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

- 8 (1) Account for all ceded lands in the public lands trust
9 inventory;
- 10 (2) Account for all income and proceeds derived from the
11 public land trust; and
- 12 (3) Transfer the full twenty per cent pro rata share of
13 income and proceeds from the public land trust
14 annually to the office of Hawaiian affairs ("OHA") for
15 the betterment of the conditions of native Hawaiians.



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



1 and crown lands, including large tracts of ceded lands used for
2 military or other purposes under federal control.

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

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



1 shall be managed and disposed of for one or more of the
2 foregoing purposes in such manner as the constitution and
3 laws of this State may provide, and their use for any other
4 object shall constitute a breach of trust for which suit
5 may be brought by the United States.

6 (*Emphasis added.*)

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

18 In September 1981, an initial land inventory by the
19 department of land and natural resources listed approximately
20 1,271,652 acres, falling woefully short of its duty to provide a
21 complete inventory of the public land trust lands.



1 Additionally, the state land information management system does
2 not include all lands held by all state entities.

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

13 Act 178, Session Laws of Hawaii 2006, affirmed the State's
14 trust obligation under Article XII, section 6, of the Hawaii
15 State Constitution to native Hawaiians by requiring that the
16 department of land and natural resources provide an annual
17 accounting of revenue-generating public trust lands and the
18 amounts derived from those lands to the legislature. The
19 interim measure also set a fixed amount of \$15,100,000 from the
20 pro rata share of the public land trust income and proceeds due
21 to OHA for the betterment of the conditions of native Hawaiians



1 until further action is taken by the legislature for this
2 purpose.

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

18 The legislature finds that to uphold its constitutional
19 trust obligation and duty to the Indigenous People of Hawaii, it
20 must enact another legislative measure in light of the
21 information, data, and facts provided to the legislature by



1 state agencies since the enactment of Act 178, Session Laws of
2 Hawaii 2006, more than a decade ago.

3 (b) The purpose of this Act is to:

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

9 (2) Transfer to the office of Hawaiian affairs the balance
10 of funds, as of _____, 2022, contained in the
11 carry-forward trust holding account established by the
12 director of finance, pursuant to executive order
13 06-06, for income and proceeds due from the use of the
14 public land trust lands between July 1, 2012, and June
15 30, 2022, that was misallocated, underreported, or
16 underpaid to the office of Hawaiian affairs; and

17 (3) Require the continued annual accounting of all
18 receipts from lands described in section 5(f) of the
19 Admission Act.

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



1 "**§10-13.5 Use of public land trust proceeds.** (a) Twenty
2 per cent of [~~all funds derived~~] the net receipts from the public
3 land trust, described in section 10-3, or \$15,100,000 from the
4 trust, whichever is greater, shall be transferred in fiscal year
5 2022-2023, and each fiscal year thereafter, and expended by the
6 office, as defined in section 10-2, for the purposes of this
7 chapter. The moneys transferred pursuant to this subsection
8 shall constitute the State's annual pro rata share of public
9 land trust proceeds due and owing to the office.

10 (b) For the purposes of this section, "net receipts" means
11 the proceeds, fees, charges, rents, or other income, or any
12 portion thereof, derived from any sale, lease, license, permit,
13 or other disposition, permitted use, or activity, that is
14 situated upon and results from the actual use of lands
15 comprising the public land trust, but excluding all costs
16 incurred by the State or its agencies in developing, managing,
17 maintaining, or operating the lands from which the receipts are
18 derived, and any other costs required to generate the receipts,
19 including:

20 (1) Required debt service payments on reimbursable general
21 obligation bonds and revenue bonds;



- 1 (2) Operation and maintenance costs for public housing
- 2 projects; and
- 3 (3) Costs for supplies, materials, equipment, or
- 4 personnel."

5 SECTION 3. Notwithstanding the provisions of Act 178,
6 Session Laws of Hawaii 2006, except for section 5 of Act 178,
7 which this Act restates, without substantive change, beginning
8 in fiscal year 2022-2023, departments, agencies, or entities
9 that collect receipts from public land trust lands, including
10 the University of Hawaii, shall determine and transfer to the
11 office of Hawaiian affairs that portion of their receipts from
12 the use, sale, lease, or other disposition of lands within the
13 public land trust collected during each fiscal quarter,
14 necessary to ensure that a total of \$3,775,000 of receipts
15 generated by the public land trust is transferred to the office
16 of Hawaiian affairs within thirty days of the close of each
17 fiscal quarter; provided that for fiscal year 2022-2023, the
18 departments shall have until thirty days after the close of the
19 fiscal year to transfer a total of \$ from their
20 receipts from the use, sale, or exchange of lands within the
21 public land trust collected during fiscal year 2022-2023, to the



1 office of Hawaiian affairs by the procedures set forth in this
2 Act.

3 The governor is expressly authorized to fix the amounts
4 each agency shall transfer to the office of Hawaiian affairs in
5 each quarter by executive order to implement the provisions of
6 this section.

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

13 If the total amount of receipts transferred to the office
14 of Hawaiian affairs is less than \$3,775,000 in the immediately
15 prior fiscal quarter, the director of finance or the director's
16 designee shall make up the difference between \$3,775,000 and the
17 amount of receipts transferred in the immediately prior fiscal
18 quarter by establishing the additional amount of receipts that
19 each agency must transfer to the office of Hawaiian affairs
20 pursuant to section 3 of this Act.



1 SECTION 5. There is appropriated out of the carry-forward
2 trust holding account established by the director of finance,
3 pursuant to executive order 06-06, the balance of funds in the
4 account as of _____, 2022, to pay to the office of Hawaiian
5 affairs amounts received from the use of lands in the public
6 land trust that the legislature has determined were
7 misallocated, underreported, or underpaid income and proceeds of
8 the public land trust between July 1, 2012, through June 30,
9 2022.

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

12 The director of finance shall transfer the funds in the
13 carry-forward trust holding account established by the director
14 of finance to the office of Hawaiian affairs.

15 SECTION 6. Any funds transferred pursuant to this Act
16 shall be deemed income and proceeds from the public land trust,
17 just as if the funds had been paid out of the income and
18 proceeds from the public land trust pursuant to article XII,
19 section 6, of the Hawaii State Constitution.

20 SECTION 7. Nothing in this Act shall resolve or settle, or
21 be deemed to acknowledge the existence of, the claims of native



1 Hawaiians to the income and proceeds of a pro rata portion of
2 the public land trust under article XII, section 6, of the
3 Hawaii State Constitution.

4 SECTION 8. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

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



Report Title:

OHA; Public Land Trust; 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 moneys to the OHA for income and proceeds due from the use of the public land trust lands between July 1, 2012, and June 30, 2022, that was misallocated, underreported, or underpaid to the OHA. Effective 7/1/2050. (SD1)

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

