
A BILL FOR AN ACT

RELATING TO HAWAIIAN EXPERTISE IN LAND USE AND RESOURCE
MANAGEMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. In Act 169, Session Laws of Hawaii 2015, the
2 legislature found that pursuant to Hawaii's constitution,
3 statutes, and case law, the State recognizes a mandate to
4 protect native Hawaiian traditional and customary rights.
5 Accordingly, Act 169 amended chapter 10, Hawaii Revised
6 Statutes, to require the office of Hawaiian affairs to
7 establish, design, and administer a training course on Hawaiian
8 rights, the sources of these rights, and how the infringement of
9 these rights affects the Hawaiian people, and further required
10 new members of certain state councils, boards, and commissions
11 to complete the training course within one year of their
12 appointment.

13 Unfortunately, despite the regular provision of notice to
14 board and commission administrators, a significant number of
15 board and commission members subject to the mandatory training
16 course continue to fail to comply with their training course



1 completion responsibility. As a result, critical land use and
2 resource management decision-making may continue to be less than
3 fully informed on native Hawaiian concepts, practices, and
4 rights.

5 These issues in turn have led and continue to lead to
6 substantial conflict, distrust in government decisions and
7 processes, and even legal action against the State, and may
8 further foreclose critical opportunities to ensure our islands'
9 resiliency and self-sufficiency through culturally-informed land
10 use and resource management.

11 Accordingly, the legislature intends to ensure a deeper
12 understanding among board and commission members of the State's
13 legal responsibilities to native Hawaiians, Hawaii's political
14 history, the public land trust, native Hawaiian traditional and
15 customary rights, Hawaii's water laws and the public trust
16 doctrine, and laws relating to native Hawaiian burials. The
17 legislature further intends to ensure greater recognition and
18 incorporation of native Hawaiian knowledge, values, and rights
19 in land use and resource management decision-making.

20 The purpose of this Act is to:



- 1 (1) Prohibit council, board, and commission members who
2 fail to meet their training course completion
3 requirement from serving on a permitted interaction
4 group or voting on matters before their respective
5 councils, boards, or commissions;
- 6 (2) Require council, board, and commission members who
7 fail to meet their training course completion
8 requirement to be removed from their respective
9 council, board, or commission, unless they complete
10 the training requirement or are reconfirmed by the
11 Senate prior to the completion of the regular
12 legislative session that follows the deadline to
13 complete their training requirement;
- 14 (3) Require the office of Hawaiian affairs and the
15 department of land and natural resources to compile an
16 annual report of council, board, and commission
17 members who have failed to complete their training
18 course requirement, and to submit the report to the
19 governor and legislature no later than twenty days
20 prior to the convening of the regular legislative
21 session;



(4) Require one member of the board of land and natural resources to be nominated from a list provided to the governor by the office of Hawaiian affairs; and

(5) Require one member of the land use commission to be nominated from a list provided to the governor by the office of Hawaiian affairs.

SECTION 2. Section 10-42, Hawaii Revised Statutes, is amended to read as follows:

"[§]10-42[§] Training relating to native Hawaiian and Hawaiian traditional and customary rights, natural resources and access rights, and the public trust. (a) All council, board, and commission members identified in section 10-41(a) shall complete the training course administered by the office of Hawaiian affairs pursuant to this section within twelve months of the date of the member's initial appointment. Members who fail to complete the training course within the required period shall be:

(1) Prohibited from serving on a permitted interaction group or voting on a matter before their respective council, board, or commission until the mandatory training course is completed; and



1 (2) Removed from their respective council, board, or
2 commission at the end of the regular legislative
3 session following their deadline to complete the
4 training course; provided that members shall not be
5 removed if they complete the mandatory training course
6 or obtain the advice and consent of the senate to
7 continue serving on their respective council, board,
8 or commission by the end of the regular legislative
9 session following their deadline to complete the
10 training course.

