



SB436

RELATING TO TRAINING

Senate Committee on Hawaiian Affairs
Senate Committee on Government Operations

February 13, 2015

1:30 p.m.

Room 224

The Office of Hawaiian Affairs (OHA) **STRONGLY SUPPORTS** SB436, which is a bill in OHA's 2015 Legislative Package. This bill would require the members of certain boards and commissions to attend a Native Hawaiian Law training course funded by OHA, and developed by third-party legal experts. Accordingly, SB436 represents an opportunity to ensure that key State policymakers understand and 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 fulfill the trust obligation and responsibility held by the State of Hawai'i towards Kānaka Maoli. The boards and commissions listed in SB436 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 enforce Native Hawaiian rights, and to administer the public trust in the interest of its beneficiaries, including Native Hawaiians. However, notwithstanding the broad range of expertise and experience of the individuals selected to serve on these boards and commissions, many may not possess knowledge of the unique legal rights and responsibilities that relate to the Native Hawaiians, or to the public trust. Unfortunately, this has likely contributed to a sense of disenfranchisement felt by many in the Native Hawaiian community, and policy decisions that have failed to uphold the duties of the State.

To address this problem, since 2013, OHA has offered a Native Hawaiian Law training course on a voluntary basis to state and county legislators, board and commission members, and other relevant individuals. This training course was developed in partnership with the Ka Huli Ao Center for Excellence in Native Hawaiian Law at the William S. Richardson School of Law, and has been presented in January 2013, January 2014, and July 2014. In total, over 250 individuals have attended the course, including members of all the boards and commissions enumerated in this bill. **Notably, training course attendees overwhelmingly indicated that as a result of the course, they better understood the State's legal responsibilities towards Native Hawaiians and the public trust.**

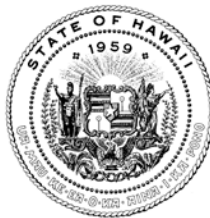
Requiring similar legal training for each member of the boards and commissions listed in this bill will ensure that *all* of these critical decisionmakers are provided with the

information they need to successfully fulfill the state's legal obligations towards Native Hawaiians and the public trust. Towards this end, OHA has and will continue to commit funds for the further development and administration of a Native Hawaiian Law training course, eliminating the need for appropriations from the state general fund.

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.¹ 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 SB436. In assessing the practices of agencies in this area, OHA finds it necessary to ensure that officials making decisions on Hawaiian issues have a basic understanding of their legal responsibilities and obligations towards Native Hawaiians. This bill would ensure that understanding.

Therefore, OHA strongly urges the Committees to **PASS** SB436. Mahalo nui loa for the opportunity to testify.

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
CARTY CHANG
Interim Chairperson**

**Before the Senate Committees on
HAWAIIAN AFFAIRS
and
GOVERNMENT OPERATIONS**

**Friday, February 13, 2015
1:30 pm
State Capitol, Conference Room 224**

**In support of
SENATE BILL 436
RELATING TO TRAINING**

Senate Bill 436 proposes to mandate that the Office of Hawaiian Affairs (OHA) develop a course on Native Hawaiian rights, and to require members of appropriate state councils, boards and commission to take the course. OHA will bear all expenses related to developing and executing the course. **The Department of Land and Natural Resources' (Department) comments are limited to those boards and commissions under its jurisdiction. As such, the Department supports this measure.**

Senate Bill 436 notes that it is the duty of all boards and commissions to protect Native Hawaiian traditional and customary rights. However, many appointees to the boards and commissions that have the potential to impact Native Hawaiian traditional and customary rights are not adequately trained in what those rights are, or the tools that they can use to protect those rights.

The Department notes that OHA has offered three such training courses since January 2013, and the Department has sent boards and commission members, as well as staff members, to the course each time. Everyone who attended had high praise for the course and indicated it was well worth their Saturday.

Thank you for the opportunity to testify.

CARTY S. CHANG
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DANIEL S. QUINN
INTERIM FIRST DEPUTY

W. ROY HARDY
ACTING 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

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lieutenant Governor

LUIS P. SALAVERIA
Director

MARY ALICE EVANS
Acting Deputy Director



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

DANIEL ORODENKER
Executive Officer

Bert K. Saruwatari
Planner
SCOTT A.K. DERRICKSON AICP
Planner

RILEY K. HAKODA
Chief Clerk/Planner

FRED A. TALON
Drafting Technician

Statement of
Daniel E. Orodenker
Executive Officer
Land Use Commission
Before the
Senate Committees on Hawaiian Affairs
and
Government Operations
February 13, 2015
1:30 PM
State Capitol, Conference Room 224

In consideration of
SB 436
RELATING TO TRAINING

Chairs Shimabukuro and Dela Cruz, Vice Chairs Galuteria and Nishihara, and members of the Committees on Hawaiian Affairs; and Government Operations:

The Land Use Commission strongly supports SB 436 in that it provides the Land Use Commission (LUC) with training that is incredibly valuable for staff who must advise commissions and non-expert commissioners who deal with public trust issues involving Hawaiian traditional and customary rights, water, natural and archaeological resources, and burials.

