MEETING OF THE
COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT

DATE: Wednesday, November 27, 2019
TIME: 1:30 p.m.
PLACE: Mauli Ola Boardroom
Na Lama Kukui
560 N. Nimitz Highway
Honolulu, HI 96817

AGENDA

I. Call to Order
II. Public Testimony*
III. Approval of Minutes
   A. October 16, 2019
IV. Unfinished Business
V. New Business
   A. ACTION ITEM: BAE #19-02: Approval of 2020 OHA Legislative Package**
VI. Executive Session***
   A. Approval of Executive Session Minutes for March 16, 2016
   B. Consultation with OHA Corporate Counsel attorney Everett Ohta, Esq. regarding questions and issues pertaining to the Board’s powers, duties, privileges, and liabilities related to a 2006 Memorandum of Agreement between the Kaua’i Island Utility Cooperative and the Office of Hawaiian Affairs. HRS § 92-5(a)(4).
   C. Consultation with Board Counsel Robert G. Klein, Esq, regarding questions and issues pertaining to the Board’s powers, duties, privileges, and liabilities with respect to legal issues pertaining to sovereign immunity. HRS § 92-5(a)(4).
VII. Community Concerns*
VIII. Announcements
IX. Adjournment

If you require an auxiliary aid or accommodation due to a disability, please contact Raina Gushiken at telephone number 594-1772 or by email at: rainag@oha.org no later than three (3) business days prior to the date of the meeting.

*Notice: Persons wishing to provide testimony are requested to submit 13 copies of their testimony to the Chief Executive Officer at 560 N. Nimitz. Suite 200, Honolulu, HI, 96817 or fax to 594-1868, or email BOTmeetings@oha.org 48 hours prior to the scheduled meeting. Persons wishing to testify orally may do so at the meeting, provided that oral testimony shall be limited to five minutes.

**Notice: Trustees may establish or revise an OHA position on ANY proposed bill / resolution / executive message currently moving through the state legislature or other relative elected body. The Matrices, which are available for public review in the meeting room at this stated meeting, provide a brief description of each bill, the bill’s number, the bill’s title, the bill’s intent, and the proposed and specific OHA position on each measure, current through 11/26/19. However, the Trustees both in committee and as the Board of Trustees (BOT) reserve the right to discuss any and all bills on the Matrices, as well as those that time does not permit to be placed on the Matrices, in order to discharge their fiduciary obligations as Trustees of the Office of Hawaiian Affairs.

***Notice: This portion of the meeting will be closed pursuant to HRS § 92-5.

†Notice: The 72 Hour rule, pursuant to OHA BOT Operations Manual, Section 49, shall be waived for distribution of new committee materials.
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I. CALL TO ORDER

Chair Waihe‘e calls the Committee on Beneficiary Advocacy and Empowerment meeting for Wednesday, October 16, 2019 to order at 1:00 p.m.

Chair Waihe‘e notes for the record that PRESENT are:

<table>
<thead>
<tr>
<th>MEMBERS</th>
<th>AT CALL TO ORDER (1:00 p.m.)</th>
<th>TIME ARRIVED</th>
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</thead>
<tbody>
<tr>
<td>CHAIR</td>
<td>JOHN WAIHE‘E, IV</td>
<td>PRESENT</td>
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<tr>
<td>VICE-CHAIR</td>
<td>KALEIHIKINA AKAKA</td>
<td>PRESENT</td>
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<tr>
<td>TRUSTEE</td>
<td>DAN AHUNA</td>
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<td>TRUSTEE</td>
<td>KELI‘I AKINA</td>
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<td>BRENDON KALEI‘AINA LEE</td>
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<td>CARMEN HULU LINDSEY</td>
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<td>ROBERT LINDSEY</td>
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<td>TRUSTEE</td>
<td>COLETTE MACHADO</td>
<td>PRESENT</td>
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At the Call to Order, EIGHT (8) Trustees are PRESENT, thereby constituting a quorum.
EXCUSED from the BAE Meeting are:

<table>
<thead>
<tr>
<th>MEMBERS</th>
<th>COMMENT</th>
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<tbody>
<tr>
<td>TRUSTEE</td>
<td>LEINA‘ALA</td>
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<tr>
<td>AHU ISA</td>
<td>MEMO – REQUESTING TO BE EXCUSED</td>
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</tbody>
</table>

Chair Waihe‘e would like the record to show that some materials (V. A) were received more recently than 72 hours ago, and that deadline, per practice, has been duly waived.

II. PUBLIC TESTIMONY*

None

III. APPROVAL OF MINUTES

Trustee Ahuna moves to approve the minutes of August 21, 2019.

Trustee Robert Lindsey seconds the motion.

Chair Waihe‘e asks if there is any discussion or corrections.

Chair Waihe‘e calls for a ROLL CALL VOTE.

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<tr>
<th>TRUSTEE</th>
<th>1</th>
<th>2</th>
<th>'AE (YES)</th>
<th>A'OLE (NO)</th>
<th>KANALUA (ABSTAIN)</th>
<th>EXCUSED</th>
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<tr>
<td>LEINA‘ALA</td>
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MOTION: [ X ] UNANIMOUS [ ] PASSED [ ] DEFERRED [ ] FAILED

IV. UNFINISHED BUSINESS

None
V. NEW BUSINESS

A. 2020 Legislative Package Concepts Workshop**‡

Chair Waiheʻe turns it back over to Ka Pouhana Kūikawā Sylvia Hussey.

Ka Pouhana Kūikawā Hussey: I will call on our Public Policy Manager Jocelyn Doane to come to the table.

Public Policy Manager Doane: Aloha Trustees, we have some ideas for your consideration for next session. We also continue to be open to ideas that you may have. Additionally, there are some issues that are going to require ongoing conversations. Our proposed schedule is included on the PowerPoint.

Public Policy Manager Doane: We received approximately 40 legislative proposals during our outreach period. Based on our engagement, our participation, and paying attention to what’s happening administratively; in the different Boards and Commissions, and on the County, we had other ideas that we considered as well.

I’m going to go over the criteria that we normally go over that leads us to the ideas that we have.

The first thing that we think about is whether-or-not there are funding implications for both OHA and the State, and then how big of an issue it is – *is it going to have a large impact?* The idea behind us engaging in Advocacy is we can’t fund everything. Yet, *can we make impacts large enough to effect larger portions of our population?* Then, of course, we think about whether it’s a State, County or Federal issue. A lot of times ideas that we get can be addressed administratively, or on the County or Federal level.
Public Policy Manager Doane: We also think about feasibility and its likelihood of passing.

- **Are there going to be folks that will help us support the measure to get it through?**

- **What are the ideas and thoughts of the legislators?**

Sometimes we do introduce bills even though we know they’re not likely to pass; to make a statement or to educate folks. We’ve been introducing a Public Land Trust Bill for many years and all but one failed to pass, but we’ve gotten a lot of traction and we’ve kept the issue alive about OHA and Native Hawaiians Rights to a fair share of the Public Land Trust. So, we can continue to do that for that purpose.

Another thing we think about is its ability to be resolved in other ways. Sometimes it’s about funding and sometimes it’s about reorganizing a department, or administrative rules. So, there are different ways. We also ask whether it is an appropriate issue for OHA. We look at what have been OHA’s priorities over time. There are issues that are very OHA-specific, that OHA is one of the best advocates at. Then there are newer issues that are showing us that based-on-data, Hawaiians are being disproportionately impacted; our beneficiaries. We oftentimes think - if there are other agencies or community organizations that would be a better lead.
Public Policy Manager Doane: This is a visual representation of where Public Policy spends most of its time and as you can see, the State Legislative box is the largest because we spend so much time and energy there. We think about what’s happening politically. If we have a lot of things happening and a lot of agency priorities, it may inform what other kinds of measures we want to bring forward for support, etc.

Public Policy Manager Doane: We have six ideas for your consideration today; this is just an opportunity to have a conversation about them. We are still doing research on these issues and solutions. So, even based on your input and further research these issues may dramatically change from now until November; or we may drop them completely. So, this is an opportunity for Trustees to ask questions or say if they don’t like something and it gives us an idea of how we move from here to November.

The first idea is related to Land Use and Resource Management in Hawai‘i. The goal of this idea is to integrate and incorporate Hawaiian perspectives and expertise in land-use and resource management decision-making. As you know OHA was successful in passing a bill that requires certain Board and Commission members to attend a training course every year. We pay to have the training course put on twice a year and it is highly successful.

We usually have at least 100 people at these trainings, but there are still certain Board and Commission members that don’t comply and there’s no real enforcement teeth; so that’s one of the issues that we identified. That also means that their decision-making potentially is less informed than it could otherwise be.