11 (b) Individual votes taken by council, board, and
12 commission members who failed to complete the mandatory training
13 course may be challenged and subject to being nullified and
14 voided following a contested case proceeding.

15 (c) The office of Hawaiian affairs and the department of
16 land and natural resources shall prepare an annual report of all
17 council, board, and commission members who have failed to meet
18 the training requirement in this section as of September 21 of
19 each year, which shall be made available for public inspection
20 at the office of Hawaiian affairs and the department of land and
21 natural resources, and submitted to the governor and the



1 legislature no later than twenty days prior to the convening of
2 each regular session of the legislature.

3 ~~[(b)]~~ (d) The office of Hawaiian affairs, at its own
4 expense, shall establish, design, and administer a training
5 course relating to native Hawaiian and Hawaiian traditional and
6 customary rights, native Hawaiian and Hawaiian natural resource
7 protection and access rights, and the public trust, including
8 the State's trust responsibility. The training course shall
9 include:

10 (1) Historical information, explanations, and discussions
11 of key state laws, state constitutional provisions,
12 and court rulings that reaffirm and provide for the
13 protection of native Hawaiian and Hawaiian rights; and

14 (2) A discussion of the importance of public trust
15 resources and various programs to native Hawaiian and
16 Hawaiian rights.

17 ~~[(e)]~~ (e) The office of Hawaiian affairs, at its own
18 expense, shall develop the methods and prepare any materials
19 necessary to implement the training course, administer the
20 training course, and notify each council, board, and commission



1 identified in section 10-41(a) that attendance in a training
2 course is mandatory.

3 ~~[(d)]~~ (f) The office of Hawaiian affairs shall offer the
4 training course at least twice per year.

5 ~~[(e)]~~ (g) The governor shall provide to the office of
6 Hawaiian affairs the names of persons required to take the
7 training course pursuant to this part within thirty calendar
8 days of their initial appointment ~~[by the governor]~~."

9 SECTION 3. Section 26-15, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§26-15 Department of land and natural resources.** (a)
12 The department of land and natural resources shall be headed by
13 an executive board to be known as the board of land and natural
14 resources, except for matters relating to the state water code
15 where the commission on water resource management shall have
16 exclusive jurisdiction and final authority.

17 The board shall consist of seven members, one from each
18 land district and three at large. The appointment, tenure, and
19 removal of the members and the filling of vacancies on the board
20 shall be as provided in section 26-34. At least one member of
21 the board shall have a background in conservation and natural



1 resources, as provided in section 171-4. At least one member,
2 other than the member with a background in conservation and
3 natural resources, shall have demonstrated expertise in native
4 Hawaiian traditional and customary practices, as provided in
5 section 171-4, and at least one other member shall have been
6 appointed from a list of nominees submitted to the governor by
7 the office of Hawaiian affairs, as provided under subsection
8 (b), to ensure assistance to the board to better administer the
9 public lands and resources with respect to native Hawaiian
10 issues and concerns, the public land trust obligations, and the
11 recognition of native Hawaiian cultural values that are
12 intrinsically tied to the 'aina.

13 The governor shall appoint the chairperson of the board
14 from among the members thereof.

15 The board may delegate to the chairperson such duties,
16 powers, and authority, or so much thereof, as may be lawful or
17 proper for the performance of the functions vested in the board.

18 The chairperson of the board shall serve in a full-time
19 capacity. The chairperson, in that capacity, shall perform
20 those duties, and exercise those powers and authority, or so
21 much thereof, as may be delegated by the board.



1 (b) Lists from the office of Hawaiian affairs to fill
2 vacancies on the board shall be submitted as follows:

3 (1) For a vacancy attributable to the expiration of a
4 term, the list shall be submitted on the first
5 business day of December prior to the expiration of
6 the term; and

7 (2) For a vacancy that occurs during a board member's
8 term, the list shall be submitted within thirty
9 business days after the vacancy occurs.

