



SB406 SD1
RELATING TO TRAINING
Senate Committee on Ways and Means

February 22, 2013

9:00 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) strongly **SUPPORTS** SB406 SD1, 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. SB406 SD1 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 SB406 SD1 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 the first Native Hawaiian Law Training Course on January 12, 2013. At least one member from each board and commission listed in SB406 SD1 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 that they have a better understanding of 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 SB406 SD1. 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 or the administration of the proposed training course. Nor is it OHA’s intention for the general fund budget to be impacted.**

OHA strongly urges this committee **PASS** SB406 SD1. Mahalo nui loa for the opportunity to testify.



LAND USE RESEARCH
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February 20, 2013

Senator David Y. Ige, Chair
Senator Michele N. Kidani, Vice Chair
Senate Committee on Ways and Means

Comments, Concerns and Opposition to current form of SB 406, SD1, Relating to Training (OHA training course in native Hawaiian matters for specified members of State boards, councils, and commissions).

Friday, February 22, 2013, 9:00 a.m., in Conference Room 211

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.

SB 406, SD1. This bill proposes to require the Office of Hawaiian Affairs ("OHA") to establish, design, and either administer a training course, or approve a third party to administer a training course in native Hawaiian matters for specified members of the following State boards, councils, and commissions:

- Land Use Commission
- Board of Land and Natural Resources ("BLNR")
- 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

The bill further requires those members to take the course within one year of their respective appointments. The effective date is July 1, 2050.

This bill is somewhat similar to 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.

LURF's Position. This bill is well-intended, and LURF **supports the intent of SB 406**, 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 provide that (1) other organizations have the same rights to provide 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 organizations should have the same access, rights and privileges as OHA; (2) if OHA maintains its absolute control over the mandatory training, that another agency or organization be assigned to advocate before those of certain State boards, councils and commissions; and (3) OHA's mandatory training program should be consistent with the legal interpretations and advice provided by the Attorney General.

LURF's concerns, objections and proposed amendments are more fully explained below:

- **This bill gives OHA the absolute power to determine the training for State boards and commissions and provide OHA with “a special and unfair advantage” over any other individual or public interest group which seeks to provide public input to those State boards, councils and commissions. Due process, equal protection and fairness dictate that other organizations with different views should be afforded the same mandatory training opportunities.** LURF's main concern is whether OHA's absolute power to establish the mandatory training program will provide OHA with the power preclude any other person's or organization's right to provide the same advice and training to the specified members of state boards, councils, and commissions; and would arguably have the effect of creating and favoring OHA as a special class, as it confers favorable treatment, special access, rights and privileges only to OHA, as one special interest group, thereby potentially rendering the measure unconstitutional.

LURF believes that the laws enacted by our Legislature must rightly support the free speech, due process 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. Thus LURF respectfully recommends that this bill be amended to allow all of the groups named above the same rights to conduct mandatory training of those State boards, councils and commissions.

- **OHA will have a conflict of interest between its statutory “advocacy efforts” before government boards and commissions and its proposed absolute power to determine the mandatory training for those same boards, councils and commissions.** OHA's statutory purposes include conducting “advocacy efforts for native Hawaiian and Hawaiians” before the very same boards, councils and commissions

for which they are they are administering, or approving a third party to administer, a mandatory training program on the very same issues they are advocating for. Assuming OHA maintains its absolute powers over such mandatory training under this measure, the conflict of interest issue could be resolved by an amendment to require that OHA recuse itself from advocating before those State boards, councils and commissions, and another agency should be assigned such advocacy duties.

- **OHA’s mandatory training of State boards and commissions, or the mandatory training by a third party approved by OHA could be inconsistent with the legal interpretation and advice provided by the Department of the Attorney General (“Attorney General”).** LURF understands that the Attorney General is the legal counsel and advisor for the above-referenced State boards and commissions. LURF also understands that in the past, OHA’s interpretation of legal rights and responsibilities may have been inconsistent with the legal interpretation and advice provided by the Attorney General. If the legal interpretations differ between OHA and the Attorney General, it could cause unnecessary confusion among the various members of those State board or commissions. If OHA administers mandatory training, or approves a third party who provides mandatory training for State boards and commissions – such training should be consistent with the legal interpretations and advice provided by the Attorney General. To prevent such a confusing situation, this bill should be amended to provide that the mandatory training should be consistent with the legal interpretations and advice provided by the Attorney General.

For the reasons stated above, LURF respectfully recommends that **SB 406, SD1, be held in this Committee at this time, unless and until it is amended as described above.**

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

From: mailinglist@capitol.hawaii.gov
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Cc: tabraham08@gmail.com
Subject: *Submitted testimony for SB406 on Feb 22, 2013 09:00AM*
Date: Tuesday, February 19, 2013 6:08:13 PM

SB406

Submitted on: 2/19/2013

Testimony for WAM on Feb 22, 2013 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Troy Abraham	Individual	Support	No

Comments:

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Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the Senate Committee on
WAYS & MEANS

Friday, February 22, 2013
9:00 AM
State Capitol, Room 211

In consideration of
SENATE BILL 406, SENATE DRAFT 1
RELATING TO TRAINING

Senate Bill 406, Senate Draft 1, proposes to require 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, and charge fees to participants of the course as needed to fund costs of the course. **The Department of Land and Natural Resources (DLNR) prefers the original version of this measure and offers the following comments and concerns on the Senate Draft 1.**

DLNR is acutely aware of the need for members of its boards and commissions to be properly educated and sensitive to the important subject of Native Hawaiian matters. 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 last 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.

Senate Bill 406, Senate Draft 1 proposes to place fees on participants, whereas in the original version of the measure OHA absorbed the costs associated with the training. DLNR is concerned with the imposition of fees for mandatory training on to DLNR and all of the members of these boards and commissions that serve on a volunteer basis, and often have limited time.