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GOVERNOR OF HAWAII



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

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**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the House Committee on
JUDICIARY**

**Thursday, February 7, 2013
2:02 PM
State Capitol, Room 325**

**In consideration of
HOUSE BILL 220, HOUSE DRAFT 1
RELATING TO TRAINING**

House Bill 220, House Draft 1 requires the Office of Hawaiian Affairs (OHA) to establish, design, and administer a training course in Native Hawaiian matters for specified members of boards, councils, and commissions and requires those members to take the course within six months of their respective appointments. The Department of Land and Natural Resources (DLNR) supports this bill and also offers the following comments.

DLNR is acutely aware of the need for the members of its boards and commissions to be properly educated and sensitive to the important subject of Native Hawaiian matters. However, DLNR requests that OHA keep in mind that all of the members of these boards and commissions fulfill an important public service by serving on a volunteer basis, and often have limited time. DLNR also notes that OHA's presence before the various councils, boards and commissions to offer guidance on Native Hawaiian matters has been very beneficial and we continue to urge an OHA presence.

DLNR is committed to increasing capacity and knowledge among its staff on Native Hawaiian rights. At a recent volunteer training Saturday workshop that OHA conducted this month on Native Hawaiian rights, there were many DLNR staff who attended, including the Chair and First Deputy. All felt that it was a productive introduction on important key Hawaiian issues. We would also encourage that OHA offer abbreviated workshops directly to different agencies, like DLNR, so that more staff can attend during the work week.

Thank you for the opportunity to testify.

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



HB220
RELATING TO TRAINING
House Committee on Judiciary

February 7, 2013

2:02 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) strongly **SUPPORTS** HB220, which is a bill in OHA's 2013 Legislative Package. This bill would require certain board and commission members to attend a Native Hawaiian Law training course developed by OHA. HB220 represents an opportunity for OHA to work with the State of Hawai'i to empower these members with information so that they can make decisions that are consistent with the state's fiduciary obligations to the Native Hawaiian people.

A training course in Native Hawaiian Law for relevant board and commission members is **necessary to honor the trust obligation and responsibility owed by the State of Hawai'i to the Native Hawaiian people**. The boards and commissions listed in HB220 administer resources and programs that directly impact Native Hawaiian traditional and customary rights, natural and cultural resources, and the public trust. As state entities, these boards and commissions have a duty to protect and preserve Native Hawaiian rights and to administer the public trust in the interest of the state's beneficiaries, including Native Hawaiians.

Given the broad range of expertise and experience of the individuals selected to serve on these state councils, boards, and commissions, many members of these key policy-making entities do not possess knowledge of the unique rights and responsibilities that relate to the Native Hawaiian community. Despite their affirmative duties, the board and commission members are not provided with any related training. Unfortunately, this has likely contributed to expensive and unnecessary litigation as well as distrust by the Native Hawaiian community. The training course would be a significant step towards addressing these problems.

OHA partnered to conduct a Native Hawaiian Law Training Course on January 12, 2013. At least one member from each board and commission listed in HB220 RSVP'd along with members of other boards and commission and associated staff members. In total over 100 individuals RSVP'd for the course. The **attendees overwhelmingly indicated that after the course they better understood the State's legal responsibilities, Hawai'i's political history, and Native Hawaiian traditional and customary practices**.

As the constitutionally established body responsible for protecting and promoting the rights of Native Hawaiians, **OHA is the appropriate agency to create and administer a Native Hawaiian Law training course**. In creating OHA, the people of Hawai'i

specifically recognized their obligations pursuant to the “public trust which includes among other responsibilities, betterment of conditions for” Native Hawaiians. HRS § 10-1(a). OHA’s kuleana to serve as the agency responsible for the 1) performance, development, and coordination of programs and activities relating to Native Hawaiians, as well as 2) the assessment of policies and practices of other agencies impacting Native Hawaiians, is clearly consistent with HB220. Moreover, requiring relevant board and commission members to attend is also consistent with HRS § 10-1(b), which requires state agencies that “provid[e] services and programs which affect” Native Hawaiians “to cooperate with and assist wherever possible the office of Hawaiian affairs.”

Finally, in anticipation of questions by this committee, OHA would like to clarify that it is not OHA’s intention for the State to incur expenses related to the development of the proposed training course. Nor is it OHA’s intention for the general fund budget to be impacted.

OHA strongly urges the committee to **PASS** HB220. Mahalo nui loa for the opportunity to testify.



February 6, 2013

Representative Karl Rhoads, Chair
Representative Sharon E. Har, Vice Chair
House Committee on Judiciary

Comments and Concerns regarding the current form of HB 220, HD1 Relating to Training (OHA training course in native Hawaiian matters for specified members of State boards, councils, and commissions).

