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LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol, Room 446
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Written Comments

SB903, SD2, HD2 PROPOSED RELATING TO HAWAIIAN AFFAIRS.

Charlotte A. Carter-Yamauchi, Director
Legislative Reference Bureau

Presented to the House Committee on Finance

Wednesday, April 2, 2025, 3:30 p.m.
Conference Room 308

Chair Kyle T. Yamashita and Members of the Committee:

Good afternoon, Chair Yamashita and members of the Committee. My name is Charlotte Carter-Yamauchi, and I am the Director of the Legislative Reference Bureau (Bureau). Thank you for providing the opportunity to submit written **comments** on S.B. No. 903, S.D. 2, H.D. 2 Proposed, Relating to Hawaiian Affairs.

The purpose of this measure is to:

- (1) Amend the membership and responsibilities of the public land trust working group established pursuant to Act 226, Session Laws of Hawaii 2022;
- (2) Require the public land trust working group to submit four reports to the Legislature, as follows:
 - (A) By August 1, 2026, a first interim report regarding the public land trust inventory;
 - (B) By December 1, 2026, a second interim report regarding Act 178 financial reporting and accounting;
 - (C) By June 1, 2027, a preliminary draft settlement of the income and proceeds from the pro rata portion of the public land trust under Article

XII, section 6 of the state constitution, which may consist of a monetary amount, real property, or in-kind assets; and

- (D) By October 1, 2027, a final report that includes a final draft settlement;
- (3) Require the State, Office of Hawaiian Affairs, and other applicable parties to begin preliminary negotiations regarding the final draft settlement by October 1, 2027; and
- (4) Appropriate funds to the Legislative Reference Bureau to retain independent third-party professionals, subject to matching funds from the Office of Hawaiian Affairs.

The Bureau takes no position on the merits of this proposed measure but has serious concerns and submits the following comments for your consideration.

As presently drafted, the measure is extremely vague as to the role of the Bureau. We note that the measure only briefly mentions the purpose of the Bureau's responsibilities and provides little clarity as to the services to be performed by an "independent third-party professional" and no specific criteria by which to determine whether the qualifications of "independent third-party professionals" are sufficient. In view of the considerable amount of state funds involved, the Bureau respectfully suggests that the Committee direct the proponents of the measure to provide clarity and specificity regarding the necessary qualifications of potential independent third-party professionals and the scope of services for which the Bureau is being directed to procure.

As a general matter, the Bureau notes that it lacks specific subject matter expertise regarding "financial, accounting, and land inventory" (page 14, lines 3-9) addressed in the measure. While the measure does not require the Bureau to perform the services, it does require the Bureau to obtain the services of independent third-party professionals. This process would require the Bureau to first develop a foundational understanding of the "financial, accounting, and land inventory" issues as they specifically relate to the public land trust in order to craft a proper Request for Proposals (RFP). Along with the possibly lengthy process of obtaining matching funds from the Office of Hawaiian Affairs, it may take up to six months to develop and publish the RFP. Following that, the Bureau would then need to select a contractor, receive, review, and approve the contractor's work product, which includes multiple reports on distinct issues, and deliver it to the working group within the 2026 and 2027 timeframes presently provided in this measure.

Given the scope of work and lack of specificity, it seems unlikely that the reports could be submitted within the ambitious deadlines established by the measure.

As a matter of background not mentioned in the measure's purpose section, Act 125, Session Laws of Hawaii 2000 (Act 125), required the Auditor to initiate and coordinate all efforts to establish a public land trust information system, consisting of an inventory of the laws

comprising the public land trust. Act 125 appropriated \$250,000 and required matching funds from the Office of Hawaiian Affairs. The next year, Act 165, Session Laws of Hawaii 2001, stated that the Auditor had estimated that completion of the public land trust information system would cost approximately \$18,500,000. Act 165 appropriated an additional \$100,000, which was required to be matched by the Office of Hawaiian Affairs. It is unclear whether the funds were ever expended or ultimately lapsed.

