

STAND. COM. REP. NO.

20

Honolulu, Hawaii

FEB 05 2021

RE: S.B. No. 321
S.D. 1

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

Sir:

Your Committee on Hawaiian Affairs, to which was referred
S.B. No. 321 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,"

begs 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 Committee received testimony in support of this measure from the Department of Transportation, Office of Hawaiian Affairs, Hawaii Appleseed Center for Law and Economic Justice, Kūpuna for the Mo'opuna, Ka Lāhui Hawai'i, and eighteen individuals. Your Committee received testimony in opposition to this measure from the Department of Land and Natural Resources and the Center for Hawaiian Sovereignty Studies. Your Committee received comments on this measure from the Department of Agriculture, Department of Budget and Finance, University of Hawai'i System, Hawaii Health Systems Corporation, Hawaii Public Housing Authority, Office of Information Practices, and League of Women Voters.

Your Committee finds 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. 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 Committee finds 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. For fiscal years 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017,



2017-2018, 2018-2019, and 2019-2020, the State reported to the legislature total gross Public Land Trust receipts in the amounts of \$150,939,203, \$159,971,589, \$163,322,176, \$178,043,261, \$177,617,893, \$202,528,564, \$225,079,055, \$289,767,657, and \$229,631,870 respectively, or an average of \$197,433,474 over the last nine fiscal years. Twenty per cent of the average reported gross receipts for fiscal years 2011-2012 through 2019-2020 is \$39,486,695. The Office of Hawaiian Affairs states that 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.

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 native Hawaiians' pro rata share can be used to benefit native Hawaiians.

Your Committee has heard the concerns of the Department of the Attorney General that this measure would require all agencies collecting receipts from the public land trust to indiscriminately transfer twenty percent of such receipts to the Office of Hawaiian Affairs. In *Office of Hawaiian Affairs v. State*, 96 Haw. 388, 31 P.3d 901 (2001), the United States' Supreme Court ruled that a twenty percent transfer requirement as applied to the Department of Transportation's airport revenues conflicted with federal transportation statutes. Therefore, this measure's return to a twenty percent transfer requirement for all agencies may raise issues of preemption.

Furthermore, your Committee notes the concerns of the Department of the Attorney General and Department of Budget and Finance regarding the carry-forward trust holding account established by Executive Order 06-06, due to the financial strain caused by the coronavirus disease-2019 (COVID-19) pandemic, which has had a negative impact on the ability of state agencies to collect revenue that may result in insufficient sums to meet the minimum \$3,775,000 quarterly payments.



Your Committee has also heard the concerns of the University of Hawai'i System citing article X, section 5, of the Hawaii State Constitution, which states that the University shall have title to all real and personal property conveyed to it, which shall be held in public trust to further its purposes as a model indigenous-serving university.

Your Committee has additionally heard the concerns of the Hawaii Health Systems Corporation, Department of Agriculture, Department of Land and Natural Resources, and the Hawaii Public Housing Authority that this measure places undue hardships on their agency operations.

Your Committee has heard the concerns of the Office of Information Practices that the measure as drafted would exempt the public land trust revenues negotiation committee from being subject to chapter 92, Hawaii Revised Statutes, because this exemption creates the appearance that the sensitivity of negotiations precludes public participation in the process.

Accordingly, in response to the numerous concerns of the testifiers, your Committee has amended this measure by:

- (1) Updating dollar amounts referenced in section 1;
- (2) Inserting language in Section 1 to acknowledge the sensitive nature of anticipated negotiations and provide an explanation for the exemption of the public land trust revenues negotiating committee from part I of chapter 92, Hawaii Revised Statutes;
- (3) Clarifying that the quarterly transfer of receipts shall occur unless precluded by federal law;
- (4) Inserting a blank dollar amount for the minimum total amount of receipts transferred to the Office of Hawaiian Affairs for any fiscal quarter;
- (5) Inserting a definition for the term "receipt";
- (6) Inserting a blank dollar amount required to be left in the holding account to act as contingency payments;



- (7) Clarifying that the public land trust revenues negotiating committee is exempt from part I of chapter 92, Hawaii Revised Statutes, rather than the entire chapter;
- (8) Inserting language to clarify that:
 - (A) Nothing in this measure shall resolve or settle the claims of native Hawaiians to the income and proceeds of a pro rata portion of the public land trust under article XII, section 6 of the Hawaii State Constitution; and
 - (B) Any funds transferred shall be deemed income and proceeds from the public land trust, just as if the funds had been paid out of the income and proceeds from the public land trust pursuant to article XII, section 6, of the Hawaii State Constitution; and
- (9) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 321, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 321, S.D. 1, and be referred to your Committees on Judiciary and Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Hawaiian Affairs,




MAILE S.L. SHIMABUKURO, Chair



The Senate
 Thirty-First Legislature
 State of Hawai'i

Record of Votes
Committee on Hawaiian Affairs
HWN

Bill / Resolution No.:*	Committee Referral:	Date:		
SB 321	HWN, JDC/WAM	2/2/2021		
<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			
KEOHOKALOLE, Jarrett (VC)	X			
ACASIO, Laura	X			
IHARA, Jr., Les				X
FEVELLA, Kurt	X			
TOTAL	4			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