

JAN 17 2020

A BILL FOR AN ACT

RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF
THE PUBLIC TRUST LAND.

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
11 10-13.5, 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.



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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



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:



- 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 office of
14 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



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

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



1 consideration that the State received for the respective
2 parcels.

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

14 SECTION 3. New statutory material is underscored.

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

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INTRODUCED BY:

Kurt Fowler

[Handwritten signatures: Alan Wong, Jon & R, Clarence & Dushik, [circled initials], [scribble], [scribble], [scribble], [scribble], [scribble], [scribble]]

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Report Title:

DLNR; OHA; 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.

