



LATE

SB701 SD2 HD1
RELATING TO THE HAWAIIAN LANGUAGE
House Committee on Judiciary

March 18, 2019

2:05 p.m.

Room 325

The Administration of the Office of Hawaiian Affairs (OHA) will recommend that the Board of Trustees **COMMENT** on SB701 SD2 HD1, which now instructs OHA to convene a task force to develop policies, procedures, and recommendations for the appropriate use of the Hawaiian language in state and county documents and letterhead. **Should the Committee move this measure forward, OHA urges the Committee to consider and adopt the recommended amendment below, which would more directly address the needs and challenges Hawaiian language speakers face in using Hawaiian in government proceedings and civic spaces.**

OHA is aware of the spirited community conversations concerning the use of one or more writing systems for the Hawaiian language, and appreciates the apparent intent of the current draft of this measure to resolve any areas of contention through additional dialogue between members of the Hawaiian language community. Notwithstanding these ongoing conversations and regardless of whether the mandated task force is established, OHA is confident that our community can achieve the intended result without the creation of a task force. Additionally, OHA's extensive comments in SB642 SD2 provided the committee options to address and allay the aforementioned community concerns. **Please see attached OHA Testimony for SB642 SD2 WLH March 13, 2019.**

At this juncture, however, OHA draws the Committee's attention to the growing population of Hawaiian language speakers who, presently, have the capacity to express themselves adequately and eloquently in Hawaiian, and who represent the tireless efforts of the Hawaiian language community over past decades to preserve, restore, and normalize Hawai'i's original and co-official language. The strides made in uplifting the Hawaiian language and the challenges faced by Hawaiian language speakers in using Hawaiian in public and civic spaces clearly warrant stronger protections of their language rights, which are currently being abridged or undermined. OHA accordingly appreciates the prior drafts of this measure as well as other legislative proposals that would seek to directly address the language inequalities and challenges that Hawaiian language speakers are experiencing in using Hawaiian in Hawai'i. Specifically, SB642 which explicitly affirmed provisions from the United Nations Declarations of Indigenous Peoples regarding indigenous language rights. Therefore, and for reasons further described below, should the Committee choose to move this measure, OHA respectfully offers the following

amendment as a means to provide more direct, meaningful, and adequate language protections for those who choose to employ Hawaiian as their medium of expression,

Replacing Sections 1 and 2 of this measure with the following statutory amendment:

“[1-13.5] Hawaiian language [;spelling-]. (a) The United Nations Declaration on the Rights of Indigenous Peoples provides, and the legislature affirms, that Native Hawaiians, as the indigenous people of Hawaii, have the right to revitalize, use, develop, and transmit to future generations their histories, language, oral traditions, philosophies, writing systems, and literatures, and to designate and retain their own names for communities, places, and persons.

(b) Whenever the Hawaiian language is used in any government proceeding, including but not limited to trials, depositions, agency hearings, public hearings, committee meetings, and board meetings as the medium of communication, language interpreters shall be provided and minutes, opinions, notices, and records shall be translated in Hawaiian.

(c) Macrons and glottal stops may be used in the spelling of words or terms in the Hawaiian language in documents prepared by or for state or county agencies or officials. Any rule, order, policy, or other act, official or otherwise, that prohibits or discourages the use of these symbols shall be void.”

The proposed amendment above would go beyond state policies that merely tolerate Hawaiian, which, as demonstrated below, has not been enough to overcome obstinate language biases that continue to subordinate Hawaiian in its home islands and place of origin. Rather, with such an amendment, the State would be moving toward policies that are promotion oriented, and provide Hawaiian language speakers with the necessary tools to use Hawaiian in government spaces without the present obstacles and discouragement.

Notably, the suggested amendment would give more meaning to the constitutional recognition of Hawaiian as an official state language, which has been significantly undermined by court decisions and other government actions in addition to passive policies of mere tolerance. Article XV, section 4 of the constitution establishes Hawaiian as an official state language, in recognition of the decades of systemic oppression that led to the unjust and often racially motivated marginalization of the Hawaiian language, culture, and people. However, the full spirit and intent of this constitutional mandate has yet to be realized, as Hawaiian speakers continue to face myriad impediments to speaking Hawaiian even in fundamental civic settings. For example, in 1994, a federal district

