
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 and
2 fulfill its trust responsibilities to the Indigenous People of
3 Hawai'i, 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 (1) account
7 for all ceded lands in the public lands trust inventory, (2) account
8 for all income and proceeds derived from the public land trust and
9 (3) transfer the full twenty-percent pro rata share of income and
10 proceeds from the public land trust annually to the Office of
11 Hawaiian Affairs ("OHA") for the betterment of the conditions of
12 native Hawaiians.

13 The genesis and source of the State's public land trust
14 responsibility to native Hawaiians are the historical events that
15 led to the illegal overthrow of the Kingdom of Hawai'i; the
16 transfer of approximately 1.8 million acres of crown, government,
17 and public lands to the United States under the 1898 Joint

.B. NO.

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

18 In 1959, as a condition of its admission into the Union, the
19 State of Hawai`i agreed to hold certain lands granted to the State
20 by the United States in a public trust, the public lands trust,
21 for five purposes delineated in *section 5(f)* of the Admission Act,
22 which provides in relevant part:

.B. NO.

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

13 Such lands, proceeds, and income shall be managed and disposed
14 of for one or more of the foregoing purposes in such manner as the
15 constitution and laws of this State may provide, and their use for
16 any other object shall constitute a breach of trust for which suit
17 may be brought by the United States.” (Emphasis added.)

18 In 1978, the people of Hawai`i affirmed the State’s trust
19 obligation to native Hawaiians by ratifying constitutional
20 amendments from the Constitutional Convention, including Article
21 XII, sections 4, 5, and 6, which established OHA and charged it
22 with managing income and proceeds from the public land trust for

.B. NO.

1 the benefit of native Hawaiians. Article XVI, section 7 of the
2 Hawai`i constitution required the State to enact legislation to
3 comply with its trust obligations. Thus, in 1979, legislation,
4 codified at Hawaii Revised Statutes ("HRS") chapter 10, set forth
5 the purposes of OHA and described its duties of the trustees.

6 In September 1981, an initial land inventory by the Department
7 of Land and Natural Resources ("DLNR") listed approximately
8 1,271,652 acres, falling woefully short of its duty to provide a
9 complete inventory of the public land trust lands. Additionally,
10 the State Land Information Management System ("SLIMS") does not
11 include all lands held by all state entities.

12 Act 273, Session Laws of Hawaii 1980, enacted HRS Section
13 10-13.5 to implement the OHA's pro rata share and required that
14 OHA receive "[t]wenty per cent of all funds derived from the public
15 land trust." This legislative directive addressing the
16 constitutional mandate has led to a series of lawsuits and
17 legislative enactments concerning OHA's constitutional pro rata
18 share of the public land trust. The State and OHA have labored to
19 resolve the political question of the statutory pro-rata share of
20 income and proceeds derived from the public lands trust, and
21 payment to OHA.

.B. NO.

1 Act 178, Session Laws of Hawai'i 2006, affirmed the State's
2 trust obligation under Article XII, Section 6, of the state
3 constitution to native Hawaiians by requiring that DNLR provide an
4 annual accounting of revenue-generating public trust lands and the
5 amounts derived from those lands to the legislature. The interim
6 measure also set a fixed amount of \$15,100,000 from the pro rata
7 share of the public land trust income and proceeds due to OHA for
8 the betterment of the conditions of native Hawaiians until further
9 action is taken by the legislature for this purpose.

10 Act 15, Session Laws of Hawai'i 2012, was enacted to address
11 past-due amounts, which accumulated during the period between
12 November 7, 1978, up to and including June 30, 2012, of income and
13 proceeds from the public land trust owed to OHA by implementing an
14 agreement between the State and OHA for the State to convey certain
15 lands in Kaka'ako, O'ahu, to OHA valued at approximately
16 \$200,000,000. Act 15 did not, however, address the State's
17 constitutional obligations relating to OHA's twenty percent pro
18 rata share of the income and proceeds from the public land trust
19 generated after June 30, 2012. Notably, a 2015-16 financial review
20 initiated by OHA found that the minimum amount of total gross
21 receipts from sources that the office of Hawaiian affairs has
22 historically claimed was approximately \$394,322,163 in the fiscal

.B. NO.

1 year 2015-2016. Twenty per cent of this amount is approximately
2 \$78,900,000.

3 The legislature finds that to uphold its constitutional trust
4 obligation and duty to the Indigenous People of Hawai'i, it must
5 enact another legislative measure in light of the information,
6 data, and facts provided to the legislature by state agencies since
7 the enactment of Act 178, Session Laws of Hawai'i 2006, more than
8 a decade ago.

9 The purpose of this Act is to:

10 (1) Establish \$78,900,000 as the Office of Hawaiian Affairs'
11 annual share of the income and proceeds of the public land
12 trust beginning in fiscal year 2022-2023;

13 (2) Transfer to the Office of Hawaiian Affairs the sum of
14 \$638,000,000 for income and proceeds due from the use of the
15 public land trust lands between July 1, 2012, and June 30,
16 2022, that was misallocated, underreported or underpaid to
17 OHA; and

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

20 SECTION 2. Notwithstanding the provisions of Act 178 (Session
21 Laws of Hawai'i 2006), except for Section 5 of Act 178, which this
22 Act restates, without substantive change, and until further action

.B. NO.

1 is taken by the legislature for this purpose, the income and
2 proceeds from the pro rata portion of the public land trust under
3 article XII, section 6 of the state constitution for expenditure
4 by the Office of Hawaiian Affairs for the betterment of the
5 conditions of native Hawaiians for each fiscal year beginning with
6 fiscal year 2022-2023 shall be \$78,900,000.

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

.B. NO.

1 during fiscal year 2022-2023, to OHA by the procedures set forth
2 in this Act.

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

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

12 If the total amount of receipts transferred to OHA is less
13 than \$19,725,000 in the immediately prior fiscal quarter, the
14 director of finance or the director's designee shall:

15 (1) Make up the difference between \$19,725,000 and the
16 amount of receipts transferred in the immediately prior fiscal
17 quarter by transferring up to the entire amount on deposit in the
18 carry-forward trust holding account established by the director of
19 finance, pursuant to Executive Order 06-06 or this Act; or

20 (2) Make up the difference between \$19,725,000 and the
21 amount of receipts transferred in the immediately prior fiscal
22 quarter by establishing the additional amount of receipts that

.B. NO.

1 each agency must transfer to OHA pursuant to section 3 of this
2 Act.

3 If the total amount of receipts transferred to OHA is more
4 than \$19,725,000 in the immediately prior fiscal quarter, the
5 director of finance shall notify OHA and request that OHA transfer
6 the amount in excess of \$19,725,000 into the carry-forward trust
7 holding account established by the director of finance, pursuant
8 to Executive Order 06-06 or this Act. This subsection shall not
9 apply to a transfer of receipts at the close of fiscal year 2022-
10 2023.

11 SECTION 5. There is appropriated out of the general revenues
12 of the State of Hawai'i in the sum of \$638,000,000 for fiscal year
13 2021-2022, which includes trust funds transferred into the carry-
14 forward trust holding account, totaling approximately
15 \$29,060,007.97 at the end of fiscal year 2021, established by the
16 director of finance, pursuant to executive order 06-06, to pay to
17 OHA amounts received from the use of lands in the public land trust
18 that the legislature has determined were misallocated,
19 underreported or underpaid income and proceeds of the public land
20 trust between July 1, 2012 through June 30, 2022.

21 The sum appropriated shall be expended by the department of
22 budget and finance.

