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## A BILL FOR AN ACT

RELATING TO THE PUBLIC LAND TRUST WORKING GROUP.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. In Act 226, Session Laws Hawaii 2022, (Act  
2 226), which in part established the public lands trust working  
3 group, the legislature stated in relevant part:

4           It is incumbent upon the legislature to enact  
5 legislation that upholds its trust responsibilities and  
6 duty of care to native Hawaiians to:

7           (1) Account for all ceded lands in the public lands  
8 trust inventory;

9           (2) Account for all income and proceeds derived from  
10 the public land trust; and

11           (3) Transfer the full twenty per cent pro rata share  
12 of income and proceeds from the public land trust  
13 annually to the office of Hawaiian affairs (OHA)  
14 for the betterment of the conditions of native  
15 Hawaiians.

16           The genesis and source of the State's public land  
17 trust responsibility to native Hawaiians are the historical



1 events that led to the illegal overthrow of the Kingdom of  
2 Hawaii; the transfer of approximately 1,800,000 acres of  
3 crown, government, and public lands to the United States  
4 under the 1898 Joint Resolution of Annexation without the  
5 consent of and without compensation to the native Hawaiian  
6 people or their sovereign government; the admission of  
7 Hawaii as a state of the Union in 1959, with the explicit  
8 trust responsibility and requirement in section 5(f) of the  
9 1959 Admission Act that one of the five purposes of the  
10 public land trust is that the income and proceeds from the  
11 public land trust are to be used "for the betterment of the  
12 conditions of native Hawaiians"; and the 1978  
13 Constitutional Convention's recognition that native  
14 Hawaiians are one of the beneficiaries of the public land  
15 trust and the creation of OHA to manage and administer the  
16 specific allocation of "all income and proceeds from that  
17 pro rata portion of the [public land] trust . . . for  
18 native Hawaiians" (Article XII, section 6, of the Hawaii  
19 State Constitution). The United States and the courts have  
20 consistently affirmed the trust nature of the government



1 and crown lands, including large tracts of ceded lands used  
2 for military or other purposes under federal control.

3 In 1959, as a condition of its admission into the  
4 Union, the State of Hawaii agreed to hold certain lands  
5 granted to the State by the United States in a public trust  
6 for five purposes delineated in section 5(f) of the  
7 Admission Act, which provides in relevant part:

8 The lands granted to the State of Hawaii by  
9 subsection (b) of this section and public lands  
10 retained by the United States under subsections (c)  
11 and (d) and later conveyed to the State under  
12 subsection (e), together with the proceeds from the  
13 sale or other disposition of any such lands and the  
14 income therefrom, shall be held by said State as a  
15 public trust [(1)] for the support of the public  
16 schools and other public educational institutions,  
17 [(2)] *for the betterment of the conditions of native*  
18 *Hawaiians, as defined in the Hawaiian Homes Commission*  
19 *Act, 1920, as amended, [(3)] for the development of*  
20 *farm and home ownership on as widespread a basis as*  
21 *possible [(4)] for the making of public improvements,*



1           and [(5)] for the provision of lands for public use.  
2           Such lands, proceeds, and income shall be managed and  
3           disposed of for one or more of the foregoing purposes  
4           in such manner as the constitution and laws of said  
5           State may provide, and their use for any other object  
6           shall constitute a breach of trust for which suit may  
7           be brought by the United States.

8           *(Emphasis added.)*

9           In 1978, the people of Hawaii affirmed the State's  
10          trust obligation to native Hawaiians by ratifying  
11          constitutional amendments from the Constitutional  
12          Convention, including article XII, sections 4, 5, and 6, of  
13          the Hawaii State Constitution, which established OHA and  
14          charged it with managing income and proceeds from the  
15          public land trust for the benefit of native Hawaiians.  
16          Article XVI, section 7, of the Hawaii State Constitution  
17          required the State to enact legislation to comply with its  
18          trust obligations. Thus, in 1979, legislation, codified as  
19          chapter 10, Hawaii Revised Statutes, set forth the purposes  
20          of OHA and described the duties of its trustees.



1           In September 1981, an initial land inventory by the  
2           department of land and natural resources listed  
3           approximately 1,271,652 acres, falling woefully short of  
4           its duty to provide a complete inventory of the public land  
5           trust lands. Additionally, the state land information  
6           management system does not include all lands held by all  
7           state entities.

8           Act 273, Session Laws of Hawaii 1980, enacted section  
9           10-13.5, Hawaii Revised Statutes, to implement OHA's pro  
10          rata share and required that OHA receive "[t]wenty per cent  
11          of all funds derived from the public land trust[.]" This  
12          legislative directive addressing the constitutional mandate  
13          has led to a series of lawsuits and legislative enactments  
14          concerning OHA's constitutional pro rata share of the  
15          public land trust. The State and OHA have labored to  
16          resolve the political question of the statutory pro rata  
17          share of income and proceeds derived from the public land  
18          trust, and payment to OHA.

