
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. In the *Trustees of the Office of Hawaiian*
2 *Affairs v. Yamasaki*, 69 Haw. 154, 737 P.2d 446 (1987), the
3 Hawaii supreme court concluded that the issue of what
4 constitutes the office of Hawaiian affairs' pro rata portion of
5 all the revenues derived from the public land trust pursuant to
6 article XII, section 6 of the Hawaii Constitution, is a
7 political question for the legislature to determine. In
8 *Yamasaki*, the office of Hawaiian affairs sought a pro rata
9 portion of revenues arising out of the illegal mining of sand on
10 Molokai and sales, leases, and other disposition of lands
11 surrounding state harbors, and lands on Sand Island, the
12 Honolulu International Airport, and the Aloha Tower complex.
13 The supreme court declined to rule upon the substance of the
14 case because it presented issues "of a peculiarly political
15 nature and therefore not meet for judicial determination." *Id.*,
16 at 175, 737 P.2d at 459.

17 In response to the *Yamasaki* decision, the legislature
18 enacted Act 304, Session Laws of Hawaii 1990 (Act 304), to



1 clarify the extent and scope of the State's constitutional
2 obligation to provide a portion of the revenues derived from the
3 public land trust to the office of Hawaiian affairs.

4 On September 12, 2001, the Hawaii supreme court ruled in
5 *Office of Hawaiian Affairs vs. State of Hawaii*, 96 Haw. 388, 31
6 P.3d 901 (2001), that Act 304 was effectively repealed by its
7 own terms, so that once again, it was necessary for the
8 legislature to specify what portion of which receipts, from
9 which lands the office of Hawaiian affairs was to receive a
10 portion of the revenues under the state constitution. In its
11 decision, the supreme court affirmed *Yamasaki*, observing:

12 [T]he State's obligation to native Hawaiians is firmly
13 established in our constitution. *How* the State satisfies
14 that constitutional obligation requires policy decisions
15 that are primarily within the authority and expertise of
16 the legislative branch. As such, it is incumbent upon the
17 legislature to enact legislation that gives effect to the
18 right of native Hawaiians to benefit from the ceded lands
19 trust. See Haw. Const. art. XVI, § 7. Although this court
20 cannot and will not judicially legislate a means to give
21 effect to the constitutional rights of native Hawaiians, we
22 will not hesitate to declare unconstitutional those



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

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

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

16 Now, more than twenty years later, as we continue to
17 struggle with giving effect to that enactment, we 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 most
21 effectively and responsibly meets those obligations.



1 *Office of Hawaiian Affairs vs. State of Hawai'i*, 96 Haw. at 401,
2 31 P.3d at 914 (Citations omitted) (Emphasis in original).

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

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

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

21 (1) Provide interim measures to ensure that an adequate
22 amount of income and proceeds is made available to the



1 office of Hawaiian affairs from the pro rata portion
2 of the public land trust, for the betterment of the
3 conditions of native Hawaiians; and

4 (2) Identify revenue-generating public trust land and the
5 amounts derived from those lands by requiring that the
6 department of land and natural resources provide an
7 annual accounting to the legislature.

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

17 SECTION 3. Notwithstanding the provisions of chapter 10,
18 Hawaii Revised Statutes, or the requirements in Executive Order
19 No. 03-03, beginning in fiscal year 2005-2006, the departments
20 of agriculture, accounting and general services, business,
21 economic development, and tourism, education, land and natural
22 resources, and transportation (for its harbors division), and



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

15 The governor is expressly authorized to fix by executive
16 order the amounts each agency shall transfer to the office of
17 Hawaiian affairs in each quarter to implement the provisions of
18 this section.

19 SECTION 4. There is appropriated out of the general
20 revenues of the State of Hawaii the sum of \$17,500,000 or so
21 much thereof as may be necessary for fiscal year 2005-2006 to
22 pay the office of Hawaiian affairs amounts received from the use



1 of lands in the public land trust that the legislature has
2 determined were underpaid between July 1, 2001, through June 30,
3 2005.

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

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

- 14 (1) The total gross amount;
- 15 (2) The amount transferred to the office of Hawaiian
16 affairs;
- 17 (3) The amount retained by the State;
- 18 (4) The account or fund in which the amount specified in
19 paragraph (3) was transferred or deposited;
- 20 (5) The parcel of section 5(f) land that generated the
21 receipt, whether by tax map key number, department of



1 land and natural resources inventory number, or other
2 recognizable description; and

3 (6) The state department or agency that received the total
4 gross amount identified in paragraph (1).

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

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

13 The sum appropriated shall be expended by the department of
14 land and natural resources.

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

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



SB 2948 SD 1

HD1

Report Title:

Office of Hawaiian Affairs; Public Land Trust Revenues

Description:

Establishes the amount of interim revenues 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 between July 1, 2001 and June 30, 2005. Requires DLNR to provide an accounting of revenues from the public land trust and appropriates \$250,000 for that purpose. (SB2948 HD1)