The other issue we’ve talked about at length as it relates to Mauna Kea specifically, regardless of the issue is that the BLNR & LUC have huge power in determining how Hawai‘i’s management and land-use of both ceded and private lands. Also, there is only one seat on these Boards for a member with appropriate consideration of Native Hawaiian knowledge. Additionally, OHA doesn’t even play a role in selecting that person. So, the idea to address the training course requirement would be to require an annual report so that everybody knows who hasn’t complied with the training course requirement.
Public Policy Manager Doane: The next measure is related to reducing barriers to employment for formerly incarcerated individuals. Formerly incarcerated individuals are much less likely to get a job offer and employment. Hawai‘i recognized this as being an issue decades-ago and passed a law that doesn’t allow employers to access beyond ten years of criminal records. They can only do that if they’ve made a conditional offer and they can only decline employment if it’s rationally related to the job.

There are expressed authorities for certain kinds of positions. For example, the Department of Education can look at someone’s criminal records for the purpose of determining suitability for working with children. We’re trying to assess if the ‘ten years’ is too much. We know that recidivism is most likely to occur within the first two years. We know that housing and the cost of living in Hawai‘i is extraordinary and the inability to get a job makes it more likely that formerly incarcerated turn to alternative, non-legitimate employment. So, the idea that we’re proposing to the trustees is to dramatically reduce that ten-year prohibition to potentially one year, which would be a dramatic decline. We do want you to understand that there are expressed provisions in the law that allow stricter employers to look at criminal background for entities like; education and the judiciary. The idea is to try to help our people get jobs after being released from jail. Right now, you can access publicly-accessible information; but employers are not supposed to use that to not hire somebody, unless it’s reasonably related to the job.

Trustee Hulu Lindsey: I just think that the one year would not pass, so maybe we should drop it to a number that would be more realistic.

Public Policy Manager Doane: Right, so we’re having rambunctious conversations about this now. As far as we know, the only other jurisdiction that has less than ten years; has seven years. Then there are two states that have five years for misdemeanors and ten years for felonies. Hawai‘i has been really progressive on this issue though. Hawai‘i was the first state to pass a law that prohibited access for convictions. We are talking about different options.

We picked ‘one year’ for two reasons. First-of-all, it complements current tax incentives; the State offers tax incentives to employers who hire formerly incarcerated within the first year. The second reason was if they’re likely to infract in two years, what can we do to try to help them get a job, so that they don’t infract. I hear you Trustee. We’re having conversations about that.
The next idea is related to Section 8 discrimination - the latest data shows that Native Hawaiians are more likely than the general population to receive Section 8 or be waitlisted for it. Most advertisements for rentals expressly discriminate against Section 8 vouchers. There has been a bill introduced almost every year for the last five years to prohibit this from happening. So, we’ve learned about why the bills haven’t moved. The most likely reason is that the landlords wait a long time to be certified.

There’s a pilot program that was started in the Hawai‘i Public Housing Authority (HPHA), the entity that manages the State vouchers for pre-certification, to potentially reduce that waitlist. We’ll get a little more information about what that looks like. The different counties also manage the different Section 8 vouchers. So, there is more research that needs to be done to figure out if we can overcome that.

The other issue that has been raised is property damage and recovery. We’re looking into ideas about insurance that would cover potential property damage. Those are things we need to do more research on before we come back in November.

**Trustee Hulu Lindsey:** I’m a property manager, so I’m very familiar with what you’re talking about. One of the biggest issues is the fact that in Maui County there’s all kinds of rentals and the Section 8 does not allow many things. In the certification, they require so much improvement, yet the homeowner or landlord doesn’t have the money to do, what they want done. As a result, that unit does not become available. Also, when you do have a Section 8 recipient in a unit, you don’t get paid for two months. It takes them that long to process the paperwork. If the homeowner depends on the rent to pay a mortgage it becomes a challenge.

**Public Policy Manager Doane:** Right, we totally hear you and we’re trying to educate ourselves as much as possible to see how we can improve it.

**Senior Public Policy Advocate Wayne Tanaka:** The next idea most recently came to the Board at the Moloka‘i Community Meeting. There was a concern raised that there’s no real after-the-fact enforcement for impacts to iwi kūpuna and historic sites when landowners or contractors, grade or build without permits. We have talked to the OHA compliance staff who work on these issues and with folks in the community. It does seem as though this is a widespread issue, with long-standing and growing concern.
Senior Public Policy Advocate Tanaka: The next proposal is similarly looking at iwi kūpuna and historic preservation issues; this would be a resolution. For about 23 years, there have been no changes to the administrative rules regarding to policy and procedures that protect burial sites and historic sites, notwithstanding, the fact that in that time there’s been numerous audits from the State outlining deficiencies with SHPD’s programming. We do understand that they’re fine in looking at doing rule changes for SHPD, but it’s not clear what exactly they’re going to try to address with these rules. So, we would like to introduce a resolution that essentially urges SHPD to address specific issues that we care about in those rules.

Senior Public Policy Advocate Tanaka: As you know, the constitution and our statutes allow Native Hawaiian Cultural Practitioners to access less than fully developed lands, including even private lands, for the purpose of reasonably exercising Native Hawaiian Traditional and Customary practices. Unfortunately, landowners are often hesitant to facilitate this because of perceived liability concerns. As a result, practitioners often: either risk getting into conflict with property managers or landowners, or even risk potential citation arrests from law enforcement for trespassing.

What this proposal would do is clarify and limit landowner liability when they expressly facilitate access to Native Hawaiian practitioners who seek to exercise their traditional and customary practices on their lands, including public and private. We’re still doing some research to identify what liability concerns there may be and how we can address them in the context of practitioners.
Public Policy Manager Doane: The last idea is related to assisting our land division with their Kūkaniloko plans. As you know, OHA is working on planning and preparing for construction of a water storage distribution system on property in Wahiawā; which is an important part of our larger plan. We are proposing to get our water through ADC, but we need storage and delivery infrastructure, and the estimated cost of that is $3 million. Our land staffers have been in conversation with the Senator of that district, who also happens to be the WAM Chair. The Senator has not only played a big role in helping OHA acquire the land when he was at the City, but also has been a supporter. He urges us to move along, so that his vision for Wahiawā to have more agriculture, comes to fruition. So, they’re proposing to do a Capital Improvement Request of $3 million.

Public Policy Manager Doane: There are a couple of other issues relevant to session that we’re not fully prepared to talk about today, but that are important in the context of our package. The one thing that is not on here is the Public Land Trust bill. We need to talk a little more about these other issues before we come up with a recommendation to have a PLT bill in our package.

Last year we had a PLT bill in our package. It wasn’t a money bill – the money bill was moved by Community folks and the Hawaiian Caucus. We had a meeting with the Hawaiian Caucus Chair in the House, who continues to be supportive of helping to educate his colleagues about the ridiculous state of Hawaiians’ access to their fair share of the Public Land Trust. So, I anticipate that there will be a measure moving – not necessarily introduced by OHA.

Public Policy Manager Doane: Before session we’re expecting the CLA Audit to come out, so we assume there will be recommendations in there of what we can do better. As you may remember, there was language in our Budget Bill that conditioned access to our 2021 General Fund Appropriations to the completion of an audit by the auditor. We’ve had many, fun conversations. So, we still don’t know what the status of that will be, once the session starts.

Ka Pouhana Kūikawā Hussey: Chair, I just wanted to toss something out there for the trustees to consider; given what everyone has expressed. If you think that we need to have a much more intentional, specific strategy short term going into the 2020 legislature and long term beyond the legislature, there are a couple ways that the trustees can approach a strategy discussion of all the implications.
Off the top of my head – Permitted Interaction Groups (PIGs) to investigate all the implications, can be formed and then recommendations brought to the full Board is one approach.

Another is that administration can complete a white paper analysis of all the issues and recommendations. We can then bring that back to the trustees for discussion and consideration along with anything in between. We can get to a coordinated, aligned approach for session short term, and then aim long term, beyond session.

Chair Waihe'e: Ok, Thank you.

Public Policy Manager Doane: The last issue is conversations about pa’akai. I don’t have anything to report at this point, but of course if it’s something that may come up then we want to be ready.

Finally, the last idea that Wayne will review, is advocacy with other groups that we may work with.

Senior Public Policy Advocate Tanaka: So, as you know OHA has been intimately involved in sentencing reform, specifically and most-recently around pre-trial policies and procedures, while also looking at reforming our prison system. What’s happening is that over the years we've established several statutes and sentencing policies; including minimum mandatory sentences and sentence enhancements. What’s resulted is essentially the mass incarceration of a disproportionate number of Native Hawaiians. This group has been working on numerous ideas about how to look at our sentencing policies to try and see if they can be addressed to reduce the impact that they’ve had on our incarcerated population. Two of the specific areas that they’re focusing on now is looking at repealing mandatory minimum sentences along with addressing some of the sentencing enhancement provisions in statute.

