

**HB 1999**

**RELATING TO  
TRAINING**

---

---

# A BILL FOR AN ACT

RELATING TO TRAINING.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. In Act 169, Session Laws of Hawaii 2015, the  
2 legislature found that pursuant to Hawaii's constitution,  
3 statutes, and case law, the State recognizes a mandate to  
4 protect native Hawaiian and Hawaiian traditional and customary  
5 rights. Accordingly, Act 169 amended chapter 10, Hawaii Revised  
6 Statutes, to require the office of Hawaiian affairs to  
7 establish, design, and administer a training course on native  
8 Hawaiian and Hawaiian rights, the sources of these rights, and  
9 how infringement of these rights affects the native Hawaiian and  
10 Hawaiian people. Act 169 required members of certain state  
11 councils, boards, and commissions to take the training course,  
12 and allowed other state and county officers, representatives,  
13 and employees to enroll in the training course.

14           The legislature further finds that the training course  
15 required by Act 169 has been well-attended and well-received  
16 since its implementation. Attendees report that the course gave  
17 them a better understanding of the State's legal



1 responsibilities to native Hawaiians, Hawaii's political  
2 history, the public land trust, native Hawaiian traditional and  
3 customary rights, Hawaii's water laws, laws relating to native  
4 Hawaiian burials, and attendees' kuleana as decision-makers,  
5 lawmakers, and government staff. Furthermore, policy-makers and  
6 community members continue to request similar trainings.  
7 Special trainings were also provided to the governor and his  
8 cabinet and the board of regents of the university of Hawaii  
9 upon request. In light of the training program's success, it is  
10 important to extend its benefits as widely as possible to those  
11 whose kuleana requires an understanding of native Hawaiian  
12 rights.

13 The purpose of this Act is to require certain government  
14 decision-makers at both the state and county levels to attend a  
15 training course on native Hawaiian and Hawaiian rights.

16 SECTION 2. Chapter 10, Hawaii Revised Statutes, is amended  
17 by amended the title of part III to read as follows:

18 "[+]PART III.[+] TRAINING; CERTAIN BOARDS, COMMISSIONS,  
19 [~~AND~~] COUNCILS [✓], AND PUBLIC OFFICIALS; NATIVE HAWAIIAN AND  
20 HAWAIIAN TRADITIONAL AND CUSTOMARY RIGHTS, NATURAL RESOURCE  
21 PROTECTION AND ACCESS RIGHTS, AND THE PUBLIC TRUST"



1 SECTION 3. Section 10-41, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) The training required by this part shall apply to the  
4 following:

- 5 (1) The members of the land use commission, board of land  
6 and natural resources, commission on water resource  
7 management, environmental council, board of directors  
8 of the agribusiness development corporation, board of  
9 agriculture, legacy land conservation commission,  
10 natural area reserves system commission, Hawaii  
11 historic places review board, and board of health[-];
- 12 (2) The director, deputy, and division heads of the  
13 department of land and natural resources;
- 14 (3) The director, deputy director of administration,  
15 deputy director of airports, deputy director of  
16 harbors, and deputy director of highways of the  
17 department of transportation;
- 18 (4) The director, deputy director of administration,  
19 deputy director of health, deputy director of  
20 environmental health administration, and environmental  
21 management division chief of the department of health;



- 1        (5) State legislators;  
2        (6) Judges;  
3        (7) The director and deputy directors of the county  
4                planning departments;  
5        (8) The members of the county councils and the county  
6                planning commissions;  
7        (9) City and county managing directors; and  
8        (10) State directors, deputy directors, and division heads  
9                of state departments not listed in section 10-41(a) (1)  
10                through (4)."

11                SECTION 4. Section 10-42, Hawaii Revised Statutes, is  
12 amended to read as follows:

13                "[+] §10-42 [+] Training relating to native Hawaiian and  
14 Hawaiian traditional and customary rights, natural resources and  
15 access rights, and the public trust. (a) All council, board,  
16 and commission members identified in section [~~10-41(a)~~] 10-  
17 41(a) (1) shall complete the training course administered by the  
18 office of Hawaiian affairs pursuant to this section within  
19 twelve months of the date of the member's initial appointment.  
20 All persons identified in sections 10-41(a) (2) through (7) shall  
21 complete the training course within twelve months of the date of



1 hire, initial appointment, or initial taking of elected office,  
2 as applicable; provided that all non-appointed persons  
3 identified in sections 10-41(a)(2) through (7) who were already  
4 serving in their positions at the time of enactment of this  
5 section shall complete the training course within twelve months  
6 of the date of enactment of this section.

