
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
22 the courts have consistently affirmed the trust nature



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

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

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



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

9 *(Emphasis added.)*

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



1 forth the purposes of OHA and described the duties of
2 its trustees.

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

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



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

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



1 from the public land trust generated after June 30,
2 2012. Notably, a 2015-2016 financial review initiated
3 by OHA found that the minimum amount of total gross
4 receipts from sources that OHA has historically
5 claimed was approximately \$394,322,163 in the fiscal
6 year 2015-2016. Twenty per cent of this gross amount
7 is approximately \$78,900,000."

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

15 Act 226 was enacted to:

- 16 (1) Increase the office of Hawaiian affairs' interim
17 annual share of the income and proceeds of the public
18 land trust beginning in fiscal year 2022-2023 from
19 \$15,100,000 to \$21,500,000;
- 20 (2) Appropriate \$64,000,000 to the office of Hawaiian
21 affairs; and



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

5 Conference Committee Report No. 250-22 filed with S.B. No.
6 2021, S.D. 1, H.D. 2, C.D. 1, which would later be enacted as
7 Act 226, further found that "the past-due sum owed to the Office
8 of Hawaiian Affairs for any and all underpayments of the pro-
9 rata portion of the income and proceeds of the Public Land Trust
10 for the period from July 1, 2012, to June 30, 2022, is
11 \$64,000,000, and that this sum is intended to represent the
12 cumulative impact of an inflation adjustment for that period."

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

18 The legislature finds that Act 54, Session Laws of Hawaii
19 2011 (Act 54), mandates the establishment of a comprehensive
20 information system to inventory and maintain information about
21 the lands of the public land trust as described in section 5(f)
22 of the Admission Act and article XII, section 4 of the state



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

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

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



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

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

20 The legislature notes that Act 178, Session Laws of Hawaii
21 2006 (Act 178), requires the department of land and natural
22 resources, with the cooperation of the department of budget and



1 finance and any other state department or agency that uses or
2 manages public lands, to provide an accounting of all receipts
3 from lands described in section 5(f) of the Admission Act for
4 the prior fiscal year. The working group has been informed that
5 state agencies' self-reported information for the purposes of
6 these reports is not audited or reviewed for accuracy by the
7 department of land and natural resources.

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

16 As part of the implementation of the information system,
17 all state and county agencies that hold title to land are
18 required to submit their entire land inventory, regardless of
19 the public land trust status, regardless of whether there are
20 any encumbrances on the land, and regardless of whether revenue
21 is being generated on the land. All state and county agencies
22 are additionally required to submit encumbrances that they have



1 issued over state-owned and county-owned land, regardless of
2 whether they hold title to that land or not and regardless of
3 whether they were revenue generating. This includes all
4 encumbrances, including leases, permits, right-of-entries, and
5 easements. The goal was to have all encumbrances issued over
6 state-owned and county-owned land represented in the information
7 system.

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

17 The working group has been informed that when a parcel
18 consists of both ceded and nonceded lands, the state agencies
19 use a "rule of thumb" to determine whether a parcel is ceded or
20 not. When more than fifty per cent of a parcel is ceded land,
21 it is categorized as ceded. The working group has been unable
22 to determine whether this is detrimental to the calculation of



1 the office of Hawaiian affairs' pro rata share. The legislature
2 believes that independent third-party professionals need to
3 evaluate this practice.

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

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

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



1 comparison of the data in the information system with the data
2 in the Act 178 reports.

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

10 Based on the amounts expended for the office of Hawaiian
11 affairs' 2016 financial review and the creation and launch of
12 the information system, which cost \$485,786, the working group
13 has estimated that approximately \$1,000,000 is needed for the
14 retention of third-party independent professionals.

15 Accordingly, the purpose of this Act is to:

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

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

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



- 1 (B) By December 1, 2026, a second interim report
2 regarding Act 178 financial reporting and
3 accounting;
- 4 (C) By June 1, 2027, a preliminary draft settlement
5 of the income and proceeds from the pro rata
6 portion of the public land trust, which may
7 consist of a monetary amount, real property, or
8 in-kind assets; and
- 9 (D) By October 1, 2027, a final report that includes
10 a final draft settlement;
- 11 (3) Require the State, office of Hawaiian affairs, and
12 other applicable parties to begin preliminary
13 negotiations regarding the final draft settlement by
14 October 1, 2027; and
- 15 (4) Appropriate funds to the legislative reference bureau
16 to retain independent third-party professionals,
17 subject to matching funds from the office of Hawaiian
18 affairs.

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

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



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

3 (2) Account for all income and proceeds from the public
4 land trust; and

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

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

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

14 (2) Three members appointed by the office of Hawaiian
15 affairs board of trustees[~~-~~];

16 (3) One member appointed by the president of the senate;
17 and

18 (4) One member appointed by the speaker of the house of
19 representatives.