<table>
<thead>
<tr>
<th>Possible Future Proposals/Discussions</th>
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<tbody>
<tr>
<td>☑ OHA = Sovereign Immunity Analogous to the State</td>
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<td>☑ Audit Implications</td>
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<td>☑ CLA Audit</td>
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<td>☑ 2019 Budget Bill</td>
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<td>☑ Lot I (Kakaako)</td>
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<tr>
<th>Coordinated Advocacy</th>
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<tr>
<td><strong>Sentencing Reform</strong></td>
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<tr>
<td>Goal: To address the invasive and costly over-incarceration in our detention facilities and mitigate the disproportionate impacts caused by four decades of &quot;three-strikes&quot; sentencing policies (including mandatory minimum and enhanced sentencing laws).</td>
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<tr>
<td>• An ad-hoc group of judges, lawyers, community advocates, etc. will take the lead; OHA staff has been supporting and recommending further coordinated advocacy to support their work.</td>
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<tr>
<td>• Legislation under consideration:</td>
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<tr>
<td>1. Making certain offenses eligible for community-based sentences rather than incarceration;</td>
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<tr>
<td>2. Reducing the length and severity of custodial sentences by redistributing or reclassifying crimes, or expanding mandatory minimum sentences;</td>
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<td>3. Reducing or eliminating sentencing enhancements for repeat offenders in certain classes of offenses;</td>
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<td>4. Shortening lengths of incarceration by expanding opportunities to earn sentence credits (which then offset time in custody and advance points eligibility for parole), and</td>
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<td>5. Reducing the number of parolees serving time for violations of community supervision requirements by implementing evidence-based practices such as graduated responses to violations as well as community-based alternative sanctions.</td>
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Public Policy Manager Doane: That’s all that we have. I just want to remind the trustees about where we go from here; we’ll be back on November 6th.

Chair Waihe'e: We’re not going to be able to meet on the 6th, due to the Joint Committee Meeting. So, we may have to coordinate a different day.

Public Policy Manager Doane: Ok, I’ll coordinate with your staff.
Trustee Hulu Lindsey: I recently had a meeting on Maui with the Hawaiian member and Maui member of the Board of Education, the Vice-Chancellor of the University of Hawai‘i – Maui, and our own Monica Morris, via telephone. I think they brought up something very critical for education, which I notice, is not on here. I’d like to ask Monica to come up because I know she can describe it better than I can.

Public Policy Manager Doane: Yes.

Public Policy Advocate Monica Morris: Aloha, thank you for inviting me to the table. We have 23 Hawaiian Immersion schools, these are schools or programs where students are instructed in the Hawaiian language. In the ‘Charter Schools world’, all these schools are completely immersed; so, it’s not an immersion program within a school.

Three priorities were identified by Kahele Dukelow:

1. Establishing a kaiapuni complex that would be set apart from the other complexes.
2. Appropriate compensation for kaiapuni teachers – that derives from a DOE policy that talks about appropriate compensation because kaiapuni teachers need to be able to instruct both Hawaiian and English.
3. Kaiapuni curriculum – the first schools started twenty years ago and there is still not any uniformed curriculum or appropriate resources.

With respect to the first issues – kaiapuni complex - right now there are 15 complex areas in Hawai‘i. Each complex is geographically situated so within the complex there are elementary, middle and high schools. So, we have 15 complex areas and each area has a superintendent that presides over it. In total we have 15 CASs (Complex Area Superintendents). There’s sentiment that the CASs are not as sensitive as they could be to are Hawaiian Immersion schools and it’s probably because of the large number of schools in general.

I think there are about 280 schools statewide and only 23 are kaiapuni; so, our kaiapuni schools’ needs are not being met. The idea is that because Hawaiian is an official State language there should be equality for our kaiapuni schools. We’re in discussion on how to address these issues. The approach may either be through bills in legislation or something that can be addressed working directly with the Department of Education. So, whether you would like to include this in our OHA package or to assist Aha Kaleo with their effort, would be at your discretion.
Public Policy Manager Doane: I’m not sure that the CASs are determined by statute. They may be determined by policy. So, I want to know that better before I have a recommendation on what OHA can do. Also, Monica will not be with us next session, so we will lose her expertise and may not have somebody half-as-good. We may not have the same sort of expertise that we have had with Monica. With that said, even if we internally decide that it makes more sense to pursue the idea through the administration, we absolutely will still draft the bill for others.

Public Policy Advocate Monica Morris: The Aha Kaleo meets again on Saturday November 16th and we will discuss further at that time.

VI. COMMUNITY CONCERNS*

Samson Malani of Kinai ‘Eha: Aloha, thank you for having us. My name is Samson Malani and I’m a mentor for Kinai ‘Eha - we distributed some pamphlets for your information.

We work with ages 14-24; young adults – houseless, incarcerated and under-privileged persons who are now in our program and working on job skills that can provide for their families. We teach them labor skills, life skills and better decision making. We teach labor skills in the construction field mainly, but we also do other stuff. We just wanted to introduce ourselves and have some of the boys introduce themselves and then I’ll explain why we’re here.

Howzit – my name is Jabien Lagmay from Kaua‘i and I’m 18 years old, Thank you.

Aloha everyone - my name is Zane Chai, I’m 18 and I grew up in Kāne‘ohe.

Howzit Everybody – my name is Zachariah Abejon, you can call me Kalena. I’m 21 and I grew up on Maui.

Howzit – I’m Kama, I grew up all over the island and I’m 20.
Samson Malani of Kinai ‘Eha: We had a bunch of guys when we came to the earlier meeting, but a lot of them had to go back to the job site; so these are the guys that I could pull. You wouldn’t know it by just looking at them, but one of them is currently incarcerated and I have to take him back after this meeting and two of them don’t have a house – they’re blessed to stay in a shelter for now and hopefully we can work on getting them housing.

They know how to build their own houses now, parts of it at least – so they’re getting those skills and hopefully one day they can become productive members of society too. The bill for an Act that’s in front of you guys; the 2019 Legislative Session successfully passed the Kinai ‘Eha law, Act 271 SB388. The law aims to disrupt the pathway to prison. I was informed by the work that we’ve done at Kinai ‘Eha with our most vulnerable ‘opio, many who have dropped out of school - almost all of them are Native Hawaiian. The bill was sponsored by Senator Donovan Dela Cruz, who is a big supporter of Kinai ‘Eha and other alternative education programs like ours that support ‘opio.

The Kinai ‘Eha law calls for trauma screening for all children in the DOE as an early intervention to identify potential academic, social, emotional and health challenges; and more importantly what we view as each haumana’s strength and assets.

For example if someone has ADHD, that doesn’t necessarily mean it’s a weakness, but we look at finding ways to use that as a strength – he/she may be a lot more creative and diverse and can move from one job to another faster. So we try to identify those things and make it work in a real workforce. We have an instagram and facebook account if you guys want to follow us; that would be awesome. @kinaieha on instagram or https://www.facebook.com/kinaieha.pono - We’re located at Kawailoa in Kailua which was the former Hawai’i Youth Correctional Facility, so a lot of our employees are from Waimānalo.

If you guys could find the time to come visit us that would be awesome. You could: see first-hand all the students, see how our curriculum works and everything, and see the solutions that we’re trying to provide. If we would be able to be on an upcoming Board agenda, I would like for our Executive Director to be able to come and talk about our program in more detail. I would like to invite all of you to visit and I wasn’t sure who to talk to about that.

Trustee Ahuna: You did a good job.

Trustee Hulu Lindsey: That’s how we can help you?

Samson Malani of Kinai ‘Eha: Yes, I’m not too familiar with all the different things you offer, but I know you guys have a lot of capacity and definitely this population needs help. When you guys come in person and get to see everybody and where they’re coming from. One guy lives on the side of shopping center – but he comes every morning at 6:30 a.m. to get his breakfast; 7:00 a.m., he starts and stays on his feet, all day working. Then at 3:30 p.m. work is done. When he leaves at the end of the day there’s not much we can help with, I can stay as long as I can to cruise with him or buy him dinner, but at the end of the day they’re back to their vices when they’re stuck out there on the street. So whatever you guys would be able to help us out with would be awesome.
Trustee Akaka: I just want to mahalo you for being a part of this wonderful organization and for being a solution for our keiki here. Also, mahalo to all of you for taking the time to be here to help bring awareness on how we can perhaps collaborate down the line and look at further solutions.

Samson Malani of Kinai 'Eha: Mahalo everyone for your time.

VII. ANNOUNCEMENTS

None

VIII. ADJOURNMENT

Trustee Ahuna moves to adjourn the BAE meeting.

Trustee Lee seconds the motion.

Chair Waiheʻe asks if there is any discussion. There is none.

Chair Waiheʻe asks if any members vote NO or ABSTAIN. There are no dissenting votes.

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Chair Waiheʻe adjourns the BAE meeting at 2:35 p.m.
Respectfully submitted,

Melissa Wennihan  
Trustee Aide  
Committee on Beneficiary Advocacy and Empowerment

As approved by the Committee on Beneficiary Advocacy and Empowerment on November 27, 2019.

