



February 11, 2013

Representative Cindy Evans, Chair  
Representative Nicole Lowen, Vice Chair  
House Committee on Water and Land

Representative Faye P. Hanohano, Chair  
Representative Ty Cullen, Vice Chair  
House Committee on Ocean, Marine Resources, and Hawaiian Affairs

**Comments, Concerns and Opposition to current form of HB 1327 Relating to State Agencies' Membership (Increases membership of the Board of Land and Natural Resources [BLNR], Commission on Water Resource Management [CWRM], and Land Use Commission [LUC] to include a member to represent the interests of the Office of Hawaiian Affairs [OHA]).**

**Wednesday, February 13, 2013, 8:30 a.m., in Conference Room 325**

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF's mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

**HB 1327.** There is no stated purpose or justification for this bill, which proposes to increase the membership of the BLNR, CWRM, and LUC, respectively, to include a member to represent the interests of the OHA; and also proposes to increase the number of affirmative votes required to approve a State land use district boundary amendment. Specifically, the proposed changes include the following:

- **Changes to the BLNR.** Increases the BLNR from seven members to nine members, including an additional "at large" member; including one member to be appointed by the OHA Board of Trustees to represent the interests of OHA.

This portion of the bill is somewhat duplicative with Act 288 (SLH 2012) (HB 2806, HB 2, SD 2, CD 1), which created the Aha Moku Advisory Committee (Aha Moku) to advise the Office of the Chairperson of the BLNR on issues related to land and natural resource management through the aha moku system - a system of best practices based upon the indigenous resource management practices of moku (regional) boundaries, which acknowledges the natural contours of land, the specific resources located within those

areas, and the methodology necessary to sustain resources and the community. Last year, LURF supported a bill which would have made OHA the advisor to the BLNR Chair, but OHA objected to serving in such a position.

- **Changes to the CRWM.** Increases the CWRM from seven members to nine members, including one member to be appointed by the OHA Board of Trustees to represent the interests of OHA.

This portion of the bill is somewhat duplicative with existing HRS Section 174C-7(b) (1), which provides that: “at least one member shall have substantial experience or expertise in traditional Hawaiian water resource management techniques and in traditional Hawaiian riparian usage, such as those preserved by section 174C-101...”

- **Changes to the LUC.** Increases the LUC from nine members to eleven members, including one member to be appointed by the OHA Board of Trustees to represent the interests of OHA; and increases the number of affirmative votes required to approve a State land use district boundary amendment from six to eight.

The portion of the bill requiring an OHA-appointed member is somewhat duplicative with existing HRS Section 205-1, which requires that one LUC member “shall have substantial experience or expertise in traditional Hawaiian land usage and knowledge of cultural land practices.

**LURF’s Position.** LURF supports the good intent of HB 1327, however, it has serious concerns, comments and recommendations about the bill. Thus, LURF must **oppose the current version of HB 1327, but would support amendments** which would allow other organizations to appoint its own members to the BLNR, CWRM and LUC, including, but not limited to organizations in the areas of agriculture, ranching, aquaculture, fishing, hunting, water use, land use, tourism, housing and construction, education, business, military, renewable energy, sustainability, genetic modification, high technology and climate change. These other organizations represent interests which are very important to the State, involve unique facts and circumstances which could provide valuable information to state boards and commissions prior to their decision-making, and will be impacted by the decisions made by the BLNR, CWRM and LUC, and thus, should have the same access, rights and privileges as OHA.

The present bill is duplicative with existing law:

1. First, OHA’s the statutory purpose and responsibilities already allow it to advocate with the BLNR, CWRM and LUC, and secondly, the OHA-appointed board or commission member could be involved in a conflict of interest situation regarding issues within OHA’s purpose and responsibilities. Pursuant to Section 10-3, HRS, OHA already serves as “the principle public agency in the State responsible for the performance, development, and coordination of programs and activities relating to Native Hawaiians and Hawaiians.” OHA’s purposes also expressly include “assessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for Native Hawaiians and Hawaiians.” Section 10-3(4), HRS. As with other board and commission members, there might be a question whether the OHA-appointed member would be required to recuse itself with respect to matters involving issues impacting on native Hawaiians and Hawaiians.

2. Existing law also already requires:

- the BLNR Chair to be advised by the Aha Moku on issues related to land and natural resource management through the aha moku system - a system of best practices based upon the indigenous Hawaiian resource management practices;
- the CRWM to have at least one member shall have substantial experience or expertise in traditional Hawaiian water resource management techniques and in traditional Hawaiian riparian usage; and
- the LUC to have one member with substantial experience or expertise in traditional Hawaiian land usage and knowledge of cultural land practices.

