
A BILL FOR AN ACT

RELATING TO HAWAIIAN AFFAIRS.

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
6 and duty of care to native Hawaiians to:

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

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



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



1 the courts have consistently affirmed the trust nature
2 of the government and crown lands, including large
3 tracts of ceded lands used for military or other
4 purposes under federal control.

5 In 1959, as a condition of its admission into
6 the Union, the State of Hawaii agreed to hold certain
7 lands granted to the State by the United States in a
8 public trust for five purposes delineated in section
9 5(f) of the Admission Act, which provides in relevant
10 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
13 State's trust obligation to native Hawaiians by
14 ratifying constitutional amendments from the
15 Constitutional Convention, including article XII,
16 sections 4, 5, and 6, of the Hawaii State
17 Constitution, which established OHA and charged it
18 with managing income and proceeds from the public land
19 trust for the benefit of native Hawaiians. Article
20 XVI, section 7, of the Hawaii State Constitution
21 required the State to enact legislation to comply with



1 its trust obligations. Thus, in 1979, legislation,
2 codified as chapter 10, Hawaii Revised Statutes, set
3 forth the purposes of OHA and described the duties of
4 its trustees.

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

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



1 rata share of income and proceeds derived from the
2 public land trust, and payment to OHA.

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

14 Act 15, Session Laws of Hawaii 2012, (Act 15)
15 was enacted to address past-due amounts, which
16 accumulated during the period between November 7,
17 1978, up to and including June 30, 2012, of income
18 and proceeds from the public land trust owed to OHA
19 by implementing an agreement between the State and
20 OHA for the State to convey certain lands in Kakaako,
21 Oahu, to OHA valued at approximately \$200,000,000.



1 Act 15 did not, however, address the State's
2 constitutional obligations relating to OHA's twenty
3 per cent pro rata share of the income and proceeds
4 from the public land trust generated after June 30,
5 2012. Notably, a 2015-2016 financial review initiated
6 by OHA found that the minimum amount of total gross
7 receipts from sources that OHA has historically
8 claimed was approximately \$394,322,163 in the fiscal
9 year 2015-2016. Twenty per cent of this gross amount
10 is approximately \$78,900,000."

11 In 2022, the legislature found that to uphold its
12 constitutional trust obligation and duty to native Hawaiians, it
13 must enact another legislative measure in light of the
14 information, data, and facts provided to the legislature by
15 state agencies since the enactment of Act 178, Session Laws of
16 Hawaii 2006, more than a decade earlier.

17 Act 226 was enacted to:

18 (1) Increase the office of Hawaiian affairs' interim
19 annual share of the income and proceeds of the public
20 land trust beginning in fiscal year 2022-2023 from
21 \$15,100,000 to \$21,500,000;



1 (2) Appropriate \$64,000,000 to the office of Hawaiian
2 affairs; and

3 (3) Establish a public land trust working group (working
4 group) to determine the pro rata share of income and
5 proceeds from the public land trust due annually to
6 the office of Hawaiian affairs after June 30, 2022.

7 Conference Committee Report No. 250-22 filed with S.B. No.
8 2021, S.D. 1, H.D. 2, C.D. 1, which would later be enacted as
9 Act 226, further found that "the past-due sum owed to the Office
10 of Hawaiian Affairs for any and all underpayments of the pro-
11 rata portion of the income and proceeds of the Public Land Trust
12 for the period from July 1, 2012, to June 30, 2022, is
13 \$64,000,000, and that this sum is intended to represent the
14 cumulative impact of an inflation adjustment for that period."

15 The legislature finds that Act 15 and Act 226 have
16 addressed past-due amounts that accumulated during the period
17 between November 7, 1978, up to and including June 30, 2022, of
18 income and proceeds from the public land trust owed to the
19 office of Hawaiian affairs.

