



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

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



1           In *Trustees of the Office of Hawaiian Affairs v. Yamasaki*,  
2 69 Haw. 154, 737 P.2d 446 (1987), the Hawaii supreme court  
3 concluded that the issue of how the apportionment is formulated  
4 is a political question for the legislature to determine.

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

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10 P.3d 901 (2001), ("OHA I") that Act 304 was effectively repealed  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

14           In its decision, the Hawaii supreme court affirmed  
15 *Yamasaki*, observing:

16           [T]he State's obligation to native Hawaiians is firmly  
17 established in our constitution. How the State  
18 satisfies that constitutional obligation requires  
19 policy decisions that are primarily within the  
20 authority and expertise of the legislative branch. As  
21 such, it is incumbent upon the legislature to enact  
22 legislation that gives effect to the right of native



1           Hawaiians to benefit from the ceded lands trust. See  
2           Haw. Const. art. XVI, §7 . . . [W]e trust that the  
3           legislature will re-examine the State's constitutional  
4           obligation to native Hawaiians and the purpose of HRS  
5           §10-13.5 and enact legislation that most effectively  
6           and responsibly meets those obligations.

7           *Office of Hawaiian Affairs v. State of Hawaii*, 96 Haw. at 401,  
8           31 P.3d at 914 (citations omitted).

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

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



1 aspects, one looking to the past, the other looking to the  
2 future.

3 With regard to the past, the legislature finds that in  
4 addition to the amounts of income and proceeds previously paid  
5 to the office of Hawaiian affairs, further resources should be  
6 provided to the office of Hawaiian affairs that represent a re-  
7 examination and final determination by the legislature for the  
8 period between November 7, 1978 (the ratification date of  
9 article XII, sections 4, 5, and 6 of the Hawaii Constitution),  
10 and July 1, 2010, with regard to income and proceeds from the  
11 lands in the public trust referred to in article XII, section 4,  
12 of the Hawaii Constitution. Additionally, the legislature finds  
13 that the dollar value of \$200,000,000 represents the  
14 legislature's re-examination and final determination of the  
15 resources that should be provided to the office of Hawaiian  
16 affairs for the period between November 7, 1978, and July 1,  
17 2010.

18 The legislature also finds that the \$200,000,000 will be  
19 provided to the office of Hawaiian affairs by the State as a  
20 monetary payment, except to the extent that the State and the  
21 office of Hawaiian affairs agree to substitute land for cash as  
22 set forth in this Act. The office of Hawaiian affairs will be



1 entitled to interest on any balance of the \$200,000,000 owed  
2 from July 1, 2010 at the rate of interest set forth in section  
3 662-8, Hawaii Revised Statutes, which is currently at four per  
4 cent a year.

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

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

21 The legislature recognizes that in January 2008, the  
22 governor and the office of Hawaiian affairs reached a settlement



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

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

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



1 SECTION 2. The State shall pay to the office of Hawaiian  
2 affairs the \$200,000,000 in resources identified in section 1 of  
3 this Act in the following manner: for each fiscal year  
4 beginning with fiscal year 2015-2016 (July 1, 2015 through June  
5 30, 2016), the State shall pay at least \$30,000,000 to the  
6 office of Hawaiian affairs; provided that the obligation to make  
7 payments of at least \$30,000,000 as specified in this section  
8 shall continue until the \$200,000,000 and applicable interest  
9 has been paid to the office of Hawaiian affairs; provided  
10 further that the State shall pay the office of Hawaiian affairs  
11 interest on any remaining balance owed from July 1, 2010 at the  
12 rate provided for in section 662-8, Hawaii Revised Statutes,  
13 which is currently at four per cent a year; provided further  
14 that nothing in this Act shall bar the State from paying to the  
15 office of Hawaiian affairs, in a monetary payment or monetary  
16 payments, all or part of the \$200,000,000 prior to July 1, 2015;  
17 provided further that beginning on July 1, 2011, the state  
18 executive branch, with the approval of the office of Hawaiian  
19 affairs, may substitute for all or any part of the cash  
20 payments, conveyances of land that are mutually agreed upon by  
21 the appropriate state agency and the office of Hawaiian affairs,  
22 and that the state executive branch and the office of Hawaiian







**Report Title:**

Public Land Trust; OHA; Income and Proceeds

**Description:**

Requires the transfer of cash or land to OHA as income and proceeds that OHA is to receive from the public trust pursuant to article XII, sections 4 and 6, of the state constitution, for the period from 11/7/1978 to 7/1/2010.

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