
A BILL FOR AN ACT

RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT.

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

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

5 According to section 4 of article XII of the state
6 constitution, the lands granted to the State of Hawaii by
7 section 5(b) of the Admission Act and pursuant to article XVI,
8 section 7, of the state constitution, excluding therefrom lands
9 defined as "available lands" by section 203 of the Hawaiian
10 Homes Commission Act, 1920, as amended, are to be held by the
11 State as a public trust for native Hawaiians and the general
12 public.

13 Section 5 of article XII of the state constitution
14 established the office of Hawaiian affairs to hold title to all
15 the real and personal property now or hereafter set aside or
16 conveyed to it in trust for native Hawaiians and Hawaiians.

17 Under section 6 of article XII of the state constitution,
18 the board of trustees of the office of Hawaiian affairs is



1 responsible for managing and administering the proceeds from the
2 sale or other disposition of the lands, natural resources,
3 minerals and income derived from whatever sources for native
4 Hawaiians and Hawaiians, including all income and proceeds from
5 that pro rata portion of the public trust referred to in section
6 4 of article XII for native Hawaiians. In addition, the board
7 of trustees of the office of Hawaiian affairs is responsible for
8 formulating policy relating to affairs of native Hawaiians and
9 Hawaiians and exercising control over real and personal property
10 set aside by state, federal or private sources and transferred
11 to the board for native Hawaiians and Hawaiians.

12 In *Trustees of the Office of Hawaiian Affairs v. Yamasaki*,
13 69 Haw. 154, 737 P.2d 446 (1987), the Hawaii supreme court
14 concluded that the issue of what constitutes the portion of the
15 income and proceeds derived from the public land trust for the
16 office of Hawaiian affairs pursuant to article XII, section 6 of
17 the state constitution, is a political question for the
18 legislature to determine.

19 In response to the *Yamasaki* decision, the legislature
20 enacted Act 304, Session Laws of Hawaii 1990, to clarify the
21 extent and scope of the State's obligation to provide a portion



1 of the funds derived from the public land trust to the office of
2 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 funds, from which
8 lands the office of Hawaiian affairs was to receive under the
9 state constitution.

10 In its decision, the Hawaii supreme court affirmed that the
11 State's obligation to native Hawaiians is firmly established in
12 the state constitution. How the State satisfies that
13 constitutional obligation requires policy decisions that are
14 primarily within the authority and expertise of the legislative
15 branch. Therefore, it is incumbent upon the legislature to
16 enact legislation that gives effect to the right of native
17 Hawaiians to benefit from the ceded lands trust.

18 The purpose of this Act is to:

19 (1) Resolve any and all claims and disputes relating to
20 the portion of income and proceeds from the lands of
21 the public land trust for use by the office of
22 Hawaiian affairs, including under sections 4 and 6 of



1 article XII of the state constitution and any relevant
2 statute or act, between November 7, 1978, and July 1,
3 2008; and

4 (2) Fix, prospectively, the minimum amount of income and
5 proceeds from the lands of the public land trust that
6 are to be paid to the office of Hawaiian affairs for
7 use under section 6 of article XII of the state
8 constitution at \$15,100,000 annually.

9 SECTION 2. Chapter 10, Hawaii Revised Statutes, is amended
10 by adding a new section to part I to be appropriately designated
11 and to read as follows:

12 "§10- Payment and use of income and proceeds from public
13 land trust lands. (a) Beginning July 1, 2008, \$15,100,000 of
14 the income and proceeds collected for the use of public land
15 trust lands during each fiscal year shall be paid to the office
16 in equal quarterly increments of \$3,775,000, to implement the
17 provisions of article XII, sections 4 and 6 of the state
18 constitution regarding the income and proceeds of the public
19 land trust. The governor shall be expressly authorized to
20 identify the income and proceeds from the public land trust
21 lands from which the \$15,100,000 is to be paid, and to fix, in
22 the governor's discretion, the portion of each receipt that each



1 state agency receiving the income and proceeds shall contribute
2 toward the \$15,100,000 payment, after giving due consideration
3 to whether federal or state law prohibits any portion of the
4 income and proceeds collected from being used by the office or
5 whether payment to the office of any portion of the income and
6 proceeds collected will cause the agency to renege on any pre-
7 existing pledge, rate covenant, or other pre-existing obligation
8 to holders of revenue bonds or other indebtedness of the State
9 or its agencies; provided that in no event shall the payment to
10 the office for any fiscal year be less than \$15,100,000. The
11 governor shall issue executive orders as necessary to implement
12 this provision. Each quarterly payment shall be made to the
13 office no later than thirty days after the close of each fiscal
14 quarter.

