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# A BILL FOR AN ACT

RELATING TO THE PUBLIC LAND TRUST WORKING GROUP.

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

1           SECTION 1. In Act 226, Session Laws Hawaii 2022, (Act 226),  
2           establishing the Public Lands Trust Working Group (PLTWG), the  
3           legislature found the following:

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

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

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

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

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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  
22 consistently affirmed the trust nature of the government

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

3                     In 1959, as a condition of its admission into the  
4           Union, the State of Hawaii agreed to hold certain lands  
5           granted to the State by the United States in a public trust  
6           for five purposes delineated in section 5(f) of the 1959  
7           Admission Act, which provides in relevant part: The lands  
8           granted to the State of Hawaii by subsection (b) of this  
9           section and public lands retained by the United States  
10          under subsections (c) and (d) and later conveyed to the  
11          State under subsection (e), together with the proceeds from  
12          the sale or other disposition of any such lands and the  
13          income therefrom, shall be held by said State as a public  
14          trust [(1)] for the support of the public schools and other  
15          public educational institutions, [(2)] for the betterment  
16          of the conditions of native Hawaiians, as defined in the  
17          Hawaiian Homes Commission Act, 1920, as amended, [(3)] for  
18          the development of farm and home ownership on as widespread  
19          a basis as possible [(4)] for the making of public  
20          improvements, and [(5)] for the provision of lands for  
21          public use. Such lands, proceeds, and income shall be  
22          managed and disposed of for one or more of the foregoing

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1      purposes in such manner as the constitution and laws of  
2      said State provide, and their use for any other object  
3      shall constitute a breach of trust for which suit may be  
4      brought by the United States. (Emphasis added.)

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

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

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

12             Act 178, Session Laws of Hawaii 2006, affirmed the  
13      State's trust obligation to native Hawaiians by requiring  
14      that the department of land and natural resources provide  
15      an annual accounting of revenue-generating public trust  
16      lands and the amounts derived from those lands to the  
17      legislature. The measure also set a fixed amount of  
18      \$15,100,000 from the pro rata share of the public land  
19      trust income and proceeds due to OHA for the betterment of  
20      the conditions of native Hawaiians until further action is  
21      taken by the legislature for this purpose.

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1           Act 15, Session Laws of Hawaii 2012, (Act 15) was  
2           enacted to address past-due amounts, which accumulated  
3           during the period between November 7, 1978, up to and  
4           including June 30, 2012, of income and proceeds from the  
5           public land trust owed to OHA by implementing an agreement  
6           between the State and OHA for the State to convey certain  
7           lands in Kakaako, Oahu, to OHA valued at approximately  
8           \$200,000,000. Act 15 did not, however, address the State's  
9           constitutional obligations relating to OHA's twenty per  
10          cent pro rata share of the income and proceeds from the  
11          public land trust generated after June 30, 2012. Notably, a  
12          2015-2016 financial review initiated by OHA found that the  
13          minimum amount of total gross receipts from sources that  
14          OHA has historically claimed was approximately \$394,322,163  
15          in the fiscal year 2015-2016. Twenty per cent of this gross  
16          amount is approximately \$78,900,000.

17                The legislature finds that to uphold its  
18                constitutional trust obligation and duty to native  
19                Hawaiians, it must enact another legislative measure in  
20                light of the information, data, and facts provided to the  
21                legislature by state agencies since the enactment of Act  
22                178, Session Laws of Hawaii 2006, more than a decade ago.

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

15           SECTION 3. The ~~Public Land Trust Working Group~~ (PLTWG) was  
16 created under Act 226 and was assigned specific statutory  
17 responsibilities as follows:

- 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

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

5           In December 2023, the PLTWG requested in writing to all  
6           state agencies that hold title to, maintain management control  
7           or otherwise use ceded lands, to provide information, data,  
8           documents and maps to ensure that they have completely and  
9           accurately identified and reported to the department of land and  
10          natural resources the following: (1) all ceded land parcels for  
11          the purpose of an inventory and (2) all income and proceeds  
12          collected or received from the public land trust.

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



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1           The PLTWG has been informed that current annual reporting  
2 by State agencies to the department of land and natural  
3 resources is self-reported and not audited or reviewed for  
4 accuracy by the department of land and natural resources. This  
5 annual reporting is for the purpose of the preparation of the  
6 annual accounting of all receipts from lands described in  
7 section 5(f) of the Admission Act, pursuant to Act 178, Session  
8 Laws of Hawaii 2006 (Act 178 Report).

