit from the ceded lands trust. See  
13 Haw. Const. art. XVI, § 7. Although this court cannot  
14 and will not judicially legislate a means to give  
15 effect to the constitutional rights of native  
16 Hawaiians, we will not hesitate to declare  
17 unconstitutional those enactments that do not comport  
18 with the mandates of the constitution. At this  
19 juncture, we believe it fitting to quote then-state  
20 Senator Neil Abercrombie's prophetic statement to the  
21 legislature at the time HRS § 10-13.5 was first  
22 enacted:

1           I fear that for those who are interested in  
2           seeing [OHA] move forward that they have won a  
3           Pyrrhic victory, that this is merely a skirmish  
4           in a very large battle.

5           . . . [A]lthough I would be delighted to say  
6           otherwise, I regret to say that I expect that the  
7           moment this passes into statute, there will be a  
8           suit and that the business of the Office of  
9           Hawaiian Affairs is, as a result, going to be  
10          tied up in court for God-knows how many years.

11          (Cites omitted.)

12          Now, more than twenty years later, as we continue  
13          to struggle with giving effect to that enactment, we  
14          trust that the legislature will re-examine the State's  
15          constitutional obligation to native Hawaiians and the  
16          purpose of HRS § 10-13.5 and enact legislation that  
17          most effectively and responsibly meets those  
18          obligations. (Office of Hawaiian Affairs vs. State of  
19          Hawai'i, 96 Haw. at 401, 31 P.3d at 914.)

20          The legislature acknowledges that the State's obligation to  
21          the office of Hawaiian affairs is firmly established in the  
22          state constitution. While many complex issues require the



1 legislature's further attention and consideration in the wake of  
2 Act 304's repeal, the legislature finds that immediate action  
3 should be taken to clearly designate the pro rata share of  
4 revenues derived from the public land trust that the office of  
5 Hawaiian affairs is to receive annually.

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

14 SECTION 3. Notwithstanding the provisions of chapter 10,  
15 Hawaii Revised Statutes, or the instructions in Executive Order  
16 No. 03-03, beginning in fiscal year 2005-2006, the departments  
17 of agriculture, accounting and general services, business,  
18 economic development and tourism, education, land and natural  
19 resources, and transportation (for its harbors division), and  
20 other departments as may be necessary, shall determine and  
21 transfer to the office of Hawaiian affairs that portion of their  
22 receipts from the use of public land trust lands collected



1 during each fiscal quarter, necessary to ensure that a total of  
2 \$3,775,000 of public land-trust generated receipts is  
3 transferred to the office of Hawaiian affairs, within thirty  
4 days of the close of each fiscal quarter; provided that for  
5 fiscal year 2005-2006, the departments shall have until thirty  
6 days after the close of the fiscal year to transfer a total of  
7 \$15,100,000 from their receipts from the use of public land  
8 trust lands collected during fiscal year 2005-2006, to the  
9 office of Hawaiian affairs whether by the procedures set out in  
10 Executive Order No. 03-03 or this Act.

11 SECTION 4. There is appropriated out of the general  
12 revenues of the State of Hawaii the sum of \$17,500,000, or so  
13 much thereof as may be necessary for fiscal year 2005-2006, to  
14 pay the office of Hawaiian affairs receipts from the use of  
15 lands in the public land trust that should have been transferred  
16 but previously were not transferred to the office between July  
17 1, 2001 through June 30, 2005.

18 SECTION 5. Nothing in this Act shall resolve or settle, or  
19 be deemed to acknowledge the existence of, the claims of native  
20 Hawaiians to the income and proceeds of a pro rata portion of  
21 the public land trust under article XII, section 6 of the state  
22 constitution.



# H.B. NO. 2853

1 SECTION 6. This Act shall take effect upon its approval.

2

INTRODUCED BY: Scott K. Brown  
Major R. F. Fink  
Mele Carroll

JAN 25 2006

HB 2853

**Report Title:**

Office of Hawaiian Affairs; Public Land Trust Revenues

**Description:**

Appropriates funds to satisfy the State's obligation to pay the office of Hawaiian affairs its pro rata share of revenues derived from the public land trust.

