

STAND. COM. REP. NO. 431

Honolulu, Hawaii

FEB 19 2021

RE: S.B. No. 1409  
S.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Thirty-First State Legislature  
Regular Session of 2021  
State of Hawaii

Sir:

Your Committee on Hawaiian Affairs, to which was referred  
S.B. No. 1409 entitled:

"A BILL FOR AN ACT RELATING TO TRAINING IN NATIVE HAWAIIAN  
RIGHTS,"

begs leave to report as follows:

The purpose and intent of this measure is to prohibit  
council, board, and commission members from serving if the member  
has not completed, within an established time, a required training  
course related to native Hawaiian traditional and customary  
rights, resource protection and access rights, and the public  
trust, including the State's fiduciary responsibility.

Your Committee received testimony in support of this measure  
from the Office of Hawaiian Affairs, Hawaiian Affairs Caucus of  
the Democratic Party of Hawai'i, Native Hawaiian Legal Corporation,  
and eight individuals. Your Committee received testimony in  
opposition to this measure from the Center for Hawaiian  
Sovereignty Studies. Your Committee received comments on this  
measure from the Department of Land and Natural Resources.

Your Committee finds that in Act 169, Session Laws of Hawaii  
2015, the Legislature found that pursuant to Hawaii's  
constitution, statutes, and case law, the State recognizes a  
mandate to protect native Hawaiian traditional and customary  
rights. Accordingly, Act 169 amended chapter 10, Hawaii Revised



Statutes, to require the Office of Hawaiian Affairs to establish, design, and administer a training course on Hawaiian rights, the sources of these rights, and how the infringement of these rights affects the Hawaiian people, and further required new members of certain state councils, boards, and commissions to complete the training course within one year of their appointment.

Unfortunately, despite the regular provision of notice to board and commission administrators and overwhelmingly positive feedback from training course attendees, a significant number of board and commission members subject to the mandatory training course continue to fail to comply with their training course completion responsibility. Additionally, although certain critical decision-making bodies are required to have one member with experience or expertise in native Hawaiian culture and well-being, this single individual membership requirement has not resulted in decisions that consistently incorporate or even acknowledge native Hawaiian knowledge, values, rights, and practices. Such decisions have led to substantial conflict, distrust, and legal action against the State, and may further foreclose critical opportunities to enhance our islands' resiliency and self-sufficiency through culturally informed land use and resource management approaches. As a result, critical land use and resource management decision-making may continue to be less than fully informed on native Hawaiian rights. The courts have held that the State "must take the initiative in considering, protecting, and advancing public rights in the resource at every stage of the planning and decision[-]making process." *In re Water Use Permit Applications*, 94 Hawai'i 97, 143, P.3d 209, 255 (2000). Therefore, this measure strengthens requirements of the completion of the training course, which will ensure greater recognition and incorporation of native Hawaiian knowledge, values, and rights in land use and resource management decision-making.

Your Committee has also heard concerns from the Department of Land and Natural Resources that the Department does not believe that members who are unable to complete the course within one year should be prevented from voting or serving on permitted interaction groups, removed from their seats, or have their votes challenged and subject to being nullified and voided following a contested case hearing. This provision may cause undue hardship for parties needing to complete business before the board if the board loses quorum because of this measure. Board members



normally only have two opportunities per year to take the course, and sometimes the training is scheduled with board meetings or other commitments conflict.

Your Committee has amended this measure by making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1409, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1409, S.D. 1, and be referred to your Committee on Judiciary.

Respectfully submitted on  
behalf of the members of the  
Committee on Hawaiian Affairs,



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MAILE S.L. SHIMABUKURO, Chair



The Senate  
 Thirty-First Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Hawaiian Affairs**  
**HWN**

Bill / Resolution No.:*	Committee Referral:	Date:
SB 1409	HWN, JDC	2/16/2021

The Committee is reconsidering its previous decision on this measure.  
 If so, then the previous decision was to: \_\_\_\_\_

The Recommendation is:

Pass, unamended 2312    
  Pass, with amendments 2311    
 Hold 2310    
 Recommit 2313

Members	Aye	Aye (WR)	Nay	Excused
SHIMABUKURO, Maile S.L. (C)	X			
KEOHOKALOLE, Jarrett (VC)	X			
ACASIO, Laura	X			
IHARA, Jr., Les	X			
FEVELLA, Kurt	X			
<b>TOTAL</b>	<b>5</b>			

Recommendation:      Adopted      Not Adopted

Chair's or Designee's Signature:

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**\*Only one measure per Record of Votes**