

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



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

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

POST OFFICE BOX 621  
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**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the Senate Committee on  
HAWAIIAN AFFAIRS**

**Tuesday, February 16, 2021**

**1:02-2:30 PM**

**Via Videoconference**

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

Senate Bill 1409 propose 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) offers the following comments.**

The Department notes that in general our boards and commissions are compliant and feedback from board members and staff has generally been positive. However, the courses are only offered once or twice a year. In 2020, a course was offered in August but unfortunately it conflicted with a land board meeting, so our newest Board of Land and Natural Resources (Land Board) members were not able to attend the course. A live video version was offered in December. This course was widely attended, and much easier for our neighbor island board members to attend. As of the December course, we believe all of our boards and commissions are current on attendance.

The Department understands that these courses are comprehensive, pull extensive resources from the Ka Huli Ao Center for Excellence in Native Hawaiian Law at the Richardson School of Law and more than two courses per year would be difficult to do. We also appreciate the Office of Hawaiian Affairs' (OHA) willingness to hold the courses on the neighbor islands. And a recorded online modular course that can be taken at the convenience of members of boards and commissions would facilitate attendance.

If the Legislature sees fit to remove the Governor's appointees to the Department's various boards and commissions for not attending, then we suggest that board members have 2 years, or 4 opportunities to take the course, or require that a recorded modular course be offered online. We would also encourage the use of video conferencing technology to allow more people to attend without the burden of travel.

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 our 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 Native Hawaiians.

The Department does not believe that members who are unable to complete the course within one year should be prevented from voting or serving on permitted interaction groups or removed from their seats until the training requirement is completed or the Senate reaffirms their appointment. This will cause undue hardship for parties needing to get business done before the board if the board loses quorum because of this bill. As we have pointed out above, board members normally have only two opportunities per year to take the course and sometimes the course and board meetings or other commitments conflict.

Further, the bill provides:

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. SECTION 1 of the bill already says that such members cannot vote. So this SECTION is unnecessary. And 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.

The Department notes that despite the very good course on Native Hawaiian Rights provided by OHA, some of the content covers matters beyond the actual current constitutional, statutory and case law, such as background history or desired changes to law, the content can be considered diverse and valuable perspective. 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.



**SB1409**  
RELATING TO TRAINING IN NATIVE HAWAIIAN RIGHTS  
Ke Kōmike ‘Aha Kenekoa o ke Kuleana Hawai‘i

Pepeluali 16, 2021

1:02 p.m.

Hālāwai Keleka‘a‘ike

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB1409, which would ensure greater compliance with the mandate of 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

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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.

Hawaiians and under the public trust, which can result in significant impacts to the ‘āina 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.



February 15, 2021

Testimony in Support of SB 1409

[COMMITTEE ON HAWAIIAN AFFAIRS](#)

Senator Maile S.L. Shimabukuro, Chair

Senator Jarrett Keohokalole, Vice Chair

Honorable Senators Maile S.L. Shimabukuro, Chair and Jarrett Keohokalole, Vice Chair,

The Hawaiian Affairs Caucus of the Democratic Party of Hawaii strongly support SB 2409 regarding Training in Native Hawaiian Rights. How can decisions be made for Native Hawaiians if decision makers have no knowledge of what matters. Hawaiian lives matter. Hawaiians must be permitted to protect their past, sustain their present way of life and perpetuate their future generations by all who decide what is right for the kaiāulu.

In accordance with Act 169, “in important decisions and issues, impacting critical land use and resource management decisions by uninformed decision makers, on native Hawaiian concepts, practices, and rights, in turn, have led and continue to lead to substantial conflict, distrust in government decisions and processes, and even legal action against the State, and may further foreclose critical opportunities to ensure our islands' resiliency and self-sufficiency”.

Please pass SB 1409.

Mahalo for the opportunity to testify.

