
A BILL FOR AN ACT

RELATING TO PUBLIC TRUST RESOURCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the State holds all
2 public natural resources in trust for the benefit of present and
3 future generations pursuant to article XI, section 1, and
4 article XI, section 7, of the Hawaii State Constitution. The
5 Hawaii supreme court has affirmed that this public trust is a
6 constitutional mandate that requires the State to prioritize the
7 protection and conservation of resources.

8 The legislature further finds that while various court
9 decisions have recognized the prioritization of certain uses
10 over other uses for public trust resources, a policy has not
11 been uniformly codified for all resources and areas administered
12 by the department of land and natural resources. This lack of
13 legal clarity has led to inconsistent management, prolonged
14 litigation, and the degradation of public trust resources.

15 The legislature recognizes the governor's proclamation
16 declaring 2026 as the "Year of Our Coastal Kuleana", affirming
17 the State's responsibility to steward Hawai'i's coastal and



1 marine resources, a declaration which prioritizes public trust
2 resource protection.

3 The purpose of this Act is to require the department of
4 land and natural resources to adopt administrative rules that
5 establish a hierarchy of duty to guide management decisions in
6 accordance with the department's role as a fiduciary trustee of
7 public trust resources.

8 SECTION 2. Chapter 171, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 **"§171- Hierarchy of duty for public trust resources.**

12 (a) In administering, managing, regulating, or permitting the
13 use of public trust resources, the department shall adhere to
14 the following hierarchy of duty, listed in order of priority:

15 (1) Duty 1 - resource protection: Preservation,
16 protection, and restoration of the natural
17 environment, including ecosystems, watersheds, coastal
18 areas, marine resources, biodiversity, and ecological
19 processes. This duty is mandatory and non-
20 discretionary and shall supersede all other uses. Any



1 action that would cause significant degradation of a
2 public trust resource shall be prohibited;

3 (2) Duty 2 - public and cultural uses: Cultural uses,
4 including Native Hawaiian traditional and customary
5 practices exercised for subsistence, cultural,
6 religious, and customary purposes consistent with
7 article XII, section 7, of the Hawaii State
8 Constitution. Uses that directly serve the public
9 interest, including subsistence gathering and other
10 non-commercial uses conducted in accordance with
11 applicable laws and rules, and non-commercial
12 recreational activities; provided that such activities
13 are compatible with resource protection, public
14 safety, and the sustainability of public trust
15 resources; and

16 (3) Duty 3 - commercial uses: Commercial or for-profit
17 activities that utilize public trust resources or
18 public lands or waters. Commercial uses may be
19 permitted only when:



1 (A) The department affirmatively determines that a
2 surplus of ecological and social carrying
3 capacity exists;

4 (B) Feasibility studies, environmental review, and
5 best available science demonstrate that the
6 activity will not impair higher-priority duties;
7 and

8 (C) The use provides a clear public benefit and is
9 consistent with long-term sustainability of the
10 resource.

11 The burden of proof shall rest with the applicant or committee
12 to demonstrate compliance with this hierarchy of duty.

13 (b) The hierarchy of duty established under this section
14 shall apply to all permits, leases, licenses, easements,
15 renewals, amendments, and approvals issued or administered by
16 the department. Any existing authorization that is renewed or
17 materially amended after the effective date of this Act shall be
18 subject to the requirements of this section.

19 (c) Failure to comply with the hierarchy of duty
20 established under this section shall constitute grounds for



1 denial, revocation, or modification of any permit or
2 authorization.

3 (d) Nothing in this section shall be construed to diminish
4 or limit any constitutional protections, including Native
5 Hawaiian rights or the State's fiduciary obligations under the
6 public trust doctrine.

7 (e) The department shall adopt rules pursuant to chapter
8 91 to implement this section. The rules shall:

9 (1) Establish clear standards and criteria for determining
10 compliance with each level of the hierarchy of duty;

11 (2) Require the use of best available science, traditional
12 ecological knowledge, and Ka Pa'akai analysis;

13 (3) Provide procedures for evaluating cumulative impacts
14 and long-term sustainability; and

15 (4) Ensure meaningful public participation, including
16 consultation with Native Hawaiian practitioners."

17 SECTION 3. New statutory material is underscored.

18 SECTION 4. This Act shall take effect upon its approval.

19 INTRODUCED BY:



JAN 26 2026



Report Title:

DLNR; Public Trust Resources; Public Trust Doctrine; Hierarchy of Duty

Description:

Establishes a hierarchy of duty for public trust resources to be applicable to the decisions made by the Department of Land and Natural Resources in the management of the State's public natural resources.

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