

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

S.B. NO. 16, RELATING TO HAWAIIAN AS AN OFFICIAL LANGUAGE OF THE STATE OF HAWAII.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Tuesday, March 14, 2023 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Alyssa-Marie Y. Kau or Ryan K.P. Kanaka'ole,
Deputy Attorneys General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General opposes this bill in its current form.

This bill amends section 1-13, Hawaii Revised Statutes (HRS) to make the Hawaiian version of a law binding if that law was originally drafted in Hawaiian then translated into English.

Section 1-13, HRS, currently provides that the English version of a law is binding whenever there is any radical and irreconcilable difference between the English and Hawaiian version of any of the laws of the State. This statute derives from section 1493 of the 1859 Civil Code of the Kingdom of Hawai'i and the Act of January 10, 1865, *Construction of Statutes Where the English and Hawaiian Versions Do Not Agree*. In 1892, the Supreme Court of the Kingdom of Hawai'i stated that: "though the Hawaiian language is the original language of this people and country, the English language is largely in use. Of necessity the English language must be largely employed to record transactions of the government in its various branches[.]" *In re Ross*, 8 Haw. 478, 480 (Haw. Kingdom 1892).

Broadly amending section 1-13, HRS, to allow a Hawaiian version of law to supersede the English version would create ambiguities in the application and interpretation of laws. In situations where two versions of law were promulgated at the same time, those ambiguities would certainly lead to questions over which version of

the law was the original, the answer to which could be unknowable. Further, laws originally drafted in Hawaiian could have been subsequently amended over time in English. The effect of this bill on such laws is unclear, but could be interpreted to create a patchwork of binding language in both English and Hawaiian within the same law.

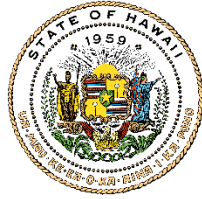
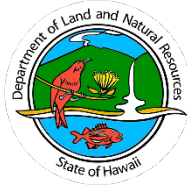
To mitigate these uncertainties and address the inherent problems with implementing this bill, we recommend amending the proviso at page 3, lines 2-5, of the bill to define the bill's application to laws originally drafted in Hawaiian that have not been later amended, codified, recodified, or reenacted in English, as follows:

provided that if the law in question was originally drafted in Hawaiian and the English version was translated based on the Hawaiian version, and if the law has not been subsequently amended, codified, recodified, or reenacted in English, the Hawaiian version shall be held binding.

Thank you for the opportunity to provide these comments.

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



**STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA**

P.O. BOX 621
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DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

LAURA H.E. KAAKUA
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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

**Testimony of
DAWN N. S. CHANG
Chairperson**

**Before the House Committee on
JUDICIARY & HAWAIIAN AFFAIRS**

**Tuesday, March 14, 2023
2:00 PM**

State Capitol Conference Room 325 and Videoconference

**In Consideration of
SENATE BILL 16
RELATING TO HAWAIIAN AS AN
OFFICIAL LANGUAGE OF THE STATE OF HAWAII**

Senate Bill 16 proposes to recognize Hawaiian as one of two official languages of the State of Hawai'i, and acknowledge that laws written in Hawaiian and translated into English, may have lost some of their meaning. Senate Bill 16 also proposes to require that the Hawaiian version of a law is held binding if the law in question was originally drafted in Hawaiian and then translated into English. **The Department of Land and Natural Resources supports this bill.**

Mahalo for the opportunity to provide testimony in support of this measure.



SB16
RELATING TO HAWAIIAN AS AN OFFICIAL LANGUAGE OF THE STATE OF
HAWAII
House Committee on Judiciary & Hawaiian Affairs

March 14, 2023

2:00 PM

Room 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB16, which would require that the ‘Ōlelo Hawai‘i (Hawaiian language) version of a law be held binding if the law in question was originally drafted in ‘Ōlelo Hawai‘i, and subsequently thereafter translated into English.

