

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

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**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the House Committee on
JUDICIARY**

**Tuesday, March 19, 2013
2:30 P.M.
State Capitol, Conference Room 325**

**In consideration of
SENATE BILL 406, SENATE DRAFT 2
RELATING TO TRAINING**

Senate Bill 406, Senate Draft 2, proposes to require the Office of Hawaiian Affairs (OHA) to establish, design, and administer a training course in Native Hawaiian matters for specified members of boards, councils, and commissions and requires those members to take the course within six months of their respective appointments, and charge fees to participants of the course as needed to fund costs of the course. **The Department of Land and Natural Resources (DLNR) prefers the original version of this measure and offers the following comments and concerns on Senate Bill 406, Senate Draft 2.**

DLNR is acutely aware of the need for members of its boards and commissions to be properly educated and sensitive to the important subject of Native Hawaiian matters. DLNR also notes that OHA's presence before the various councils, boards and commissions to offer guidance on Native Hawaiian matters has been very beneficial and DLNR continues to urge an OHA presence.

DLNR is committed to increasing capacity and knowledge among its individuals on Native Hawaiian matters. At a Saturday volunteer training that OHA conducted on Native Hawaiian rights there were many DLNR individuals that attended including the Chairperson and First Deputy. All felt that it was a very productive introduction on important Native Hawaiian matters, and DLNR suggests OHA consider extending the training to various agencies, including DLNR, during the work week so more individuals may attend.

In addition, DLNR strongly supports two measures this session that direct the Board of Land and Natural Resources (House Bill 1327) and the Natural Area Reserves Commission (Senate Bill 1172) to require a member that possesses a background in Native Hawaiian traditional and customary practices.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
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

Senate Bill 406, Senate Draft 2 proposes to place fees on the participants, whereas in the original version of the measure OHA absorbed the costs associated with the training. DLNR is concerned with the imposition of fees for mandatory training on to DLNR and the members of these boards and commissions. DLNR suggests that mandatory training for members of boards and commissions should be free of cost, for example such as ethics training. In addition, DLNR finds that OHA has very able staff to provide the training. Lastly, DLNR would like to note that the members of these boards and commissions serve on a volunteer basis, and often have limited time.

For the above-mentioned reasons DLNR prefers the original version of this measure. Thank you for the opportunity to testify.



SB406 SD2
RELATING TO TRAINING
House Committee on Judiciary

March 19, 2013

2:00 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) strongly **SUPPORTS** SB406 SD2, which is a bill in OHA's 2013 Legislative Package. This bill would require certain board and commission members to attend a Native Hawaiian Law training course developed or approved by OHA. SB406 SD2 represents an opportunity for OHA to work with the State of Hawai'i to empower these members with information so that they can make decisions that are consistent with the state's fiduciary obligations to the Native Hawaiian people.

A training course in Native Hawaiian law for relevant board and commission members is **necessary to honor the trust obligation and responsibility owed by the State of Hawai'i to the Native Hawaiian people**. The boards and commissions listed in SB406 SD2 administer resources and programs that directly impact Native Hawaiian traditional and customary rights, natural and cultural resources, and the public trust. As state entities, these boards and commissions have a duty to protect and preserve Native Hawaiian rights and to administer the public trust in the interest of the state's beneficiaries, including Native Hawaiians.

Given the broad range of expertise and experience of the individuals selected to serve on these state councils, boards, and commissions, many members of these key policy-making entities do not possess knowledge of the unique rights and responsibilities that relate to the Native Hawaiian community. Despite their affirmative duties, the board and commission members are not provided with any related training. Unfortunately, this has likely contributed to expensive and unnecessary litigation as well as distrust by the Native Hawaiian community. The training course would be a significant step towards addressing these problems.

OHA partnered to conduct the first Native Hawaiian Law Training Course on January 12, 2013. At least one member from each board and commission listed in SB406 SD2 RSVP'd along with members of other boards and commission and associated staff members. In total, over 100 individuals RSVP'd for the course. The **attendees overwhelmingly indicated that after the course that they have a better understanding of the State's legal responsibilities, Hawai'i's political history, and Native Hawaiian traditional and customary practices**.

As the constitutionally established body responsible for protecting and promoting the rights of Native Hawaiians, **OHA is the appropriate agency to create and administer a Native Hawaiian Law training course**. In creating OHA, the people of Hawai'i

specifically recognized their obligations pursuant to the “public trust which includes among other responsibilities, betterment of conditions for” Native Hawaiians. HRS § 10-1(a). OHA’s kuleana to serve as the agency responsible for the 1) performance, development, and coordination of programs and activities relating to Native Hawaiians, as well as 2) the assessment of policies and practices of other agencies impacting Native Hawaiians, is clearly consistent with SB406 SD1. Moreover, requiring relevant board and commission members to attend is also consistent with HRS § 10-1(b), which requires state agencies that “provid[e] services and programs which affect” Native Hawaiians “to cooperate with and assist wherever possible the office of Hawaiian affairs.”