court judge denied a Hawaiian language speaker the opportunity to express himself in Hawaiian in a deposition.¹ Naturally, this judicial restriction significantly undermined Hawaiian's designation as an official language of the State; as recently as last year, this case was cited as persuasive precedent by a Maui district court judge to silence and deny another Hawaiian speaker the right to use his 'ōlelo makuahine, or mother tongue, before the court. **Effectively compelling Hawaiian language speakers to speak English, such cases stand in contravention not only to Article XV, section 4 of the Hawai'i State Constitution, but also to the mandates, policies, and intent of various laws and other documents, including HRS § 1-13; the Native American Languages Act (NALA) of 1990; and Article 13 of the United Nations Declaration on the Rights of Indigenous Peoples.** Unfortunately, the prominence and active favoring of English over Hawaiian is not isolated to the court system, and is arguably rooted in a history of systemic oppression that must be acknowledged, repudiated, and rectified. Accordingly, the above recommended amendment would be one step towards addressing the ongoing neglect and active undermining of our constitution's recognition of Hawaiian as an official state language.

Furthermore, the recommended amendment would reflect the long history of Hawaiian language usage in our islands' governance. **Hawaiian was the first language of Hawai'i's legislative, executive, and judicial branches.** Many would also be surprised to know that Hawai'i published its laws in both Hawaiian and English until 1943. However, policies such as an 1896 law requiring English to be the medium of instruction in public and private schools, the Organic Act's subsequent mandate requiring all legislative proceedings be conducted in English only, and a 1943 statute abolishing the practice of publishing laws in Hawaiian, reflect an ongoing historical movement to suppress the use of Hawaiian in social and civic arenas. As illustrated by the aforementioned court cases, the legacy of systemic linguistic oppression lives on to this day; existing statutory language even explicitly states that "Hawaiian shall not be required for public acts and transactions." The amendment above would accordingly help to reverse this historical movement, and restore the historic role Hawaiian played in our government and civic spaces.

Finally, inclusion of language to implement the constitutional charge that Hawaiian is *co-official* with English by providing for translators and translations in Hawai'i Revised Statutes will enable Hawai'i to join in international efforts to protect and perpetuate indigenous languages. **Specifically, the United Nations has proclaimed 2019 the Year of Indigenous Languages to draw attention to the critical loss of indigenous languages;** this proclamation has sparked a global initiative to stabilize indigenous languages, which like Hawaiian, are often classified as endangered. Indigenous languages, in general, are key vehicles for cultural transmission and traditional ecological knowledge. For Hawaiians, Hawaiian, our heritage language, is an important marker for our individual and collective identities and an important connection to our ancestral legacy. **In light of this worldwide movement, Hawai'i has a unique opportunity to join this international effort and align its**

¹ Tagupa v. Odo, 843 F. Supp. 630 (D. Haw. 1994).

laws, policies, and practices for its own indigenous language, including through the proposed statutory language.

Again, OHA strongly supports efforts to provide long-overdue “teeth” to the constitutional vision of Hawaiian as a true official language of the State. Accordingly, and for the reasons set forth above, should the Committee choose to move this measure forward, OHA urges the Committee to adopt the above recommended amendment to SB701 SD2 HD1. E ola nō ka ‘ōlelo Hawai‘i! Mahalo a nui for the opportunity to testify on this measure.



‘Ōlelo Hō‘ike ‘Aha Kau Kānāwai

SB642 SD2

NO KA ‘ŌLELO HAWAI‘I HE ‘ŌLELO KŪHELU O KA MOKU‘ĀINA O HAWAI‘I
Ke Kōmike Wai, ‘Āina, & Nā Kuleana Hawai‘i

Malaki 13, 2019

Hola 10:00 o Kakahiaka

Lumi 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS WITH AMENDMENTS** SB642 SD2, which would (1) provide Hawaiian language speakers with long-awaited and adequate language protections; (2) require that the Hawaiian version of a law be held binding, if the law in question was originally drafted in Hawaiian; (3) require, when employed, the proper use of ‘okina and kahakō in documents prepared by or for state or county agencies or officials; and (4) allow Hawaiian language speakers to transact government business and access government services using the Hawaiian language. OHA commends the intent and purpose of this measure, which would give “teeth” and true meaning to the Hawaiian language’s designation as a co-official language of the State. After thoughtful consideration and continued conversation with Hawaiian language community stakeholders, OHA offers the following additional recommended amendments, to further this measure’s vision of upholding Hawaiian as an official state language.