These trainings have been cost-effective, time-efficient, and at least for the LUC, highly relevant to the legal issues and the type of findings they are required to make in their decisions and orders. LUC staff and several of our past commissioners have attended OHA-sponsored training sessions with unanimous agreement as to their value and utility.

The LUC will continue to take advantage of such training opportunities for our staff and commissioners in the future.

Thank you for the opportunity to testify on this matter.



Association of Hawaiian Civic Clubs

P. O. Box 1135
Honolulu, Hawai`i 96807

SB 436 RELATING TO TRAINING

**SENATE COMMITTEES ON
HAWAIIAN AFFAIRS AND GOVERNMENT OPERATIONS**

Friday; 2/13/15; 1:30 pm; Room 224

Aloha Madam Chair Shimabukuro of the Hawaiian Affairs Committee and Chairman Dela Cruz of the Government Operations Committee and members of the joint committees.

The Board of Directors of the Association of Hawaiian Civic Clubs had the opportunity to receive a briefing on the legislative package offered by the Office of Hawaiian Affairs on January 17, 2015. The Directors agreed to support the bills introduced, understanding the need to provide relevant information on native Hawaiian and Hawaiian rights to certain state councils, boards and commissions.

Thank you for the opportunity to support this bill.

Contact: Jalna.keala2@hawaiiantel.net

From: mailinglist@capitol.hawaii.gov
To: [HWNTestimony](#)
Cc: ikepono@hotmail.com
Subject: Submitted testimony for SB436 on Feb 13, 2015 13:30PM
Date: Wednesday, February 11, 2015 11:41:32 AM

SB436

Submitted on: 2/11/2015

Testimony for HWN/GVO on Feb 13, 2015 13:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Isaiah Kala Kaaihue	King Kamehameha HCC	Support	No

Comments: The membership of the King Kamehameha Hawaiian Civic Club strongly support SB436.

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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KO`OLAUPOKO HAWAIIAN CIVIC CLUB

February 12, 2015

TO: Senator Maile S.L. Shimabukuro, Chair / & Members
Committee on Hawaiian Affairs

Senator Donovan M. Dela Cruz, Chair / & Members
Committee on Government Operations

FROM: Alice P. Hewett, President
Ko'olaupoko Hawaiian Civic Club

RE: Support for S.B. 436, Relating to Training

Aloha, Senators Shimabukuro and Dela Cruz, and Members of the Committees on Hawaiian Affairs and Government Operations.

The Ko'olaupoko Hawaiian Civic Club offers its strong support for S.B. 436, which would require members of certain state boards and commissions to receive training on Hawaiian rights and public trust law.

In our view, this would empower these state commission and board members to make informed decisions early enough in their processes, with the hope that conflict and disagreement can be minimized once final decisions are made.

We ask your favorable action on this measure.

Mahalo for allowing us to share our mana`o.

The Ko'olaupoko Hawaiian Civic Club was established in 1937 and is a not-for-profit community organization dedicated to preserving and perpetuating the history, heritage and culture of Native Hawaiians. Its membership is open to people of Hawaiian ancestry and those who are "Hawaiian at heart".

P. O. Box 664 * Kaneohe, HI 96744 * Ph. (808) 235-8111 * www.koolaupokohcc.org

TO: Senator Maile S.L. Shimabukuro, Chair
Senate Committee on Hawaiian Affairs, and

Senator Donovan M. Dela Cruz, Chair
Senate Committee on Government Operations

FROM: Sara L. Collins, Ph.D., President
Society for Hawaiian Archaeology
sara.l.collins.sha@gmail.com

HEARING: Friday, February 13, 2015 at 1:30 PM in Conference Room 224

SUBJECT: Testimony in SUPPORT of SB 436, Relating to Training

I am Dr. Sara Collins, President of the Society for Hawaiian Archaeology (SHA). We have over 150 members that include professional archaeologists and advocates of historic preservation in general. SB 436 amends Chapter 10, Hawaii Revised Statutes (HRS) to require the Office of Hawaiian Affairs (OHA) to administer a training course on native Hawaiian and Hawaiian rights. The amendments will also require members of certain state councils, boards, and commissions to attend the training course, and allow other state or county officers, representatives, or employees to request to enroll in the training course.

