

JAN 24 2024

A BILL FOR AN ACT

RELATING TO PUBLIC LAND.

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

1 SECTION 1. The legislature finds that in Act 226, Session
2 Laws of Hawaii 2022, (Act 226), it found the following:

3 "[I]t must set right and fulfill its trust
4 responsibilities to native Hawaiians, consistent with
5 governmental action across America to address injustices
6 against Indigenous Peoples. It is incumbent upon the
7 legislature to enact legislation that upholds its trust
8 responsibilities and duty of care to native Hawaiians to:

- 9 (1) Account for all ceded lands in the public lands trust
10 inventory;
- 11 (2) Account for all income and proceeds derived from the
12 public land trust; and
- 13 (3) Transfer the full twenty per cent pro rata share of
14 income and proceeds from the public land trust
15 annually to the office of Hawaiian affairs (OHA) for
16 the betterment of the conditions of native Hawaiians.



1 The genesis and source of the State's public land
2 trust responsibility to native Hawaiians are the historical
3 events that led to the illegal overthrow of the Kingdom of
4 Hawaii; the transfer of approximately 1,800,000 acres of
5 crown, government, and public lands to the United States
6 under the 1898 Joint Resolution of Annexation without the
7 consent of and without compensation to the native Hawaiian
8 people or their sovereign government; the admission of
9 Hawaii as a state of the Union in 1959, with the explicit
10 trust responsibility and requirement in section 5(f) of the
11 1959 Admission Act that one of the five purposes of the
12 public land trust is that the income and proceeds from the
13 public land trust are to be used 'for the betterment of the
14 conditions of native Hawaiians'; and the 1978
15 Constitutional Convention's recognition that native
16 Hawaiians are one of the beneficiaries of the public land
17 trust and the creation of OHA to manage and administer the
18 specific allocation of 'all income and proceeds from that
19 pro rata portion of the [public land] trust . . . for
20 native Hawaiians' (Article XII, section 6, of the Hawaii
21 State Constitution). The United States and the courts have



1 consistently affirmed the trust nature of the government
2 and crown lands, including large tracts of ceded lands used
3 for military or other purposes under federal control.

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

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



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

9 (*Emphasis added.*)

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



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

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

19 Act 178, Session Laws of Hawaii 2006, affirmed the
20 State's trust obligation to native Hawaiians by requiring
21 that the department of land and natural resources provide



1 an annual accounting of revenue-generating public trust
2 lands and the amounts derived from those lands to the
3 legislature. The measure also set a fixed amount of
4 \$15,100,000 from the pro rata share of the public land
5 trust income and proceeds due to OHA for the betterment of
6 the conditions of native Hawaiians until further action is
7 taken by the legislature for this purpose.

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



1 \$394,322,163 in the fiscal year 2015-2016. Twenty per cent
2 of this gross amount is approximately \$78,900,000.

3 The legislature finds that to uphold its
4 constitutional trust obligation and duty to native
5 Hawaiians, it must enact another legislative measure in
6 light of the information, data, and facts provided to the
7 legislature by state agencies since the enactment of
8 Act 178, Session Laws of Hawaii 2006, more than a decade
9 ago."

10 The legislature recognizes that Act 54, Session Laws of
11 Hawaii 2011, (Act 54) mandates the establishment of a
12 comprehensive information system to inventory and maintain
13 information about the lands of the public land trust as
14 described in section 5(f) of the Admission Act and article XII,
15 section 4 of the state constitution. The department of land and
16 natural resources worked with a consultant to develop a public
17 land trust information system (information system) to satisfy
18 the requirements of Act 54. The information system is a GIS-
19 based system that aims to be a complete inventory of all state-
20 owned and county-owned lands, as well as a complete inventory of
21 encumbrances issued by state and county agencies over these



1 lands. To meet these goals, each state and county agency must
2 submit comprehensive lists of their land and encumbrance
3 inventories.

4 The legislature further recognizes that the public land
5 trust working group (working group) was established pursuant to
6 Act 226 to account for all ceded lands in the public land trust
7 inventory; account for all income and proceeds from the public
8 land trust; and subsequently determine the twenty per cent pro
9 rata share of income and proceeds from the public land trust due
10 annually to the office of Hawaiian affairs for the betterment of
11 the conditions of Native Hawaiians.

12 In December 2023, the working group requested in writing to
13 all state agencies that hold title to, maintain management
14 control of, or otherwise use ceded lands, to provide
15 information, data, documents, and maps to ensure that the agency
16 completely and accurately identified and reported to the
17 department of land and natural resources all ceded land parcels
18 for the purpose of an inventory and all income and proceeds
19 collected or received from the public land trust.

20 The last financial review by an outside independent
21 accounting firm of the pro rata share of income and proceeds



1 from the public land trust due annually to the office of
2 Hawaiian affairs was the fiscal year 2015-2016 financial review
3 initiated by the office of Hawaiian affairs. At that time, the
4 financial review identified total gross receipts from
5 historically claimed public land trust revenue sources in the
6 minimum amount of approximately \$394,322,163 in the fiscal year
7 2015-2016. Twenty per cent of this gross amount is
8 approximately \$78,900,000. The working group found that there
9 has not been a new financial review since fiscal year 2015-2016.
10 The fiscal year 2015-2016 financial review cost \$145,404.

