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# A BILL FOR AN ACT

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           Act 273, Session Laws of Hawaii 1980, enacted section  
14 10-13.5, Hawaii Revised Statutes, to implement the office of  
15 Hawaiian affairs' pro rata share and required that the office of  
16 Hawaiian affairs receive "[t]wenty per cent of all funds derived  
17 from the public land trust." This legislative directive



1 addressing the constitutional mandate has led to a series of  
2 lawsuits and legislative enactments concerning the office of  
3 Hawaiian affairs' constitutional pro rata share of the public  
4 land trust. The State and the office of Hawaiian affairs have  
5 labored to resolve the political question of the statutory pro  
6 rata share of income and proceeds derived from the public lands  
7 trust, and payment to the office of Hawaiian affairs. Act 178,  
8 Session Laws of Hawaii 2006, affirmed the State's trust  
9 obligation under article XII, section 6, of the state  
10 constitution to native Hawaiians by requiring that the  
11 department of land and natural resources provide an annual  
12 accounting of revenue-generating public trust lands and the  
13 amounts derived from those lands to the legislature. The  
14 interim measure also set a fixed amount of \$15,100,000 from the  
15 pro rata share of the public land trust income and proceeds due  
16 to the office of Hawaiian affairs for the betterment of the  
17 conditions of native Hawaiians until further action is taken by  
18 the legislature for this purpose.

19 Act 15, Session Laws of Hawaii 2012, was enacted to address  
20 past-due amounts, which accumulated during the period between  
21 November 7, 1978, up to and including June 30, 2012, of income



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

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



# H.B. NO. 1712

1           The purpose of this Act is to increase the amount of moneys  
2 transferred from the public land trust to the office of Hawaiian  
3 affairs.

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

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

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

19           (1) Establish trust holding accounts to accumulate the  
20 office's portion of each receipt that would otherwise  
21 be deposited into the general fund or a special fund,



1           and to accumulate the remainder of each receipt that  
2           would otherwise be deposited into the general fund for  
3           the rest of the fiscal year;

4       (2) Determine if:

5           (A) Any federal or state law precludes any portion of  
6           the receipt from being used to better the  
7           conditions of native Hawaiians; or

8           (B) The transfer of any portion of the receipt will  
9           cause the department or agency to renege on any  
10           pre-existing pledge, rate covenant, or other pre-  
11           existing obligation to holders of revenue bonds  
12           or other indebtedness of the State, department,  
13           or agency;

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

16           (A) Determine the office's share of the receipt by  
17           calculating the ceded and non-ceded fraction for  
18           the parcel that generated the receipt by area  
19           (square feet or acres), multiplying the receipt  
20           by the ceded and non-ceded fraction, and  
21           multiplying that result by twenty per cent; and



- 1           (B) Deposit the resulting amount into the appropriate  
2           trust holding account established pursuant to  
3           paragraph (1) to accumulate the office's portion;  
4           and
- 5           (C) Deposit the remaining portion of the receipt into  
6           the general fund if it would otherwise be  
7           deposited into the general fund, or deposit the  
8           remaining portion of the receipt into the  
9           appropriate special fund;
- 10          (4) If use of a receipt is limited by subparagraph (2) (A)  
11          or (B), report the receipt as a gross receipt in a  
12          manner as required by the department of land and  
13          natural resources, and deposit the entire amount to  
14          the credit of the general fund or special fund, as  
15          appropriate; and
- 16          (5) Within ten calendar days of the close of each fiscal  
17          quarter:
- 18               (A) Notify the department of budget and finance in a  
19               manner established by the department of budget  
20               and finance of the receipts collected and



1           deposited in each of its trust holding accounts,  
2           and transferred to the office; and

3           (B) Transfer all receipts deposited in its trust  
4           holding accounts to the office, and transmit  
5           records of that transfer to the office and the  
6           department of budget and finance."

7           SECTION 3. Section 10-13.5, Hawaii Revised Statutes, is  
8 repealed.

9           ~~["§10-13.5 Use of public land trust proceeds. Twenty per~~  
10 ~~cent of all funds derived from the public land trust, described~~  
11 ~~in section 10-3, shall be expended by the office, as defined in~~  
12 ~~section 10-2, for the purposes of this chapter."]~~

13           SECTION 4. Act 178, Section Session Laws of Hawaii 2006,  
14 is amended by repealing sections 2 and 3.

15           ~~["SECTION 2. Notwithstanding the provisions of chapter 10,~~  
16 ~~Hawaii Revised Statutes, including section 10-13.5, Hawaii~~  
17 ~~Revised Statutes, and until further action is taken by the~~  
18 ~~legislature for this purpose, the income and proceeds from the~~  
19 ~~pro rata portion of the public land trust under article XII,~~  
20 ~~section 6, of the state constitution for expenditure by the~~  
21 ~~office of Hawaiian affairs for the betterment of the conditions~~



1 ~~of native Hawaiians for each fiscal year beginning with fiscal~~  
2 ~~year 2005-2006 shall be \$15,100,000.~~

3       ~~SECTION 3. Notwithstanding the provisions of chapter 10,~~  
4 ~~Hawaii Revised Statutes, or the requirements of Executive Order~~  
5 ~~No. 03-03, beginning in fiscal year 2005-2006, the departments~~  
6 ~~of agriculture, accounting and general services, business,~~  
7 ~~economic development, and tourism, education, land and natural~~  
8 ~~resources, and transportation (for its harbors division), and~~  
9 ~~any other department or agency that collects receipts from the~~  
10 ~~lands within the public land trust, shall determine and transfer~~  
11 ~~to the office of Hawaiian affairs that portion of their receipts~~  
12 ~~from the use of lands within the public land trust collected~~  
13 ~~during each fiscal quarter, necessary to ensure that a total of~~  
14 ~~\$3,775,000 of revenues generated by the public land trust is~~  
15 ~~transferred to the office of Hawaiian affairs, within thirty~~  
16 ~~days of the close of each fiscal quarter; provided that for~~  
17 ~~fiscal year 2005-2006, the departments shall have until thirty~~  
18 ~~days after the close of the fiscal year to transfer a total of~~  
19 ~~\$15,100,000 from their receipts from the use of lands within the~~  
20 ~~public land trust collected during fiscal year 2005-2006, to the~~





1 ~~office of Hawaiian affairs whether by the procedures set out in~~  
2 ~~Executive Order No. 03-03 or this Act.~~

3 ~~The governor is expressly authorized to fix the amounts~~  
4 ~~each agency shall transfer to the office of Hawaiian affairs in~~  
5 ~~each quarter by executive order to implement the provisions of~~  
6 ~~this section." ]~~

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

12 SECTION 6. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 7. This Act shall take effect on July 1, 2024.

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16

INTRODUCED BY:

*[Signature]*  
*[Signature]*  
*[Signature]*  
*[Signature]*



# H.B. NO. 1712

**Report Title:**

Minority Caucus Package; 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.

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