15 (b) As long as the office retains the statutory right to
16 receive an annual payment of income and proceeds from the public
17 land trust lands of at least \$15,100,000, no suit for damages or
18 any other relief may be brought against the State, or its
19 departments, agencies, officers, or employees, by the office or
20 any other person or entity, with respect to any controversy,
21 claim, cause of action, or right of action arising out of or
22 relating to any right the office or any other person or entity



1 may have to income, proceeds, or any other tangible right, item,
2 or benefit from the public land trust lands under sections 4 and
3 6 of article XII of the state constitution or any related
4 statute or act. To the extent any waiver of sovereign immunity
5 for such a suit, claim, cause of action, or right of action
6 still exists, that waiver shall be withdrawn.

7 (c) Beginning July 1, 2008, for each and every fiscal year
8 that the office has the statutory right to receive an annual
9 payment of income and proceeds from the public land trust lands
10 of at least \$15,100,000, each and every claim for damages or any
11 other relief against the State or its departments, agencies,
12 officers, or employees, by the office or any other person or
13 entity, with respect to any controversy, claim, cause of action,
14 or right of action arising out of, or relating to any right the
15 office or any other person or entity may have to income,
16 proceeds, or any other tangible right, item, or benefit from the
17 public land trust lands under sections 4 and 6 of article XII of
18 the state constitution or any related statute or act is forever
19 barred. To the extent any waiver of sovereign immunity for such
20 a suit, claim, cause of action, or right of action still exists,
21 that waiver shall be withdrawn."



1 SECTION 3. Section 10-2, Hawaii Revised Statutes, is
2 amended by adding a new definition to be appropriately inserted
3 and to read as follows:

4 ""Public land trust lands" mean lands:

- 5 (1) That were ceded to the United States by the Republic
6 of Hawaii under the joint resolution of annexation,
7 approved July 7, 1898 (30 Stat. 750), or acquired in
8 exchange for lands so ceded, and that were conveyed to
9 the State by section 5(b) of the Admission Act; except
10 for lands defined as "available lands" by section 203
11 of the Hawaiian Homes Commission Act, 1920, as
12 amended;
- 13 (2) That were retained by the United States, under
14 sections 5(c) and 5(d) of the Admission Act, and later
15 conveyed to the State under section 5(e) of the
16 Admission Act; and
- 17 (3) That were ceded to and retained by the United States
18 under sections 5(c) and 5(d) of the Admission Act and
19 later conveyed to the State pursuant to Pub. L. 88-233
20 (77 Stat. 472)."

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



1 "**§10-3 Purpose of the office.** The purposes of the office
2 of Hawaiian affairs include:

3 (1) The betterment of conditions of native Hawaiians[.—A
4 ~~pro rata portion of all funds derived from the public~~
5 ~~land trust shall be funded in an amount to be~~
6 ~~determined by the legislature for this purpose, and~~
7 ~~shall be held and used solely as a public trust for~~
8 ~~the betterment of the conditions of native Hawaiians.~~
9 ~~For the purpose of this chapter, the public land trust~~
10 ~~shall be all proceeds and income from the sale, lease,~~
11 ~~or other disposition of lands ceded to the United~~
12 ~~States by the Republic of Hawaii under the joint~~
13 ~~resolution of annexation, approved July 7, 1898 (30~~
14 ~~Stat. 750), or acquired in exchange for lands so~~
15 ~~ceded, and conveyed to the State of Hawaii by virtue~~
16 ~~of section 5(b) of the Act of March 18, 1959 (73 Stat.~~
17 ~~4, the Admissions Act), (excluding therefrom lands and~~
18 ~~all proceeds and income from the sale, lease, or~~
19 ~~disposition of lands defined as "available lands" by~~
20 ~~section 203 of the Hawaiian Homes Commission Act,~~
21 ~~1920, as amended), and all proceeds and income from~~
22 ~~the sale, lease, or other disposition of lands~~



