

Honolulu, Hawaii

MAR 22 2019

RE: H.B. No. 402  
H.D. 1  
S.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Thirtieth State Legislature  
Regular Session of 2019  
State of Hawaii

Sir:

Your Committees on Hawaiian Affairs and Higher Education, to which was referred H.B. No. 402, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF PUBLIC LAND TRUST FUNDS,"

beg leave to report as follows:

The purpose and intent of this measure is to serve as an interim measure to:

- (1) Establish the Office of Hawaiian Affairs' annual pro rata share of the public land trust beginning with the 2019-2020 fiscal year;
- (2) Determine the amounts received from the use of the public land trust that were underpaid to the Office of Hawaiian Affairs between July 1, 2012, and June 30, 2019, and appropriate that amount, less the funds in the carry-forward trust holding account, to the Office of Hawaiian Affairs;
- (3) Require the Director of Finance to:
  - (A) Determine the amount of receipts transferred by any agency that collects public land trust receipts to the Office of Hawaiian Affairs; and



- (B) Determine whether the amount transferred to the Office of Hawaiian Affairs is less than or more than a certain amount and address deficiencies with transfers from the carry-forward trust holding account and address overpayments by directing the Office of Hawaiian Affairs to transfer excess amounts to the carry-forward trust holding account; and
- (4) Require the Department of Land and Natural Resources to conduct an annual accounting of all funds derived from receipts from lands described in section 5(f) of the Admission Act.

Your Committees received testimony in support of this measure from the Office of Hawaiian Affairs; one member of the Maui County Council; Ka Lāhui Hawaii Political Action Committee; Kanaeokana, the Kula Hawai'i Network; Hawai'i Alliance for Progressive Action; Ka Lei Pāpahi 'o Kākuhihewa; Republican Party of Hawaii; Hawaiian Community Assets; Sierra Club of Hawai'i; Kamehameha Schools; Waimea Hawaiian Civil Club; Democratic Party of Hawai'i; Ke One O Kākuhihewa, O'ahu Council of the Association of Hawaiian Civic Clubs; Lahaina Hawaiian Civic Club; Pueo Consulting, LLC; Native Hawaiian Chamber of Commerce; We Are One, Inc.; Council for Native Hawaiian Advancement; Association of Hawaiian Civic Clubs; La'i Ōpua 2020; Hawai'i Alliance for Community-Based Economic Development; Pride at Work Hawaii; Ali'i Pauahi Hawaiian Civic Club; Hanalei Hawaiian Civic Club; LGBT Caucus of the Democratic Party of Hawaii; Prince Kūhio Hawaiian Civic Club; Trilogy Corporation; the Governing Board of Ke Kula 'O Nāwahīokalaniōpu'u Iki Laboratory Public Charter School; Hawaii Investment Ready; 'Aha Pūnana Leo; Kua'āina Ulu 'Auamo; and thirty-six individuals. Your Committees received testimony in opposition to this measure from the University of Hawai'i System and Center for Hawaiian Sovereignty Studies. Your Committees received comments on this measure from the Department of Budget and Finance, Department of the Attorney General, Department of Transportation, Department of Agriculture, Department of Land and Natural Resources, and Hawaii Health Systems Corporation.



Your Committees find that there is a constitutional obligation for the State to provide a sufficient sum of income and proceeds as the pro rata share of the public land trust for the betterment of the conditions of native Hawaiians. In 2006, 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 in part 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 and it is in the interests of the Office of Hawaiian Affairs, its beneficiaries, and the State to use that information to enact an updated interim legislative measure regarding the Office of Hawaiian Affairs' constitutional pro rata share of the public lands trust.

Your Committees have heard the testimony of the Department of the Attorney General expressing concerns that the total gross receipts amount in this measure may be over inclusive. Your Committees also heard Office of Hawaiian Affairs' testimony responding to concerns about the gross receipts as well as on the State's reliance on Act 304, Session Laws of Hawaii 1990 (Act 304). According to the Office of Hawaiian Affairs' testimony, agency calculations have always been made on the gross amount received by the agency and was included in Act 304, and Act 304 included a pro rata share of airport revenues. Your Committees also note that the Office of Hawaiian Affairs stated that the only receipts used to calculate the amount in previous versions of this measure were undisputed revenue streams and were calculated using the definition of revenue in Act 304.

Your Committees request that your Committee on Ways and Means further examine the composition of the total gross receipts amount. Your Committees further request your Committee on Ways and Means consider the viability of making annual payments to the Office of Hawaiian Affairs of all amounts in the carry-forward trust holding account at the end of each fiscal year.



Your Committees have amended this measure by:

- (1) Reducing the University of Hawaii's portion of receipts from the use, sale, lease, or other disposition of lands within the public land trust to be collected during each fiscal year by the amount equal to the University's receipts derived from tuition and special funds utilized for native Hawaiian programs;
- (2) Requiring that the annual accounting of all receipts from lands described in section 5(f) of the Admission Act for the prior fiscal year to be completed by the Department of Budget and Finance, rather than the Department of Land and Natural Resources;
- (3) Establishing the public land trust revenues committee within the Department of Budget and Finance to study and make recommendations regarding the annual amount of the income and proceeds from the public land trust to be allocated to the Office of Hawaiian Affairs;
- (4) Prohibiting any additional funds from being provided to the Office of Hawaiian Affairs until the fiscal and performance audit approved by the Board of Trustees of the Office of Hawaiian Affairs in 2017 is completed and provided to the Legislature;
- (5) Effectuating the intent of this measure to supersede Act 178, Session Laws of Hawaii 2006, by repealing Act 178; and
- (6) 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 Hawaiian Affairs and Higher Education that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 402, H.D. 1, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 402, H.D. 1, S.D. 1, and be referred to your Committee on Ways and Means.



Respectfully submitted on  
behalf of the members of the  
Committees on Hawaiian Affairs  
and Higher Education,


  
for DONNA MERCADO KIM, Chair

  
MAILE S.L. SHIMABUKURO, Chair



The Senate  
Thirtieth Legislature  
State of Hawai'i

**Record of Votes**  
**Committee on Hawaiian Affairs**  
**HWN**

Bill / Resolution No.:* <b>HB 402 HD1</b>	Committee Referral: <b>HWN ARE, WAM</b>	Date: <b>3/19/19</b>		
<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
SHIMABUKURO, Maile S.L. (C)	X			
KAHELE, Kaiali'i (VC)				X
IHARA, Jr., Les	X			
KEOHOKALOLE, Jarrett	X			
FEVELLA, Kurt				X
<b>TOTAL</b>	3			2
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
<b>Distribution:</b> Original     Yellow     Pink     Goldenrod File with Committee Report     Clerk's Office     Drafting Agency     Committee File Copy				

\*Only one measure per Record of Votes

