

JAN 17 2020

A BILL FOR AN ACT

RELATING TO HAWAIIAN EXPERTISE IN LAND USE AND RESOURCE
MANAGEMENT.

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 traditional and customary rights.
5 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 Hawaiian
8 rights, the sources of these rights, and how the infringement of
9 these rights affects the Hawaiian people, and further required
10 new members of certain state councils, boards, and commissions
11 to complete the training course within one year of their
12 appointment.

13 Unfortunately, despite the regular provision of notice to
14 board and commission administrators, a significant number of
15 board and commission members subject to the mandatory training
16 course continue to fail to comply with their training course



1 completion responsibility. As a result, critical land use and
2 resource management decision-making may continue to be less than
3 fully informed on Native Hawaiian concepts, practices, and
4 rights.

5 The legislature further finds that, in recognition of the
6 importance of incorporating Native Hawaiian knowledge, values,
7 and rights in resource management decision-making, certain
8 critical decision-making bodies, such as the land use commission
9 and board of land and natural resources, are statutorily
10 required to have at least one member with experience or
11 expertise in Native Hawaiian practices or resource management
12 approaches. However, requiring just one member of the land use
13 commission and one member of the board of land and natural
14 resources to possess this experience or expertise has not
15 resulted in decisions that consistently recognize or incorporate
16 Native Hawaiian knowledge, values, and rights.

17 These issues in turn have led and continue to lead to
18 substantial conflict, distrust in government decisions and
19 processes, and even legal action against the State, and may
20 further foreclose critical opportunities to ensure our islands'



1 resiliency and self-sufficiency through culturally-informed land
2 use and resource management.

3 Accordingly, the legislature intends to ensure a deeper
4 understanding among board and commission members of the State's
5 legal responsibilities to Native Hawaiians, Hawaii's political
6 history, the public land trust, Native Hawaiian traditional and
7 customary rights, Hawaii's water laws and the public trust
8 doctrine, and laws relating to Native Hawaiian burials. The
9 legislature further intends to ensure greater recognition and
10 incorporation of Hawaiian knowledge, values, and rights in land
11 use and resource management decision-making.

12 The purpose of this Act is to:

13 (1) Prohibit council, board, and commission members who
14 fail to meet their training course completion
15 requirement from serving on a permitted interaction
16 group or voting on matters before their respective
17 councils, boards, or commissions;

18 (2) Require council, board, and commission members who
19 fail to meet their training course completion
20 requirement to complete their training requirement or
21 be reconfirmed by the senate by the end of the regular



1 legislative session following their training course
2 completion deadline;

3 (3) Require the office of Hawaiian affairs and the
4 department of land and natural resources to compile an
5 annual report of council, board, and commission
6 members who have failed to complete their training
7 course requirement, and to submit the report to the
8 governor and legislature no later than twenty days
9 prior to the convening of the regular legislative
10 session;

11 (4) Require four members of the board of land and natural
12 resources to be nominated from a list provided to the
13 governor by the office of Hawaiian affairs; and

14 (5) Require four members of the land use commission to be
15 nominated from a list provided to the governor by the
16 office of Hawaiian affairs.

17 SECTION 2. Section 10-42, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "[+]§10-42[+] Training relating to native Hawaiian and
20 Hawaiian traditional and customary rights, natural resources and
21 access rights, and the public trust. (a) All council, board,



1 and commission members identified in section 10-41(a) shall
2 complete the training course administered by the office of
3 Hawaiian affairs pursuant to this section within twelve months
4 of the date of the member's initial appointment. Members who
5 fail to complete the training course within the required period
6 shall be:

7 (1) Prohibited from serving on a permitted interaction
8 group or voting on a matter before their respective
9 council, board, or commission until the mandatory
10 training course is completed; and

11 (2) Removed from their respective council, board, or
12 commission at the end of the regular legislative
13 session following their deadline to complete the
14 training course, provided that members shall not be
15 removed if they complete the mandatory training course
16 or obtain the advice and consent of the senate to
17 continue serving on their respective council, board,
18 or commission by the end of the regular legislative
19 session following their deadline to complete the
20 training course.



