
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 1978, the Constitution of the State of
2 Hawaii was amended to include article XII, sections 4, 5, and 6
3 that, among other things, established the office of Hawaiian
4 affairs and its board of trustees. Sections 4 and 6 of article
5 XII of the Constitution provide:

"PUBLIC TRUST

6
7 Section 4. The lands granted to the State of Hawaii by
8 Section 5(b) of the Admission Act and pursuant to Article XVI,
9 Section 7, of the State Constitution, excluding therefrom lands
10 defined as "available lands" by Section 203 of the Hawaiian
11 Homes Commission Act, 1920, as amended, shall be held by the
12 State as a public trust for native Hawaiians and the general
13 public."

"POWERS OF BOARD OF TRUSTEES

14
15 Section 6. The board of trustees of the Office of Hawaiian
16 Affairs shall exercise power as provided by law: to manage and
17 administer the proceeds from the sale or other disposition of
18 the lands, natural resources, minerals and income derived from



1 whatever sources for native Hawaiians and Hawaiians, including
2 all income and proceeds from that pro rata portion of the trust
3 referred to in section 4 of this article for native Hawaiians;
4 to formulate policy relating to affairs of native Hawaiians and
5 Hawaiians; and to exercise control over real and personal
6 property set aside by state, federal or private sources and
7 transferred to the board for native Hawaiians and Hawaiians.
8 The board shall have the power to exercise control over the
9 Office of Hawaiian Affairs through its executive officer, the
10 administrator of the Office of Hawaiian Affairs, who shall be
11 appointed by the board."

12 By Act 273, Session Laws of Hawaii 1980, the legislature
13 provided that "[t]wenty per cent of all funds derived from the
14 public land trust . . . shall be expended by the office of
15 Hawaiian affairs . . . for the purposes of this chapter." This
16 legislative directive has led to a series of lawsuits concerning
17 the practical application of the twenty per cent apportionment
18 that the legislature established to implement article XII,
19 sections 4 and 6, of the Hawaii Constitution.

20 In *Trustees of the Office of Hawaiian Affairs v. Yamasaki*,
21 69 Haw. 154, 737 P.2d 446 (1987), the Hawaii supreme court



1 concluded that the issue of how the apportionment is formulated
2 is a political question for the legislature to determine.

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

6 On September 12, 2001, the Hawaii supreme court ruled in
7 *Office of Hawaiian Affairs v. State of Hawaii*, 96 Haw. 388, 31
8 P.3d 901 (2001), ("OHA I") that Act 304 was effectively repealed
9 by its own terms, so that once again, it was necessary for the
10 legislature to specify the apportionment to be managed and
11 administered by the office of Hawaiian affairs.

12 In its decision, the Hawaii supreme court affirmed
13 *Yamasaki*, observing:

14 [T]he State's obligation to native Hawaiians is firmly
15 established in our constitution. How the State
16 satisfies that constitutional obligation requires
17 policy decisions that are primarily within the
18 authority and expertise of the legislative branch. As
19 such, it is incumbent upon the legislature to enact
20 legislation that gives effect to the right of native
21 Hawaiians to benefit from the ceded lands trust. See
22 Haw. Const. art. XVI, §7 . . . [W]e trust that the



1 legislature will re-examine the State's constitutional
2 obligation to native Hawaiians and the purpose of HRS §
3 10-13.5 and enact legislation that most effectively and
4 responsibly meets those obligations.

5 *Office of Hawaiian Affairs v. State of Hawaii*, 96 Haw. at 401,
6 31 P.3d at 914 (citations omitted).

7 On April 28, 2006, the Hawaii supreme court ruled in *Office*
8 *of Hawaiian Affairs v. State of Hawaii*, 110 Haw. 338, 366, 133
9 P.3d 767, 795 (2006) ("OHA II"), that consistent with its ruling
10 in OHA I, the State remained obligated to pay OHA for use of
11 ceded lands including the "use of ceded lands upon which the
12 airports sit", and noted that "it is incumbent upon the
13 legislature to enact legislation that gives effect to the right
14 of native Hawaiians to benefit from the ceded lands trust."

15 In reviewing the entire history of the issue of the State's
16 obligation to transmit to the office of Hawaiian affairs a part
17 of the income and proceeds from the public land trust, the
18 legislature finds that the issue has evolved into two principal
19 aspects, one looking to the past, the other looking to the
20 future.