OHA would like to emphasize that language is the carrier of culture and where cultures are so vastly different, incongruence is often prevalent in the (mis)interpretation of one language by the other. One of the most common examples of this incongruence, as it relates to the impetus of this measure, is in the English (mis)translation of the state motto: “ua mau ke ea o ka ‘āina i ka pono,” to mean, “the life of the land is perpetuated in righteousness.”

Ua ha‘i nō ka mō‘ī ‘o Kauikeaouli Kamehameha III – it was King Kamehameha III, who first declared, “ua mau ke ea o ka ‘āina i ka pono,” following the restoration of sovereignty to the Hawaiian Kingdom government in 1843. The King’s declaration, which eventually adorned the royal coat of arms of the Hawaiian Kingdom, could more meaningfully and accurately be translated to mean, “the sovereignty of the State/country is perpetuated as it should be.” There is a stark contrast in meaning between the state’s accepted English translation of this famous motto and the more contextually accurate translation, which evidences the long-standing need to increase and elevate the use of ‘Ōlelo Hawai‘i.

‘Ōlelo Hawai‘i is a beautiful and enigmatically poetic language that invokes adroit use of metaphors and kaona (hidden meaning), which pose a formidable challenge to fully and meaningfully interpret without a deeply engaging understanding of Native Hawaiian culture.

OHA appreciates the opportunity to SUPPORT this measure and urges the Committee to PASS SB16. Mahalo nui loa.

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Unity, Equality, Aloha for all



To: HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

For hearing Tuesday, March 14, 2023

Re: SB 16

RELATING TO HAWAIIAN AS AN OFFICIAL LANGUAGE OF THE STATE OF HAWAII.

Requires that the Hawaiian version of a law be held binding if the law in question was originally drafted in Hawaiian and then translated into English.

TESTIMONY IN OPPOSITION

SUMMARY AND INTRODUCTION

My dear legislators: Would you vote to pass a bill that's written in a language you are not fluent in? Would you be willing to rely on an English translation of it provided by someone (a) who stands to benefit greatly by getting you to vote for it; and (b) who gives you an English translation which changes or distorts what the bill actually means in its original language as written, knowing that the inaccuracies in the English version will cause you to like what you're reading even though you would dislike what was actually stated in the original version; and (c) who intentionally fails to remind you that the bill's meaning in its original language is the meaning that really counts? The

only way you can logically vote in favor of this bill is by saying "Yes" to all three (a), (b), (c). If enacted, this law immediately becomes a "sleeper agent" affecting all bills in the future that are written in Hawaiian first before being translated into English -- even years after this bill itself is forgotten, legislators will vote on bills whose Hawaiian-language meaning is the official one even though they do not understand Hawaiian and they mistakenly think they are voting on what it says in English (which could be very different from how it will actually be interpreted by attorneys and judges who are certified as having expertise in Hawaiian).

In your desire to vote in favor of this bill because you wish to honor and display respect for Hawaiian language during "Hawaiian language month", please do not allow that emotion to sway you into making a very unwise decision. I speak Hawaiian with moderate fluency -- probably better than anyone on this committee. 30 years ago when I came to live permanently in Hawaii I immediately enrolled in night school courses in Hawaiian language, history, and culture for three years precisely because I had fallen in love with the language, people, and culture of my hanai homeland. Thereafter I have continued to learn further and more deeply. I have also discovered the existence of attitudes and political goals which are extremely divisive and dangerous to the Aloha Spirit and to Hawaii's future as a multiracial, multicultural society. This bill aligns with those negative goals.

Please bear with me as I explain what's really happening with this bill

I'm asking you to do two things before you vote. (1) Try out the little experiment I propose where you will read an actual bill that was written first in Hawaiian and then in English -- where I want you to read only the Hawaiian version that comes first and then stop and explain to yourself what it means, before you read the followup English version to discover how bad your understanding was. (2) Read my analysis of how an extremely important short Hawaiian-language phrase in the Mahele law of 1848 has become twisted to a very different meaning in the English-language interpretation of it that was relied upon in the PASH decision and continues to shape the way "Native Hawaiians" are mistakenly given special race-based benefits deriving from the mutant interpretation.