7 (b) The office of Hawaiian affairs, at its own expense,  
8 shall establish, design, and administer a training course  
9 relating to native Hawaiian and Hawaiian traditional and  
10 customary rights, native Hawaiian and Hawaiian natural resource  
11 protection and access rights, and the public trust, including  
12 the State's trust responsibility. The training course shall  
13 include:

- 14 (1) Historical information, explanations, and discussions  
15 of key state laws, state constitutional provisions,  
16 and court rulings that reaffirm and provide for the  
17 protection of native Hawaiian and Hawaiian rights; and  
18 (2) A discussion of the importance of public trust  
19 resources and various programs to native Hawaiian and  
20 Hawaiian rights.



1 (c) The office of Hawaiian affairs, at its own expense,  
2 shall develop the methods and prepare any materials necessary to  
3 implement the training course, administer the training course,  
4 and notify each [~~council, board, and commission~~] person  
5 identified in section 10-41(a) that attendance in a training  
6 course is mandatory.

7 (d) The office of Hawaiian affairs shall offer the  
8 training course at least twice per year.

9 (e) The governor shall provide to the office of Hawaiian  
10 affairs the names of persons required to take the training  
11 course pursuant to sections 10-41(a)(1) through (6) and a(10) of  
12 this part within thirty calendar days of their initial  
13 appointment [~~by the governor.~~] or hire, provided that the names  
14 of persons identified in sections 10-41(a)(2) through (6) who  
15 were already serving in their positions at the time of enactment  
16 of this section shall be provided within thirty days of the date  
17 of enactment of this section. The county mayors shall provide  
18 to the office of Hawaiian affairs the names of persons within  
19 their respective counties who are required to take the training  
20 course pursuant to sections 10-41(a)(7), (8) and (9) of this  
21 part within thirty calendar days of their initial appointment,



1 election, or hire; provided that the names of non-appointed  
2 persons identified in section 10-41(a)(7) who were already  
3 serving in their positions at the time of enactment of this  
4 section shall be provided within thirty days of the date of  
5 enactment of this section."

6 SECTION 5. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 6. This Act shall take effect upon its approval.





**Report Title:**

Training; Native Hawaiian and Hawaiian Rights; Office of  
Hawaiian Affairs

**Description:**

Requires certain government decision-makers at the state and  
county levels to attend a training course on native Hawaiian and  
Hawaiian rights. (HB1999 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is  
not legislation or evidence of legislative intent.*



**HB 1999**

**TESTIMONY**

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the House Committee on  
LABOR**

**Thursday, February 15, 2018  
10:30 AM  
State Capitol, Conference Room 309**

**In consideration of  
HOUSE BILL 1999, HOUSE DRAFT 1  
RELATING TO TRAINING**

House Bill 1999, House Draft 1 proposes to expand training on Native Hawaiians Rights by expanding the categories of individuals required to attend. **The Department of Land and Natural Resources (Department) supports this measure with suggested amendments below, as a way to ensure a deeper understanding of native Hawaiian rights in government.**

The Department has encouraged its pertinent staff to attend the training, provided there is space and most have taken advantage of the opportunity. Department staff who have previously attended have commented that the training is well worth the time spent. The Department asks that at least one additional training be added per year so that staff have adequate options to fit their schedules. The Department appreciates the Office of Hawaiian Affairs providing this training.

Lastly, as the head of the Department, by statute, is referred to as the Chairperson of the Board of Land and Natural Resources as well as the Chairperson of the Commission on Water Resource Management and not Director, that individual is already covered under Section 10-41(a), Hawaii Revised Statutes (HRS). As such, the Department requests that the proposed language in Section 10-41(a)(2), HRS, be amended (Highlighted in grey) to read as follows:

(a) The training required by this part shall apply to the  
following:

**SUZANNE D. CASE**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ROBERT K. MASUDA**  
FIRST DEPUTY

**JEFFREY T. PEARSON, P.E.**  
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

(1) The members of the 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 system commission, Hawaii historic places review board, and board of health[-];

(2) The [director, deputy,] deputies and division heads of the department of land and natural resources;

Thank you for the opportunity to comment on this measure.