1 ~~retained by the United States under sections 5(e) and~~
2 ~~5(d) of the Act of March 18, 1959, later conveyed to~~
3 ~~the State under section 5(e)];~~

4 (2) The betterment of conditions of Hawaiians;

5 (3) Serving as the principal public agency in this State
6 responsible for the performance, development, and
7 coordination of programs and activities relating to
8 native Hawaiians and Hawaiians; except that the
9 Hawaiian Homes Commission Act, 1920, as amended, shall
10 be administered by the Hawaiian homes commission;

11 (4) Assessing the policies and practices of other agencies
12 impacting on native Hawaiians and Hawaiians[7] and
13 conducting advocacy efforts for native Hawaiians and
14 Hawaiians;

15 (5) Applying for, receiving, and disbursing, grants and
16 donations from all sources for native Hawaiian and
17 Hawaiian programs and services; and

18 (6) Serving as a receptacle for reparations."

19 SECTION 5. Section 206E-3, Hawaii Revised Statutes, is
20 amended by amending subsection (b) to read as follows:

21 "(b) The authority shall consist of [~~thirteen~~] fourteen
22 voting members. The director of finance[7]; the director of



1 recommendations. The list of recommendations shall be made by
2 the local governing body of the county. If an additional
3 district is designated by the legislature, the total membership
4 of the authority shall be increased as prescribed above by the
5 appointment of three additional members, except as provided for
6 in section 206E-191. Notwithstanding section 92-15, a majority
7 of all members shall constitute a quorum to do business, and the
8 concurrence of a majority of all members shall be necessary to
9 make any action of the authority valid; except that, on any
10 matter relating solely to a specific community development
11 district, the members representing districts other than that
12 specific community development district shall [~~neither~~] not
13 vote [~~nor~~] and shall [~~they~~] not be counted [~~to constitute~~]
14 towards a quorum, and concurrence shall be required of a
15 majority of that portion of the authority made up of all ex
16 officio voting members, members at large, and county and
17 district members representing the district for which action is
18 being proposed in order for such action to be valid. All
19 members shall continue in office until their respective
20 successors have been appointed and qualified. Except as herein
21 provided, no member appointed under this subsection shall be an
22 officer or employee of the State or its political subdivisions."



1 SECTION 6. Section 206E-8, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§206E-8[+] Use of public lands; acquisition of state

4 lands. (a) Any provision of chapter 171 to the contrary
5 notwithstanding, the governor may set aside public lands located
6 within community development districts to the authority for its
7 use.

8 (b) If state lands under the control and management of
9 other public agencies are required by the authority for its
10 purposes, the agency having the control and management of those
11 required lands [~~shall~~], upon request by the authority and with
12 the approval of the governor, shall convey[~~r~~] or lease [~~such~~]
13 the lands to the authority upon such terms and conditions as may
14 be agreed to by the parties.

15 (c) Notwithstanding [~~the foregoing~~] subsection (b), no
16 public lands shall be set aside, conveyed, or leased to the
17 authority [~~as above provided~~] pursuant to this section if [~~such~~]
18 the setting aside, conveyance, or lease would impair any
19 covenant between the State [~~or~~], any county, or any department
20 or board thereof and the holders of bonds issued by the State or
21 [~~such~~] a county, department, or board.



1 (d) This section shall not apply to the land conveyed in
2 fee simple to the office of Hawaiian affairs by this Act; except
3 that the authority may acquire, by condemnation pursuant to
4 chapter 101, easements, rights-of-way, rights of entry, or other
5 rights of access in favor of lands adjoining the land conveyed
6 in fee simple to the office of Hawaii affairs that is under the
7 control and management of public agencies; provided that the
8 office of Hawaiian affairs shall be paid just compensation for
9 the easement, right-of-way, right of entry, or other right of
10 access."