First, for statutory consistency and cohesion, OHA proposes that HRS §1-13, which codifies the State’s official languages in statute, be amended to include only the instructions on determining whether the Hawaiian or English version shall be held binding, to read as follows:

“§1-13 Official languages. English and Hawaiian are the official languages of Hawai‘i. Whenever there is found to exist any radical and irreconcilable difference between the English and Hawaiian version of any of the laws of the State, the English version shall be held binding[~~-~~]; provided that if the law in question was originally drafted in Hawaiian and the English version was translated based on the Hawaiian version, the Hawaiian language version shall be held

binding. Hawaiian shall [~~not~~] be required for public acts and transactions[~~-~~] upon request or as needed.””

Second, OHA respectfully proposes that the provisions pertaining to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) would be more appropriately placed in HRS §1-13.5, which specifically seeks to promote the Hawaiian language through the usage of diacritical markings in government documents. In addition to recognizing the UNDRIP provisions regarding indigenous language, further statutory provisions in this section on Hawaiian language and its usage, including the history of the usage of Hawaiian, orthographic considerations, and the rights of those wishing to use Hawaiian as their medium of communication, would also serve as both a teaching tool and a long-awaited protection of the critical, but often dismissed, right to use our state’s co-official language. **Accordingly, OHA recommends re-designating section HRS §1-13.5 as “Hawaiian language,”** rather than solely “Hawaiian language spelling,” and including in this section statutory language: (a) reciting a brief history of Hawaiian and its usage in the three main branches of government; (b) explicitly affirming provisions from the United Nations Declarations of Indigenous Peoples regarding indigenous language rights; (c) requiring Hawaiian language interpreters and translations when Hawaiian is used as an individual or entity’s medium of communication; (d) including introductory and clarifying provisions on the orthographies used by Hawaiian language speakers, namely unmarked language (which closely resembles the earliest written form of Hawaiian) and marked language (which incorporates the ‘okina and kahakō); (e) requiring that (1) either ‘okina or kahakō be used in government documents or (2) should a government agency or official choose to employ ‘okina and kahakō, the usage of such markings shall be correct and consistent; and (e) explaining the functions of the ‘okina and kahakō (see below for proposed amended language for HRS §1-13.5).

Notably, while OHA appreciates the current draft’s exemptions proposed for “native speakers of Hawaiian” from the use of ‘okina and kahakō, OHA notes the following issues with this phrasing. First, both native and non-native Hawaiian language speakers may use the unmarked orthography. To obviate the need to distinguish between native and non-native speakers, OHA suggests, as expressed below, distinguishing between the orthographies themselves. Second, the term “native speakers” may be misconstrued to mean native Hawaiian as an ethnicity, rather than a person who has spoken Hawaiian from earliest childhood. Third, OHA notes that members of the Native Hawaiian community have noted that such language may inadvertently produce a perception of primacy toward speakers who do employ diacritical marks over speakers who use the unmarked orthography. In other words, community members have articulated that setting a state standard may alienate speakers who use the unmarked orthography or create an arbitrary and unnecessary hierarchy between the two.¹ OHA finds these distinctions of

¹ A similar hierarchy presently exists between Hawaiian and English speakers, which this measure would help to curtail. Therefore, it would be an unfortunate and unintended consequence for those users of

consequence because of their ideological significance and the semiotic hierarchies they may engender within Hawaiian speakers and non-speakers as well. Moreover, OHA acknowledges that there are two valuable opinions to consider in the State's use of either unmarked or marked language. **Elucidating these distinctions, and subsequently providing implementing language to Hawaiian language's status, may likely help to further mitigate historical and institutional language bias and imbue and restore cultural pride and dignity in speaking Hawaiian irrespective of a speaker's orthographic beliefs.² Given these concerns OHA offers two options for amending HRS §1-13.5 in section 3 of this measure, from page 3, line 12 to page 4, line 5; option 1 would continue to require 'okina and kahakō as the current draft does and option 2 would require the correct use of 'okina and kahakō if used:**

OPTION ONE: REQUIRING 'OKINA AND KAHAKO

"[~~1-13.5~~] **Hawaiian language** [~~spelling~~] (a)

~~[Macrons and glottal stops may be used in the]~~ The Hawaiian language is Hawai'i's indigenous and first language. Hawaiian language was also the original language of Hawai'i's executive, judicial, and legislative branches. However, due to myriad political, economic, and social pressures, the Hawaiian language was materially marginalized, leading to its atrophy and eventual formal and practical exclusion from public and civic spaces. Fortunately, the Hawaiian language community's efforts and resilience have maintained Hawaiian's existence and

unmarked language to once again be placed in a similar intra-community hierarchy should diacritical marking usage be mandated.

