

MAR 16 2026

SENATE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF THE ATTORNEY GENERAL TO SUBMIT AN
ANNUAL REPORT ON LITIGATION INVOLVING NATIVE HAWAIIAN
TRADITIONAL AND CUSTOMARY RIGHTS AND THE STATE'S PUBLIC
TRUST OBLIGATIONS UNDER ARTICLES XI AND XII OF THE HAWAII
STATE CONSTITUTION.

1 WHEREAS, the Hawaii Constitution imposes affirmative
2 fiduciary obligations on the State and its agencies to protect
3 Native Hawaiian traditional and customary rights and to manage
4 public trust lands and natural resources for the benefit of
5 present and future generations; and

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7 WHEREAS, article XI, section 1, of the Hawaii State
8 Constitution affirms the State's duty to protect and preserve
9 Hawaii's natural public trust resources; and

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11 WHEREAS, article XI, section 7, of the Hawaii State
12 Constitution affirms the State's duty to protect, control, and
13 regulate Hawaii's water resources for the benefit of its people;
14 and

15
16 WHEREAS, article XII, section 4, of the Hawaii State
17 Constitution affirms the State's duty to also hold in trust
18 "ceded," or seized lands taken from the Hawaiian people without
19 their consent or compensation, for the benefit of Native
20 Hawaiians and the general public; and

21
22 WHEREAS, article XII, section 7, of the Hawaii State
23 Constitution affirms and protects the traditional and customary
24 rights of Native Hawaiians and imposes an obligation on the
25 State and its political subdivisions to preserve and protect
26 those rights; and

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28 WHEREAS, courts in the State of Hawaii have repeatedly
29 reviewed and, in many instances, overturned or corrected agency



1 actions that failed to comply with these constitutional duties;
2 and

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4 WHEREAS, selected holdings by the courts include the
5 following:

- 6 (1) In *In re Water Use Permit Applications*, 94 Hawai'i 97
7 (2000), the Hawaii Supreme Court rejected the state's
8 position that keeping public trust water in streams
9 constitutes waste, and that a lack of evidence of
10 demand justifies the draining of Kahana stream;
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- 12 (2) In *In re Wai'ola o Moloka'i*, 103 Hawai'i 401 (2004),
13 and in *In re Kukui*, 116 Hawai'i 481 (2007), the Hawaii
14 Supreme Court found the State failed to recognize and
15 protect Department of Hawaiian Home Lands water
16 reservations and Native Hawaiian traditional and
17 customary rights as public trust purposes of water;
18
- 19 (3) In *In re Petition to Amend Interim Instream Flow*
20 *Standards for Waikamoi*, 128 Hawai'i 497 (2012), the
21 Hawaii Intermediate Court of Appeals rejected
22 arguments limiting protections for Native Hawaiian
23 cultural practitioners' water rights and reaffirmed
24 that decisions affecting water resources must comply
25 with the State's public trust obligations and
26 procedural safeguards;
27
- 28 (4) In *In re 'Īao Ground Water Mgmt. Area High-Level Source*
29 *Water User Permit Apps.*, 128 Hawai'i 228 (2012), the
30 Hawaii Supreme Court found that the state failed to
31 adequately protect Native Hawaiian traditional and
32 customary rights and consider other instream public
33 uses in Nā Wai 'Ehā, and failed to adequately address
34 massive water waste and alternative water sources as
35 required by the public trust;
36
- 37 (5) In *Kilakila 'O Haleakalā v. Board of Land and Natural*
38 *Resources*, 131 Hawai'i 193 (2013), the Hawaii Supreme
39 Court rejected the State's argument that the Board of
40 Land and Natural Resources could vote to grant a
41 conservation district use permit prior to holding a



1 contested case hearing as requested by Native Hawaiian
2 cultural practitioners;

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4 (6) In *Ching v. Case*, 145 Hawai'i 148, 449 P.3d 1146
5 (2019), the Hawaii Supreme Court rejected the State's
6 argument that it could delegate its constitutional
7 public trust duty to protect and preserve "ceded"
8 (seized) public trust lands to the lessee of those
9 lands, particularly after repeated reports of harm to
10 trust property in violation of the lease;

