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

6 **"PUBLIC TRUST**

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."

14 **"POWERS OF BOARD OF TRUSTEES**

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



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

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

21 In *Trustees of the Office of Hawaiian Affairs v. Yamasaki*,  
22 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), that Act 304 was effectively repealed by its  
9 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 (citations omitted).

7 In reviewing the entire history of the issue of the State's  
8 obligation to transmit to the office of Hawaiian affairs a part  
9 of the income and proceeds from the public land trust, the  
10 legislature finds that the issue has evolved into two principal  
11 aspects, one looking to the past, the other looking to the  
12 future.

13 With regard to the past, the legislature finds that in  
14 addition to the amounts of income and proceeds previously paid  
15 to the office of Hawaiian affairs, further resources should be  
16 provided to the office of Hawaiian affairs that represent a re-  
17 examination and final determination by the legislature for the  
18 period between November 7, 1978 (the ratification date of  
19 article XII, sections 4, 5, and 6 of the Hawaii Constitution),  
20 and July 1, 2009, with regard to income and proceeds from the  
21 lands in the public trust referred to in article XII, section 4,  
22 of the Hawaii Constitution. Additionally, the legislature finds



1 that the dollar value of \$200,000,000 represents the  
2 legislature's re-examination and final determination of the  
3 resources that should be provided to the office of Hawaiian  
4 affairs for the period between November 7, 1978, and July 1,  
5 2009.

6 The legislature also finds that the resources valued at  
7 \$200,000,000 will be provided to the office of Hawaiian affairs  
8 in two phases. In the first phase, the legislature by this Act  
9 conveys to the office of Hawaiian affairs the fee simple  
10 interest in a certain parcel of real property in the city and  
11 county of Honolulu with a tax assessed value for 2008-2009 of  
12 \$92,719,415 (certain property in Kakaako on Oahu). In the  
13 second phase, the legislature in 2010 will pass an act that  
14 conveys to the office of Hawaiian affairs resources totaling  
15 \$107,280,585 in value, in the form of conveyance of real  
16 property in fee simple.

17 With regard to the future, the legislature finds that the  
18 public interest is best served by the legislature deferring  
19 temporarily a re-examination of what amount of income and  
20 proceeds from the lands in the public trust referred to in  
21 article XII, section 4, of the Hawaii Constitution should be  
22 provided to the office of Hawaiian affairs annually beginning on



1 July 1, 2009. In this light, the annual amount will, for the  
2 time being, continue to be set by Act 178, Session Laws of  
3 Hawaii 2006, which stated:

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

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

20 This Act is an expression of legislative policy and not a  
21 settlement or a contract. This legislation is a legislative act  
22 without distinction from any other legislative act. As it is



1 neither a settlement nor a contract, it can give rise to no  
2 lawsuits or claims to enforce it, nor to any claim in the future  
3 that any future legislation is barred in any way, or leads to  
4 liability in any way, because it somehow conflicts with a  
5 settlement, settlement agreement, or contract.

6 The purpose of this Act is to allow the State to most  
7 effectively and responsibly make progress toward meeting part of  
8 its constitutional obligation to native Hawaiians by addressing  
9 the additional amount of income and proceeds that the office of  
10 Hawaiian affairs is to receive from the public trust pursuant to  
11 article XII, sections 4 and 6, of the Hawaii Constitution, for  
12 the period from November 7, 1978, to July 1, 2009, by:

- 13 (1) Conveying certain parcels of real property in fee  
14 simple to the office of Hawaiian affairs; and  
15 (2) Supporting the conveyance with appropriate provisions,  
16 such as exempting all the conveyed lands from the  
17 definition of "public lands" in chapter 171, Hawaii  
18 Revised Statutes, and exempting the conveyed lands  
19 located in Kakaako from the authority of the Hawaii  
20 community development authority under chapter 206E,  
21 Hawaii Revised Statutes.