Since 2013, OHA has offered three such training courses attended by a broad range of state and county government officials. An overwhelming majority of the attendees found the course materials, content, and presentation to be very valuable. Upon completion, attendees felt that they had a better understanding of Native Hawaiian traditional and customary rights, natural resource protection, access rights, and the public trust.

SB 436 proposes to amend §10.2, HRS by adding a new part that requires the following actions:

- The training shall be required for members of the Land Use Commission, Board of Land and Natural Resources, Commission on Water Resource Management, Environmental Council, Board of Directors of the Agribusiness Development Corporation, Board of Agriculture, Legacy Land Conservation Commission, Natural Area Reserves Commission, Hawaii Historic Places Review Board, and the Board of Health. Such individuals shall complete the training course within 12 months of the members' initial appointments.
- At its own expense, OHA will establish, design, and administer the training course relating 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. OHA shall offer the training course at least twice per year.
- The Governor shall provide to OHA the names of the persons required to take the training course within 30 calendar days of their initial appointments.

We support the subject bill and believe that a training course of this type will be valuable to incoming commissioners and others who may choose to take the course. We would only recommend that the required content include some basic information on State historic preservation law (Chapter 6E, HRS) as well as the content identified in SB 436.

Mahalo for considering our testimony. Should you have any questions, please feel free to contact me at the above email address.



Testimony of Hawai'i Green Growth In Support of SB436
Relating to Native Hawaiian Law Training
Senate Committee on Hawaiian Affairs
Senate Committee on Government Operations
13 February 2015, 1:30pm, Room 224

Audrey Newman
Hawai'i Green Growth
P.O. Box 535 Ho'olehua, Hawai'i 96729

Hawai'i Green Growth is a voluntary partnership of more than 70 state, county, federal, business, and non-governmental leaders from energy, food production, natural resources, waste reduction, planning, green jobs, and other sectors who have come together to support a shared statewide commitment and tangible actions toward sustainability and a model green economy.

Aloha Chairs Shimabukuro & Dela Cruz, Vice Chairs Galuteria & Nishihara, and Members of the Committees:

Hawai'i Green Growth (HGG) supports SB436 relating to Native Hawaiian Law Training Courses. HGG supports the bill proposed by the Office of Hawaiian Affairs (OHA) to require a Native Hawaiian Law Training Courses provided by OHA for the State of Hawai'i's board and commission members. This will help ensure government entities better understand traditional and customary practices, rights and responsibilities (kuleana) regarding Native Hawaiian rights and the public trust doctrine.

SB436 will help advance action on the *Aloha+ Challenge's* Green Workforce and Education 2030 target to "increase local green jobs and education to implement [the *Aloha+ Challenge* sustainability] targets." Education on Native Hawaiian culture and traditional practices is an integral part this target. *The Aloha+ Challenge: A Culture of Sustainability – He Nohona 'Ae'ōia* is a joint leadership commitment to achieve six sustainability targets by 2030 in the areas of clean energy, local food production, natural resource management, solid waste reduction, smart growth and climate resilience, green jobs and education. The *Aloha+ Challenge* was unanimously endorsed by the 2014 Legislature (SCR 69) and signed by Hawai'i's Governor, Mayors and Office of Hawaiian Affairs. It was also internationally recognized as a model of integrated sustainability at the UN Conference on Small Island Developing States in Samoa.

We respectfully urge your support for **SB436**.

Mahalo nui,

A handwritten signature in black ink that reads "Audrey Newman". The signature is fluid and cursive, with the first name "Audrey" being more prominent than the last name "Newman".

Audrey Newman

Senior Advisor, Hawai'i Green Growth (HGG)

Bringing leaders together to achieve sustainability in Hawai'i & be a model for a green economy

<http://www.hawaiigreengrowth.org/>

From: mailinglist@capitol.hawaii.gov
To: [HWNTestimony](#)
Cc: mkhan@hawaiiantel.net
Subject: Submitted testimony for SB436 on Feb 13, 2015 13:30PM
Date: Thursday, February 12, 2015 10:19:23 AM

SB436

Submitted on: 2/12/2015

Testimony for HWN/GVO on Feb 13, 2015 13:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Leimomi Khan	Kalihi Palama HCC	Support	No

Comments: Support SB 436. Training as proposed by OHA will enable leaders to make sound decisions and to advocate for good policies that take into consideration the State's commitment to Native Hawaiians, especially as mandated by the Hawaii State Constitution. Respectfully, Leimomi Khan, President, Kaihi Palama Hawaiian Civic Club

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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Center for Hawaiian Sovereignty Studies
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Unity, Equality, Aloha for all



To: SENATE COMMITTEES ON
HAWAIIAN AFFAIRS and
GOVERNMENT OPERATIONS

Re: SB 436 RELATING TO TRAINING.