11
12 (7) In *In re Surface Water Use Applications*, 154 Hawai'i
13 309 (2024), the Hawaii Supreme Court rejected the
14 State's argument that it need not take the initiative
15 to examine how more water could be restored to Nā Wai
16 'Ehā after the closure of sugar operations in central
17 Maui, and need not examine how Native Hawaiian
18 traditional and customary rights could be specifically
19 impacted by not updating minimum stream flow
20 requirements;

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22 (8) In *Frankel v. Board of Land and Natural Resources*, No.
23 CAAP-20-0000603 (Haw. Intermediate Ct. App. Jan. 29,
24 2025), the Intermediate Court of Appeals concluded
25 that the State had not demonstrated compliance with
26 its public trust duties in the management of "ceded"
27 (seized) lands known as "Lot 41" and clarified that
28 the public trust doctrine applies to such lands and
29 requires agencies to exercise diligence and
30 transparency in decision-making affecting public trust
31 resources; and

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33 (9) In *Kia'i Wai O Wai'ale'ale v. BLNR*, SCWC-23-0000383
34 (Hawai'i Sep. 30, 2025), the Hawai'i Supreme Court
35 rejected the State's argument that the Board of Land
36 and Natural Resources had no constitutional public
37 trust duty or authority to protect Native Hawaiian
38 traditional and customary rights harmed or threatened
39 by violations of a Board permit; and
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41 WHEREAS, repeated judicial review of agency actions
42 affecting Native Hawaiian traditional and customary rights and



1 public trust resources highlights the need for careful legal
2 analysis and adherence to constitutional, statutory, and
3 procedural requirements in state decision-making; and
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5 WHEREAS, repeated litigation necessary to correct legally
6 erroneous or procedurally deficient agency actions has imposed
7 significant financial, personal, and institutional burdens on
8 Native Hawaiian community members, their allies, and public
9 interest organizations seeking to uphold constitutional
10 protections and the State's public trust responsibilities; and
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12 WHEREAS, judicial decisions invalidating agency actions
13 based on violations of public trust duties or other
14 constitutional provisions may have significant fiscal,
15 operational, and policy implications for the State; and
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17 WHEREAS, the Legislature finds that improved transparency
18 and interagency learning regarding litigation outcomes would
19 promote constitutional compliance, reduce future litigation
20 risk, and strengthen public confidence in state governance; now,
21 therefore,
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23 BE IT RESOLVED by the Senate of the Thirty-third
24 Legislature of the State of Hawaii, Regular Session of 2026, the
25 House of Representatives concurring, that the Department of the
26 Attorney General is requested to submit an annual report to the
27 Legislature regarding litigation involving state agency actions
28 affecting Native Hawaiian traditional and customary rights
29 protected under Article XII, Section 7 of the Hawaii
30 Constitution, and the State's public trust obligations under
31 Article XI, Sections 1 and 7, and Article XII, Section 4 of the
32 Hawaii Constitution; and
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34 BE IT FURTHER RESOLVED that the annual report include, for
35 the preceding fiscal year:
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- 37 (1) A summary of pending and completed litigation
38 involving alleged violations of Native Hawaiian
39 traditional and customary rights protected under the
40 Hawaii Constitution;
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- 1 (2) A summary of litigation involving alleged violations
2 of the State's public trust obligations in the
3 management of public lands, water resources, and other
4 natural resources;
5 (3) A description of the legal issues raised in such cases
6 and the status or outcome of the litigation;
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8 (4) An assessment of whether agency actions challenged in
9 the litigation complied with constitutional
10 protections for Native Hawaiian traditional and
11 customary practices and the State's fiduciary duties
12 in managing public trust resources; and
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14 (5) Any corrective actions or policy changes implemented
15 by state agencies in response to judicial decisions
16 involving these constitutional duties; and
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18 BE IT FURTHER RESOLVED that the Department of the Attorney
19 General is requested to submit the annual report no later than
20 twenty days prior to the convening of each Regular Session of
21 the Legislature; and
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23 BE IT FURTHER RESOLVED that certified copies of this
24 Concurrent Resolution be transmitted to the Attorney General of
25 the State of Hawaii and the heads of all principal state
26 departments and agencies.
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OFFERED BY: 

