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## A BILL FOR AN ACT

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RELATING TO PUBLIC LAND TRUST REVENUES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The legislature finds that it must set right  
2 and fulfill its trust responsibilities to the indigenous people  
3 of Hawaii, 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 account  
7 for all ceded lands in the public land trust inventory, account  
8 for all income and proceeds derived from the public land trust,  
9 and transfer the full twenty per cent pro rata share of income  
10 and proceeds from the public land trust annually to the office  
11 of Hawaiian affairs 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  
15 that led to the illegal overthrow of the Kingdom of Hawaii; the  
16 transfer of approximately 1,800,000 acres of crown, government,  
17 and public lands to the United States under the 1898 Joint



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 Hawaii 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 Act that one of the five  
6 purposes of the public land trust is that the income and  
7 proceeds from the public land trust are supposed to be used "for  
8 the betterment of the conditions of native Hawaiians"; and the  
9 1978 constitutional convention's recognition that native  
10 Hawaiians are one of the beneficiaries of the public land trust  
11 and the creation of the office of Hawaiian affairs to manage and  
12 administer the specific allocation of "all income and proceeds  
13 from that pro rata portion of the [public land] trust for native  
14 Hawaiians" as stated in Article XII of the Hawaii State  
15 Constitution. The United States and the courts have  
16 consistently affirmed the trust nature of the government and  
17 crown lands, including large tracts of ceded lands used for  
18 military or other purposes under federal control.

19 In 1959, as a condition of its admission into the union,  
20 the State of Hawaii agreed to hold certain lands granted to the  
21 State by the United States in a public trust, the public land



1 trust, for five purposes delineated in section 5(f) of the  
2 Admission Act, which provides in relevant part:

3 The lands granted to the State of Hawaii by subsection  
4 (b) of this section and public lands retained by the  
5 United States under subsections (c) and (d) and later  
6 conveyed to the State under subsection (e), together  
7 with the proceeds from the sale or other disposition  
8 of any such lands and the income therefrom, shall be  
9 held by said State as a public trust [(1)] for the  
10 support of the public schools and [(2)] other  
11 educational institutions, [(3)] for the betterment of  
12 the conditions of native Hawaiians, as defined in the  
13 Hawaiian Homes Commission Act, 1920, as amended, [(4)]  
14 for the development of farm and home ownership on as  
15 widespread a basis as possible for the making of  
16 public improvements, and [(5)] for the provision of  
17 lands for public use. Such lands, proceeds, and  
18 income shall be managed and disposed of for one or  
19 more of the foregoing purposes in such manner as the  
20 constitution and laws of this State may provide, and  
21 their use for any other object shall constitute a



1 breach of trust for which suit may be brought by the  
2 United States.

3 In 1978, the people of Hawaii affirmed the State's trust  
4 obligation to native Hawaiians by ratifying constitutional  
5 amendments from the constitutional convention, including  
6 article XII, sections 4, 5, and 6, which established the office  
7 of Hawaiian affairs and charged it with managing income and  
8 proceeds from the public land trust for the benefit of native  
9 Hawaiians. Article XVI, section 7 of the Hawaii constitution  
10 required the State to enact legislation to comply with its trust  
11 obligations. Thus, in 1979, legislation, codified at  
12 chapter 10, Hawaii Revised Statutes, set forth the purposes of  
13 the office of Hawaiian affairs and described its duties of the  
14 trustees.

15 In September 1981, an initial land inventory by the  
16 department of land and natural resources listed approximately  
17 1,271,652 acres, falling woefully short of its duty to provide a  
18 complete inventory of the public land trust lands.  
19 Additionally, the state land information management system does  
20 not include all lands held by all state entities.



1        Act 273, Session Laws of Hawaii 1980, enacted section  
2    10-13.5, Hawaii Revised Statutes, to implement the office of  
3    Hawaiian affairs' pro rata share and required that the office of  
4    Hawaiian affairs receive "[t]wenty per cent of all funds derived  
5    from the public land trust." This legislative directive  
6    addressing the constitutional mandate has led to a series of  
7    lawsuits and legislative enactments concerning the office of  
8    Hawaiian affairs' constitutional pro rata share of the public  
9    land trust. The State and the office of Hawaiian affairs have  
10   labored to resolve the political question of the statutory pro  
11   rata share of income and proceeds derived from the public lands  
12   trust, and payment to the office of Hawaiian affairs. Act 178,  
13   Session Laws of Hawaii 2006, affirmed the State's trust  
14   obligation under article XII, section 6, of the state  
15   constitution to native Hawaiians by requiring that the  
16   department of land and natural resources provide an annual  
17   accounting of revenue-generating public trust lands and the  
18   amounts derived from those lands to the legislature. The  
19   interim measure also set a fixed amount of \$15,100,000 from the  
20   pro rata share of the public land trust income and proceeds due  
21   to the office of Hawaiian affairs for the betterment of the



1 conditions of native Hawaiians until further action is taken by  
2 the legislature for this purpose.

