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# A BILL FOR AN ACT

RELATING TO INCREASING THE PAYMENT AMOUNT FOR THE OFFICE OF  
HAWAIIAN AFFAIRS' PRO RATA SHARE OF THE PUBLIC LAND TRUST.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that in 1978, the state  
2 constitution was amended to include article XII, sections 4, 5,  
3 and 6, which established the office of Hawaiian affairs and its  
4 board of trustees.

5           Article XII, sections 4, 5, and 6 of the state constitution  
6 provide:

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 State 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.

14           Section 5. There is hereby established an Office of  
15 Hawaiian Affairs. The Office of Hawaiian Affairs shall  
16 hold title to all the real and personal property now or  
17 hereafter set aside or conveyed to it which shall be held



1 in trust for native Hawaiians and Hawaiians. There shall  
 2 be a board of trustees for the Office of Hawaiian Affairs  
 3 elected by qualified voters . . . as provided by law. . . .  
 4 There shall be not less than nine members of the board of  
 5 trustees; provided that each of the following Islands have  
 6 one representative: Oahu, Kauai, Maui, Molokai and Hawaii.  
 7 The board shall select a chairperson from its members.

8 Section 6. The board of trustees of the Office of  
 9 Hawaiian Affairs shall exercise power as provided by law:  
 10 to manage and administer the proceeds from the sale or  
 11 other disposition of the lands, natural resources, minerals  
 12 and income derived from whatever sources for native  
 13 Hawaiians and Hawaiians, including all income and proceeds  
 14 from that pro rata portion of the trust referred to in  
 15 section 4 of this article for native Hawaiians; to  
 16 formulate policy relating to affairs of native Hawaiians  
 17 and Hawaiians; and to exercise control over real and  
 18 personal property set aside by state, federal or private  
 19 sources and transferred to the board for native Hawaiians  
 20 and Hawaiians. The board shall have the power to exercise  
 21 control over the Office of Hawaiian Affairs through its



1 executive officer, the administrator of the Office of  
2 Hawaiian Affairs, who shall be appointed by the board.  
3 Act 273, Session Laws of Hawaii 1980, enacted section  
4 10-13.5, Hawaii Revised Statutes, to implement the office of  
5 Hawaiian affairs' pro rata share and provide that "[t]wenty per  
6 cent of all funds derived from the public land trust . . . shall  
7 be expended by the office of Hawaiian affairs . . . for the  
8 purposes of this chapter."

9 This legislative directive has led to a series of lawsuits  
10 concerning the office of Hawaiian affairs' constitutional pro  
11 rata share and the statutory allocation of twenty per cent of  
12 all funds that the legislature established to implement article  
13 XII, sections 4 and 6, of the state constitution. In *Trustees*  
14 *of the Office of Hawaiian Affairs v. Yamasaki*, 737 P.2d 446  
15 (1987), the Hawaii supreme court concluded that it was unable to  
16 determine the parameters of section 10-13.5, Hawaii Revised  
17 Statutes, because the issue of how the twenty per cent  
18 apportionment is formulated was a political question for the  
19 legislature to determine.

20 In response to the *Yamasaki* decision, the office of  
21 Hawaiian affairs and the governor's office entered into lengthy



1 negotiations and submitted to the legislature an agreement to  
2 clarify the extent and scope of the twenty per cent portion.  
3 The legislature, based on this agreement, enacted Act 304,  
4 Session Laws of Hawaii 1990.

5 In a memorandum dated April 28, 1993, the office of  
6 Hawaiian affairs and the State memorialized the results of their  
7 negotiations and noted that "[the office of state planning] and  
8 [the office of Hawaiian affairs] recognize and agree that the  
9 amount specified in section 1 hereof does not include several  
10 matters regarding revenue which [the office of Hawaiian affairs]  
11 has asserted is due [the office of Hawaiian affairs] and which  
12 [the office of state planning] has not accepted and agreed to."

13 These disagreements led to litigation. The office of  
14 Hawaiian affairs specified that it was seeking its pro rata  
15 share of revenues received by the State based on: (1) Waikiki  
16 Duty Free receipts (in connection with the lease of ceded lands  
17 at the Honolulu International Airport); (2) Hilo Hospital  
18 patient services receipts; (3) receipts from the Hawaii housing  
19 authority and the housing finance and development corporation  
20 for projects situated on ceded lands; and (4) interest earned on  
21 withheld revenues. On October 24, 1996, the trial court granted



1 the office of Hawaiian affairs' motion for partial summary  
2 judgment on each of its aforementioned claims. The State  
3 appealed.