19          Act 178, Session Laws of Hawaii 2006, affirmed the  
20          State's trust obligation to native Hawaiians by requiring  
21          that the department of land and natural resources provide



1 an annual accounting of revenue-generating public trust  
2 lands and the amounts derived from those lands to the  
3 legislature. The measure also set a fixed amount of  
4 \$15,100,000 from the pro rata share of the public land  
5 trust income and proceeds due to OHA for the betterment of  
6 the conditions of native Hawaiians until further action is  
7 taken by the legislature for this purpose.

8 Act 15, Session Laws of Hawaii 2012, (Act 15) was  
9 enacted to address past-due amounts, which accumulated  
10 during the period between November 7, 1978, up to and  
11 including June 30, 2012, of income and proceeds from the  
12 public land trust owed to OHA by implementing an agreement  
13 between the State and OHA for the State to convey certain  
14 lands in Kakaako, Oahu, to OHA valued at approximately  
15 \$200,000,000. Act 15 did not, however, address the State's  
16 constitutional obligations relating to OHA's twenty per  
17 cent pro rata share of the income and proceeds from the  
18 public land trust generated after June 30, 2012. Notably,  
19 a 2015-2016 financial review initiated by OHA found that  
20 the minimum amount of total gross receipts from sources  
21 that OHA has historically claimed was approximately



1           \$394,322,163 in the fiscal year 2015-2016. Twenty per cent  
2           of this gross amount is approximately \$78,900,000.

3           The legislature finds that to uphold its  
4           constitutional trust obligation and duty to native  
5           Hawaiians, it must enact another legislative measure in  
6           light of the information, data, and facts provided to the  
7           legislature by state agencies since the enactment of Act  
8           178, Session Laws of Hawaii 2006, more than a decade ago.

9           SECTION 2. Act 54, Session Laws of Hawaii 2011, (Act 54)  
10          mandates the establishment of a comprehensive information system  
11          to inventory and maintain information about the lands of the  
12          public land trust as described in section 5(f) of the Admission  
13          Act and article XII, section 4 of the state constitution. The  
14          department of land and natural resources worked with a  
15          consultant to develop a public land trust information system  
16          (information system) to satisfy the requirements of Act 54. The  
17          information system will be a geographic information system that  
18          is intended for a complete inventory of all state-owned and  
19          county-owned lands, as well as a complete inventory of  
20          encumbrances issued by state and county agencies over these  
21          lands. To meet these goals, each state or county agency must



1 submit comprehensive lists of its land and encumbrance  
2 inventories.

3 SECTION 3. The public land trust working group (working  
4 group) was created under Act 226 and was assigned to:

5 (1) Account for all ceded lands in the public land trust  
6 inventory;

7 (2) Account for all income and proceeds from the public  
8 land trust; and

9 (3) Subsequently determine the twenty per cent pro rata  
10 share of income and proceeds from the public land  
11 trust due annually to the office of Hawaiian affairs  
12 for the betterment of the conditions of Native  
13 Hawaiians.

14 In December 2023, the working group submitted to all state  
15 agencies that hold title to, maintain management control or  
16 otherwise use ceded lands, a written request to provide  
17 information, data, documents, and maps to ensure that those  
18 agencies have completely and accurately identified and reported  
19 to the department of land and natural resources: (1) all ceded  
20 land parcels for the purpose of an inventory; and (2) all income  
21 and proceeds collected or received from the public land trust.



1           The working group has been informed that the last financial  
2 review by an outside independent accounting firm of the pro rata  
3 share was the fiscal year 2015-2016 financial review initiated  
4 by the office of Hawaiian affairs. At the time, the financial  
5 review identified total gross receipts from historically claimed  
6 public land trust revenue sources in the minimum amount of  
7 approximately \$394,322,163 in the fiscal year 2015-2016. Twenty  
8 per cent of this gross amount is approximately \$78,900,000. The  
9 working group found that there has been no new financial review  
10 since the 2015-2016. The 2016 financial review cost \$145,404.

11           The legislature notes that Act 178, Session Laws of Hawaii  
12 2006 (Act 178), requires the department of land and natural  
13 resources, with the cooperation of the department of budget and  
14 finance and any other state department or agency that uses or  
15 manages public lands, to provide an accounting of all receipts  
16 from lands described in section 5(f) of the Admission Act for  
17 the prior fiscal year. The working group has been informed that  
18 state agencies' self-reported information for the purposes of  
19 these reports is not audited or reviewed for accuracy by the  
20 department of land and natural resources.



