

JAN 21 2011

A BILL FOR AN ACT

RELATING TO THE PORTION OF INCOME AND PROCEEDS FROM THE LANDS OF THE PUBLIC LAND TRUST FOR USE BY 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

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

"POWERS OF BOARD OF TRUSTEES

14
15 Section 6. The board of trustees of the office of
16 Hawaiian affairs shall exercise power as provided by law:
17 to manage and administer the proceeds from the sale or



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




1 affairs mutually agree has the fair market value of the cash for
2 which the land is being substituted.

3 SECTION 3. The cash or land transfers to the office of
4 Hawaiian affairs made under this Act shall be deemed income and
5 proceeds from the lands in the public trust referred to in
6 article XII, sections 4 and 6, of the state constitution, as if
7 they had been paid out of the income and proceeds from trust
8 lands pursuant to article XII, sections 4 and 6, of the state
9 constitution.

10 SECTION 4. This Act shall take effect upon its approval.

11

INTRODUCED BY: 
By Request

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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