11 SECTION 7. Section 206E-10, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[+]§206E-10[+] **Condemnation of real property.** The
14 authority, upon making a finding that it is necessary to acquire
15 any real property for its immediate or future use for the
16 purposes of this chapter, may acquire the property by
17 condemnation pursuant to chapter 101, including property already
18 devoted to a public use. [~~Such~~] The real property shall not
19 thereafter be taken for any other public use without the consent
20 of the authority. No award of compensation shall be increased
21 by reason of any increase in the value of real property caused
22 by the designation of a community development district or plan



1 adopted pursuant to a designation, or the actual or proposed
2 acquisition, use or disposition of any other real property by
3 the authority. This section shall not apply to the land
4 conveyed in fee simple to the office of Hawaiian affairs by this
5 Act; except that the authority may acquire by condemnation
6 pursuant to chapter 101, easements, rights-of-way, rights of
7 entry, or other rights of access in favor of lands adjoining the
8 land conveyed in fee simple to the office of Hawaiian affairs
9 that is under the control and management of public agencies;
10 provided that the office of Hawaiian affairs shall be paid just
11 compensation for the easement, right-of-way, right of entry, or
12 other right of access."

13 SECTION 8. Section 206E-34, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "[+]§206E-34 **Cultural public market.** [+] (a) There shall
16 be established within the Hawaii community development authority
17 a state cultural public market.

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

22 (c) The Hawaii community development authority shall:



- 1 (1) Designate and develop the state-owned land for the
- 2 cultural public market;
- 3 (2) Accept, for consideration, input regarding the
- 4 establishment of the cultural public market from the
- 5 following departments and agencies:
- 6 (A) The department of agriculture;
- 7 (B) The department of business, economic development,
- 8 and tourism;
- 9 (C) The department of land and natural resources;
- 10 (D) The department of labor and industrial relations;
- 11 and
- 12 (E) The Hawaii tourism authority;
- 13 (3) Consider and determine the propriety of using public-
- 14 private partnerships in the development and operation
- 15 of the cultural public market;
- 16 (4) Develop, distribute, and accept requests for proposals
- 17 from private entities for plans to develop and operate
- 18 the cultural public market; and
- 19 (5) Ensure that the Hawaiian culture is the featured
- 20 culture in the cultural public market.



1 (d) Requests for proposals for the cultural public market
2 shall contemplate, but not be limited to, the inclusion of the
3 following types of facilities and services:

- 4 (1) Retail outlets for ethnically diverse products;
- 5 (2) Venues for businesses with ethnic themes, including
6 restaurants and other service-related businesses;
- 7 (3) Theaters, stages, and arenas designed to showcase
8 cultural performing artists as well as community
9 performing arts;
- 10 (4) Exhibition space or museums that showcase artwork
11 created by international and local artists; and
- 12 (5) Museums or other educational facilities focusing on
13 the history and cultures of the various ethnic groups
14 within Hawaii, including Hawaiian history.

15 (e) This section shall not apply to the land conveyed in
16 fee simple to the office of Hawaiian affairs by this Act."

17 SECTION 9. Section 10-13.3, Hawaii Revised Statutes, is
18 repealed.

19 ~~["§10-13.3] Interim revenue. Notwithstanding the~~
20 ~~definition of revenue contained in this chapter and the~~
21 ~~provisions of section 10-13.5, and notwithstanding any claimed~~
22 ~~invalidity of Act 304, Session Laws of Hawaii 1990, the income~~



1 ~~and proceeds from the pro rata portion of the public land trust~~
2 ~~under article XII, section 6 of the state constitution for~~
3 ~~expenditure by the office of Hawaiian affairs for the betterment~~
4 ~~of the conditions of native Hawaiians for each of fiscal year~~
5 ~~1997-1998 and fiscal year 1998-1999 shall be \$15,100,000."]~~

6 SECTION 10. Section 10-13.5, Hawaii Revised Statutes, is
7 repealed.

8 [~~"§10-13.5 Use of public land trust proceeds. Twenty per~~
9 ~~cent of all funds derived from the public land trust, described~~
10 ~~in section 10-3, shall be expended by the office, as defined in~~
11 ~~section 10-2, for the purposes of this chapter."]~~

