
A BILL FOR AN ACT

RELATING TO HAWAIIAN AFFAIRS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. In 1978, the Hawaii Constitution was amended to
2 include article XII, sections 4, 5, and 6, which, among other
3 things, established the office of Hawaiian affairs and its board
4 of trustees.

5 Sections 4, 5, and 6 of article XII of the Hawaii
6 Constitution provide:

7 "Section 4. The lands granted to the State of Hawaii
8 by Section 5(b) of the Admission Act and pursuant to
9 Article XVI, Section 7, of the State Constitution,
10 excluding therefrom lands defined as "available lands" by
11 Section 203 of the Hawaiian Homes Commission Act, 1920, as
12 amended, shall be held by the State as a public trust for
13 native Hawaiians and the general public.

14 Section 5. There is hereby established an Office of
15 Hawaiian Affairs. The Office of Hawaiian Affairs shall
16 hold title to all the real and personal property now or
17 hereafter set aside or conveyed to it which shall be held
18 in trust for native Hawaiians and Hawaiians. There shall



1 be a board of trustees for the Office of Hawaiian Affairs
2 elected by qualified voters who are Hawaiians, as provided
3 by law. The board members shall be Hawaiians. There shall
4 be not less than nine members of the board of trustees;
5 provided that each of the following Islands have one
6 representative: Oahu, Kauai, Maui, Molokai and Hawaii.
7 The board shall select a chairperson from its members.

8 Section 6. The board of trustees of the Office of
9 Hawaiian Affairs shall exercise power as provided by law:
10 to manage and administer the proceeds from the sale or
11 other disposition of the lands, natural resources, minerals
12 and income derived from whatever sources for native
13 Hawaiians and Hawaiians, including all income and proceeds
14 from that pro rata portion of the trust referred to in
15 section 4 of this article for native Hawaiians; to
16 formulate policy relating to affairs of native Hawaiians
17 and Hawaiians; and to exercise control over real and
18 personal property set aside by state, federal or private
19 sources and transferred to the board for native Hawaiians
20 and Hawaiians. The board shall have the power to exercise
21 control over the Office of Hawaiian Affairs through its



1 executive officer, the administrator of the Office of
2 Hawaiian Affairs, who shall be appointed by the board."

3 In 1980, by Act 273, Session Laws of Hawaii 1980, the
4 legislature provided that "[t]wenty per cent of all funds
5 derived from the public land trust, . . . shall be expended by
6 the office of Hawaiian affairs . . . for the purposes of this
7 chapter." This legislative directive has led to a series of
8 lawsuits concerning the practical application of the twenty per
9 cent apportionment the legislature established to implement
10 article XII, sections 4 and 6, of the Hawaii Constitution.

11 In *Trustees of the Office of Hawaiian Affairs v. Yamasaki*,
12 69 Haw. 154, 737 P.2d 446 (1987), the Hawaii supreme court
13 concluded that the issue of how the apportionment is formulated
14 is a political question for the legislature to determine.

15 In response to the *Yamasaki* decision, the legislature
16 enacted Act 304, Session Laws of Hawaii 1990, to clarify the
17 extent and scope of the twenty per cent portion.

18 On September 12, 2001, the Hawaii supreme court ruled in
19 *Office of Hawaiian Affairs v. State of Hawaii*, 96 Haw. 388, 31
20 P.3d 901 (2001), that Act 304 was effectively repealed by its
21 own terms, so that once again, it was necessary for the



1 legislature to specify the apportionment to be managed and
2 administered by the office of Hawaiian affairs.

3 In its decision, the Hawaii supreme court affirmed
4 *Yamasaki*, observing:

5 "[T]he State's obligation to native Hawaiians is firmly
6 established in our constitution. *How* the State satisfies
7 that constitutional obligation requires policy decisions
8 that are primarily within the authority and expertise of
9 the legislative branch. As such, it is incumbent upon the
10 legislature to enact legislation that gives effect to the
11 right of native Hawaiians to benefit from the ceded lands
12 trust. See Haw. Const. art. XVI, §7.

13 . . . we trust that the legislature will re-examine the
14 State's constitutional obligation to native Hawaiians and
15 the purpose of HRS § 10-13.5 and enact legislation that
16 most effectively and responsibly meets those obligations."

