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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. The legislature finds that is in the best  
2 interests of the office of Hawaiian affairs, its beneficiaries,  
3 the State, and all citizens of Hawaii to facilitate further  
4 discussions between the governor, legislative leadership, and  
5 the office of Hawaiian affairs regarding the office of Hawaiian  
6 affairs' share of public land trust revenues.

7           The legislature recognizes that there is long-standing  
8 contention regarding how the office's share should be  
9 calculated, based on differing interpretations of the relevant  
10 constitutional and statutory language. The state constitutional  
11 provisions that grant a pro rata share include article XII,  
12 section 4, which establishes the public land trust; and article  
13 XII, section 6, which gives the board of trustees of the office  
14 of Hawaiian affairs power, as provided by law:

15           [T]o manage and administer the proceeds from the sale or  
16 other disposition of the lands, natural resources, minerals  
17 and income derived from whatever sources for native



1           Hawaiians and Hawaiians, including all income and proceeds  
2           from that pro rata portion of the trust referred to in  
3           section 4 of this article for native Hawaiians.

4   Additionally, section 10-13.5, Hawaii Revised Statutes, grants  
5   to the office of Hawaiian affairs "[t]wenty per cent of all  
6   funds derived from the public land trust . . . . "

7           Since the enactment of section 10-13.5, a series of  
8   lawsuits, legislation, and negotiations have attempted to  
9   formulate how these shares should be calculated. In *Trustees of*  
10   *the Office of Hawaiian Affairs v. Yamasaki*, 169 Haw. 154, 737  
11   P.2d 446 (1987), the Hawaii supreme court found that the  
12   calculation was a political question to be determined by the  
13   legislature. Act 304, Session Laws of Hawaii 1990 (Act 304),  
14   was enacted after lengthy negotiations between the governor's  
15   office and the office of Hawaiian affairs as an attempt to  
16   clarify which types of funds constituted "revenue" for the  
17   purposes of the calculation.

18           In 1993, the office of Hawaiian affairs challenged the  
19   formulation outlined in Act 304, arguing that it excluded  
20   several key types of revenues. Specifically, the office sought  
21   a share of:



- 1           (1) Waikiki Duty Free receipts (in connection with the
- 2                   lease of ceded lands at the Honolulu international
- 3                   airport);
- 4           (2) Hilo hospital patient services receipts;
- 5           (3) Receipts from the Hawaii housing authority and the
- 6                   housing finance and development corporation for
- 7                   projects situated on ceded lands; and
- 8           (4) Interest earned on withheld revenues.

9           The trial court granted the office of Hawaiian affairs'  
10 motion for partial summary judgment, finding that:

- 11           (1) The State is required to pay the office of Hawaiian
- 12                   affairs its pro rata portion of rents or fees
- 13                   collected from the Duty Free concessions at the
- 14                   State's airports;
- 15           (2) The State's activities of providing affordable housing
- 16                   are proprietary in nature and subject to the office of
- 17                   Hawaiian affairs' pro rata share;
- 18           (3) Patient service fees, cafeteria sales, and rental
- 19                   income at Hilo hospital are "clearly a proprietary
- 20                   rather than sovereign exercise of power" which does
- 21                   not shield the Hilo hospital's income from being

1 characterized as revenue, for the purposes of the  
2 office of Hawaiian affairs' pro rata share; and

3 (4) The office of Hawaiian affairs was entitled to a pro  
4 rata share of interest earned on ceded land revenues  
5 derived from the public trust.

6 In 2001, the Hawaii supreme court held that Act 304 was  
7 invalid, because it conflicted with federal law, which provided  
8 that airport revenues could not be used to satisfy the State's  
9 obligations in connection with ceded lands.

10 Because Act 304 was effectively repealed by the court's  
11 decision, the legislature enacted Act 178, Session Laws of  
12 Hawaii 2006 (Act 178), as an interim measure while they further  
13 considered the issue. The intent of Act 178 was to ensure that  
14 "an adequate amount of income and proceeds [was] made available  
15 to [the office of Hawaiian affairs]." Rather than requiring a  
16 calculation of the pro rata share, the temporary measure  
17 established a flat rate of \$15,100,000 annually, beginning with  
18 fiscal year 2005-2006. Act 178 noted that this interim amount  
19 should be issued until "further action is taken by the  
20 legislature for this purpose." The amount of the payment was



1 based, in part, on certain ancillary receipts from the state  
2 airports.