12 SECTION 11. Act 178, Session Laws of Hawaii 2006, is
13 amended by repealing section 3.

14 [~~"SECTION 3. Notwithstanding the provisions of chapter 10,~~
15 ~~Hawaii Revised Statutes, or the requirements of Executive Order~~
16 ~~No. 03-03, beginning in fiscal year 2005-2006, the departments~~
17 ~~of agriculture, accounting and general services, business,~~
18 ~~economic development, and tourism, education, land and natural~~
19 ~~resources, and transportation (for its harbors division), and~~
20 ~~any other department or agency that collects receipts from the~~
21 ~~lands within the public land trust, shall determine and transfer~~
22 ~~to the office of Hawaiian affairs that portion of their receipts~~



1 ~~from the use of lands within the public land trust collected~~
 2 ~~during each fiscal quarter, necessary to ensure that a total of~~
 3 ~~\$3,775,000 of revenues generated by the public land trust 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 lands within the~~
 9 ~~public land trust 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 ~~The governor is expressly authorized to fix the amounts~~
 13 ~~each agency shall transfer to the office of Hawaiian affairs in~~
 14 ~~each quarter by executive order to implement the provisions of~~
 15 ~~this section."]~~

16 SECTION 12. (a) Notwithstanding any law to the contrary,
 17 fee simple interest to the following parcels of land with the
 18 existing improvements thereon, except for submerged land,
 19 accreted land, or any land makai of the shoreline, shall be
 20 conveyed to the office of Hawaiian affairs:

- 21 (1) Kaka'ako Makai: (Lots 2, 3, 4, 5, and 9 as identified
- 22 on the final Kakaako park subdivision map dated



1 October 15, 2007, and approved by the city and county
2 of Honolulu department of planning and permitting on
3 November 9, 2007);

4 (2) Kalaeloa Makai: (TMK: (1)-9-1-31:1); and

5 (3) Hilo Banyan drive: Bayview Banyan Corp. (TMK: (3)-2-1-
6 5:21); country club condo hotel (TMK: (3)-2-1-5:20);
7 Hilo Hawaiian hotel (TMK: (3)-2-1-3:5); Naniloa hotel
8 and golf course (TMK: (3)-2-1-1:12; TMK: (3)-2-1-5:13,
9 14, 16, 17, 27, 32, 39, 41, 42, 46); Reed's bay resort
10 hotel (TMK: (3)-2-1-5:22); Uncle Billy's Hilo Bay
11 Hotel Inc. (TMK: (3)-2-1-5:9, 12, 33, 34, 35, 45, 47).

12 (b) As directed by the attorney general, the appropriate
13 boards, agencies, officers, and employees of the State shall:

14 (1) Execute instruments of conveyance as may be necessary
15 and proper to the office of Hawaiian affairs, as
16 grantee, to convey the interest and title of the State
17 and its boards and commissions to the lands described
18 in subsection (a) and improvements in fee simple; and

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

21 (c) As the conveyances in this section are conveyances in
22 which the State and its agencies are the only parties, the tax



1 imposed by section 247-1, Hawaii Revised Statutes, shall not
2 apply to them.

3 (d) The conveyances made by this section shall not include
4 any of the State's rights to minerals, or surface or ground
5 water.

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

21 (f) After the conveyances are made pursuant to this
22 section and while the office of Hawaiian affairs owns the



1 property, the office shall cooperate with the State to designate
2 and grant any access rights and easements to the State as may be
3 reasonably necessary for the benefit and use of adjoining
4 properties owned by the State. The office shall not be required
5 to approve any access rights or grant any access easements to
6 the State that would materially diminish the value of the
7 servient property or that would materially interfere with the
8 use of the servient property by the office or any lessee,
9 tenant, licensee, concessionaire, or other occupant of the
10 property. Each of the instruments creating access rights or
11 granting easements shall provide that the office or any
12 successor owner of the servient property shall have the right to
13 reasonably relocate any access areas or easements so granted.
14 The cost of initially identifying access areas or designating
15 and granting any easements shall be paid by the State. The cost
16 of relocating any access areas or easements shall be paid by the
17 office or any successor owner, as the case may be. Any
18 instrument creating an access right or granting an easement
19 shall provide that:

- 20 (1) The State is responsible for a reasonable share of the
- 21 cost of maintaining any access areas or easement
- 22 areas, as the case may be; and



1 (2) The State must indemnify the office, its tenants,
2 licensees, concessionaires, successors, and assigns,
3 from any liability arising from the use of such access
4 areas or easement areas by the State or its invitees.