17 *Office of Hawaiian Affairs v. State of Hawaii*, 96 Haw. at 401,
18 31 P.3d at 914 (citations omitted).

19 The legislature finds that reviewing for each fiscal
20 biennium the amount of income and proceeds the office of
21 Hawaiian affairs is to receive from the public trust pursuant to
22 article XII, sections 4 and 6, of the Hawaii Constitution, is



1 reasonable and prudent, particularly in light of changing
2 revenues over time.

3 Furthermore, in reviewing the entire history of the issue,
4 the legislature finds that--in addition to the amounts paid to
5 the office of Hawaiian affairs in the past--further resources
6 should be provided to the office of Hawaiian affairs that
7 represent a re-examination and final determination by the
8 legislature for the period between November 7, 1978, and July 1,
9 2008, with regard to revenue from the lands in the public trust
10 referred to in article XII, section 4, of the Hawaii
11 Constitution.

12 The legislature recognizes that the governor and the office
13 of Hawaiian affairs have reached a settlement agreement with
14 respect to all issues relating to the portion of the income and
15 proceeds from the lands in the public trust for the period
16 between November 7, 1978, and July 1, 2008, the office of
17 Hawaiian affairs is to receive.

18 The legislature finds that the land and funds identified in
19 the settlement agreement reflect a joint recommendation as to
20 the policy the legislature should adopt in fulfilling its
21 constitutional obligations to native Hawaiians in connection
22 with this issue.



1 This Act, therefore, is an expression of legislative
2 policy, not a settlement or a contract. This legislation is a
3 legislative act without distinction from any other legislative
4 act. As it is not a settlement nor a contract, it can give rise
5 to no lawsuits or claims to enforce it, nor to any claim in the
6 future that any future legislation is barred in any way, or
7 leads to liability in any way, because it somehow conflicts with
8 a settlement, settlement agreement, or contract.

9 A combination of a conveyance to the office of Hawaiian
10 affairs of the fee simple interest in certain parcels of real
11 property and a payment to the office of Hawaiian affairs of
12 \$13,189,860 to represent this re-examination and final
13 determination for the period between November 7, 1978, and July
14 1, 2008, will allow the State to most effectively and
15 responsibly meet its constitutional obligations to native
16 Hawaiians.

17 The legislature agrees with the governor and office of
18 Hawaiian affairs that \$15,100,000 per fiscal year (\$30,200,000
19 per fiscal biennium) is a sum that shall serve as the floor
20 baseline as future legislatures or governors set the dollar
21 amount of the income and proceeds the office of Hawaiian affairs
22 is to receive from the public trust pursuant to article XII,



1 sections 4 and 6, of the Hawaii Constitution, for the next and
 2 future fiscal bienniums. The legislature is committed to
 3 supporting this shared, hard-won consensus on how the State can
 4 most effectively and responsibly meet its obligation to native
 5 Hawaiians in the future and to not falling below that dollar
 6 level of support.

7 The purpose of this Act is to allow the State to most
 8 effectively and responsibly meet its constitutional obligations
 9 to native Hawaiians by:

10 (1) Addressing the additional amount of income and
 11 proceeds the office of Hawaiian affairs is to receive
 12 from the public trust pursuant to article XII,
 13 sections 4 and 6, of the Hawaii Constitution, for the
 14 period from November 7, 1978, to July 1, 2008, by:

15 (A) Providing \$13,189,860 in cash to the office of
 16 Hawaiian affairs; and

17 (B) Conveying certain parcels of real property in fee
 18 simple to the office of Hawaiian affairs;

19 and

20 (2) For the period after July 1, 2008, establishing the
 21 amount of income and proceeds the office of Hawaiian
 22 affairs is to receive from the public trust pursuant



1 to article XII, sections 4 and 6, of the Hawaii
2 Constitution.