21 With regard to the past, the legislature finds that in
22 addition to the amounts of income and proceeds previously paid



1 to the office of Hawaiian affairs, further resources should be
2 provided to the office of Hawaiian affairs that represent a re-
3 examination and final determination by the legislature for the
4 period between November 7, 1978 (the ratification date of
5 article XII, sections 4, 5, and 6 of the Hawaii constitution),
6 and July 1, 2008, with regard to income and proceeds from the
7 lands in the public trust referred to in article XII, section 4,
8 of the Hawaii constitution. Additionally, the legislature finds
9 that the dollar value of \$200,000,000 represents the
10 legislature's re-examination and final determination of the
11 resources that should be provided to the office of Hawaiian
12 affairs for the period between November 7, 1978, and July 1,
13 2010.

14 The legislature also finds that the \$200,000,000 will be
15 provided to the office of Hawaiian affairs by the State as a
16 monetary payment. The office of Hawaiian affairs will be
17 entitled to interest on any balance of the \$200,000,000 owed
18 from July 1, 2010 at the rate of interest set forth in section
19 662-8, Hawaii Revised Statutes, which is currently at four per
20 cent a year.

21 With regard to the future, the legislature finds that the
22 public interest is best served by deferring temporarily a re-



1 examination of what amount of income and proceeds from the lands
2 in the public trust referred to in article XII, section 4, of
3 the Hawaii constitution should be provided to the office of
4 Hawaiian affairs annually beginning on July 1, 2008. In this
5 light, the annual amount, for the time being, would continue to
6 be set by Act 178, Session Laws of Hawaii 2006, which stated:

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

15 The legislature recognizes that in January 2008, the
16 governor and the office of Hawaiian affairs reached a settlement
17 agreement with respect to all issues relating to the portion of
18 the income and proceeds from the lands in the public trust that
19 the office of Hawaiian affairs was to receive for the period
20 between November 7, 1978, and July 1, 2008. However, the
21 settlement agreement did not take effect because it was
22 conditioned on certain legislative actions that did not occur.



1 This Act is an expression of legislative policy and not a
2 settlement or a contract. This Act is without distinction from
3 any other legislative act. As it is neither a settlement nor a
4 contract, it can give rise to no lawsuits or claims to enforce
5 it, nor to any claim in the future that any future legislation
6 is barred in any way, or lead to liability in any way, because
7 it somehow conflicts with a settlement, settlement agreement, or
8 contract.

9 The purpose of this Act is to allow the State to most
10 effectively and responsibly make progress toward meeting part of
11 its constitutional obligation to native Hawaiians by addressing
12 the additional amount of income and proceeds that the office of
13 Hawaiian affairs is to receive from the public trust pursuant to
14 article XII, sections 4 and 6, of the Hawaii constitution, for
15 the period from November 7, 1978, to July 1, 2010, by requiring
16 the transfer of cash to the office of Hawaiian affairs.

17 SECTION 2. The State shall pay to the office of Hawaiian
18 affairs the \$200,000,000 in resources identified in section 1 of
19 this Act in the following manner: For each fiscal year
20 beginning with fiscal year 2015-2016 (July 1, 2015 through June
21 30, 2016), the State shall pay at least \$30,000,000 to the
22 office of Hawaiian affairs; provided that the obligation to make



1 payments of at least \$30,000,000 as specified in this section
 2 shall continue until the \$200,000,000 and applicable interest
 3 has been paid to the office of Hawaiian affairs; provided
 4 further that the State shall pay the office of Hawaiian affairs
 5 interest on any remaining balance owed from July 1, 2010 at the
 6 rate provided for in section 662-8, Hawaii Revised Statutes,
 7 which is currently at four per cent a year; provided further
 8 that nothing in this Act shall bar the State from paying to the
 9 office of Hawaiian affairs, in a monetary payment or monetary
 10 payments, all or part of the \$200,000,000 prior to July 1, 2015.

11 SECTION 3. The cash transfers to the office of Hawaiian
 12 affairs made under this Act shall be deemed income and proceeds
 13 from the lands in the public trust referred to in article XII,
 14 sections 4 and 6, of the Constitution of the State of Hawaii, as
 15 if they had been paid out of the income and proceeds from trust
 16 lands pursuant to article XII, sections 4 and 6, of the state
 17 constitution.

18 SECTION 4. This Act shall take effect upon its approval.
 19

INTRODUCED BY:



Uwele Carroll

Deq. Hanalei

Hannuonovita



Report Title:

Office of Hawaiian Affairs; Public Land Trust

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; requires payment of cash to the office of Hawaiian affairs.

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