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



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

3 The legislature further finds the public land trust working
4 group (working group) was created under Act 226 and was assigned
5 to:

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

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

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

15 In December 2023, the working group submitted to all state
16 agencies that hold title to, maintain management control or
17 otherwise use ceded lands, a written request to provide
18 information, data, documents, and maps to ensure that those
19 agencies have completely and accurately identified and reported
20 to the department of land and natural resources: (1) all ceded



1 land parcels for the purpose of an inventory; and (2) all income
2 and proceeds collected or received from the public land trust.

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

13 The legislature notes that Act 178, Session Laws of Hawaii
14 2006 (Act 178), requires the department of land and natural
15 resources, with the cooperation of the department of budget and
16 finance and any other state department or agency that uses or
17 manages public lands, to provide an accounting of all receipts
18 from lands described in section 5(f) of the Admission Act for
19 the prior fiscal year. The working group has been informed that
20 state agencies' self-reported information for the purposes of



1 these reports is not audited or reviewed for accuracy by the
2 department of land and natural resources.

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

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



1 to have all encumbrances issued over state-owned and county-
2 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 when a parcel
13 consists of both ceded and nonceded lands, the state agencies
14 use a "rule of thumb" to determine whether a parcel is ceded or
15 not. When more than fifty per cent of a parcel is ceded land,
16 it is categorized as ceded. The working group has been unable
17 to determine whether this is detrimental to the calculation of
18 the office of Hawaiian affairs' pro rata share. The legislature
19 believes that independent third-party professionals need to
20 evaluate this practice.



1 The working group has been informed that there are many
2 parcels without tax map key numbers in the information system
3 and therefore may not be included in the system. This is
4 particularly so for submerged lands, which are generally
5 considered public land trust lands. The legislature believes
6 that independent third-party professionals need to evaluate how
7 to include these parcels so that the information system contains
8 the complete and accurate inventory.

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

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



1 The working group has conducted research and has determined
2 that the services of one or more third-party independent
3 consultants with the necessary financial, accounting, land
4 inventory expertise will be appropriate to address the concerns
5 that have been raised regarding the thoroughness and accuracy of
6 the information system, to ensure that the working group
7 completes its objectives under Act 226.

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

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

17 SECTION 2. There is appropriated out of the general
18 revenues of the State of Hawaii the sum of \$ or so
19 much thereof as may be necessary for fiscal year 2025-2026 and
20 the same sum or so much thereof as may be necessary for fiscal
21 year 2026-2027 for the hiring of necessary staff and the



1 purchase of equipment and professional services on behalf of the
2 public land trust working group; provided that in obtaining
3 services by uniquely qualified persons, the office of Hawaiian
4 affairs shall be exempt from chapter 103D, Hawaii Revised
5 Statutes.

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

8 SECTION 3. This Act shall take effect on July 1, 3000.



Report Title:

Public Land Trust Working Group; OHA; Public Land Trust;
Appropriation

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. Effective 7/1/3000. (HD1)

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