



SB3336
RELATING TO PUBLIC LAND
Senate Committee on Hawaiian Affairs

February 6, 2024

1:01 PM

Room 224

The Office of Hawaiian Affairs (OHA) stands in **STRONG SUPPORT** of SB3336, which appropriates funds to the Office of Hawaiian Affairs for the retention of third party professionals with the necessary financial, accounting, and land inventory expertise to evaluate and address the completeness and accuracy of the public land trust information system, so that the Public Land Trust Working Group can complete its objectives pursuant to Act 226, Session Laws of 2022.

Our state motto, Ua Mau ke Ea o ka ‘Āina i ka Pono, is generally understood to mean the life/sovereignty of this land/these islands is perpetuated in righteousness. Land has always been one of the most valuable resources here in Hawai‘i. Its importance was recognized by every authority that governed these islands—from first settlement through kingdom days, at the overthrow and territorial admission and into statehood.

Since Hawai‘i’s admission as a U.S. state, there has been steady acknowledgement that the State of Hawai‘i agrees to hold certain lands in a public trust for five purposes delineated in section 5(f) of the Admissions Act, including for the betterment of the conditions of native Hawaiians. The State further formalized this trust responsibility and purpose in 1978 by establishing the Office of Hawaiian Affairs in the State Constitution and charging OHA with managing income and proceeds from the public land trust for the benefit of native Hawaiians. Subsequent legislation over the next 45 years continued to evolve the ways OHA would manage and be entitled to proceeds of these public lands.

Over the last decade and a half, OHA and the Department of Land and Natural Resources, with their own unique authorities, have established systems, audits and reviews to ascertain a complete inventory of public land trust lands. Efforts to determine the true and accurate scope of the inventory of public lands are hindered by a number of factors, including the fact that government agencies self-report these lands, the ways in which lands are determined to be ceded lands (using the rule that parcels must be at least



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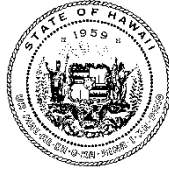
50% ceded lands to be categorized as such) and the fact that many parcels in the current inventory cannot be verified because they lack a tax map key (TMK) and may include submerged lands.

The State's constitutional obligations hinge on a complete and accurate account of the public land trust. This is one of the express purposes the State Legislature passed Act 226 in 2022. The Act found that the legislature "must set right and fulfill its trust responsibilities to native Hawaiians, consistent with governmental action across America to address injustices against Indigenous Peoples." The Act established a public land trust working group with representatives appointed by the Governor and OHA.

The Public Land Trust Working Group has been meeting once or more a month since September 2023. The group currently includes representatives chosen by OHA's Board of Trustees, the Chair of the Board of Land and Natural Resources and a representative of the Department of Attorney General. In December 2023, the working group requested all state agencies that hold title to, maintain management control of or otherwise use ceded lands provide information, data, documents, and maps to ensure complete and accurate identification of all ceded lands.

It's vital that the work of the Public Land Trust Working Group and the State's actions over the last 20 or more years is put to good use so we may finally build a complete and accurate inventory of ceded lands. We must be able to retain third-party professionals with the necessary financial, accounting, and land inventory expertise. This independent audit and evaluation will ensure we can address the completeness and accuracy of the public land trust information system. In doing so, the Public Land Trust Working Group will be able to complete its objectives pursuant to Act 226, Session Laws of 2022.

OHA believes the appropriations in SB3336 are integral to the success of the Public Land Trust Working Group fulfilling the will of the legislature. We also believe that the success of the working group is essential for the State to fulfill its constitutional obligations. OHA urges the committee to advance this measure. Mahalo nui for the opportunity to testify on this important issue.



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TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE
ON
HAWAIIAN AFFAIRS
February 6, 2024, 1:01pm

SENATE BILL 3336
RELATING TO PUBLIC LAND

Chair Shimabukuro, Vice Chair Fevella, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 3336. The State Procurement Office (SPO) appreciates the intent of the bill to appropriate funds to the Office of Hawaiian Affairs for the retention of third party professionals to evaluate and address the completeness and accuracy of the public land trust information system, so that the Public Land Trust Working Group can complete its objectives pursuant to Act 226, Session Laws of 2022.

The SPO **opposes** the 103D, HRS, exemption language on SECTION 3, page 14, lines 12-14 set forth below.

“Purchases made with funds appropriated by this Act shall be exempt from chapter 103D, Hawaii Revised Statutes”

Comments: While the SPO acknowledges the important objectives outlined in Act 226, Session Laws of Hawaii 2022, to address historical injustices and fulfill trust responsibilities to native Hawaiians, the SPO is concerned that exempting purchases from Chapter 103D would violate the fundamental principles of ethical procurement to provide vendors with an equal opportunity to compete in a fair and open environment.

