
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 Hawaii
5 Constitution provide:

"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."

"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, 2008, 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 2008.

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 2007-2008 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; provided that the following parcels at
17 Pier 1 and Pier 2 shall not be conveyed: All of lot 3 and
18 parcels 2, 3-A, A, and B of the Forrest Avenue subdivision, as
19 shown on the map filed with the bureau of conveyances of the
20 State of Hawaii as file plan 2335; and lots A-1 and A-2, as
21 shown on map 2, filed in the office of the assistant registrar



1 of the land court of the State of Hawaii with land court
2 application 1328.

3 With regard to the future, the legislature finds that the
4 public interest is best served by the legislature deferring
5 temporarily a re-examination of what amount of income and
6 proceeds from the lands in the public trust referred to in
7 article XII, section 4, of the Hawaii Constitution should be
8 provided to the office of Hawaiian affairs annually beginning on
9 July 1, 2008. In this light, the annual amount will, for the
10 time being, continue to be set by Act 178, Session Laws of
11 Hawaii 2006, which stated:

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

20 The legislature recognizes that in January 2008, the
21 governor and the office of Hawaiian affairs reached a settlement
22 agreement with respect to all issues relating to the portion of



1 the income and proceeds from the lands in the public trust for
2 the period between November 7, 1978, and July 1, 2008, that the
3 office of Hawaiian affairs was to receive. However, the
4 settlement agreement did not take effect because it was
5 conditioned on certain legislative actions that did not occur.

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

14 The purpose of this Act is to allow the State to most
15 effectively and responsibly make progress toward meeting part of
16 its constitutional obligation to native Hawaiians by addressing
17 the additional amount of income and proceeds that the office of
18 Hawaiian affairs is to receive from the public trust pursuant to
19 article XII, sections 4 and 6, of the Hawaii Constitution, for
20 the period from November 7, 1978, to July 1, 2008, by:

21 (1) Conveying certain parcels of real property in fee
22 simple to the office of Hawaiian affairs; and



1 (2) Supporting the conveyance with appropriate provisions,
2 such as exempting all the conveyed lands from the
3 definition of "public lands" in chapter 171, Hawaii
4 Revised Statutes, and exempting the conveyed Kakaako
5 lands from the authority of the Hawaii community
6 development authority under chapter 206E, Hawaii
7 Revised Statutes.

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

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

20 (1) Lands designated in section 203 of the Hawaiian Homes
21 Commission Act, 1920, as amended;



- 1 (2) Lands set aside pursuant to law for the use of the
2 United States;
- 3 (3) Lands being used for roads and streets;
- 4 (4) Lands to which the United States relinquished the
5 absolute fee and ownership under section 91 of the
6 Hawaiian Organic Act prior to the admission of Hawaii
7 as a state of the United States unless subsequently
8 placed under the control of the board of land and
9 natural resources and given the status of public lands
10 in accordance with the [State] Hawaii Constitution,
11 the Hawaiian Homes Commission Act, 1920, as amended,
12 or other laws;
- 13 (5) Lands to which the University of Hawaii holds title;
- 14 (6) Lands to which the Hawaii housing finance and
15 development corporation in its corporate capacity
16 holds title;
- 17 (7) Lands to which the Hawaii community development
18 authority in its corporate capacity holds title;
- 19 (8) Lands to which the department of agriculture holds
20 title by way of foreclosure, voluntary surrender, or
21 otherwise, to recover moneys loaned or to recover
22 debts otherwise owed the department under chapter 167;



1 (9) Lands [~~whieh~~] that are set aside by the governor to
2 the Aloha Tower development corporation; lands leased
3 to the Aloha Tower development corporation by any
4 department or agency of the State; or lands to which
5 the Aloha Tower development corporation holds title in
6 its corporate capacity;

7 (10) Lands [~~whieh~~] that are set aside by the governor to
8 the agribusiness development corporation; lands leased
9 to the agribusiness development corporation by any
10 department or agency of the State; or lands to which
11 the agribusiness development corporation in its
12 corporate capacity holds title; [and]

13 (11) Lands to which the high technology development
14 corporation in its corporate capacity holds title[-];
15 and

16 (12) Lands conveyed to the office of Hawaiian affairs
17 pursuant to Act , Session Laws of Hawaii 2009."

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

20 "**§206E-32 District; established, boundaries.** The Kakaako
21 community development district is established. The district
22 shall include that area bounded by King Street; Piikoi Street



1 from its intersection with King Street to Ala Moana Boulevard;
2 Ala Moana Boulevard, inclusive, from Piikoi Street to its
3 intersection with the Ewa boundary of Ala Moana Park also
4 identified as the Ewa boundary of tax map key 2-3-37:01; the Ewa
5 boundary of tax map key 2-3-37:01 from its intersection with Ala
6 Moana Boulevard to the shoreline; the shoreline from its
7 intersection with the property line representing the Ewa
8 boundary of property identified by tax map key 2-3-37:01 to the
9 property line between Pier 2 and Pier 4; the property line
10 between Pier 2 and Pier 4 from its intersection with the
11 shoreline to Ala Moana Boulevard; Ala Moana Boulevard from its
12 intersection with the property line between lands identified by
13 Pier 2 and Pier 4 to Punchbowl Street; and Punchbowl Street to
14 its intersection with King Street; provided that the following
15 parcels at Pier 1 and Pier 2 shall be deleted from the Kakaako
16 community development district boundaries and conveyed to the
17 department of land and natural resources to be set aside for the
18 department of transportation and the foreign-trade zone division
19 of the department of business, economic development, and
20 tourism, to ensure continued maritime and foreign commerce use:
21 all of lot 3 and parcels 2, 3-A, A, and B of the Forrest Avenue
22 subdivision, as shown on the map filed with the bureau of



