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# A BILL FOR AN ACT

RELATING TO HAWAIIAN AFFAIRS.

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

1           SECTION 1. The legislature finds that Public Law 103-150,  
2 states, inter alia, that the Republic of Hawaii ceded 1,800,000  
3 acres of crown, government, and public lands of the Kingdom of  
4 Hawaii, without the consent of or compensation to the Native  
5 Hawaiian people of Hawaii or their sovereign government, and  
6 that the indigenous Hawaiian people never directly relinquished  
7 their claims to their inherent sovereignty as a people or over  
8 their national lands to the United States.

9           In Act 226, Session Laws of Hawaii 2022 (Act 226), which in  
10 part established the public land trust working group, the  
11 legislature stated in relevant part:

12                     "It is incumbent upon the legislature to enact  
13 legislation that upholds its trust responsibilities  
14 and duty of care to native Hawaiians to:

15                     (1) Account for all ceded lands in the public  
16                     lands trust inventory;



- 1           (2) Account for all income and proceeds derived  
2           from the public land trust; and
- 3           (3) Transfer the full twenty per cent pro rata  
4           share of income and proceeds from the public  
5           land trust annually to the office of  
6           Hawaiian affairs (OHA) for the betterment  
7           of the conditions of native Hawaiians.

8           The genesis and source of the State's public land  
9           trust responsibility to native Hawaiians are the  
10          historical events that led to the illegal overthrow  
11          of the Kingdom of Hawaii; the transfer of  
12          approximately 1,800,000 acres of crown, government,  
13          and public lands to the United States under the 1898  
14          Joint Resolution of Annexation without the consent of  
15          and without compensation to the native Hawaiian people  
16          or their sovereign government; the admission of Hawaii  
17          as a state of the Union in 1959, with the explicit  
18          trust responsibility and requirement in section 5(f)  
19          of the 1959 Admission Act that one of the five  
20          purposes of the public land trust is that the income  
21          and proceeds from the public land trust are to be used



1 "for the betterment of the conditions of native  
2 Hawaiians"; and the 1978 Constitutional Convention's  
3 recognition that native Hawaiians are one of the  
4 beneficiaries of the public land trust and the  
5 creation of OHA to manage and administer the specific  
6 allocation of "all income and proceeds from that pro  
7 rata portion of the [public land] trust . . . for  
8 native Hawaiians" (Article XII, section 6, of the  
9 Hawaii State Constitution). The United States and  
10 the courts have consistently affirmed the trust nature  
11 of the government and crown lands, including large  
12 tracts of ceded lands used for military or other  
13 purposes under federal control.

14 In 1959, as a condition of its admission into  
15 the Union, the State of Hawaii agreed to hold certain  
16 lands granted to the State by the United States in a  
17 public trust for five purposes delineated in section  
18 5(f) of the Admission Act, which provides in relevant  
19 part:

20 The lands granted to the State of Hawaii by  
21 subsection (b) of this section and public lands



1 retained by the United States under subsections (c)  
2 and (d) and later conveyed to the State under  
3 subsection (e), together with the proceeds from the  
4 sale or other disposition of any such lands and the  
5 income therefrom, shall be held by said State as a  
6 public trust [(1)] for the support of the public  
7 schools and other public educational institutions,  
8 [(2)] *for the betterment of the conditions of native*  
9 *Hawaiians, as defined in the Hawaiian Homes Commission*  
10 *Act, 1920, as amended, [(3)] for the development of*  
11 *farm and home ownership on as widespread a basis as*  
12 *possible [(4)] for the making of public improvements,*  
13 *and [(5)] for the provision of lands for public use.*  
14 Such lands, proceeds, and income shall be managed and  
15 disposed of for one or more of the foregoing purposes  
16 in such manner as the constitution and laws of said  
17 State may provide, and their use for any other object  
18 shall constitute a breach of trust for which suit may  
19 be brought by the United States.

20 (*Emphasis added.*)



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

15          In September 1981, an initial land inventory by  
16          the department of land and natural resources listed  
17          approximately 1,271,652 acres, falling woefully short  
18          of its duty to provide a complete inventory of the  
19          public land trust lands. Additionally, the state land  
20          information management system does not include all  
21          lands held by all state entities.



1           Act 273, Session Laws of Hawaii 1980, enacted  
2           section 10-13.5, Hawaii Revised Statutes, to  
3           implement OHA's pro rata share and required that OHA  
4           receive "[t]wenty per cent of all funds derived from  
5           the public land trust[.]" This legislative directive  
6           addressing the constitutional mandate has led to a  
7           series of lawsuits and legislative enactments  
8           concerning OHA's constitutional pro rata share of the  
9           public land trust. The State and OHA have labored to  
10          resolve the political question of the statutory pro  
11          rata share of income and proceeds derived from the  
12          public land trust, and payment to OHA.

13          Act 178, Session Laws of Hawaii 2006, affirmed  
14          the State's trust obligation to native Hawaiians by  
15          requiring that the department of land and natural  
16          resources provide an annual accounting of revenue-  
17          generating public trust lands and the amounts derived  
18          from those lands to the legislature. The measure also  
19          set a fixed amount of \$15,100,000 from the pro rata  
20          share of the public land trust income and proceeds  
21          due to OHA for the betterment of the conditions of



1 native Hawaiians until further action is taken by the  
2 legislature for this purpose.

