



**HB1999 HD2  
RELATING TO TRAINING**

Senate Committee on Hawaiian Affairs  
Senate Committee on Labor

Senate Committee on Public Safety, Intergovernmental, and Military Affairs

March 13, 2018

1:15 p.m.

Room 016

The Office of Hawaiian Affairs (OHA) **SUPPORTS** the intent of HB1999 HD2, which is substantially similar to SB2134 SD2, a bill in OHA's 2018 Legislative Package. HB1999 HD2 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 inclusion 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 may 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 to 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 make and 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 decisionmaking 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.** Toward 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 and SB2134, OHA's package measures, 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 package measure identifies individuals whose decisionmaking 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 Committees and the Legislature as to whether a training course requirement for these additional individuals is appropriate at this time.

OHA also notes that the current draft of this measure now includes judges on the list of officials required to take the Native Hawaiian Law training course. **As members of the Judiciary, 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 SB2134 SD2, 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 Committees to **PASS** HB1999 HD2, with the recommended amendment. Mahalo nui loa for the opportunity to testify on this important measure.

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 Senate Committees on  
HAWAIIAN AFFAIRS  
and  
LABOR  
and  
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS**

**Tuesday, March 13, 2018  
1: 15 PM  
State Capitol, Conference Room 016**

**In consideration of  
HOUSE BILL 1999, HOUSE DRAFT 2  
RELATING TO TRAINING**

House Bill 1999, House Draft 2 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 the suggested amendment 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, the head of the Department, by statute, is referred to as the Chairperson of the Board of Land and Natural Resources and as the Chairperson of the Commission on Water Resource Management, and not Director. As such, the head of the Department is already required to take the training under Section 10-41(a)(1), Hawaii Revised Statutes (HRS). Therefore, the Department requests that the proposed language in Section 10-41(a)(2), HRS, be amended (Highlighted in grey) to read as follows:

**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

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

(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;

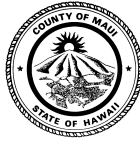
Thank you for the opportunity to comment on this measure.

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)

March 12, 2018

TO: The Honorable Maile S.L. Shimabukuro, Chair  
Senate Committee on Hawaiian Affairs

The Honorable Jill N. Tokuda  
Senate Committee on Labor

The Honorable Clarence K. Nishihara  
Senate Committee on Public Safety, Intergovernmental, and Military Affairs

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 MARCH 13, 2018; OFFERING COMMENTS ON HB 1999  
HD 2, 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-2**

Submitted on: 3/9/2018 9:10:26 PM

Testimony for HWN on 3/13/2018 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Leimomi Khan	Testifying for Democratic Party of Hawaii, Hawaiian Affairs Caucu	Support	No

Comments:

**HB-1999-HD-2**

Submitted on: 3/9/2018 5:55:41 PM

Testimony for HWN on 3/13/2018 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments:

I agree with OHA's February 28, 2018 testimony to the House Committee on Finance that "judges" should not be required for this training to retain a safe and open learning environment.

"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. "

I would like to also see Section 3(a)(6). deleted. I support passage of HB1999HD2 with the recommended amendments.



**HB-1999-HD-2**

Submitted on: 3/12/2018 12:10:24 PM

Testimony for HWN on 3/13/2018 1:15:00 PM

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

Comments:

**HB-1999-HD-2**

Submitted on: 3/12/2018 2:58:33 PM

Testimony for HWN on 3/13/2018 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Shane Akoni Nelsen	Testifying for Kuakini Hawaiian Civic Club	Support	No

Comments:

**HB-1999-HD-2**

Submitted on: 3/12/2018 5:40:58 AM

Testimony for HWN on 3/13/2018 1:15:00 PM

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

Comments:

We continue to STRONGLY SUPPORT this bill, but seek an AMENDMENT to include Judges, to have a separate training by themselves to alleviate any opportunity to cause conflicts of interest. Mahalo.



BEFORE THE SENATE HAWAIIAN AFFAIRS, LABOR, AND PUBLIC SAFETY,  
INTERGOVERNMENTAL & MILITARY AFFAIRS

Hawaii State Legislature  
March 12, 2018

House Bill 1999 HD2  
Relating to Training

Aloha Chair Shimbukuro, Vice Chair Galuteria, Chair Tokuda, Vice Chair English, Chair Nishihara,  
Vice Chair Wakai and Members of the Committees,

Ka Lāhui Hawaii Political Action Committee (KPAC) supports HB 1999 HD2, which requires certain government decision-makers at the state and county levels to attend a training course on native Hawaiian and Hawaiian rights.

The Kanaka Maoli people have lived in Hawai‘i for over 2,000 years and had a traditional land tenure system that was very different from Western concepts of land ownership. Despite over 200 years of “Contact” with the Western world, ideas of traditional Hawaiian land tenure and ownership that evolved and were outlined in 1848 Mahele, are still very difficult to translate into a digestible form for the general public including State decision makers.