Chapter 103D, Hawaii Revised Statutes, Hawaii Public Procurement Code (Code), is the State's single source of public procurement policy to be applied equally and uniformly, while providing fairness, open competition, a level playing field, government disclosure, and transparency in the procurement and contracting process vital to good government. To legislate that any one entity

should be exempt from compliance with both Chapter 103D and 103F, HRS, results in inequality in the law's application.

Exemptions to the Code mean that all procurements made with taxpayer monies will not have the same oversight, accountability and transparency requirements mandated by those procurements processes provided in the code. It means that there is no requirement for due diligence, proper planning, or consideration of protections for the state in contract terms and conditions, nor are there any set requirements to conduct cost and price analysis and market research or post-award contract management. As such, Agencies can choose whether to compete any procurement or go directly to one contractor. It also means Agencies are not required to adhere to the code's procurement integrity laws.

Recommendation: No justification has been provided why the services of a consultant cannot be competitively procured. Therefore, the SPO recommends revising Section 3, page 14, lines 12-14 set forth below.

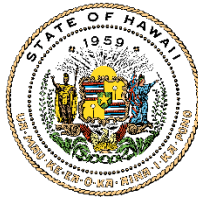
“Purchases made with funds appropriated by this Act shall be ~~exempt from~~ in compliance with chapter 103D, Hawaii Revised Statutes”

The agency can use HRS Chapter 103D-304, Professional Services, to expedite the procurement of a consultant (i.e., Professional Class/Category GS-510 Accounting or GS-511 Auditing).

Thank you.

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
DAWN N. S. CHANG
Chairperson

Before the Senate Committee on
HAWAIIAN AFFAIRS

Tuesday, February 6, 2024
1:01 PM

State Capitol, Conference Room 224 & Videoconference

In consideration of
SENATE BILL 3336
RELATING TO PUBLIC LAND

Senate Bill 3336 proposes to appropriate funds to the Office of Hawaiian Affairs (OHA) for the retention of third party professionals with the necessary financial, accounting and land inventory expertise to evaluate and address the completeness and accuracy of the public land trust information system (PLTIS), so that the Public Land Trust Working Group (PLTWG) can complete its objectives pursuant to Act 226, Session Laws of Hawaii (SLH) 2022. The measure also proposes to declare that the general fund expenditure ceiling is exceeded. **The Department of Land and Natural Resources (Department) offers its comments with concerns on this measure.**

The Department has concerns with the measure's focus on the PLTIS in order to resolve perceived problems that should be addressed by different means, which would result in, inter alia the Department staff becoming burdened in assisting any third-party contractors hired pursuant to this measure. Although this bill's objective is to assess the "completeness and accuracy of the PLTIS", the issues identified as potential errors or data gaps are not necessarily indicative of flaws of the PLTIS. The PLTIS is not an accounting system, but a land inventory database, which is comprised of data submitted by the Department and other agencies¹. Additionally, the PLTIS was never intended nor funded to be a comprehensive database of all public trust lands *and* revenue receipts.

¹ The public land trust status of public lands was obtained from the Department's existing land management and information system ("SLIMS") which was later replaced with a newer and upgraded land management and property management system.

Receipts from ceded lands are reported by the Department and submitted to the Legislature pursuant to Act 178, Session Laws of Hawai‘i 2006.

If the PLTWG has concerns about the accuracy or completeness of information contained in the PLTIS, the PLTWG must consult and work with the relevant agency that has management jurisdiction over the land in question to resolve any issues. Additionally, certain issues raised in the measure are not relevant to the PLTIS. For example, the measure notes that submerged lands are not assigned tax map key (TMK) numbers, but that is because submerged lands are not assigned TMK numbers by the respective counties, and not due to a data gap in the PLTIS. With regard to trust land status, the Department notes that a vast majority of State lands are considered ceded. To date, the PLTWG has not identified any parcels that it believes to be incorrectly classified as non-ceded. If parcels of State lands are identified as potentially being incorrectly designated, the Department is ready and willing to conduct further research.

The Department has acknowledged the need to update and upgrade the PLTIS, including additional maintenance and support, and has submitted its own appropriation request through the Governor’s supplemental budget request for FY 2025 in House Bill 1800 and Senate Bill 2234 to expend \$900,000.00 of the Department’s operating and special funds. Previously the Department expended over \$120,000.00 to upgrade PLTIS capacity to allow public use of the system. OHA has not contributed any funds to support or improve the PLTIS.

