

JAN 23 2025

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. The legislature finds that in Act 226, Session
2 Laws of Hawaii 2022, (Act 226), establishing the public lands
3 trust working group (PLTWG), the legislature found the
4 following:

5 "[I]t must set right and fulfill its trust
6 responsibilities to native Hawaiians, consistent with
7 governmental action across America to address injustices
8 against Indigenous Peoples. It is incumbent upon the
9 legislature to enact legislation that upholds its trust
10 responsibilities and duty of care to native Hawaiians to:
11 (1) Account for all ceded lands in the public lands trust
12 inventory;
13 (2) Account for all income and proceeds derived from the
14 public land trust; and
15 (3) Transfer the full twenty per cent pro rata share of
16 income and proceeds from the public land trust



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



1 native Hawaiians' (Article XII, section 6, of the Hawaii
2 State Constitution). The United States and the courts have
3 consistently affirmed the trust nature of the government
4 and crown lands, including large tracts of ceded lands used
5 for military or other purposes under federal control.

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

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



1 Act, 1920, as amended, [(3)] for the development of
2 farm and home ownership on as widespread a basis as
3 possible [(4)] for the making of public improvements,
4 and [(5)] for the provision of lands for public use.
5 Such lands, proceeds, and income shall be managed and
6 disposed of for one or more of the foregoing purposes
7 in such manner as the constitution and laws of said
8 State may provide, and their use for any other object
9 shall constitute a breach of trust for which suit may
10 be brought by the United States.'

11 (*Emphasis added.*)

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



1 chapter 10, Hawaii Revised Statutes, set forth the purposes
2 of OHA and described the duties of its trustees.

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

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



1 Act 178, Session Laws of Hawaii 2006, affirmed the
2 State's trust obligation to native Hawaiians by requiring
3 that the department of land and natural resources provide
4 an annual accounting of revenue-generating public trust
5 lands and the amounts derived from those lands to the
6 legislature. The measure also set a fixed amount of
7 \$15,100,000 from the pro rata share of the public land
8 trust income and proceeds due to OHA for the betterment of
9 the conditions of native Hawaiians until further action is
10 taken by the legislature for this purpose.

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



1 a 2015-2016 financial review initiated by OHA found that
2 the minimum amount of total gross receipts from sources
3 that OHA has historically claimed was approximately
4 \$394,322,163 in the fiscal year 2015-2016. Twenty per cent
5 of this gross amount is approximately \$78,900,000.

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

13 The legislature further finds that Act 54, Session Laws of
14 Hawaii 2011, (Act 54) mandates the establishment of a
15 comprehensive information system to inventory and maintain
16 information about the lands of the public land trust as
17 described in section 5(f) of the Admission Act and article XII,
18 section 4 of the state constitution. The department of land and
19 natural resources worked with a consultant to develop a public
20 land trust information system (PLTIS) to satisfy the
21 requirements of Act 54. The PLTIS is a GIS-based system that



1 aims to be a complete inventory of all state- and county-owned
2 lands, as well as a complete inventory of encumbrances issued by
3 state and county agencies over these lands. In order to meet
4 these goals, each state and county agency must submit
5 comprehensive lists of their land and encumbrance inventories.

6 The legislature further finds that Act 226 assigned the
7 PLTWG specific statutory responsibilities as follows:

- 8 (1) Account for all ceded lands in the public land trust
9 inventory;
- 10 (2) Account for all income and proceeds from the public
11 land trust; and
- 12 (3) Subsequently determine the twenty per cent pro rata
13 share of income and proceeds from the public land
14 trust due annually to the office of Hawaiian affairs
15 for the betterment of the conditions of Native
16 Hawaiians.

17 In December 2023, the PLTWG requested in writing to all
18 state agencies that hold title to, maintain management control
19 of, or otherwise use ceded lands, to provide information, data,
20 documents, and maps to ensure that the agency completely and



1 accurately identified and reported to the department of land and
2 natural resources the following:

- 3 (1) All ceded lands parcels for the purpose of an
4 inventory; and
5 (2) All income and proceeds collected or received from the
6 public land trust.

7 The legislature further finds that the PLTWG has been
8 informed that the last financial review by an outside
9 independent accounting firm of the pro rata share of income and
10 proceeds from the public land trust due annually to the office
11 of Hawaiian affairs was the fiscal year 2015-2016 financial
12 review initiated by the office of Hawaiian affairs. At that
13 time, the financial review identified total gross receipts from
14 historically claimed public land trust revenue sources in the
15 minimum amount of approximately \$394,322,163 in the fiscal year
16 2015-2016. Twenty per cent of this gross amount is
17 approximately \$78,900,000. The PLTWG found that there has not
18 been a new financial review since fiscal year 2015-2016. The
19 2016 financial review cost \$145,404.

