

PROPOSED

HOUSE OF REPRESENTATIVES
TWENTY-THIRD LEGISLATURE, 2006
STATE OF HAWAII

H.B. NO. 2204
H.D. 2
S.D. 1

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



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5 P.3d 901 (2001), that Act 304 was effectively repealed by its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

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

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

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

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



1 enact legislation that most effectively and
 2 responsibly meets those obligations. (*Office of*
 3 *Hawaiian Affairs v. State of Hawai'i*, 96 Haw. at 401,
 4 31 P.3d at 914 (citations omitted; emphasis in
 5 original)).

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

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

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

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

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

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



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

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



1 SECTION 4. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$17,500,000 or so
3 much thereof as may be necessary for fiscal year 2005-2006 to
4 pay to the office of Hawaiian affairs amounts received from the
5 use of lands in the public land trust that the legislature has
6 determined were underpaid between July 1, 2001, through June 30,
7 2005. The sum appropriated shall be expended by the department
8 of budget and finance.

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

- 17 (1) The total gross amount;
- 18 (2) The amount transferred to the office of Hawaiian
19 affairs;
- 20 (3) The amount retained by the State;
- 21 (4) The account or fund in which the amount specified in
22 paragraph (3) was transferred or deposited;



1 (5) The parcel of land subject to section 5(f) of the
 2 Admission Act that generated the receipt, whether by
 3 tax map key number, department of land and natural
 4 resources inventory number, or other recognizable
 5 description; and

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

8 The accounting shall also indicate whether any parcel of land
 9 described in section 5(f) of the Admission Act was sold or
 10 exchanged in the prior fiscal year and, if so, the amount of
 11 consideration that the State received for the respective
 12 parcels.

13 The office of Hawaiian affairs shall be consulted by the
 14 department of land and natural resources in determining the
 15 method in which the accounting shall be conducted.

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

20 The sum appropriated shall be expended by the department of
 21 land and natural resources. Should any additional funds be
 22 necessary to carry out the purpose of section 5, the office of

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1 Hawaiian affairs shall provide the additional funds up to
2 \$250,000.

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

8 SECTION 8. This Act shall take effect on June 1, 2006.

PROPOSEL

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. (SD1)

