THE SENATE
THIRTY-THIRD LEGISLATURE, 2025
STATE OF HAWAII

S.B. NO. 903 S.D. 2 H.D. 2 PROPOSED

A BILL FOR AN ACT

RELATING TO HAWAIIAN AFFAIRS.

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

SECTION 1. In Act 226, Session Laws of Hawaii 2022 (Act 226), which in part established the public lands trust working group, the legislature stated in relevant part:

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

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

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

(3) Transfer the full twenty per cent pro rata share of income and proceeds from the public land trust annually to the office of Hawaiian affairs (OHA) for the betterment of the conditions of native Hawaiians.

The genesis and source of the State's public land trust responsibility to native Hawaiians are the

historical events that led to the illegal overthrow of the Kingdom of Hawaii; the transfer of approximately 1,800,000 acres of crown, government, and public lands to the United States under the 1898 Joint Resolution of Annexation without the consent of and without compensation to the native Hawaiian people or their sovereign government; the admission of Hawaii as a state of the Union in 1959, with the explicit trust responsibility and requirement in section 5(f) of the 1959 Admission Act that one of the five purposes of the public land trust is that the income and proceeds from the public land trust are to be used "for the betterment of the conditions of native Hawaiians"; and the 1978 Constitutional Convention's recognition that native Hawaiians are one of the beneficiaries of the public land trust and the creation of OHA to manage and administer the specific allocation of "all income and proceeds from that pro rata portion of the [public land] trust . . . for native Hawaiians" (Article XII, section 6, of the Hawaii State Constitution). The United States and the courts have consistently affirmed the trust nature

of the government and crown lands, including large tracts of ceded lands used for military or other purposes under federal control.

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

The lands granted to the State of Hawaii by subsection (b) of this section and public lands retained by the United States under subsections (c) and (d) and later conveyed to the State under subsection (e), together with the proceeds from the sale or other disposition of any such lands and the income therefrom, shall be held by said State as a public trust [(1)] for the support of the public schools and other public educational institutions, [(2)] *for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended*, [(3)] for the development of farm and home ownership on as widespread a basis as

possible [(4)] for the making of public improvements, and [(5)] for the provision of lands for public use. Such lands, proceeds, and income shall be managed and disposed of for one or more of the foregoing purposes in such manner as the constitution and laws of said State may provide, and their use for any other object shall constitute a breach of trust for which suit may be brought by the United States.

(*Emphasis added.*)

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

forth the purposes of OHA and described the duties of its trustees.

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

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

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

Act 15, Session Laws of Hawaii 2012, (Act 15) was enacted to address past-due amounts, which accumulated during the period between November 7, 1978, up to and including June 30, 2012, of income and proceeds from the public land trust owed to OHA by implementing an agreement between the State and OHA for the State to convey certain lands in Kakaako, Oahu, to OHA valued at approximately $200,000,000. Act 15 did not, however, address the State's constitutional obligations relating to OHA's twenty per cent pro rata share of the income and proceeds

from the public land trust generated after June 30, 2012. Notably, a 2015-2016 financial review initiated by OHA found that the minimum amount of total gross receipts from sources that OHA has historically claimed was approximately $394,322,163 in the fiscal year 2015-2016. Twenty per cent of this gross amount is approximately $78,900,000."

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

Act 226 was enacted to:

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

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

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

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

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

The legislature finds that Act 54, Session Laws of Hawaii 2011 (Act 54), mandates the establishment of a comprehensive information system to inventory and maintain information about the lands of the public land trust as described in section 5(f) of the Admission Act and article XII, section 4 of the state

constitution. The department of land and natural resources worked with a consultant to develop a public land trust information system (information system) to satisfy the requirements of Act 54. The information system will be a geographic information system that is intended for a complete inventory of all state-owned and county-owned lands, as well as a complete inventory of encumbrances issued by state and county agencies over these lands. To meet these goals, each state or county agency must submit comprehensive lists of its land and encumbrance inventories.

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

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

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

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

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

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

The legislature notes that Act 178, Session Laws of Hawaii 2006 (Act 178), requires the department of land and natural resources, with the cooperation of the department of budget and

finance and any other state department or agency that uses or manages public lands, to provide an accounting of all receipts from lands described in section 5(f) of the Admission Act for the prior fiscal year. The working group has been informed that state agencies' self-reported information for the purposes of these reports is not audited or reviewed for accuracy by the department of land and natural resources.

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

As part of the implementation of the information system, all state and county agencies that hold title to land are required to submit their entire land inventory, regardless of the public land trust status, regardless of whether there are any encumbrances on the land, and regardless of whether revenue is being generated on the land. All state and county agencies are additionally required to submit encumbrances that they have

issued over state-owned and county-owned land, regardless of whether they hold title to that land or not and regardless of whether they were revenue generating. This includes all encumbrances, including leases, permits, right-of-entries, and easements. The goal was to have all encumbrances issued over state-owned and county-owned land represented in the information system.

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

The working group has been informed that when a parcel consists of both ceded and nonceded lands, the state agencies use a "rule of thumb" to determine whether a parcel is ceded or not. When more than fifty per cent of a parcel is ceded land, it is categorized as ceded. The working group has been unable to determine whether this is detrimental to the calculation of

the office of Hawaiian affairs' pro rata share. The legislature believes that independent third-party professionals need to evaluate this practice.

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

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

To the knowledge of the working group, there has been no third-party independent audit, review, or evaluation of the thoroughness and accuracy of the information system or the current reporting by agencies for the purpose of preparing the annual Act 178 report, nor has there been any analysis or

comparison of the data in the information system with the data in the Act 178 reports.

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

Based on the amounts expended for the office of Hawaiian affairs' 2016 financial review and the creation and launch of the information system, which cost $485,786, the working group has estimated that approximately $1,000,000 is needed for the retention of third-party independent professionals.

