



HB1999 HD2 SD1
RELATING TO TRAINING
Senate Committee on Ways and Means

April 5, 2018

10:30 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB1999 HD2 SD1, which is substantially similar to SB2134 SD2 HD1, a bill originally in OHA's 2018 Legislative Package. HB1999 HD2 SD1 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 continues to 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 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.** 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 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 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 had planned to continue doing so going forward, 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 SD1, with the recommended amendment. Mahalo nui loa for the opportunity to testify on this important measure.



The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Ways and Means

Senator Donovan M. Dela Cruz, Chair

Senator Gilbert S.C. Keith-Agaran, Vice Chair

Thursday, April 5, 2018, 10:30 AM

State Capitol, Conference Room 211

by

Rodney A. Maile

Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1999, H.D. 2, S.D. 1, Relating to Training.

Purpose: Requires certain government decision-makers at the state and county levels to attend a training course on native Hawaiian and Hawaiian rights. Appropriates funds for the office of Hawaiian affairs to plan and implement the training course. Takes effect on 1/1/2050. (SD1)

Judiciary's Position:

The Judiciary appreciates the opportunity to comment on this measure.

This measure requires that certain government decision-makers at the state and county levels, including judges, attend a legal training hosted by the Office of Hawaiian Affairs (OHA). While the Judiciary recognizes that these trainings have been well-received by past participants, the Judiciary agrees with OHA’s testimony, which requests that judges be removed from the list of individuals who are required to attend the training. In addition to the impact that judicial presence may have on the training’s learning environment as noted in OHA’s testimony, the presence of state judges at the training also raises significant ethical concerns.

Under the Hawai‘i Revised Code of Judicial Conduct Rule 2.9(a), “A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter,” except in certain situations. Additionally, Rule 2.10(a) provides that “A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the

fairness of a matter pending or impending in any court or make any nonpublic statement that might substantially interfere with a fair trial or hearing.”

Therefore, the judges who attend cannot participate in discussions about issues in cases that are before the courts, or are likely to be before the courts in the future. Given the broad range of legal topics covered in OHA’s training, this would be very difficult to accomplish without impacting the nature of the training. Because state courts hear appeals from agency decisions, the agency decision-makers who attend the training could possibly have pending or impending cases that would be decided by one of the judges in attendance. And, the judges may not even be aware that a case is impending if it is still under consideration by the agency.

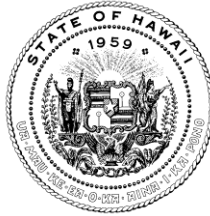
Additionally, there are ethical concerns about the appropriateness of requiring judges to attend a legal training administered by OHA, which has been a party to a number of cases brought in state court and which has filed amicus briefs in cases of interest. Even if the participants avoid discussions of pending or impending matters, the appearance of a litigant having private discussions with judges on matters related to the general subject of those cases is problematic.

It is important to note that the Judiciary recognizes the importance of continuing judicial education on matters relating to native Hawaiian and Hawaiian rights. For example, judges assigned to our Environmental Courts have received training on topics related to native Hawaiian rights and environmental protections, and we expect to offer more such training in the future.

In sum, the Judiciary respectfully opposes the inclusion of judges in the list of decision-makers who are required to attend training conducted by OHA, as provided by section 3 of the bill.

Thank you for the opportunity to comment on this 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 Committee on
WAYS AND MEANS**

**Thursday, April 5, 2018
10: 30 AM
State Capitol, Conference Room 211**

**In consideration of
HOUSE BILL 1999, HOUSE DRAFT 2, SENATE DRAFT 1
RELATING TO TRAINING**

House Bill 1999, House Draft 2, Senate 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 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.

Thank you for the opportunity to comment on this measure.

