

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**  
**JUDICIARY**

**Thursday, February 25, 2021**

**9:30 AM**

**Via Videoconference**

**In consideration of**  
**SENATE BILL 1409, SENATE DRAFT 1**  
**RELATING TO TRAINING IN NATIVE HAWAIIAN RIGHTS**

Senate Bill 1409, Senate Draft 1 proposes to prohibit council, board, and commission members from serving if a member has not completed, within the requisite time (1 year), 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. **The Department of Land and Natural Resources (Department) opposes this bill for the reasons below.**

This bill is unnecessary and regressive. If the bill is enacted, it will unnecessarily delay board business. If board and commission member are not allowed to vote, serve on permitted interaction groups, or are removed from their seats until the training requirement is completed or the Senate reaffirms their appointment, then the boards or commissions could lose quorum for an unspecified amount of time and be unable to do their business. This could potentially stop major public and private projects and add costs to those projects. It could also affect permits with mandated review times.

This bill is unnecessary. The Department notes that in general its boards and commissions are compliant and feedback from board and commission members and staff has generally been positive. However, the courses are only offered once or twice a year. In 2020, a live video course was offered in August but unfortunately it conflicted with a Board of Land and Natural Resources (Land Board) meeting, so the newest Land Board members were not able to attend the course. The Department requested that its members be allowed to view the video later, but this option was not allowed. A live video version was offered again in December 2020. This course was widely attended. As of the December course, The Department believes all of its boards and commissions are current on attendance.

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

**ROBERT K. MASUDA**  
FIRST DEPUTY

**M. KALEO MANUEL**  
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

The bill is regressive because it punishes the Department when its board and commission members cannot attend the course within one year. However, this allows members only two options for attendance. If the course falls during a scheduled meeting, then members only have one opportunity to attend per year. There are ways to make it easier for board and commission members to comply. First, a recorded online modular course that can be taken at the convenience of members of boards and commissions would make it much easier to comply. If this option is impossible, then holding the courses at regular times during the year and checking to ensure that there is no conflict with board and commission meetings would also help. The Department also believes that if non-compliance will result in the loss of a board or commission member's seat, then board and commission members should be allowed at least 4 opportunities to take the course over at least 2 years.

The Department would also like to point out that native Hawaiian rights ensured under the Constitution is just one set of rights that the Land Board has to balance when making decisions. The course ensures that board and commission members are aware of these rights. But other rights also come into play, which the Department would argue is the basis for conflict, not necessarily a misunderstanding of Hawaiian rights. For example, despite native Hawaiians' very strong beliefs in the sacredness of Mauna Kea, the Land Board has to balance native Hawaiian rights of access with the fact that Legislature has designated the summit as an astronomy preserve. These types of conflicts in use and vision for natural resources are common for our board, and require careful balancing of various interest groups, one of which is ative Hawaiians.

Further, subsection (b) on page 5, lines 3-6 of the bill provides:

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

The intent of this language is unclear. It appears to say that votes by noncompliant members "may" be challenged and that such a challenge would be by way of contested case. Subsection (a) on page 4, lines 10-13 of the bill already says that such members cannot vote. The Department suggests this subsection be removed. Even if it remains in the bill, no criteria are stated and there is no reason for the challenge to be made by way of a contested case.

Board and commission members take in a lot of information from many sources, the Office of Hawaiian Affairs course being one of them. The Department, its board and commission members and its staff all appreciate this course, and many have attended more than once. The Department notes the content of the course is diverse and provides valuable information and perspective, such as background history or desired changes to law. As to the actual applicable law in a board matter, a Deputy Attorney General from the Department of the Attorney General provides the formal legal guidance to the board.

Thank you for the opportunity to comment on this measure.

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Unity, Equality, Aloha for all



To: SENATE COMMITTEE ON JUDICIARY

For hearing Thursday, February 25, 2021

Re: SB 1409 SD1 RELATING TO TRAINING IN NATIVE HAWAIIAN RIGHTS. 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 traditional and customary rights, Native Hawaiian natural resource protection and access rights, and the public trust, including the State's fiduciary responsibility. (SD1)

#### TESTIMONY IN OPPOSITION

In 2017 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. In 2018 OHA expanded its empire by requiring more government employees of additional departments to endure the OHA training. This year OHA seeks to subjugate even more bureaucrats. Today Hawaii, tomorrow all of America. Woo-HOO!!

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. So by analogy, imagine the situation of a middle-school student from a Christian fundamentalist family being forced to attend a sex-education course which graphically describes anal sex as normal behavior, and whose parents are denied the right to opt-out their kids.

