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## A BILL FOR AN ACT

RELATING TO THE LAND CONSERVATION FUND.

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

1           SECTION 1. (a) During the regular session of 2017, the  
2 legislature enacted Act 209, which required the auditor to  
3 conduct a performance audit of the department of land and  
4 natural resources' land conservation fund and provide  
5 recommendations as appropriate. The audit required by Act 209,  
6 Session Laws of Hawaii 2017, was submitted to the legislature in  
7 January 2019.

8           The audit found that the department of land and natural  
9 resources has struggled to properly manage the land conservation  
10 fund, hampering the program's effectiveness. Significantly, the  
11 department of land and natural resources has not established a  
12 resource land acquisition plan, which is required by law  
13 pursuant to section 173A-3, Hawaii Revised Statutes. The  
14 auditor noted that without this plan in place, the legacy land  
15 conservation program and the department of land and natural  
16 resources "lack an overall direction and purpose."



1           The auditor also found a number of more specific concerns  
2 with program implementation and financial management. Overall,  
3 the department of land and natural resources failed to exercise  
4 proper financial management over the land conservation fund,  
5 resulting in shortfalls, misspending, and a lack of transparency  
6 and accountability. For example:

7           (1) Program staff missed fiscal deadlines to create and  
8           execute contracts for grant awards, triggering a  
9           "domino effect" of borrowing anticipated future funds  
10           that had not yet been appropriated by the legislature.  
11           In practice, this reduced the amount of funding  
12           available for future projects;

13           (2) Program staff failed to track balances in the trust  
14           account used to hold legacy land conservation program  
15           funds awarded to state agencies, resulting in a  
16           complete lack of oversight and accountability;

17           (3) Department staff mistakenly paid nearly \$685,000 for  
18           State central service fees during fiscal years 2016  
19           and 2017, even though the land conservation fund had  
20           been statutorily exempt from paying the fees since  
21           2015;



1           (4) The department of land and natural resources used the  
2           land conservation fund's limited administrative budget  
3           to support the salary of an employee unrelated to the  
4           legacy land conservation fund program; and

5           (5) The division of forestry and wildlife of the  
6           department of land and natural resources has at times  
7           sought and obtained funding from the land conservation  
8           fund for its own projects outside of the legacy land  
9           conservation program's grant award process, reducing  
10          transparency and accountability.

11          (b) The legislature agrees with the auditor that the  
12          department of land and natural resources must follow its  
13          obligations under the law and implement the policies and  
14          procedures required for the department to exercise proper  
15          financial management over the land conservation fund.

16          Accordingly, the purpose of this Act is to require the  
17          department of land and natural resources to implement certain  
18          recommendations made by the auditor, and allow members of the  
19          public to compel the department of land and natural resources to  
20          fulfill its statutory responsibilities under chapter 173A,  
21          Hawaii Revised Statutes.



1 Specifically, this Act:

2 (1) Requires the department of land and natural resources  
3 to:

4 (A) Establish an initial resource land acquisition  
5 plan no later than January 1, 2020;

6 (B) Develop and implement written policies and  
7 procedures, including internal controls, to  
8 govern the grant award and blanket encumbrance  
9 processes;

10 (C) Develop clear and well-defined policies and  
11 procedures between the legacy land conservation  
12 program and the division of forestry and wildlife  
13 regarding the distribution of land conservation  
14 fund moneys;

15 (D) Maintain a record of the transfer of funds to and  
16 from any department of land and natural resources  
17 trust account and report these transactions to  
18 the governor and the legislature in the program's  
19 annual report;

20 (E) Maintain a centralized file system and establish  
21 a records retention policy for all awarded.



1 projects, including pending, completed and  
2 discontinued projects; and  
3 (F) Report to the legislature and the auditor on its  
4 progress in meeting its obligations under this  
5 Act prior to the convening of the legislature's  
6 regular session of 2020;

7 (2) Requires the auditor to:

8 (A) Monitor the progress of the department of land  
9 and natural resources in implementing this Act;  
10 and

11 (B) Commence a full financial and management audit of  
12 the department of land and natural resources if  
13 the auditor finds the department is not in  
14 compliance with this Act; and

15 (3) Authorizes any person to commence a civil action  
16 against the board of land and natural resources or the  
17 board of land and natural resources to enforce chapter  
18 173A, Hawaii Revised Statutes.

19 SECTION 2. Chapter 173A, Hawaii Revised Statutes, is  
20 amended by adding a new section to be appropriately designated  
21 and to read as follows:



1           "§173A- Private right of action. (a) Beginning  
 2 July 1, 2019, any person may commence a civil action on that  
 3 person's own behalf against the board, department, or  
 4 commission, if the board, department, or commission is alleged  
 5 to be in violation of this chapter.

6           (b) A person bringing an action pursuant to this section  
 7 shall be entitled to recover the person's costs and reasonable  
 8 attorneys' fees."