1 (b) Individual votes taken by council, board, and
2 commission members who failed to complete the mandatory training
3 course may be challenged and subject to being nullified and
4 voided following a contested case proceeding.

5 (c) The office of Hawaiian affairs and the department of
6 land and natural resources shall prepare an annual report of all
7 council, board, and commission members who have failed to meet
8 the training requirement in this section as of September 21 of
9 each year, which shall be made available for public inspection
10 at the office of Hawaiian affairs and the department of land and
11 natural resources, and submitted to the governor and the
12 legislature no later than twenty days prior to the convening of
13 each regular session of the legislature.

14 [~~(b)~~] (d) The office of Hawaiian affairs, at its own
15 expense, shall establish, design, and administer a training
16 course relating to native Hawaiian and Hawaiian traditional and
17 customary rights, native Hawaiian and Hawaiian natural resource
18 protection and access rights, and the public trust, including
19 the State's trust responsibility. The training course shall
20 include:



1 (1) Historical information, explanations, and discussions
2 of key state laws, state constitutional provisions,
3 and court rulings that reaffirm and provide for the
4 protection of native Hawaiian and Hawaiian rights; and

5 (2) A discussion of the importance of public trust
6 resources and various programs to native Hawaiian and
7 Hawaiian rights.

8 ~~[(e)]~~ (e) The office of Hawaiian affairs, at its own
9 expense, shall develop the methods and prepare any materials
10 necessary to implement the training course, administer the
11 training course, and notify each council, board, and commission
12 identified in section 10-41(a) that attendance in a training
13 course is mandatory.

14 ~~[(f)]~~ (f) The office of Hawaiian affairs shall offer the
15 training course at least twice per year.

16 ~~[(g)]~~ (g) The governor shall provide to the office of
17 Hawaiian affairs the names of persons required to take the
18 training course pursuant to this part within thirty calendar
19 days of their initial appointment [~~by the governor~~]."

20 SECTION 3. Section 26-15, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§26-15 Department of land and natural resources. (a)

2 The department of land and natural resources shall be headed by
3 an executive board to be known as the board of land and natural
4 resources, except for matters relating to the state water code
5 where the commission on water resource management shall have
6 exclusive jurisdiction and final authority.

7 The board shall consist of seven members, one from each
8 land district and three at large. The appointment, tenure, and
9 removal of the members and the filling of vacancies on the board
10 shall be as provided in section 26-34. At least one member of
11 the board shall have a background in conservation and natural
12 resources, as provided in section 171-4. At least one member,
13 other than the member with a background in conservation and
14 natural resources, shall have demonstrated expertise in native
15 Hawaiian traditional and customary practices, as provided in
16 section 171-4, and at least four members shall have been
17 appointed from a list of nominees submitted to the governor by
18 the office of Hawaiian affairs, as provided under subsection
19 (b), to ensure assistance to the board to better administer the
20 public lands and resources with respect to native Hawaiian
21 issues and concerns, the public land trust obligations, and the



1 recognition of native Hawaiian cultural values that are
2 intrinsically tied to the [~~'āina.~~] 'āina.

3 The governor shall appoint the chairperson of the board
4 from among the members thereof.

5 The board may delegate to the chairperson such duties,
6 powers, and authority, or so much thereof, as may be lawful or
7 proper for the performance of the functions vested in the board.

8 The chairperson of the board shall serve in a full-time
9 capacity. The chairperson, in that capacity, shall perform
10 those duties, and exercise those powers and authority, or so
11 much thereof, as may be delegated by the board.

12 (b) Lists from the office of Hawaiian affairs to fill
13 vacancies on the board shall be submitted as follows:

14 (1) For a vacancy attributable to the expiration of a
15 term, the list shall be submitted on the first
16 business day of December prior to the expiration of
17 the term; and

18 (2) For a vacancy that occurs during a board member's
19 term, the list shall be submitted within thirty
20 business days after the vacancy occurs.



