A BILL FOR AN ACT

RELATING TO STRENGTHENING THE FOUNDATION FOR ENSURING A FAIR AND JUST 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 HAWAI'I:

SECTION 1. The legislature finds that in 1978, the state constitution was amended to include article XII section 4, which established the public land trust "to be held by the State as a public trust for native Hawaiians and the general public."

Article XII sections 5 and 6, also included in the 1978 constitutional amendments, established the Office of Hawaiian Affairs and its board of trustees, and gave the board the power and authority to manage and administer the income and proceeds of native Hawaiians' pro rata portion of the public land trust. Act 273, Session Laws of Hawaii 1980, enacted section 10-13.5, Hawaii Revised Statutes, to implement the office of Hawaiian affairs' pro rata share and to provide that "[t]wenty per cent of all funds derived from the public land trust" shall be expended by the office of Hawaiian affairs for the purposes of chapter 10, Hawaii Revised Statutes.
Following a series of lawsuits to establish the fair and just pro rata share of the public land trust for the office of Hawaiian affairs, the legislature enacted Act 178, Session Laws of Hawaii 2006. The stated purpose of Act 178 was "to ensure that an adequate amount of income and proceeds is made available to the Office of Hawaiian Affairs from the pro rata portion of the public land trust." Act 178 further provided that $15,100,000 per fiscal year would be transferred to the office of Hawaiian affairs as an "interim amount" until "further action is taken by the legislature for this purpose." To inform this further action, Act 178 tasked the department of land and natural resources to "provide an annual accounting to the legislature," identifying "revenue-generating public trust lands and the amounts derived from those lands," and including the amounts transferred to the office of Hawaiian affairs and the amounts retained by the State, among other details.

In order to effectuate Act 178, then-governor Linda Lingle issued Executive Order No. 06-06 to establish the procedures by which all state agencies collecting receipts for the use of public land trust lands must account for, set aside, and
transfer to the office of Hawaiian affairs receipts from public land trust lands, subject to enumerated exceptions.

Based on the annual accountings of the amounts derived from the public land trust conducted pursuant to Act 178, and as supplemented by additional research commissioned by the office of Hawaiian affairs of receipts generated from the public land trust in fiscal year 2015-2016, the minimum amount of total gross public land trust receipts from sources to which the office of Hawaiian affairs has made a past or current claim was found to be $174,816,220 in fiscal year 2015-2016. Twenty percent of this amount from fiscal year 2015-2016 is $34,963,244, considerably more than the $15,100,000 that the office of Hawaiian affairs receives annually pursuant to Act 178.

However, despite its "interim" nature, Act 178, Session Laws of Hawaii 2006, remains in effect, setting the office of Hawaiian affairs' annual income and proceeds from the public land trust for the betterment of the conditions of native Hawaiians at $15,100,000, pending further legislative action on the subject.

While accounting information gathered pursuant to Act 178 has already proven valuable to illustrate the need to revisit and revise the $15,100,000 amount transferred annually to the
office of Hawaiian affairs, full compliance with Act 178 is
critical to informing future discussions and determinations of
what constitutes a fair, revised amount of native Hawaiians'
share of all funds derived from the public land trust. However,
deficiencies in reporting and accountability have been
identified by the office of Hawaiian affairs and its contractors
over several recent years, including the State's failure to
fully account for all gross receipts from the public land trust,
and the State's apparent reluctance to completely report the
public land trust receipts of certain agencies, including the
University of Hawaii.

Accordingly, the legislature finds that it is now in the
best interests of the office of Hawaiian affairs, its
beneficiaries, the State, and all citizens of Hawaii to clarify,
supplement, and codify the reporting and accountability
procedures that have been used to implement Act 178, Session

The purpose of this Act is to:

(1) Codify the accounting and reporting requirements set
forth in section 5 of Act 178, Session Laws of Hawaii
2006, with modifications to:
(A) Emphasize that the University of Hawaii is subject to the requirements;

(B) Emphasize that all public land trust receipts must be accounted for, including those receipts that a department or agency believes may not be subject to the office of Hawaiian affairs' pro rata share; and

(C) Require the department of land and natural resources to consult with the office of Hawaiian affairs to ensure that the accounting is accurate and inclusive; and

(2) Require certain explanations and determinations regarding the amount of receipts transferred to the office of Hawaiian affairs.

SECTION 2. Chapter 171, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§171- Public land trust; reporting. Notwithstanding the provisions of section 5 of Act 178, Session Laws of Hawaii 2006, no later than January 1 of each year, the department of land and natural resources, with the cooperation of the
department of budget and finance and any other department or
agency that collects receipts from lands within the public land
trust as described in section 5(f) of the Admission Act,
including the University of Hawaii, shall provide an annual
report with an accounting of all receipts from lands described
in section 5(f) of the Admission Act for the prior fiscal year.
With respect to each receipt, the department of land and natural
resources shall identify the:

(1) Total gross amount of the receipt generated from the
use of the public land trust, regardless of whether
the receipt is subject to the office of Hawaiian
affairs' pro rata share pursuant to section 10-13.5;

(2) Amount of the receipt transferred to the office of
Hawaiian affairs;

(3) Amount of the receipt retained by the State;

(4) Account or fund in which the amount specified in
paragraph (3) was transferred or deposited;

(5) Parcel of land subject to section 5(f) of the
Admission Act that generated the receipt, whether by
tax map key number, department of land and natural
resources inventory number, or other recognizable

description;

(6) Department or agency that received the total gross
amount identified in paragraph (1); and

(7) Reason or reasons why the department or agency
identified in paragraph (6) did not transfer the full
twenty per cent of the total gross amount of the
receipt for each receipt where the transferred amount
identified in paragraph (2) was less than twenty per
cent of the total gross amount identified in paragraph
(1); for example, that federal or state law precludes
any portion of the receipt from being used directly to
better the conditions of native Hawaiians, or the
transfer of any portion of the receipt will cause the
State to renege on any pre-existing pledge, rate
covenant, or other pre-existing obligation to holders
of revenue bonds or other indebtedness of the State.

The accounting shall also indicate whether any parcel of
land described in section 5(f) of the Admission Act was sold or
exchanged in the prior fiscal year and, if so, the amount of
consideration that the State received for the respective parcels.

The department of land and natural resources shall consult the office of Hawaiian affairs in determining the method by which the accounting shall be conducted and in ensuring that the accounting is accurate and inclusive of all receipts generated by the public land trust. Prior to finalizing its annual report described in this section, the department of land and natural resources shall provide the office of Hawaiian affairs a draft of the report and shall allow no less than thirty days for the office of Hawaiian affairs to provide a written response. The office of Hawaiian affairs' written response shall be published as an addendum to the report."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.
Report Title:
OHA Package; DLNR; Public Land Trust; Pro Rata Share

Description:
Requires the Department of Land and Natural Resources to use certain reporting and accountability procedures in implementing the public land trust reporting requirements of Act 178, Session Laws of Hawaii 2006. Requires the Department of Land and Natural Resources to consult with the Office of Hawaiian Affairs to ensure that the accounting and reporting is accurate and inclusive.

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