20 The PLTWG has been further informed that current annual
21 reporting by state agencies to the department of land and



1 natural resources is self-reported and is not audited nor
2 reviewed for accuracy by the department of land and natural
3 resources. This annual reporting is for the purpose of the
4 preparation of the annual accounting of all receipts from lands
5 described in section 5(f) of the Admission Act, pursuant to
6 Act 178, Session Laws of Hawaii 2006 (Act 178 report).

7 The PLTWG has also been informed that work began on the
8 process to procure a consultant for the PLTIS after the
9 enactment of Act 54; the development of the PLTIS began in 2012;
10 and the PLTIS was launched in October 2018. Act 54 appropriated
11 up to \$360,000 from a land conservation fund for the work
12 performed by an outside independent consultant. The final
13 amount for creation of the PLTIS and training was \$340,382.

14 The implementation of the PLTIS informed all state and
15 county agencies that hold title to land that they must submit
16 their entire land inventory, regardless of the public land trust
17 status, whether or not there are any encumbrances on the land,
18 and whether or not revenue is being generated on the land. The
19 goal was to have all state- and county-owned land represented in
20 the PLTIS. All state and county agencies must submit
21 encumbrances that they have issued over state- and county-owned



1 land, regardless if they hold title to that land or not. This
2 includes all encumbrances, including but not limited to leases,
3 permits, right-of-entries, and easements issued over state- and
4 county-owned land represented in the PLTIS, regardless of
5 whether they generate revenue.

6 Like the reporting to the department of land and natural
7 resources on public land trust revenues, the PLTIS is also based
8 on self-reporting by state agencies and the counties. There are
9 some disclaimers about the information. The department of land
10 and natural resources has encouraged all state departments and
11 counties to regularly update data in the system. Updates are
12 also based on self-reporting. Independent third-party
13 professionals are needed to evaluate this practice.

14 The PLTWG has been informed that state agencies use a "rule
15 of thumb" to determine whether a parcel is ceded. When the
16 parcel is more than fifty per cent ceded land, it is categorized
17 as ceded. The PLTWG cannot determine whether this disadvantages
18 the calculation of the office of Hawaiian affairs' pro rata
19 share. Therefore independent third-party professionals are
20 needed to evaluate this practice.



1 The PLTWG has also been informed that there are many
2 parcels without tax map key numbers in the PLTIS, including
3 submerged lands, which are generally considered public trust
4 lands. Independent third-party professionals are needed to
5 evaluate how to include these parcels so that the PLTIS contains
6 the complete and accurate inventory.

7 The PLTWG has been informed that the lands under federal
8 jurisdiction are not included in the PLTIS and that the counties
9 do not report any of the revenue from the public land trust to
10 the department of land and natural resources for its annual
11 Act 178 report.

12 To the knowledge of the PLTWG, there has been no
13 third-party independent audit, review, or evaluation of the
14 completeness and accuracy of the PLTIS or the current reporting
15 by agencies for the purpose of preparing the annual Act 178
16 report, nor has there been any analysis or comparison of the
17 data in the PLTIS with the data in the Act 178 report.

18 The PLTWG has determined after research that the services
19 of a third-party independent consultant, or consultants, with
20 the necessary financial, accounting, and land inventory
21 expertise will be appropriate to address the concerns that have



1 been raised regarding the completeness and accuracy of the PLTIS
2 to complete its objectives under Act 226.

3 Based on the amounts expended by the office of Hawaiian
4 affairs' 2016 financial review and the creation and launch of
5 the PLTIS, which was \$495,786, the PLTWG has estimated that
6 approximately \$1,000,000 is required for the retention of
7 third-party independent professionals.

8 SECTION 2. There is appropriated out of the general
9 revenues of the State of Hawaii the sum of \$1,000,000 or so much
10 thereof as may be necessary for fiscal year 2025-2026 and the
11 same sum or so much thereof as may be necessary for fiscal year
12 2026-2027 for the hiring of necessary staff, purchasing of
13 equipment, and retention of professional services which are
14 unique. Accordingly, purchases made with funds appropriated by
15 this Act shall be exempt from chapter 103D, Hawaii Revised
16 Statutes.

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

19 SECTION 3. This Act shall take effect on July 1, 2025.
20

INTRODUCED BY:





S.B. NO. 1600

Report Title:

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

Description:

Appropriates funds to the Office of Hawaiian Affairs to hire necessary staff, purchase equipment, and retain professional services on behalf of the Public Land Trust Working Group.

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