3 SECTION 2. Chapter 10, Hawaii Revised Statutes, is amended
4 by adding a new section to be appropriately designated and to
5 read as follows:

6 "§10- Determination and disbursement of income and
7 proceeds. (a) Not later than thirty days before the convening
8 of the regular session of the legislature in an odd-numbered
9 year, beginning with the regular session of 2011, the department
10 of land and natural resources, with the cooperation of the
11 department of budget and finance and any other state department
12 or agency that uses or manages public lands, shall provide a
13 report of all receipts from the lands in the public trust
14 referred to in article XII, section 4, of the Hawaii
15 Constitution collected during the prior two fiscal years. With
16 respect to each receipt, the department of land and natural
17 resources shall identify:

- 18 (1) The total gross amount received;
- 19 (2) The portion of the gross amount, if any, transferred
20 to the office under this section;
- 21 (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 or parcels of land in the public trust
4 referred to in article XII, section 4, of the Hawaii
5 Constitution that generated the receipt, whether by
6 tax map key number or numbers, department of land and
7 natural resources inventory number or numbers, or
8 other recognizable description;

9 (6) Any formula or other consideration used to establish
10 the amount identified in paragraph (2); and

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

13 The office shall be consulted by the department of land and
14 natural resources in determining the method in which the report
15 shall be prepared. The report is to assist the legislature and,
16 if necessary, the governor, to biennially determine the amount
17 of income and proceeds the office is to receive from the public
18 trust pursuant to article XII, sections 4 and 6, of the Hawaii
19 Constitution.

20 (b) In every odd-numbered year, the legislature shall set
21 by legislative act for the fiscal biennium, the dollar amount of
22 income and proceeds the office is to receive from the public



1 trust pursuant to article XII, sections 4 and 6, of the Hawaii
2 Constitution. If the legislature does not set by legislative
3 act the dollar amount of the income and proceeds the office is
4 to receive from the public trust pursuant to article XII,
5 sections 4 and 6, of the Hawaii Constitution for the fiscal
6 biennium at least thirty days before the first quarterly
7 increment is due, the governor shall determine and pay to the
8 office pursuant to subsection (c) the amount of income and
9 proceeds the office is to receive from the public trust pursuant
10 to article XII, sections 4 and 6, of the Hawaii Constitution,
11 after taking into consideration the most recent report provided
12 by the department of land and natural resources under subsection
13 (a) and the most recent authorized disbursement. If neither the
14 legislature nor the governor sets the dollar amount of income
15 and proceeds the office is to receive from the public trust
16 pursuant to article XII, sections 4 and 6, of the Hawaii
17 Constitution, an amount not less than the previous authorized
18 disbursement shall be disbursed pursuant to subsection (c).

19 (c) Payment to the office of the amounts shall be made in
20 equal quarterly increments for each year of the fiscal biennium
21 pursuant to this subsection. The departments of agriculture;
22 accounting and general services; business, economic development,



1 and tourism; education; land and natural resources; and
2 transportation (for its harbors and highways divisions); and any
3 other department or agency that collects receipts from the lands
4 in the public trust referred to in article XII, section 4, of
5 the Hawaii Constitution, shall determine and transfer to the
6 office that portion of their receipts from the use of the lands
7 collected during each fiscal quarter, necessary to ensure that
8 the revenues correspond to the amount of income and proceeds the
9 office is to receive from the public trust pursuant to article
10 XII, sections 4 and 6, of the Hawaii Constitution, set by the
11 legislature or by the governor under subsection (b) and are
12 transferred to the office, within thirty days after the close of
13 each fiscal quarter.

14 The governor is expressly authorized to fix the amounts
15 each agency shall transfer to the office in each fiscal quarter
16 by executive order to implement this section.

17 (d) The amount of \$15,100,000 per fiscal year (\$30,200,000
18 per fiscal biennium) shall serve as the floor baseline for the
19 legislature or governor to set as the amount of income and
20 proceeds the office is to receive from the public trust pursuant
21 to article XII, sections 4 and 6, of the Hawaii Constitution,



1 for the next and future fiscal bienniums pursuant to this
2 section."

3 SECTION 3. Section 10-9, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§10-9 Salaries; benefit; expenses.** Members of the board:

6 (1) Shall receive an annual salary which shall be paid:

7 (A) Exclusively from [~~revenue under section 10-13.5~~]
8 the amounts transferred to the office pursuant to
9 section 10- ; and

10 (B) In equal amounts, beginning with the first pay
11 period for state employees in November of the
12 year the member of the board is elected.

