
A BILL FOR AN ACT

RELATING TO STRENGTHENING THE FOUNDATION FOR ENSURING A FAIR AND JUST 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 in 1978, the state
2 constitution was amended to include article XII section 4, which
3 established the public land trust "to be held by the State for
4 native Hawaiians and the general public." Article XII, sections
5 5 and 6, also included in the 1978 constitutional amendments,
6 further established the Office of Hawaiian Affairs and its board
7 of trustees, and gave the board the power and authority to
8 manage and administer the income and proceeds of native
9 Hawaiians' pro rata portion of the public land trust.

10 Act 273, Session Laws of Hawai'i 1980, enacted section
11 10-13.5, Hawai'i Revised Statutes, to implement the Office of
12 Hawaiian Affairs' pro rata share and provide that "[¶]twenty per
13 cent of all funds derived from the public land trust . . . shall
14 be expended by the [Office of Hawaiian Affairs] . . . for the
15 purposes of this chapter."

16 Following a series of lawsuits to establish the fair and
17 just pro rata share of the public land trust for the Office of

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1 Hawaiian Affairs, the legislature enacted Act 178, Session Laws
2 of Hawai'i 2006. The stated purpose of Act 178 was "to ensure
3 that an adequate amount of income and proceeds is made available
4 to the [Office of Hawaiian Affairs] from the pro rata portion of
5 the public land trust," and provided that \$15,100,000 per fiscal
6 year would be transferred to the Office of Hawaiian Affairs as
7 an "interim amount" until "further action is taken by the
8 legislature for this purpose." To inform such further action,
9 Act 178 tasked the department of land and natural resources to
10 "provide an annual accounting to the legislature," identifying
11 "revenue-generating public trust lands and the amounts derived
12 from those lands," and including the amounts transferred to the
13 Office of Hawaiian Affairs and the amounts retained by the
14 State, among other details.

15 In order to effectuate Act 178, the then-governor Lingle
16 issued Executive Order No. 06-06, which established the
17 procedures by which all state agencies collecting receipts for
18 the use of public land trust lands must account for, set aside,
19 and transfer to the Office of Hawaiian Affairs receipts from
20 public land trust lands, subject to enumerated exceptions.

21 Based on the annual accountings of the amounts derived from
22 the public land trust conducted pursuant to Act 178, and as

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1 supplemented by additional research commissioned by the Office
2 of Hawaiian Affairs of receipts generated from the public land
3 trust in fiscal year 2015-2016, the minimum amount of total
4 gross public land trust receipts from sources to which the
5 Office of Hawaiian Affairs has made a past or current claim was
6 found to be \$174,816,220 in fiscal year 2015-2016. Twenty
7 percent of this amount from fiscal year 2015-2016 is
8 \$34,963,244, considerably more than the \$15,100,000 that the
9 Office of Hawaiian Affairs receives annually pursuant to Act
10 178. However, despite its "interim" nature, Act 178, Session
11 Laws of 2006, remains in effect setting the Office of Hawaiian
12 Affairs' annual income and proceeds from the public land trust
13 for the betterment of the conditions of native Hawaiians at
14 \$15,100,000, pending further legislative action on the subject.

15 While accounting information gathered pursuant to Act 178
16 has already proven valuable to illustrating the need to revisit
17 and revise the \$15,100,000 amount transferred annually to the
18 Office of Hawaiian Affairs, full compliance with Act 178 is
19 critical to informing future discussions and determinations of
20 what constitutes a fair, revised amount of native Hawaiians'
21 share of all funds derived from the public land trust. However,
22 deficiencies in reporting and accountability have been

1 identified by the Office of Hawaiian Affairs and its contractors
2 over several recent years, including the State's failure to
3 fully account for all gross receipts from the public land trust,
4 and the State's apparent reluctance to completely report the
5 public land trust receipts of certain agencies, including the
6 University of Hawai'i.

