
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*, 69 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;

7 (3) Require and appropriate funds for the department of
 8 budget and finance to conduct an annual financial
 9 review of the amounts of revenue generated from the
 10 public land trust, starting with fiscal year 2018; and

11 (4) Require and appropriate funds for the office of
 12 planning to assist and facilitate the financial audit
 13 by liaising between the department of budget and
 14 finance and the affected departments and agencies.

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

17 "**§10-5 Board of trustees; powers and duties.** The board
 18 shall have the power in accordance with law to:

19 (1) Manage, invest, and administer the proceeds from the
 20 sale or other disposition of lands, natural resources,
 21 minerals, and income derived from whatever sources for



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



1 (7) Provide grants to individuals, and public or private
2 organizations to better the conditions of native
3 Hawaiians and Hawaiians consistent with the standards
4 set forth in section 10-17; provided that each grant
5 made or contract entered into pursuant to this section
6 shall be subject to a separate vote of approval by the
7 board;

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

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

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

20 "(e) [~~Grants~~] A grant made by the office under this
21 chapter may be made without regard to chapters 103D and 103F[-],



1 and shall be subject to a separate vote of approval by the
2 board."

3 SECTION 4. (a) There is established a public land trust
4 revenues negotiating committee within the office of planning for
5 administrative purposes. The purpose of the public land trust
6 revenues negotiating committee shall be to determine the
7 increase to the annual amount of the income and proceeds from
8 the public land trust that the office of Hawaiian affairs shall
9 receive annually under the state constitution and other state
10 law.

11 (b) The public land trust revenues negotiating committee
12 shall consist of:

- 13 (1) The governor or the governor's designee, who shall
14 serve as chairperson of the committee;
- 15 (2) The president of the senate or the president's
16 designee;
- 17 (3) The speaker of the house of representatives or the
18 speaker's designee;
- 19 (4) The chairperson of the board of trustees of the office
20 of Hawaiian affairs or the chairperson's designee;
- 21 (5) The director of finance or the director's designee;



1 (6) One representative that shall be selected by the
2 president of the senate; and

3 (7) One representative that shall be selected by the
4 speaker of the house of representatives.

5 (c) The public land trust revenues negotiating committee
6 shall submit a report to the legislature detailing the status of
7 its discussions no later than twenty days prior to the convening
8 of the regular session of 2022.

9 (d) The public land trust revenues negotiating committee
10 shall study and submit to the legislature its recommendations,
11 including any proposed legislation, regarding the increase to
12 the annual amount of the income and proceeds from the public
13 land trust that the office of Hawaiian affairs shall receive
14 annually under the state constitution and other state law no
15 later than twenty days prior to the convening of the regular
16 session of 2023.

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

20 (f) The public land trust revenues committee shall serve
21 without compensation but shall be reimbursed by the office of



1 planning for necessary expenses, including travel expenses,
2 incurred for service on the task force.

3 (g) The public land trust revenues committee shall serve
4 until it has accomplished the purposes of this Act or twenty
5 days prior to the convening of the regular session of 2023,
6 whichever occurs first.

7 SECTION 5. (a) The department of budget and finance shall
8 conduct an annual financial review, beginning with fiscal year
9 2018, of the amounts of revenue generated in each fiscal year
10 from the public land trust established pursuant to section 5(f)
11 of the Admission Act, inclusive of those lands conveyed to the
12 State pursuant to Public Law 88-233 ("An Act to Revise the
13 Procedures Established by the Hawaii Statehood Act, Public Law
14 86-3, for the Conveyance of Certain Lands to the State of
15 Hawaii, and for Other Purposes") and by section 10-13.5;
16 provided that "revenue" shall be defined as provided in section
17 3 of Act 304, Session Laws of Hawaii 1990; provided further that
18 "revenue" shall not include any airport revenue. Upon request,
19 the office of Hawaiian affairs, along with the state auditor or
20 the state auditor's designee, shall be provided all data
21 relating to lands that comprise the public land trust and the



1 revenue derived therefrom, including the methodology for
2 determining this revenue and the office of Hawaiian affairs' pro
3 rata portion.

4 (b) The department of land and natural resources shall
5 take all necessary steps to assist the department of budget and
6 finance in conducting the financial review, including working
7 with affected departments and agencies to ensure all relevant
8 data relating to the lands that comprise the public land trust
9 and the revenue derived therefrom is collected and provided to
10 the department of budget and finance.

11 (c) The office of planning shall assist and facilitate the
12 financial review by acting as a liaison between the department
13 of budget and finance and the affected departments and agencies.

14 (d) The department of budget and finance shall submit to
15 the legislature the results of its financial review of the
16 amounts of revenue generated from the public land trust no later
17 than twenty days prior to the convening of the regular session
18 of 2021.

19 SECTION 6. There is appropriated out of the general
20 revenues of the State of Hawaii the sum of \$ or so
21 much thereof as may be necessary for fiscal year 2020-2021 to



1 add one full time equivalent (1.0 FTE) position in the
2 department of budget and finance to effectuate the purposes of
3 this Act.

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

6 SECTION 7. There is appropriated out of the general
7 revenues of the State of Hawaii the sum of \$ or so
8 much thereof as may be necessary for fiscal year 2020-2021 for
9 administrative and other costs incurred by the office of
10 planning as a result of executing the purposes of this Act;
11 provided that no funds shall be made available unless the office
12 of Hawaiian affairs provides matching trust funds in the amount
13 of \$.

14 The sum appropriated shall be expended by the office of
15 planning for the purposes of this Act.

16 SECTION 8. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 9. This Act shall take effect on July 1, 2050.



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 an annual financial review of the amounts of revenue generated from the public land trust. Requires the Office of Planning to assist in the financial review by liaising with affected departments and agencies. Appropriates funds. Effective 7/1/2050. (HD1)

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