5 (g) Except as set forth in this Act, beginning July 1,
6 2008, the State shall not impose new leases, contracts,
7 agreements, permits, or other instruments upon any land conveyed
8 by this section.

9 SECTION 13. The passage of this Act shall be in full
10 satisfaction and resolution of all controversies at law and in
11 equity, known or unknown, now existing or hereafter arising,
12 established or inchoate, arising out of or in any way related to
13 any right the office of Hawaiian affairs or any other person or
14 entity may have to income, proceeds, or any other tangible
15 right, item, or benefit from the public land trust lands under
16 sections 4 and 6 of article XII of the state constitution or any
17 related statute or act, which arose between November 7, 1978,
18 and July 1, 2008; thus, upon the passage of this Act, each and
19 every claim or suit that is predicated in any way upon an act or
20 omission that arises out of or is in any way related to any
21 right the office of Hawaiian affairs or any other person or
22 entity may have to the income, proceeds, or any other tangible



1 right, item, or benefit from the public land trust lands under
2 sections 4 and 6 of article XII of the state constitution or any
3 related statute or act that occurred between November 7, 1978,
4 and July 1, 2008, shall be forever barred and may not be brought
5 by the office of Hawaiian affairs or by any other person or
6 entity.

7 The passage of this Act shall have the effect of *res*
8 *judicata* as to all persons, claims, and issues that arise and
9 defenses that have been at issue, or that could have been, or
10 could in the future be, at issue, that arose between November 7,
11 1978, and July 1, 2008, whether brought against the State or its
12 departments, agencies, officials, and employees, directly or
13 indirectly, by subrogation, derivative or third party action,
14 tender, federal action, or by any other means whatsoever arising
15 out of or in any way related to any right the office of Hawaiian
16 affairs or any other person or entity may have to the income,
17 proceeds, or any other tangible right, item, or benefit from the
18 public land trust lands under sections 4 and 6 of article XII of
19 the state constitution or any related statute or act.

20 SECTION 14. The State, while not admitting the validity of
21 any claim, hereby resolves and satisfies all controversies and
22 claims described in section 13 of this Act by:



1 (1) The payment of \$13,189,860, to the office of Hawaiian
2 affairs for which general obligation bond funds are
3 authorized and appropriated in section 15 of this Act;
4 and

5 (2) The conveyance of the land and improvements to the
6 office of Hawaiian affairs pursuant to section 12 of
7 this Act.

8 SECTION 15. The director of finance is authorized to issue
9 general obligation bonds in the sum of \$ or so much
10 thereof as may be necessary and the same sum or so much thereof
11 as may be necessary is appropriated for fiscal year 2008-2009
12 for the purpose of making the payment described in section 14 of
13 this Act.

14 Any funds remaining unexpended or unencumbered as of
15 June 30, 2009, shall lapse as of such date.

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

19 SECTION 16. The real property conveyances made under this
20 Act and the funds paid under this Act, regardless of the means
21 of financing, shall be deemed income and proceeds from the
22 public land trust as if they had been paid out of the income and



1 proceeds from the public land trust pursuant to article XII,
2 section 4 and article XII, section 6 of the state constitution.

3 SECTION 17. Notwithstanding any other law to the contrary,
4 the State and the state officials who may have participated in
5 the preparation of the provisions or the enactment of this Act,
6 including the office of Hawaiian affairs, each of the members of
7 its board of trustees, and its staff, shall not be subject to
8 suit because of their participation, except if an action is
9 brought to enforce the provisions of this Act, in which case the
10 action shall be brought only against the State and any state
11 official as necessary to enforce the provisions of this Act.

12 SECTION 18. If any provision of chapter 673, Hawaii
13 Revised Statutes, is inconsistent with any provision of this
14 Act, the provisions of this Act shall prevail.