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 forced out of class or 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."

By the way, this committee utterly fails to exercise its fiduciary responsibility to the public to provide much-needed oversight and correction to OHA. Instead of forcing administrators of other departments to subjugate themselves to training by OHA, how about forcing OHA administrators and board members to be trained by the state Auditor and the Ethics Commission regarding what the laws require regarding compliance with accounting and procurement procedures.



**SB1409 SD1**  
RELATING TO TRAINING IN NATIVE HAWAIIAN RIGHTS  
Ke Kōmike ‘Aha Kenekoa o ka Ho‘okolokolo

Pepeluali 25, 2021

9:30 a.m.

Hālāwai Keleka‘a‘ike

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB1409 SD1. This measure would ensure greater compliance with Act 169 (Session Laws 2015),<sup>1</sup> which requires that certain state board and commission members attend a Native Hawaiian Law Training Course within 12 months of the date of their initial appointment. Greater compliance with Act 169’s mandate will facilitate more fully-informed decisionmaking by policymakers who have substantive legal obligations to Native Hawaiians and under the public trust; **this in turn will help to ensure that the state’s fiduciary duties to Native Hawaiians and the public trust are more consistently upheld, and potentially reduce conflicts and legal challenges arising from decisions that inadvertently fail to take such duties into account.**

The Native Hawaiian Law Training Course was designed to provide important legal, historical, and cultural context for key board and commission members whose decisions directly impact Native Hawaiian traditional and customary rights, natural resource protection and cultural access rights, and the public trust. Such training is necessary because the individuals appointed to serve on these boards and commissions may not initially possess knowledge of the unique legal responsibilities they may have relating to Native Hawaiian rights and the public trust. Indeed, since the Native Hawaiian Law Training Course began as a pilot program in 2013, attendees have consistently and continually expressed their appreciation for the course and have overwhelmingly indicated that as a result of the training, they better understood the state’s and their own legal responsibilities towards Native Hawaiians and the public trust.

As an initial matter, OHA would like to express appreciation for the large number of board and commission members who have attended the Native Hawaiian Law Training Course pursuant to Act 169, as well the many others who have attended the training even without a legal mandate. However, records of training course attendance indicate that some individuals continue to neglect their training requirement. Because there are no statutory remedies for noncompliance with Act 169, such individuals are at risk of rendering decisions that neglect to account for their legal duties and obligations to Native Hawaiians and under the public trust, which can result in significant impacts to the ‘āina

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<sup>1</sup> Act 169, codified in H.R.S. §§ 10-41 – 10-42, requires that members of the following entities attend the Native Hawaiian Law Training Course: the Land Use Commission; the Board of Land and Natural Resources, the Commission on Water Resources Management, the Environmental Council, the Board of Directors of the Agribusiness Development Corporation, the Board of Agriculture, the Legacy Land Conservation Commission, the Natural Area Reserves Aystem Xommission, and the Hawai‘i Historic Places Review Board.

and associated Hawaiian rights and practices, as well as increase the likelihood of conflict and distrust between the state government and the Native Hawaiian community.

**SB1409 will reinforce the state’s legal commitments to the Native Hawaiian community by providing statutory remedies for the failure to attend the Native Hawaiian Law Training Course.** In doing so, this measure will better ensure that the existing training course requirement is fulfilled by all board and commission members subject to the requirement, which in turn will ensure better informed and more legally responsible decisionmaking with regards to Native Hawaiian rights and interests. **OHA notes that the proposed remedies provide ample opportunity for noncompliant board and commission members to be made aware of and to fulfill their training course attendance requirement, with the most significant sanction – a required reconfirmation by the Senate – delayed until the end of the legislative session following their one-year attendance deadline, providing such members with two full years to attend a training course.**

Therefore, for the reasons described above, OHA respectfully urges the Committee to **PASS** SB1409. Mahalo nui loa for the opportunity to testify on this measure.





**DAVID Y. IGE**  
Governor

**JOSH GREEN**  
Lieutenant Governor

**MIKE MCCARTNEY**  
Director

**LAND USE COMMISSION**  
Department of Business, Economic Development & Tourism  
State of Hawai'i

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Statement of  
**Daniel E. Orodenker**  
**Executive Officer**  
State Land Use Commission

Before the  
**Senate Committee on**  
**Judiciary**

Thursday February 25, 2021  
9:30 AM  
State Capitol, Virtual Video Conference

In consideration of  
**SB 1409 SD1**  
**RELATING TO TRAINING IN NATIVE HAWAIIAN RIGHTS**

Chair Rhoads; Vice Chair Keohokalole; and members of the Senate Committee on  
Judiciary:

The Land Use Commission supports the intent of SB 1409 SD1 with comments. The LUC was, and continues to be, a strong proponent of continued training in Native Hawaiian rights. Our past and present commissioners and staff have high praise for the quality of the training received from the Office of Hawaiian Affairs in conjunction with the William S. Richardson School of Law. All currently seated commissioners and staff have been through at least one training; many having attended more than one.