1 SECTION 2. Section 171-2, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§171-2 Definition of public lands.** "Public lands" means  
4 all lands or interest therein in the State classed as government  
5 or crown lands previous to August 15, 1895, or acquired or  
6 reserved by the government upon or subsequent to that date by  
7 purchase, exchange, escheat, or the exercise of the right of  
8 eminent domain, or in any other manner; including accreted lands  
9 not otherwise awarded, submerged lands, and lands beneath tidal  
10 waters which are suitable for reclamation, together with  
11 reclaimed lands which have been given the status of public lands  
12 under this chapter, except:

- 13 (1) Lands designated in section 203 of the Hawaiian Homes  
14 Commission Act, 1920, as amended;
- 15 (2) Lands set aside pursuant to law for the use of the  
16 United States;
- 17 (3) Lands being used for roads and streets;
- 18 (4) Lands to which the United States relinquished the  
19 absolute fee and ownership under section 91 of the  
20 Hawaiian Organic Act prior to the admission of Hawaii  
21 as a state of the United States unless subsequently  
22 placed under the control of the board of land and





1 natural resources and given the status of public lands  
2 in accordance with the State Constitution, the  
3 Hawaiian Homes Commission Act, 1920, as amended, or  
4 other laws;

5 (5) Lands to which the University of Hawaii holds title;

6 (6) Lands to which the Hawaii housing finance and  
7 development corporation in its corporate capacity  
8 holds title;

9 (7) Lands to which the Hawaii community development  
10 authority in its corporate capacity holds title;

11 (8) Lands to which the department of agriculture holds  
12 title by way of foreclosure, voluntary surrender, or  
13 otherwise, to recover moneys loaned or to recover  
14 debts otherwise owed the department under chapter 167;

15 (9) Lands [~~which~~] that are set aside by the governor to  
16 the Aloha Tower development corporation; lands leased  
17 to the Aloha Tower development corporation by any  
18 department or agency of the State; or lands to which  
19 the Aloha Tower development corporation holds title in  
20 its corporate capacity;

21 (10) Lands [~~which~~] that are set aside by the governor to  
22 the agribusiness development corporation; lands leased



1 to the agribusiness development corporation by any  
2 department or agency of the State; or lands to which  
3 the agribusiness development corporation in its  
4 corporate capacity holds title; [~~and~~]

5 (11) Lands to which the high technology development  
6 corporation in its corporate capacity holds title[-];  
7 and

8 (12) Lands conveyed to the office of Hawaiian affairs  
9 pursuant to Act \_\_\_\_\_, Session Laws of Hawaii 2009."

10 SECTION 3. Section 206E-32, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "**§206E-32 District; established, boundaries.** The Kakaako  
13 community development district is established. The district  
14 shall include that area bounded by King Street; Piikoi Street  
15 from its intersection with King Street to Ala Moana Boulevard;  
16 Ala Moana Boulevard, inclusive, from Piikoi Street to its  
17 intersection with the Ewa boundary of Ala Moana Park also  
18 identified as the Ewa boundary of tax map key 2-3-37:01; the Ewa  
19 boundary of tax map key 2-3-37:01 from its intersection with Ala  
20 Moana Boulevard to the shoreline; the shoreline from its  
21 intersection with the property line representing the Ewa  
22 boundary of property identified by tax map key 2-3-37:01 to the



1 property line between Pier 2 and Pier 4; the property line  
2 between Pier 2 and Pier 4 from its intersection with the  
3 shoreline to Ala Moana Boulevard; Ala Moana Boulevard from its  
4 intersection with the property line between lands identified by  
5 Pier 2 and Pier 4 to Punchbowl Street; and Punchbowl Street to  
6 its intersection with King Street; provided that the following  
7 parcels at Pier 1 and Pier 2 shall be deleted from the Kakaako  
8 community development district boundaries and conveyed to the  
9 department of land and natural resources to be set aside for the  
10 department of transportation and the foreign-trade zone division  
11 of the department of business, economic development, and  
12 tourism, to ensure continued maritime and foreign commerce use:  
13 all of lot 3 and parcels 2, 3-A, A, and B of the Forrest Avenue  
14 subdivision, as shown on the map filed with the bureau of  
15 conveyances of the State of Hawaii as file plan 2335; and lots  
16 A-1 and A-2, as shown on map 2, filed in the office of the  
17 assistant registrar of the land court of the State of Hawaii  
18 with land court application 1328; and provided further that all  
19 existing easements affecting and appurtenant to the parcels to  
20 be deleted from the Kakaako community development district  
21 boundaries shall not be affected by this change.



1 The district shall also include that parcel of land  
2 identified by tax map key 2-1-14:16, situated mauka of Pier 6  
3 and Pier 7 and makai of Nimitz Highway, being the site for the  
4 existing Hawaiian Electric power plant and related facilities.