Requires OHA to administer a training course on native Hawaiian and Hawaiian rights. Requires members of certain state councils, boards, and commissions to attend the training course.

The bill says that OHA offered its training courses on three occasions to government officials on various boards and commissions, and that some of those officials took the course, and then some who took the course reported that they had found it helpful. How nice for OHA! Participation was voluntary, free of cost to those who took it and to their employers; and of course they were enthusiastic (or at least they were polite enough to their instructors to give a positive evaluation). How nice for those who took the course and for those who taught it!

This bill proposes to make the course mandatory for all members of a long list of boards and commissions. How awful it would be to force people to be brainwashed by OHA's political propaganda on highly controversial topics with no presentation of opposing views. Would any member of a board or commission 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? 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.

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 members of previously independent boards and commissions 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 given a failing grade in this mandatory course and will then be ineligible to continue as a member of their board or commission.

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?

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 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. 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.



Testimony Before The
Senate Committee on Hawaiian Affairs
Senate Committee on Government Operations
IN SUPPORT OF SB 436
Friday, February 13, 2015, 1:30PM, Room 224

My name is Kevin Chang and I am the Executive Director of Kua'āina Ulu 'Auamo (or KUA). KUA works to empower grassroots rural and Native Hawaiian mālama 'āina groups to celebrate their places and pass on their traditions to better Hawai'i and achieve 'āina momona— an abundant, productive ecological system that supports community well-being. We employ a community-driven approach that currently supports a network of more than 31 mālama 'āina community groups collectively referred to as E Alu Pū (moving forward together), 40 fishpond projects and practitioners called the Hui Mālama Loko I'a, and a new and growing hui of Limu practitioners all from across our state.

KUA supports SB 436 as an incremental step towards 'āina momona. This bill would require members of state councils, boards, and commissions that have an impact on Native Hawaiian and public trust resources to attend a training course on their fiduciary duties in regard to those resources.

Many of the communities in the networks we facilitate focus on improving natural resource management and restoration of native ecological systems, values and ethics more sensitive to the needs of their wahi (their places). Quite often the issues they work to advance come before state and county councils, boards and commission dealing with historical and cultural sites, land, agriculture and water issues. When members of these decision-making bodies are uninformed of their fiduciary duties confusion often results in un-necessary delay and drain of resources sometimes even resulting in prolonged and personally taxing lawsuits.

We commend the Office of Hawaiian Affairs for the development and implementation of these training sessions and advancement of this important issue before you. However, the long term vision for these programs should ultimately be one embraced and furthered by the broader community.

Our communities are committed to ensuring the long-term health of our cultural and natural resources because they have depended on them for generations. This bill among others is an exciting trend towards increasing government's role as a partner with our communities to restore the abundance that we are all often so nostalgic about.

Mahalo for this opportunity. Aloha 'Āina Momona.



Ko`olau Foundation

P. O. Box 4749
Kane`ohe, HI 96744

February 12, 2015

TESTIMONY IN SUPPORT OF S.B. 436 – RELATING TO TRAINING

To: Sen. Maile Shimabukuro, Chair
Sen. Brickwood Galuteria, Vice Chair
Members, Hawaiian Affairs Committee

From: Mahealani Cypher, Secretary/Board Member
Ko`olau Foundation

Subject: Support for S.B. 436 – Relating to Training

The Ko`olau Foundation offers its strong support for Senate Bill 436, requiring training in Hawaiian rights and public trust law for members of state boards and commissions.

We believe such training is essential for certain boards and commissions which make decisions that affect Native Hawaiian rights, resources and concerns. Over the years, we have noted that there are some agencies which often make decisions in a vacuum, unaware that their decisions may run counter to what is required by law as it concerns the interests and needs of the Hawaiian people.

We urge you to approve this bill and move it to the governor's office for signing into law. It is long overdue.

Mahalo.

Mahealani Cypher



February 12, 2015

Senator Maile S.L. Shimabukuro, Chair
Senator Brickwood Galuteria, Vice Chair
Committee on Hawaiian Affairs

Senator Donovan M. Dela Cruz, Chair
Senator Clarence K. Nishihara, Vice Chair
Committee on Government Operations

Comments, Concerns and Opposition to current form of SB 436 Relating to Training - Requires the Office of Hawaiian Affairs (OHA) to administer a training course on native Hawaiian and Hawaiian legal rights. Requires members of certain state councils, boards, and commissions to attend the legal rights training course.

HWN/GVO Hearing: Friday, February 13, 2015, 1:30 p.m., Conference Room 224

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.