4 On September 12, 2001, the Hawaii supreme court ruled in  
5 *Office of Hawaiian Affairs v. State of Hawaii*, 31 P.3d 901  
6 (2001), ("OHA I") that Act 304 was effectively repealed by its  
7 own terms, so that once again, it was necessary for the  
8 legislature to clarify the office of Hawaiian affairs'  
9 constitutional pro rata share and the statutory allocation of  
10 twenty per cent of all funds to be managed and administered by  
11 the office of Hawaiian affairs. In its decision, the Hawaii  
12 supreme court affirmed *Yamasaki*, observing:

13 [T]he State's obligation to native Hawaiians is firmly  
14 established in our constitution. How the State satisfies  
15 that constitutional obligation requires policy decisions  
16 that are primarily within the authority and expertise of  
17 the legislative branch. As such, it is incumbent upon the  
18 legislature to enact legislation that gives effect to the  
19 right of native Hawaiians to benefit from the ceded lands  
20 trust. See Haw. Const. art. XVI, section 7 . . . [W]e  
21 trust that the legislature will re-examine the State's



1 constitutional obligation to native Hawaiians and the  
2 purpose of HRS §10-13.5 and enact legislation that most  
3 effectively and responsibly meets those obligations.  
4 *Office of Hawaiian Affairs v. State of Hawaii*, 31 P.3d at  
5 914 (citations omitted).

6 On April 28, 2006, the Hawaii supreme court ruled in *Office*  
7 *of Hawaiian Affairs v. State of Hawaii*, 133 P.3d 767, 795 (2006)  
8 ("OHA II"), that consistent with its ruling in *OHA I*, "it is  
9 incumbent upon the legislature to enact legislation that gives  
10 effect to the right of native Hawaiians to benefit from the  
11 ceded lands trust."

12 Subsequently, Act 178, Session Laws of Hawaii 2006, which  
13 took effect on June 7, 2006, stated, "The legislature  
14 acknowledges that the State's obligation to native Hawaiians is  
15 firmly established in the state constitution." (See Haw. Const.  
16 art XII).

17 While finding that "many complex issues require the  
18 legislature's further attention and consideration in the wake of  
19 the repeal of Act 304," Act 178 was enacted with a stated  
20 purpose of providing "interim measures to ensure that an  
21 adequate amount of income and proceeds is made available to the



1 office of Hawaiian affairs from the pro rata portion of the  
2 public land trust, for the betterment of the conditions of  
3 native Hawaiians." Act 178 carried out this purpose by  
4 requiring:

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

12 Subsequently, addressing past-due amounts owed to the  
13 office of Hawaiian affairs, Act 15, Session Laws of Hawaii 2012,  
14 was enacted to implement an agreement between the State and the  
15 office of Hawaiian affairs for the State to convey certain lands  
16 in Kakaako Makai on Oahu valued at approximately \$200,000,000 to  
17 allow the State to give effect to the right of native Hawaiians  
18 to benefit from the public land trust and to fulfill its  
19 constitutional obligations under article XII, sections 4 and 6  
20 of the state constitution for the period between November 7,  
21 1978, up to and including June 30, 2012, relating to the office



1 of Hawaiian affairs' portion of the income and proceeds from the  
2 public land trust.

3       However, Act 15 did not address the State's constitutional  
4 obligations under article XII, sections 4 and 6 relating to the  
5 office of Hawaiian affairs' pro rata share of the income and  
6 proceeds from the public land trust after June 30, 2012.

7       Act 178, Session Laws of 2006, remained in effect as a  
8 purely interim legislative measure setting the office of  
9 Hawaiian affairs' annual income and proceeds from the public  
10 land trust for the betterment of the conditions of native  
11 Hawaiians at \$15,100,000 beginning in fiscal year 2005-2006,  
12 pending further legislative action on the subject.

13       The second purpose of Act 178 was the identification of  
14 "revenue-generating public trust lands and the amounts derived  
15 from those lands by requiring that the department of land and  
16 natural resources provide an annual accounting to the  
17 legislature." For fiscal years 2011-2012, 2012-2013, and 2013-  
18 2014, the State reported to the legislature total gross public  
19 land trust revenues in the amounts of \$150,939,203,  
20 \$159,971,589, and \$163,322,176 respectively, or an average of  
21 \$158,077,656 over the three fiscal years. Twenty per cent of





1 the average reported gross revenue for fiscal years 2011-12  
2 through 2013-2014 is \$31,615,531.

3 The legislature finds that it is now in the best interests  
4 of the office of Hawaiian affairs, its beneficiaries, the State,  
5 and all citizens of Hawaii to enact another purely interim  
6 legislative measure regarding the office of Hawaiian affairs'  
7 constitutional pro rata share of the public land trust for the  
8 betterment of the conditions of native Hawaiians, in light of  
9 the information, data, and facts provided to the legislature by  
10 state agencies over the last three fiscal years.