Trustee John Waihe’e, IV  
Chair  
Committee on Beneficiary Advocacy and Empowerment

ATTACHMENT(s):

None
MEETING OF THE
COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT

DATE: Wednesday, November 27, 2019
TIME: 1:30 p.m.
PLACE: Mauli Ola Boardroom
Na Llama Kukui
560 N. Nimitz Highway
Honolulu, HI 96817

AGENDA

I. Call to Order
II. Public Testimony*
III. Approval of Minutes
   A. October 16, 2019
IV. Unfinished Business
V. New Business
   A. ACTION ITEM: BAE #19-02: Approval of 2020 OHA Legislative Package**!
VI. Executive Session***
   A. Approval of Executive Session Minutes for March 16, 2016
   B. Consultation with OHA Corporate Counsel attorney Everett Ohta, Esq. regarding questions and issues pertaining to the Board’s powers, duties, privileges, and liabilities related to a 2006 Memorandum of Agreement between the Kaua’i Island Utility Cooperative and the Office of Hawaiian Affairs. HRS § 92-5(a)(4).
   C. Consultation with Board Counsel Robert G. Klein, Esq, regarding questions and issues pertaining to the Board’s powers, duties, privileges, and liabilities with respect to legal issues pertaining to sovereign immunity. HRS § 92-5(a)(4).
VII. Community Concerns*
VIII. Announcements
IX. Adjournment

*Notice: Persons wishing to provide testimony are requested to submit 13 copies of their testimony to the Chief Executive Officer at 560 N. Nimitz. Suite 200, Honolulu, HI 96817 or fax to 594-1868, or email BOTmeetings@oha.org 48 hours prior to the scheduled meeting. Persons wishing to testify orally may do so at the meeting, provided that oral testimony shall be limited to five minutes.
**Notice: Trustees may establish or revise an OHA position on ANY proposed bill / resolution / executive message currently moving through the state legislature or other relative elected body. The Matrices, which are available for public review in the meeting room at this stated meeting, provide a brief description of each bill, the bill’s number, the bill’s title, the bill’s intent, and the proposed and specific OHA position on each measure, current through 11/26/19. However, the Trustees both in committee and as the Board of Trustees (BOT) reserve the right to discuss any and all bills on the Matrices, as well as those that time does not permit to be placed on the Matrices, in order to discharge their fiduciary obligations as Trustees of the Office of Hawaiian Affairs.
***Notice: This portion of the meeting will be closed pursuant to HRS § 92-5.
†Notice: The 72 Hour rule, pursuant to OHA BOT Operations Manual, Section 49, shall be waived for distribution of new committee materials.
Action Item Issue: To support the inclusion of new legislative proposals in the 2020 OHA Legislative Package

Prepared by:
Jocelyn M. Doane
Pou Kāko‘o Kulekele Aupuni, Public Policy Manager

Reviewed by:
John James McMahon, J.D.
Ka Pōhaku Kihi Paia Kū, Advocacy Counsel

Reviewed by:
Keola Lindsey
Ka Poukihi Kū, Chief Advocate

Reviewed by:
Sylvia M. Hussey, Ed.D.
Ka Pounana Kūikawā, Interim Chief Executive Officer

Reviewed by:
John Waihe’e IV
Luna Ho‘omaluhano ke Kōmike BAE
Chairperson, Committee on Beneficiary Advocacy and Empowerment
I. Action

To support the following new legislative proposals and approve their inclusion in the 2020 OHA Legislative Package (See referenced attachments for text of the proposals):

1. **OHA-1 Restoring Hawaiian Expertise in Land Use and Resource Management:**
   Since 2016, a number of state boards and commissions with land use and resource management responsibilities have been required to attend a Native Hawaiian law and public trust training course; in addition, several of these boards are required to have at least one member possess experience or expertise in relevant Native Hawaiian traditional and customary practices or resource management approaches. Combined, these requirements seek to ensure that decisions impacting our lands and resources are more informed as to the rights, values, and practices of Native Hawaiians, and have the potential to enhance our islands’ sustainability and resilience for present and future generations.

   Unfortunately, despite the regular provision of notice to board and commission administrators, the vast majority of boards and commissions subject to the training course requirement have failed to fully comply with their training responsibilities. As a result, land use and resource management decision-making may continue to be less than fully informed on Native Hawaiian concepts, practices, and rights associated with the ‘āina. Moreover, requiring only a single member of critical decision-making bodies, such as the Land Use Commission (LUC) and Board of Land and Natural Resources (BLNR), to have experience or expertise in Hawaiian practices or resource management approaches, has not resulted in decisions that consistently recognize or incorporate Native Hawaiian knowledge, values, and rights. These issues in turn have led and continue to lead to substantial conflict, distrust in government decisions and processes, and even legal action against the state, and may further foreclose critical opportunities to ensure our islands’ resiliency and self-sufficiency through culturally-informed land use and resource management.

   This measure would seek to address the above challenges and ensure greater recognition and incorporation of Hawaiian perspectives, expertise, and rights in land use and resource management decision-making. First, it would provide clear statutory remedies for noncompliance with the Native Hawaiian law and training course requirement, including by

   - Requiring an annual report by OHA and the Department of Land and Natural Resources of all individuals who have failed to meet the one-year training deadline under the law;
   - Prohibiting individuals who have failed to meet their requirement from serving on a permitted interaction group or voting on any matter before their respective boards or commissions, until they have attended a training course;
   - Removing untrained individuals from their respective boards or commissions at the end of the regular legislative session following their deadline to complete the training course, unless they complete the training course or are reconfirmed by the Senate before the session ends; and
• Allowing the individual votes of untrained council, board and commission members to be challenged and subject to being nullified and voided following a contested case proceeding.

Second, this measure would require that four of the nine-member LUC and four members of the seven-member BLNR be appointed from a list of nominees submitted by OHA, similar to the way in which OHA nominees are appointed to the various island burial councils; this requirement would take effect after the end of the current terms of all sitting BLNR and LUC members. Such meaningful representation of Native Hawaiian perspectives will particularly ensure that land use and resource management decisions incorporate and benefit from Native Hawaiian practices, values, and knowledge relating to the ‘āina.

(Attachment A)

OHA-2 Addressing Employment Discrimination Against Former Pa‘ahao:
As noted in OHA’s 2010 report on The Disparate Treatment of Native Hawaiians in the Criminal Justice System, the inability of former pa‘ahao to find stable employment and support their families after their release is one of the major “collateral consequences” of incarceration, which particularly burden the Native Hawaiian community. Criminal background checks as part of the employment process may exacerbate this burden by allowing prospective employers to effectively discriminate against pa‘ahao even after they have paid their debt to society. Notably, national studies show that employers may be far less inclined to hire individuals with even a misdemeanor criminal conviction record – particularly for individuals of color – and despite the length of time from their past illegal activity.

While existing state laws generally prohibit employment discrimination based on arrest and court records, Hawai‘i statutes still allow employers to rescind job offers or make other employment decisions based on convictions up to ten years old, as long as the conviction has a “rational relationship” to the job. This express allowance and the ten-year criminal background checks it encourages may substantially and unreasonably hinder pa‘ahao efforts to earn a legitimate income and support their families, potentially leading to recidivist behavior and otherwise frustrating state investments in their rehabilitation and reentry into society.

This measure would mitigate the impacts of the ten-year criminal background checks encouraged under state law, by limiting the length of time that convictions may be used in employment decisions from a maximum time period of five years for felonies and three years for misdemeanors (subject to existing exceptions for certain occupations and agencies such as those related to law enforcement). These new limits will discourage most employers from using old and possibly irrelevant convictions in making employment decisions; shorten the unreasonably long ten-year background check period used by employers in evaluating job applicants; and ensure that those who have long past paid their debt to society receive a more meaningful opportunity to support themselves and their families and become contributing members of the community. By striking a better balance between employers’ liability concerns and the need to provide pa‘ahao
with meaningful employment opportunities, this measure will help to reduce recidivism, facilitate successful pa’ahao reentry, and enhance public safety in the long-term.

Importantly, this measure will not apply to employers who are expressly permitted to inquire into their employees’ or prospective employees’ criminal history pursuant to federal or state laws (e.g. DOE to determine suitability to work with children, public safety to insure against risks to the department or the public, etc.), nor will it affect existing reporting requirements (e.g. for sex offender registries).

(Attachment B)

OHA-3 Preventing of Historic Preservation Review Evasion and Other Violations:
State historic preservation laws provide a process by which county grading- and construction-related permit applications can be vetted for potential impacts to iwi kupuna and archaeological/historical sites; this process includes the opportunity to attach permit conditions as well as develop and apply other protective measures to mitigate any potential impacts. Historic preservation laws further impose criminal and civil penalties for the knowing desecration of iwi kupuna, burials, and archaeological/historical sites, and for failing to stop work upon the discovery of a burial.