While LURF supports the general intent of providing State councils, boards and commission with training on native Hawaiian and Hawaiian rights and supports the involvement of the Office of Hawaiian Affairs (OHA) in that process, it is **OPPOSED** to the current version of SB 436, and respectfully requests that this Committee **HOLD** this bill, based on the following:

(1) This bill is unnecessary, because the State Administration and Department of the Attorney General (Attorney General) could create a "comprehensive training program" for State councils, boards and commissions, and with assistance from OHA, it could include areas relating to native Hawaiian and Hawaiian traditional and customary practices and legal rights, natural resources protection and access rights, and the public trust; and also include the State's trust responsibilities and other legal issues relating to agriculture, ranching, aquaculture, fishing, hunting, water, tourism, housing, education, business, military, land use, renewable energy, astronomy, sustainability, genetic modification, high technology and other areas of state interests.

(2) This bill is unnecessary, because OHA has stated that even without legislation such as SB 436, it already *"has offered three such training courses, which have attracted attendees representing a broad spectrum of state and county government officials."*

(3) The bill is unnecessary, because current law already allows OHA to publicly present its factual and legal positions relating to native Hawaiian and Hawaiian traditional and customary practices and legal rights, natural resources protection and access rights, and the public trust to State councils, boards and commissions and also allows OHA to be official parties in matters, hearings and meetings before those entities.

(4) The Attorney General is the legal advisor for State councils, boards and commissions. OHA's mandatory legal rights training could be contrary to the Attorney General's legal interpretations and advice and could create confusion for members of those State councils, boards and commissions;

(5) Pursuant to Section 10-3 (4), of the Hawaii Revised Statutes (HRS), OHA's purposes include "*conducting advocacy efforts*" and "*affecting public policy*" relating to State councils, boards and commissions. Thus, OHA's proposed mandatory legal rights training to those same State councils, boards and commissions would represent conflict of interest between its statutory "*advocacy*" responsibilities to affect public policy and OHA's proposed mandatory legal rights training role;

(6) OHA's exclusive access and legal training will involve an opportunity for illegal ex parte communications on legal and factual issues that will come before State councils, boards and commissions. During those *ex parte* legal training sessions OHA will have the exclusive opportunity to affect the public policy decisions of those State councils, boards and commissions by providing information, advocating, supporting, opposing or criticizing various State, county or private initiatives and projects;

(7) OHA's exclusive *ex parte* legal training will create a special and unfair access and advantage with State councils, boards and commissions, without providing similar access to other organizations with differing views in areas including, but not limited to, agriculture, ranching, aquaculture, fishing, hunting, water, tourism, housing, education, business, military, land use, renewable energy, astronomy, sustainability, genetic modification, high technology and other areas of state interests .

SB 436 OHA's native Hawaiian and Hawaiian Law Training Course. The Office of Hawaiian Affairs ("OHA") website and legislative package describes this bill as "***OHA-3 Native Hawaiian Law Training Course.***" This bill proposes to require OHA to establish, design, and administer a "law training course" relating to native Hawaiian and Hawaiian traditional and customary rights, native Hawaiian and Hawaiian natural resources protection and access rights, and the public trust, including the State's trust responsibility; and specified members of the following councils, boards and commissions would be required to take the law training course:

- 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

The bill also authorizes OHA to repeat the law training course at least twice per year; requires the governor to provide OHA with the names of the persons required to take the law training course within thirty calendar days of their initial appointment; requires OHA to notify those persons; and requires those persons to take the law course within thirty calendar days of their initial appointments (this means that the Governor's ability to appoint officials will be severely restricted by the dates of the OHA training – at least twice a year). The effective date of this measure is upon approval.

This bill is somewhat similar to, and duplicative with some of the purposes of 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. It appears that this is a well-intended bill regarding very important issues, which has been proposed in the past. However, there are still serious and major concerns that have not been resolved by legislative committees in prior years, or in the current version of SB 436. Thus, the current version of SB 436 should be **HELD** in your Committees.

Major concerns and issues. SB 436 includes the following issues, concerns and objections:

- **This bill is unnecessary, because the State administration could develop and implement a “comprehensive training program.”** Instead of passing this bill, perhaps the State Administration and Attorney General could consider working with various organizations, including OHA, to develop and implement a **“comprehensive” training course** for members of the certain boards, councils, and commissions relating to various issues that will come within their purview, including:
 - ❖ native Hawaiian and Hawaiian traditional and customary rights, native Hawaiian and Hawaiian natural resources protection and access rights, and the public trust, including the State's trust responsibilities;
 - ❖ the State responsibilities and legal rights in areas of agriculture, ranching, aquaculture, fishing, hunting, water use, land use, tourism, housing, education, business, military, renewable energy, astronomy, sustainability, genetic modification, high technology and climate change; and
 - ❖ any “legal training” of State councils, boards and commissions should only be taught by the Attorney General or his deputies, as they are the legal advisors for State councils, boards and commissions.
- **The bill is unnecessary, because current law already allows OHA to publicly present its factual and legal positions relating to native Hawaiian and Hawaiian traditional and customary practices and legal rights, natural resources protection and access rights, and the public trust to State**

councils, boards and commissions and also allows OHA to be official parties in matters, hearings and meetings before those entities.

