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 for native Hawaiians and the general public.” Article XII, sections 5 and 6, also included in the 1978 constitutional amendments, further 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 Hawai‘i 1980, enacted section 10-13.5, Hawai‘i Revised Statutes, to implement the Office of Hawaiian Affairs’ pro rata share and provide that “[10-13.5] twenty percent of all funds derived from the public land trust . . . shall be expended by the [Office of Hawaiian Affairs] . . . for the purposes of this chapter.”

Following a series of lawsuits to establish the fair and just pro rata share of the public land trust for the Office of

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Hawaiian Affairs, the legislature enacted Act 178, Session Laws of Hawai‘i 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,” and 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 such 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, the then-governor Lingle issued Executive Order No. 06-06, which established 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 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 illustrating 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 Hawai‘i.

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 Hawai‘i to amend the Hawai‘i Revised Statutes to clarify, supplement, and codify the reporting and accountability procedures that have been used to implement Act 178.

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 Hawai‘i, with modifications to:

(a) Emphasize that the University of Hawai‘i 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, Hawai‘i Revised Statutes, is
amended by adding a new section to part I 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 Hawai‘i 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 that
is described in section 5(f) of the Admission Act, including the
University of Hawai‘i, 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:

1. The 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;

2. The amount of the receipt transferred to the Office of Hawaiian Affairs;

3. The amount of the receipt retained by the State;

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

5. The 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. The state department or agency that received the total gross amount identified in paragraph (1); and

7. For each receipt where the transferred amount identified in paragraph (2) was less than twenty percent of the total gross amount identified in paragraph
(1), an explanation of why the state department or agency identified in paragraph (6) did not transfer the full twenty per cent of the total gross amount of the receipt; 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 in 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, which
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.

INTRODUCED BY:______________________________

By Request