



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 the legislature established to implement article XII, sections 4  
19 and 6, of the state 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8 P.3d 901 (2001) ("OHA I"), that Act 304 was effectively repealed  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  
15 firmly 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  
4 and responsibly meets those obligations."

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

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 the office of  
11 Hawaiian affairs for use of ceded lands including "for use of  
12 ceded lands upon which the airports sit" and "it is incumbent  
13 upon the legislature to enact legislation that gives effect to  
14 the right of native Hawaiians to benefit from the ceded lands  
15 trust."

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



1           With regard to the past, the legislature finds that in  
2 addition to the amounts of income and proceeds previously paid  
3 to the office of Hawaiian affairs, further resources should be  
4 provided to the office of Hawaiian affairs that represent a re-  
5 examination and final determination by the legislature for the  
6 period between November 7, 1978 (the ratification date of  
7 article XII, sections 4, 5, and 6 of the Hawaii constitution),  
8 and July 1, 2010, with regard to income and proceeds from the  
9 lands in the public trust referred to in article XII, section 4,  
10 of the state constitution. Additionally, the legislature finds  
11 that the dollar value of \$200,000,000 represents the  
12 legislature's re-examination and final determination of the  
13 resources that should be provided to the office of Hawaiian  
14 affairs for the period between November 7, 1978, and July 1,  
15 2010.

16           The legislature further finds that the \$200,000,000 will be  
17 provided to the office of Hawaiian affairs by the State as a  
18 monetary payment. The office of Hawaiian affairs will be  
19 entitled to interest on any balance of the \$200,000,000 owed  
20 from July 1, 2010 at the rate of interest set forth in section  
21 662-8, Hawaii Revised Statutes, which is currently at four per  
22 cent a year.



1           With regard to the future, the legislature finds that the  
2 public interest is best served by the legislature deferring  
3 temporarily a re-examination of what amount of income and  
4 proceeds from the lands in the public trust referred to in  
5 article XII, section 4, of the state constitution should be  
6 provided to the office of Hawaiian affairs annually beginning on  
7 July 1, 2010. In this light, the annual amount will, for the  
8 time being, continue to be set by Act 178, Session Laws of  
9 Hawaii 2006, which stated:

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

18           The legislature recognizes that in January 2008, the  
19 governor and the office of Hawaiian affairs reached a settlement  
20 agreement with respect to all issues relating to the portion of  
21 the income and proceeds from the lands in the public trust for  
22 the period between November 7, 1978, and July 1, 2008, that the



1 office of Hawaiian affairs was to receive. However, the  
2 settlement agreement did not take effect because it was  
3 conditioned on certain legislative actions that did not occur.

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

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

20 SECTION 2. The State shall pay to the office of Hawaiian  
21 affairs \$200,000,000 as a monetary payment in the following  
22 manner: for each fiscal year beginning with fiscal year 2015-



1 2016 (July 1, 2015 through June 30, 2016), the State shall pay  
2 at least \$30,000,000 to the office of Hawaiian affairs; provided  
3 that the obligation to make payments of at least \$30,000,000 as  
4 set forth in this section shall continue until the \$200,000,000  
5 and applicable interest has been paid to the office of Hawaiian  
6 affairs; provided further that the State shall pay the office of  
7 Hawaiian affairs interest on any remaining balance owed from  
8 July 1, 2010 at the rate provided for in section 662-8, Hawaii  
9 Revised Statutes, at four per cent a year; provided further that  
10 nothing in this Act shall bar the State from paying to the  
11 office of Hawaiian affairs, in a monetary payment or monetary  
12 payments, all or part of the \$200,000,000 prior to July 1, 2015.

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

19





1 SECTION 4. This Act shall take effect on July 1, 2010.

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INTRODUCED BY: \_\_\_\_\_

*Cynthia Hlee*  
*by request*



**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 7/1/2010.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

