

STAND. COM. REP. NO. 942

Honolulu, Hawaii

MAR 05 2021

RE: S.B. No. 321
S.D. 2

Honorable Ronald D. Kouchi
President of the Senate
Thirty-First State Legislature
Regular Session of 2021
State of Hawaii

Sir:

Your Committees on Judiciary and Ways and Means, to which was referred S.B. No. 321, S.D. 1, entitled:

"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,"

beg leave to report as follows:

The purpose and intent of this measure is to provide the Office of Hawaiian Affairs with the funds to which it is entitled under article XII, section 6, of the Hawaii State Constitution and section 10-13.5, Hawaii Revised Statutes. Specifically, this measure:

- (1) Requires agencies that collect receipts related to the public land trust to transfer twenty percent of such receipts to the Office of Hawaiian Affairs on a quarterly basis;
- (2) Sets the minimum aggregate quarterly transfer of receipts to the Office of Hawaiian Affairs at \$3,775,000;
- (3) Directs the Director of Finance to transfer funds to the Office of Hawaiian Affairs in satisfaction of any quarterly shortfall;



- (4) Transfers to the Office of Hawaiian Affairs all overpayment funds collected in fiscal year 2012-2013 through fiscal year 2020-2021 from the carry-forward trust holding account established pursuant to Executive Order No. 06-06, plus any additional overpayments collected in the holding account in fiscal year 2021-2022 or 2022-2023; and
- (5) Establishes a public land trust revenues negotiating committee to make recommendations to the Legislature for resolving the matter of the amount of the income and proceeds from the public land trust that the Office of Hawaiian Affairs shall receive annually.

Your Committees received testimony in support of this measure from the Office of Hawaiian Affairs, Kūpuna for the Mo'opuna, Hawaiian Affair Caucus of the Democratic Party of Hawai'i, and fifteen individuals. Your Committees received testimony in opposition to this measure from the Department of Land and Natural Resources and Center for Hawaiian Sovereignty Studies. Your Committees received comments on this measure from the Department of the Attorney General, Department of Agriculture, Department of Budget and Finance, University of Hawai'i System, Office of Information Practices, Hawaii Health Systems Corporation, and League of Women Voters of Hawaii.

Your Committees find that the Hawai'i Admission Act and the Hawaii State Constitution established the public land trust, which comprises over one million acres of former government and crown lands of the Kingdom of Hawai'i, for the betterment of the conditions of native Hawaiians and for the general public. The Hawaii State Constitution entrusts the Board of Trustees of the Office of Hawaiian Affairs with the responsibility to manage and administer public land trust funds set aside for native Hawaiians, which state law reaffirms is a twenty percent pro rata share of all funds from the trust.

Act 178, Session Laws of Hawaii 2006 (Act 178), put in place annual payments of \$15,100,000 from the pro rata portion of the public land trust to the Office of Hawaiian Affairs in acknowledgment of the State's constitutional obligation. However, Act 178 was passed with the intention that it would be an interim measure until the Legislature could further assess the



complexities of the issue, including gathering information on revenue-generating public trust lands and amounts derived from those lands. Your Committees find that since Act 178 was passed, the Legislature has received additional information from the departments and the Office of Hawaiian Affairs on the annual amounts derived from the public land trust. From fiscal years 2011-2012 through 2019-2020, the State reported to the Legislature total gross receipts averaging \$197,433,474. Twenty percent of the average reported gross receipts for fiscal years 2011-2012 through 2019-2020 is \$39,486,695.

Therefore, your Committees find that lifting the \$15,100,000 cap on the annual transfer of the public land trust revenues to the Office of Hawaiian Affairs, and allowing the Office of Hawaiian Affairs to expend the funds it has had to return over the last nine fiscal years due to this cap would demonstrate the State's support for providing native Hawaiians with a fair share of the public land trust.

Your Committees further find that despite the ongoing, urgent economic crisis faced by the State, this measure does not require any general fund appropriations, nor does it require state agencies to set aside more funds than they are already required. This measure intends to ensure that the full twenty percent of public land trust receipts that agencies set aside as the native Hawaiians' pro rata share can be used to assist beneficiaries of the Office of Hawaiian Affairs.

Your Committees have amended this measure by:

- (1) Inserting an effective date of May 6, 2137, to encourage further discussion; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the records of votes of the members of your Committees on Judiciary and Ways and Means that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 321, S.D. 1, as amended herein, and recommend that it pass Third Reading in the form attached hereto as S.B. No. 321, S.D. 2.



Respectfully submitted on
behalf of the members of the
Committees on Judiciary and
Ways and Means,


DONOVAN M. DELA CRUZ, Chair


KARL RHOADS, Chair



The Senate
 Thirty-First Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary
JDC

Bill / Resolution No.:*	Committee Referral:	Date:
SB 321 SD1	HWN, JDC/WAM	03/03/2021

The Committee is reconsidering its previous decision on this measure.
 If so, then the previous decision was to: _____

The Recommendation is:

Pass, unamended 2312
 Pass, with amendments 2311
 Hold 2310
 Recommit 2313

Members	Aye	Aye (WR)	Nay	Excused
RHOADS, Karl (C)	✓			
KEOHOKALOLE, Jarrett (VC)	✓			
ACASIO, Laura	✓			
GABBARD, Mike	✓			
KIM, Donna Mercado	✓			
LEE, Chris	✓			
FEVELLA, Kurt	✓			
TOTAL	7	0	0	0

Recommendation:
 Adopted
 Not Adopted


Chair's or Designee's Signature: *Karl Rhoads*

Distribution:
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*Only one measure per Record of Votes

The Senate
Thirty-First Legislature
State of Hawai'i

Record of Votes
Committee on Ways and Means
WAM

Bill / Resolution No.:*	Committee Referral:	Date:		
SB 321, SD1	HWN, JDC/WAM	3/3/21		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310		
<input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
DELA CRUZ, Donovan M. (C)	X			
KEITH-AGARAN, Gilbert S.C. (VC)	X			
ENGLISH, J. Kalani	X			
INOUYE, Lorraine R.	X			
KANUHA, Dru Mamo	X			
KIDANI, Michelle N.	X			
MORIWAKI, Sharon Y.	X			
SHIMABUKURO, Maile S.L.	X			
TANIGUCHI, Brian T.		X		
WAKAI, Glenn				X
FEVELLA, Kurt	X			
TOTAL	9	1		1
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy	

*Only one measure per Record of Votes