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# 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 Hawaii, consistent with governmental action across America to  
4 address injustices against Indigenous Peoples. It is incumbent  
5 upon the 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, section  
17 6, Hawaii State Constitution). The United States and the courts  
18 have consistently affirmed the trust nature of the government  
19 and crown lands, including large tracts of ceded lands used for  
20 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, the public lands  
4        trust, for five purposes delineated in section 5(f) of the  
5        Admission Act, which provides 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 [(2)] other educational institutions, [(3)] *for the*  
14       *betterment of the conditions of native Hawaiians, as*  
15       *defined in the Hawaiian Homes Commission Act, 1920, as*  
16       *amended, [(4)]* for the development of farm and home  
17       ownership on as widespread a basis as possible for the  
18       making of public improvements, and [(5)] for the provision  
19       of lands for public use. Such lands, proceeds, and income  
20       shall be managed and disposed of for one or more of the  
21       foregoing purposes in such manner as the constitution and



1 laws of this State may provide, and their use for any other  
2 object shall constitute a breach of trust for which suit  
3 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 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 Hawaii 2012, was enacted to address  
2 past-due amounts, which accumulated during the period between  
3 November 7, 1978, up to and including June 30, 2012, of income  
4 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 Kakaako, Oahu, to OHA valued at  
7 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 Hawaii, it  
18 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 Hawaii 2006, more than a decade ago.



1 The purpose of this Act is to:

2 (1) Establish \$ 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 \$ 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 \$                   .

4           SECTION 3. Notwithstanding the provisions of Act 178,  
5   Session Laws of Hawaii 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 Hawaii, shall determine and  
10   transfer to the office of Hawaiian affairs that portion of their  
11   receipts from the use, sale, lease, or other disposition of  
12   lands within the public land trust collected during each fiscal  
13   quarter, necessary to ensure that a total of \$                   of  
14   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 \$                   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 \$ 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 \$ 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 \$ 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 \$ 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 \$  
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 Hawaii the sum of \$ 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 for the purposes of this Act.

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



1 the public land trust under article XII, section 6, of the  
2 Hawaii State Constitution.

3 SECTION 8. This Act shall take effect on July 1, 2022.



**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. (SD1)

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