Thursday, February 7, 2013, 2:02 p.m., in CR 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 220, HD1. This bill proposes to require the Office of Hawaiian Affairs ("OHA") to establish, design, and administer a training course in native Hawaiian and Hawaiian traditional and customary rights, native Hawaiian and Hawaiian natural resources protection and access rights, and the public trust, including the State's trust responsibility; and requires specified members of State boards, councils, and commissions (Land Use Commission, Board of Land and Natural Resources, Commission on Water Resource Management, Environmental Council, Board of Directors of the Agribusiness Development Corporation, Board of Agriculture, Legacy Land Conservation Commission, Natural Area Reserves Systems Commission, Hawaii Historic Places Review Board, Board of Health, and Board of Directors of the Public Lands Development Corporation) to take the course within six months of their respective appointments.

LURF's Position. This bill is well-intended, and LURF **supports the intent of HB 220**, however, it has serious concerns, comments and recommendations, thus, at this time; LURF must **oppose the current version of SB 406, but would support amendments** which would allow other organizations to provide similar mandatory training to specified members of State boards, councils, and commissions, including, but not limited to organizations in the areas of agriculture, ranching, aquaculture, fishing, hunting, water use, land use, tourism, housing, education, business, military, renewable energy, sustainability, genetic modification, high technology and climate change. These other training organizations should have the same access, rights and privileges as OHA.

LURF's main concern is whether the establishment of the mandatory OHA training program will preclude any other person's or organization's right to provide the same training and advice to the specified members of state boards, councils, and commissions; and whether limiting the training opportunity only to OHA would 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.

State boards, councils, and commissions make decisions based on the law; rules, various policies, issues and factual information – and oftentimes their decisions are based on a “balancing” of all of these requirements, interests and information. LURF also 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 provide training or advice to specified members of State boards, councils, and commissions relating to the broad spectrum of subject matter areas relating to land and natural resource management, which includes agriculture, ranching, aquaculture, fishing, hunting, water, tourism, housing, education, business, military, land use, renewable energy, sustainability, genetic modification, and high technology.

Background. LURF is familiar with issues relating to HB 220, because it is somewhat similar to Act 288 (SLH 2012) (HB 2806, HB 2, SD 2, CD 1), which created the Aha Moku Advisory Committee to advise the Office of the Chairperson of the Board of Land and Natural Resources (“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. LURF also supported the intent of Act 288, which specifically allows the Aha Moku Advisory Committee to provide advice to BLNR on: integrating indigenous resource management practices with western management practices in each moku; identifying a comprehensive set of indigenous practices for natural resource management; fostering the understanding and practical use of native Hawaiian resource knowledge, methodology, and expertise; sustaining the State's marine, land, cultural, agricultural, and natural resources; providing community education and fostering cultural awareness on the benefits of the aha moku system; fostering protection and conservation of the State's natural resources; and developing an administrative structure that oversees the aha moku system.

During the 2012 legislative session, LURF testified in support of HB 2806, HD2, SD1, which would have placed the Aha Moku Advisory Committee within OHA, based on the understanding that the Aha Moku Advisory Committee is best suited to be within the OHA, rather than in the DLNR, since the purpose of creating the Aha Moku Advisory Committee is similar to the purpose for which the OHA was created (such an amendment would be consistent with the companion Senate version - SB 3053, SD1). We also recommended that the legislature consider an amendment to that measure which would require prior consultation between the legislature and OHA, the approval by the OHA Board of Trustees, and a funding allocation to OHA to place the Aha Moku Advisory Committee within OHA.

For the reasons stated above, LURF respectfully recommends that **SB 406 be held in this Committee at this time, until it is amended** to allow the same mandatory training opportunities to other organizations and interests.

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



Association of Hawaiian Civic Clubs

P. O. Box 1135
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HOUSE COMMITTEE ON JUDICIARY

HOUSE BILL 220, HD1 RELATING TO TRAINING

Thursday, February 7, 2013; 2:02pm; Room 325

Aloha Chairman Rhoads, Vice chair Har and members of the House Judiciary Committee. The Association of Hawaiian Civic Clubs supports this measure and finds that the amendments made to the original version give us no reason to change our position.

The Association of Hawaiian Civic Clubs (AHCC) is currently comprised of sixty nine component member clubs in Hawaii and fifteen states on the continent. The first civic club was organized in 1918 by Prince Kuhio and a group of prominent Hawaiian men when Kuhio was a Delegate to the US Congress. Kuhio recognized the need for Native Hawaiians to become more involved in the passage of the Hawaiian Homes Act then before the Congress, and to further become engaged in the intricacies of federal and local government.

Training of this type will provide more knowledgeable decision-making by members on boards and commissions. It was not stated in the bill and but perhaps the State Admission Act, Section 5(f) can be added to the list of reference documents to be used in the training.

Thank you for the opportunity to submit testimony.

Contact: jalna.keala2@hawaiiantel.net

Hawaiian Affairs Caucus

Democratic Party
1050 Ala Moana Blvd, Suite D2150
Honolulu, Hawaii 96814

February 6, 2013

Testimony in Support of HB220

Aloha Mai Kakou House Judicial Committee Chair Rep. Karl Rhoads and Vice Chair Sharon E. Har and members of the committee,

The Hawaiian Affairs Caucus of the Democratic Party of Hawaii strongly supports HB220HD1/SB406 which requires OHA to create and fund a Native Hawaiian Law training course for specified members of state boards, councils, and commissions. The State of Hawaii has a trust obligation and a fiduciary duty to Native Hawaiians which needs to be clarified for these individuals who have been selected to serve.