20 The legislature finds that Act 54, Session Laws of Hawaii
21 2011 (Act 54), mandates the establishment of a comprehensive



1 information system to inventory and maintain information about
2 the lands of the public land trust as described in section 5(f)
3 of the Admission Act and article XII, section 4 of the state
4 constitution. The department of land and natural resources
5 worked with a consultant to develop a public land trust
6 information system (information system) to satisfy the
7 requirements of Act 54. The information system will be a
8 geographic information system that is intended for a complete
9 inventory of all state-owned and county-owned lands, as well as
10 a complete inventory of encumbrances issued by state and county
11 agencies over these lands. To meet these goals, each state or
12 county agency must submit comprehensive lists of its land and
13 encumbrance inventories.

14 The legislature further finds that the working group
15 established under Act 226 was assigned to:

- 16 (1) Account for all ceded lands in the public land trust
17 inventory;
- 18 (2) Account for all income and proceeds from the public
19 land trust; and
- 20 (3) Subsequently determine the twenty per cent pro rata
21 share of income and proceeds from the public land



1 trust due annually to the office of Hawaiian affairs
2 for the betterment of the conditions of Native
3 Hawaiians.

4 In December 2023, the working group submitted to all state
5 agencies that hold title to, maintain management control over,
6 or otherwise use ceded lands, a written request to provide
7 information, data, documents, and maps to ensure that those
8 agencies have completely and accurately identified and reported
9 to the department of land and natural resources: (1) all ceded
10 land parcels for the purpose of an inventory; and (2) all income
11 and proceeds collected or received from the public land trust.

12 The working group has been informed that the last financial
13 review by an outside independent accounting firm of the pro rata
14 share was the fiscal year 2015-2016 financial review initiated
15 by the office of Hawaiian affairs. At the time, the financial
16 review identified total gross receipts from historically claimed
17 public land trust revenue sources in the minimum amount of
18 approximately \$394,322,163 in the fiscal year 2015-2016. Twenty
19 per cent of this gross amount is approximately \$78,900,000. The
20 working group found that there has been no new financial review



1 since the 2015-2016 financial review. The 2016 financial review
2 cost \$145,404.

3 The legislature notes that Act 178, Session Laws of Hawaii
4 2006 (Act 178), requires the department of land and natural
5 resources, with the cooperation of the department of budget and
6 finance and any other state department or agency that uses or
7 manages public lands, to provide an accounting of all receipts
8 from lands described in section 5(f) of the Admission Act for
9 the prior fiscal year. The working group has been informed that
10 state agencies' self-reported information for the purposes of
11 these reports is not audited or reviewed for accuracy by the
12 department of land and natural resources.

13 The working group has been informed that work began on the
14 process to procure a consultant for the information system after
15 the enactment of Act 54 and that the development of the
16 information system began in 2012 and the information system was
17 launched in October 2018. Act 54 appropriated up to \$360,000
18 from a land conservation fund for the work by an outside
19 independent consultant. The final amount for the creation of
20 the information system and training was \$340,382.



1 As part of the implementation of the information system,
2 all state and county agencies that hold title to land are
3 required to submit their entire land inventory, regardless of
4 the public land trust status, regardless of whether there are
5 any encumbrances on the land, and regardless of whether revenue
6 is being generated on the land. All state and county agencies
7 are additionally required to submit encumbrances that they have
8 issued over state-owned and county-owned land, regardless of
9 whether they hold title to that land or not and regardless of
10 whether they were revenue generating. This includes all
11 encumbrances, including leases, permits, right-of-entries, and
12 easements. The goal was to have all encumbrances issued over
13 state-owned and county-owned land represented in the information
14 system.

15 As with the reporting to the department of land and natural
16 resources on public land trust revenues, the information system
17 is also based on self-reporting by state agencies and the
18 counties. There are some disclaimers about the information.
19 The department of land and natural resources has encouraged all
20 state and county departments to regularly update data in the
21 system. Updates, however, are also based on self-reported



1 information. The legislature believes that independent
2 third-party professionals need to evaluate this practice.

