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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. 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  
13 Hawaiians, it must enact another legislative measure in  
14 light of the information, data, and facts provided to the  
15 legislature by state agencies since the enactment of Act  
16 178, Session Laws of Hawaii 2006, more than a decade  
17 earlier.

18 Act 226 was enacted to:

19 (1) Increase the office of Hawaiian affairs' interim  
20 annual share of the income and proceeds of the public



1 land trust beginning in fiscal year 2022-2023 from  
2 \$15,100,000 to \$21,500,000;

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

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

9 Conference Committee Report No. 250-22 filed with S.B. No.  
10 2021, S.D. 1, H.D. 2, C.D. 1, which would later be enacted as  
11 Act 226, further found that "the past-due sum owed to the Office  
12 of Hawaiian Affairs for any and all underpayments of the pro-  
13 rata portion of the income and proceeds of the Public Land Trust  
14 for the period from July 1, 2012, to June 30, 2022, is  
15 \$64,000,000, and that this sum is intended to represent the  
16 cumulative impact of an inflation adjustment for that period."

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



1           The legislature finds that Act 54, Session Laws of Hawaii  
2 2011 (Act 54), mandates the establishment of a comprehensive  
3 information system to inventory and maintain information about  
4 the lands of the public land trust as described in section 5(f)  
5 of the Admission Act and article XII, section 4 of the state  
6 constitution. The department of land and natural resources  
7 worked with a consultant to develop a public land trust  
8 information system (information system) to satisfy the  
9 requirements of Act 54. The information system will be a  
10 geographic information system that is intended for a complete  
11 inventory of all state-owned and county-owned lands, as well as  
12 a complete inventory of encumbrances issued by state and county  
13 agencies over these lands. To meet these goals, each state or  
14 county agency must submit comprehensive lists of its land and  
15 encumbrance inventories.

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

- 18           (1) Account for all ceded lands in the public land trust  
19                 inventory;
- 20           (2) Account for all income and proceeds from the public  
21                 land trust; and



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

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

14          The working group has been informed that the last financial  
15          review by an outside independent accounting firm of the pro rata  
16          share was the fiscal year 2015-2016 financial review initiated  
17          by the office of Hawaiian affairs. At the time, the financial  
18          review identified total gross receipts from historically claimed  
19          public land trust revenue sources in the minimum amount of  
20          approximately \$394,322,163 in the fiscal year 2015-2016. Twenty  
21          per cent of this gross amount is approximately \$78,900,000. The



1 working group found that there has been no new financial review  
2 since the 2015-2016 financial review. The 2016 financial review  
3 cost \$145,404.

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

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



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

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



1 information. The legislature believes that independent  
2 third-party professionals need to evaluate this practice.

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

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

20 The working group has been informed that the lands under  
21 federal jurisdiction are not included in the information system



1 and that the counties do not report any of the revenue from the  
2 public land trust to the department of land and natural  
3 resources for the purposes of the annual accounting required  
4 pursuant to Act 178 (Act 178 report).

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

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

19 Based on the amounts expended for the office of Hawaiian  
20 affairs' 2016 financial review and the creation and launch of  
21 the information system, which cost \$485,786, the working group



1 has estimated that approximately \$1,000,000 is needed for the  
2 retention of third-party independent professionals.

3 Accordingly, the purpose of this Act is to appropriate  
4 moneys to the office of Hawaiian affairs for the hiring of  
5 necessary staff and the purchase of equipment and professional  
6 services on behalf of the public land trust working group.

7 SECTION 2. There is appropriated out of the general  
8 revenues of the State of Hawaii the sum of \$ or so  
9 much thereof as may be necessary for fiscal year 2025-2026 and  
10 the same sum or so much thereof as may be necessary for fiscal  
11 year 2026-2027 for the hiring of necessary staff and the  
12 purchase of equipment and professional services on behalf of the  
13 public land trust working group; provided that in obtaining  
14 services by uniquely qualified persons, the office of Hawaiian  
15 affairs shall be exempt from chapter 103D, Hawaii Revised  
16 Statutes.

17 The sums appropriated shall be expended by the office of  
18 Hawaiian affairs for the purposes of this Act.

19 SECTION 3. This Act shall take effect on July 1, 3000.



**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. Effective 7/1/3000. (HD1)

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