Harry Kim  
Mayor



Wil Okabe  
Managing Director

Barbara J. Kossow  
Deputy Managing Director

## County of Hawai'i Office of the Mayor

25 Aupuni Street, Suite 2603 • Hilo, Hawai'i 96720 • (808) 961-8211 • Fax (808) 961-6553  
KONA: 74-5044 Ane Keohokālole Hwy., Bldg C • Kailua-Kona, Hawai'i 96740  
(808) 323-4444 • Fax (808) 323-4440

February 13, 2018

Representative Aaron Ling Johanson, Chair  
Committee on Labor & Public Employment  
Hawai'i State Capitol, Room 309  
Honolulu, HI 96813

Dear Chair Johanson and Committee Members:

**Re: HB 1999, HD 1 Relating to Training Courses on Native Hawaiian and Hawaiian Rights**  
**Hearing Date: 02/15/18 – 10:30 am; House Conference Room 309**

I am often reluctant to endorse any mandate, especially an unfunded mandate that will impact county governments. However, there are few things as important as fostering a better understanding of Hawai'i's First Nation, and I have heard great things about the OHA training course.

Therefore, I support the concept behind HB 1999, HD1. However, I think there needs to be more detail. For example, what is the time commitment that each participant must make? It would seem that if training is mandated, there should also be a mandate that the course be no more than a certain number of hours.

I would also ask that a provision be made to offer the courses on the neighbor islands so that travel will not become a barrier to participation. It seems to me that at least twice a year on each island would be the minimum necessary.

Finally, as I am sure others have noted, it is not clear what happens if a "mandate" is violated. Suppose a duly elected County Council member fails to take the training for some reason; what is the consequence? In the beginning, would you consider offering the courses to the targeted officials, rather than requiring participation. I know that I would strongly encourage my appointees to attend, and I am confident that other Mayors would do the same.

Requiring that the course be offered, rather than mandating that it be taken, would also address a concern that has been voiced about the content of the course. If the audience for the course is not required to be there, but is attending because the course is of high quality, there would be some built-in protection against a change in content, at some time in the future, which would make the course less valuable to the decision-makers listed in the bill.

Respectfully submitted,

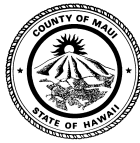
Harry Kim  
Mayor, County of Hawai'i

Council Chair  
Mike White

Vice-Chair  
Robert Carroll

Presiding Officer Pro Tempore  
Stacy Crivello

Councilmembers  
Alika Atay  
Elle Cochran  
Don S. Guzman  
Riki Hokama  
Kelly T. King  
Yuki Lei K. Sugimura



**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

February 13, 2018

TO: The Honorable Aaron Ling Johanson, Chair  
House Committee on Labor and Public Employment

FROM: Mike White  
Council Chair

A handwritten signature in black ink, appearing to read "Mike White", is written over the printed name and title.

SUBJECT: **HEARING OF FEBRUARY 15, 2018; OFFERING COMMENTS ON HB  
1999 HD 1, RELATING TO TRAINING**

Thank you for the opportunity to offer **comments** on this measure. The purpose of this bill is to require certain government decision-makers at both the state and county levels to complete a training course on native Hawaiian and Hawaiian rights.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

Training on Native Hawaiian history, law, and rights is crucial in assisting decision makers to create policies that respect, perpetuate, and reflect the culture of our islands.