1 [~~(b)~~] (c) The department shall manage and administer the
2 public lands of the State and minerals thereon and all water and
3 coastal areas of the State except the commercial harbor areas of
4 the State, including the soil conservation function, the forests
5 and forest reserves, aquatic life, wildlife resources, state
6 parks, including historic sites, and all activities thereon and
7 therein including, but not limited to, boating, ocean
8 recreation, and coastal areas programs.

9 [~~(e)~~] (d) The functions and authority heretofore exercised
10 by the commissioner and board of public lands (including the
11 hydrography division and the bureau of conveyances), the Hawaii
12 water authority, the commission on ground water resources, the
13 Hawaii land development authority, the soil conservation
14 committee, and the commission on historical sites and the
15 function of managing the state parks and the function of
16 promoting the conservation, development and utilization of
17 forests, including the regulatory powers over the forest
18 reserve, aquatic life and wildlife resources of the State
19 heretofore exercised by the board of commissioners of
20 agriculture and forestry as heretofore constituted are



1 transferred to the department of land and natural resources
2 established by this chapter."

3 SECTION 4. Section 205-1, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "[+](a)[+] There shall be a state land use commission,
6 hereinafter called the commission. The commission shall consist
7 of nine members who shall hold no other public office and shall
8 be appointed in the manner and serve for the term set forth in
9 section 26-34. One member shall be appointed from each of the
10 counties and the remainder shall be appointed at large; provided
11 that one member shall have substantial experience or expertise
12 in traditional Hawaiian land usage and knowledge of cultural
13 land practices[-], and at least four members shall have been
14 appointed from a list of nominees submitted to the governor by
15 the office of Hawaiian affairs. Lists from the office of
16 Hawaiian affairs to fill vacancies on the board shall be
17 submitted as follows:

18 (1) For a vacancy attributable to the expiration of a
19 term, the list shall be submitted on the first
20 business day of December prior to the expiration of
21 the term; and



1 (2) For a vacancy that occurs during a board member's
2 term, the list shall be submitted within thirty
3 business days after the vacancy occurs.

4 The commission shall elect its chairperson from one of its
5 members. The members shall receive no compensation for their
6 services on the commission, but shall be reimbursed for actual
7 expenses incurred in the performance of their duties. Six
8 affirmative votes shall be necessary for any boundary
9 amendment."

10 SECTION 5. Notwithstanding the amendments made by this Act
11 to section 26-15, Hawaii Revised Statutes, each current sitting
12 board member may serve the remainder of the member's term, and
13 until the expiration of the current terms of all current sitting
14 board members, the decisions and other actions of the board
15 shall not be subject to challenge on the basis that the
16 requirement of section 26-15, Hawaii Revised Statutes, that four
17 members of the board be appointed from lists submitted by the
18 office of Hawaiian affairs, has not been met.

19 SECTION 6. Notwithstanding the amendments made by this Act
20 to section 205-1, Hawaii Revised Statutes, each current sitting
21 commission member may serve the remainder of the member's term,



1 and until the expiration of the current terms of all current
 2 sitting commission members, the decisions and other actions of
 3 the commission shall not be subject to challenge on the basis
 4 that the requirement of section 205-1, Hawaii Revised Statutes,
 5 that four members of the commission be appointed from lists
 6 submitted by the office of Hawaiian affairs, has not been met.

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

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

10

INTRODUCED BY: *[Signature]*
 By Request



S.B. NO. 2192

Report Title:

Office of Hawaiian Affairs (OHA) Package; Department of Land and Natural Resources; BLNR; State Land Use Commission; Council; Board; Commission; Members; Training; Appointment

Description:

Prohibits council, board, and commission members from serving if the member has not completed, within the requisite time, the required training course related to native Hawaiian and Hawaiian traditional and customary rights, native Hawaiian and Hawaiian natural resource protection and access rights, and the public trust, including the State's trust responsibility. Requires that at least 4 members of each the board of land and natural resources and the state land use commission be appointed from a list submitted by the office of Hawaiian affairs.

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

