
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 it must set right
2 and fulfill its trust responsibilities to native Hawaiians,
3 consistent with governmental action across America to address
4 injustices against Indigenous Peoples. It is incumbent upon the
5 legislature to enact legislation that upholds its trust
6 responsibilities and duty of care to native Hawaiians to:

7 (1) Account for all ceded lands in the public lands trust
8 inventory;

9 (2) Account for all income and proceeds derived from the
10 public land trust; and

11 (3) Transfer the full twenty per cent pro rata share of
12 income and proceeds from the public land trust
13 annually to the office of Hawaiian affairs (OHA) for
14 the betterment of the conditions of native Hawaiians.

15 The genesis and source of the State's public land trust
16 responsibility to native Hawaiians are the historical events



1 that led to the illegal overthrow of the Kingdom of Hawaii; the
2 transfer of approximately 1,800,000 acres of crown, government,
3 and public lands to the United States under the 1898 Joint
4 Resolution of Annexation without the consent of and without
5 compensation to the native Hawaiian people or their sovereign
6 government; the admission of Hawaii as a state of the Union in
7 1959, with the explicit trust responsibility and requirement in
8 section 5(f) of the 1959 Admission Act that one of the five
9 purposes of the public land trust is that the income and
10 proceeds from the public land trust are to be used "for the
11 betterment of the conditions of native Hawaiians"; and the 1978
12 Constitutional Convention's recognition that native Hawaiians
13 are one of the beneficiaries of the public land trust and the
14 creation of OHA to manage and administer the specific allocation
15 of "all income and proceeds from that pro rata portion of the
16 [public land] trust . . . for native Hawaiians" (Article XII,
17 section 6, of the Hawaii State Constitution). The United States
18 and the courts have consistently affirmed the trust nature of
19 the government and crown lands, including large tracts of ceded
20 lands used for military or other purposes under federal control.



1 In 1959, as a condition of its admission into the Union,
2 the State of Hawaii agreed to hold certain lands granted to the
3 State by the United States in a public trust for five purposes
4 delineated in section 5(f) of the Admission Act, which provides
5 in relevant part:

6 The lands granted to the State of Hawaii by subsection
7 (b) of this section and public lands retained by the United
8 States under subsections (c) and (d) and later conveyed to
9 the State under subsection (e), together with the proceeds
10 from the sale or other disposition of any such lands and
11 the income therefrom, shall be held by said State as a
12 public trust [(1)] for the support of the public schools
13 and other educational institutions, [(2)] *for the*
14 *betterment of the conditions of native Hawaiians, as*
15 *defined in the Hawaiian Homes Commission Act, 1920, as*
16 *amended, [(3)] for the development of farm and home*
17 *ownership on as widespread a basis as possible [(4)] for*
18 *the making of public improvements, and [(5)] for the*
19 *provision of lands for public use. Such lands, proceeds,*
20 *and income shall be managed and disposed of for one or more*
21 *of the foregoing purposes in such manner as the*



1 constitution and laws of this State may provide, and their
2 use for any other object shall constitute a breach of trust
3 for which suit may be brought by the United States.

4 (*Emphasis added.*)

5 In 1978, the people of Hawaii affirmed the State's trust
6 obligation to native Hawaiians by ratifying constitutional
7 amendments from the Constitutional Convention, including
8 article XII, sections 4, 5, and 6, of the Hawaii State
9 Constitution, which established OHA and charged it with managing
10 income and proceeds from the public land trust for the benefit
11 of native Hawaiians. Article XVI, section 7, of the Hawaii
12 State Constitution required the State to enact legislation to
13 comply with its trust obligations. Thus, in 1979, legislation,
14 codified as chapter 10, Hawaii Revised Statutes, set forth the
15 purposes of OHA and described the duties of its trustees.

16 In September 1981, an initial land inventory by the
17 department of land and natural resources listed approximately
18 1,271,652 acres, falling woefully short of its duty to provide a
19 complete inventory of the public land trust lands.
20 Additionally, the state land information management system does
21 not include all lands held by all state entities.



1 Act 273, Session Laws of Hawaii 1980, enacted section
2 10-13.5, Hawaii Revised Statutes, to implement OHA's pro rata
3 share and required that OHA receive "[t]wenty per cent of all
4 funds derived from the public land trust[.]" This legislative
5 directive addressing the constitutional mandate has led to a
6 series of lawsuits and legislative enactments concerning OHA's
7 constitutional pro rata share of the public land trust. The
8 State and OHA have labored to resolve the political question of
9 the statutory pro rata share of income and proceeds derived from
10 the public land trust, and payment to OHA.

11 Act 178, Session Laws of Hawaii 2006, affirmed the State's
12 trust obligation to native Hawaiians by requiring that the
13 department of land and natural resources provide an annual
14 accounting of revenue-generating public trust lands and the
15 amounts derived from those lands to the legislature. The
16 measure also set a fixed amount of \$15,100,000 from the pro rata
17 share of the public land trust income and proceeds due to OHA
18 for the betterment of the conditions of native Hawaiians until
19 further action is taken by the legislature for this purpose.

20 Act 15, Session Laws of Hawaii 2012, (Act 15) was enacted
21 to address past-due amounts, which accumulated during the period



1 between November 7, 1978, up to and including June 30, 2012, of
2 income and proceeds from the public land trust owed to OHA by
3 implementing an agreement between the State and OHA for the
4 State to convey certain lands in Kakaako, Oahu, to OHA valued at
5 approximately \$200,000,000. Act 15 did not, however, address
6 the State's constitutional obligations relating to OHA's twenty
7 per cent pro rata share of the income and proceeds from the
8 public land trust generated after June 30, 2012. Notably, a
9 2015-2016 financial review initiated by OHA found that the
10 minimum amount of total gross receipts from sources that OHA has
11 historically claimed was approximately \$394,322,163 in the
12 fiscal year 2015-2016. Twenty per cent of this gross amount is
13 approximately \$78,900,000.

