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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,  
3 which established the public land trust to be held by the State  
4 as a 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, codified as section  
11 10-13.5, Hawaii Revised Statutes, implemented the office of  
12 Hawaiian affairs' pro rata share and provides that twenty per  
13 cent of all funds derived from the public land trust shall be  
14 expended by the office of Hawaiian affairs for the purposes of  
15 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 (Act 178). The stated purpose of Act 178 was to  
5 ensure that an adequate amount of income and proceeds is made  
6 available to the office of Hawaiian affairs from the pro rata  
7 portion 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 is  
10 taken by the legislature. To inform this further action, Act  
11 178 tasked the department of land and natural resources to  
12 provide an annual accounting to the legislature, identify  
13 revenue-generating public trust lands and the amounts derived  
14 from those lands, and include the amounts transferred to the  
15 office of Hawaiian affairs and the amounts retained by the  
16 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



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 remains in effect,  
15 setting the office of Hawaiian affairs' annual income and  
16 proceeds from the public land trust for the betterment of the  
17 conditions of native Hawaiians at \$15,100,000, pending further  
18 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



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.

17 The purpose of this Act is to:

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



1 (A) Require the department of budget and finance,  
2 with the cooperation of the department of land  
3 and natural resources, to provide the annual  
4 accounting report;

5 (B) Emphasize that the University of Hawaii is  
6 subject to the requirements;

7 (C) Emphasize that all public land trust receipts  
8 must be accounted for, including those receipts  
9 that a department or agency believes may not be  
10 subject to the office of Hawaiian affairs' pro  
11 rata share; and

12 (D) Require the department of budget and finance to  
13 consult with the office of Hawaiian affairs to  
14 ensure that the accounting is accurate and  
15 inclusive; and

16 (2) Require certain explanations and determinations  
17 regarding the amount of receipts transferred to the  
18 office of Hawaiian affairs.

19 SECTION 2. Chapter 37, Hawaii Revised Statutes, is amended  
20 by adding a new section to be appropriately designated and to  
21 read as follows:



1        "§37- Public land trust; reporting. Notwithstanding the  
2 provisions of section 5 of Act 178, Session Laws of Hawaii 2006,  
3 no later than January 1 of each year, the department of budget  
4 and finance, with the cooperation of the department of land and  
5 natural resources and any other department or agency that  
6 collects receipts from lands within the public land trust as  
7 described in section 5(f) of the Admission Act, including the  
8 University of Hawaii, shall provide an annual report with an  
9 accounting of all receipts from lands described in section 5(f)  
10 of the Admission Act for the prior fiscal year. With respect to  
11 each receipt, the department of budget and finance shall  
12 identify the:

- 13        (1) Total gross amount of the receipt generated from the  
14        use of the public land trust, regardless of whether  
15        the receipt is subject to the office of Hawaiian  
16        affairs' pro rata share pursuant to section 10-13.5;
- 17        (2) Amount of the receipt transferred to the office of  
18        Hawaiian affairs;
- 19        (3) Amount of the receipt retained by the State;
- 20        (4) Account or fund in which the amount specified in  
21        paragraph (3) was transferred or deposited;



- 1        (5) Parcel of land subject to section 5(f) of the
- 2            Admission Act that generated the receipt, whether by
- 3            tax map key number, inventory number, or other
- 4            recognizable description;
- 5        (6) Department or agency that received the total gross
- 6            amount identified in paragraph (1); and
- 7        (7) Reason or reasons why the department or agency
- 8            identified in paragraph (6) did not transfer the full
- 9            twenty per cent of the total gross amount of the
- 10           receipt for each receipt where the transferred amount
- 11           identified in paragraph (2) was less than twenty per
- 12           cent of the total gross amount identified in paragraph
- 13           (1); for example, that federal or state law precludes
- 14           any portion of the receipt from being used directly to
- 15           better the conditions of native Hawaiians, or the
- 16           transfer of any portion of the receipt will cause the
- 17           State to renege on any pre-existing pledge, rate
- 18           covenant, or other pre-existing obligation to holders
- 19           of revenue bonds or other indebtedness of the State.
- 20        The accounting shall also indicate whether any parcel of
- 21        land described in section 5(f) of the Admission Act was sold or



1 exchanged in the prior fiscal year and, if so, the amount of  
2 consideration that the State received for the respective  
3 parcels.

4 The department of budget and finance shall consult the  
5 office of Hawaiian affairs in determining the method by which  
6 the accounting shall be conducted and in ensuring that the  
7 accounting is accurate and inclusive of all receipts generated  
8 by the public land trust. Prior to finalizing its annual report  
9 described in this section, the department of budget and finance  
10 shall provide the office of Hawaiian affairs a draft of the  
11 report and shall allow no less than thirty days for the office  
12 of Hawaiian affairs to provide a written response. The office  
13 of Hawaiian affairs' written response shall be published as an  
14 addendum to the report."

15 SECTION 3. There is established one full-time equivalent  
16 (1.0 FTE) public land trust reporting and accountability officer  
17 position within the department of budget and finance to ensure  
18 compliance with the reporting and accounting requirements of  
19 section 37- , Hawaii Revised Statutes.

20 SECTION 4. Beginning with the 2020-2021 fiscal year, the  
21 department of budget and finance shall request as a separate





1 line item in the budget the sum of \$                    or so much  
2 thereof as may be necessary per fiscal year to fund the public  
3 land trust reporting and accountability officer position  
4 established pursuant to section 3.

5            SECTION 5.    New statutory material is underscored.

6            SECTION 6.    This Act shall take effect on December 31,  
7 2050.



**Report Title:**

OHA Package; Department of Budget and Finance; Public Land Trust; Pro Rata Share;

**Description:**

Requires the Department of Budget and Finance 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 Budget and Finance to consult with the Office of Hawaiian Affairs to ensure that the accounting and reporting is accurate and inclusive. Establishes and requires the Department of Budget and Finance to request funding every fiscal year for a specific budget line item for a public land trust reporting and accountability officer position. Takes effect 12/31/2050. (SD1)

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