11 Current annual reporting by state agencies to the
12 department of land and natural resources is self-reported and is
13 not audited nor reviewed for accuracy by the department of land
14 and natural resources. This annual reporting is for the purpose
15 of the preparation of the annual accounting of all receipts from
16 lands described in section 5(f) of the Admission Act, pursuant
17 to Act 178, Session Laws of Hawaii 2006 (Act 178 report).

18 The work began on the process to procure a consultant for
19 the information system after the enactment of Act 54; the
20 development of the information system began in 2012; and the
21 information system was launched in October 2018. Act 54



1 appropriated up to \$360,000 from a land conservation fund for
2 the work performed by an outside independent consultant. The
3 final amount for creation of the information system and training
4 was \$340,382.

5 The implementation of the information system informed all
6 state and county agencies that hold title to land that they must
7 submit their entire land inventory, regardless of the public
8 land trust status, whether there are any encumbrances on the
9 land, and whether revenue is being generated on the land. The
10 goal is to have all state-owned and county-owned land
11 represented in the information system. All state and county
12 agencies must submit encumbrances that they have issued over
13 State-owned and county-owned land, regardless if they hold title
14 to that land. This includes all encumbrances, including but not
15 limited to leases, permits, right-of-entries, and easements,
16 regardless of whether they generate revenue, issued over state-
17 owned and county-owned land represented in the information
18 system.

19 As to the reporting of public land trust revenues to the
20 department of land and natural resources, the information system
21 relies on self-reporting by state and counties agencies. The



1 department of land and natural resources has encouraged all
2 state departments and counties to regularly update data in the
3 system, but independent third-party professionals are needed to
4 evaluate this practice.

5 State agencies use a "rule of thumb" to determine whether a
6 parcel is ceded. When the parcel is more than fifty per cent
7 ceded land, it is categorized as ceded. The working group
8 cannot determine whether this disadvantages the calculation of
9 the office of Hawaiian affairs' pro rata share, therefore
10 independent third-party professionals are needed to evaluate
11 this practice.

12 There are many parcels without tax map key numbers in the
13 information system, including submerged lands, which are
14 generally considered public trust lands. Independent third-
15 party professionals are needed to evaluate how to include
16 parcels without tax map key numbers in the information system so
17 that the information system contains a complete and accurate
18 inventory.

19 Lands under federal jurisdiction are not included in the
20 information system and the counties do not report any of the



1 revenue from the public land trust to the department of land and
2 natural resources for its annual 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 completeness and accuracy of the information system; current
6 reporting by agencies for the purpose of the preparing the
7 annual Act 178 report; nor any analysis or comparison of the
8 data in the information system with the data in the Act 178
9 report.

10 The working group has determined that the services of a
11 third-party independent consultant with the necessary financial,
12 accounting, and land inventory expertise is appropriate to
13 address the concerns that have been raised regarding the
14 completeness and accuracy of the information system, so that the
15 working group can complete its objectives under Act 226.

16 Based on the amounts expended for the office of Hawaiian
17 affairs' 2016 financial review and the creation and launch of
18 the information system, which was \$495,786, the working group
19 has estimated that approximately \$500,000 is needed for the
20 retention of third-party independent professionals.



1 Accordingly, the purpose of this Act is to appropriate
2 funds to the office of Hawaiian affairs for the retention of
3 third party professionals with the necessary financial,
4 accounting, and land inventory expertise to evaluate and address
5 the completeness and accuracy of the public land trust
6 information system, so that the public land trust working group
7 can complete its objectives pursuant to Act 226, Session Laws of
8 2022.

9 SECTION 2. In accordance with section 9 of article VII of
10 the Hawaii State Constitution and sections 37-91 and 37-93,
11 Hawaii Revised Statutes, the legislature has determined that the
12 appropriations contained in Act 164, Regular Session of 2023,
13 and this Act will cause the state general fund expenditure
14 ceiling for fiscal year 2024-2025 to be exceeded by
15 \$ or per cent. This current declaration takes
16 into account general fund appropriations authorized for fiscal
17 year 2024-2025 in Act 164, Regular Session of 2023, and this Act
18 only. The reasons for exceeding the general fund expenditure
19 ceiling are that:

20 (1) The appropriation made in this Act is necessary to
21 serve the public interest; and



1 (2) The appropriation made in this Act meets the needs
2 addressed by this Act.

3 SECTION 3. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$500,000 or so much
5 thereof as may be necessary for fiscal year 2024-2025 for the
6 retention of third-party independent professionals with the
7 necessary financial, accounting, and land inventory expertise to
8 evaluate and address the completeness and accuracy of the public
9 land trust information system, so that the public land trust
10 working group can complete its objectives pursuant to Act 226,
11 Session Laws of 2022, including the hiring of necessary staff
12 and purchase of equipment and professional services. Purchases
13 made with funds appropriated by this Act shall be exempt from
14 chapter 103D, Hawaii Revised Statutes.

15 The sum appropriated shall be expended by the office of
16 Hawaiian affairs for the purposes of this Act.

17 SECTION 4. This Act shall take effect on July 1, 2024.

18

INTRODUCED BY:



S.B. NO. 3336

Report Title:

OHA; Public Land Trust Information System; Public Land Trust Working Group; Expenditure Ceiling; Appropriation

Description:

Appropriates funds to the Office of Hawaiian Affairs for the retention of third party professionals with the necessary financial, accounting, and land inventory expertise to evaluate and address the completeness and accuracy of the public land trust information system, so that the Public Land Trust Working Group can complete its objectives pursuant to Act 226, Session Laws of 2022. Declares that the general fund expenditure ceiling is exceeded.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