1           The working group has been informed that work began on the  
2 process to procure a consultant for the information system after  
3 the enactment of Act 54 and that the development of the  
4 information system began in 2012 and the information system was  
5 launched in October 2018. Act 54 appropriated up to \$360,000  
6 from a land conservation fund for the work by an outside  
7 independent consultant. The final amount for the creation of  
8 the information system and training was \$340,382.

9           The implementation of the information system informed all  
10 state and county agencies that hold title to land that they must  
11 submit their entire land inventory, regardless of the public  
12 land trust status, regardless of whether there are any  
13 encumbrances on the land, and regardless of whether revenue is  
14 being generated on the land. The goal here was to have all  
15 state-owned and county-owned land represented in the information  
16 system. All state and county agencies must submit encumbrances  
17 that they have issued over state-owned and county-owned land,  
18 regardless if they hold title to that land or not. This  
19 includes all encumbrances, including leases, permits,  
20 right-of-entries, and easements. All encumbrances must be  
21 submitted, regardless of whether they generate revenue or not.



1 The goal was to have all encumbrances issued over state-owned  
2 and county-owned land represented in the information system.

3 As with the reporting to the department of land and natural  
4 resources on public land trust revenues, the information system  
5 is also based on self-reporting by state agencies and the  
6 counties. There are some disclaimers about the information.  
7 The department of land and natural resources has encouraged all  
8 state and county departments to regularly update data in the  
9 system. Updates, however, are also based on self-reported  
10 information. The legislature believes that independent  
11 third-party professionals need to evaluate this practice.

12 The working group has been informed that State agencies use  
13 a "rule of thumb" to determine whether a parcel is ceded or not  
14 when it is both. When more than fifty per cent of a parcel is  
15 ceded land, it is categorized as ceded. The working group is  
16 not able to determine whether this is detrimental to the  
17 calculation of the office of Hawaiian affairs' pro rata share.  
18 The legislature believes that independent third-party  
19 professionals need to evaluate this practice.

20 The working group has been informed that there are many  
21 parcels without tax map key numbers in the information system



1 and therefore may not be included in the system. This is  
2 particularly the case for the submerged lands which are  
3 generally considered public land trust lands. The legislature  
4 believes that independent third-party professionals need to  
5 evaluate how to include these parcels so that the information  
6 system contains the complete and accurate inventory.

7 The working group has been informed that the lands under  
8 federal jurisdiction are not included in the information system  
9 and that the counties do not report any of the revenue from the  
10 public land trust to the department of land and natural  
11 resources for the purposes of the annual accounting required  
12 pursuant to Act 178 (Act 178 report).

13 To the knowledge of the working group, there has been no  
14 third-party independent audit, review, or evaluation of the  
15 thoroughness and accuracy of the information system or the  
16 current reporting by agencies for the purpose of the preparing  
17 the annual Act 178 report, nor has there been any analysis or  
18 comparison of the data in the information system with the data  
19 in the Act 178 reports.

20 The working group has conducted research and has determined  
21 that the services of one or more third-party independent



1 consultants with the necessary financial, accounting, land  
2 inventory expertise will be appropriate to address the concerns  
3 that have been raised regarding the thoroughness and accuracy of  
4 the information system, to ensure that the working group  
5 completes its objectives under Act 226.

6 Based on the amounts expended for the office of Hawaiian  
7 affairs' 2016 financial review and the creation and launch of  
8 the information system, which cost \$495,786, the working group  
9 has estimated that approximately \$1,000,000 is needed for the  
10 retention of third party independent professionals.

11 Accordingly, the purpose of this Act is to appropriate  
12 moneys to the office of Hawaiian affairs to facilitate the  
13 hiring of necessary staff and the purchase of equipment and  
14 professional services on behalf of the public land trust working  
15 group.

16 SECTION 4. There is appropriated out of the general  
17 revenues of the State of Hawaii the sum of \$1,000,000 or so much  
18 thereof as may be necessary for fiscal year 2025-2026 and the  
19 same sum or so much thereof as may be necessary for fiscal year  
20 2026-2027 to carry out the purposes of this Act, including the  
21 hiring of necessary staff and the purchase of equipment and



1 professional services; provided that in obtaining services by  
2 uniquely qualified persons, the office of Hawaiian affairs shall  
3 be exempt from chapter 103D, Hawaii Revised Statutes.

4 The sums appropriated shall be expended by the office of  
5 Hawaiian affairs for the purposes of this Act.

6 SECTION 5. This Act shall take effect on July 1, 2025.

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INTRODUCED BY: Karari Seema

JAN 23 2025



# H.B. NO. 1358

**Report Title:**

Public Land Trust Working Group; OHA; Public Land Trust;  
Appropriations

**Description:**

Appropriates moneys to the Office of Hawaiian Affairs to facilitate the hiring of necessary staff and the purchase of equipment and professional services on behalf of the public land trust working group.

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