1 conveyances of the State of Hawaii as file plan 2335; and lots
2 A-1 and A-2, as shown on map 2, filed in the office of the
3 assistant registrar of the land court of the State of Hawaii
4 with land court application 1328; and provided further that all
5 existing easements affecting and appurtenant to the parcels to
6 be deleted from the Kakaako community development district
7 boundaries shall not be affected by this change.

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

12 Any other provision of this section or of this chapter
13 notwithstanding, the Kakaako community development district
14 shall not include any lands conveyed in fee simple to the office
15 of Hawaiian affairs pursuant to Act , Session Laws of Hawaii
16 2009, and these lands shall not be subject to any other
17 provisions of this chapter."

18 SECTION 4. Section 10-13.3, Hawaii Revised Statutes, is
19 repealed.

20 [~~"[§10-13.3]—Interim revenue. Notwithstanding the~~
21 ~~definition of revenue contained in this chapter and the~~
22 ~~provisions of section 10-13.5, and notwithstanding any claimed~~



1 ~~invalidity of Act 304, Session Laws of Hawaii 1990, the income~~
2 ~~and proceeds from the pro rata portion of the public land trust~~
3 ~~under article XII, section 6 of the state constitution for~~
4 ~~expenditure by the office of Hawaiian affairs for the betterment~~
5 ~~of the conditions of native Hawaiians for each of fiscal year~~
6 ~~1997-1998 and fiscal year 1998-1999 shall be \$15,100,000."]~~

7 SECTION 5. (a) Subject to the rights of the office of
8 Hawaiian affairs set forth in section 8 of this Act including
9 the right to inspect and reject any or all of the properties
10 described in this section, all right, title, and interest in the
11 following parcels of land with the existing improvements
12 thereon, including submerged land, accreted land, or any land
13 makai of the shoreline, shall be conveyed in accordance with
14 section 8 of this Act in fee simple to the office of Hawaiian
15 affairs:

16 Kakaako Makai: Lots 2, 3, 4, 5, and 9 as identified on the
17 final Kakaako park subdivision map dated October 15, 2007,
18 and approved by the city and county of Honolulu department
19 of planning and permitting on November 9, 2007.

20 The land described in this section shall be held in trust
21 pursuant to article XII, sections 4, 5, and 6, of the Hawaii
22 Constitution, and shall be subject to all laws, including



1 section 171-58, Hawaii Revised Statutes, except as otherwise
2 provided in this Act.

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

6 The property conveyed shall be subject to all encumbrances,
7 whether or not of record, rights of native tenants, leases,
8 contracts, agreements, permits, easements, profits, licenses,
9 rights-of-way, or other instruments applicable to any land
10 conveyed by this section effective or ongoing on the effective
11 date of this Act, which shall remain in full force and effect.

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



1 After the conveyances are made, the property shall be
2 subject to all laws, except as otherwise provided in this Act.
3 The office of Hawaiian affairs shall administer the property in
4 accordance with its duties under the Hawaii Constitution and as
5 provided by law.

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



1 areas and easement areas, as the case may be, and that the
2 office, its tenants, licensees, concessionaires, successors, and
3 assigns shall not be liable for injuries or damages arising from
4 the use of the access areas or easement areas by other state
5 agencies or their invitees.

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

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

18 (1) Execute instruments of conveyance as may be necessary
19 and proper to the office of Hawaiian affairs, as
20 grantee, to convey the interest and title of the State
21 and its boards and commissions to these lands and
22 improvements in fee simple; and



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

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

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

16 SECTION 7. To the extent that the State has waived
17 sovereign immunity for a suit, claim, cause of action, or right
18 of action regarding the amount of income and proceeds the office
19 of Hawaiian affairs is to receive from the public trust pursuant
20 to article XII, sections 4 and 6, of the Hawaii Constitution,
21 that waiver is withdrawn.



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

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



- 1 (7) Copies of any existing surveys, maps, and aerial
2 photographs; and
3 (8) Copies of all plans and other documents relating to
4 any improvements on any of the property.

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

14 (c) The office of Hawaiian affairs shall have until the
15 later of:

- 16 (1) October 1, 2009; or
17 (2) Six months after the State has provided the office
18 with access to all the documents and property
19 described in subsections (a) and (b);
20 to conduct a due diligence investigation of the property to be
21 conveyed to the office of Hawaiian affairs pursuant to this Act.



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

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



1 by the value of the county tax assessment, as of county tax year
2 2007-2008, of the rejected real property.

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

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

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

15 SECTION 11. This Act shall take effect on July 1, 2020.



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; conveys certain parcels of real property in fee simple to the office of Hawaiian affairs. (SB995 HD3)