EXPLANATION

First let's note that this bill is written entirely in English. Now, why in the world would that happen in view of the main purpose of this bill? It seeks to establish that if a bill is written first in Hawaiian and then translated into English, the Hawaiian version shall take priority as the official version. So why not write this bill first in Hawaiian and then provide an English translation? Indeed, why not write this bill solely in Hawaiian with no English at all? Would the members of this committee feel comfortable with that?

Would you feel confident that you understand what you are enacting? No? Then why in the world would you even so much as fool around with the idea of making the Hawaiian version of a bill take priority over the English version in case of a dispute later on over how it should be interpreted or implemented?

This bill is so poorly written, and lacking in detail -- it's surprising that the bill is getting a hearing (or perhaps that's not so surprising after all, considering that hearing the bill is a virtue signal to celebrate "Hawaiian language Month"). But there were bills two years ago and four years ago along the same lines. Those bills failed, and were also poorly written, but at least they had more detail. The best thing about SB701 and SB195 from year 2019 was that they were written in Hawaiian language first, and then had English translations of their various sections. Thus those bills give us an opportunity to do a thought-experiment. Let's put the members of this committee to a test where you can judge for yourselves whether you could possibly be serious about enacting the concept "that the Hawaiian version of a law be held binding if the law in question was originally drafted in Hawaiian and then translated into English."

Here is a link to full text of SB701 from year 2019:

https://www.capitol.hawaii.gov/session2019/Bills/SB701_.pdf

Go ahead now. Read the first part of that bill, which is in Hawaiian, and then stop the first time you encounter the subordinate English translation. Did you understand it? Even if you as an individual are one of the rare legislators who speaks Hawaiian fairly well, do you understand what you read with sufficient confidence to vote for it even if it was highly controversial? More importantly, do you seriously believe that your colleagues in the legislature are competent to vote on it? If necessary, continue this thought-

experiment by reading only the Hawaiian portion of each subsequent part of the bill, and then summarizing its main concepts in whatever language you prefer, before you read the English translation.

A majority of your fellow legislators whose fluency in Hawaiian language is moderate or even non-existent will be relying entirely on the English translation, but they will actually be voting on what the Hawaiian version says, according to the injunction "that the Hawaiian version of a law be held binding if the law in question was originally drafted in Hawaiian and then translated into English."

If you'd like another example, run the thought-experiment with SB195, also from year 2019:

https://www.capitol.hawaii.gov/session2019/Bills/SB195_.pdf

Giving priority to Hawaiian language is a political stunt to bolster ethnic pride and get votes from a constituency that demands visible tokens of validation and status; but it has no practical usefulness. It seems likely that every person outside Ni'ihau who speaks Hawaiian also speaks English with greater fluency. Hawaiian activists, following the lead of Princess Ruth Ke'elikolani (hoo dat?), sometimes insist on speaking Hawaiian in the courtroom or when giving speeches, interviews, or testimony; but they are perfectly capable of speaking and understanding English. Nobody NEEDS to speak or hear Hawaiian to express himself or to understand what someone is saying -- the activists demand it to score a political point; and sometimes to simply "gum up the works" when there is testimony on an environmental impact statement regarding telescopes on Mauna Kea or construction on a military base.

Please see a large and detailed webpage "Hawaiian Language as a Political Weapon" at

<http://www.angelfire.com/big09/HawLangPolitWeapon.html>

Kaleikoa Kaeo is a community college instructor who speaks English fluently. In fact he teaches classes using English as the language of instruction, makes fiery political speeches in English, and has also learned to speak Hawaiian fluently. He demanded to give court testimony in Hawaiian, not because he is unable to speak English, but merely as a stunt -- a form of Hawaiian sovereignty street theatre or political activism.