Furthermore, these members learn that they should uphold and protect Native Hawaiian traditional and customary rights, culture, natural resources, and access rights.

OHA's first training class was well-received. Appointees are more fully informed of their roles and responsibilities towards Native Hawaiians. This is a winning situation for the Hawaiian beneficiaries and for those who carry out various mandates in the State. Each knows his kuleana.

Mahalo for this opportunity to testify in support of HB220, HD1.

Lela M. Hubbard

Chair

About the Hawaiian Affairs Caucus
www.hawaiianaffairscaucus.weebly.com

Established in 2006, the Democratic Party Hawaiian Affairs Caucus was founded on the Hawaiian cultural values of aloha, mālama 'āina, ho'okipa and kuleana. Our work and interaction in the community reflect our Hawaiian values. Our kuleana is to 1) mālama 'āina, 2) protect all of Hawai'i's natural resources; 3) mālama na kupuna, and 4) educate all on Hawaiian values. We advocate protection of Native Hawaiian rights, cultural practices and sacred sites; a pono economic system; sustainability that will lead to abundance; and 4) accountability of public servants.

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Unity, Equality, Aloha for All

To: OMH, JUD, FIN
From: Kenneth R. Conklin, Ph.D.
Re: HB220-HD1
Date: February 4, 2013

TESTIMONY IN OPPOSITION

There are many reasons for opposing this bill. In this testimony I will focus on two reasons.

1. The bill places one state agency, OHA, in a position of authority over other state agencies by requiring employees to pass a course whose purpose is to brainwash them with the political views of OHA.
2. The bill would require government employees to learn about, and give deference to, the ancient Hawaiian religion as the justification for various state laws and practices regarding water rights for taro, protection of ancient burials, etc. This would be an establishment of religion contrary to the the First Amendment of the U.S. Constitution; and it would also force employees who have no Hawaiian blood to kow-tow to a religion which portrays people who do have Hawaiian blood as possessing an inherent God-given right to rule these islands.

1. This bill authorizes OHA to exercise power over all or most state agencies.

It elevates OHA to a position of superiority over other agencies of the State of Hawaii, by forcing employees of those agencies to place themselves under the authority of OHA, where OHA will determine the contents of the courses they are required to take, and OHA will be the sole judge of whether those

employees have learned the subject matter and have shown proper deference to the political views of OHA. This bill forces government employees to submit to political indoctrination -- brainwashing -- in the views of OHA, many of which are highly controversial, morally reprehensible, and probably unconstitutional.

For example, OHA has certain views regarding who owns the ceded lands and whether the state has a right to sell parcels of ceded lands. The Hawaii Supreme Court made a 5-0 decision upholding OHA's views. But on appeal, the U.S. Supreme Court ruled 9-0 that OHA's views are wrong. Can we expect OHA to teach correct information about who owns the ceded lands and whether the state can sell them?

For example, OHA has certain views about the Hawaiian revolution of 1893 that overthrew the monarchy, and points to the Blount Report of 1893 and the U.S. apology resolution of 1993 to bolster OHA's views. But those views are controversial, and are disproved by the Morgan Report issued by the U.S. Senate in 1894 and by the majority report of the Native Hawaiians Study Commission issued by a joint Senate/House commission in 1996. Can we expect OHA to provide both sides of this controversy, or will OHA brainwash state employees by teaching only the views OHA endorses?

2. This bill requires government employees to learn about "traditional and customary rights" of Native Hawaiians to ensure that in carrying out their duties, the employees will give respect and deference to Native Hawaiian beliefs and cultural values. For example, we might expect employees to be trained regarding sacred places, the reasons why taro patches are given special guarantees of access to water, the reasons why ancient burials must not be disturbed, etc.

Those topics, and many others, are based in the ancient Hawaiian religion, which has a creation legend which today's sovereignty activists (incorrectly) describe as portraying Native Hawaiians (and only Native Hawaiians) as genealogically the children of the gods and the brothers to these islands, and the younger brothers of the taro plant, in a way nobody ever can be who lacks a drop of native blood.

The Hawaiian religion is the only one to be given special deference under the

terms of this bill; thus this bill would be an establishment of religion. Under terms of this legislation, government money will be used to indoctrinate government employees with a religious belief. Furthermore, the way that belief is likely to be taught can best be described as religious fascism because it justifies giving governmental authority over land-use decisions to a particular racial group.

In 1819, the year before the American missionaries came to Hawaii, the sovereign King Liholiho Kamehameha II, with his regent stepmother Queen Ka'ahumanu, and with Kahuna Nui (High Priest) Hewahewa, exercised sovereignty on behalf of all native Hawaiians to abolish the ancient religion, and ordered the destruction of the heiaus and burning of idols. Today's ethnic Hawaiians disrespect the decision of their ali'is and ancestors by trying to resurrect the ancient religion for political purposes. By seeking to elevate that ancient religion above all other religions, they disrespect the right to freedom of religion possessed by all Americans. This committee should not disrespect the multiracial, multicultural people of Hawaii by passing this bill.