13 Effective July 1, 1993, and until the salary
14 commission makes recommendations for salary, the
15 salary of the chairperson of the board shall be
16 \$37,000 a year and the salary of other members of the
17 board shall be \$32,000 a year. Any provision of law
18 to the contrary notwithstanding, all members of the
19 board shall be included in any benefit program
20 generally applicable to officers and employees of the
21 State;



1 (2) Shall be allowed transportation fares between islands
2 and abroad;

3 (3) Shall be allowed personal expenses at the rates
4 specified by the board while attending board meetings
5 or while on official business as authorized by the
6 chairperson, when those board meetings or official
7 business shall require a member to leave the island
8 upon which the member resides; and

9 (4) Shall be allowed a protocol allowance to cover
10 expenses incurred in the course of a member's duties
11 and responsibilities."

12 SECTION 4. Section 206E-3, Hawaii Revised Statutes, is
13 amended by amending subsection (b) to read as follows:

14 "(b) The authority shall consist of [~~thirteen~~] fourteen
15 voting members. The director of finance, the director of
16 business, economic development, and tourism, the comptroller,
17 and the director of transportation, or their respective
18 designated representatives shall serve as ex officio, voting
19 members. One member of the authority shall be appointed by the
20 chairperson of the office of Hawaiian affairs. One member shall
21 be appointed by the governor from a list of not less than three
22 prospective appointees submitted by the president of the senate,



1 and one member shall be appointed by the governor from a list of
2 not less than three prospective appointees submitted by the
3 speaker of the house of representatives. Seven members shall be
4 appointed by the governor for staggered terms pursuant to
5 section 26-34; provided that four members shall be appointed at
6 large and, initially, three members, hereinafter referred to as
7 county members, shall be selected from a list of ten prospective
8 appointees recommended by the local governing body of the county
9 in which the initial designated district is situated; and
10 provided further that when vacancies occur in any of the three
11 positions for which the members were selected from a list of
12 county recommendations, the governor shall fill such vacancies
13 on the basis of one from a list of four recommendations, two
14 from a list of seven recommendations, or three from a list of
15 ten recommendations. The list of recommendations shall be made
16 by the local governing body of the county. If an additional
17 district is designated by the legislature, the total membership
18 of the authority shall be increased as prescribed above by the
19 appointment of three additional members, except as provided for
20 in section 206E-191. Notwithstanding section 92-15, a majority
21 of all members shall constitute a quorum to do business, and the
22 concurrence of a majority of all members shall be necessary to



1 make any action of the authority valid; except that, on any
2 matter relating solely to a specific community development
3 district, the members representing districts other than that
4 specific community development district shall neither vote, nor
5 shall they be counted to constitute a quorum, and concurrence
6 shall be required of a majority of that portion of the authority
7 made up of all ex officio voting members, members at large, and
8 county and district members representing the district for which
9 action is being proposed in order for such action to be valid.
10 All members shall continue in office until their respective
11 successors have been appointed and qualified. Except as herein
12 provided, no member appointed under this subsection shall be an
13 officer or employee of the State or its political subdivisions."

14 SECTION 5. Section 206E-8, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "[~~+~~]**§206E-8**[~~+~~] **Use of public lands; acquisition of state**
17 **lands.** (a) Any provision of chapter 171 to the contrary
18 notwithstanding, the governor may set aside public lands located
19 within community development districts to the authority for its
20 use.

21 (b) If state lands under the control and management of
22 other public agencies are required by the authority for its



1 purposes, the agency having the control and management of those
2 required lands shall, upon request by the authority and with the
3 approval of the governor, convey, or lease such lands to the
4 authority upon such terms and conditions as may be agreed to by
5 the parties.

6 (c) Notwithstanding the foregoing, no public lands shall
7 be set aside, conveyed, or leased to the authority as above
8 provided if such setting aside, conveyance, or lease would
9 impair any covenant between the State or any county or any
10 department or board thereof and the holders of bonds issued by
11 the State or such county, department, or board.

12 (d) This section shall not apply to the land conveyed in
13 fee simple to the office of Hawaiian affairs by Act , Session
14 Laws of Hawaii 2008, except that the authority may acquire by
15 condemnation, pursuant to chapter 101, easements, rights-of-way,
16 rights of entry, or other rights of access in favor of lands
17 adjoining the property conveyed that is under the control and
18 management of public agencies where the office of Hawaiian
19 affairs is paid just compensation for the same."