- **OHA’s mandatory law training could be contrary to the legal interpretation and advice provided by the Attorney General and cause unnecessary confusion for the State councils, boards and commissions.** The Attorney General is the legal counsel and advisor for the above-referenced State councils, boards and commissions. In the recent past, OHA’s interpretation of legal rights and responsibilities sometimes appear inconsistent with, or contrary to the Attorney General’s legal interpretations and advice to those State councils, boards and commissions. If OHA administers mandatory training and expresses legal interpretations, conclusions and advice that is inconsistent with or contrary to the Attorney General, it will cause unnecessary confusion for the State councils, boards and commissions and could lead to messy legal challenges.

- **OHA’s conflict of interest.** OHA’s website emphasizes its focus on advocacy:

*“OHA is focused on strategic priorities for improving the conditions of Native Hawaiians in the areas of aina, culture, economic self-sufficiency, education, governance and health. **OHA’s advocacy** involves conducting research findings are used **to guide decisions** and empower communities to inspire positive results in these areas. **OHA’s advocacy also calls for developing and shaping public policies** that have broad implications for the Hawaiian community. **OHA’s advocacy** is reflected in its efforts **to help ensure that laws are complied with** at the local, state and federal levels. In addition, OHA’s advocacy requires working with communities to share information and build public support for Hawaiian issues.”*

Given OHA’s focus on advocacy and affecting public policy of State councils, boards and commissions, OHA will have a conflict of interest between its statutory “advocacy” responsibilities before government boards and commissions and its proposed absolute power to implement the mandatory legal training for those same councils, boards and commissions. As noted above, 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 establish, design, and administer a “mandatory law training course”, **on the very same issues they are advocating for**. If OHA opposes a particular State or private initiative or project, it would have the statutory mandate and opportunity to **advocate** their own OHA’s legal position and arguments to those State councils, boards and commissions.

- **OHA’s Native Hawaiian Law Training Course could be considered improper *exparte* opposition to, or criticism of current and future State and private initiatives and projects that will come before those same State councils, boards and commissions.** OHA’s statutory purposes include “Assessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and **conducting advocacy efforts** for Native Hawaiians and Hawaiians.” HRS §10-3(4).

This “**advocacy responsibility**” is one that OHA performs often and well, and is of great value. Over the years, OHA has opposed or expressed concerns with the State Administration’s legislative package and with other major private and State-related initiatives or projects. OHA’s past and continuing legal and other opposition to state projects are a healthy and necessary part of the public comment and advocacy process.

However, given **OHA’s statutory advocacy mission**, there are concerns whether OHA’s legal training of State councils, boards and commissions will include such advocacy, opposition to and criticism of private and State-related projects or initiatives and be considered improper ex parte communications regarding the same issues and matters that come before those councils, boards and commissions.

- **OHA will have a “special and unfair advantage” over other organizations and groups.** This bill gives OHA the absolute power to determine the legal training for State boards and commissions and provide OHA with “a special and unfair advantage” over any other individual or public interest organizations which seek to provide public input to those State boards, councils and commissions. If this bill passes in its present form, other major public interest groups will not have a “level playing field” with OHA, including organizations with expertise and interests in agriculture, ranching, aquaculture, fishing, hunting, water, tourism, housing, education, business, military, land use, renewable energy, astronomy, sustainability, genetic modification, and high technology.

Due process, equal protection and fairness dictate that such other organizations, which may have different views on other important issues, should be afforded the same mandatory legal training opportunities. One of the main concerns is whether OHA’s absolute power to establish and administer the mandatory legal training program will provide OHA with the power preclude any other person’s or organization’s right to provide the advice and training to the specified members of state boards, councils, and commissions on similar issues; 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.

- **Other organizations and special interest groups should have the same rights to train certain State boards, councils and commissions.** Laws enacted by the 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 areas such as agriculture, ranching, aquaculture, fishing, hunting, water, tourism, housing, education, business, military, land use, renewable energy, sustainability, genetic modification, and high technology. All of the groups named above should have the same rights as OHA to conduct mandatory training of those State boards, councils and commissions.

LURF supports the idea of the Attorney General providing training for State councils, boards, and commissions relating to native Hawaiian and Hawaiian traditional and customary practices and rights, native Hawaiian and Hawaiian natural resources protection and access rights, and the public trust, including the State's trust responsibility; and LURF also supports OHA's working with the Attorney General to create such a training process and content.