Me ka mana’o nui,

Juanita Mahienaena Brown Kawamoto

E Luna Hoomalu

Hawaiian Affairs Caucus of the DPH



# Native Hawaiian LEGAL CORPORATION

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**LATE**



## SB 1409

### RELATING TO TRAINING IN NATIVE HAWAIIAN RIGHTS

#### SENATE COMMITTEE ON HAWAIIAN AFFAIRS

February 16, 2021

1:00 p.m.

Via Videoconference

Aloha e Chair Shimabukuro, Vice Chair Keohokalole, and members of the Committee,

The Native Hawaiian Legal Corporation (NHLC) offers the following testimony in **SUPPORT** of SB1409, which seeks to ensure compliance with the mandatory training on Native Hawaiian rights for new members of certain state councils, boards, and commissions.

Those who serve in this capacity are in a unique position to make significant decisions with critical and lasting impacts on Native Hawaiian traditional and customary rights and natural and cultural resources, including public trust resources, and have an affirmative duty to ensure the protection of the same. In 2015, the State recognized the importance of educating councilmembers, board members, and commissioners serving on behalf of the State to ensure that their decision-making reflects an understanding of these rights, the State's trust responsibility, historical information, key state laws, constitutional provisions, and relevant case law that reaffirm and provide for the protection of Native Hawaiian rights. *See* 2015 Haw. Sess. Laws Act 169. Indeed, these positions of power come with kuleana – that is, a responsibility and privilege to be of service to communities and to discharge one's duties with meaningful purpose, intention, and preparedness.

As SB1409 points out, a significant number of board and commission numbers have not fulfilled their kuleana, failing to comply with their training mandate. Consequently, "critical land use and resource management decision-making may continue to be less than fully informed on native Hawaiian concepts, practices, and rights." SB1409 § 1.

As NHLC has seen firsthand, a lack of understanding of and education on the affirmative duty of the State to protect these rights and resources have led to numerous lawsuits, costing both the State and members of the general public far too much in time and resources to address inadequate decision-making. More significantly, though, is the irreversible impacts on the resources themselves. Despite the best of intentions, you cannot truly mitigate for the damage to historic sites, changes to ecosystems, and the resulting loss of culture. Therefore, whatever can be done at the front end of decisionmaking to prevent these impacts from occurring is the goal.

Indeed, the State “must not relegate itself to the role of a mere “umpire passively calling balls and strikes for adversaries appearing before it,” but instead “must take the initiative in considering, protecting, and advancing public rights in the resource at every stage of the planning and decisionmaking process.” *In Re Water Use Permit Applications*, 94 Hawai‘i 97, 143, 9 P.3d 209, 255 (2000). This initiative can only be realized when there is a clear understanding of rights and duties and historical context, which Act 169 recognized.

In light of the State’s great kuleana and the pattern of falling short in the protection of what the constitution expressly safeguards and that which makes Hawai‘i Hawai‘i, we believe education is of the utmost importance. In that vein, there certainly should be consequences for the failure to avail oneself of the very education that would allow these public servants to effectively carry out the job they were selected to do. Just as one cannot get a diploma without fulfilling the requisite credits, board members and commissioners should not be allowed to fill a seat of power without fulfilling their mandatory education on Native Hawaiian rights. As such, we fully support the effort to enforce this requirement with consequences as dire as removing and replacing those who do not prioritize this central and essential function of their position.

As the only law firm in Hawai‘i focusing solely on Native Hawaiian rights, NHLC can say with certainty that the people and communities we represent would be better served by board members and commissioners equipped with an understanding of the law and their affirmative duty to protect Native Hawaiian rights and natural, cultural and public trust resources.

Mahalo nui for this opportunity to testify.

Summer L. H. Sylva



Executive Director  
Native Hawaiian Legal Corporation

Ashley K. Obrey



Staff Attorney  
Native Hawaiian Legal Corporation

**SB-1409**

Submitted on: 2/12/2021 2:06:46 PM

Testimony for HWN on 2/16/2021 1:02:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
cheryl B.	Individual	Support	No

Comments:

Support

This bill makes me think that there are folks who have not yet completed their training? Honestly, this is Hawai`i and learning, listening should be a continuous part of people's professionalism.