9           SECTION 3. Section 173A-3, Hawaii Revised Statutes, is  
 10 amended to read as follows:

11           "**§173A-3 Resource land acquisition plan.** In consultation  
 12 with the senate president and speaker of the house of  
 13 representatives, the department shall prepare and, from time to  
 14 time, revise a plan for the acquisition of land having value as  
 15 a resource to the State[-]; provided that an initial plan shall  
 16 be completed no later than January 1, 2020. This plan shall  
 17 guide the board in acquiring [~~such~~] applicable land in the  
 18 exercise of its powers under this chapter. In preparing this  
 19 plan, the department may institute studies relating to the need  
 20 for [~~such~~] the land and shall consider any plan relating to the



1 acquisition of [~~such~~] applicable land that has been prepared by  
2 any state or county agency."

3 SECTION 4. Section 173A-5, Hawaii Revised Statutes, is  
4 amended by amending subsection (1) to read as follows:

5 "(1) The board shall:

6 (1) Track amounts disbursed from the fund;

7 (2) Prepare and submit an annual report to the governor  
8 and the legislature at least twenty days prior to the  
9 convening of each regular session. The annual report  
10 shall include:

11 (A) A summary of all interests or rights in land  
12 acquired during the preceding fiscal year;

13 (B) A summary of what value each newly acquired land  
14 has as a resource to the State;

15 (C) Proposals for future land acquisitions, including  
16 a summary of the resource value that the land may  
17 possess;

18 (D) A financial report for the preceding fiscal year;  
19 [~~and~~]

20 (E) A record of the balance of and all transfers of  
21 funds to or from any department of land and



1           natural resources trust account established to  
2           hold awards granted to state agencies. The  
3           report shall include a list of all projects for  
4           which a grant was awarded and the status of each  
5           project; and

6           ~~(E)~~ (F) Objectives and budget projections for the  
7           following fiscal year; and

8           (3) Make copies of the annual report available to the  
9           public."

10          SECTION 5. No later than January 1, 2020, the department  
11 of land and natural resources shall:

12          (1) Develop and implement written policies and procedures,  
13               including internal controls, governing the grant award  
14               and blanket encumbrance processes to ensure that  
15               project contracts are executed on time and blanket  
16               encumbrance funds do not lapse;

17          (2) Develop clear and well-defined policies and procedures  
18               between the legacy land conservation program and the  
19               division of forestry and wildlife regarding  
20               distribution of moneys from the land conservation  
21               fund; provided that the procedures shall require the





1           division of forestry and wildlife to follow the grant  
2           application process described in section 173A-5,  
3           Hawaii Revised Statutes, in order to receive funding  
4           from the land conservation fund; and

5           (3) Develop a centralized file system and establish a  
6           records retention policy for all awarded projects,  
7           including pending, completed, and discontinued  
8           projects.

9           SECTION 6. The department of land and natural resources  
10          shall submit a report of its progress in meeting its obligations  
11          under this Act to the auditor and the legislature no later than  
12          twenty days prior to the convening of the regular session of  
13          2020.

14          SECTION 7. The auditor shall monitor the department of  
15          land and natural resources' progress in meeting its obligations  
16          under this Act. If, following the submittal of the report  
17          required by section 6 of this Act, the auditor determines that  
18          the department of land and natural resources is not in  
19          compliance with this Act, the auditor shall conduct a full  
20          financial and management audit of the department of land and  
21          natural resources. If an audit is required, the auditor shall



# H.B. NO. 589

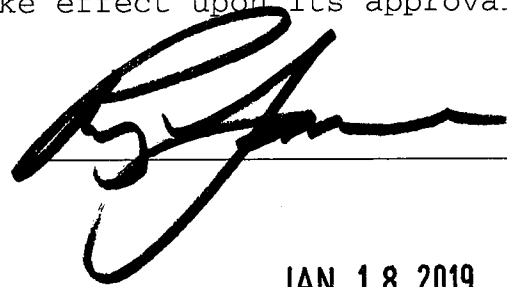
1 submit a report on the audit's findings and recommendations,  
2 including proposed legislation, to the legislature no later than  
3 twenty days prior to the convening of the regular session of  
4 2022.

5 SECTION 8. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 9. This Act shall take effect upon its approval.

8

INTRODUCED BY:



JAN 18 2019



# H.B. NO. 589

**Report Title:**

DLNR; Land Conservation Fund; Auditor; Auditor's  
Recommendations; Report to Legislature

**Description:**

Requires the Department of Land and Natural Resources to complete an initial resource land acquisition plan no later than 1/1/2020. Requires the department to develop and implement written policies, procedures, and internal controls, including a centralized filing system and records retention policy governing the land conservation fund and any grants awarded therefrom. Requires the department to maintain a record of funds transferred from the land conservation fund to and from any department trust account. Requires a report to the legislature. Directs the Auditor to commence a full financial and management audit of the department if the department does not comply with its obligations under the Act. Authorizes a private right of action to enforce chapter 173A, Hawaii Revised Statutes.

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

