

Honolulu, Hawaii
Feb 16, 2006

RE: H.B. No. 2204
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committee on Hawaiian Affairs, to which was referred H.B. No. 2204 entitled:

"A BILL FOR AN ACT RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS,"

begs leave to report as follows:

The purpose of this bill is to further the Legislature's attempt to determine the pro rata portion of the public land trust to be transferred to, managed, and administered by the Office of Hawaiian Affairs (OHA) for the betterment of the conditions of native Hawaiians pursuant to Article XII, Section 6 of the Hawaii Constitution. Specifically, this bill establishes and appropriates an unspecified sum of interim revenue to be expended by OHA each fiscal year for the betterment of the conditions of native Hawaiians.

Alu Like and Papa Ola Lokahi testified in support of this measure. OHA, the Department of the Attorney General (AG), Native Hawaiian Legal Corporation, and Native Hawaiian Hospitality Association supported a yet to be determined settlement between the State and OHA on the amount OHA is entitled to as its pro rata portion of revenues from the public land trust. A concerned individual testified in opposition.

In *Trustees of the Office of Hawaiian Affairs v. Yamasaki*, 69 Haw. 154, 737 P.2d 446 (1987), the Hawaii Supreme Court determined that the issue of what constitutes OHA's pro rata portion of all



the funds derived from the public land trust is a political question. The Supreme Court stated that it could not find any "judicially discoverable and manageable standards" that could be used to resolve the issue. *Id.*, at 175, 737 P.2d at 459. Accordingly, the Supreme Court declined to rule upon the substance of the case, holding that the issues presented were "of a peculiarly political nature and therefore not meet for judicial determination." *Id.*

Fourteen years later, the Hawaii Supreme Court reaffirmed its holding in *Yamasaki in Office of Hawaiian Affairs vs. State of Hawai'i*, 96 Haw. 388, 31 P.3d 901 (2001). In that case, the Supreme Court stated in pertinent part:

[T]he State's obligation to native Hawaiians is firmly established in our constitution. How the State satisfies that constitutional obligation requires policy decisions that are primarily within the authority and expertise of the legislative branch. As such, it is incumbent upon the legislature to enact legislation that gives effect to the right of native Hawaiians to benefit from the ceded lands trust.

Id. at 401, 31 P.3d at 914 (emphasis in original). In making this statement, the Supreme Court relied upon Article XVI, Section 7 of the Hawaii Constitution, which reads:

Any trust provisions which the Congress shall impose, upon the admission of this State, in respect of the lands patented to the State by the United States or the proceeds and income therefrom, shall be complied with by appropriate legislation. Such legislation shall not diminish or limit the benefits of native Hawaiians under Section 4 of Article XII.

As stated earlier, the purpose of this measure is to further the Legislature's constitutional obligation to define OHA's pro rata portion of funds derived from the public land trust. As a preliminary matter, it should be noted that in recent years, the issue of whether the completion of an inventory of lands comprising the public land trust is necessary to determine OHA's pro rata portion has been debated. It is the understanding of



your Committee, however, that no inventory is necessary, based on the testimonies of representatives from OHA and AG on this measure.

Your Committee has amended this bill by:

- (1) Inserting a findings and purpose section;
- (2) Specifying that the income and proceeds from the pro rata portion of the public land trust for expenditure by the OHA for each fiscal year beginning with fiscal year 2005-2006 shall be \$15,100,000;
- (3) Appropriating \$17,500,000 for fiscal year 2005-2006, to pay OHA receipts from the use of lands within the public land trust that should have been transferred, but were not transferred previously to OHA between July 1, 2001, and June 30, 2005;
- (4) Requiring the Department of Land and Natural Resources to account for receipts generated from the public land trust, and appropriating \$250,000 for that purpose;
- (5) Specifying that this measure will not affect the claims of native Hawaiians to the income and proceeds of a pro rata portion of the public land trust; and
- (6) Making technical, nonsubstantive amendments for style, clarity, and consistency.

Section 2 specifies that beginning in fiscal year 2005-2006, and until further legislative action is taken, the income and proceeds from the pro rata portion of the public land trust for expenditure by OHA pursuant to Article XII, Section 6 of the Hawaii Constitution shall be \$15,100,000 per fiscal year. This amount shall be transferred from various state departments and agencies to OHA in four equal quarterly installments via voucher payments. According to the AG:

The annual \$15.1 million share . . . for annual transfer to OHA is based on the sums actually transferred during these four fiscal years, the sums of analogous receipts that could have been transferred from the health and housing corporations and the University, the upward trend of these receipts over the



last four years, and negotiation and fairness considerations.