Despite these laws, concerns have been raised regarding landowners and contractors who ignore county permitting requirements before beginning construction work, thereby avoiding the procedural protections established under our historic preservation laws, and likely impacting countless iwi kupuna and archaeological/historical sites as a result. These concerns have been compounded by written statements from the State Historic Preservation Division that impacts to iwi kupuna from unpermitted grading or construction activities cannot be investigated or enforced after-the-fact, due to the likelihood that any evidence of such impacts have already been destroyed. For unscrupulous landowners and contractors, this admitted lack of after-the-fact enforcement may even represent a significant financial incentive to engage in unpermitted work especially where iwi kupuna may be found, as the otherwise minimal penalties for unpermitted work may be far less than the costs of complying with permitting processes and conditions protecting iwi kupuna and historic sites.

Accordingly, this measure would seek to better protect Native Hawaiians’ ancestors by

- Providing for increased maximum fines for violations to the chapter, including unpermitted grading or construction activities that would have otherwise involved historic preservation review;
- Prohibiting any further work or permit issuance for the subject property where unpermitted activities occurred, until the submission and approval of a work schedule that includes recommended actions from SHPD staff or a department-approved archaeologist who has inspected the worksite for evidence of potential impacts to iwi kupuna or historic sites;
- Holding landowners and contractors jointly liable for all assessment and mitigation costs associated with unpermitted activities;
- Requiring the establishment of a citizen complaint intake process and the development of informational resources for citizens to document/report potential HRS 6E violations and impacts to iwi kupuna or historic sites;
• Requiring the posting of notice at worksites regarding iwi kupuna and historic preservation laws, and informing workers and the public of the citizen complaint intake process; and
• Amending the historic preservation special fund, which collects historic preservation fines and fees, to explicitly allow fund monies to be dedicated towards enforcement related activities.

(Attachment C)

**OHA-4 Protecting Our Ancestors via SHPD Admin Rules (Resolution):**
Both OHA and the federal government have noted concerns that support amendments to SHPD’s administrative rule. Over the years, OHA’s compliance division has chronicled and commented on persistent procedural inconsistencies relating to the identification and protection of iwi kupuna and burial sites, which have led to inconsistent and inadequate protection for iwi kupuna. Concerns about SHPD were also noted by a 2010 review of the Hawaii SHPD by the National Park service, who found significant operational problems with the division. Despite the apparent need for greater regulatory guidance to address these issues, no rule amendments have been made to the administrative rules for burial sites, iwi kupuna, or archaeological/historical sites and resources for many years. Specifically, there have also not been any updates to the administrative rules relating to the protection of iwi kupuna and burial sites for over 23 years, and the protection of archaeological/historical resources and sites for over 16 years.

The State Historic Preservation Division has been contemplating rulemaking action in the near future and this resolution would send a clear legislative message to the division that any such rulemaking must address specific, long-standing issues that have inhibited the consistent and appropriate protection of iwi kupuna, burial sites, and archaeological/historical resources and sites that embody the physical and spiritual legacies and final resting places of our ancestors. The resolution will point to general and specific rule provisions that SHPD should consider, and will likely include:

• Improving accountability for archaeologists responsible for surveying development sites;
• Developing an alternative or streamlined historic preservation process for projects specifically aimed at preserving or stewarding historic resources or cultural resources;
• Standardizing the archaeological inventory survey sampling and reporting requirements to improve consistency;
• Creating a process to reclassify “inadvertently discovered” burials as “previously identified” burials, especially where burials are discovered during exploratory testing or where burials are found in concentrations;
• Empowering the Island Burial Councils;
• Providing stronger and periodic training to Island Burial Councils on their statutory and administrative authorities and responsibilities;
• Improving requirements for consistent consultation with descendants and knowledgeable individuals throughout the historic preservation review process;
• Requiring the metes and bounds recordation of preservation sites at the Bureau of Conveyances; and
• Creating a process to document and address rule violations by cultural resource contractors.

(Attachment D)

**OHA-5 Facilitating Practitioner Access Onto Private Lands:**

The Hawai‘i constitution provides cultural practitioners with the right to access less-than-fully-developed lands in the reasonable exercise of their Native Hawaiian traditional and customary practices; in recognition of Hawai‘i’s unique history of land ownership, land tenure, and native displacement, this right extends to both government and privately held lands. Unfortunately, both private and government landowners may be reluctant to provide explicit permission or otherwise accommodate practitioners seeking to access their lands, due to liability concerns. Such landowner reluctance may force practitioners to risk physical conflict or even the possibility of citation and/or arrest in order to access lands they do not have permission to be on. In the latter case, practitioners would also have the costly burden of proving in court that they were in fact engaged in the reasonable exercise of their traditional and customary practices, in order to avoid conviction and a criminal record. Faced with such risks and burdens, Native Hawaiian practitioners may choose to forego the continuation of their practices and the perpetuation of their culture, undermining the vision and intent of our unique constitutional protections.

This measure would address the liability concerns of private landowners and government entities (in the case of government lands not otherwise open to the public) who grant explicit permission to cultural practitioners to access their lands to specifically engage in Native Hawaiian traditional and customary practices. By protecting landowners from legal claims arising from such access, this measure would encourage their accommodation of practitioners and facilitate the perpetuation of Native Hawaiian traditional and customary practices, as envisioned in our constitution and otherwise protected under the law.

This measure does not require practitioners to obtain permission to exercise their constitutionally protected rights, but increases the likelihood that a landowner would grant permission, and thereby facilitate the perpetuation of Native Hawaiian cultural practices.

(Attachment E)

**OHA-6 Capital Improvement Project Budget Request for OHA’s Wahiawā Lands:**

OHA is working to plan, design, permit, and otherwise prepare for the construction of a water storage and distribution system on OHA’s 511-acre property in Wahiawā. This activity aligns with OHA’s Conceptual Master Plan (Plan) for the property, approved by the BOT in 2018, which requires a consistent and reliable water source for its implementation. This activity is also necessary to amend the conservation easement that accompanied OHA’s acquisition of the property in 2012; the City and County of Honolulu (the holder of the easement) has communicated that OHA will need to demonstrate agricultural uses before the easement can be amended to accommodate the Plan’s commercial elements. Notably, OHA has secured an allocation of water from the
Agribusiness Development Corporation (ADC), which would provide OHA with one million gallons of water per week from ADC’s Bott Well; however, ADC cannot provide the water to OHA without a water storage system. OHA has committed OHA funds for FY 20 ($200,000.00) and FY21 ($300,000) for the planning, designing, and permitting of the system and is starting the procurement process. Bill OHA-6 would request state CIP funds raised by the issue of general obligation bonds to pay for the actual construction of the system, estimated by our research to be approximately $3 million.

(Attachment F)

II. Issue

Should the OHA Board of Trustees support the new legislative proposals and approve their inclusion in the 2020 OHA Legislative Package?

III. Discussion

From July through October 2019, OHA Public Policy staff collected more than 40 legislative proposals from staff, key stakeholders, experts, and community leaders. These proposals were vetted, filtered, and developed into the legislative proposals offered in this Action Item for inclusion in the 2020 OHA Legislative Package.

Editing note:
With this Action Item, we also ask the Board of Trustees to authorize staff (1) to make, as appropriate, technical, non-substantive changes for style, clarity, consistency, and accuracy to all of the legislative proposals in the 2020 OHA Legislative Package (2) to add or amend preamble language in the measures for framing and editorial purposes and (3) to make changes to the title of the measures for strategic and clarifying reasons.

IV. Recommended Action

To support the new legislative proposals and include those new proposals in the 2020 OHA Legislative Package.

V. Alternative Actions

A. To support only selected new legislative proposals and include only those selected new legislative proposals in the 2020 OHA Legislative Package.

B. To not approve any of the new legislative proposals and not include any of the new legislative proposals in the 2020 OHA Legislative Package.

VI. Funding

No funding is required.

VII. Timeframe
Immediate action is recommended.

VIII. Attachments

A. OHA-1 (Attachment A)
B. OHA-2 (Attachment B)
C. OHA-3 (Attachment C)
D. OHA-4 (Attachment D)
E. OHA-5 (Attachment E)
F. OHA-6 (Attachment F)
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 HAWAI‘I:

SECTION 1. In Act 169, Session Laws of Hawai‘i 2015, the legislature found that pursuant to Hawai‘i’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, Hawai‘i 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, 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. As a result, critical land use and resource management...
resource management decision-making may continue to be less than fully informed on Native Hawaiian concepts, practices, and rights.

The legislature further finds that, in recognition of the importance of incorporating Native Hawaiian knowledge, values, and rights in resource management decision-making, certain critical decision-making bodies, such as the land use commission and board of land and natural resources, are statutorily required to have at least one member with experience or expertise in Native Hawaiian practices or resource management approaches. However, requiring just one member of the land use commission and one member of the board of land and natural resources to possess such experience or expertise has not resulted in decisions that consistently recognize or incorporate Native Hawaiian knowledge, values, and rights.