Accordingly, the purpose of this Act is to:

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

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

(A) By August 1, 2026, a first interim report regarding the public land trust inventory;

(B) By December 1, 2026, a second interim report regarding Act 178 financial reporting and accounting;

(C) By June 1, 2027, a preliminary draft settlement of the income and proceeds from the pro rata portion of the public land trust, which may consist of a monetary amount, real property, or in-kind assets; and

(D) By October 1, 2027, a final report that includes a final draft settlement;

(3) Require the State, office of Hawaiian affairs, and other applicable parties to begin preliminary negotiations regarding the final draft settlement by October 1, 2027; and

(4) Appropriate funds to the legislative reference bureau to retain independent third-party professionals, subject to matching funds from the office of Hawaiian affairs.

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

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

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

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

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

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

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

(2) Three members appointed by the office of Hawaiian affairs board of trustees[~~.~~];

(3) One member appointed by the president of the senate; and

(4) One member appointed by the speaker of the house of representatives.

(c) The working group, with the cooperation of any department or agency that uses, manages, or receives income, proceeds, or any other funds derived from the public land trust,

shall prepare and submit a report of its findings and recommendations, including any proposed legislation and the amount it determines for the annual amount of the twenty per cent pro rata share of income and proceeds from the public land trust, to the legislature.

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

(1) Regarding the public land trust inventory:

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

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

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

(D) Identify issues and gaps in reporting on public land trust inventory and encumbrances across federal, state, and county agencies;

(E) Assess the accuracy of the reporting of parcel trust status; and

(F) Recommend improvements to reporting consistency, land inventory accuracy, encumbrance reporting, and assignments of tax map key numbers to all parcels; and

(2) Regarding section 5 of Act 178, Session Laws of Hawaii 2006, financial reporting and accounting:

(A) Document the current processes as to how the data is being collected and reported;

(B) Validate the accuracy, completeness, and reliability of the reporting of revenue data derived from the public land trust;

(C) Identify issues and gaps in reporting revenues across state agencies;

(D) Assess the accuracy of the reporting of parcel trust status; and

(E) Recommend improvements to financial tracking and reporting consistency for all parcels.

(e) In addition to the report required under subsection (c), the working group shall submit to the legislature:

(1) No later than August 1, 2026, a first interim report with findings from the preliminary public land trust inventory required pursuant to subsection (d)(1);

(2) No later than December 1, 2026, a second interim report with findings from the preliminary financial reporting and accounting related to Act 178, Session Laws of Hawaii 2006, required pursuant to subsection (d)(2);

(3) No later than June 1, 2027, a third interim report that shall:

(A) Be based on the reports submitted pursuant to paragraphs (1) and (2); and

(B) Include a preliminary draft settlement of the income and proceeds from the pro rata portion of the public land trust under article XII, section 6, of the state constitution for expenditure by the office of Hawaiian affairs for the betterment of the conditions of native Hawaiians for each fiscal year beginning with fiscal year 2022-2023 and every fiscal year thereafter.

The preliminary draft settlement submitted pursuant to this paragraph may consist of a monetary amount, real property, or in-kind assets; and

(4) No later than October 1, 2027, a final report that shall include a final draft settlement based on the findings and considerations of the third interim report submitted pursuant to paragraph (3).

(f) On October 1, 2027, the State, office of Hawaiian affairs, and any other applicable party, as agreed upon by the State and office of Hawaiian affairs, shall begin preliminary negotiations regarding the final draft settlement submitted to the legislature pursuant to subsection (e)(4).

[~~(d)~~] (g) The office of Hawaiian affairs shall provide any necessary administrative support, including preparation of the report required by subsection (c), to the working group."

SECTION 3. No later than fifteen days after the effective date of this Act:

(1) The governor shall select one of the three members of the working group initially appointed by the governor pursuant to Act 226, Session Laws of Hawaii 2022, to be removed from the working group; and

(2) The president of the senate and speaker of the house of representatives shall appoint one member each to the working group established by Act 226, Session Laws of Hawaii 2022, as amended by this Act.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of $500,000 or so much thereof as may be necessary for fiscal year 2025-2026 and the same sum or so much thereof as may be necessary for fiscal year 2026-2027 to retain independent third-party professionals for the purposes of Act 226, Session Laws of Hawaii 2022, as amended by this Act; provided that no funds shall be made available under this Act unless the office of Hawaiian affairs provides matching funds for the purposes for which this sum is appropriated; provided further that in obtaining services of the independent third-party professionals, the legislative reference bureau shall be exempt from chapter 103D, Hawaii Revised Statutes.

The sums appropriated shall be expended by the legislative reference bureau for the purposes of this Act.

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

SECTION 6. This Act shall take effect upon its approval; provided that section 4 shall take effect on July 1, 2025.

S.B. NO. 903 S.D. 2 H.D. 2 PROPOSED

Report Title:
Public Land Trust Working Group; OHA; Public Land Trust; Inventory; Financial Reporting and Accounting; Reports; Settlement; LRB; Appropriation

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 8/1/2026, a first interim report regarding the public land trust inventory; by 12/1/2026, a second interim report regarding Act 178, SLH 2006, financial reporting and accounting; by 6/1/2027, a preliminary draft settlement of the income and proceeds from the pro rata portion of the public land trust; and by 10/1/2027, a final report that includes a final draft settlement. Requires the State, OHA, and other applicable parties to begin preliminary negotiations regarding the final draft settlement by 10/1/2027. Appropriates funds for the Legislative Reference Bureau to retain independent third-party professionals for the public land trust working group and requires matching funds from the Office of Hawaiian Affairs. (PROPOSED HD2)

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