20 SECTION 6. Section 206E-10, Hawaii Revised Statutes, is
21 amended to read as follows:



1 " ~~[+]~~ §206E-34 Cultural public market. ~~[+]~~ (a) There shall
2 be established within the Hawaii community development authority
3 a state cultural public market.

4 (b) The cultural public market shall be located on state
5 land within the Kakaako Makai area and developed pursuant to
6 sections 206E-31, 206E-32, and 206E-33. A public parking lot
7 shall be included.

8 (c) The Hawaii community development authority shall:

9 (1) Designate and develop the state-owned land for the
10 cultural public market;

11 (2) Accept, for consideration, input regarding the
12 establishment of the cultural public market from the
13 following departments and agencies:

14 (A) The department of agriculture;

15 (B) The department of business, economic development,
16 and tourism;

17 (C) The department of land and natural resources;

18 (D) The department of labor and industrial relations;
19 and

20 (E) The Hawaii tourism authority;



- 1 (3) Consider and determine the propriety of using public-
2 private partnerships in the development and operation
3 of the cultural public market;
- 4 (4) Develop, distribute, and accept requests for proposals
5 from private entities for plans to develop and operate
6 the cultural public market; and
- 7 (5) Ensure that the Hawaiian culture is the featured
8 culture in the cultural public market.
- 9 (d) Requests for proposals for the cultural public market
10 shall contemplate but not be limited to the inclusion of the
11 following types of facilities and services:
 - 12 (1) Retail outlets for ethnically diverse products;
 - 13 (2) Venues for businesses with ethnic themes, including
14 restaurants and other service-related businesses;
 - 15 (3) Theaters, stages, and arenas designed to showcase
16 cultural performing artists as well as community
17 performing arts;
 - 18 (4) Exhibition space or museums that showcase artwork
19 created by international and local artists; and
 - 20 (5) Museums or other educational facilities focusing on
21 the history and cultures of the various ethnic groups
22 within Hawaii, including Hawaiian history.



1 (e) This section shall not apply to the land conveyed in
2 fee simple to the office of Hawaiian affairs by Act , Session
3 Laws of Hawaii 2008."

4 SECTION 8. Section 10-13.3, Hawaii Revised Statutes, is
5 repealed.

6 [~~"§10-13.3 Interim revenue. Notwithstanding the~~
7 ~~definition of revenue contained in this chapter and the~~
8 ~~provisions of section 10-13.5, and notwithstanding any claimed~~
9 ~~invalidity of Act 304, Session Laws of Hawaii 1990, the income~~
10 ~~and proceeds from the pro rata portion of the public land trust~~
11 ~~under article XII, section 6 of the state constitution for~~
12 ~~expenditure by the office of Hawaiian affairs for the betterment~~
13 ~~of the conditions of native Hawaiians for each of fiscal year~~
14 ~~1997-1998 and fiscal year 1998-1999 shall be \$15,100,000."~~]

15 SECTION 9. Section 10-13.5, Hawaii Revised Statutes, is
16 repealed.

17 [~~"§10-13.5 Use of public land trust proceeds. Twenty per~~
18 ~~cent of all funds derived from the public land trust, described~~
19 ~~in section 10-3, shall be expended by the office, as defined in~~
20 ~~section 10-2, for the purposes of this chapter."~~]

21 SECTION 10. Act 178, Session Laws of Hawaii 2006, is
22 amended by repealing sections 2 and 3.



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

10 ~~SECTION 3. Notwithstanding the provisions of chapter 10,~~
11 ~~Hawaii Revised Statutes, or the requirements of Executive Order~~
12 ~~No. 03-03, beginning in fiscal year 2005-2006, the departments~~
13 ~~of agriculture, accounting and general services, business,~~
14 ~~economic development, and tourism, education, land and natural~~
15 ~~resources, and transportation (for its harbors division), and~~
16 ~~any other department or agency that collects receipts from the~~
17 ~~lands within the public land trust, shall determine and transfer~~
18 ~~to the office of Hawaiian affairs that portion of their receipts~~
19 ~~from the use of lands within the public land trust collected~~
20 ~~during each fiscal quarter, necessary to ensure that a total of~~
21 ~~\$3,775,000 of revenues generated by the public land trust is~~
22 ~~transferred to the office of Hawaiian affairs, within thirty~~