² OHA also understands that all languages evolve over time and generally, supports the creation of words and characters to meet the communicative needs of today's speakers and facilitate the broad acquisition and proliferation of Hawaiian throughout Hawai'i. Accordingly, as a second option OHA suggests the removal of language pertaining to the use of the diacritical makers to advance other essential provisions in the bill.

restored its vitality for the upcoming generations.

Therefore, the purposes of this section are:

- (1) To implement the recognition of the Hawaiian language as an official language of the State, Article XV, Section 4, Hawai'i State Constitution;
- (2) To affirm Native Hawaiians' and Hawaiian language speakers' rights to freely express themselves in the Hawaiian language; and
- (3) To ensure that the State shall take effective measures to safeguard and protect this right.

(b) Hawaiians, as the indigenous people of Hawai'i, have the right to revitalize, use, develop, and transmit to future generations their histories, language, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places, and persons.

(c) Whenever the Hawaiian language is used in any government proceeding, including but not limited to, trials, depositions, agency hearings, public hearings, committee meetings, and board meetings as the medium of communication, Hawaiian interpreters shall be

provided and minutes, opinions, notices, and records shall be translated in Hawaiian.

(d) Hawaiian language practitioners, generally, employ two written orthographies, namely, unmarked language and marked language. The unmarked orthography was the first writing system of Hawaiian language. The orthography which includes the ‘okina and kahakō was created as a means to help learners of Hawaiian language determine when to elongate a vowel or where insert a glottal stop.

(e) ‘Okina and kahakō shall be used in the conventional spelling of words or terms in the Hawaiian language in documents and letterheads prepared by or for state or county agencies or officials[-]; provided that any document submitted to state or county agencies or officials by members of the general public shall not require the use of ‘okina and kahakō. Any rule, order, policy, or other act, official or otherwise, that prohibits or discourages the use of these symbols shall be void.

(f) ‘Okina are known in English as glottal stops and shall be represented as a left single quotation mark. Kahakō are known in English as macrons, which

elongate vowel sounds and shall be represented as a macron over a vowel."

OPTION TWO: REQUIRING APPROPRIATE USE OF 'OKINA AND KAHAKO WHEN MARKED ORTHOGRAPHY IS USED

"~~[f]1-13.5[f]~~ **Hawaiian language** [~~spelling.~~] (a)

~~[Macrons and glottal stops may be used in the]~~ The Hawaiian language is Hawai'i's indigenous and first language. Hawaiian language was also the original language of Hawai'i's executive, judicial, and legislative branches. However, due to myriad political, economic, and social pressures, the Hawaiian language was materially marginalized, leading to its atrophy and eventual formal and practical exclusion from public and civic spaces. Fortunately, the Hawaiian language community's efforts and resilience have maintained Hawaiian's existence and restored its vitality for the upcoming generations. Therefore, the purposes of this section are:

- (4) To implement the recognition of the Hawaiian language as an official language of the State, Article XV, Section 4, Hawai'i State Constitution;

(5) To affirm Native Hawaiians' and Hawaiian language speakers' rights to freely express themselves in the Hawaiian language; and

(6) To ensure that the State shall take effective measures to safeguard and protect this right.

(b) Hawaiians, as the indigenous people of Hawai'i, have the right to revitalize, use, develop, and transmit to future generations their histories, language, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places, and persons.

(c) Whenever the Hawaiian language is used in any government proceeding, including but not limited to, trials, depositions, agency hearings, public hearings, committee meetings, and board meetings as the medium of communication, Hawaiian interpreters shall be provided and minutes, opinions, notices, and records shall be translated in Hawaiian.

(d) Hawaiian language practitioners, generally, employ two written orthographies, namely, unmarked language and marked language. It is not the intent of this section to establish one as the state standard over the other. The unmarked orthography was the

first writing system of Hawaiian language. The orthography which includes the 'okina and kahakō was created as a means to help learners of Hawaiian language determine when to elongate a vowel or where insert a glottal stop.

(e) For consistency, when a state or county agency or official elects to employ 'okina and kahakō markings, the agency or official shall ensure that such usage conforms to the conventional marked spelling of words or terms in the Hawaiian language in documents and letterheads prepared by or for state or county agencies or officials[-]; provided that any document submitted to state or county agencies or officials by members of the general public shall not require the use of 'okina and kahakō. Any rule, order, policy, or other act, official or otherwise, that prohibits or discourages the use of these symbols shall be void.