The training has been offered twice a year and usually this has been sufficient to ensure that any recently appointed commissioners attend within a year of being appointed. However, Neighbor Island commissioners did have trouble at times. We are concerned that volunteer commissioners, who are few and far between, may be lost automatically. We are also concerned that the continuing emergency due to the COVID pandemic that affects travel and current and future funding issues may reduce training opportunities.

The current version of the bill provides that any members of a council, board, or commission that has not taken the training course within one year of the date of initial appointment would not be able to vote on matters before them, possibly being removed from

their appointed seat and/or, any votes by a member in that situation could be challenged or nullified.

We would suggest that the bill be revised to afford a commissioner the opportunity to attend the next scheduled class after the year has passed and if they fail to do so that they be prohibited from voting on matters before the commission. Provisions nullifying votes and/or providing for removal from the appointed seat should be reserved for failure to take the course over a more extended period of time.

We would also suggest a discussion with agencies to identify reasons for past difficulties in compliance would be a proactive approach that might yield better results in seeking timely training before this measure takes effect to ensure that the needs of the various boards and commissions can be met.

Thank you for the opportunity to testify on this matter.



## COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

Date: Thursday, February 25, 2021      Time: 9:30 a.m.      Place: Via Videoconference

### **Testimony of Kūpuna for the Mo'opuna**

SB 1409, SD 1 – RELATING TO TRAINING IN NATIVE HAWAIIAN RIGHTS.      **SUPPORT**

Aloha Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

We, Kūpuna for the Mo'opuna, a group of kūpuna Hawaiian homestead farmers committed to the well-being of Hawai'i for the next generations to come, **are in support of SB 1409, SD 1.**

SB 1409, SD 1 seeks to enforce the **mandatory** training in Native Hawaiian rights as set forth in Act 169, Session Laws of Hawai'i 2015. We appreciate and agree with the HWN committee's report, SSCR 431, stating, "Therefore, this measure strengthens requirements of the completion of the training course, which will ensure greater recognition and incorporation of native Hawaiian knowledge, values, and rights in land use and resource management decision-making."

**We urge this Committee to PASS SB 1409, SD 1.** Mahalo.

*Ua mau ke ea o ka 'āina i ka pono!*



Testimony Before The  
House Committee on Judiciary and Hawaiian Affairs  
**IN SUPPORT OF SB 1409 SD 1**  
Thursday, February 25, 2021, 9:30AM, Videoconference

My name is Kevin Chang and I am the Co-Director of Kua'āina Ulu 'Auamo (or KUA). KUA works to empower grassroots rural and Native Hawaiian mālama 'āina groups -fishers, farmers, families- to celebrate their places and pass on their traditions to better Hawai'i and achieve 'āina momona— an abundant, productive ecological system that supports community well-being.

KUA employs a community-driven approach that currently supports a network of more than 36 mālama 'āina community groups collectively referred to as E Alu Pū (moving forward together), 40 fishpond projects and practitioners called the Hui Mālama Loko l'a, and a growing hui of Limu practitioners all from across our state.

KUA and the E Alu Pū network were founded by rural Native Hawaiian cultural and subsistence practitioners who have long understood and worked to affirm the mandates of our state constitution to uphold their traditional and customary practices. A primary function of KUA includes development of the 'auwai, a stream of resources tools, bridges and networks that help to cultivate and take our communities' work to greater levels of collective impact. A core source of the flow in this 'auwai includes leadership within government that are enlightened to the constitutional mandates and purposes behind among other things, Article XII Section 7.

**KUA strongly supports SB 1409 SD1.** This bill 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 traditional and customary rights, Native Hawaiian natural resource protection and access rights, and the public trust, including the State's fiduciary responsibility.

