
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 Hawaii, 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18 effectively repealed by its own terms, so that once again, it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
2 interested in seeing [OHA] move forward that
3 they have won a Pyrrhic victory, that this
4 is merely a skirmish in a very large battle.

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

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

21 The legislature acknowledges that the State's obligation to
22 the office of Hawaiian affairs is firmly established in the



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

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

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



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

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

19 SECTION 5. Nothing in this Act shall resolve or settle, or
 20 be deemed to acknowledge the existence of, the claims of native
 21 Hawaiians to the income and proceeds of a pro rata portion of

1 the public land trust under article XII, section 6 of the state
2 constitution.

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

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. (SD1)