3 Act 15, Session Laws of Hawaii 2012, was enacted to address  
4 past-due amounts, which accumulated during the period between  
5 November 7, 1978, up to and including June 30, 2012, of income  
6 and proceeds from the public land trust owed to the office of  
7 Hawaiian affairs by implementing an agreement between the State  
8 and the office of Hawaiian affairs for the State to convey  
9 certain lands in Kakaako, Oahu, to the office of Hawaiian  
10 affairs valued at approximately \$200,000,000. Act 15 did not,  
11 however, address the State's constitutional obligations relating  
12 to the office of Hawaiian affairs' twenty percent pro rata share  
13 of the income and proceeds from the public land trust generated  
14 after June 30, 2012. Notably, a 2015-2016 financial review  
15 initiated by the office of Hawaiian affairs found that the  
16 minimum amount of total gross receipts from sources that the  
17 office of Hawaiian affairs has historically claimed was  
18 approximately \$394,322,163 in the fiscal year 2015-2016. Twenty  
19 per cent of this amount is approximately \$78,900,000.

20 The legislature finds that to uphold its constitutional  
21 trust obligation and duty to the indigenous people of Hawaii, it



1 must enact another legislative measure in light of the  
2 information, data, and facts provided to the legislature by  
3 state agencies since the enactment of Act 178, Session Laws of  
4 Hawaii 2006, more than a decade ago.

5 The purpose of this Act is to increase the amount of moneys  
6 transferred from the public land trust to the office of Hawaiian  
7 affairs.

8 SECTION 2. Section 10-13.3, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "[+]§10-13.3[+]—~~Interim~~] Public land trust revenue. (a)  
11 Notwithstanding the definition of revenue contained in this  
12 chapter and the provisions of section 10-13.5, and  
13 notwithstanding any claimed invalidity of Act 304, Session Laws  
14 of Hawaii 1990, the income and proceeds from the pro rata  
15 portion of the public land trust under article XII, section 6 of  
16 the state constitution [~~for expenditure by~~] shall be transferred  
17 to the office of Hawaiian affairs for the betterment of the  
18 conditions of native Hawaiians [~~for each of fiscal year 1997-~~  
19 ~~1998 and fiscal year 1998-1999 shall be \$15,100,000-~~] pursuant  
20 to this section.



1        (b) All departments and agencies that collect receipts for  
2 the use of ceded or public land trust land shall:

3        (1) Establish trust holding accounts to accumulate the  
4 office's portion of each receipt that would otherwise  
5 be deposited into the general fund or a special fund,  
6 and to accumulate the remainder of each receipt that  
7 would otherwise be deposited into the general fund for  
8 the rest of the fiscal year;

9        (2) Determine if:

10        (A) Any federal or state law precludes any portion of  
11 the receipt from being used to better the  
12 conditions of native Hawaiians; or

13        (B) The transfer of any portion of the receipt will  
14 cause the department or agency to renege on any  
15 pre-existing pledge, rate covenant, or other pre-  
16 existing obligation to holders of revenue bonds  
17 or other indebtedness of the State, department,  
18 or agency;

19        (3) If use of a receipt is not limited by the provisions  
20 of paragraph (2):





- 1           (A) Determine the office's share of the receipt by  
2           calculating the ceded and non-ceded fraction for  
3           the parcel that generated the receipt by area  
4           (square feet or acres), multiplying the receipt  
5           by the ceded and non-ceded fraction, and  
6           multiplying that result by twenty per cent; and  
7           (B) Deposit the resulting amount into the appropriate  
8           trust holding account established pursuant to  
9           paragraph (1) to accumulate the office's portion;  
10           and  
11           (C) Deposit the remaining portion of the receipt into  
12           the general fund if it would otherwise be  
13           deposited into the general fund, or deposit the  
14           remaining portion of the receipt into the  
15           appropriate special fund;  
16           (4) If use of a receipt is limited by subparagraph (2) (A)  
17           or (B), report the receipt as a gross receipt in a  
18           manner as required by the department of land and  
19           natural resources, and deposit the entire amount to  
20           the credit of the general fund or special fund, as  
21           appropriate; and



1        (5) Within ten calendar days of the close of each fiscal  
 2        quarter:

3        (A) Notify the department of budget and finance in a  
 4        manner established by the department of budget  
 5        and finance of the receipts collected and  
 6        deposited in each of its trust holding accounts,  
 7        and transferred to the office; and

8        (B) Transfer all receipts deposited in its trust  
 9        holding accounts to the office, and transmit  
 10       records of that transfer to the office and the  
 11       department of budget and finance."

