
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
2 (Act 226), which established the public land 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
9 section 5(f) of the Admission Act, which provides in
10 relevant part:

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



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

15 *(Emphasis added.)*

16 In 1978, the people of Hawaii affirmed the
17 State's trust obligation to native Hawaiians by
18 ratifying constitutional amendments from the
19 Constitutional Convention, including article XII,
20 sections 4, 5, and 6, of the Hawaii State
21 Constitution, which established OHA and charged it



1 with managing income and proceeds from the public land
2 trust for the benefit of native Hawaiians.
3 Article XVI, section 7, of the Hawaii State
4 Constitution required the State to enact legislation
5 to comply with its trust obligations. Thus, in 1979,
6 legislation, codified as chapter 10, Hawaii Revised
7 Statutes, set forth the purposes of OHA and described
8 the duties of its trustees.

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

16 Act 273, Session Laws of Hawaii 1980, enacted
17 section 10-13.5, Hawaii Revised Statutes, to
18 implement OHA's pro rata share and required that OHA
19 receive "[t]wenty per cent of all funds derived from
20 the public land trust[.]" This legislative directive
21 addressing the constitutional mandate has led to a



1 series of lawsuits and legislative enactments
2 concerning OHA's constitutional pro rata share of the
3 public land trust. The State and OHA have labored to
4 resolve the political question of the statutory pro
5 rata share of income and proceeds derived from the
6 public land trust, and payment to OHA.

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

18 Act 15, Session Laws of Hawaii 2012, (Act 15)
19 was enacted to address past-due amounts, which
20 accumulated during the period between November 7,
21 1978, up to and including June 30, 2012, of income



1 and proceeds from the public land trust owed to OHA
2 by implementing an agreement between the State and
3 OHA for the State to convey certain lands in Kakaako,
4 Oahu, to OHA valued at approximately \$200,000,000.
5 Act 15 did not, however, address the State's
6 constitutional obligations relating to OHA's twenty
7 per cent pro rata share of the income and proceeds
8 from the public land trust generated after June 30,
9 2012. Notably, a 2015-2016 financial review initiated
10 by OHA found that the minimum amount of total gross
11 receipts from sources that OHA has historically
12 claimed was approximately \$394,322,163 in the fiscal
13 year 2015-2016. Twenty per cent of this gross amount
14 is approximately \$78,900,000.

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



1 Act 226 was enacted to:

2 (1) Increase the office of Hawaiian affairs' interim
3 annual share of the income and proceeds of the public
4 land trust beginning in fiscal year 2022-2023 from
5 \$15,100,000 to \$21,500,000;

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

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

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

20 The legislature finds that Act 15 and Act 226 addressed
21 past-due amounts of income and proceeds from the public land



1 trust owed to the office of Hawaiian affairs that accumulated
2 during the period between November 7, 1978, up to and including
3 June 30, 2022.

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

19 The legislature further finds that the working group
20 established under Act 226 was assigned 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 In December 2023, the working group submitted to all state
11 agencies that hold title to, maintain management control of, or
12 otherwise use ceded lands, a written request to provide
13 information, data, documents, and maps to ensure that those
14 agencies have completely and accurately identified and reported
15 to the department of land and natural resources: (1) all ceded
16 land parcels for the purpose of an inventory; and (2) all income
17 and proceeds collected or received from the public land trust.

18 The working group has been informed that the last financial
19 review by an outside independent accounting firm of the pro rata
20 share was the fiscal year 2015-2016 financial review initiated
21 by the office of Hawaiian affairs. At the time, the financial



1 review identified total gross receipts from historically claimed
2 public land trust revenue sources in the minimum amount of
3 approximately \$394,322,163 in the fiscal year 2015-2016. Twenty
4 per cent of this gross amount is approximately \$78,900,000. The
5 working group found that there has been no new financial review
6 since the 2015-2016 financial review. The 2016 financial review
7 cost \$145,404.

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

18 The working group has been informed that work began on the
19 process to procure a consultant for the information system after
20 the enactment of Act 54 and that the development of the
21 information system began in 2012 and the information system was



1 launched in October 2018. Act 54 appropriated up to \$360,000
2 from a land conservation fund for the work by an outside
3 independent consultant. The final amount for the creation of
4 the information system and training was \$340,382.

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

18 As with the reporting to the department of land and natural
19 resources on public land trust revenues, the information system
20 is also based on self-reporting by state agencies and the
21 counties. There are some disclaimers about the information.



1 The department of land and natural resources has encouraged all
2 state and county departments to regularly update data in the
3 system. Updates, however, are also based on self-reported
4 information. The legislature believes that independent
5 third-party professionals need to evaluate this practice.

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

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



1 to include these parcels so that the information system contains
2 the complete and accurate inventory.

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

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

16 The working group has conducted research and has determined
17 that the services of one or more third-party independent
18 consultants with the necessary financial, accounting, and land
19 inventory expertise will be appropriate to address the concerns
20 that have been raised regarding the thoroughness and accuracy of



1 the information system, to ensure that the working group
2 completes its objectives under Act 226.

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

8 Accordingly, the purpose of this Act is to appropriate
9 moneys to the office of Hawaiian affairs to hire necessary staff
10 and purchase equipment and professional services on behalf of
11 the public land trust working group.

12 SECTION 2. There is appropriated out of the general
13 revenues of the State of Hawaii the sum of \$ or so
14 much thereof as may be necessary for fiscal year 2026-2027 to
15 hire necessary staff and purchase equipment and professional
16 services on behalf of the public land trust working group;
17 provided that in obtaining services by uniquely qualified
18 persons, the office of Hawaiian affairs shall be exempt from
19 chapter 103D, Hawaii Revised Statutes.

20 The sum appropriated shall be expended by the office of
21 Hawaiian affairs for the purposes of this Act.



H.B. NO. 1917

1 SECTION 3. This Act shall take effect on July 1, 2026.

2

INTRODUCED BY:


JAN 23 2026



H.B. NO. 1917

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.

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