

JAN 19 2022

A BILL FOR AN ACT

RELATING TO INCREASING 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 the Indigenous People
3 of Hawai`i, consistent with governmental action across America
4 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 (1) account for all ceded lands in the public lands trust
8 inventory, (2) account for all income and proceeds derived from
9 the public land trust, and (3) transfer the full twenty per cent
10 pro rata share of income and proceeds from the public land trust
11 annually to the office of Hawaiian affairs ("OHA") for the
12 betterment of the conditions of native Hawaiians.

13 The genesis and source of the State's public land trust
14 responsibility to native Hawaiians are the historical events
15 that led to the illegal overthrow of the Kingdom of Hawai`i; the
16 transfer of approximately 1,800,000 acres of crown, government,



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

20 In 1959, as a condition of its admission into the Union,
21 the State of Hawai`i agreed to hold certain lands granted to the



1 State by the United States in a public trust, the public lands
2 trust, for five purposes delineated in section 5(f) of the
3 Admission Act, which provides in relevant part:

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



1 object shall constitute a breach of trust for which suit
2 may be brought by the United States.

3 (Emphasis added.)

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

15 In September 1981, an initial land inventory by the
16 department of land and natural resources listed approximately
17 1,271,652 acres, falling woefully short of its duty to provide a
18 complete inventory of the public land trust lands.
19 Additionally, the state land information management system does
20 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 Hawai'i 2006, affirmed the State's
12 trust obligation under Article XII, section 6, of the Hawaii
13 State Constitution to native Hawaiians by requiring that the
14 department of land and natural resources provide an annual
15 accounting of revenue-generating public trust lands and the
16 amounts derived from those lands to the legislature. The
17 interim measure also set a fixed amount of \$15,100,000 from the
18 pro rata share of the public land trust income and proceeds due
19 to OHA for the betterment of the conditions of native Hawaiians
20 until further action is taken by the legislature for this
21 purpose.



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

16 The legislature finds that to uphold its constitutional
17 trust obligation and duty to the Indigenous People of Hawai`i,
18 it must enact another legislative measure in light of the
19 information, data, and facts provided to the legislature by
20 state agencies since the enactment of Act 178, Session Laws of
21 Hawai`i 2006, more than a decade ago.



1 The purpose of this Act is to:

2 (1) Establish \$78,900,000 as the office of Hawaiian
3 affairs' annual share of the income and proceeds of
4 the public land trust beginning in fiscal year
5 2022-2023;

6 (2) Transfer to the office of Hawaiian affairs the sum of
7 \$638,000,000 for income and proceeds due from the use
8 of the public land trust lands between July 1, 2012,
9 and June 30, 2022, that was misallocated,
10 underreported, or underpaid to the office of Hawaiian
11 affairs; and

12 (3) Require the continued annual accounting of all
13 receipts from lands described in section 5(f) of the
14 Admission Act.

15 SECTION 2. Notwithstanding the provisions of Act 178,
16 Session Laws of Hawaii 2006, except for section 5 of Act 178,
17 which this Act restates, without substantive change, and until
18 further action is taken by the legislature for this purpose, the
19 income and proceeds from the pro rata portion of the public land
20 trust under article XII, section 6, of the Constitution of the
21 State of Hawaii for expenditure by the office of Hawaiian



1 affairs for the betterment of the conditions of native Hawaiians
2 for each fiscal year, beginning with fiscal year 2022-2023,
3 shall be \$78,900,000.

4 SECTION 3. Notwithstanding the provisions of Act 178,
5 Session Laws of Hawai`i 2006, except for section 5 of Act 178,
6 which this Act restates, without substantive change, beginning
7 in fiscal year 2022-2023, departments, agencies, or entities
8 that collect receipts from public land trust lands, including
9 but not limited to the university of Hawai`i, shall determine
10 and transfer to the office of Hawaiian affairs that portion of
11 their receipts from the use, sale, lease, or other disposition
12 of lands within the public land trust collected during each
13 fiscal quarter, necessary to ensure that a total of \$19,725,000
14 of receipts generated by the public land trust is transferred to
15 the office of Hawaiian affairs within thirty days of the close
16 of each fiscal quarter; provided that for fiscal year 2022-2023,
17 the departments shall have until thirty days after the close of
18 the fiscal year to transfer a total of \$19,725,000 from their
19 receipts from the use, sale, or exchange of lands within the
20 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 \$19,725,000 in the immediately
15 prior fiscal quarter, the director of finance or the director's
16 designee shall:

17 (1) Make up the difference between \$19,725,000 and the
18 amount of receipts transferred in the immediately
19 prior fiscal quarter by transferring up to the entire
20 amount on deposit in the carry-forward trust holding



1 account established by the director of finance,
2 pursuant to executive order 06-06 or this Act; or
3 (2) Make up the difference between \$19,725,000 and the
4 amount of receipts transferred in the immediately
5 prior fiscal quarter by establishing the additional
6 amount of receipts that each agency must transfer to
7 the office of Hawaiian affairs pursuant to section 3
8 of this Act.

9 If the total amount of receipts transferred to the office
10 of Hawaiian affairs is more than \$19,725,000 in the immediately
11 prior fiscal quarter, the director of finance shall notify the
12 office of Hawaiian affairs and request that the office of
13 Hawaiian affairs transfer the amount in excess of \$19,725,000
14 into the carry-forward trust holding account established by the
15 director of finance, pursuant to executive order 06-06 or this
16 Act. This section shall not apply to a transfer of receipts at
17 the close of fiscal year 2022-2023.

18 SECTION 5. There is appropriated out of the general
19 revenues of the State of Hawai'i the sum of \$638,000,000 or so
20 much thereof as may be necessary for fiscal year 2022-2023,
21 which includes trust funds transferred into the carry-forward



1 trust holding account, totaling approximately \$29,060,007.97 at
2 the end of fiscal year 2021, established by the director of
3 finance, pursuant to executive order 06-06, to pay to the office
4 of Hawaiian affairs amounts received from the use of lands in
5 the public land trust that the legislature has determined were
6 misallocated, underreported, or underpaid income and proceeds of
7 the public land trust between July 1, 2012, through June 30,
8 2022.

9 The sum appropriated shall be expended by the department of
10 budget and finance.

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

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

19 SECTION 7. Nothing in this Act shall resolve or settle, or
20 be deemed to acknowledge the existence of, the claims of native
21 Hawaiians to the income and proceeds of a pro rata portion of



S.B. NO. 2122

Report Title:

Office of Hawaiian Affairs Package; 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 Office of Hawaiian Affairs 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 Office of Hawaiian Affairs.

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