These issues in turn have led and continue to lead to substantial conflict, distrust in government decisions and processes, and even legal action against the State, and may further foreclose critical opportunities to ensure our islands’ resiliency and self-sufficiency through culturally-informed land use and resource management.
Accordingly, the legislature intends to ensure a deeper understanding among board and commission members of the State’s legal responsibilities to Native Hawaiians, Hawai‘i’s political history, the public land trust, Native Hawaiian traditional and customary rights, Hawai‘i’s water laws and the public trust doctrine, and laws relating to Native Hawaiian burials. The legislature further intends to ensure greater recognition and incorporation of Hawaiian knowledge, values, and rights in land use and resource management decision-making. The purpose of this measure is to:

(1) Prohibit council, board, and commission members who fail to meet their training course completion requirement from serving on a permitted interaction group or voting on matters before their respective councils, boards, or commissions;

(2) Require council, board, and commission members who fail to meet their training course completion requirement to complete their training requirement or be reconfirmed by the senate by the end of the regular legislative session following their training course completion deadline;
(3) Require the Office of Hawaiian Affairs and the department of land and natural resources to compile an annual report of council, board, and commission members who have failed to complete their training course requirement, and to submit the report to the governor and legislature no later than twenty days prior to the convening of the regular legislative session;

(4) Require four members 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 four members 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, Hawai‘i 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

OHA-1 Relating to Expertise in Land Use and Resource Management
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

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

(b) Individual votes taken by council, board, and commission members who failed to complete the mandatory training course may be challenged and subject to being nullified and voided following a contested case proceeding.
(c) The Office of Hawaiian Affairs and the department of land and natural resources shall prepare an annual report of all council, board, and commission members who have failed to meet the training requirement in this section as of September 21 of each year, which shall be made available for public inspection at the Office of Hawaiian Affairs, the department of land and natural resources, and submitted to the governor and the legislature no later than twenty days prior to the convening of each regular session of the legislature.

(d) The Office of Hawaiian Affairs, at its own expense, shall establish, design, and administer a 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. The training course shall include:

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

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

[(e)](e) The [office] Office of Hawaiian [affairs,]  
Affairs, at its own expense, shall develop the methods and  
prepare any materials necessary to implement the training  
course, administer the training course, and notify each council,  
board, and commission identified in section 10-41(a) that  
attendance in a training course is mandatory.

[(f)](f) The [office] Office of Hawaiian [affairs,] Affairs  
shall offer the training course at least twice per year.

[(g)](g) The governor shall provide to the [office] Office  
of Hawaiian [affairs,] Affairs the names of persons required to  
take the training course pursuant to this part within thirty  
calendar days of their initial appointment [by the governor]."

SECTION 3. Section 26-15, Hawai‘i Revised Statutes, is  
amended to read as follows:

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

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The board shall consist of seven members, one from each land district and three at large. The appointment, tenure, and removal of the members and the filling of vacancies on the board shall be as provided in section 26-34. At least one member of the board shall have a background in conservation and natural resources, as provided in section 171-4. At least one member, other than the member with a background in conservation and natural resources, shall have demonstrated expertise in native Hawaiian traditional and customary practices, as provided in section 171-4, and at least four members shall have been appointed from a list of nominees submitted to the governor by the Office of Hawaiian Affairs, as provided under subsection (b), to ensure assistance to the board to better administer the public lands and resources with respect to native Hawaiian issues and concerns, the public land trust obligations, and the recognition of native Hawaiian cultural values that are intrinsically tied to the [ʻāina] ʻāina.

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

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

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

(b) Lists from the Office of Hawaiian Affairs to fill vacancies on the board shall be submitted as follows:

(1) For vacancies attributable to the expiration of terms, the list shall be submitted on the first business day of December prior to the expiration of the terms; and

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

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

[(e)](d) The functions and authority heretofore exercised by the commissioner and board of public lands (including the
hydrography division and the bureau of conveyances), the Hawaii
water authority, the commission on ground water resources, the
Hawaii land development authority, the soil conservation
committee, and the commission on historical sites and the
function of managing the state parks and the function of
promoting the conservation, development and utilization of
forests, including the regulatory powers over the forest
reserve, aquatic life and wildlife resources of the State
heretofore exercised by the board of commissioners of
agriculture and forestry as heretofore constituted are
transferred to the department of land and natural resources
established by this chapter."

SECTION 4. Section 205-1, Hawai‘i Revised Statutes, is
amended by amending subsection (a) to read as follows:

"[4](a)[4] There shall be a state land use commission,
hereinafter called the commission. The commission shall consist
of nine members who shall hold no other public office and shall
be appointed in the manner and serve for the term set forth in
section 26-34. One member shall be appointed from each of the
counties and the remainder shall be appointed at large; provided
that one member shall have substantial experience or expertise
in traditional Hawaiian land usage and knowledge of cultural

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land practices[1], and at least four members shall have been appointed from a list of nominees submitted to the governor by the Office of Hawaiian Affairs. Lists from the Office of Hawaiian Affairs to fill vacancies on the board shall be submitted as follows:

(1) For vacancies attributable to the expiration of terms, the list shall be submitted on the first business day of December prior to the expiration of the terms; and

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

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

SECTION 5. Notwithstanding the amendments made by this Act to section 26-15, Hawai‘i Revised Statutes, each current sitting board member may serve the remainder of the member’s term, and until the expiration of the current terms of all current sitting board members, the decisions and other actions of the board
shall not be subject to challenge on the basis that the requirement of section 26-15, Hawai‘i Revised Statutes, that four members of the board be appointed from lists submitted by the Office of Hawaiian Affairs, has not been met.

SECTION 6. Notwithstanding the amendments made by this Act to section 205-1, Hawai‘i Revised Statutes, each current sitting commission member may serve the remainder of the member’s term, and until the expiration of the current terms of all current sitting commission members, the decisions and other actions of the commission shall not be subject to challenge on the basis that the requirement of section 205-1, Hawai‘i Revised Statutes, that four members of the commission be appointed from lists submitted by the Office of Hawaiian Affairs, has not been met.

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

SECTION 8. This Act shall take effect upon its approval.

INTRODUCED BY:______________________________

By Request

OHA-1 Relating to Expertise in Land Use and Resource Management
A BILL FOR AN ACT

RELATING TO EMPLOYMENT DISCRIMINATION.

BEIT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAI'I:

SECTION 1. PREAMBLE

SECTION 2. Section 378-2.5, Hawai'i Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

"(c) For purposes of this section, "conviction" means an adjudication by a court of competent jurisdiction that the defendant committed a crime, not including final judgments required to be confidential pursuant to section 571-84; provided that the employer may consider the employee's conviction record falling within a period that shall not exceed the most recent [ten years,] five years for felony convictions and three years for misdemeanor convictions, excluding periods of incarceration. If the employee or prospective employee claims that the period of incarceration was less than what is shown on the employee's or prospective employee's conviction record, an employer shall provide the employee or prospective employee with an opportunity to present documentary evidence of a date of release to establish a period of incarceration that is shorter than the
sentence imposed for the employee's or prospective employee's conviction.

(d) Notwithstanding subsections (b) and (c), the requirement that inquiry into and consideration of a prospective employee's conviction record may take place only after the individual has received a conditional job offer, and the limitation to the most recent ten-year period for felony convictions and three-year period for misdemeanor convictions, excluding the period of incarceration, shall not apply to employers who are expressly permitted to inquire into an individual's criminal history for employment purposes pursuant to any federal or state law other than subsection (a), including:

(1) The State or any of its branches, political subdivisions, or agencies pursuant to sections 78-2.7 and 831-3.1;

(2) The department of education pursuant to section 302A-601.5;

(3) The department of health with respect to employees, providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services pursuant to section 321-171.5;
B. NO._____

(4) The judiciary pursuant to section 571-34;

(5) The counties pursuant to section 846-2.7(b)(5), (33), (34), (35), (36), and (38);

(6) Armed security services pursuant to section 261-17(b);

(7) Providers of a developmental disabilities domiciliary home pursuant to section 321-15.2;

(8) Private schools pursuant to sections 302C-1 and 378-3(8);

(9) Financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution pursuant to section 378-3(9);

(10) Detective agencies and security guard agencies pursuant to sections 463-6(b) and 463-8(b);

(11) Employers in the business of insurance pursuant to section 431:2-201.3;

(12) Employers of individuals or supervisors of individuals responsible for screening passengers or property under title 49 United States Code section 44901 or individuals with unescorted access to an aircraft of an air carrier or foreign carrier or in a secured area of an airport in the United States pursuant to title 49 United States Code section 44936(a);
(13) The department of human services pursuant to sections 346-97 and 352-5.5;

(14) The public library system pursuant to section 302A-601.5;

(15) The department of public safety pursuant to section 353C-5;

(16) The board of directors of a cooperative housing corporation or the manager of a cooperative housing project pursuant to section 421I-12;

(17) The board of directors of an association under chapter 514B, or the managing agent or resident manager of a condominium pursuant to section 514B-133; and

(18) The department of health pursuant to section 321-15.2."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY: ______________________________

By Request
A BILL FOR AN ACT

RELATING TO HISTORIC PRESERVATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAI‘I:

SECTION 1. Iwi kūpuna and wahi kūpuna are treasured among the Native Hawaiian community as fundamental parts of its history and identity. Burial sites and other historic sites are physical vestiges of Native Hawaiian heritage; their continuing presence is vital to the perpetuation of the Native Hawaiian culture and the unique mana and character of Hawai‘i.