5 Any other provision of this section or of this chapter  
6 notwithstanding, the Kakaako community development district  
7 shall not include any lands conveyed in fee simple to the office  
8 of Hawaiian affairs pursuant to Act , Session Laws of Hawaii  
9 2009; provided further that these lands shall not be subject to  
10 any other of the provisions of this chapter."

11 SECTION 4. Section 10-13.3, Hawaii Revised Statutes, is  
12 repealed.

13 [~~["§10-13.3] Interim revenue. Notwithstanding the~~  
14 ~~definition of revenue contained in this chapter and the~~  
15 ~~provisions of section 10-13.5, and notwithstanding any claimed~~  
16 ~~invalidity of Act 304, Session Laws of Hawaii 1990, the income~~  
17 ~~and proceeds from the pro rata portion of the public land trust~~  
18 ~~under article XII, section 6 of the state constitution for~~  
19 ~~expenditure by the office of Hawaiian affairs for the betterment~~  
20 ~~of the conditions of native Hawaiians for each of fiscal year~~  
21 ~~1997-1998 and fiscal year 1998-1999 shall be \$15,100,000." ]~~



1           SECTION 5. (a) Subject to the rights of the office of  
2 Hawaiian affairs set forth in section 8 of this Act including  
3 but not limited to the right to inspect and reject any or all of  
4 the properties described in this section, all right, title, and  
5 interest in the following parcels of land with the existing  
6 improvements thereon, including submerged land, accreted land,  
7 or any land makai of the shoreline, shall be conveyed in  
8 accordance with section 8 of this Act in fee simple to the  
9 office of Hawaiian affairs:

10           Kakaako Makai: Lots 2, 3, 4, 5, and 9 as identified on the  
11 final Kakaako park subdivision map dated October 15, 2007,  
12 and approved by the city and county of Honolulu department  
13 of planning and permitting on November 9, 2007; except TMK:  
14 2-1-058:41 and 2-1-058:110.

15           The land described in this section shall be held in trust  
16 pursuant to article XII, sections 4, 5, and 6, of the Hawaii  
17 Constitution, and shall be subject to all laws, including  
18 section 171-58, Hawaii Revised Statutes, except as otherwise  
19 provided in this Act.

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 ongoing 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 of Hawaiian affairs or set forth in a  
9 license or similar agreement, a memorandum of which may be  
10 recorded concurrently with the instruments conveying the  
11 property to the office of Hawaiian affairs. Effective upon  
12 conveyance of the property to the office of Hawaiian affairs  
13 pursuant to this Act, every reference to the current title-  
14 holder or the head of the department or agency in each such  
15 instrument, if the title-holder is a department or an agency,  
16 shall be construed to be a reference to the office of Hawaiian  
17 affairs or its board of trustees.

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



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



1 (c) Notwithstanding subsection (b), the office of Hawaiian  
 2 affairs shall not be required to approve any access rights or  
 3 grant any access easements to other state agencies that would  
 4 materially diminish the value of the servient property or that  
 5 would materially interfere with the use of the servient property  
 6 by the office of Hawaiian affairs or any lessee, tenant,  
 7 licensee, concessionaire, or other lawful occupant of the  
 8 property, unless otherwise provided by law.

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

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

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

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





1 (f) The office of Hawaiian affairs shall transfer  
2 management and control of all parcels, as described in  
3 subsection (a), to the sovereign native Hawaiian entity upon its  
4 recognition by the United States and the State. All terms,  
5 conditions, agreements, and laws affecting the parcels, as  
6 described in subsection (a), shall remain in effect until  
7 expressly terminated.

8 SECTION 6. The real property conveyances made under this  
9 Act shall be deemed income and proceeds from the lands in the  
10 public trust referred to in article XII, sections 4 and 6, of  
11 the Hawaii Constitution, as if they had been paid out of the  
12 income and proceeds from trust lands pursuant to article XII,  
13 sections 4 and 6, of the Hawaii Constitution. With regard to  
14 any properties conveyed to the office of Hawaiian affairs under  
15 this Act that are part of the public land trust referred to in  
16 article XII, sections 4 and 6, of the Hawaii Constitution,  
17 nothing in this Act shall remove those properties from that  
18 public land trust.