9           The PLTWG has been informed that work began on the process  
10 to procure a consultant for the PLTIS after the enactment of Act  
11 54 and that the development of the PLTIS began in 2012 and the  
12 PLTIS was launched in October 2018. Act 54 appropriated up to  
13 \$360,000 from a land conservation fund for the work by an  
14 outside independent consultant. The final amount for creation of  
15 the PLTIS and training was \$340,382.

16           The implementation of the PLTIS informed all State and  
17 county agencies that hold title to land that they must submit  
18 their entire land inventory, regardless of the public land trust  
19 status, whether or not there are any encumbrances on the land,  
20 and whether or not revenue is being generated on the land. The  
21 goal here was to have all State-owned and county-owned land  
22 represented in the PLTIS. All State and county agencies must

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1 submit encumbrances that they have issued over State-owned and  
2 county-owned land, regardless if they hold title to that land or  
3 not. This includes all encumbrances including, but not limited  
4 to, leases, permits, right-of-entries, and easements. All  
5 encumbrances must be submitted, regardless of if they generate  
6 revenue or not. The goal here was to have all encumbrances  
7 issued over State-owned and County-owned land represented in the  
8 PLTIS.

9       As with the reporting to the department of land and natural  
10 resources on public land trust revenues, the PLTIS is also based  
11 on self-reporting by State agencies and the counties. There are  
12 some disclaimers about the information. The department of land  
13 and natural resources has encouraged all State departments and  
14 counties to regularly update data in the system. Updates are  
15 also based on self-reporting. Independent third-party  
16 professionals are needed to evaluate this practice.

17       The PLTWG has been informed that State agencies use a "rule  
18 of thumb" to determine whether a parcel is ceded or not when it  
19 is both. When the parcel is more than 50% ceded land, it is  
20 categorized as ceded. The PLTWG is not able to determine whether  
21 this disadvantages the calculation of the office of Hawaiian

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1 affairs' pro rata share. Independent third-party professionals  
2 are needed to evaluate this practice.

3         The PLTWG has been informed that there are many parcels  
4 without tax map key numbers in the PLTIS and therefore may not  
5 be included in the system. This is particularly the case for the  
6 submerged lands which are generally considered public land trust  
7 lands. Independent third-party professionals are needed to  
8 evaluate how to include such parcels so that the PLTIS contains  
9 the complete and accurate inventory.

10         The PLTWG has been informed that the lands under federal  
11 jurisdiction are not included in the PLTIS and that the counties  
12 do not report any of the revenue from the public land trust to  
13 the department of land and natural resources for its annual Act  
14 178 Report.

15         To the knowledge of the PLTWG, there has been no third-  
16 party independent audit, review or evaluation of the  
17 completeness and accuracy of the PLTIS or the current reporting  
18 by agencies for the purpose of the preparing the annual Act 178  
19 Report nor has there been any analysis or comparison of the data  
20 in the PLTIS with the data in the Act 178 Report.

21         The PLTWG has determined after research that the services  
22 of a third-party independent consultant(s) with the necessary

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1 financial, accounting, land inventory expertise will be  
2 appropriate to address the concerns that have been raised  
3 regarding the completeness and accuracy of the PLTIS to  
4 complete its objectives under Act 226.

5         Based on the amounts expended for the office of Hawaiian  
6 affairs' 2016 financial review and the creation and launch of  
7 the PLTIS, which was \$495,786, the PLTWG has estimated that  
8 approximately \$~~500,000~~1,000,000 is needed for the retention of  
9 third party independent professionals.

10         SECTION 4. There is appropriated out of the general  
11 revenues of the State of Hawai'i the sum of \$~~500,000~~1,000,000 or  
12 so much thereof as may be necessary for fiscal year ~~2024~~2025-  
13 ~~2025-2026~~ and the same sum or so much thereof as may be  
14 necessary for fiscal year ~~2025~~2026-2026-2027 to carry out the  
15 purposes of this Act, including the hiring of necessary staff,  
16 purchasing of equipment, and professional services which are  
17 unique and thus shall be exempt from the procurement process of  
18 Hawai`i Revised Statutes, Chapter 103D.

19         The sums appropriated shall be managed and expended by the  
20 office of Hawaiian affairs for the purposes of this Act.

21         SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_

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**Report Title:** Public Land Trust Working Group; Office of  
Hawaiian Affairs; Public Land Trust; Appropriation

**Description:** Appropriates moneys to the Office of Hawaiian  
affairs to facilitate hiring of necessary staff, purchasing  
of equipment, and professional services on behalf of the  
public land trust working group.

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not legislation or evidence of legislative intent.*