15 SECTION 19. (a) The provisions of this Act shall not be
16 severable to the extent that if any one or more of sections 9,
17 10, 11, 13, or 15 of this Act, or the provisions of subsections
18 (b) or (c) of the new section added to chapter 10, Hawaii
19 Revised Statutes, by section 2 of this Act, or subsection (a) of
20 section 12 of this Act, or the application of any one or more of
21 those sections or subsections is held invalid or unenforceable,
22 this Act in its entirety shall be invalid and:



- 1 (1) Sections 10-2, 10-3, 10-13.3, 10-13.5, 206E-3, 206E-8,
2 206E-10, and 206E-34, Hawaii Revised Statutes, and
3 section 3 of Act 178, Session Laws of Hawaii 2006,
4 shall be reenacted in the form in which they read on
5 the day before the effective date of this Act;
- 6 (2) All interests in the lands and improvements conveyed
7 by the provisions of section 12 of this Act, shall be
8 conveyed back to their respective grantors by the
9 office of Hawaiian affairs, but in that case:
- 10 (A) The State shall:
- 11 (i) Indemnify the office of Hawaiian affairs
12 with regard to any environmental claims
13 asserted by any third party against the
14 office of Hawaiian affairs arising solely
15 from time periods when the State held the
16 fee title to the lands; and
- 17 (ii) Indemnify the office of Hawaiian affairs
18 with regard to those portions of any
19 environmental claims asserted by any third
20 party against the office of Hawaiian affairs
21 arising solely from time periods when the
22 State held the fee title to the lands; and



1 (B) The office of Hawaiian affairs shall:
2 (i) Indemnify the State with regard to any
3 environmental claims asserted by any third
4 party against the State, arising solely from
5 time periods when the office of Hawaiian
6 affairs held the fee title to the lands; and
7 (ii) Indemnify the State with regard to those
8 portions of any environmental claims
9 asserted by any third party against the
10 State solely from time periods when the
11 office of Hawaiian affairs held the fee
12 title to the lands;
13 provided that at the option of the office of Hawaiian
14 affairs, if in lieu of conveying back the lands and
15 improvements conveyed by the provisions of section 12
16 of this Act to the State, the office of Hawaiian
17 affairs opts not to reconvey the lands, the office of
18 Hawaiian affairs shall pay the director of finance
19 \$186,810,140, of which the director of finance shall
20 deposit \$94,090,725 into the special land and
21 development fund of the department of land and natural
22 resources for all of the property conveyed to the



1 office other than at Kaka'ako Makai, and pay
 2 \$92,719,415 to the Hawaii community development
 3 authority for the property at Kaka'ako Makai; and
 4 (3) The \$13,189,860 payment to the office of Hawaiian
 5 affairs shall be paid back to the director of finance
 6 by the office of Hawaiian affairs and deposited into
 7 the bond fund as defined in section 37-62, Hawaii
 8 Revised Statutes.

9 (b) There shall be no waiver of sovereign immunity to
 10 bring any suit, claim, cause of action, or right of action to
 11 invalidate sections 9, 10, 11, 13, or 15 of this Act, or the
 12 provisions of subsections (b) or (c) of the new section added to
 13 chapter 10, Hawaii Revised Statutes, by section 2 of this Act,
 14 or subsection (a) of section 12 of this Act, or the application
 15 of any one or more of these sections or subsections, and to the
 16 extent any waiver of sovereign immunity for such a suit, claim,
 17 cause of action, or right of action still exists, that waiver
 18 shall be withdrawn.

19 SECTION 20. Statutory material to be repealed is bracketed
 20 and stricken. New statutory material is underscored.

21 SECTION 21. This Act shall take effect on July 1, 2050.



Report Title:

Public Trust Lands Settlement

Description:

Resolves claims and disputes relating to the portion of income and proceeds from the lands of the public land trust for use by the office of Hawaiian affairs between 11/7/1978 and 7/1/2008; fixes prospectively the minimum amount of income and proceeds from the lands of the public land trust that are to be paid to the office of Hawaii affairs at \$15,100,000 each fiscal year. Effective 07/01/08. (SB2733 SD2)