20 (c) The working group, with the cooperation of any
21 department or agency that uses, manages, or receives income,
22 proceeds, or any other funds derived from the public land trust,



1 shall prepare and submit a report of its findings and
2 recommendations, including any proposed legislation and the
3 amount it determines for the annual amount of the twenty per
4 cent pro rata share of income and proceeds from the public land
5 trust, to the legislature.

6 (d) The working group shall oversee and be responsible for
7 the completion of the following tasks, which shall be carried
8 out with the support of independent third-party professionals
9 retained to fulfill the objectives of the working group:

10 (1) Regarding the public land trust inventory:

11 (A) Document the current data collection and
12 reporting processes;

13 (B) Assess the accuracy, completeness, and
14 reliability of land parcels in the public land
15 trust information system;

16 (C) Determine whether the public land trust
17 information system complies with and fulfills the
18 purposes of Act 54, Session Laws of Hawaii 2011;

19 (D) Identify issues and gaps in reporting on public
20 land trust inventory and encumbrances across
21 federal, state, and county agencies;



- 1 (E) Assess the accuracy of the reporting of parcel
2 trust status; and
- 3 (F) Recommend improvements to reporting consistency,
4 land inventory accuracy, encumbrance reporting,
5 and assignments of tax map key numbers to all
6 parcels; and
- 7 (2) Regarding section 5 of Act 178, Session Laws of Hawaii
8 2006, financial reporting and accounting:
- 9 (A) Document the current processes as to how the data
10 is being collected and reported;
- 11 (B) Validate the accuracy, completeness, and
12 reliability of the reporting of revenue data
13 derived from the public land trust;
- 14 (C) Identify issues and gaps in reporting revenues
15 across state agencies;
- 16 (D) Assess the accuracy of the reporting of parcel
17 trust status; and
- 18 (E) Recommend improvements to financial tracking and
19 reporting consistency for all parcels.
- 20 (e) In addition to the report required under
21 subsection (c), the working group shall submit to the
22 legislature:



1 (1) No later than August 1, 2026, a first interim report
2 with findings from the preliminary public land trust
3 inventory required pursuant to subsection (d)(1);

4 (2) No later than December 1, 2026, a second interim
5 report with findings from the preliminary financial
6 reporting and accounting related to Act 178, Session
7 Laws of Hawaii 2006, required pursuant to
8 subsection (d)(2);

9 (3) No later than June 1, 2027, a third interim report
10 that shall:

11 (A) Be based on the reports submitted pursuant to
12 paragraphs (1) and (2); and

13 (B) Include a preliminary draft settlement of the
14 income and proceeds from the pro rata portion of
15 the public land trust under article XII, section
16 6, of the state constitution for expenditure by
17 the office of Hawaiian affairs for the betterment
18 of the conditions of native Hawaiians for each
19 fiscal year beginning with fiscal year 2022-2023
20 and every fiscal year thereafter.



1 The preliminary draft settlement submitted pursuant to
2 this paragraph may consist of a monetary amount, real
3 property, or in-kind assets; and

4 (4) No later than October 1, 2027, a final report that
5 shall include a final draft settlement based on the
6 findings and considerations of the third interim
7 report submitted pursuant to paragraph (3).

8 (f) On October 1, 2027, the State, office of Hawaiian
9 affairs, and any other applicable party, as agreed upon by the
10 State and office of Hawaiian affairs, shall begin preliminary
11 negotiations regarding the final draft settlement submitted to
12 the legislature pursuant to subsection (e) (4).

13 [~~(d)~~] (g) The office of Hawaiian affairs shall provide any
14 necessary administrative support, including preparation of the
15 report required by subsection (c), to the working group."

16 SECTION 3. No later than fifteen days after the effective
17 date of this Act:

18 (1) The governor shall select one of the three members of
19 the working group initially appointed by the governor
20 pursuant to Act 226, Session Laws of Hawaii 2022, to
21 be removed from the working group; and



1 (2) The president of the senate and speaker of the house
2 of representatives shall appoint one member each to
3 the working group established by Act 226, Session Laws
4 of Hawaii 2022, as amended by this Act.

5 SECTION 4. There is appropriated out of the general
6 revenues of the State of Hawaii the sum of \$500,000 or so much
7 thereof as may be necessary for fiscal year 2025-2026 and the
8 same sum or so much thereof as may be necessary for fiscal year
9 2026-2027 to retain independent third-party professionals for
10 the purposes of Act 226, Session Laws of Hawaii 2022, as amended
11 by this Act; provided that no funds shall be made available
12 under this Act unless the office of Hawaiian affairs provides
13 matching funds for the purposes for which this sum is
14 appropriated; provided further that in obtaining services of the
15 independent third-party professionals, the legislative reference
16 bureau shall be exempt from chapter 103D, Hawaii Revised
17 Statutes.

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

20 SECTION 5. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 6. This Act shall take effect upon its approval;
2 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 the 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 public land trust working group and requires matching funds from the Office of Hawaiian Affairs.
(PROPOSED HD2)

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