See Testimony of the AG to the House Committee on Hawaiian Affairs, dated February 1, 2006, p. 3. The AG supplemented his written testimony at the hearing by explaining that the \$15,100,000 also includes certain ancillary receipts from the state airports. See Testimony of the AG, p. 2.

The approximate amount of funding actually transferred to OHA pursuant to Executive Order No. 03-03 and Act 34, Session Laws of Hawaii 2003, was as follows:

	FYs	<u>2002-2003</u>	<u>2004</u>	<u>2005</u>
DAGS State Parking Revolving Fund		\$32,757	\$22,896	\$23,730
DOA Agricultural Park Special Fund				
General Fund		\$74,921	\$46,006	\$113,505
DBED&T Foreign Trade Zone Special Fund				
HCDA Revolving Fund				
NELHA Special Fund		\$357,043	\$230,090	\$253,045
DOE Use of School Facilities Special Fund		\$50,966	\$48,400	\$45,098
DLNR Boating Special Fund				
Special Land & Development Fund				
State Parks Special Fund				
Beach Restoration Special Fund				
General Fund		\$2,554,338	\$2,274,483	\$2,774,768
DOT Harbors Special Fund		\$9,049,700	\$6,480,000	\$6,866,384
Act 34, SLH 2002		\$2,041,852		
General Fund				
Annual Totals		\$14,161,577	\$9,101,875	\$10,076,530

The approximate amounts of "analogous" ceded land receipts were as follows:



FYs	<u>2002-2003</u>	<u>2004</u>	<u>2005</u>
Hawaii Health Systems Corporation Hilo Medical, Kula Hospital, Samuel Mahelona Non-Patient Food Sales Catering Revenue Parking Revenue Data processing Services Revenue Medical Records Abstract Sales Non-Patient Room Rentals Telephone & Telegraph Revenue Restricted and Non-Restricted Contributions Employee Housing Rent Revenue Clinical Rent Revenue Other Space Rental	\$665,687	\$471,650	Unverified
University of Hawaii ¹ Manoa and Hilo Campuses Parking Faculty Housing Non-Student Housing Rentals, including food and vending machine, telephone commissions/collections Hilo Bookstore - logo products, sundries but not books or school supplies Other Revenue	\$1,293,852	\$1,182,121	Unverified
HCDCH Housing Public School Faculty Housing Rentals Public Rental Housing Laundromat/Vending Machine Receipts Public Rental Housing Antennae Rental Receipts	\$80,626	\$40,091	\$32,625
Annual Totals	<u>\$2,040,165</u>	<u>\$1,693,862</u>	<u>Unverified</u>

¹The amounts range from \$373,677-\$1,293,852 for fiscal years 2002 and 2003, and \$243,583-\$1,182,121 for fiscal year 2004.



381-06

The approximate amounts of ancillary receipts from the state airports were as follows:

FYs	2002-2003	2004	2005
HIA Terminal Rental Revenue	\$2,598,460	\$1,290,018	\$1,068,268
HIA Terminal Concession Revenue	\$857,152	\$503,754	\$525,671
Non-HIA Aeronautical Revenue	\$1,158,094	\$671,564	\$712,015
Non-HIA Concession/Other Terminal Revenue	<u>\$18,241,417</u>	<u>\$ 9,655,042</u>	<u>\$10,159,033</u>
Annual Total Receipts	\$22,855,123	\$12,120,378	\$12,464,987
20% Share	\$4,571,025	\$2,424,076	\$2,492,997

Section 4 appropriates the sum of \$17,500,000 to OHA in fiscal year 2005-2006. This one-time appropriation

. . . raise[s] the [amount] of ceded land receipts actually transferred to OHA during the fiscal years 2002 through 2005. The one-time appropriation of general funds is roughly equivalent to analogous rent-type receipts for the use of ceded lands collected by the Hawaii Health Systems Corporation, the Housing and Community Development Corporation of Hawaii, and the University of Hawaii, etc. during the relevant period which were not paid for legal reasons, interest, and negotiation and fairness considerations.

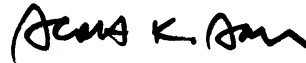
Id. at 4. In other words, this appropriation represents a "catch-up" of amounts that were underpaid during the specified time period.

Section 5 requires the DLNR to provide an annual accounting of revenues derived from the public land trust. At the present time, no single state department or agency is responsible for compiling such data. A single accounting will provide the Legislature, OHA, the general public, and even the State administration, with a clearer financial picture of the public land trust.



As affirmed by the record of votes of the members of your Committee on Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2204, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2204, H.D. 1, and be referred to the Committee on Finance.

Respectfully submitted on
behalf of the members of the
Committee on Hawaiian Affairs,



SCOTT K. SAIKI, Chair