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

~~8 The governor is expressly authorized to fix the amounts
9 each agency shall transfer to the office of Hawaiian affairs in
10 each quarter by executive order to implement the provisions of
11 this section."]~~

12 SECTION 11. Act 178, Session Laws of Hawaii 2006, is
13 amended by repealing section 5.

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

22 ~~(1) The total gross amount;~~



- 1 ~~(2) The amount transferred to the office of Hawaiian~~
- 2 ~~affairs;~~
- 3 ~~(3) The amount retained by the State;~~
- 4 ~~(4) The account or fund in which the amount specified in~~
- 5 ~~paragraph (3) was transferred or deposited;~~
- 6 ~~(5) The parcel of land subject to section 5(f) of the~~
- 7 ~~Admission Act that generated the receipt, whether by~~
- 8 ~~tax map key number, department of land and natural~~
- 9 ~~resources inventory number, or other recognizable~~
- 10 ~~description; and~~
- 11 ~~(6) The state department or agency that received the total~~
- 12 ~~gross amount identified in paragraph (1).~~

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

18 ~~The office of Hawaiian affairs shall be consulted by the~~
 19 ~~department of land and natural resources in determining the~~
 20 ~~method in which the accounting shall be conducted."]~~

21 SECTION 12. (a) All rights, title, and interest in the
 22 following parcels of land with the existing improvements



1 thereon, except for submerged land, accreted land, or any land
 2 makai of the shoreline, shall be conveyed in fee simple to the
 3 office of Hawaiian affairs to be held in trust pursuant to
 4 article XII, sections 4, 5, and 6, of the Hawaii Constitution,
 5 and shall be subject to all laws, including section 171-58,
 6 Hawaii Revised Statutes:

- 7 (1) Kakaako Makai: (Lots 2, 3, 4, 5, and 9 as identified
 8 on the final Kakaako park subdivision map dated
 9 October 15, 2007, and approved by the city and county
 10 of Honolulu department of planning and permitting on
 11 November 9, 2007);
- 12 (2) Kalaeloa Makai: (TMK: (1)-9-1-31:1); and
- 13 (3) Hilo Banyan drive: Bayview Banyan Corp. (TMK: (3)-2-1-
 14 5:21); Country Club Condo Hotel (TMK: (3)-2-1-5:20);
 15 Hilo Hawaiian Hotel (TMK: (3)-2-1-3:5); Nanihoa Hotel
 16 and Golf Course (TMK: (3)-2-1-1:12; TMK: (3)-2-1-5:13,
 17 14, 16, 17, 27, 32, 39, 41, 42, 46); Reed's Bay Resort
 18 Hotel (TMK: (3)-2-1-5:22); Uncle Billy's Hilo Bay
 19 Hotel Inc. (TMK: (3)-2-1-5:9, 12, 33, 34, 35, 45, 47).

20 Because these are conveyances in which the State and its
 21 agencies are the only parties, the tax imposed by section 247-1,
 22 Hawaii Revised Statutes, shall not apply to them.



1 The property conveyed shall be subject to all encumbrances,
2 whether or not of record, rights of native tenants, leases,
3 contracts, agreements, permits, easements, profits, licenses,
4 rights-of-way, or other instruments applicable to any land
5 conveyed by this section effective or on going on the effective
6 date of this Act, which shall remain in full force and effect.
7 These encumbrances may be set forth in the instruments conveying
8 the property to the office or set forth in a license or similar
9 agreement, a memorandum of which may be recorded concurrently
10 with the instruments conveying the property to the office.
11 Beginning July 1, 2008, every reference to the current title-
12 holder or the head of the department or agency in each such
13 instrument, if the title-holder is a department or an agency,
14 shall be construed to be a reference to the office of Hawaiian
15 affairs or its board of trustees.

16 After the conveyances are made, the property shall be
17 subject to all laws, except as otherwise provided in this Act.
18 The office shall administer the property in accordance with its
19 duties under the Hawaii Constitution and as provided by law.