Finally, in anticipation of questions by this committee, OHA would like to clarify that **it is not OHA’s intention for the State to incur expenses related to the development or the administration of the proposed training course. Nor is it OHA’s intention for the general fund budget to be impacted.**

OHA strongly urges this committee **PASS** SB406 SD2. Mahalo nui loa for the opportunity to testify.



March 18, 2013

Representative Karl Rhoads, Chair
Representative Sharon E. Har, Vice Chair
House Committee on Judiciary

Support of the Intent, Comments, Concerns and Opposition to current form of SB 406, SD2, Relating to Training (Mandatory OHA training course in native Hawaiian matters for specified members of State boards, councils, and commissions).

Tuesday, March 19, 2013, 2:00 p.m., in Conference Room 325

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF's mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

SB 406, SD2. This bill proposes to require the Office of Hawaiian Affairs ("OHA") to either administer or approve a third party to administer a mandatory training course in native Hawaiian and Hawaiian matters to members of the following state councils, boards, and commissions:

- Land Use Commission
- Board of Land and Natural Resources ("BLNR")
- 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 Systems Commission
- Hawaii Historic Places Review Board
- Board of Health, and
- Board of Directors of the Public Lands Development Corporation

The bill also authorizes OHA to repeat the training course as necessary; and offer abbreviated training courses directly to state agencies, as well as councils, boards and commissions.

The bill further requires those members to take the course within one year of their respective appointments. The effective date is July 1, 2050.

This bill is somewhat similar to Act 288 (SLH 2012) (HB 2806, HB 2, SD 2, CD 1), which created the Aha Moku Advisory Committee (“Aha Moku”) to advise the Office of the Chairperson of the BLNR on issues related to land and natural resource management through the aha moku system - a system of best practices based upon the indigenous resource management practices of moku (regional) boundaries, which acknowledges the natural contours of land, the specific resources located within those areas, and the methodology necessary to sustain resources and the community.

LURF’s Position. This bill is well-intended, and LURF **supports the intent of SB 406, SD2**, however, it has serious concerns, comments and recommendations, thus, at this time; LURF must **oppose the current version of SB 406, SD2, but would support amendments** which would provide that (1) other organizations have the same rights to provide mandatory training to specified members of State boards, councils, and commissions, including, but not limited to organizations in the areas of agriculture, ranching, aquaculture, fishing, hunting, water use, land use, tourism, housing, education, business, military, renewable energy, sustainability, genetic modification, high technology and climate change. These other organizations should have the same access, rights and privileges as OHA; (2) if OHA maintains its absolute control over the mandatory training, that another agency or organization be assigned to advocate before those of certain State boards, councils and commissions; and (3) OHA’s mandatory training program should be consistent with the legal interpretations and advice provided by the Attorney General.

LURF’s concerns, objections and proposed amendments are more fully explained below:

- **This bill gives OHA the absolute power to determine the training for State boards and commissions and provide OHA with “a special and unfair advantage” over any other individual or public interest group which seeks to provide public input to those State boards, councils and commissions. Due process, equal protection and fairness dictate that other organizations with different views should be afforded the same mandatory training opportunities.** LURF’s main concern is whether OHA’s absolute power to establish the mandatory training program will provide OHA with the power preclude any other person’s or organization’s right to provide the same advice and training to the specified members of state boards, councils, and commissions; and would arguably have the effect of creating and favoring OHA as a special class, as it confers favorable treatment, special access, rights and privileges only to OHA, as one special interest group, thereby potentially rendering the measure unconstitutional.

LURF believes that the laws enacted by our Legislature must rightly support the free speech, due process and equal protection rights of all citizens, special interest groups, industry groups and stakeholders who may also wish to provide training or advice to specified members of State boards, councils, and commissions relating to the broad spectrum of subject matter areas relating to land and natural resource management, which includes agriculture, ranching, aquaculture, fishing, hunting, water, tourism, housing, education, business, military, land use, renewable energy, sustainability, genetic modification, and high technology. Thus LURF respectfully recommends that this bill be amended to allow all of the groups named above the same rights to conduct mandatory training of those State boards, councils and commissions.