However, given the Auditor's historical involvement on a substantially similar issue and inherent expertise in contracting for the services of third-party independent consultants *for financial and accounting projects*, the Auditor may be better equipped to more efficiently obtain the services requested by this measure.

However, if the Committee still believes the Bureau's participation in this matter is necessary, the Bureau respectfully requests that the measure be amended to provide more clarity and specificity regarding the necessary qualifications of potential independent third-party consultants and the scope of services to be procured and to allow for more time to issue the RFP and for the contractor to complete the work.

If these amendments are made to clarify the qualifications of independent third-party consultants and the scope of services the Bureau is contracting for, and the timeframe is expanded to allow more time for the Bureau to research and develop an adequate request for proposals and complete the scope of work required, then the Bureau believes that the services requested under the measure may be manageable, provided that the Bureau's interim workload is not adversely impacted by too many other studies or additional responsibilities, such as conducting studies, writing or finalizing other reports, drafting legislation, or any combination of these for the Legislature or for other state agencies, task forces, or working groups that may be requested or required under other legislative measures.

Thank you again for your consideration.



**TESTIMONY IN OPPOSITION TO SENATE BILL 903_SD2_HD2 (PROPOSED) WITH
COMMENTS AND PROPOSED AMENDMENTS**
Relating to Hawaiian Affairs

House Committee on Finance

April 1, 2025 3:30 p.m. Room 308
Aloha e Chair Yamashita, Vice Chair Takenouchi, and Members of the House Committee
on Finance:

The Office of Hawaiian Affairs (OHA) submits this testimony in **OPPOSITION** to SB903_SD2_HD2 (Proposed) in its current form. The current draft would take the Public Land Trust Working Group (PLTWG), established by Act 226 (2022) to determine OHA's pro rata share of the public land trust (PLT) income due as annual income, and add a new and potentially illegal task to its scope of work: to prepare a "final draft settlement" by October 1, 2027. OHA does ask that the committee **amend** the bill and **pass** it in the form requested below which would allow the PLTWG to complete its original scope of work.

Background

Act 226 established the PLTWG to:

- (1) Account for all ceded lands in the public land trust inventory;
- (2) Account for all income and proceeds from the public land trust; and
- (3) Subsequently determine the twenty per cent pro rata share of income and proceeds from the public land trust **due annually** to [OHA] for the betterment of the conditions of Native Hawaiians.

Act 226 (2022), § 3 (emphasis added). Under SB903_SD2_HD2, the PLTWG would now also be required to submit to the legislature by "June 1, 2027, a preliminary draft settlement," and by "October 1, 2027, a final report that includes a final draft settlement." The terms "preliminary draft settlement" and "final draft settlement" are left undefined in this measure.

As set forth in previous testimony, any offer from the state for settlement of claims for revenues due to OHA from the PLT is premature unless and until the state has a complete and accurate inventory of the PLT. As also set forth in previous testimony, OHA is not opposed in concept to a working group to discuss **procedures for settlement discussions** between the State and OHA concerning future claims. However, the time bound process set forth in this measure to produce a "preliminary draft settlement" and "final draft settlement" using undefined terms does not comprise good faith opening to any negotiation process, and raises serious legal concerns.

OHA is first and foremost a trust vehicle that expends funds for the benefit of native Hawaiians and Hawaiians, pursuant to the terms of Section 5 of the Admissions Act, the Hawai'i State Constitution, Article XII, sections 4-6, and Hawai'i Revised Statutes chapters 10 and 10H. OHA's duties include "the betterment of the conditions of Native Hawaiians," serving as a "receptacle for reparations," and implementing "the recognition of the Native Hawaiian people by means and methods that will facilitate their self-governance." HRS §§ 10-3(1), (6), 10H-2. **The 2027 timeline does not provide sufficient time for OHA to consult with its beneficiaries about the contents of any preliminary or final "draft settlement."** Further, to the extent that this term is left undefined in the statute, there is no clarity as what the parties are being asked to negotiate. The vagueness of this term renders the proposed new language unenforceable, even if it were to be enacted over OHA's strong objections.

