



COMMENTS ON SENATE BILL 903_SD1

Relating to Hawaiian Affairs

Senate Committee on Hawaiian Affairs

Senate Committee on Ways and Means

February 18, 2025

10:00 a.m.

Room 211

Aloha e Chairs Richards and Dela Cruz, Vice Chairs San Buenaventura and Moriwaki, and Members of the Committees:

The Office of Hawaiian Affairs (OHA) provides **COMMENTS** on SB903_SD1 which would replace the Public Land Trust Working Group (PLTWG), Act 226 (2022), with a working group to settle OHA's future claims for its share of public land trust (PLT) revenues.

OHA is open to the idea of a working group to discuss procedures for settlement discussions between the State and OHA concerning future claims. However, for meaningful settlement discussions to be possible, the PLTWG must complete its scope of work as provided in Act 226, to provide a fair and accurate baseline for settlement discussions. To that end, OHA urges the Committee to amend SB903_SD1 to make clear that the settlement working group will not replace or supersede the PLTWG. OHA also asks the Committee to set the composition of any future settlement working group at nine members (an odd number) to avoid deadlock in discussions about the options available to the State and OHA to engage in settlement negotiations.

The PLTWG Must Complete Its Scope of Work

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.

However, the PLTWG—comprised of representatives from both OHA and the Department of Land and Natural Resources—unanimously agreed in 2023 and again in 2024 that a third-party inventory and audit of the PLT and receipts therefrom is necessary for the PLTWG to complete its scope of work. To that end, OHA introduced HB1358, to obtain the necessary funding for a third-party inventory and audit which would then allow the PLTWG to complete its scope of work as set out in Act 226. **Because the PLTWG has not completed its work, OHA respectfully requests that the Committees amend SB 903_SD1 by deleting section 2 in its entirety.**

Until the PLTWG completes its accounting, there is no baseline for settlement discussions. Any settlement valuation must be accurate, data-driven, and informed by due diligence, ensuring the State has the proper systems in place to accurately identify and calculate revenues from the PLT. Currently, state and county agencies use different formulas to identify PLT lands and calculate PLT revenues, leading to significant undercounting of OHA's PLT revenue share. If the State is serious about a just settlement, the process for calculating PLT revenues must reflect best practices, similar to those governing private businesses and trusts. The highest fiduciary standard must be upheld, ensuring that Native Hawaiian beneficiaries receive their fair and equitable share.

OHA also respectfully urges the Committees' members to support enactment of HB1358_HD2, when it crosses over from the House. HB1358_HD2 has passed out of both the House Committee on Water and Land and the House Committee on Judiciary & Hawaiian Affairs, and has been referred to Finance for its final House hearing. HB1358_HD2 would appropriate \$1 million to OHA to hire the third-party professionals with the skill and experience necessary to complete the land inventory and receipts audit that have remained unfinished for the past nearly fifty years, as recommended by the PLTWG. Given the specific and unique tasks, it may be necessary to engage two separate professional firms with distinct tasks (land inventory review and revenue receipts review) to assist the PLTWG to complete its work.

Working Group Composition and Procedures

Under SB903_SD1, the settlement working group would consist of two members appointed by the governor, four members by OHA's chairperson, one by the President of the Senate, and one by the speaker of the House of Representatives, for a total of eight members. To avoid a deadlock in decision making, OHA respectfully suggests an amendment to designate that five members be appointed by OHA's chairperson. OHA also suggests an amendment to SB903_SD1, section 1, that would put the settlement working group under OHA for administrative purposes including public notice (identical to the PLTWG):

(f) The office of Hawaiian affairs shall provide any necessary administrative support, including preparation of the report required by subsection (d), to the working group.

Mahalo nui for considering OHA's Comments on this measure.