RELATING TO INCREASING 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 the Indigenous People of Hawai‘i, 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-percent 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 Hawai‘i; the transfer of approximately 1.8 million 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 Hawai`i as a state of the Union in 1959, with the explicit trust responsibility and requirement in the Section 5(f) of the 1959 Admissions that one of the five purposes of the public land trust is that the income and proceeds from the public land trust are supposed 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 (6), Hawai`i 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 Hawai`i agreed to hold certain lands granted to the State by the United States in a public trust, the public lands 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 [(2)] other educational institutions, [(3)] for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended, [(4)] for the development of farm and home ownership on as widespread a basis as possible 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 this 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 Hawai‘i 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, 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 Hawai`i constitution required the State to enact legislation to comply with its trust obligations. Thus, in 1979, legislation, codified at Hawaii Revised Statutes ("HRS") chapter 10, set forth the purposes of OHA and described its duties of the trustees.

In September 1981, an initial land inventory by the Department of Land and Natural Resources ("DLNR") 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 ("SLIMS") does not include all lands held by all state entities.

Act 273, Session Laws of Hawaii 1980, enacted HRS Section 10-13.5 to implement the 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 lands trust, and payment to OHA.
Act 178, Session Laws of Hawai‘i 2006, affirmed the State’s trust obligation under Article XII, Section 6, of the state constitution to native Hawaiians by requiring that DNLR provide an annual accounting of revenue-generating public trust lands and the amounts derived from those lands to the legislature. The interim 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 Hawai‘i 2012, 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 Kaka‘ako, O‘ahu, to OHA valued at approximately $200,000,000. Act 15 did not, however, address the State’s constitutional obligations relating to OHA’s twenty percent pro rata share of the income and proceeds from the public land trust generated after June 30, 2012. Notably, a 2015-16 financial review initiated by OHA found that the minimum amount of total gross receipts from sources that the office of Hawaiian affairs has historically claimed was approximately $394,322,163 in the fiscal
year 2015-2016. Twenty per cent of this amount is approximately $78,900,000.

The legislature finds that to uphold its constitutional trust obligation and duty to the Indigenous People of Hawaiʻi, 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 Hawaiʻi 2006, more than a decade ago.

The purpose of this Act is to:

(1) Establish $78,900,000 as the Office of Hawaiian Affairs' annual share of the income and proceeds of the public land trust beginning in fiscal year 2022-2023;

(2) Transfer to the Office of Hawaiian Affairs the sum of $638,000,000 for income and proceeds due from the use of the public land trust lands between July 1, 2012, and June 30, 2022, that was misallocated, underreported or underpaid to OHA; and

(3) Require the continued annual accounting of all receipts from lands described in section 5(f) of the Admission Act.

SECTION 2. Notwithstanding the provisions of Act 178 (Session Laws of Hawaiʻi 2006), except for Section 5 of Act 178, which this Act restates, without substantive change, 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 2022-2023 shall be $78,900,000.

SECTION 3. Notwithstanding the provisions of Act 178 (Session
Laws of Hawai`i 2006), except for Section 5 of Act 178, which this
Act restates, without substantive change, beginning in fiscal year
2022-2023, departments, agencies or entities that collect receipts
from public land trust lands, including but not limited to the
University of Hawai`i, shall determine and transfer to OHA that
portion of their receipts from the use, sale, lease, or other
disposition of lands within the public land trust collected during
each fiscal quarter, necessary to ensure that a total of
$19,725,000 of receipts generated by the public land trust is
transferred to OHA within thirty days of the close of each fiscal
quarter; provided that for fiscal year 2022-2023, the departments
shall have until thirty days after the close of the fiscal year to
transfer a total of $19,725,000 from their receipts from the use,
sale, or exchange of lands within the public land trust collected
during fiscal year 2022-2023, to OHA by the procedures set forth in this Act.

The governor is expressly authorized to fix the amounts each agency shall transfer to OHA in each quarter by executive order to implement the provisions of this section.

SECTION 4. No later than twelve days after the close of each fiscal quarter, the director of finance or the director's designee shall determine the total amount of receipts transferred by any department or agency that collects receipts from the lands within the public land trust to OHA during the immediately prior fiscal quarter.

If the total amount of receipts transferred to OHA is less than $19,725,000 in the immediately prior fiscal quarter, the director of finance or the director's designee shall:

(1) Make up the difference between $19,725,000 and the amount of receipts transferred in the immediately prior fiscal quarter by transferring up to the entire amount on deposit in the carry-forward trust holding account established by the director of finance, pursuant to Executive Order 06-06 or this Act; or

(2) Make up the difference between $19,725,000 and the amount of receipts transferred in the immediately prior fiscal quarter by establishing the additional amount of receipts that
each agency must transfer to OHA pursuant to section 3 of this
Act.

If the total amount of receipts transferred to OHA is more
than $19,725,000 in the immediately prior fiscal quarter, the
director of finance shall notify OHA and request that OHA transfer
the amount in excess of $19,725,000 into the carry-forward trust
holding account established by the director of finance, pursuant
to Executive Order 06-06 or this Act. This subsection shall not
apply to a transfer of receipts at the close of fiscal year 2022-
2023.

SECTION 5. There is appropriated out of the general revenues
of the State of Hawai‘i in the sum of $638,000,000 for fiscal year
2021-2022, which includes trust funds transferred into the carry-
forward trust holding account, totaling approximately
$29,060,007.97 at the end of fiscal year 2021, established by the
director of finance, pursuant to executive order 06-06, to pay to
OHA amounts received from the use of lands in the public land trust
that the legislature has determined were misallocated,
derunderreported or underpaid income and proceeds of the public land
trust between July 1, 2012 through June 30, 2022.

The sum appropriated shall be expended by the department of
budget and finance.
The director of finance shall transfer the funds in the carry-forward trust holding account established by the director of finance to OHA.

SECTION 6. Any funds transferred pursuant to this Act 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 state constitution.

SECTION 7. Nothing in this Act shall resolve or settle, or be deemed to acknowledge the existence of, 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 state constitution.

SECTION 8. This Act shall take effect on July 1, 2022.

INTRODUCED BY: ________________________________

By Request