Kaleikoa Kaeo took his inspiration from the wealthiest person in Hawaii in the 1860s and 1870s, Princess Ruth Ke'elikolani, who could speak perfectly

good English but refused to do so when politicians or journalists visited her -- she took great pleasure in humiliating them by forcing them to hire translators. She felt she was having a political and "moral" victory by forcing them to use Hawaiian. Is that what legislators and Hawaiian language zealots doing with this bill?

Hawaii is filled with the Aloha Spirit. Our people are kind and generous, and show our good will to people who cannot speak English by allowing them to give testimony in their own language and by providing them at our own taxpayer expense with interpreters who have been certified by the court to be fluent in both their own language and English. But Kaleikoa Kaeo's political stunt was neither kind nor generous. It did not display good will, let alone the Aloha Spirit. He could easily have spoken English, but he chose to speak Hawaiian as a way to FORCE everyone else to either learn Hawaiian or to spend taxpayer dollars to hire speakers of Hawaiian. That's what today's bill in our legislature is all about -- a political stunt that would inconvenience everyone and cost a lot of money over time merely for the sake of cultural/linguistic chauvinism.

Hawaii has large numbers of people from many ethnic backgrounds who speak different languages in their homes; but we all come together in shared spaces where we are expected to speak English. Inability to speak English is treated as a disability or handicap. People who cannot speak English are given special accommodation to help them communicate in their own language, just as someone who is deaf gets a sign-language interpreter, someone who is blind is allowed to use a seeing-eye dog even in places where dogs are not normally allowed, and someone who cannot walk is allowed to use a wheelchair and elevator. Kaeo who is fluent in English but insists on speaking Hawaiian is like a marathon runner who might demand just for fun to come to court in a noisy wheelchair with a taxpayer-supplied assistant to push it for him.

If this bill were enacted into law, the Hawaiian language content of a bill would be the official law even though your comprehension of its meaning came only from the English-language version. And you can be quite sure that Hawaiian-language zealots would give top priority to writing many important bills in Hawaiian before getting them translated into English, thereby invoking the new rule that the Hawaiian version takes priority. Would your expertise in Hawaiian be sufficient to enable you to detect kaona (wat dat?) -- subtle double meanings that you would never vote for if you knew they were in the law you just finished enacting? Kaona were widely used orally in ancient times and later in Hawaiian language newspapers, as a

sort of secret code, so that insiders "in the know" about obscure cultural metaphors would understand hidden social or political meanings in poetry or songs. For example, a hula might seem to be about a bee spreading pollen while flitting from flower to flower sipping nectar; but in reality one of its hidden meanings was about a man "spreading his seed" while engaging in intimate activities with one after another young ladies. On a more serious note, a phrase that seemed to be celebrating a needle piercing a white plumeria flower while stringing a lei might actually be an incitement to hurl a verbal or actual spear at a haole opponent.

Perhaps you're aware that there are some Hawaiian sovereignty activists who would love to get you to enact laws whose legally binding meaning in Hawaiian language would undermine or even overthrow the [fake!] State of Hawaii and replace it with a rejuvenated Kingdom; even though the merely advisory subordinate English translation being relied upon to solicit votes appears to pertain only to plowing on a farm as a way to turn over the soil. ("Huli" is to turn over, whether it refers to plowing the soil on a farm or inciting to violent political revolution.)

TRANSLATING HAWAIIAN INTO ENGLISH: THE MAHELE PHRASE

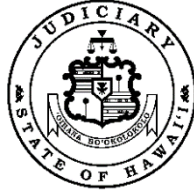
"KOE NAE KE KULEANA O NA KANAKA."