However, based on the reasons stated above, SB 436, in its current form, should be **HELD** in this Committee.

Thank you for the opportunity to present LURF's position in **OPPOSITION** to this measure.

From: mailinglist@capitol.hawaii.gov
To: [HWNTestimony](#)
Cc: kaliko08@gmail.com
Subject: Submitted testimony for SB436 on Feb 13, 2015 13:30PM
Date: Wednesday, February 11, 2015 3:55:15 PM

SB436

Submitted on: 2/11/2015

Testimony for HWN/GVO on Feb 13, 2015 13:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Donna K Santos	Individual	Support	No

Comments: I am from Kauai and I strongly SUPPORT SB436 which will require certain state boards and commission members to take a training course on Native Hawaiian rights and public trust law. I believe that it is important that these boards and commission members have the basic understanding about how their decisions affect Native Hawaiian traditional and customary practices, public trust resources, and protections for 'iwi kupuna and sacred sites. I urge the committee to PASS this bill.

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From: mailinglist@capitol.hawaii.gov
To: [HWNTestimony](#)
Cc: sugajo@mail2honey.com
Subject: Submitted testimony for SB436 on Feb 13, 2015 13:30PM
Date: Thursday, February 12, 2015 12:27:16 PM

SB436

Submitted on: 2/12/2015

Testimony for HWN/GVO on Feb 13, 2015 13:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Jolene	Individual	Comments Only	No

Comments: I strongly Support SB436 which will require certain state boards and commission members to take a training course on Native Hawaiian rights and public trust law. I believe that it is how their decisions affect Native Hawaiian traditional and customary practices, public trust resources, and protections for 'iwi kupuna and sacred sites. This bill takes a positive step forward in reaffirming the state's commitment to Native Hawaiians and communities across the state. I urge the committee to Pass this bill. Mahalo for your support. Jolene Peapealalo

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From: mailinglist@capitol.hawaii.gov
To: [HWNTestimony](#)
Cc: kamakane73@gmail.com
Subject: *Submitted testimony for SB436 on Feb 13, 2015 13:30PM*
Date: Wednesday, February 11, 2015 5:38:58 AM

SB436

Submitted on: 2/11/2015

Testimony for HWN/GVO on Feb 13, 2015 13:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Kama Hopkins	Individual	Support	No

Comments:

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:: Leanne Kealoha Fox ::

2nd Congressional District

House District: 39
Senate District: 18

February 11, 2015

SB436

RELATING TO TRAINING

Senate Committees on Hawaiian Affairs, Government Operations, & Ways and Means
Hearing: Friday, February 23, 2015 1:30 p.m. Room 224

Aloha a welina mai nei e nā alaka'i:

It is with great enthusiasm that I write testimony to **STRONGLY SUPPORT** SB436 relating to training.

I strongly **SUPPORT SB436** which will require certain state boards and commission members to take a training course on Native Hawaiian rights and public trust law. I believe that it is important that these boards and commission members have the basic understanding about how their decisions affect Native Hawaiian traditional and customary practices, public trust resources, and protections for 'iwi kupuna and sacred sites. This bill takes a positive step forward in reaffirming the state's commitment to Native Hawaiians and communities across the state. I urge the committee to **PASS** this bill.

I urge the committee to **PASS** SB436
Respectfully, me ka `oia`i`o.

Leanne Kealoha Fox

Letter of Support for SB436

Melody Kapilialoha MacKenzie
Ka Huli Ao Center for Excellence in Native Hawaiian Law
William S. Richardson School of Law, UH-Mānoa
2515 Dole Street, Honolulu, Hawai'i 96822

S.B. 436

Relating to Training

Committee on Hawaiian Affairs

Senator Maile S.L. Shimabukuro, Chair

Committee on Government Operations

Senator Donovan M. Dela Cruz, Chair

Hearing on Friday, February 13, 2015, at 1:30 p.m.

Mahalo for this opportunity to submit testimony in **support** of **S.B.436** relating to training of members of state councils, boards, and commissions on Native Hawaiian legal issues – especially the state's trust duties in relation to natural and cultural resources. I am a professor at the William S. Richardson School of Law and director of Ka Huli Ao Center.

Ka Huli Ao has partnered with the Office of Hawaiian Affairs to provide three Native Hawaiian Law training courses with the focus on the public land trust, water, traditional and customary rights, and iwi kūpuna or ancestral remains. Over 270 people have attended the day-long training courses. Most attendees were members of state and county boards, councils, and commissions or staff members. A number of state legislators and county councilmembers have also attended. The response to the training has been overwhelmingly positive. The evaluations of the training indicate that 75-80% of those responding believed that the training had increased their understanding and knowledge of the state's trust duties and responsibilities in each of the relevant subject areas. When asked to identify the most important "take-aways" from the training, responses included:

- The difficult and huge responsibilities for us to respect and protect Hawaiian traditional and customary practices.
- The Public Land Trust is real and important.
- Water laws in Hawai'i incorporate a concept of public trust.
- The historical basis of Native Hawaiian customary rights and practices.
- The counties do have an obligation to conserve and protect the State's natural resources.
- My understanding of water resource management in Hawai'i improved greatly.