This legislature has acknowledged the deep significance of irreplaceable historic resources and has developed prudent policy to protect iwi kūpuna and historic properties from inadvertent destruction as a result of development. State historic preservation laws provide a process by which county grading- and construction-related permit applications can be vetted for potential impacts to iwi kūpuna and other archaeological and historic sites.

Unfortunately, these goals are undermined when landowners and developers circumvent required permits and, likewise, the historic preservation review process they trigger. As a result,
it is impossible to know whether and how many significant
historic resources have been destroyed.

Therefore, the purpose of this Act is to better protect
historic properties and burial sites and facilitate stronger,
more effective enforcement against non-compliance with county
permitting processes that involve historic preservation review
as well as against violations of other historic preservation
review requirements by:

(1) Explicitly clarifying that any failure to comply with
advisement or approval processes that would trigger
state historic preservation review shall be a
violation of chapter 6E, Hawai‘i Revised Statutes;

(2) Authorizing the state historic preservation division
of the department of land and natural resources to
issue an order to stop work immediately where such a
violation has occurred until a site inspection by
department staff or an approved archaeologist is
conducted and a work schedule for recommended
mitigation or restoration measures is approved by the
board of land and natural resources;

(3) Providing that any violators shall be responsible for
the costs of site inspections and any mitigation or
restoration measures recommended;
(4) Increasing the limit for civil and administrative fines for violations of historic preservation review requirements to further disincentivize noncompliance;
(5) Requiring the department to publish a list of violators of chapter 6E, Hawai‘i Revised Statutes, to inform state agencies of the individuals and entities with whom they are restricted from contracting pursuant to subsection 6E-11(g);
(6) Explicitly allowing for moneys in the historic preservation special fund, including civil and administrative fines collected for violations of chapter 6E, to be expended for the costs of enforcement against violations of chapter 6E;
(7) Requiring the department to establish a citizen complaint intake process and to prepare informational materials, including a worksite poster, related to that process for dissemination to the public; and
(8) Requiring construction worksites to post prominently an informational poster regarding the citizen complaint intake process developed by the department.

SECTION 2. Section 6E-8, Hawai‘i Revised Statutes, is amended by amending subsection (a) to read as follows:
"(a) Before any agency or officer of the State or its political subdivisions commences any project which may affect historic property, aviation artifact, or a burial site, the agency or officer shall advise the department and allow the department an opportunity for review of the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43, especially those listed on the Hawaii register of historic places. The proposed project shall not be commenced, or if it has already begun, continued, until the department has given its written concurrence. If:

(1) The proposed project consists of corridors or large land areas;

(2) Access to properties is restricted; or

(3) Circumstances dictate that construction be done in stages,

the department may give its written concurrence based on a phased review of the project; provided that there shall be a programmatic agreement between the department and the project applicant that identifies each phase and the estimated timelines for each phase.

The department shall provide written concurrence or non-concurrence within ninety days after the filing of a request.

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with the department. The agency or officer seeking to proceed
with the project, or any person, may appeal the department's
concurrence or non-concurrence to the Hawaii historic places
review board. An agency, officer, or other person who is
dissatisfied with the decision of the review board may apply to
the governor, who may take action as the governor deems best in
overruling or sustaining the department.

Commencing or continuing any project or any phase of any
phased project without a written concurrence from the department
as required in this subsection shall be a violation of this
chapter."

SECTION 3. Section 6E-42, Hawai‘i Revised Statutes, is
amended by amending subsection (a) to read as follows:
"(a) Except as provided in section 6E-42.2, before any
agency or officer of the State or its political subdivisions
approves any project involving a permit, license, certificate,
land use change, subdivision, or other entitlement for use,
which may affect historic property, aviation artifacts, or a
burial site, the agency or office shall advise the department
and prior to any approval allow the department an opportunity
for review and comment on the effect of the proposed project on
historic properties, aviation artifacts, or burial sites,
consistent with section 6E-43, including those listed in the 
Hawaii register of historic places. If:
(1) The proposed project consists of corridors or large 
land areas;
(2) Access to properties is restricted; or
(3) Circumstances dictate that construction be done in 
stages,
the department's review and comment may be based on a phased 
review of the project; provided that there shall be a 
programmatic agreement between the department and the project 
applicant that identifies each phase and the estimated timelines 
for each phase.

Commencing or continuing any project or any phase of any 
phased project without first obtaining an approval from an 
agency or office that would have initiated the historic 
preservation review process with the department pursuant to this 
section is a violation of this chapter."

SECTION 4. Section 6E-10.5, Hawai‘i Revised Statutes, is 
amended to read as follows:

"§6E-10.5 Enforcement. (a) If the board of land and 
natural resources determines that any person has violated or is 
violating this chapter, or any rule adopted pursuant to this 
chapter, the board shall serve written notice by certified mail
or personal service upon the alleged violator or violators specifying the alleged violation and may include with the notice:

(1) An order to stop all work in the parcel containing the site of the violation;

(2) An order specifying a reasonable time during which that person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports;

An order imposing penalties provided in section 6E-11.6; and

An order that the alleged violator or violators appear before the board for a hearing at a time and place specified in the notice or to be set later and answer the charges complained of.

(b) If the board determines that any person is continuing to violate this chapter or any rule adopted pursuant to this chapter after having been served notice of violation, the board shall serve written notice by certified mail or personal service upon the alleged violator or violators specifying the alleged violation. With the notice, the board:

(1) Shall order the violator or violators to cease and desist from the activities that violate this chapter
or any rule adopted thereunder and to stop work in any parcel or parcels where unauthorized or unapproved work has commenced, until the board accepts the written schedule required by this subsection;

(2) Shall order the alleged violator or violators to submit a written schedule within thirty days specifying the measures to be taken and the time within which the measures shall be taken to bring that person into compliance with this chapter or any rule adopted thereunder; provided that for violations involving the commencement or continuation of work without a written concurrence from the department as required by 6E-8(a) or an approval from an agency or office that would have triggered historic preservation review requirements as required by 6E-42(c), the written schedule shall include findings and a timeline of mitigation or restoration measures for any impacted or potentially impacted burial site or historic property as recommended by department staff or an archaeologist approved by the department who has conducted an inspection of the site, provided further that the violator or violators shall be responsible for all costs of any site inspection. The board shall
accept or modify the submitted schedule within sixty
days of receipt of the schedule. Any schedule not
acted upon after sixty days of receipt by the board
shall be deemed accepted by the board;

[(2) Shall order the alleged violator or violators to
cease and desist from the activities that violate this
chapter or any rule adopted thereunder, if that person
does not submit a written schedule to the board within
thirty days. This order shall remain in effect until
the board accepts the written schedule;]

(3) May impose penalties as provided in section 6E-11.6;

and

(4) May order the alleged violator or violators to appear
before the board for a hearing to answer the charges
issued, at a time and place specified in the notice or
otherwise set by the board.

(c) If the board determines that any person has violated
an accepted schedule or an order issued pursuant to this
section, the board shall impose penalties by sending a notice in
writing, either by certified mail or by personal service to that
person, describing such non-adherence or violation with
reasonable particularity.
(d) Any order issued pursuant to this chapter shall become final, unless the person or persons named therein requests in writing, not later than twenty days after notice of violation and order is served, a hearing before the board. Upon request for a hearing, the board shall require that the alleged violator or violators appear before the board for a hearing to answer the charges issued, at a time and place specified in the notice or otherwise set by the board.

Any penalty imposed pursuant to this chapter shall become due and payable twenty days after the notice of penalty is served, unless the person or persons named therein requests in writing a hearing before the board. Whenever a hearing is requested on any penalty imposed pursuant to this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part.

(e) Any hearing conducted pursuant to this section shall be conducted as a contested case under chapter 91. If, after a hearing held pursuant to this section, the board finds that a violation or violations has occurred, the board shall:

(1) Affirm or modify any penalties imposed;

(2) Modify or affirm the order previously issued; or
(3) Issue an appropriate order or orders for the prevention, abatement, or control of the violation or for the taking of such other corrective action as may be appropriate. Any order issued after a hearing may prescribe timetables for necessary action in preventing, abating, or controlling the violation. If, after a hearing on an order or penalty contained in a notice, the board finds that no violation has occurred or is occurring, the board shall rescind the order or penalty.

(f) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the board may institute a civil action in the name of the State to collect the administrative penalty, which shall be a government realization. In any proceeding to collect the administrative penalty imposed, the board need only show that:

(1) Notice was given;
(2) A hearing was held, or the time granted for requesting a hearing has run without such a request;
(3) The administrative penalty was imposed; and
(4) The penalty remains unpaid.