20 (b) The office of Hawaiian affairs shall cooperate with
21 other state agencies to designate and grant such access rights
22 and easements as may be reasonably necessary for the benefit and



1 use of adjoining properties owned by the State. Each of the
2 instruments creating such access rights or granting such
3 easements shall provide that the office, or any successor owner
4 of the servient property, shall have the right to reasonably
5 relocate any such access areas or easements so granted. The
6 cost of initially identifying such access areas or designating
7 and granting any such easements shall not be the responsibility
8 of the office. The cost of relocating any such access areas or
9 easements shall be paid by the office or any such successor
10 owner, as the case may be. Each of the instruments creating
11 such access rights or granting such easements shall also provide
12 that the office shall only be responsible for a reasonable share
13 of the cost of maintaining any such access areas and easement
14 areas, as the case may be, and that the office, its tenants,
15 licensees, concessionaires, successors, and assigns shall not be
16 liable for injuries or damages arising from the use of such
17 access areas or easement areas by other state agencies or their
18 invitees.

19 (c) Notwithstanding subsection (b), the office of Hawaiian
20 affairs shall not be required to approve any access rights or
21 grant any access easements to other state agencies that would
22 materially diminish the value of the servient property or that



1 would materially interfere with the use of the servient property
2 by the office or any lessee, tenant, licensee, concessionaire,
3 or other occupant of the property, unless otherwise provided by
4 law.

5 (d) The conveyances made by this section shall not include
6 any of the State's rights to minerals, or surface or ground
7 water. As directed by the attorney general, the appropriate
8 boards, agencies, officers, and employees of the State shall:

9 (1) Execute instruments of conveyance as may be necessary
10 and proper to the office of Hawaiian affairs, as
11 grantee, to convey the interest and title of the State
12 and its boards and commissions to these lands and
13 improvements in fee simple; and

14 (2) Record the instruments in the land court or bureau of
15 conveyances, as appropriate.

16 (e) This section shall not limit the power of the
17 legislature to enact any laws.

18 SECTION 13. The real property conveyances made under this
19 Act, and the funds paid under this Act regardless of the means
20 of financing, shall be deemed income and proceeds from the lands
21 in the public trust referred to in article XII, sections 4 and
22 6, of the Hawaii Constitution, as if they had been paid out of



1 the income and proceeds from such lands pursuant to article XII,
2 sections 4 and 6, of the Hawaii Constitution.

3 SECTION 14. To the extent that the State has made any
4 waiver of sovereign immunity for a suit, claim, cause of action,
5 or right of action regarding the amount of income and proceeds
6 the office of Hawaiian affairs is to receive from the public
7 trust pursuant to article XII, sections 4 and 6, of the Hawaii
8 Constitution, that waiver is withdrawn.

9 SECTION 15. The director of finance is authorized to issue
10 general obligation bonds in the sum of \$13,189,860 or so much
11 thereof as may be necessary and the same sum or so much thereof
12 as may be necessary is appropriated for fiscal year 2008-2009
13 for the purpose of transferring that sum to the office of
14 Hawaiian affairs pursuant to this Act.

15 The sum appropriated shall be expended by the department of
16 budget and finance by making the required transfer under this
17 section to the office of Hawaiian affairs no later than June 30,
18 2009.

19 SECTION 16. The legislature finds that the amount of
20 income and proceeds the office of Hawaiian affairs is to receive
21 from the public trust pursuant to article XII, sections 4 and 6,
22 of the Hawaii Constitution, for fiscal year 2008-2009 is



1 \$15,100,000. The sum shall be disbursed to the office of
2 Hawaiian affairs pursuant to section 10- , Hawaii Revised
3 Statutes.

4 SECTION 17. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 18. This Act shall take effect on July 1, 2008,
7 provided that section 11 shall take effect on January 2, 2010.



Report Title:

Public trust; Conveyance of real property and cash to OHA

Description:

Conveys certain parcels of real property and transfers cash to the Office of Hawaiian Affairs as part of the State's obligations to native Hawaiians under Article XII, sections 4 and 6, of the Hawaii Constitution. (HB266 HD2)