For too long the constitutional pathway toward affirming Native Hawaiian traditional and customary practices has been dammed. The current system though laudable could be greatly improved by having all public officials who make constitutional decisions be informed as to what our constitution says and means. Indeed, failure to understand our constitution at the highest decision-making levels have seeded community division based on this failure. Ignorance of our constitution also lies at the heart of the difficulties our community has in coming to terms with our collective and political history. The environment toward reconciliation and civic stewardship is hardened when the leadership of a community continues to be ignorant of the values we wish to hold.

Indeed, we agree, as this Senate acknowledges, that courts have held that the State "must take the initiative in considering, protecting, and advancing public rights in the resource at every stage of the planning and decision[-]making process." *In re Water Use Permit Applications*, 94 Hawai'i 97, 143, P.3d 209, 255 (2000). Therefore, this measure strengthens requirements of the completion of the training course, which will ensure greater recognition and incorporation of

native Hawaiian knowledge, values, and rights in land use and resource management decision-making.

Please pass this bill out of your committee and mahalo for this opportunity to testify.

Aloha 'Āina Momona.

# SUPPORT ENFORCING TRAINING REQUIREMENTS WITH SB1409

Senator Karl Rhoads  
Chair, Committee on Judiciary  
Hawaii State Capitol  
Room 204

**Aloha Chair Rhoads, Vice Chair Keohokalole, and Members,**

I write in strong support of SB 1409 which ENFORCES already established training requirements. This bill does not create new requirements, it makes sure individuals actually take the training they are required to do, and that is paid for with taxpayer money.

**This is a critical need for our members of the BLNR and LUC. They have, in their hands the stewardship of our sacred and historic natural resources. Thank you for your consideration.**

Mahalo nui loa,

**Daniel Lee**



TESTIMONY IN STRONG SUPPORT of SB1409 Relating to the HAWAIIAN TRAINING

Chair Karl Rhoads  
Committee on Judiciary  
415 S. Beretania Street  
Honolulu, HI 96813

Mahalo piha Chair Rhoads and Committee Members for hearing this bill.

I write in **strong support** for enforcing training that is already required and paid for by the state, for members of the BLNR and LUC. I find it hard to believe that we are expending funds and also requiring this training to these members, and yet these individuals do not complete this training.

Hawaiian perspectives are crucial for making the decisions that these individuals need to make. The training provided is extremely helpful, well done, and is eye opening. We are not like the continent, or any other place on earth. There is only one Hawai'i in the world, and these commission members have the power and responsibility in their hands to steward our natural resources and protect Native Hawaiian interests.

Thank you for your consideration.

With Aloha,

Rikako Ishiki



**SB-1409-SD-1**

Submitted on: 2/21/2021 10:29:12 PM

Testimony for JDC on 2/25/2021 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Carrie Ann Shirota	Individual	Support	No

Comments:

Aloha,

I am writing in strong support of SB1409 SD1. This is Hawai'i, and all persons serving within leadership positions within the government, from the Governor to the State Legislature and persons on Boards and Commission should complete at least one training relating to Native Hawaiian history and rights in order to fulfil their duties.

Please support this measure!

Carrie Ann Shirota, Esq.



**SB-1409-SD-1**

Submitted on: 2/23/2021 1:34:16 AM

Testimony for JDC on 2/25/2021 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Amy Brinker	Individual	Support	No

Comments:

Support

## TESTIMONY IN SUPPORT OF SB1409 SD1

Urge support of SB1409, SD 1 that would ensure greater compliance with the mandate of Act 169 (Session Laws 2015), which requires that certain state board and commission members attend a Native Hawaiian Law Training Course within 12 months of the date of their initial appointment. Greater compliance with Act 169's mandate will facilitate more fully-informed decision making by policymakers who have substantive legal obligations to Native Hawaiians. This will also help to ensure that the state's fiduciary duties to Native Hawaiians and the public trust are more consistently upheld, and potentially reduce conflicts and legal challenges arising from decisions that inadvertently fail to take such duties into account.

**I note that the provisions of this bill only apply to 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 as prescribed by Act 169.**

Given the responsibilities of these entities and the decisions they make that could impact on the Public Land Trust, Land Use, Water Use, and Native Hawaiian culture and traditional practices, the provisions of this bill are reasonable and provide some measure of accountability to the mandated training requirement.

Otherwise, critical land use and resource management decision-making may continue to be less than fully informed on native Hawaiian concepts, practices, and rights.

Respectfully, Leimomi Khan

**SB-1409-SD-1**

Submitted on: 2/24/2021 7:58:13 AM

Testimony for JDC on 2/25/2021 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kamuela Werner	Individual	Support	No

Comments:

Aloha:

I strongly support SB1409 SD1.

Me ke aloha,

Kamuela Werner