14 The legislature finds that to uphold its constitutional
15 trust obligation and duty to native Hawaiians, it must enact
16 another legislative measure in light of the information, data,
17 and facts provided to the legislature by state agencies since
18 the enactment of Act 178, Session Laws of Hawaii 2006, more than
19 a decade ago.

20 The purpose of this Act is to:



(1) Establish twenty per cent of the net receipts from the public land trust, or \$15,100,000, whichever is greater, as the office of Hawaiian affairs' annual share of the income and proceeds of the public land trust beginning in fiscal year 2022-2023; and

(2) Appropriate funds from the carry-forward trust holding account established by the director of finance, pursuant to executive order 06-06, to the office of Hawaiian affairs.

SECTION 2. Section 10-13.5, Hawaii Revised Statutes, is amended to read as follows:

"§10-13.5 Use of public land trust proceeds. (a) Twenty per cent of ~~[all funds derived]~~ the net receipts from the public land trust, described in section 10-3, or \$15,100,000 from the trust, whichever is greater, shall be transferred in fiscal year 2022-2023, and each fiscal year thereafter, and expended by the office, as defined in section 10-2, for the purposes of this chapter. The moneys transferred pursuant to this subsection shall constitute the State's annual pro rata share of public land trust proceeds due and owing to the office.



1 (b) For the purposes of this section, "net receipts" means
2 the proceeds, fees, charges, rents, or other income, or any
3 portion thereof, derived from any sale, lease, license, permit,
4 or other disposition, permitted use, or activity, that is
5 situated upon and results from the actual use of lands
6 comprising the public land trust, unless precluded by federal
7 law; provided that all costs incurred by the State or its
8 departments, agencies, or entities in developing, managing,
9 maintaining, or operating the lands from which the receipts are
10 derived, and any other costs required to generate the receipts,
11 shall be excluded, including:

12 (1) Required debt service payments on reimbursable general
13 obligation bonds and revenue bonds;

14 (2) Operation and maintenance costs for public housing
15 projects; and

16 (3) Costs for supplies, materials, equipment, or
17 personnel."

18 SECTION 3. (a) Notwithstanding the provisions of Act 178,
19 Session Laws of Hawaii 2006, except for section 5 of Act 178,
20 Session Laws of Hawaii 2006, beginning in fiscal year 2022-2023,
21 departments, agencies, or entities that collect receipts from



1 public land trust lands, including the University of Hawaii,
2 shall determine and transfer to the office of Hawaiian affairs
3 that portion of their net receipts from the public land trust
4 collected during each fiscal quarter necessary to ensure that
5 twenty per cent of the net receipts from the public land trust,
6 or \$3,775,000 from the trust, whichever is greater, is
7 transferred to the office of Hawaiian affairs within thirty days
8 of the close of each fiscal quarter; provided that for fiscal
9 year 2022-2023, the departments, agencies, or entities shall
10 have until thirty days after the close of the fiscal year to
11 transfer a total of \$ from their net receipts from the
12 public land trust collected during fiscal year 2022-2023, to the
13 office of Hawaiian affairs by the procedures set forth in this
14 Act.

15 (b) The governor is expressly authorized to fix the
16 amounts each department, agency, or entity shall transfer to the
17 office of Hawaiian affairs in each quarter by executive order to
18 implement the provisions of this section.

19 (c) For the purposes of this section, "net receipts" shall
20 have the same meaning as that term is defined under section 10-
21 13.5, Hawaii Revised Statutes.



1 SECTION 4. No later than twelve days after the close of
2 each fiscal quarter, the director of finance or the director's
3 designee shall determine the total amount of receipts
4 transferred by any department, agency, or entity that collects
5 receipts from the lands within the public land trust to the
6 office of Hawaiian affairs during the immediately prior fiscal
7 quarter.

8 If the total amount of receipts transferred to the office
9 of Hawaiian affairs is less than the amount required under
10 section 3 of this Act in the immediately prior fiscal quarter,
11 the director of finance or the director's designee shall make up
12 the difference between the amount required under section 3 of
13 this Act and the amount of receipts transferred in the
14 immediately prior fiscal quarter by establishing the additional
15 amount of receipts that each department, agency, or entity must
16 transfer to the office of Hawaiian affairs pursuant to section 3
17 of this Act.

18 SECTION 5. There is appropriated out of the carry-forward
19 trust holding account established by the director of finance,
20 pursuant to executive order 06-06, the sum of \$ or so
21 much thereof as may be necessary for fiscal year 2022-2023 to



1 pay to the office of Hawaiian affairs amounts received from the
2 public land trust between July 1, 2012, through June 30, 2022.

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

5 The director of finance shall transfer the funds in the
6 carry-forward trust holding account established by the director
7 of finance to the office of Hawaiian affairs.

8 SECTION 6. Any funds transferred pursuant to this Act
9 shall be deemed income and proceeds from the public land trust,
10 just as if the funds had been paid out of the income and
11 proceeds from the public land trust pursuant to article XII,
12 section 6, of the Hawaii State Constitution.

13 SECTION 7. Nothing in this Act shall resolve or settle, or
14 be deemed to acknowledge the existence of, the claims of native
15 Hawaiians to the income and proceeds of a pro rata portion of
16 the public land trust under article XII, section 6, of the
17 Hawaii State Constitution.

18 SECTION 8. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

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



Report Title:

OHA; Public Land Trust; Pro Rata Share

Description:

Establishes the office of Hawaiian affairs' pro rata share of the moneys derived from the public land trust. Transfers funds from the carry-forward trust holding account to OHA. 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.