**SB-1409**

Submitted on: 2/12/2021 2:55:08 PM

Testimony for HWN on 2/16/2021 1:02:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Bronson Kainoa Kiyoshi Azama	Individual	Support	No

Comments:

Aloha mai kākou,

My name is Bronson Azama I am a youth advocate on the windward side of O'ahu, in the moku of Ko'olaupoko, and I am a Cultural Practitioner as well.

I would like to request that this bill be passed through committee as it would best serve the people of Hawai'i to have educated officials in the government of the rights of native people. This can help to avoid the all too common issues between the current occupying government and the native people of this land, the Kānaka Maoli. It may also serve to best mitigate many ongoing issues and avoid boilings points in our community altogether.

I humbly ask that this bill be passed in order to build a more educated government to best serve our communities.

Aloha nā ,

Bronson Azama

**SB-1409**

Submitted on: 2/12/2021 3:18:50 PM

Testimony for HWN on 2/16/2021 1:02:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Malia Marquez	Individual	Support	No

Comments:

I absolutely support Bill 1409. This is Hawai'i nei, why wouldn't one have to complete training in Native Hawaiian Rights. If you choose to serve here in Hawai'i you should absolutely know our kanaka rights. I urge support for this Bill, SB 1409. Mahalo for your time.

**SB-1409**

Submitted on: 2/13/2021 12:18:37 AM

Testimony for HWN on 2/16/2021 1:02:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kamakana Aquino	Individual	Support	No

Comments:

Aloha e Committee Memebers,

I urge you to pass this bill and hold those accountable who have decision making authority. It is important that they have some basic understanding in Hawaiian history, culture, and customary rights.

Mahalo,

Kamakana

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Unity, Equality, Aloha for all



To: SENATE COMMITTEE ON HAWAIIAN AFFAIRS

For hearing Tuesday, February 16, 2021

Re: SB 1409 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 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.

#### 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.

**SB-1409**

Submitted on: 2/15/2021 12:49:00 PM

Testimony for HWN on 2/16/2021 1:02:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marion K A Kapuniai	Individual	Support	No

Comments:

The Office of Hawaiian Affairs **shall be provided funds** from the State Budget to accomplish this requirement.

Thank you!

M Kapuniai



**SB-1409**

Submitted on: 2/15/2021 12:54:30 PM

Testimony for HWN on 2/16/2021 1:02:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Leimomi Khan	Individual	Support	No

Comments:

Support. The bill would add accountability to Act 169's mandate that all members of the relevant councils, boards, and commissions attend the required training course related to Native 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.

If there was a way to amend this bill, I would recommend including a mandate that members of the Senate Committee on Hawaiian Affairs and the House Judiciary and Hawaiian Affairs Committee members attend this course, especially as they are the makers of law that impact upon Native Hawaiians. It is disheartening to observe that only one Native Hawaiian legislator serves on the powerful Judiciary and Hawaiian Affairs Committee. Legislators born and raised in Hawaii may have some knowledge of Native Hawaiian history, culture, values, and traditions. Attendance at the course would greatly enhance that knowledge and help such legislators to be sensitive to the impact laws have on the Native Hawaiian people and the community at large.

**LATE**

TESTIMONY IN STRONG SUPPORT of SB1409 Relating to the HAWAIIAN TRAINING

Chair Maile Shimabukuro  
Committee on Hawaiian Affairs  
415 S. Beretania Street  
Honolulu, HI 96813

Mahalo piha Chair Shimabukuro 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

**LATE**

# SUPPORT ENFORCING TRAINING REQUIREMENTS WITH SB1409

Senator Maile Shimabukuro  
Chair, Committee on Hawaiian Affairs  
Hawaii State Capitol  
Room 222

**Aloha Chair Shimabukuro, 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**