Currently, Kanaka Maoli “rights customarily and traditionally exercised for subsistence, cultural and religious purposes” are protected by the Hawai‘i State Constitution (1978) Article XII Section 7 and reconfirmed by several landmark court cases. However, Kanaka Maoli rights to access our traditional lands (e.g. Kuleana and Hawaiian Kingdom Crown and Government lands) have been a hotly contested issue in communities across the Hawaiian archipelago for decades which have led to the arrests of hundreds of Kanaka Maoli. Most times when asserting customary and traditional rights the burden of proof is put upon Kanaka Maoli costing time, money and unnecessary trauma. This current system, gives undue hardship and stress to the people of the ‘āina (land) the majority of whom are already struggling financially (according to Asset Limited Income Constrained Employed: A Study of Financial Hardships in Hawai‘i published in 2017).

Educating decision and policy makers in the State on Kanaka Maoli rights is a proactive step in the right direction.

M. Healani Sonoda-Pale  
Chair, KPAC

**HB-1999-HD-2**

Submitted on: 3/9/2018 9:48:22 PM

Testimony for HWN on 3/13/2018 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nancy Davlantes	Individual	Support	No

Comments:

**HB-1999-HD-2**

Submitted on: 3/13/2018 3:52:48 AM

Testimony for HWN on 3/13/2018 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rachel L. Kailianu	Testifying for Ho`omana Pono, LLC	Support	Yes

Comments:

In STRONG SUPPORT!

**HB-1999-HD-2**

Submitted on: 3/13/2018 9:30:28 AM

Testimony for HWN on 3/13/2018 1:15:00 PM

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

Comments:

Center for Hawaiian Sovereignty Studies  
46-255 Kahuhipa St. Suite 1205  
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Unity, Equality, Aloha for all



To: Senate Committee on Hawaiian Affairs; Committee on Labor;  
and Committee on Public Safety, Intergovernmental and Military  
Affairs

For hearing Tuesday March 13, 2018

Re: HB 1999, HD2

RELATING TO TRAINING.

Requires certain government decision-makers at the state and WAM  
county levels to attend a training course on native Hawaiian and  
Hawaiian rights. (HB1999 HD2)

#### TESTIMONY IN OPPOSITION

Last year OHA cajoled the legislature into passing a law that  
forced heads of specified state and county departments to take a  
training course whose content and instructors are dictated by  
OHA. This year OHA wants to expand its empire by requiring more



government employees of additional departments to endure the OHA training. Next year OHA will seek to expand even further.

Make no mistake about what's going on here. OHA has certain views on controversial political issues and wants to make sure that decision-makers and employees of other government agencies get brainwashed to believe in OHA's propaganda, with no presentation of opposing views. Would any member of a state or county department dare to ask a question in class that challenges the correctness of what the OHA-designated teacher is saying, or disagrees with the opinions being presented? Please realize that many people feel moral revulsion at the concept of taxpayer funded racial entitlements.

This 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. Dozens -- perhaps hundreds -- of state and county department heads would now be placed under the direct authority and supervision of OHA, knowing that if they refuse to kow-tow to their OHA instructor they will be given a failing grade in this mandatory course and will then be ineligible to continue in their job. Does any state agency other than OHA exercise comparable authority over other agencies?

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?

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?

This 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. It would constitute an establishment of religion contrary to the First Amendment of the U.S. Constitution; and it would also force employees who have no Hawaiian blood to bow to a religion which portrays people who do have Hawaiian blood as possessing an inherent God-given right to rule these islands.

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 a government 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 provides a theological justification for 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 birth mother Keopuolani and his regent stepmother Queen Ka'ahumanu, and with Kahuna Nui (High Priest) Hewahewa, exercised self-determination on behalf of all native Hawaiians to abolish the ancient religion, and ordered the destruction of the heiaus and burning of idols. Those ethnic Hawaiians who try to resurrect the ancient religion for political purposes disrespect the decision of their ali'is and ancestors. 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 mainstream majority of today's ethnic Hawaiians, and the multiracial, multicultural people of Hawaii, by passing this bill. Please vote "No."

In view of the state auditor's report on OHA mismanagement, and the looming FBI investigation of financial corruption, IT IS OHA WHOSE TRUSTEES, CEO, CFO, AND ALL STAFFERS SHOULD BE REQUIRED TO PASS A COURSE ORGANIZED BY THE ATTORNEY GENERAL AND THE ETHICS COMMISSION FOCUSED ON LAWS, ETHICS AND ACCOUNTABILITY TO BENEFICIARIES REGARDING FISCAL MANAGEMENT AND PROCUREMENT OF GOODS AND SERVICES.