7 Accordingly, the legislature finds that it is now in the
8 best interests of the Office of Hawaiian Affairs, its
9 beneficiaries, the State, and all citizens of Hawai'i to amend
10 the Hawai'i Revised Statutes to clarify, supplement, and codify
11 the reporting and accountability procedures that have been used
12 to implement Act 178.

13 The purpose of this Act is to:

14 (1) Codify the accounting and reporting requirements set
15 forth in Section 5 of Act 178, Session Laws of Hawai'i,
16 with modifications to:

17 (a) Emphasize that the University of Hawai'i is
18 subject to the requirements;

19 (b) Emphasize that all public land trust receipts
20 must be accounted for, including those receipts
21 that a department or agency believes may not be

- 1 subject to the Office of Hawaiian Affairs' pro
2 rata share; and
- 3 (c) Require the department of land and natural
4 resources to consult with the Office of Hawaiian
5 Affairs to ensure that the accounting is accurate
6 and inclusive;
- 7 and
- 8 (2) Require certain explanations and determinations
9 regarding the amount of receipts transferred to the
10 Office of Hawaiian affairs.

11 SECTION 2. Chapter 171, Hawai'i Revised Statutes, is
12 amended by adding a new section to part I to be appropriately
13 designated and to read as follows:

14 "§171- Public land trust; reporting. Notwithstanding the
15 provisions of section 5 of Act 178, Session Laws of Hawai'i 2006,
16 no later than January 1 of each year, the department of land and
17 natural resources, with the cooperation of the department of
18 budget and finance and any other department or agency that
19 collects receipts from lands within the public land trust that
20 is described in section 5(f) of the Admission Act, including the
21 University of Hawai'i, shall provide an annual report with an
22 accounting of all receipts from lands described in section 5(f)

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1 of the Admission Act for the prior fiscal year. With respect to
2 each receipt, the department of land and natural resources shall
3 identify:

4 (1) The total gross amount of the receipt generated from
5 the use of the public land trust, regardless of
6 whether the receipt is subject to the Office of
7 Hawaiian Affairs' pro rata share;

8 (2) The amount of the receipt transferred to the Office of
9 Hawaiian Affairs;

10 (3) The amount of the receipt retained by the State;

11 (4) The account or fund in which the amount specified in
12 paragraph (3) was transferred or deposited;

13 (5) The parcel of land subject to section 5(f) of the
14 Admission Act that generated the receipt, whether by
15 tax map key number, department of land and natural
16 resources inventory number, or other recognizable
17 description;

18 (6) The state department or agency that received the total
19 gross amount identified in paragraph (1); and

20 (7) For each receipt where the transferred amount
21 identified in paragraph (2) was less than twenty per
22 cent of the total gross amount identified in paragraph

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1 (1), an explanation of why the state department or
2 agency identified in paragraph (6) did not transfer
3 the full twenty per cent of the total gross amount of
4 the receipt; for example, that federal or state law
5 precludes any portion of the receipt from being used
6 directly to better the conditions of native Hawaiians,
7 or the transfer of any portion of the receipt will
8 cause the State to renege on any pre-existing pledge,
9 rate covenant, or other pre-existing obligation to
10 holders of revenue bonds or other indebtedness of the
11 State.

12 The accounting shall also indicate whether any parcel of
13 land described in section 5(f) of the Admission Act was sold or
14 exchanged in the prior fiscal year and, if so, the amount of
15 consideration that the State received for the respective
16 parcels.

17 The department of land and natural resources shall consult
18 the Office of Hawaiian Affairs in determining the method in
19 which the accounting shall be conducted and in ensuring that the
20 accounting is accurate and inclusive of all receipts generated
21 by the public land trust. Prior to finalizing its annual report
22 described in this section, the department of land and natural

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1 resources shall provide the Office of Hawaiian Affairs a draft
2 of the report and shall allow no less than thirty days for the
3 Office of Hawaiian Affairs to provide a written response, which
4 shall be published as an addendum to the report."

5 SECTION 3. New statutory material is underscored.

6 SECTION 4. This Act shall take effect upon its approval.

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8 INTRODUCED BY: _____

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By Request