10 ~~[(b)]~~ (c) The department shall manage and administer the
11 public lands of the State and minerals thereon and all water and
12 coastal areas of the State except the commercial harbor areas of
13 the State, including the soil conservation function, the forests
14 and forest reserves, aquatic life, wildlife resources, state
15 parks, including historic sites, and all activities thereon and
16 therein including, but not limited to, boating, ocean
17 recreation, and coastal areas programs.

18 ~~[(c)]~~ (d) The functions and authority heretofore exercised
19 by the commissioner and board of public lands (including the
20 hydrography division and the bureau of conveyances), the Hawaii
21 water authority, the commission on ground water resources, the



1 Hawaii land development authority, the soil conservation
2 committee, and the commission on historical sites and the
3 function of managing the state parks and the function of
4 promoting the conservation, development and utilization of
5 forests, including the regulatory powers over the forest
6 reserve, aquatic life and wildlife resources of the State
7 heretofore exercised by the board of commissioners of
8 agriculture and forestry as heretofore constituted are
9 transferred to the department of land and natural resources
10 established by this chapter."

11 SECTION 4. Section 205-1, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "[+] (a) [+] There shall be a state land use commission,
14 hereinafter called the commission. The commission shall consist
15 of nine members who shall hold no other public office and shall
16 be appointed in the manner and serve for the term set forth in
17 section 26-34. One member shall be appointed from each of the
18 counties and the remainder shall be appointed at large; provided
19 that one member shall have substantial experience or expertise
20 in traditional Hawaiian land usage and knowledge of cultural
21 land practices[-], and at least one other member shall have been



1 appointed from a list of nominees submitted to the governor by
2 the office of Hawaiian affairs. Lists from the office of
3 Hawaiian affairs to fill vacancies on the board shall be
4 submitted as follows:

5 (1) For a vacancy attributable to the expiration of a
6 term, the list shall be submitted on the first
7 business day of December prior to the expiration of
8 the term; and

9 (2) For a vacancy that occurs during a board member's
10 term, the list shall be submitted within thirty
11 business days after the vacancy occurs.

12 The commission shall elect its chairperson from one of its
13 members. The members shall receive no compensation for their
14 services on the commission, but shall be reimbursed for actual
15 expenses incurred in the performance of their duties. Six
16 affirmative votes shall be necessary for any boundary
17 amendment."

18 SECTION 5. Notwithstanding the amendments made by this Act
19 to section 26-15, Hawaii Revised Statutes, each current sitting
20 board member may serve the remainder of the member's term, and
21 until the expiration of the current terms of all current sitting



1 board members, the decisions and other actions of the board
2 shall not be subject to challenge on the basis that the
3 requirement of section 26-15, Hawaii Revised Statutes, that one
4 member of the board be appointed from lists submitted by the
5 office of Hawaiian affairs, has not been met.

6 SECTION 6. Notwithstanding the amendments made by this Act
7 to section 205-1, Hawaii Revised Statutes, each current sitting
8 commission member may serve the remainder of the member's term,
9 and until the expiration of the current terms of all current
10 sitting commission members, the decisions and other actions of
11 the commission shall not be subject to challenge on the basis
12 that the requirement of section 205-1, Hawaii Revised Statutes,
13 that one member of the commission be appointed from lists
14 submitted by the office of Hawaiian affairs, has not been met.

15 SECTION 7. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 8. This Act shall take effect on June 18, 2050.



Report Title:

Office of Hawaiian Affairs Package; Department of Land and Natural Resources; BLNR; State Land Use Commission; Council; Board; Commission; Members; Training; Appointment

Description:

Prohibits council, board, and commission members from serving if the member has not completed, within the requisite time, the required training course related to native Hawaiian and Hawaiian traditional and customary rights, native Hawaiian and Hawaiian natural resource protection and access rights, and the public trust, including the State's trust responsibility. Requires that at least one member each of the board of land and natural resources and the state land use commission be appointed from a list submitted by the office of Hawaiian affairs. Effective 6/18/2050. (SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

