

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:

SECTION 1. The legislature finds that it must set right and fulfill its trust responsibilities to native Hawaiians, consistent with governmental action across America to address injustices against Indigenous Peoples. It is incumbent upon the legislature to enact legislation that upholds its trust responsibilities and duty of care to native Hawaiians to:

- (1) Account for all ceded lands in the public lands trust inventory;
- (2) Account for all income and proceeds derived from the public land trust; and
- (3) Transfer the full twenty per cent pro rata share of income and proceeds from the public land trust annually to the office of Hawaiian affairs (OHA) for the betterment of the conditions of native Hawaiians.

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

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

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

provide, and their use for any other object shall constitute a breach of trust for which suit may be brought by the United States.

(Emphasis added.)

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

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

Act 273, Session Laws of Hawaii 1980, enacted section 10-13.5, Hawaii Revised Statutes, to implement OHA's pro rata share and required that OHA receive "[t]wenty per cent of all funds derived from the public land trust[.]" This legislative directive addressing the constitutional mandate has led to a series of lawsuits and legislative enactments concerning OHA's constitutional pro rata share of the public land trust. The State and OHA have labored to resolve the political question of the statutory pro rata share of income and proceeds derived from the public land trust, and payment to OHA.

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

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

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

The purpose of this Act is to:

- (1) Establish \$21,500,000 as the office of Hawaiian affairs' interim annual share of the income and proceeds of the public land trust beginning in fiscal year 2022-2023;
- (2) Appropriate \$64,000,000 to the office of Hawaiian affairs; and

- (3) Establish a working group to determine the pro rata share of income and proceeds from the public land trust due annually to the office of Hawaiian affairs.

SECTION 2. Act 178, Session Laws of Hawaii 2006, is amended by amending sections 2 and 3 to read:

“SECTION 2. Notwithstanding the provisions of chapter 10, Hawaii Revised Statutes, including section 10-13.5, Hawaii Revised Statutes, and until further action is taken by the legislature for this purpose, the income and proceeds from the pro rata portion of the public land trust under article XII, section 6, of the state constitution for expenditure by the office of Hawaiian affairs for the betterment of the conditions of native Hawaiians for each fiscal year beginning with fiscal year [~~2005-2006~~] 2022-2023 shall be [~~\$15,100,000~~] \$21,500,000.

SECTION 3. Notwithstanding the provisions of chapter 10, Hawaii Revised Statutes, or the requirements of Executive Order No. [~~03-03~~] 06-06, beginning in fiscal year [~~2005-2006~~] 2022-2023, the departments of agriculture, accounting and general services, business, economic development, and tourism, education, land and natural resources, and transportation (for its harbors division), and any other department or agency that collects receipts from the lands within the public land trust, shall determine and transfer to the office of Hawaiian affairs that portion of their receipts from the use of lands within the public land trust collected during each fiscal quarter, necessary to ensure that a total of [~~\$3,775,000~~] \$5,375,000 of revenues generated by the public land trust is transferred to the office of Hawaiian affairs, within thirty days of the close of each fiscal quarter; provided that for fiscal year [~~2005-2006~~] 2022-2023, the departments shall have until thirty days after the close of the fiscal year to transfer a total of [~~\$15,100,000~~] \$21,500,000 from their receipts from the use of lands within the public land trust collected during fiscal year [~~2005-2006~~] 2022-2023, to the office of Hawaiian affairs whether by the procedures set out in Executive Order No. [~~03-03~~] 06-06 or this Act.

The governor is expressly authorized to fix the amounts each agency shall transfer to the office of Hawaiian affairs in each quarter by executive order to implement the provisions of this section[-]; provided that a total of not less than \$5,375,000 each quarter shall be transferred to the office of Hawaiian affairs, as provided in this section.”

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

- (1) Account for all ceded lands in the public land trust inventory;
- (2) Account for all income and proceeds from the public land trust; and
- (3) Subsequently determine the twenty per cent pro rata share of income and proceeds from the public land trust due annually to the office of Hawaiian affairs for the betterment of the conditions of Native Hawaiians.

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

(c) The working group, with the cooperation of any department or agency that uses, manages, or receives income, proceeds, or any other funds derived from the public land trust, shall prepare and submit a report of its findings and recommendations, including any proposed legislation and the amount it determines for the annual amount of the twenty per cent pro rata share of income and proceeds from the public land trust, to the legislature.

(d) The office of Hawaiian affairs shall provide any necessary administrative support, including preparation of the report required by subsection (c), to the working group.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$64,000,000 or so much as may be necessary for fiscal year 2021-2022 to pay to the office of Hawaiian affairs for a portion of the income and proceeds from the public land trust. The sum appropriated shall be deposited into the native Hawaiian trust fund and expended by the office of Hawaiian affairs.

SECTION 5. The general revenue appropriated by this Act shall be deemed income and proceeds from the public land trust as if the sum had been paid out of income and proceeds from the public land trust pursuant to article XII, section 6, of the Hawaii State Constitution.

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

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

(Approved June 27, 2022.)