I conclude this testimony by citing an extremely important example from Hawaiian history illustrating how a single phrase, and especially an individual word in that phrase, has been subjected to deliberate distortion over time because of what the word meant in Hawaiian when proclaimed into law seventeen decades ago and what it has come to mean in English since then. The phrase in the Mahele laws beginning in 1848 and culminating in the Kuleana Act of 1850 is: "koe nae ke kuleana o na kanaka." The individual word whose meaning has morphed is "kanaka."

When private land ownership was created by granting royal patent deeds during the unfolding stages of the Mahele, chiefs were given huge swaths of land, while peasants living on and farming individual parcels were given the right to have fee-simple ownership of their parcels. The problem was that the chief's land completely surrounded the peasant's small parcel, thus making it necessary for a peasant to trespass through the chief's land in order to gather materials necessary for daily life, or to go to the ocean for fishing. So in the interest of what we today might call "social justice", the chief's royal patent deed gave him ownership "but reserving the rights of

the people" [for gathering or shoreline access]. That Hawaiian phrase "koe nae ke kuleana o na kanaka" today is always translated to mean "reserving the rights of the native tenants." However, there was nothing racial about the word "kanaka" back in 1850, although today it has come to refer to so-called "Native Hawaiians." The word "kanaka" simply meant person, or human being, with an implication that it might be referring to a servant or peasant. If you look up "kanaka" in the big Pukui/Elbert dictionary you will find no racial terms. Furthermore, the word "kanaka" does not mean "tenant" -- that word is "hoaaaina." Although non-natives made up only a small percentage of Hawaii's population in 1850, the rights reserved to the "kanaka" in the Kuleana Act were reserved for ALL the "people" regardless of race and regardless whether they were tenants under a particular chief.

The Hawaii Constitution Article 12 Section 7, and also the PASH decision by the Hawaii Supreme Court, include racial restrictions which are modern distortions and simply do not grow out of the Mahele or the Kuleana Act. "The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights." The traditional and customary rights of native Hawaiians from before 1778, and still possessed under the Kuleana Act of 1850 -- those terms describe what rights are being referred to, but those terms should NOT be construed as limiting those rights to members of any particular racial or ethnic group. By interpreting those rights to be possessed by ALL Hawaii's people, we would ensure equality under the law for everyone including ethnic Hawaiians. The fact that my interpretation of "koe nae ke kuleana o na kanaka" is so unusual should serve as an important illustration of why it is dangerous to give primacy to a language which very few people understand with sufficient fluency -- especially when the only people who do have sufficient fluency have been trained by teachers and institutions which are politically active; and the students mastering the language under their tutelage have been indoctrinated with their political views and will interpret the meaning of laws in a manner that facilitates their political agenda.



The Judiciary, State of Hawai‘i

**Testimony to the Thirty-Second State Legislature
2023 Regular Session**

House Committee on Judiciary & Hawaiian Affairs
Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

Tuesday, March 14, 2023, 2:00 p.m.
Conference Room 325 & Videoconference

by:

Johanna K. Chock-Tam
‘Ōlelo Hawai‘i Program Administrator

Bill No. and Title: Senate Bill 16, Relating to Hawaiian as an Official Language of the State of Hawaii.

Purpose: Requires that the Hawaiian version of a law be held binding if the law in question was originally drafted in Hawaiian and then translated into English.

Judiciary’s Position:

Kāko‘o ka ‘Oihana Ho‘okolokolo i ka Pila ‘Aha Kenekoa 16, ka mea e koi mai nei ka mālama ‘ana i ka mana ‘ōlelo Hawai‘i o kekahi kanawai inā kākau mua ‘ia ia kanawai ma ka ‘ōlelo Hawai‘i a laila ‘unihi ‘ia i ka ‘ōlelo Pelekānia.