11 Accordingly, the purpose of this Act is to serve as a  
12 purely interim measure to:

- 13 (1) Remove the annual and quarterly maximum amounts that  
14 Act 178, Session Laws of Hawaii 2006, imposed on  
15 payments of income and proceeds from the public land  
16 trust to the office of Hawaiian affairs;
- 17 (2) Return to the office of Hawaiian affairs certain  
18 moneys that the office of Hawaiian affairs transferred  
19 to the State in response to claims by the department  
20 of budget and finance that the moneys constituted  
21 overpayments of public land trust receipts to the



1 office of Hawaiian affairs for fiscal years 2012-2013,  
2 2013-2014, and 2014-2015; establish that any claimed  
3 overpayments to the office of Hawaiian affairs for  
4 fiscal years 2015-2016 and 2016-2017 are not required  
5 to be returned to the State; and ensure that any  
6 shortfalls in quarterly amounts paid to the office of  
7 Hawaiian affairs under this Act are timely paid to the  
8 office of Hawaiian affairs upon discovery of the  
9 shortfall; and

- 10 (3) Establish a public land trust revenues negotiating  
11 committee to make recommendations to the legislature  
12 for resolving the matter of the amount of the income  
13 and proceeds from the public land trust that the  
14 office of Hawaiian affairs shall receive annually.

15 SECTION 2. Notwithstanding the provisions of Act 178,  
16 Session Laws of Hawaii 2006; chapter 10, Hawaii Revised  
17 Statutes, including section 10-13.5, Hawaii Revised Statutes;  
18 and the requirements of executive order 06-06; beginning in  
19 fiscal year 2016-2017:

- 20 (1) All departments and agencies that collect receipts for  
21 the use, sale, lease, or other disposition of the



1 public land trust shall each fiscal quarter transfer  
2 to the office of Hawaiian affairs twenty per cent of  
3 each receipt derived from the use, sale, lease, or  
4 other disposition of the public land trust; provided  
5 that in no event shall the total amount of receipts  
6 transferred to the office of Hawaiian affairs for any  
7 fiscal quarter be less than \$3,775,000; and

8 (2) If at any time the department of finance, the office  
9 of Hawaiian affairs, or any other state agency  
10 discovers that the total amount of receipts  
11 transferred to the office of Hawaiian affairs for any  
12 fiscal quarter fell short of the amount required by  
13 this Act, the director of finance or the director's  
14 designee shall ensure that within ten days of the  
15 discovery of the shortfall, an amount equal to the  
16 shortfall be transferred to the office of Hawaiian  
17 affairs.

18 SECTION 3. Notwithstanding the provisions of Act 178,  
19 Session Laws of Hawaii 2006; chapter 10, Hawaii Revised  
20 Statutes, including section 10-13.5, Hawaii Revised Statutes;  
21 and the requirements of executive order 06-06; the department of



1 budget and finance shall return to the office of Hawaiian  
2 affairs the moneys in the carry-forward trust holding account  
3 established pursuant to executive order 06-06 to which the  
4 office of Hawaiian affairs transferred moneys in response to  
5 claims by the department of budget and finance that the moneys  
6 constituted overpayments of public-land-trust receipts to the  
7 office of Hawaiian affairs for fiscal year 2012-2013, fiscal  
8 year 2013-2014, and fiscal year 2014-2015, plus any overpayment  
9 moneys the office of Hawaiian affairs transfers to the carry-  
10 forward trust holding account for fiscal year 2015-2016 or  
11 fiscal year 2016-2017.

12 SECTION 4. There is established a public land trust  
13 revenues negotiating committee consisting of the president of  
14 the senate or the senate president's designee, the speaker of  
15 the house of representatives or the house speaker's designee,  
16 the governor or the governor's designee, and the chairperson of  
17 the board of trustees of the office of Hawaiian affairs or the  
18 chairperson's designee. The committee shall not be subject to  
19 the requirements of chapter 92, Hawaii Revised Statutes.

20 The committee shall engage in discussions with the purpose  
21 of resolving the matter of the amount of the income and proceeds



1 from the public land trust that the office of Hawaiian affairs  
2 shall receive annually under the State Constitution and other  
3 state law. The committee shall submit a status report on the  
4 progress of the committee's discussions to the legislature no  
5 later than twenty days before the convening of the legislature's  
6 regular session of 2017 and shall submit a final report  
7 containing the committee's findings and recommendations,  
8 including any proposed legislation, no later than the convening  
9 of the legislature's regular session of 2018.

10 SECTION 5. This Act shall take effect on July 1, 2050.

11



**Report Title:**

OHA Package; Public Land Trust; Transfer of Moneys; Public Land Trust Revenues Negotiating Committee

**Description:**

Requires agencies that collect receipts for any disposition of the public land trust shall each fiscal quarter transfer to the office of Hawaiian affairs twenty per cent of each receipt from the disposition. Returns to the office of Hawaiian affairs certain moneys previously claimed as public land trust overpayments to the office. Establishes a public land trust revenues negotiating committee. Takes effect on 7/1/2050.

(SD1)

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