3 The working group has been informed that when a parcel
4 consists of both ceded and nonceded lands, the state agencies
5 use a "rule of thumb" to determine whether a parcel is ceded or
6 not. When more than fifty per cent of a parcel is ceded land,
7 it is categorized as ceded. The working group has been unable
8 to determine whether this is detrimental to the calculation of
9 the office of Hawaiian affairs' pro rata share. The legislature
10 believes that independent third-party professionals need to
11 evaluate this practice.

12 The working group has been informed that there are many
13 parcels without tax map key numbers in the information system
14 and therefore may not be included in the system. This is
15 particularly so for submerged lands, which are generally
16 considered public land trust lands. The legislature believes
17 that independent third-party professionals need to evaluate how
18 to include these parcels so that the information system contains
19 the complete and accurate inventory.

20 The working group has been informed that the lands under
21 federal jurisdiction are not included in the information system



1 and that the counties do not report any of the revenue from the
2 public land trust to the department of land and natural
3 resources for the purposes of the annual accounting required
4 pursuant to Act 178 (Act 178 report).

5 To the knowledge of the working group, there has been no
6 third-party independent audit, review, or evaluation of the
7 thoroughness and accuracy of the information system or the
8 current reporting by agencies for the purpose of preparing the
9 annual Act 178 report, nor has there been any analysis or
10 comparison of the data in the information system with the data
11 in the Act 178 reports.

12 The working group has conducted research and has determined
13 that the services of one or more third-party independent
14 consultants with the necessary financial, accounting, and land
15 inventory expertise will be appropriate to address the concerns
16 that have been raised regarding the thoroughness and accuracy of
17 the information system, to ensure that the working group
18 completes its objectives under Act 226.

19 Based on the amounts expended for the office of Hawaiian
20 affairs' 2016 financial review and the creation and launch of
21 the information system, which cost \$485,786, the working group



1 has estimated that approximately \$1,000,000 is needed for the
2 retention of third-party independent professionals.

3 Accordingly, the purpose of this Act is to:

4 (1) Amend the membership and responsibilities of the
5 public land trust working group established pursuant
6 to Act 226, Session Laws of Hawaii 2022;

7 (2) Require the public land trust working group to submit
8 four reports to the Legislature, as follows:

9 (A) By August 1, 2026, a first interim report
10 regarding the public land trust inventory;

11 (B) By December 1, 2026, a second interim report
12 regarding Act 178 financial reporting and
13 accounting;

14 (C) By June 1, 2027, a preliminary draft settlement
15 of the income and proceeds from the pro rata
16 portion of the public land trust, which may
17 consist of a monetary amount, real property, or
18 in-kind assets; and

19 (D) By October 1, 2027, a final report that includes
20 a final draft settlement;



1 (3) Require the State, office of Hawaiian affairs, and
2 other applicable parties to begin preliminary
3 negotiations regarding the final draft settlement by
4 October 1, 2027; and

5 (4) Appropriate funds to the legislative reference bureau
6 to retain independent third-party professionals,
7 subject to matching funds from the office of Hawaiian
8 affairs.

9 SECTION 2. Act 226, Session Laws of Hawaii 2022, is
10 amended by amending section 3 to read as follows:

11 "SECTION 3. (a) There is established a working group to:

12 (1) Account for all ceded lands in the public land trust
13 inventory;

14 (2) Account for all income and proceeds from the public
15 land trust; and

16 (3) Subsequently determine the twenty per cent pro rata
17 share of income and proceeds from the public land
18 trust due annually to the office of Hawaiian affairs
19 for the betterment of the conditions of Native
20 Hawaiians.



1 (b) The working group shall be [~~comprised~~] composed of
2 [~~six members, three of whom three shall be~~] the following:

3 (1) Two members appointed by the governor [~~and three of~~
4 ~~whom shall be~~];

5 (2) Three members appointed by the office of Hawaiian
6 affairs board of trustees[~~+~~];

7 (3) One member appointed by the president of the senate;
8 and

9 (4) One member appointed by the speaker of the house of
10 representatives.