I support the intent of this measure, but offer the following comments:

1. Understanding the effectiveness of the training course created by the Office of Hawaiian Affairs through Act 169, the Maui County Council passed Bill 119 (2016). The bill required the Maui, Molokai, and Lanai Planning Commissions along with the Hana Advisory Committee, to take part in this specific Native Hawaiian law training course. In deliberations over the bill, Councilmembers were informed that funding was available from the Office of Hawaiian Affairs to meet these training requirements.
2. In the fall of 2017, the Maui County Department of Planning attempted to organize the training for commissioners. They were notified that trainings were only available on weekends and at a central location. Training was not available for each island or during a commission meeting. Therefore, this would require travel by Molokai, Lanai, and Hana members to a central location. As funds were not available for such travel, the county requested to utilize the Council's video conferencing system. For Molokai, Lanai, and Hana to view the training being conducted in the Council Chamber, a live-stream must be broadcasted on Akaku, our public access television provider. Due to the nature of the training, the Office of Hawaiian Affairs did not want the training to be broadcasted.

3. Logistics are still being discussed to allow future Maui County trainings. However, appropriate funding is necessary to implement the trainings effectively. Please keep in mind that Maui County consists of Maui, Molokai, Lanai, and the rural district of Hana. Each of these unique areas have their own commissions and therefore, would be required to travel to a central location, or individual trainings would need to be organized in their respective communities. Appropriate funding is necessary, otherwise this will become another unfunded mandate.
4. When legislative bodies are subject to training, the sunshine law must also be considered. Hawaii Revised Statutes, 92-2.5 (e) states:  
*(e) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may attend an informational meeting or presentation on matters relating to official board business, including a meeting of another entity, legislative hearing, convention, seminar, or community meeting; provided that the meeting or presentation is not specifically and exclusively organized for or directed toward members of the board. The board members in attendance may participate in discussions, including discussions among themselves; provided that the discussions occur during and as part of the informational meeting or presentation; and provided further that no commitment relating to a vote on the matter is made or sought.*
5. Any trainings that encompass issues that are or may become board business must be conducted in compliance with Chapter 92-2.5 (e) or posted on an official meeting notice. An alternative is to exempt this specific training from the sunshine law.

These comments are offered with the spirit and desire to make this training achievable statewide and not as a deterrent. The training created by the Office of Hawaiian Affairs is truly invaluable and should be expanded.

Mahalo.

**HB-1999-HD-1**

Submitted on: 2/13/2018 4:59:17 PM

Testimony for LAB on 2/15/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Planning	County of Maui-Dept. of Planning	Comments	No

Comments:

Aloha,

The Maui County Planning Department has concerns over HB1999, HD1, as drafted.

The Maui County Council recently adopted an [ordinance](#) requiring this training for the members of our three island planning commissions. However, providing the training has proved to be problematic. These commissions are subject to the Sunshine Law and their proceedings are, therefore, open to the public. The Maui Planning Commission's meetings are regularly filmed and rebroadcast by AKAKU - Maui Community Media. OHA was resistant to allowing these training sessions to be open to the public and broadcast over community cable television, which is a deal-breaker. OHA was also not able to provide the training during these commissions' regular meeting days and at their regular locations, which also makes it difficult.

We believe the training would be valuable and insightful, and would encourage our staff and others to also listen in. However, it must be open to the public and must be provided on Lanai and Molokai, and in Hana, during the commissions' regular meeting times.

Mahalo,  
WILLIAM R. SPENCE  
Planning Director, County of Maui





**HB1999 HD1  
RELATING TO TRAINING**

House Committee on Labor & Public Employment

February 15, 2018

10:30 a.m.

Room 309

The Office of Hawaiian Affairs (OHA) generally **SUPPORTS** HB1999 HD1, which is substantially similar to HB1745, a bill in OHA's 2018 Legislative Package. HB1999 HD1 would **expand the application of Act 169 (Session Laws 2015) to provide certain additional state and county officials, state legislators, and state judges with training on Native Hawaiian and public trust law**, so that they may understand and make decisions that are consistent with their fiduciary obligations to the Native Hawaiian people, and to the public trust. **However, OHA does have concerns about the current draft's addition of state judges to the list of officials required to participate in the training, as this change would fundamentally alter the learning environment of the trainings, and substantially increase training costs.**

