
A BILL FOR AN ACT

RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS.

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

SECTION 1. The legislature finds that Act 304, Session Laws of Hawaii 1990, amended chapter 10, Hawaii Revised Statutes to authorize the office of Hawaiian affairs to expend twenty percent of all revenue derived from the public land trust, as described in sections 10-2 and 10-13.5, for the betterment of the conditions of native Hawaiians. In Office of Hawaiian Affairs v. State of Hawaii Civil No. 94-0205-01, the state of Hawaii's supreme court ruled that Act 304 as applied to revenue derived from the Honolulu International Airport conflicted with federal legislation, and by its own terms was effectively repealed. In the absence of Act 304, the legislature finds that the Hawaii supreme court ruled that there was a lack of judicially discoverable or manageable standards adequate to permit a judicial determination of whether the office of Hawaiian affairs was entitled to the specific revenues in its claim, and recommended legislative clarification to fulfill the state's constitutional trust obligation to native Hawaiians.

As was appropriate at the time of the passage of Act 304, Session Laws of Hawaii 1990, the legislature finds it incumbent to enact legislation that gives effect to and recognizes the right of native Hawaiians to benefit from the ceded lands trust. The legislature further finds it necessary to provide legislative clarification to resolve facial

statutory inconsistencies, to establish the continued funding of the office of Hawaiian affairs under chapter 10, and fulfill the mandate of Hawaii state constitution articles XII, sections 4, 5, and 6.

The purposes of this act are to:

- (1) Clarify the lands comprising the public land trust under chapter 10, Hawaii Revised Statutes; and
- (2) Clarify the revenues derived from the public land trust which shall be considered to establish the amount of funding to the office of Hawaiian affairs for the purpose of the betterment of the conditions of native Hawaiians.

This Act is not intended to replace or affect the claims of native Hawaiians and Hawaiians with regard to reparations from the federal government.

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

“[[§10-2]] Definitions. In this chapter, if not inconsistent with the context:

"Administrator" means the administrator of the office of Hawaiian affairs.

"Beneficiary of the public trust entrusted upon the office" means native Hawaiians and Hawaiians.

"Board" means the board of trustees.

"Hawaiian" means any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii.

"Native Hawaiian" means any descendant of not less than one-half part of the races inhabiting the Hawaiian Islands previous to 1778, as defined by the Hawaiian Homes Commission Act, 1920, as amended; provided that the term identically refers to the descendants of such blood quantum of such aboriginal peoples which exercised sovereignty and subsisted in the Hawaiian Islands in 1778 and which peoples thereafter continued to reside in Hawaii.

"Office" means the office of Hawaiian affairs.

"Public land trust" means those lands:

(1) Which were ceded to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July 7, 1898 (30 Stat. 750), or acquired in exchange for lands so ceded, and which were conveyed to the State of Hawaii by virtue of section 5(b) of the Act of March 18, 1959 (73 Stat. 4, the Admission Act), (excluding therefrom lands and all proceeds and income from the sale, lease, or disposition of lands defined as "available lands" by section 203 of the Hawaiian Homes Commission Act, 1920, as amended);

(2) Retained by the United States under section 5(c) and 5(d) of the Act of March 18, 1959, and later conveyed to the State under section 5(e) of the Act of March 18, 1959; and

(3) Which were ceded to and retained by the United States under section 5(c) and 5(d) of the Act of March 18, 1959, and later conveyed to the State pursuant to the Act of December 23, 1963 (Public Law 88-233, 77 Stat. 472).”

“Revenue” means all proceeds, fees, charges, rents, or other income, or any portion thereof, derived from any sale, lease, license, permit, or other similar proprietary disposition, permitted use, or activity, that is situated upon and results from the actual use of lands comprising the public land trust, and including any penalties or levies exacted as a result of a violation of the terms of any proprietary disposition, but excluding any income, proceeds, fees, charges, or other moneys derived through the exercise of sovereign functions and powers including:

(1) Taxes;

(2) Regulatory or licensing fees;

(3) Fines, penalties, or levies;

(4) Registration fees;

(5) Moneys received by any public educational institution, including the University of Hawaii, and the community college

system, from its educational programs and ancillary services, such as tuition, registration fees, meals, books, grants, or scholarships;

(6) Interagency and intra-agency administrative fees or assessments;

(7) Moneys derived from or provided in support of penal institutions and programs;

(8) Grants, carry-overs, and pass-throughs;

(9) Federal moneys, including federal-aid, grants, subsidies, and contracts;

(10) Moneys collected from the sale or dissemination of government publications;

(11) Department of defense proceeds on state-improved lands; and

(12) Moneys derived from the development of housing projects as defined under section 201G-1 and 201G-112 after the conveyance of the public land trust to the housing and community development corporation of Hawaii except as provided under section 10-13.6.”