11 (c) The working group, with the cooperation of any
12 department or agency that uses, manages, or receives income,
13 proceeds, or any other funds derived from the public land trust,
14 shall prepare and submit a report of its findings and
15 recommendations, including any proposed legislation and the
16 amount it determines for the annual amount of the twenty per
17 cent pro rata share of income and proceeds from the public land
18 trust, to the legislature.

19 (d) The working group shall oversee and be responsible for
20 the completion of the following tasks, which shall be carried



1 out with the support of independent third-party professionals
2 retained to fulfill the objectives of the working group:

- 3 (1) Regarding the public land trust inventory:
 - 4 (A) Document the current data collection and
5 reporting processes;
 - 6 (B) Assess the accuracy, completeness, and
7 reliability of land parcels in the public land
8 trust information system;
 - 9 (C) Determine whether the public land trust
10 information system complies with and fulfills the
11 purposes of Act 54, Session Laws of Hawaii 2011;
 - 12 (D) Identify issues and gaps in reporting on public
13 land trust inventory and encumbrances across
14 federal, state, and county agencies;
 - 15 (E) Assess the accuracy of the reporting of parcel
16 trust status; and
 - 17 (F) Recommend improvements to reporting consistency,
18 land inventory accuracy, encumbrance reporting,
19 and assignments of tax map key numbers to all
20 parcels; and



- 1 (2) Regarding section 5 of Act 178, Session Laws of Hawaii
2 2006, financial reporting and accounting:
- 3 (A) Document the current processes as to how the data
4 is being collected and reported;
- 5 (B) Validate the accuracy, completeness, and
6 reliability of the reporting of revenue data
7 derived from the public land trust;
- 8 (C) Identify issues and gaps in reporting revenues
9 across state agencies;
- 10 (D) Assess the accuracy of the reporting of parcel
11 trust status; and
- 12 (E) Recommend improvements to financial tracking and
13 reporting consistency for all parcels.
- 14 (e) In addition to the report required under subsection
15 (c), the working group shall submit to the legislature:
- 16 (1) No later than August 1, 2026, a first interim report
17 with findings from the preliminary public land trust
18 inventory required pursuant to subsection (d) (1);
- 19 (2) No later than December 1, 2026, a second interim
20 report with findings from the preliminary financial
21 reporting and accounting related to Act 178, Session



1 same sum or so much thereof as may be necessary for fiscal year
2 2026-2027 to retain independent third-party professionals for
3 the purposes of Act 226, Session Laws of Hawaii 2022, as amended
4 by this Act; provided that no funds shall be made available
5 under this Act unless the office of Hawaiian affairs provides
6 matching funds for the purposes for which this sum is
7 appropriated; provided further that in obtaining services of the
8 independent third-party professionals, the legislative reference
9 bureau shall be exempt from chapter 103D, Hawaii Revised
10 Statutes.

11 The sums appropriated shall be expended by the legislative
12 reference bureau for the purposes of this Act.

13 SECTION 5. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 6. This Act shall take effect on July 1, 3000;
16 provided that section 4 shall take effect on July 1, 2025.



Report Title:

Public Land Trust Working Group; OHA; Public Land Trust; Inventory; Financial Reporting and Accounting; Reports; Settlement; LRB; Appropriation

Description:

Amends the membership and responsibilities of the Public Land Trust Working Group established under Act 226, SLH 2022. Requires the Working Group to submit four reports to the Legislature: by 8/1/2026, a first interim report regarding the public land trust inventory; by 12/1/2026, a second interim report regarding Act 178, SLH 2006, financial reporting and accounting; by 6/1/2027, a preliminary draft settlement of the income and proceeds from OHA's pro rata portion of the public land trust; and by 10/1/2027, a final report that includes a final draft settlement. Requires the State, OHA, and other applicable parties to begin preliminary negotiations regarding the final draft settlement by 10/1/2027. Appropriates funds for the Legislative Reference Bureau to retain independent third-party professionals for the Working Group and requires matching funds from OHA. Effective 7/1/3000. (HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