Mea mai ‘o HRS § 1-13, i kona kākau ‘ia ‘ana i kēia lā, inā he mea ‘oko‘a a hiki ‘ole ke ‘ae ma waena o ka mana ‘ōlelo Hawai‘i a me ka mana ‘ōlelo Pelekānia o kekahi kanawai, mālama ‘ia ‘ana ka mana ‘ōlelo Pelekānia. Noi ‘o SB 16, e mālama ‘ana ka mana ‘ōlelo Hawai‘i o kekahi kanawai inā kākau mua ‘ia ‘o ia ma ka ‘ōlelo Hawai‘i. ‘Oni kēia ho‘ololi ‘ana i ka mea ma‘amau, ‘o ia ho‘i ka mālama ‘ana o ka mana ‘ōlelo Pelekānia i luna o ka mana ‘ōlelo Hawai‘i. Eia na‘e, nānā ‘o ia i ka mana mua no ka huli ‘ana i ke kumu ma ka nānā hou ‘ana i ke kanawai i ka ‘ōlelo āna i kākau mua ‘ia ai, inā ‘ōlelo Pelekānia a i ‘ole ‘ōlelo Hawai‘i, a mālama i kēlā mana. Ho‘okō hou ‘o SB 16 i ko ka ‘ōlelo Hawai‘i kūlana ‘ōlelo kūhelu ma ka hō‘oia‘i‘o ‘ana, hiki nā kanawai i kākau ‘ia ai ma ka ‘ōlelo Hawai‘i ke kūlike me nā kanawai i kākau ‘ia ai ma ka ‘ōlelo Pelekānia.

Kāko‘o ka ‘Oihana Ho‘okolokolo i kēia pila akā maopopo e pilikia ana paha ka hō‘oia ‘ana i nā kanawai i kākau mua ‘ia ai ma ka ‘ōlelo Hawai‘i. Hiki iā mākou ke hana me nā mea kākau o ka pila a me nā luna kōmike e nānā i nā nīnau ma mua o ka hopena o ke kau.

Mahalo i ka ‘Aha‘ōlelo no ka holomua ‘ana i ka hō‘oia‘i‘o ‘ana i ke ko‘iko‘i o ka ‘ōlelo Hawai‘i ma kona kūlana ‘ōlelo kūhelu. Mahalo mākou iā ‘oukou no ka manawa no ka ha‘i mana‘o ‘ana i ko kākou kāko‘o o SB 16.

* * * * *

The Judiciary supports [the intent](#) of Senate Bill 16, which requires that the Hawaiian version of a law be held binding if the law in question was originally drafted in Hawaiian and then translated into English.

HRS § 1-13, as it is written today, states that if there is an irreconcilable difference between the ‘ōlelo Hawai‘i and English version of a law, then the English version will be binding. SB 16 proposes that the ‘ōlelo Hawai‘i version of a law be held binding if it was originally drafted in Hawaiian. This change shifts the paradigm of holding the English version over the Hawaiian. Instead, it looks to the original draft to find intent by reviewing the law in the language it was originally drafted, whether English or Hawaiian, and holding that version as binding. SB 16 reinforces ‘ōlelo Hawai‘i’s status as a co-official language by recognizing that laws drafted in Hawaiian can stand alongside laws written in English.

The Judiciary supports [the intent](#) of this bill, though we have identified potential implementation issues regarding identification of the laws at issue and the logistics of the manner of resolution. At this time we believe these are resolvable and we are open to working with the introducer of the bill and committee chairs to address the issues before the end of the session.

Mahalo to the Legislature for taking steps to further recognize the importance of ‘ōlelo Hawai‘i as a co-official language. We thank you for the opportunity to testify in support [of the intent](#) of Senate Bill 16.

SB-16

Submitted on: 3/12/2023 7:47:32 AM

Testimony for JHA on 3/14/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Leimomi Khan	Individual	Support	Written Testimony Only

Comments:

Support SB16 which would require that the Hawaiian version of a law be held binding if the law in question was originally drafted in Hawaiian and then translated into English. This should help to assure that the integrity of the law is upheld.

SB-16

Submitted on: 3/13/2023 12:51:04 PM

Testimony for JHA on 3/14/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dana Keawe	Individual	Support	Written Testimony Only

Comments:

Support