A training course in Native Hawaiian Law and the public trust doctrine for policymakers is necessary to fulfill the trust obligations and responsibilities held by the State of Hawai'i towards Kānaka Maoli. Accordingly, since 2013, OHA has offered a Native Hawaiian Law training course for state and county legislators, board and commission members, and other relevant individuals to attend on a voluntary basis. Based on the success of this course, since 2015, members of certain key state boards and commissions have been required to attend a Native Hawaiian Law training course within one year of their appointment. **Course attendees have consistently and continually expressed their appreciation for the course, and have overwhelmingly indicated that as a result of the course, they better understood the State's legal responsibilities towards Native Hawaiians and the public trust.**

The additional state and county officials who would be required to attend a training course under this measure implement policy decisions, administer resources, and manage programs that directly impact Native Hawaiian traditional and customary rights, natural and cultural resources, and the public trust. Each of the agencies represented have specific duties to protect and enforce Native Hawaiian rights, and to administer the public trust in the interest of its beneficiaries, including Native Hawaiians. **Notably, notwithstanding the broad range of expertise and experiences of the individuals elected, appointed, and hired for these positions, many may not possess knowledge of the unique legal rights and responsibilities that relate to Native Hawaiians, or to the public trust.** Unfortunately, this has likely contributed to a sense of disenfranchisement felt by many in the Native Hawaiian community, and policy decisions that have failed to uphold the

constitutional duties of the State and its counties.

Requiring training course attendance by many of the officials named in this bill, each of whom has unique kuleana to the Native Hawaiian community and under the public trust, will ensure that a greater number of critical decisionmakers are provided with the information they need to successfully fulfill the State's and counties' legal obligations. **More fully-informed decision-making by these individuals will thereby help to uphold our constitutional mandates, increase public confidence in state and county decision-making, and reduce conflicts and legal challenges in policymaking as well as policy implementation and enforcement.** Towards this end, OHA has and will continue to commit funds for the further development and administration of a Native Hawaiian Law training course, eliminating the need for appropriations from the state general fund.

OHA notes that as originally introduced, this measure differed from HB1745, OHA's package measure, in including state legislators, county managing directors, and the directors, deputy directors, and division heads of additional state departments as individuals also required to take the Native Hawaiian Law training course. While OHA's measure identifies individuals whose decision-making may have the most direct and critical impact on Native Hawaiian rights and the public trust, OHA agrees that all state agencies and entities have substantive obligations in this regard; OHA defers to the Committee and the legislature as to whether a training course requirement for these additional individual is appropriate at this time.

OHA also notes that the current draft of this measure has now included judges on the list of officials required to take the Native Hawaiian Law training course. **OHA notes that judges have direct authority to review the decisions and policies of legislators, state agencies, boards and commissions, and county councils; to require judges to attend the same training as these policymakers could potentially disrupt the safe learning environment of the training course and chill individuals from asking sincere, issue-oriented questions related to their respective kuleana, out of concern that it may undermine their previous and even future decisions that are challenged in court.** Moreover, the addition of over 75 judges statewide and potentially many more staff may vastly increase the cost burden of providing the course. While OHA has voluntarily subsumed the cost of trainings in previous years, and would do so going forward even with the passage of HB1745, OHA has not logistically or financially planned for an increase in the training course audience of such a magnitude.

**Therefore, we respectfully request that paragraph (6) on page 4, line 2 be removed, to eliminate "Judges" from the list of those who would be required to attend the Native Hawaiian Law training course.**

Accordingly, OHA strongly urges the Committee to **PASS** HB1999 HD1, with the recommended amendment. Mahalo nui loa for the opportunity to testify on this important measure.

**HB-1999-HD-1**

Submitted on: 2/13/2018 10:39:17 PM

Testimony for LAB on 2/15/2018 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	OCC Legislative Priorities Committee, Democratic Party of Hawaii	Support	No

Comments:

**HB-1999-HD-1**

Submitted on: 2/13/2018 11:51:06 PM

Testimony for LAB on 2/15/2018 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
De MONT R. D. CONNER	Ho'omanapono Political Action Committee (HPAC)	Support	Yes

Comments:

We continue to STRONGLY SUPPORT of this bill.

**HB-1999-HD-1**

Submitted on: 2/13/2018 9:27:34 PM

Testimony for LAB on 2/15/2018 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jennifer Milholen	Individual	Support	No

Comments:

**HB 1999**

**LATE  
TESTIMONY**