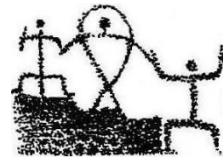
(f) 'Okina are known in English as glottal stops and shall be represented as a left single quotation mark. Kahakō are known in English as macrons, which elongate vowel sounds and shall be represented as a macron over a vowel."

OHA notes that the above suggestions are the result of meaningful deliberation and careful drafting among a subset of prominent Hawaiian language community stakeholders. OHA believes that such community consultation is highly appropriate given the Hawaiian language's historical treatment, fragile status, and cultural-political value, as well as the stakeholder community's decades-long investment in restoring, maintaining, and promoting the vitality of our islands' indigenous and first language.

Again, OHA strongly supports this measure as an important step towards giving long-overdue "teeth" to the constitutional vision of Hawaiian as a true official language of the State. For the reasons set forth above, OHA urges the Committee to **PASS WITH AMENDMENTS** SB642 SD2. E ola nō ka 'ōlelo Hawai'i! Mahalo a nui for the opportunity to testify on this measure.



KA LEI PĀPAHI ‘O KĀKUHIHEWA



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COMMITTEE ON JUDICIARY

Rep. Chris Lee, Chair

Rep. Joy A. San Buenaventura, Vice Chair

DATE: Monday, March 18, 2019

TIME: 2:05pm

PLACE: Conference Room 325

REGARDING: Testimony in **Strong Support for SB 701 SD2 HD1**, Relating to Hawaiian Language

Dear Chair Lee and Committee Members:

My name is Keali‘i Gora, president of Ka Lei Pāpahi O Kākuhihewa, an O‘ahu-based Native Hawaiian education and cultural organization.

Ka Lei Pāpahi ‘o Kākuhihewa **strongly supports** SB 701 SD2 HD1 because it fits perfectly within our mission, which is to assure quality instruction and cultural integrity in all aspects of Hawaiian history, language and culture.

Furthermore, to ensure that the Office of Hawaiian Affairs can convene a task force for the purpose of developing policies, procedures and recommendations for the appropriate use of the Hawaiian language in state and also county documents and letterhead, adequate funds should be appropriated to the OHA since their operating budget will be impacted. The bill presents an additional operating cost to the OHA that was not foreseen when they presented their budget to the Legislature at the beginning of session.

DEMOCRATIC PARTY OF HAWAII
Hawaiian Affairs Caucus

TESTIMONY IN SUPPORT WITH COMMENTS
SB701 SD2 HD1
RELATING TO THE HAWAIIAN LANGUAGE
Committee on Judiciary
Hearing: Monday, March 18, 2019, Conf Rm 325

Aloha, Chair Lee, Vice Chair Buenventura, and members of the Committee on Judiciary

The Hawaiian Affairs Caucus of the Democratic Party of Hawaii continues to support SB701, SD2, HD1, and its original intent of this legislative measure, which was to require that all state and county documents, letterhead, emblems, and symbols containing Hawaiian language words or names employ accurate, appropriate, and authentic usage of the Hawaiian language including diacritical marks. This measure also established certain source materials as authoritative for determining accuracy, appropriateness, and authenticity.

However, several testifiers have objected to this measure expressing their concerns about such issues as the use of diacritical marks and source materials. The current amendment to SB701 now directs the Office of Hawaiian Affairs to establish a task force to: 1) Determine appropriate sources for authenticating and verifying the appropriate usage and syntax of Hawaiian language for purposes of state and county documents, letterhead emblems, and symbols; and 2) Establish a process for the review of Hawaiian language documents, letterhead, emblems, and symbols; and (3) direct OHA to report the task force's findings and recommendations to the 2020 Legislature.

Accordingly, we support HB701 HD1 SD1 and recommend that organizations, such as 'Aha Pūnana Leo, the University of Hawaii Kawaihuelani Center for Hawaiian Language, Ka Haka 'Ula O Ke'elikōlani College of Hawaiian Language, and representatives of the Native Hawaiian speaking community from Niihau be included on such committee.

Respectfully,

LEIMOMI KHAN, Chair

SB-701-HD-1

Submitted on: 3/16/2019 12:55:19 PM

Testimony for JUD on 3/18/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments: