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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 Constitution of the State of Hawaii, 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 v. State of Hawai'i*, 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6 P.3d 901 (2001), that Act 304 was effectively repealed by its  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  
13 firmly established in our constitution. *How* the  
14 State satisfies that constitutional obligation  
15 requires policy decisions that are primarily within  
16 the authority and expertise of the legislative  
17 branch. As such, it is incumbent upon the  
18 legislature to enact legislation that gives effect  
19 to the right of native Hawaiians to benefit from the  
20 ceded lands trust. See Haw. Const. art. XVI, §7.  
21 Although this court cannot and will not judicially  
22 legislate a means to give effect to the

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

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

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

19 Now, more than twenty years later, as we  
20 continue to struggle with giving effect to that  
21 enactment, we trust that the legislature will re-  
22 examine the State's constitutional obligation to



1 native Hawaiians and the purpose of HRS § 10-13.5  
2 and enact legislation that most effectively and  
3 responsibly meets those obligations. (*Office of*  
4 *Hawaiian Affairs v. State of Hawai'i*, 96 Haw. at  
5 401, 31 P.3d at 914 (citations omitted; emphasis in  
6 original)).

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

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



1 agencies. A single state department should be responsible for  
2 compiling and providing an accounting of such information.

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

4 (1) Provide interim measures to ensure that an adequate  
5 amount of income and proceeds is made available to the  
6 office of Hawaiian affairs from the pro rata portion  
7 of the public land trust, for the betterment of the  
8 conditions of native Hawaiians; and

9 (2) Identify revenue-generating public trust lands and the  
10 amounts derived from those lands by requiring that the  
11 department of land and natural resources provide an  
12 annual accounting to the legislature.

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



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

21 The governor is expressly authorized to fix the amounts  
22 each agency shall transfer to the office of Hawaiian affairs in



1 each quarter by executive order to implement the provisions of  
2 this section.

3 SECTION 4. There is appropriated out of the general  
4 revenues of the State of Hawaii the sum of \$17,500,000, or so  
5 much thereof as may be necessary for fiscal year 2005-2006, to  
6 pay to the office of Hawaiian affairs amounts received from the  
7 use of lands in the public land trust that the legislature has  
8 determined were underpaid between July 1, 2001, through June 30,  
9 2005. The sum appropriated shall be expended by the department  
10 of budget and finance.

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

- 19 (1) The total gross amount;
- 20 (2) The amount transferred to the office of Hawaiian  
21 affairs;
- 22 (3) The amount retained by the State;



1 (4) The account or fund in which the amount specified in  
2 paragraph (3) was transferred or deposited;

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

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

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

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

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





1           The sum appropriated shall be expended by the department of  
2 land and natural resources. Should any additional funds be  
3 necessary to carry out the purpose of section 5, the office of  
4 Hawaiian affairs shall provide the additional funds up to  
5 \$250,000.

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

11           SECTION 8. This Act shall take effect on June 1, 2050.



**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.  
(SD2)