Amendments

Therefore, to cure the potential illegalities in this measure and return the PLTWG to its original scope of work, OHA respectfully requests the following amendments:

Pg.15, lines 4-14 (deletion struck through, additions underlined)

(C) By June 1, 2027, a preliminary draft ~~settlement~~annual payment of the income and proceeds from the pro rata portion of the public land trust, which may consist of a monetary amount, real property, or in-kind assets; and

(D) By October 1, 2027, a final report that includes a ~~final draft settlement~~draft annual payment;

(3) Require the State, office of Hawaiian affairs, and other applicable parties to begin preliminary negotiations regarding the ~~final draft settlement~~draft annual payment by 14 October 1, 2027;

Pg.16, line 14 (deletion struck through, additions underlined)

(2) ~~Three~~Four members appointed by the office of Hawaiian affairs board of trustees;

Pg.19, lines 9-20 (deletion struck through, additions underlined)

(3) No later than June 1, 2027, a third interim report that shall:

(A) Be based on the reports submitted pursuant to paragraphs (1) and (2); and

(B) Include a preliminary draft ~~settlement~~annual payment of the income and proceeds from the pro rata portion of the public land trust under article XII, section 6, of the state constitution for expenditure by the office of Hawaiian affairs for the betterment of the conditions of native Hawaiians for each fiscal year beginning with fiscal year ~~2022-2023~~2012-2013 and every fiscal year thereafter.

Pg.20, lines 4-12 (deletion struck through, additions underlined)

(4) No later than October 1, 2027, a final report that shall include a final draft ~~settlement~~annual payment based on the findings and considerations of the third interim report submitted pursuant to paragraph (3).

(f) On October 1, 2027, the State, office of Hawaiian affairs, and any other applicable party, as agreed upon by the State and office of Hawaiian affairs, shall begin preliminary negotiations regarding the final ~~draft settlement~~annual payment submitted to the legislature pursuant to subsection (e)(4).

Pg.21, line 5 (additions underlined)

(3) The office of Hawaiian affairs board of trustees shall appoint one additional member to the working group established by Act 226, Session Laws of Hawaii 2022, as amended by this Act.

Pg.21, line 5-17 (additions underlined)

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2025-2026 and the same sum or so much thereof as may be necessary for fiscal year 2026-2027 to retain independent third-party professionals for the purposes of Act 226, Session Laws of Hawaii 2022, as amended by this Act; provided that no funds shall be made available under this Act unless the office of Hawaiian affairs provides matching funds for the purposes for which this sum is appropriated; provided further that in obtaining services of the independent third-party professionals, the legislative reference bureau shall be exempt from chapter 103D, Hawaii Revised Statutes and a representative from the office of Hawaiian Affairs will be included as a member of the procurement selection committee.

OHA also notes that while the Committee report cited in the preamble to the bill (page 8 lines 5-13) found that \$64,000,000 comprised the amount due OHA for its share of PLT income between 2013 and 2022, OHA itself requested continued negotiations regarding the amount due to OHA for the period July 1, 2012 through June 30, 2022. See OHA Testimony on SB2021 SD1 HD1 (April 4, 2022) ([pdf page 130-131](#)).

Mahalo nui for considering OHA's request to **PASS this measure with amendments.**

SB-903-HD-1

Submitted on: 4/1/2025 3:37:52 PM

Testimony for FIN on 4/2/2025 3:30:00 PM

Submitted By	Organization	Testifier Position	Testify
Frank Schultz	Individual	Support	Written Testimony Only

Comments:

I support this initiative.

SB-903-HD-1

Submitted on: 4/2/2025 5:53:06 AM

Testimony for FIN on 4/2/2025 3:30:00 PM

Submitted By	Organization	Testifier Position	Testify
Germaine Meyers	Individual	Support	Remotely Via Zoom

Comments:

Aloha Honorable Chair, Vice Chair and Members of the Finance Committee,

I'm in STRONG SUPPORT of SB903 SD2 HD1.

Please appropriate \$1 million for the Working Group to complete its work as outlined in this version of the bill.