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

HB-1999-SD-1

Submitted on: 4/3/2018 9:40:28 AM

Testimony for WAM on 4/5/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michele McLean	Testifying for County of Maui	Comments	No

Comments:

Aloha kakou,

The Maui County Planning Department fully supports HB1999 and its companion SB2134, with one important tweak: **boards, commissions and County Councils must receive this training in compliance with the Sunshine Law.**

We have attempted to provide this training to our Maui, Lanai and Molokai Planning Commissions, but OHA was not able to travel to Lanai and Molokai, and refused to allow the training to be open to the public or to be filmed/broadcast on Akaku - Maui Community Media. **The bill must be amended to address this problem or we will be faced with a no-win situation: either violate the law that requires the training or violate the Sunshine Law.**

To remedy this problem, page 6, lines 7-8 of the proposed bill could be amended to amend HRS 10-42(d) as follows: "(d) The office of Hawaiian affairs shall offer the training course at least twice per year **on the island of Oahu and at least once per year on the islands of Kauai, Hawaii, Maui, Molokai and Lanai, and the training course provided to the persons identified in sections 10-41(a)(1) and 10-41(a)(8) shall comply with Chapter 92, Hawaii Revised Statutes.**"

Please make this necessary change and provide sufficient funding to OHA so that our boards, commissions and County Councils can comply with this important training requirement AND comply with the Sunshine Law.

Mahalo for your consideration.

Michele McLean, Deputy Planning Director, County of Maui

Harry Kim
Mayor



Wil Okabe
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawai'i Office of the Mayor

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April 3, 2018

Senator Donovan M. Dela Cruz, Chair
Committee on Ways and Means
Hawai'i State Capitol, Room 211
Honolulu, HI 96813

Senator Gilbert S.C. Keith-Agaran, Vice-Chair
Committee on Ways and Means
Hawai'i State Capitol, Room 211
Honolulu, HI 96813

Dear Chair Dela Cruz, Vice-Chair Keith-Agaran, and Committee Members:

Re: HB 1999, HD 2, SD 1 Relating to Training Courses on Native Hawaiian and Hawaiian Rights
Hearing Date: 04/05/2018 – 10:30 am; Conference Room 211

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, HD 2, SD 1. 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 specified 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.

Third, 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?

I realize that this mandate is already on the books for a number of officials, and there is no statutory consequence specified for failing to participate. However, I would suggest that, for instance, a controversial ruling by a Planning Commission could be

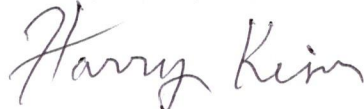
April 3, 2018
Page 2

challenged on the basis that one or more Commissioners should have been disqualified from serving because of failure to attend the mandatory training course.

Finally, I found the testimony in the Labor Committee dated February 13 from Maui Council Chair Mike White important and persuasive. I hope you will address the specific concerns he raises.

I must suggest that this bill not pass in its present form.

Respectfully submitted,

A handwritten signature in cursive script that reads "Harry Kim".

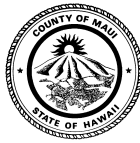
Harry Kim
Mayor, County of Hawai'i

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
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April 4, 2018

TO: The Honorable Donovan M. Dela Cruz, Chair
Senate Committee on Ways and Means

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 APRIL 5, 2018; OFFERING COMMENTS ON HB 1999 HD 2, SD 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-SD-1

Submitted on: 4/2/2018 6:49:35 PM

Testimony for WAM on 4/5/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Testifying for Hawaiian Civic Club of Honolulu	Support	No

Comments:

The Hawaiian Civic Club of Honolulu supports HB1999 HD2SD1. 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 KÄ• naka Maoli.

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Unity, Equality, Aloha for all



To: Senate Committee on Ways and Means

For hearing Thursday April 5, 2018

Re: HB 1999, HD2, SD1

RELATING TO TRAINING.

Requires certain government decision-makers at the state and county levels to attend a training course on native Hawaiian and Hawaiian rights. Appropriates funds for the office of Hawaiian affairs to plan and implement the training course. Takes effect on 1/1/2050. (SD1)

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.