LURF's main concern is whether the establishment of the mandatory OHA-appointed member of the BLNR, CWRM and LUC will preclude any other person's or organization's right to have an appointed member on those state boards and commissions. If OHA is the only organization with such rights and privileges, it could arguably have the effect of creating and favoring a special class, as it confers favorable treatment, special access, rights and privileges only to one special interest group, thereby potentially rendering the measure unconstitutional.

LURF believes the laws enacted by our Legislature must rightly support the free speech and equal protection rights of all citizens, special interest groups, industry groups and stakeholders who may also wish to have appointed members on boards and commissions. Such organizations include a broad spectrum of subject matter areas relating to land and natural resource management, which includes agriculture, ranching, aquaculture, fishing, hunting, water, tourism, housing and construction, education, business, military, land use, renewable energy, sustainability, genetic modification, and high technology.

For the reasons stated above, LURF respectfully recommends that **HB 1327 be held in this Committee at this time, unless and until it is amended to include board and commission members representing the other important interest groups named above.**

Thank you for the opportunity to provide testimony regarding this proposed measure.

**NEIL ABERCROMBIE**  
Governor

**BRIAN SCHATZ**  
Lieutenant Governor

**RICHARD LIM**  
Director



**LAND USE COMMISSION**  
Department of Business, Economic Development & Tourism  
State of Hawai'i

**DANIEL ORODENKER**  
Executive Officer  
Planner

**SCOTT A.K. DERRICKSON AICP**  
Planner

**RILEY K. HAKODA**  
Chief Clerk

**FRED A. TALON**  
Drafting Technician

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Statement of  
**Daniel E. Orodenker**  
Executive Officer  
Land Use Commission  
before the  
Committee on Water and Land  
and  
Committee on Ocean, Marine Resources, and Hawaiian Affairs  
Wednesday, February 13, 2013  
State Capitol, Conference Room 325

In consideration of

**HB1327 RELATING TO STATE AGENCIES**

Chairs Evans and Hanohano, Vice Chairs Lowen and Cullen, and members of the Committees on Water and Land, and Ocean, Marine Resources, and Hawaiian Affairs:

The Land Use Commission takes no position on the merits of HB 1327.

The LUC would caution however, that the simple addition of another member to the Commission may present the possibility of deadlock when voting on important matters if the total number of commissioners is set at an even, rather than odd number. This could severely hamper the ability of the Commission to conduct business.

Thank you for the opportunity to testify on this matter.



## **HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO**

Gentry Pacific Design Center, Suite 215A \* 560 N. Nimitz Highway, #50 \* Honolulu, Hawaii 96817  
(808) 524-2249 - FAX (808) 524-6893

February 12, 2013

**KIKA G. BUKOSKI**  
*Executive Director*

### EXECUTIVE BOARD

**REGINALD CASTANARES**  
*President*  
Plumbers & Fitters Local 675

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Workers United Union of Roofer  
Local 221

Honorable Representative Cindy Evans, Chair- Committee on Water and Land  
Honorable Representative Nicole Lowen, Vice Chair- Committee on Water and Land  
Honorable Representative Faye Hanohano, Chair- Committee on Ocean, Marine Resources and Hawaiian Affairs  
Honorable Representative Ty Cullen, Vice Chair- Committee on Ocean, Marine Resources and Hawaiian Affairs  
Hawaii State House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Re: HB1327 RELATING TO STATE AGENCIES proposing to increase the membership of the BLNR, commission on water resource management, and LUC, respectively, to include a member to represent the interests of the OHA.

Hearing: Wednesday, February 13, 2013, 0830, Room 325

Aloha Chairs Evans, Hanohano, Vice Chairs Lowen, Cullen and Committee Members;

My name is Kika G. Bukoski, testifying on behalf of the Hawaii Building & Construction Trades Council, AFL-CIO. The Council is comprised of various construction trade unions and represents the interests of over 15,000 of Hawaii's unionized construction trades men and women throughout the state.

The Council supports the intent of House Bill 1327 which appears to expand the membership of various state boards and commission to be more inclusive of its stakeholders. However, we are concerned that not all stakeholders may be represented in this measure.

If this Bill is to be considered further, we would humbly request your consideration of amending the Bill to include other community and industry stakeholders who might also be impacted by the decisions made by the various boards and commissions that will be affected by this Bill. We would also humbly ask that a representative of the Hawaii Building and Construction Trades Council (HBCTC) be included as an additional member/stakeholder, as our members and their interests are directly impacted by the decisions made by the boards and commissions listed in the Bill.

The HBCTC, chartered in 1953, is a recognized member of, and sanctioned by the AFL-CIO and our parent organization the Building and Construction Trades Department which is a national organization representing the organized construction trades and created by the AFL-CIO in 1901. HBCTC has and continues to serve its members through the advocacy and education of construction trades in Hawaii. HBCTC has played an integral role in the social and economic fabric of Hawaii through its efforts and its membership and sincerely appreciate the opportunity to share our comments on House Bill 1327.

