

JAN 30 2026

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;



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



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

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

5 (2) Account for all income and proceeds from the public
6 land trust; and

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

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

20 The working group has been informed that the last financial
21 review by an outside independent accounting firm of the pro rata



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

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

20 The working group has been informed that work began on the
21 process to procure a consultant for the information system after



1 the enactment of Act 54 and that the development of the
2 information system began in 2012 and the information system was
3 launched in October 2018. Act 54 appropriated up to \$360,000
4 from a land conservation fund for the work by an outside
5 independent consultant. The final amount for the creation of
6 the information system and training was \$340,382.

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



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

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

19 The working group has been informed that there are many
20 parcels without tax map key numbers in the information system
21 and therefore may not be included in the system. This is



1 particularly so for submerged lands, which are generally
2 considered public land trust lands. The legislature believes
3 that independent third-party professionals need to evaluate how
4 to include these parcels so that the information system contains
5 the complete and accurate inventory.

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

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

19 The working group has conducted research and has determined
20 that the services of one or more third-party independent
21 consultants with the necessary financial, accounting, and land



1 inventory expertise will be appropriate to address the concerns
2 that have been raised regarding the thoroughness and accuracy of
3 the information system, to ensure that the working group
4 completes its objectives under Act 226.

5 Accordingly, the purpose of this Act is to:

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

9 (2) Require the public land trust working group to submit
10 four reports to the legislature, as follows:

11 (A) By August 1, 2027, a first interim report
12 regarding the Act 178 financial reporting and
13 accounting;

14 (B) By December 1, 2027, a second interim report
15 regarding the public land trust inventory;

16 (C) By June 1, 2028, a third interim report that
17 includes a preliminary draft of findings and
18 recommendations regarding Act 178 financial
19 reporting and accounting and the public land
20 trust inventory; and



1 (D) By October 1, 2028, a final report that includes
2 proposed legislation; and

3 (3) Authorize the office of Hawaiian affairs to provide
4 administrative support to the working group in
5 coordination with a third-party consultant.

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

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

11 (2) Account for all income and proceeds from the public
12 land trust; and

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

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

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



1 (2) Four members appointed by the office of Hawaiian
2 affairs board of trustees[.];
3 (3) Two members of the senate appointed by the president
4 of the senate;
5 (4) Two members of the house of representatives appointed
6 by the speaker of the house of representatives; and
7 (5) One non-governmental community member selected by the
8 members appointed pursuant to paragraphs (1) through
9 (4).
10 The members appointed pursuant to paragraphs (1) through
11 (4) shall elect a chairperson from among themselves.
12 (c) The working group, with the cooperation of any
13 department or agency that uses, manages, or receives income,
14 proceeds, or any other funds derived from the public land trust,
15 shall prepare and submit a report of its findings and
16 recommendations, including any proposed legislation and the
17 amount it determines for the annual amount of the twenty per
18 cent pro rata share of income and proceeds from the public land
19 trust, to the legislature.
20 (d) The working group shall oversee and be responsible for
21 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, 2027, a first interim report
17 with findings from the preliminary financial reporting
18 and accounting related to Act 178, Session Laws of
19 Hawaii 2006, required pursuant to subsection (d) (2);
20 (2) No later than December 1, 2027, a second interim
21 report with findings from the preliminary public land



1 trust inventory required pursuant to subsection
2 (d) (1);
3 (3) No later than June 1, 2028, a third interim report
4 that includes a preliminary draft of findings and
5 recommendations regarding Act 178 financial reporting
6 and accounting and the public land trust inventory;
7 and
8 (4) No later than October 1, 2028, a final report that
9 includes proposed legislation based on the findings
10 and considerations of the third interim report
11 submitted pursuant to paragraph (3).

12 [+d] (f) The office of Hawaiian affairs shall provide any
13 necessary administrative support, including preparation of the
14 [report] reports required by [subsection (e),] this Act, to the
15 working group[+] in coordination with a third-party consultant."

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



5 SECTION 4. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 5. This Act shall take effect upon its approval.

8

INTRODUCED BY:

201



S.B. NO. 3307

Report Title:

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

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 8/1/2027, a first interim report regarding Act 178, SLH 2006, financial reporting and accounting; by 12/1/2027, a second interim report regarding the public land trust inventory; by 6/1/2028, a third interim report that includes a preliminary draft of findings and recommendations regarding Act 178 financial reporting and accounting and the public land trust inventory; and by 10/1/2028, a final report that includes proposed legislation. Authorizes the Office of Hawaiian Affairs to provide administrative support to the Working Group in coordination with a third-party consultant.

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