- **OHA will have a conflict of interest between its statutory “advocacy efforts” before government boards and commissions and its proposed absolute power to determine the mandatory training for those same boards, councils and commissions.** OHA’s statutory purposes include conducting “advocacy efforts for native Hawaiian and Hawaiians” before the very same boards, councils and commissions for which they are they are administering, or approving a third party to administer, a mandatory training program on the very same issues they are advocating for. Assuming OHA maintains its absolute powers over such mandatory training under this measure, the conflict of interest issue could be resolved by an amendment to require that OHA recuse itself from advocating before those State boards, councils and commissions, and another agency should be assigned such advocacy duties.
- **OHA’s mandatory training of State boards and commissions, or the mandatory training by a third party approved by OHA could be inconsistent with the legal interpretation and advice provided by the Department of the Attorney General (“Attorney General”).** LURF understands that the Attorney General is the legal counsel and advisor for the above-referenced State boards and commissions. LURF also understands that in the past, OHA’s interpretation of legal rights and responsibilities may have been inconsistent with the legal interpretation and advice provided by the Attorney General. If the legal interpretations differ between OHA and the Attorney General, it could cause unnecessary confusion among the various members of those State board or commissions. If OHA administers mandatory training, or approves a third party who provides mandatory training for State boards and commissions – such training should be consistent with the legal interpretations and advice provided by the Attorney General. To prevent such a confusing situation, this bill should be amended to provide that the mandatory training should be consistent with the legal interpretations and advice provided by the Attorney General.

For the reasons stated above, LURF respectfully recommends that **SB 406, SD2, be held in this Committee at this time, unless and until it is amended as described above.**

Thank you for the opportunity to provide testimony regarding this proposed measure.

HAWAIIAN AFFAIRS CAUCUS

DEMOCRATIC PARTY OF HAWAII

1050 ALA MOANA BLVD D-2150, HONOLULU, HI 96814

LEGISLATIVE TESTIMONY

HOUSE COMMITTEE ON JUDICIARY

HEARING: Rm. 325 3/19/2013 2:00 PM

SB 406 - RELATING TO TRAINING

POSITION: SUPPORT

The Hawaiian Affairs Caucus of the Democratic Party is submitting testimony in **STRONG SUPPORT** of SB 406 that requires certain board and commission members to attend a Native Hawaiian law training course. The boards and commissions listed in the bill administer important natural and cultural resources, therefore it is critical that they understand the State's constitutional responsibility and trust obligation to protect those resources.

This course will cover unique rights and responsibilities related to the Native Hawaiian community that includes traditional and customary rights and the public trust doctrine. While individuals selected to serve on these state boards and commissions are chosen for their wide range OF expertise and experience, they often do not possess knowledge of those unique rights and responsibilities mentioned above. As a result, this has likely contributed to expensive and unnecessary litigation that is a cost to the State, the parties involved, and the Native Hawaiian community. This course would be an important step towards remedying these problems.

For these reasons, I strongly urge this committee to **PASS** this measure. Mahalo for the opportunity to testify.

'O ia ihola nö me ke aloha.

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Unity, Equality, Aloha for All

To: House Committee on Judiciary
From: Kenneth R. Conklin, Ph.D.

Re: SB406 SD2

Requires OHA to either administer or approve a third party to administer a mandatory training course in native Hawaiian and Hawaiian matters to members of certain state councils, boards, and commissions. Requires those members to take the course within one year of their respective appointments.

Date: March 15, 2013 for Hearing Tuesday March 19

TESTIMONY IN OPPOSITION

There are many reasons for opposing this bill. In this testimony I will focus on two reasons.

1. The 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.
2. The 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. This would be 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 kow-tow to a religion which portrays people who do have Hawaiian blood as possessing an inherent God-given right to rule these islands.

1. This bill authorizes OHA to exercise power over all or most state agencies.

It elevates OHA to a position of superiority over other agencies of the State of Hawaii, by forcing employees of those agencies to place themselves under the authority of OHA, where OHA will determine the contents of the courses they are required to take, and OHA will be the sole judge of whether those employees have learned the subject matter and have shown proper deference to the political views of OHA. This bill forces government employees to submit to political indoctrination -- brainwashing -- in the views of OHA, many of which are highly controversial, morally reprehensible, and probably unconstitutional.

For example, 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?

For example, 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?

2. 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 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 an 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 justifies 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 regent stepmother Queen Ka'ahumanu, and with Kahuna Nui (High Priest) Hewahewa, exercised sovereignty on behalf of all native Hawaiians to abolish the ancient religion, and ordered the destruction of the heiaus and burning of idols. Today's ethnic Hawaiians disrespect the decision of their ali'is and ancestors by trying to resurrect the ancient religion for political purposes. 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 multiracial, multicultural people of Hawaii by passing this bill.

SB406

Submitted on: 3/15/2013

Testimony for JUD on Mar 19, 2013 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Jeannine Johnson	Individual	Support	No

Comments: At a neighborhood board meeting this month, I was shocked to learn that the police and certain government representatives were not familiar with the PASH law. This law is not new. But of course LURF and all those that favor development don't want this bill to pass so that they can keep denying Hawaiians their rights.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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