3 Act 178 also required the department of land and natural  
4 resources to provide an annual accounting to the legislature of  
5 "revenue-generating public trust lands and the amounts derived  
6 from those lands." Based on these accountings, the office of  
7 Hawaiian affairs argues that its share for 2015-2016 was  
8 approximately \$34,963,244, not \$15,100,000 as provided by Act  
9 178. The State has conveyed approximately \$200,000,000 in land  
10 to the office of Hawaiian affairs, in payment of past-due  
11 amounts owed to the office. However, based on the possible  
12 discrepancies between the moneys allocated by Act 178 and the  
13 pro rata share indicated by the department's accountings, the  
14 legislature finds that it is necessary to determine an increased  
15 amount.

16 Accordingly, the purpose of this Act is to serve as an  
17 interim measure to:

- 18 (1) Provide that all grants and contracts awarded by the  
19 office of Hawaiian affairs shall be subject to  
20 approval by the board of trustees;



- 1           (2) Establish a public land trust revenues negotiating  
2           committee to determine the increase to the annual  
3           amount of the income and proceeds from the public land  
4           trust that the office of Hawaiian affairs shall  
5           receive annually under the state constitution and  
6           other state law; and
- 7           (3) Require and appropriate funds for the department of  
8           budget and finance to conduct a financial review of  
9           the amounts of revenue generated from the public land  
10          trust.

11          SECTION 2. Section 10-5, Hawaii Revised Statutes, is  
12          amended to read as follows:

13          "**§10-5 Board of trustees; powers and duties.** The board  
14          shall have the power in accordance with law to:

- 15          (1) Manage, invest, and administer the proceeds from the  
16          sale or other disposition of lands, natural resources,  
17          minerals, and income derived from whatever sources for  
18          native Hawaiians and Hawaiians, including all income  
19          and proceeds from that pro rata portion of the trust  
20          referred to in section 10-3;



- 1           (2) Exercise control over real and personal property set  
2           aside to the office by the State of Hawaii, the United  
3           States of America, or any private sources, and  
4           transferred to the office for native Hawaiians and  
5           Hawaiians;
- 6           (3) Collect, receive, deposit, withdraw, and invest money  
7           and property on behalf of the office;
- 8           (4) Formulate policy relating to the affairs of native  
9           Hawaiians and Hawaiians, provided that such policy  
10          shall not diminish or limit the benefits of native  
11          Hawaiians under article XII, section 4, of the state  
12          Constitution;
- 13          (5) Otherwise act as a trustee as provided by law;
- 14          (6) Delegate to the administrator, its officers and  
15          employees such powers and duties as may be proper for  
16          the performance of the powers and duties vested in the  
17          board;
- 18          (7) Provide grants to individuals, and public or private  
19          organizations to better the conditions of native  
20          Hawaiians and Hawaiians consistent with the standards  
21          set forth in section 10-17; provided that each grant



1 made or contract entered into pursuant to this section  
2 shall be subject to a separate vote of approval by the  
3 board;

4 (8) Make available technical and financial assistance and  
5 advisory services to any agency or private  
6 organization for native Hawaiian and Hawaiian  
7 programs, and for other functions pertinent to the  
8 purposes of the office of Hawaiian affairs. Financial  
9 assistance may be rendered through contractual  
10 arrangements as may be agreed upon by the board and  
11 any such agency or organization; and

12 (9) Adopt and use a common seal by which all official acts  
13 shall be authenticated."

14 SECTION 3. Section 10-17, Hawaii Revised Statutes, is  
15 amended by amending subsection (e) to read as follows:

16 "(e) [~~Grants~~] A grant made by the office under this  
17 chapter may be made without regard to chapters 103D and 103F[-],  
18 and shall be subject to a separate vote of approval by the  
19 board."

20 SECTION 4. (a) There is established a public land trust  
21 revenues negotiating committee within the office of planning for





1 administrative purposes. The purpose of the public land trust  
2 revenues negotiating committee shall be to determine the  
3 increase to the annual amount of the income and proceeds from  
4 the public land trust that the office of Hawaiian affairs shall  
5 receive annually under the state constitution and other state  
6 law.

7 (b) The public land trust revenues negotiating committee  
8 shall consist of:

- 9 (1) The governor or the governor's designee, who shall  
10 serve as chairperson of the committee;
- 11 (2) The president of the senate or the president's  
12 designee;
- 13 (3) The speaker of the house of representatives or the  
14 speaker's designee;
- 15 (4) The chairperson of the office of Hawaiian affairs or  
16 the chairperson's designee;
- 17 (5) The director of finance or the director's designee;
- 18 (6) One representative that shall be selected by the  
19 president of the senate; and
- 20 (7) One representative that shall be selected by the  
21 speaker of the house of representatives.



1 (c) The public land trust revenues negotiating committee  
2 shall submit a report to the legislature detailing the status of  
3 its discussions no later than twenty days prior to the convening  
4 of the regular session of 2021.

5 (d) The public land trust revenues negotiating committee  
6 shall study and submit to the legislature its recommendations,  
7 including any proposed legislation, regarding the increase to  
8 the annual amount of the income and proceeds from the public  
9 land trust that the office of Hawaiian affairs shall receive  
10 annually under the state constitution and other state law no  
11 later than twenty days prior to the convening of the regular  
12 session of 2021.

13 (e) The public land trust revenues committee shall not be  
14 subject to the requirements of chapter 92, Hawaii Revised  
15 Statutes.

16 SECTION 5. The department of budget and finance shall  
17 conduct a financial review of the amounts of revenue generated  
18 in fiscal year 2018 from the public land trust established  
19 pursuant to section 5(f) of the Admission Act, inclusive of  
20 those lands conveyed to the State pursuant to Public Law 88-233  
21 ("An Act to Revise the Procedures Established by the Hawaii



1 Statehood Act, Public Law 86-3, for the Conveyance of Certain  
2 Lands to the State of Hawaii, and for Other Purposes") and by  
3 section 10-13.5, provided that "revenue" shall be defined as  
4 provided in section 3 of Act 304, Session Laws of Hawaii 1990.  
5 Upon request, the office of Hawaiian affairs, along with any  
6 independent auditor selected by the office, shall be provided  
7 with all data relating to lands that comprise the public land  
8 trust and the revenue derived therefrom, including the  
9 methodology for determining this revenue and the office of  
10 Hawaiian affairs' pro rata portion.

11 The department of budget and finance shall submit to the  
12 legislature the results of its financial review of the amounts  
13 of revenue generated from the public land trust no later than  
14 twenty days prior to the convening of the regular session of  
15 2021.

16 SECTION 6. There is appropriated out of the general  
17 revenues of the State of Hawaii the sum of \$ or so much  
18 thereof as may be necessary for fiscal year 2020-2021 to add one  
19 full time equivalent (1.0 FTE) position in the department of  
20 budget and finance to effectuate the purposes of this Act.



H.B. NO. 2585

1           The sum appropriated shall be expended by the department of  
2 budget and finance for the purposes of this Act.

3           SECTION 7. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

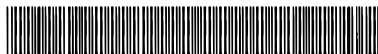
5           SECTION 8. This Act shall take effect on July 1, 2020.

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INTRODUCED BY:

                    D. H. Het  
                    S. Cal

JAN 23 2020



# H.B. NO. 2585

**Report Title:**

OHA; B&F; Public Land Trust; Pro Rata Share; Appropriation

**Description:**

Requires all grants or contracts awarded by the Office of Hawaiian Affairs to be approved by its board of trustees. Establishes a public land trust revenues negotiating committee to determine the increase to the annual amount of the income and proceeds from the public land trust that the Office of Hawaiian Affairs shall receive annually under the state constitution and other state law. Requires the Department of Budget and Finance to conduct a financial review of the amounts of revenue generated from the public land trust. Appropriates funds.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