12       SECTION 3. Section 10-13.5, Hawaii Revised Statutes, is  
 13       repealed.

14       [~~"§10-13.5 Use of public land trust proceeds. Twenty per~~  
 15       ~~cent of all funds derived from the public land trust, described~~  
 16       ~~in section 10-3, shall be expended by the office, as defined in~~  
 17       ~~section 10-2, for the purposes of this chapter." ]~~

18       SECTION 4. Act 178, Session Laws of Hawaii 2006,  
 19       is amended by repealing sections 2 and 3.

20       [~~"SECTION 2. Notwithstanding the provisions of chapter 10,~~  
 21       ~~Hawaii Revised Statutes, including section 10-13.5, Hawaii~~



1 ~~Revised Statutes, and until further action is taken by the~~  
2 ~~legislature for this purpose, the income and proceeds from the~~  
3 ~~pro rata portion of the public land trust under article XII,~~  
4 ~~section 6, of the state constitution for expenditure by the~~  
5 ~~office of Hawaiian affairs for the betterment of the conditions~~  
6 ~~of native Hawaiians for each fiscal year beginning with fiscal~~  
7 ~~year 2005 2006 shall be \$15,100,000.~~

8       ~~SECTION 3. Notwithstanding the provisions of chapter 10,~~  
9 ~~Hawaii Revised Statutes, or the requirements of Executive Order~~  
10 ~~No. 03 03, beginning in fiscal year 2005 2006, the departments~~  
11 ~~of agriculture, accounting and general services, business,~~  
12 ~~economic development, and tourism, education, land and natural~~  
13 ~~resources, and transportation (for its harbors division), and~~  
14 ~~any other department or agency that collects receipts from the~~  
15 ~~lands within the public land trust, shall determine and transfer~~  
16 ~~to the office of Hawaiian affairs that portion of their receipts~~  
17 ~~from the use of lands within the public land trust collected~~  
18 ~~during each fiscal quarter, necessary to ensure that a total of~~  
19 ~~\$3,775,000 of revenues generated by the public land trust is~~  
20 ~~transferred to the office of Hawaiian affairs, within thirty~~  
21 ~~days of the close of each fiscal quarter; provided that for~~



~~1   fiscal year 2005 2006, the departments shall have until thirty~~  
~~2   days after the close of the fiscal year to transfer a total of~~  
~~3   \$15,100,000 from their receipts from the use of lands within the~~  
~~4   public land trust collected during fiscal year 2005 2006, to the~~  
~~5   office of Hawaiian affairs whether by the procedures set out in~~  
~~6   Executive Order No. 03 03 or this Act.~~

~~7       The governor is expressly authorized to fix the amounts~~  
~~8   each agency shall transfer to the office of Hawaiian affairs in~~  
~~9   each quarter by executive order to implement the provisions of~~  
~~10  this section." ]~~

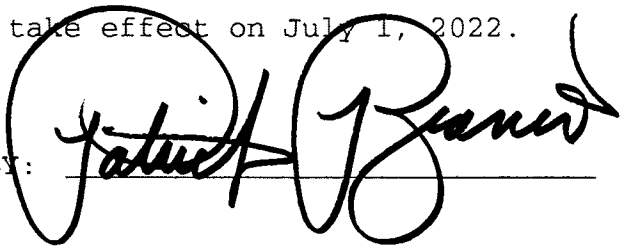
11       SECTION 5. Nothing in this Act shall resolve or settle, or  
12 be deemed to acknowledge the existence of, the claims of native  
13 Hawaiians to the income and proceeds of a pro rata portion of  
14 the public land trust under article XII, section 6, of the state  
15 constitution.

16       SECTION 6. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18       SECTION 7. This Act shall take effect on July 1, 2022.

19

INTRODUCED BY:



JAN 26 2022



# H.B. NO. 2433

**Report Title:**

OHA; Ceded Lands; Pro Rata Share

**Description:**

Requires that all moneys in the pro rata portion of the Public Land Trust be transferred to the Office of Hawaiian Affairs.

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