19 SECTION 7. To the extent that the State has waived  
20 sovereign immunity for a suit, claim, cause of action, or right  
21 of action regarding the amount of income and proceeds the office  
22 of Hawaiian affairs is to receive from the public trust pursuant



1 to article XII, sections 4 and 6, of the Hawaii Constitution,  
2 that waiver is withdrawn.

3 SECTION 8. (a) During regular business hours, the State  
4 shall make available to the office of Hawaiian affairs and its  
5 authorized representatives the State's files that contain any of  
6 the following regarding properties to be conveyed to the office  
7 pursuant to this Act:

- 8 (1) Copies of soil reports, site plans, engineering  
9 reports, archaeological and historical studies, plans,  
10 and surveys, including shoreline surveys;
- 11 (2) Zoning entitlement and other land use documents and  
12 records including, without limitation, all current  
13 governmental permits, approvals, and authorizations;
- 14 (3) Copies of notices from governmental agencies regarding  
15 any violations of laws or ordinances;
- 16 (4) Copies of all leases and all correspondence with any  
17 lessees under any of the leases;
- 18 (5) Copies of licenses and concession agreements and all  
19 correspondence with any of the parties to the licenses  
20 and concession agreements;



1 (6) Copies of any other agreements affecting or relating  
2 to any of the property, and correspondence with any of  
3 the parties to any other relevant agreements;

4 (7) Copies of any existing surveys, maps, and aerial  
5 photographs; and

6 (8) Copies of all plans and other documents relating to  
7 any improvements on any of the property.

8 (b) The State shall permit the office of Hawaiian affairs  
9 and its authorized representatives to enter upon and conduct  
10 reasonable physical inspections of the property to be conveyed  
11 to the office of Hawaiian affairs under this Act, including  
12 subsurface investigations under the property and inspections of  
13 the buildings and other improvements located upon the property;  
14 provided that all entries and inspections shall be conducted in  
15 a manner that reasonably minimizes interference with the use of  
16 the property by the occupants of the property.

17 (c) The office of Hawaiian affairs shall have until the  
18 later of:

19 (1) October 1, 2009; or

20 (2) Six months after the State has provided the office  
21 with access to all the documents and property  
22 described in subsections (a) and (b);



1 to conduct a due diligence investigation of the property to be  
2 conveyed to the office of Hawaiian affairs pursuant to this Act.

3 (d) If the office of Hawaiian affairs determines in its  
4 sole and absolute discretion that there exists any condition  
5 with respect to any of the property to be conveyed to the office  
6 of Hawaiian affairs pursuant to this Act that makes the property  
7 unsuitable for the intended uses of the property by the office  
8 of Hawaiian affairs, the office of Hawaiian affairs may reject  
9 any or all of the property to be conveyed to it pursuant to this  
10 Act by written notice to the State given by not later than  
11 October 1, 2009, or six months after the State has provided the  
12 office of Hawaiian affairs with access to all the documents and  
13 property described in subsections (a) and (b).

14 (e) Upon receipt of written notice from the office of  
15 Hawaiian affairs as and by the date provided in subsection (d)  
16 that any or all of the property, including but not limited to  
17 any one or more lot or tax map key parcel, to be conveyed to the  
18 office of Hawaiian affairs is rejected, then the property  
19 identified by the office of Hawaiian affairs shall not be  
20 conveyed to the office of Hawaiian affairs pursuant to this Act,  
21 and the value of real property to be conveyed to the office of  
22 Hawaiian affairs in 2010, as described in section 1 of this Act,



1 shall be increased by the value of the county tax assessment, as  
2 of the effective date of this Act, of the rejected real  
3 property.

4 (f) The State shall convey to the office of Hawaiian  
5 affairs any property that has not been rejected by the office of  
6 Hawaiian affairs as provided in subsection (d) by not later than  
7 thirty days after the date by which the office of Hawaiian  
8 affairs was required to notify the State of any rejection as  
9 provided in subsection (d).

10 SECTION 9. In printing this Act, the revisor of statutes  
11 shall substitute in sections 171-2 and 206E-32, Hawaii Revised  
12 Statutes, of sections 2 and 3, the corresponding act number of  
13 this Act.

14 SECTION 10. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 11. This Act shall take effect on July 1, 2070.



**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 7/1/2009; conveys certain parcels of real property in fee simple to the office of Hawaiian affairs. (SB995 HD1)