We believe that the training courses have significantly increased the understanding of those who attended, and have given attendees the knowledge and tools to help in making difficult decisions. One additional benefit from the training is that attendees from different agencies and departments have been able to interact and share concerns and possible solutions with each other, building some common understanding and increasing cooperation among agencies and departments.

Ka Huli Ao has been honored to partner with OHA in this effort. We believe that it is important, particularly for newly-appointed members of councils, boards, and commissions, to be required to attend a training on areas of law that invariably affect Hawai'i's natural and cultural resources and the Native Hawaiian community. Mahalo for the opportunity to express our strong **support** for S.B.436.

From: mailinglist@capitol.hawaii.gov
To: [HWNTestimony](#)
Cc: morris.haole@mauicounty.us
Subject: Submitted testimony for SB436 on Feb 13, 2015 13:30PM
Date: Thursday, February 12, 2015 9:47:31 AM

SB436

Submitted on: 2/12/2015

Testimony for HWN/GVO on Feb 13, 2015 13:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Morris Haole Jr.	Individual	Support	No

Comments: I support the following measure for reasons cited in testimony by the Office of Hawaiian Affairs. This initiative will go a long way in familiarizing State entities in Hawaiiana.

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From: mailinglist@capitol.hawaii.gov
To: [HWNTestimony](#)
Cc: stacy.crivello@mauicounty.us
Subject: Submitted testimony for SB436 on Feb 13, 2015 13:30PM
Date: Wednesday, February 11, 2015 2:45:35 PM

SB436

Submitted on: 2/11/2015

Testimony for HWN/GVO on Feb 13, 2015 13:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Councilmember Stacy Helm Crivello	Individual	Support	No

Comments: I strongly SUPPORT SB436 which will require certain state boards and commissionmembers to take a training course on Native Hawaiian rights and public trust law. I believe that it is important that these boards and commissions members have the basic understanding about how their decisions affect Native Hawaiian traditional and customary practices, public trust resources, and protections for iwi kupuna and sacred sites. This bill takes a positive step forward in reaffirming the state's commitment to Native Hawaiians and communities across the state. I urge the committee to PASS this bill. Mahalo for your support!

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Cc: pennysfh@hawaii.rr.com
Subject: Submitted testimony for SB436 on Feb 13, 2015 13:30PM
Date: Tuesday, February 10, 2015 9:37:35 PM

SB436

Submitted on: 2/10/2015

Testimony for HWN/GVO on Feb 13, 2015 13:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
penny levin	Individual	Support	No

Comments: I strongly support this measure. Too many board and commission members with responsibilities and decision-making authority over our natural and cultural resources know little, if anything, about the laws and rules affecting such resources. Such training as the State Water Code or rules and protocols applying to cultural sites and iwi kupuna should be mandatory, particularly for members of the land use commission, the board of land and natural resources, and the water commission.

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Aloha Chair Shimabukuro, Chair Dela Cruz and Committee Members,

I **STRONGLY SUPPORT SB436**. Although I appreciate the individuals who serve on these boards and commissions, I believe that many would appreciate the added knowledge to their decision making. This measure brings clarity to decision makers, of what is upheld in our state's constitution Article XII, Section 7, to which are overlooked.

I believe this measure is a positive move forward for all communities and more importantly, reaffirm the State's commitment to the Native Hawaiian community.

I urge these committees to support SB436. Thank you for your time in hearing this measure.

Mahalo,
Shane Nelsen

From: mailinglist@capitol.hawaii.gov
To: [HWNTestimony](#)
Cc: wctanaka@gmail.com
Subject: Submitted testimony for SB436 on Feb 13, 2015 13:30PM
Date: Wednesday, February 11, 2015 9:13:49 AM

SB436

Submitted on: 2/11/2015

Testimony for HWN/GVO on Feb 13, 2015 13:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Wayne	Individual	Support	No

Comments: I strongly SUPPORT SB436 which will require certain state boards and commission members to take a training course on Native Hawaiian rights and public trust law. I believe that it is important that these boards and commission members have the basic understanding about how their decisions affect Native Hawaiian traditional and customary practices, public trust resources, and protections for 'iwi kupuna and sacred sites. This bill takes a positive step forward in reaffirming the state's commitment to Native Hawaiians and communities across the state. I urge the committees to PASS this bill.

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