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## 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 as a  
4           public trust for native Hawaiians and the general public."  
5           Article XII sections 5 and 6, also included in the 1978  
6           constitutional amendments, established the Office of Hawaiian  
7           Affairs and its board of trustees, and gave the board the power  
8           and authority to manage and administer the income and proceeds  
9           of native Hawaiians' pro rata portion of the public land trust.  
10           Act 273, Session Laws of Hawaii 1980, enacted section 10-  
11           13.5, Hawaii Revised Statutes, to implement the office of  
12           Hawaiian affairs' pro rata share and to provide that "[t]wenty  
13           per cent of all funds derived from the public land trust" shall  
14           be expended by the office of Hawaiian affairs for the purposes  
15           of chapter 10, Hawaii Revised Statutes.



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

17           In order to effectuate Act 178, then-governor Linda Lingle  
18 issued Executive Order No. 06-06 to establish the procedures by  
19 which all state agencies collecting receipts for the use of  
20 public land trust lands must account for, set aside, and



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1 transfer to the office of Hawaiian affairs receipts from public  
2 land trust lands, subject to enumerated exceptions.

3       Based on the annual accountings of the amounts derived from  
4 the public land trust conducted pursuant to Act 178, and as  
5 supplemented by additional research commissioned by the office  
6 of Hawaiian affairs of receipts generated from the public land  
7 trust in fiscal year 2015-2016, the minimum amount of total  
8 gross public land trust receipts from sources to which the  
9 office of Hawaiian affairs has made a past or current claim was  
10 found to be \$174,816,220 in fiscal year 2015-2016. Twenty per  
11 cent of this amount from fiscal year 2015-2016 is \$34,963,244,  
12 considerably more than the \$15,100,000 that the office of  
13 Hawaiian affairs receives annually pursuant to Act 178.

14 However, despite its "interim" nature, Act 178, Session Laws of  
15 Hawaii 2006, remains in effect, setting the office of Hawaiian  
16 affairs' annual income and proceeds from the public land trust  
17 for the betterment of the conditions of native Hawaiians at  
18 \$15,100,000, pending further legislative action on the subject.

19       While accounting information gathered pursuant to Act 178  
20 has already proven valuable to illustrate the need to revisit  
21 and revise the \$15,100,000 amount transferred annually to the



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1 office of Hawaiian affairs, full compliance with Act 178 is  
2 critical to informing future discussions and determinations of  
3 what constitutes a fair, revised amount of native Hawaiians'  
4 share of all funds derived from the public land trust. However,  
5 deficiencies in reporting and accountability have been  
6 identified by the office of Hawaiian affairs and its contractors  
7 over several recent years, including the State's failure to  
8 fully account for all gross receipts from the public land trust,  
9 and the State's apparent reluctance to completely report the  
10 public land trust receipts of certain agencies, including the  
11 University of Hawaii.

12 Accordingly, the legislature finds that it is now in the  
13 best interests of the office of Hawaiian affairs, its  
14 beneficiaries, the State, and all citizens of Hawaii to clarify,  
15 supplement, and codify the reporting and accountability  
16 procedures that have been used to implement Act 178, Session  
17 Laws of Hawaii 2006.

18 The purpose of this Act is to:

- 19 (1) Codify the accounting and reporting requirements set  
20 forth in section 5 of Act 178, Session Laws of Hawaii  
21 2006, with modifications to:



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- 1 (A) Emphasize that the University of Hawaii is
- 2 subject to the requirements;
- 3 (B) Emphasize that all public land trust receipts
- 4 must be accounted for, including those receipts
- 5 that a department or agency believes may not be
- 6 subject to the office of Hawaiian affairs' pro
- 7 rata share; and
- 8 (C) Require the department of land and natural
- 9 resources to consult with the office of Hawaiian
- 10 affairs to ensure that the accounting is accurate
- 11 and inclusive; and
- 12 (2) Require certain explanations and determinations
- 13 regarding the amount of receipts transferred to the
- 14 office of Hawaiian affairs.

15 SECTION 2. Chapter 171, Hawaii Revised Statutes, is  
 16 amended by adding a new section to be appropriately designated  
 17 and to read as follows:

18 "§171- Public land trust; reporting. Notwithstanding  
 19 the provisions of section 5 of Act 178, Session Laws of Hawaii  
 20 2006, no later than January 1 of each year, the department of  
 21 land and natural resources, with the cooperation of the



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1 department of budget and finance and any other department or  
 2 agency that collects receipts from lands within the public land  
 3 trust as described in section 5(f) of the Admission Act,  
 4 including the University of Hawaii, shall provide an annual  
 5 report with an accounting of all receipts from lands described  
 6 in section 5(f) of the Admission Act for the prior fiscal year.  
 7 With respect to each receipt, the department of land and natural  
 8 resources shall identify the:

- 9       (1) Total gross amount of the receipt generated from the  
 10           use of the public land trust, regardless of whether  
 11           the receipt is subject to the office of Hawaiian  
 12           affairs' pro rata share pursuant to section 10-13.5;
- 13       (2) Amount of the receipt transferred to the office of  
 14           Hawaiian affairs;
- 15       (3) Amount of the receipt retained by the State;
- 16       (4) Account or fund in which the amount specified in  
 17           paragraph (3) was transferred or deposited;
- 18       (5) Parcel of land subject to section 5(f) of the  
 19           Admission Act that generated the receipt, whether by  
 20           tax map key number, department of land and natural



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1           resources inventory number, or other recognizable  
2           description;  
3       (6) Department or agency that received the total gross  
4           amount identified in paragraph (1); and  
5       (7) Reason or reasons why the department or agency  
6           identified in paragraph (6) did not transfer the full  
7           twenty per cent of the total gross amount of the  
8           receipt for each receipt where the transferred amount  
9           identified in paragraph (2) was less than twenty per  
10          cent of the total gross amount identified in paragraph  
11          (1); for example, that federal or state law precludes  
12          any portion of the receipt from being used directly to  
13          better the conditions of native Hawaiians, or the  
14          transfer of any portion of the receipt will cause the  
15          State to renege on any pre-existing pledge, rate  
16          covenant, or other pre-existing obligation to holders  
17          of revenue bonds or other indebtedness of the State.

18       The accounting shall also indicate whether any parcel of  
19       land described in section 5(f) of the Admission Act was sold or  
20       exchanged in the prior fiscal year and, if so, the amount of







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**Report Title:**

OHA Package; DLNR; Public Land Trust; Pro Rata Share

**Description:**

Requires the Department of Land and Natural Resources to use certain reporting and accountability procedures in implementing the public land trust reporting requirements of Act 178, Session Laws of Hawaii 2006. Requires the Department of Land and Natural Resources to consult with the Office of Hawaiian Affairs to ensure that the accounting and reporting is accurate and inclusive.

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

