
A BILL FOR AN ACT

RELATING TO INCREASING THE 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 it must set right
2 and fulfill its trust responsibilities to native Hawaiians,
3 consistent with governmental action across America to address
4 injustices against Indigenous Peoples. It is incumbent upon the
5 legislature to enact legislation that upholds its trust
6 responsibilities and duty of care to native Hawaiians to:

7 (1) Account for all ceded lands in the public lands trust
8 inventory;

9 (2) Account for all income and proceeds derived from the
10 public land trust; and

11 (3) Transfer the full twenty per cent pro rata share of
12 income and proceeds from the public land trust
13 annually to the office of Hawaiian affairs (OHA) for
14 the betterment of the conditions of native Hawaiians.

15 The genesis and source of the State's public land trust
16 responsibility to native Hawaiians are the historical events



1 that led to the illegal overthrow of the Kingdom of Hawaii; the
2 transfer of approximately 1,800,000 acres of crown, government,
3 and public lands to the United States under the 1898 Joint
4 Resolution of Annexation without the consent of and without
5 compensation to the native Hawaiian people or their sovereign
6 government; the admission of Hawaii as a state of the Union in
7 1959, with the explicit trust responsibility and requirement in
8 section 5(f) of the 1959 Admission Act that one of the five
9 purposes of the public land trust is that the income and
10 proceeds from the public land trust are to be used "for the
11 betterment of the conditions of native Hawaiians"; and the 1978
12 Constitutional Convention's recognition that native Hawaiians
13 are one of the beneficiaries of the public land trust and the
14 creation of OHA to manage and administer the specific allocation
15 of "all income and proceeds from that pro rata portion of the
16 [public land] trust . . . for native Hawaiians" (Article XII,
17 section 6, of the Hawaii State Constitution). The United States
18 and the courts have consistently affirmed the trust nature of
19 the government and crown lands, including large tracts of ceded
20 lands used for military or other purposes under federal control.



1 In 1959, as a condition of its admission into the Union,
2 the State of Hawaii agreed to hold certain lands granted to the
3 State by the United States in a public trust for five purposes
4 delineated in section 5(f) of the Admission Act, which provides
5 in relevant part:

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



1 constitution and laws of said State may provide, and their
2 use for any other object shall constitute a breach of trust
3 for which suit may be brought by the United States.

4 (*Emphasis added.*)

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

16 In September 1981, an initial land inventory by the
17 department of land and natural resources listed approximately
18 1,271,652 acres, falling woefully short of its duty to provide a
19 complete inventory of the public land trust lands.
20 Additionally, the state land information management system does
21 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 OHA's pro rata
3 share and required that OHA receive "[t]wenty per cent of all
4 funds derived from the public land trust[.]" This legislative
5 directive addressing the constitutional mandate has led to a
6 series of lawsuits and legislative enactments concerning OHA's
7 constitutional pro rata share of the public land trust. The
8 State and OHA have labored to resolve the political question of
9 the statutory pro rata share of income and proceeds derived from
10 the public land trust, and payment to OHA.

11 Act 178, Session Laws of Hawaii 2006, affirmed the State's
12 trust obligation to native Hawaiians by requiring that the
13 department of land and natural resources provide an annual
14 accounting of revenue-generating public trust lands and the
15 amounts derived from those lands to the legislature. The
16 measure also set a fixed amount of \$15,100,000 from the pro rata
17 share of the public land trust income and proceeds due to OHA
18 for the betterment of the conditions of native Hawaiians until
19 further action is taken by the legislature for this purpose.

20 Act 15, Session Laws of Hawaii 2012, (Act 15) was enacted
21 to address past-due amounts, which accumulated during the period



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

14 The legislature finds that to uphold its constitutional
15 trust obligation and duty to native Hawaiians, it must enact
16 another legislative measure in light of the information, data,
17 and facts provided to the legislature by state agencies since
18 the enactment of Act 178, Session Laws of Hawaii 2006, more than
19 a decade ago.

20 The purpose of this Act is to:



(1) Establish twenty per cent of all funds derived from the public land trust, or \$21,500,000 whichever is greater, as the office of Hawaiian affairs' annual share of the income and proceeds of the public land trust beginning in fiscal year 2022-2023;

(2) Establish a working group to determine the pro rata share of income and proceeds from the public land and past due amounts owed to the office of Hawaiian affairs for the period from July 1, 2012, to June 30, 2022; and

(3) Appropriate funds from the carry-forward trust holding account established by the director of finance, pursuant to executive order 06-06, to the office of Hawaiian affairs.

SECTION 2. Section 10-13.5, Hawaii Revised Statutes, is amended to read as follows:

"§10-13.5 Use of public land trust proceeds. Twenty per cent of all funds derived from the public land trust, described in section 10-3, or \$21,500,000 from the trust, whichever is greater, shall be transferred to the office in fiscal year 2022-2023, and each fiscal year thereafter, and expended by the



1 office[~~as defined in section 10-2,~~] for the purposes of this
2 chapter. The moneys transferred pursuant to this subsection
3 shall constitute the annual pro rata share of public land trust
4 proceeds due and owing to the office."

5 SECTION 3. (a) There is established a working group to:

6 (1) Account for all ceded lands in the public land trust
7 inventory;

8 (2) Account for all income and proceeds from the public
9 land trust;

10 (3) Subsequently determine the twenty per cent pro rata
11 share of income and proceeds from the public land
12 trust due annually to the office of Hawaiian affairs
13 for the betterment of the conditions of Native
14 Hawaiians; and

15 (4) Determine any past due sum owed to the office of
16 Hawaiian affairs for the period from July 1, 2012, to
17 June 30, 2022.

18 (b) The working group shall be comprised of six members,
19 three of whom three shall be appointed by the governor and three
20 of whom shall be appointed by the office of Hawaiian affairs
21 board of trustees.



1 (c) The working group shall prepare and submit a report of
2 its findings and recommendations, including any proposed
3 legislation and the amount it determines for the twenty per cent
4 pro rata share of income and proceeds from the public land
5 trust, to the legislature.

6 (d) The department of budget and finance shall provide any
7 necessary administrative support, including preparation of the
8 report required by subsection (c), to the working group.

9 SECTION 4. There is appropriated out of the carry-forward
10 trust holding account established by the director of finance,
11 pursuant to executive order 06-06, the sum of \$31,000,000 or so
12 much thereof as may be necessary for fiscal year 2022-2023 to
13 pay to the office of Hawaiian affairs amounts received from the
14 public land trust between July 1, 2012, through June 30, 2022.

15 The sum appropriated shall be expended by the department of
16 budget and finance for the purposes of this Act.

17 The director of finance shall transfer the funds in the
18 carry-forward trust holding account established by the director
19 of finance to the office of Hawaiian affairs.

20 SECTION 5. Nothing in this Act shall resolve or settle, or
21 be deemed to acknowledge the existence of, claims of native



1 Hawaiians to the income and proceeds of a pro rata portion of
2 the public land trust under article XII, section 6, of the
3 Hawaii State Constitution.

4 SECTION 6. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect upon its approval.



Report Title:

OHA; Public Land Trust; Pro Rata Share; Carry-forward Trust
Holding Account; Working Group

Description:

Establishes the office of Hawaiian affairs' pro rata share of the moneys derived from the public land trust. Establishes a working group to determine pro rata share of income and proceeds from the public land trust and back amounts due. Appropriates funds from the carry-forward trust holding account to OHA.

(HD2)

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