3 Act 15, Session Laws of Hawaii 2012, (Act 15)  
4 was enacted to address past-due amounts, which  
5 accumulated during the period between November 7,  
6 1978, up to and including June 30, 2012, of income  
7 and proceeds from the public land trust owed to OHA  
8 by implementing an agreement between the State and  
9 OHA for the State to convey certain lands in Kakaako,  
10 Oahu, to OHA valued at approximately \$200,000,000.  
11 Act 15 did not, however, address the State's  
12 constitutional obligations relating to OHA's twenty  
13 per cent pro rata share of the income and proceeds  
14 from the public land trust generated after June 30,  
15 2012. Notably, a 2015-2016 financial review initiated  
16 by OHA found that the minimum amount of total gross  
17 receipts from sources that OHA has historically  
18 claimed was approximately \$394,322,163 in the fiscal  
19 year 2015-2016. Twenty per cent of this gross amount  
20 is approximately \$78,900,000."



1 In 2022, the legislature found that to uphold its  
2 constitutional trust obligation and duty to native Hawaiians, it  
3 needed to enact another legislative measure in light of the  
4 information, data, and facts provided to the legislature by  
5 state agencies since the enactment of Act 178, Session Laws of  
6 Hawaii 2006, more than a decade earlier.

7 Act 226 was enacted to:

- 8 (1) Increase the office of Hawaiian affairs' interim  
9 annual share of the income and proceeds of the public  
10 land trust beginning in fiscal year 2022-2023 from  
11 \$15,100,000 to \$21,500,000;
- 12 (2) Appropriate \$64,000,000 to the office of Hawaiian  
13 affairs; and
- 14 (3) Establish a public land trust working group (working  
15 group) to determine the pro rata share of income and  
16 proceeds from the public land trust due annually to  
17 the office of Hawaiian affairs after June 30, 2022.

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)



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

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

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



1           for the betterment of the conditions of Native  
2           Hawaiians.

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

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



1           The legislature notes that Act 178, Session Laws of Hawaii  
2 2006 (Act 178), requires the department of land and natural  
3 resources, with the cooperation of the department of budget and  
4 finance and any other state department or agency that uses or  
5 manages public lands, to provide an accounting of all receipts  
6 from lands described in section 5(f) of the Admission Act for  
7 the prior fiscal year. The working group has been informed that  
8 state agencies' self-reported information for the purposes of  
9 these reports is not audited or reviewed for accuracy by the  
10 department of land and natural resources.

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

19           As part of the implementation of the information system,  
20 all state and county agencies that hold title to land are  
21 required to submit their entire land inventory, regardless of



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

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



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

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

18           The working group has been informed that lands under  
19 federal jurisdiction are not included in the information system  
20 and that the counties do not report any of the revenue from the  
21 public land trust to the department of land and natural



1 resources for the purposes of the annual accounting required  
2 pursuant to Act 178 (Act 178 report).

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

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

17 Accordingly, the purpose of this Act is to:

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



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

3 (A) By August 1, 2027, a first interim report  
4 regarding the Act 178 financial reporting and  
5 accounting;

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

8 (C) By June 1, 2028, a third interim report that  
9 includes a preliminary draft of findings and  
10 recommendations regarding Act 178 financial  
11 reporting and accounting and the public land  
12 trust inventory; and

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

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

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

20 "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) Three 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 who shall serve as an ex-officio, non-voting member;
- 18 (4) One member appointed by the speaker of the house of  
19 representatives, who shall serve as an ex-officio,  
20 non-voting member;



1       (5) One member of the senate appointed by the president of  
2       the senate, who shall serve as an ex-officio, non-  
3       voting member;

4       (6) One member of the house of representatives appointed  
5       by the speaker of the house of representatives, who  
6       shall serve as an ex-officio, non-voting member; and

7       (7) One non-governmental community member selected by the  
8       members appointed pursuant to paragraphs (1) through  
9       (6).

10       All members shall meet some of the following  
11       qualifications: experience in financial accounting or auditing;  
12       experience in complex negotiations; expertise in Native Hawaiian  
13       history, governance, and legal entitlements; and demonstrated  
14       commitment to the Native Hawaiian community.

15       The office of Hawaiian affairs shall select one of the  
16       members appointed pursuant to paragraph (2) to serve as the  
17       chairperson of the working group.

18       (c) The working group, with the cooperation of any  
19 department or agency that uses, manages, or receives income,  
20 proceeds, or any other funds derived from the public land trust,  
21 shall prepare and submit a report of its findings and



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

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

9 (1) Regarding the public land trust inventory:

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

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

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

18 (D) Identify issues and gaps in reporting on public  
19 land trust inventory and encumbrances across  
20 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 subsection  
21           (c), the working group shall submit to the legislature:



1       (1) No later than August 1, 2027, a first interim report  
2       on the progress toward the preliminary financial  
3       reporting and accounting related to Act 178, Session  
4       Laws of Hawaii 2006, required pursuant to subsection  
5       (d) (2);

6       (2) No later than December 1, 2027, a second interim  
7       report on the progress toward the public land trust  
8       inventory required pursuant to subsection (d) (1);

9       (3) No later than June 1, 2028, a third interim report  
10       that includes a preliminary draft of findings and  
11       recommendations regarding Act 178, Session Laws of  
12       Hawaii 2006, financial reporting and accounting and  
13       the public land trust inventory; and

14       (4) No later than October 1, 2028, a final report that  
15       includes proposed legislation based on the findings  
16       and considerations of the third interim report  
17       submitted pursuant to paragraph (3).

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



1 SECTION 3. No later than fifteen days after the effective  
2 date of this Act, the president of the senate and speaker of the  
3 house of representatives shall appoint two members each to the  
4 working group established by Act 226, Session Laws of Hawaii  
5 2022, as amended by this Act.

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

8 SECTION 5. This Act shall take effect on July 1, 3000.



**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. 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.*

