

MAR 1 6 2026

SENATE 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

6
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

10
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

27
28 WHEREAS, courts in the State of Hawaii have repeatedly
29 reviewed and, in many instances, overturned or corrected agency
30 actions that failed to comply with these constitutional duties;
31 and



1
2 WHEREAS, selected holdings by the courts include the
3 following:

- 4 (1) In *In re Water Use Permit Applications*, 94 Hawai'i 97
5 (2000), the Hawaii Supreme Court rejected the state's
6 position that keeping public trust water in streams
7 constitutes waste, and that a lack of evidence of
8 demand justifies the draining of Kahana stream;
9
- 10 (2) In *In re Wai'ola o Moloka'i*, 103 Hawai'i 401 (2004),
11 and in *In re Kukui*, 116 Hawai'i 481 (2007), the Hawaii
12 Supreme Court found the State failed to recognize and
13 protect Department of Hawaiian Home Lands water
14 reservations and Native Hawaiian traditional and
15 customary rights as public trust purposes of water;
16
- 17 (3) In *In re Petition to Amend Interim Instream Flow*
18 *Standards for Waikamoi*, 128 Hawai'i 497 (2012), the
19 Hawaii Intermediate Court of Appeals rejected
20 arguments limiting protections for Native Hawaiian
21 cultural practitioners' water rights and reaffirmed
22 that decisions affecting water resources must comply
23 with the State's public trust obligations and
24 procedural safeguards;
25
- 26 (4) In *In re 'Īao Ground Water Mgmt. Area High-Level Source*
27 *Water User Permit Apps.*, 128 Hawai'i 228 (2012), the
28 Hawaii Supreme Court found that the state failed to
29 adequately protect Native Hawaiian traditional and
30 customary rights and consider other instream public
31 uses in Nā Wai 'Ehā, and failed to adequately address
32 massive water waste and alternative water sources as
33 required by the public trust;
34
- 35 (5) In *Kilakila 'O Haleakalā v. Board of Land and Natural*
36 *Resources*, 131 Hawai'i 193 (2013), the Hawaii Supreme
37 Court rejected the State's argument that the Board of
38 Land and Natural Resources could vote to grant a
39 conservation district use permit prior to holding a
40 contested case hearing as requested by Native Hawaiian
41 cultural practitioners;
42



- 1 (6) In *Ching v. Case*, 145 Hawai'i 148, 449 P.3d 1146
2 (2019), the Hawaii Supreme Court rejected the State's
3 argument that it could delegate its constitutional
4 public trust duty to protect and preserve "ceded"
5 (seized) public trust lands to the lessee of those
6 lands, particularly after repeated reports of harm to
7 trust property in violation of the lease;
8
- 9 (7) In *In re Surface Water Use Applications*, 154 Hawai'i
10 309 (2024), the Hawaii Supreme Court rejected the
11 State's argument that it need not take the initiative
12 to examine how more water could be restored to Nā Wai
13 'Ehā after the closure of sugar operations in central
14 Maui, and need not examine how Native Hawaiian
15 traditional and customary rights could be specifically
16 impacted by not updating minimum stream flow
17 requirements;
18
- 19 (8) In *Frankel v. Board of Land and Natural Resources*, No.
20 CAAP-20-0000603 (Haw. Intermediate Ct. App. Jan. 29,
21 2025), the Intermediate Court of Appeals concluded
22 that the State had not demonstrated compliance with
23 its public trust duties in the management of "ceded"
24 (seized) lands known as "Lot 41" and clarified that
25 the public trust doctrine applies to such lands and
26 requires agencies to exercise diligence and
27 transparency in decision-making affecting public trust
28 resources; and
29
- 30 (9) In *Kia'i Wai O Wai'ale'ale v. BLNR*, SCWC-23-0000383
31 (Hawai'i Sep. 30, 2025), the Hawai'i Supreme Court
32 rejected the State's argument that the Board of Land
33 and Natural Resources had no constitutional public
34 trust duty or authority to protect Native Hawaiian
35 traditional and customary rights harmed or threatened
36 by violations of a Board permit; and
37

38 WHEREAS, repeated judicial review of agency actions
39 affecting Native Hawaiian traditional and customary rights and
40 public trust resources highlights the need for careful legal
41 analysis and adherence to constitutional, statutory, and
42 procedural requirements in state decision-making; and



1
2 WHEREAS, repeated litigation necessary to correct legally
3 erroneous or procedurally deficient agency actions has imposed
4 significant financial, personal, and institutional burdens on
5 Native Hawaiian community members, their allies, and public
6 interest organizations seeking to uphold constitutional
7 protections and the State's public trust responsibilities; and
8

9 WHEREAS, judicial decisions invalidating agency actions
10 based on violations of public trust duties or other
11 constitutional provisions may have significant fiscal,
12 operational, and policy implications for the State; and
13

14 WHEREAS, the Legislature finds that improved transparency
15 and interagency learning regarding litigation outcomes would
16 promote constitutional compliance, reduce future litigation
17 risk, and strengthen public confidence in state governance; now,
18 therefore,
19

20 BE IT RESOLVED by the Senate of the Thirty-third
21 Legislature of the State of Hawaii, Regular Session of 2026,
22 that the Department of the Attorney General is requested to
23 submit an annual report to the Legislature regarding litigation
24 involving state agency actions affecting Native Hawaiian
25 traditional and customary rights protected under Article XII,
26 Section 7 of the Hawaii Constitution, and the State's public
27 trust obligations under Article XI, Sections 1 and 7, and
28 Article XII, Section 4 of the Hawaii Constitution; and
29

30 BE IT FURTHER RESOLVED that the annual report include, for
31 the preceding fiscal year:
32

- 33 (1) A summary of pending and completed litigation
34 involving alleged violations of Native Hawaiian
35 traditional and customary rights protected under the
36 Hawaii Constitution;
37
38 (2) A summary of litigation involving alleged violations
39 of the State's public trust obligations in the
40 management of public lands, water resources, and other
41 natural resources;



- 1 (3) A description of the legal issues raised in such cases
- 2 and the status or outcome of the litigation;
- 3
- 4 (4) An assessment of whether agency actions challenged in
- 5 the litigation complied with constitutional
- 6 protections for Native Hawaiian traditional and
- 7 customary practices and the State's fiduciary duties
- 8 in managing public trust resources; and
- 9
- 10 (5) Any corrective actions or policy changes implemented
- 11 by state agencies in response to judicial decisions
- 12 involving these constitutional duties; and
- 13

14 BE IT FURTHER RESOLVED that the Department of the Attorney
 15 General is requested to submit the annual report no later than
 16 twenty days prior to the convening of each Regular Session of
 17 the Legislature; and

18
 19 BE IT FURTHER RESOLVED that certified copies of this
 20 Resolution be transmitted to the Attorney General of the State
 21 of Hawaii and the heads of all principal state departments and
 22 agencies.

23
 24
 25 OFFERED BY:  _____