Mahalo;

Kika G. Bukoski  
Hawaii Building and Construction Trades Council, AFL-CIO

**lowen1-Kyli**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 11, 2013 1:06 PM  
**To:** waltestimony  
**Cc:** mz@conservehi.org  
**Subject:** \*Submitted testimony for HB1327 on Feb 13, 2013 08:30AM\*

**HB1327**

Submitted on: 2/11/2013

Testimony for WAL/OMH on Feb 13, 2013 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marjorie Ziegler		Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
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**Testimony of  
WILLIAM J. AILA, JR.  
Chairperson**

**Before the House Committees on  
WATER & LAND  
and  
OCEAN, MARINE RESOURCES, AND HAWAIIAN AFFAIRS**

**Wednesday, February 13, 2013  
8:30 AM  
State Capitol, Conference Room 325**

**In consideration of  
HOUSE BILL 1327  
RELATING TO STATE AGENCIES**

House Bill 1327 proposes to amend Sections 171-4, 174C-7, and 205-1, Hawaii Revised Statutes (HRS), respectively, to add an additional member to the (1) Board of Land and Natural Resources (Board), (2) Commission on Water Resource Management (Water Commission), and (3) Land Use Commission, respectively, to be appointed by the Office of Hawaiian Affairs (OHA) Board of Trustees to represent OHA's interests. The Department of Land and Natural Resource (Department) comments, limited to SECTIONS 1 and 2 of the measure only, are as follows.

**SECTION 1**

The Department recognizes the importance of incorporating an understanding of native Hawaiian rights as part of the membership of the Board. The Administration has submitted a proposal (House Bill 941/Senate Bill 1172) that seeks to amend the composition of the Natural Area Reserves System Commission by adding a member possessing a background in native Hawaii traditional and customary rights, and suggests that a similar provision be included in the guiding statute for the Board. Specifically, the Department recommends that Section 171-4(a), HRS, be amended as follows:

**§171-4 Board of land and natural resources; terms and qualifications of members of the board; organization; expenses.** (a) The board of land and natural resources shall be composed of seven members, one from each land district and three at large, to be nominated and, by and with the advice and consent of the senate, appointed by the governor as provided in section 26-34. The term and removal of a member of the board and the filling of a vacancy on

**WILLIAM J. AILA, JR.**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ESTHER KIA'AINA**  
FIRST DEPUTY

**WILLIAM M. TAM**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

the board shall also be as provided in section 26-34. There shall be not more than three members on the board from the same political party. At least one member of the board shall have a background in conservation [~~and~~], natural resources, and native Hawaiian rights, as evidenced by:

- (1) A college degree in a relevant field, including forestry, wildlife conservation, geology, environmental science, or marine biology[;], or native Hawaiian rights, or
- (2) Work history sufficient to demonstrate an appropriate level of knowledge in the subject of land and natural resources or native Hawaiian rights, including parks and recreation, public lands management, natural area reserves, aquatic resources, boating and recreation, forestry and wildlife, water resources management, [~~or~~] conservation and resources, or native Hawaiian rights.

## SECTION 2

First, Section 174C-7, HRS, State Water Code provides that “at least one member shall have substantial experience or expertise in traditional Hawaiian water resource management techniques and in traditional Hawaiian riparian usage.” For a number of reasons, the Department recommends this broad “experience and knowledge based” approach rather than having OHA (or any other organization) place an individual on the Board or Water Commission. This is an approach that other Boards and Commissions may want to consider. It brings appropriate knowledge and expert experience about traditional native Hawaiian history and practices into decision-making, without rendering the position a captive vote of one group.

Establishing a general requirement is preferable to naming a specific organization. Identifying one organization may only encourage other agencies and organizations with specific and distinct interests to also request a seat on the Board or the Water Commission.

Second, all Board and Water Commission members have constitutional and statutory responsibilities to protect and preserve the rights and cultural practices of native Hawaiians under the Hawaii Admission Act, Hawaii State Constitution, Article XII, Chapter 174C, HRS, and the Hawaiian Homes Commission Act, Section 221. Identifying and appointing one member from OHA alone to protect those interests misallocates responsibility to a single person.

The Hawaii Supreme Court has made it clear that in the context of water, the entire Commission has a responsibility to respect and protect native Hawaiian rights and practices (In Re Waiahole; Na Wai Eha) and to carry out the State’s public trust duties. This does not rest on a single member.

Third, OHA and other organizations are often parties before the Board or the Water Commission, including important contested case hearings. Any member appointed by an organization would be required to recuse him or herself on any matter in which the organization has an interest (both because of conflict of interest and third party due process). If the interest represented is broader than OHA (as an organization), then the individual might be barred from a whole range of issues. This might actually defeat the very purpose of the appointment.

Thank you for the opportunity to testify.