Finally, this bill at page 9, lines 3 through 9, estimates an annual pro rata share of ceded land revenues to be approximately \$78.9 million for Fiscal Year (FY) 2015-2016. According to this bill, this amount is based on 20% of estimated ceded land revenues of \$394,322,163 for FY 2015-2016 as determined by a financial review conducted by OHA. From the Department’s annual report accounting of all receipts from ceded lands submitted to the Legislature, gross receipts from ceded lands totaled \$177,617,893.09 in FY 2015-2016.

Thank you for the opportunity to testify on this measure.

SB-3336

Submitted on: 2/5/2024 12:29:50 PM

Testimony for HWN on 2/6/2024 1:01:00 PM

Submitted By	Organization	Testifier Position	Testify
sherry broder	Testifying for OHA Appointed Member, Public Land Trust Working Group	Support	In Person

Comments:

Aloha Chairwoman Shimabukuro and Committee Members,

I am one of the three members of the Public Land Trust Working Group ('PLTWG') appointed by the Office of Hawaiian Affairs.pursuant to Act 226, Session Laws Hawai`i 2022. The language in SB 3336 was approved by unanimous vote of the PLTWG and this testimony is submitted in strong support.

The legislature assigned the PLTWG to "(1) Account for all ceded lands in the public land trust inventory; (2) Account for all income and proceeds from the public land trust; and (3) Subsequently determine the twenty per cent pro rata share of income and proceeds from the public land trust due annually to the office of Hawaiian affairs for the betterment of the conditions of Native Hawaiians." The goal is to develop a complete and accurate public land trust inventory and a complete and accurate accounting of all income and proceeds from the public land trust. After those goals are achieved the PLTWG will be in the best position to determine the twenty per cent pro rata share due annually to the Office of Hawaiian Affairs. Native Hawaiians and the general public deserve to have the best inventory and accounting.

The PLTWG has begun the process of collecting and examining the details underlying the Public Land Trust Information System ("PLTIS") and has studied the 2015-2016 Financial Review of the income and proceeds from the public land trust.

The PLTWG has been informed that the last financial review by an outside independent accounting firm of the pro rata share was the fiscal year 2015-2016 financial review initiated by the office of Hawaiian affairs. The PLTWG found that there has been no new financial review since the 2015-2016. The 2016 financial review cost \$145,404. The PLTWG has been informed that current annual reporting by State agencies to the department of land and natural resources is self-reported by the agencies and not audited or reviewed for accuracy by the department of land and natural resources.

The PLTIS was launched in 2018. The DLNR relied on the agencies self-reporting by the state agencies and counties to have the PLTIS developed by an outside contractor. The final amount for creation of the information system and training was \$340,382.

To the knowledge of the working group, there has been no third-party independent audit, review, or evaluation of the completeness and accuracy of the information system; current reporting by agencies for the purpose of the preparing the annual Act 178 report; nor any analysis or comparison of the data in the information system with the data in the Act 178 report. The PLTWG has determined that the services of a third-party independent consultant with the necessary financial, accounting, and land inventory expertise is appropriate to address the concerns that have been raised regarding the completeness and accuracy of the information system, so that the working group can complete its objectives under Act 226.

PLTWG was informed that DLNR is also requesting funding to upgrade the technical and computer programming supporting the PLTIS system. This is separate from the PLTWG request in SB 3336.

The request for \$500,000 is based on the cost for the 2015-2016 financial review plus the 2012-2018 creation of the PLTIS.

Mahalo nui loa for your attention to this matter. Sherry Broder

SB-3336

Submitted on: 2/4/2024 11:12:36 PM

Testimony for HWN on 2/6/2024 1:01:00 PM

Submitted By	Organization	Testifier Position	Testify
De Mont Kalai Manaole	Testifying for Hoomana Pono, LLC	Support	In Person

Comments:

We **STRONGLY SUPPORT** this bill.

SB-3336

Submitted on: 1/31/2024 6:34:46 PM

Testimony for HWN on 2/6/2024 1:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Justin Silva	Individual	Oppose	Written Testimony Only

Comments:

Declares that the general fund expenditure ceiling is exceeded.

SB-3336

Submitted on: 1/31/2024 7:56:45 PM

Testimony for HWN on 2/6/2024 1:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Lu Ann Mahiki Lankford-Faborito	Individual	Support	Written Testimony Only

Comments:

complete support to kokua OHA to complete its objectives to Act 226

SB-3336

Submitted on: 2/2/2024 6:25:09 PM

Testimony for HWN on 2/6/2024 1:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Leimomi Khan	Individual	Support	Written Testimony Only

Comments:

Support.