SECTION 3. Section 10-3, Hawaii Revised Statutes, is amended to read as follows:

“**[[§10-3]]** Purpose of the office. The purposes of the office of Hawaiian affairs include:

(1) The betterment of conditions of native Hawaiians [. A pro rata portion of all funds derived from the public land trust shall be funded in an amount to be determined by the legislature for this purpose, and shall be held and used solely as a public trust for the betterment of the conditions of native Hawaiians. For the purpose of this chapter, the public land trust shall be all proceeds and income from the sale, lease, or other disposition of lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July 7, 1898 (30 Stat. 750), or acquired in exchange for lands so ceded, and conveyed to the State of Hawaii by virtue of section 5(b) of the Act of March 18, 1959 (73 Stat. 4, the Admissions Act), (excluding therefrom lands and all proceeds and income from the sale, lease, or disposition of lands defined as “available lands” by section 203 of the Hawaiian Homes Commission Act, 1920, as amended), and all proceeds and income from the sale, lease, or other disposition of lands retained by the United States under sections 5(c) and 5(d) of the Act of March 18, 1959, later conveyed to the State under section 5(e)];

- (2) The betterment of conditions of Hawaiians;
- (3) Serving as the principal public agency in this State responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; except that the Hawaiian Homes Commission Act, 1920, as amended, shall be administered by the Hawaiian homes commission;
- (4) Assessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians;
- (5) Applying for, receiving, and disbursing, grants and donations from all sources for native Hawaiian and Hawaiian programs and services; and
- (6) Serving as a receptacle for reparations.”

SECTION 4. Section 10-5, Hawaii Revised Statutes, is amended to read as follows:

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

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

Hawaiians, including all [income and proceeds from] moneys received by the office equivalent to that pro rata portion of the [trust] revenue derived from the public land trust referred to in section [10-3, of this chapter:] 10-2;

(2) Exercise control over real and personal property set aside to the office by the State of Hawaii, the United States of America, or any private sources, and transferred to the office for native Hawaiians and Hawaiians; provided that all of the properties acquired by the office shall be controlled and managed for the purposes of this chapter, subject to any limitations of the trust provisions established by article XII, sections 5 and 6, of the state Constitution;

(3) Collect, receive, deposit, withdraw, and invest money and property on behalf of the office;

(4) Formulate policy relating to the affairs of native Hawaiians and Hawaiians, provided that such policy shall not diminish or limit the benefits of native Hawaiians under article XII, section 4, of the state Constitution;

(5) Otherwise act as a trustee as provided by law;

(6) Delegate to the administrator, its officers and employees such powers and duties as may be proper for the performance of the powers and duties vested in the board;

(7) Provide grants to public or private agencies for pilot projects, demonstrations, or both, where [such] those projects or demonstrations fulfill criteria established by the board;

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

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

SECTION 5. Section 10-13, Hawaii Revised Statutes, is amended to read as follows:

“[[§10-13]] Appropriations; accounts; reports. (a) Moneys appropriated by the legislature for the office shall be payable by the director of finance, upon vouchers approved by the board, or by any officer elected or appointed by the board and authorized by the board to approve [such] the vouchers on behalf of the board. All moneys received

by or on behalf of the board shall be deposited with the director of finance and kept separate from moneys in the state treasury; except that any moneys received from the federal government or from private contributions shall be deposited and accounted for in accordance with conditions established by the agencies or persons from whom the moneys are received; and except that with the concurrence of the director of finance, moneys received from the federal government for research, training, and other related purposes of a transitory nature, and moneys in trust or revolving funds administered by the office, shall be deposited in depositories other than the state treasury and shall be reported on to the state comptroller under section 40-81, and rules prescribed thereunder.

(b) Income derived from the sale of goods or services and [income from lands and property as described in section 10-3,] all moneys received by the office equivalent to that pro rata portion of the revenue derived from the public land trust described in section 10-2; shall be credited to special or other funds; provided that upon the recommendation of the office, the comptroller shall establish such other separate accounts or special funds for other designated revenues as may be directed by the board or its authorized representative.”

SECTION 6. Section 10-13.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§10-13.5~~]]~~ Use of public land trust proceeds. Twenty per cent of all [funds] revenue derived from the public land trust[, described in section 10-3,] shall be expended by the office[, as defined in section 10-2,] for the [purposes of this chapter.] betterment of the conditions of native Hawaiians.”

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$17,000,000, or so much thereof as may be necessary for fiscal year 2001-2002, to provide funds pursuant to sections 10-2 and 10-13.5. The sum appropriated shall be expended for the betterment of the conditions of native Hawaiians.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

INTRODUCED BY: _____