(g) In connection with any hearing held pursuant to this section, the board may subpoena the attendance of witnesses and the production of evidence on behalf of all parties."
SECTION 5. Section 6E-11, Hawai‘i Revised Statutes, is amended by amending subsections (f) and (g) to read as follows:

"(f) Any person who violates this section shall be fined not more than [$10,000] $25,000 for each separate violation. If the violator directly or indirectly has caused the loss of, or damage to, any historic property or burial site, the violator shall be fined an additional amount determined by the environmental court or an administrative adjudicative authority to be equivalent to the value of the lost or damaged historic property or burial site. Each day of continued violation of this provision shall constitute a distinct and separate violation for which the violator may be punished. Land owners and developers responsible for projects where violations are found to have occurred shall execute any mitigation and preservation measures ordered by the department and shall be jointly and severally liable for the costs of such mitigation and preservation. Equipment used by a violator for the taking, appropriation, excavation, injury, destruction, or alteration of any historic property or burial site, or for the transportation of the violator to or from the historic property or burial site, shall be subject to seizure and disposition by the State without compensation to its owner or owners."
(g) Any person who [knowingly] violates this chapter with respect to burial sites shall also be prohibited from participating in the construction of any state or county funded project for ten years. The department shall maintain a list of violators who have violated this chapter with respect to burial sites during the preceding ten years and the dates and locations of such violations, provided that the list shall be transmitted to all other state departments and the counties annually, and made available to the public."

SECTION 6. Section 6E-11.5, Hawai‘i Revised Statutes, is amended to read as follows:

"§6E-11.5 Civil penalties. Except as provided in section 6E-11, any person who violates this chapter, or any rule adopted pursuant to this chapter shall be fined not less than $500 nor more than [[$10,000]] $25,000 for each separate violation. Each day of each violation constitutes a separate violation."

SECTION 7. Section 6E-16, Hawai‘i Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Subject to legislative authorization, the department may expend moneys from the fund:

(1) For permanent and temporary staff positions;

(2) To replenish goods;

(3) To produce public information materials;"
(4) To provide financial assistance to public agencies and private agencies in accordance with chapter 42F involved in historic preservation activities other than those covered by section 6E-9; [and]

(5) To cover administrative and operational costs of the historic preservation program[†]; and

(6) To cover administrative and operational costs for enforcement of this chapter."

SECTION 8. Chapter 6E, Hawai‘i Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"§6E— Citizen complaint intake hotline. (a) The department shall establish an intake hotline by which citizens may confidentially report via telephone or electronic communication alleged violations of this chapter.

(b) The department shall develop and distribute to the public appropriate informational materials, including a worksite poster that explains the statutory protections for burials, historical sites, and archaeological resources, and provides information on how citizens can submit complaints to the citizen complaint intake hotline.

(c) Beginning on July 1, 2021, a copy of the department’s informational poster shall be prominently posted at all
worksites where ground disturbing construction activities take place to provide notice of the citizen complaint intake hotline to construction personnel or the public."

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

INTRODUCED BY:______________________________

By Request
CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO ADOPT ADMINISTRATIVE RULES TO BETTER PROTECT IWI KUPUNA AND NATIVE HAWAIIAN CULTURAL AND HISTORIC RESOURCES.

WHEREAS, our State’s cultural heritage is imbued in its historic and cultural resources; and

WHEREAS, preservation of irreplaceable historic properties and cultural resources as well as responsible stewardship of precious and sacred iwi kupuna is of utmost importance to Native Hawaiians and the State; and

WHEREAS, Chapter 6E, Hawai‘i Revised Statutes, authorizes the Department of Land and Natural Resources (Department), through its State Historic Preservation Division, to adopt rules in accordance with Chapter 91, Hawai‘i Revised Statutes, in order to administer historic preservation review laws and regulate the treatment and protection of invaluable historic properties and resources throughout the state; and

WHEREAS, the Department’s historic preservation rule chapters have not been updated in over fifteen years or longer in some instances; and

WHEREAS, the Department’s historic preservation rules are, in places, incomplete, ineffective, and inadequate to provide clear guidance on historic preservation processes and strong protection for historic resources and iwi kupuna; and

WHEREAS, the Department’s historic preservation rules contain no standards for professional responsibility in archaeology and no process to regulate archaeology permits or discipline archaeologists who engage in practices that cause harm to historical resources or departmental resource waste; and

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WHEREAS, the Department’s historic preservation rules fail
to distinguish requirements for projects aimed at developing
land which may harm, displace, or destroy historic and cultural
resources and projects aimed at rehabilitating, restoring,
preserving, and or stewarding historic or cultural resources; and

WHEREAS, the Department’s historic preservation rules have
failed to adequately effectuate statutory protections for burial
sites, especially in areas with large concentrations of skeletal
remains, as contemplated in Section 6E-63, Hawai‘i Revised
Statutes; and

WHEREAS, under current historic preservation rules,
“previously identified” burials are burials identified during an
archaeological inventory survey (AIS) or burials previously
registered with the State Historic Preservation Division; and

WHEREAS, “inadvertently discovered” burials are all other
burials including burials found during exploratory testing that
may use the same exact methodologies as an AIS and that may
occur prior to the commencement of work; and

WHEREAS, the current distinction between what are
considered “previously identified” burials and “inadvertently
discovered” burials leads to vastly different decision-making
processes, with “previously identified” burial disposition
determinations made by the Island Burial Councils and
“inadvertently discovered” burial disposition determinations
made by the State Historic Preservation Division; and

WHEREAS, the Island Burial Councils possess far more
appropriate expertise to advise upon, and make determinations
about dispositions of burials and moepu, irregardless of their
classification as “previously identified” or “inadvertently
discovered”; and

WHEREAS, the distinction between “previously identified”
bruals and “inadvertently discovered” burials does not warrant
such vastly differential treatment such that burial councils are
completely left out of decision-making on burial dispositions
for “inadvertently discovered” burials, especially when the
“inadvertently discovered” burials are located in close
proximity to previously identified burials, leading to patchwork
and inconsistent burial treatment plans; and

WHEREAS, the different processes, treatments, and
dispositions applied respectively to “previously identified” and
“inadvertently discovered” burials has incentivized
irresponsible archaeological testing practices that minimize the
prior identification of burial sites, and that has thereby
resulted in the disinterment of countless burials contrary to
the intent of Hawai‘i’s historic preservation laws; and

WHEREAS, the Department’s historic preservation rules
require recordation of the metes and bounds of unmarked burial
sites with the Bureau of Conveyances to provide perpetual
protection to such sites, but they do not require the same for
historic preservation sites such as heiau, which has caused the
unintentional destruction of many historic properties; and

WHEREAS, the Department’s historic preservation rules
require consultation with descendants and knowledgeable
individuals to inform determinations on the historic
significance of sites, but these consultation requirements are
inconsistently effectuated and inadequately enforced; and

WHEREAS, the inadequacy of the Department’s historic
preservation rules has caused much confusion, costly litigation,
and the destruction of invaluable and irreplaceable historic
resources and cultural sites as well as iwi kupuna; now,
therefore,

BE IT RESOLVED by the [originating chamber] of the
Thirtieth Legislature of the State of Hawai‘i, Regular Session of
2021, the [non-originating chamber] concurring, that the
Department of Land and Natural Resources is requested to adopt
administrative rules that strengthen historic resource
protections by:

(1) Improving accountability for archaeologists
responsible for surveying, recording, and making
recommendations for treatment of historic resources
discovered on development sites;
(2) Developing an alternative or streamlined historic
preservation process to facilitate the approval of
preservation plans and permits for projects
specifically aimed at rehabilitating, preserving, or stewarding historic properties or cultural resources;

(3) Standardizing and formalizing the archaeological inventory survey sampling and reporting requirements to improve thoroughness and consistency;

(4) Creating a process to allow for the reclassification of “inadvertently discovered” burials as “previously identified”, especially where burials are discovered during exploratory testing authorized or ordered by the Department or where burials are discovered in concentrations;

(5) Empowering the Island Burial Councils with greater authority, responsibility, and deference to advise in the historic preservation review process and determine the treatment of Native Hawaiian burials;

(6) Providing stronger and periodic training to Island Burial Councils on their statutory and administrative authorities and responsibilities;

(7) Requiring landowners to record the metes and bounds of preservation sites with the Bureau of Conveyances to ensure perpetual protection of culturally significant and irreplaceable historic sites and resources;

(8) Clarifying requirements for consultation with the Native Hawaiian community and organizations throughout the historic preservation review process when Native Hawaiian historic and cultural sites are threatened by development; and

(9) Providing for stricter fines, clearer enforcement processes, and a process by which citizens may report the discovery and potential destruction of burials and other historic resources, to improve the effectuation of historic preservation review process and the enforcement of historic properties protections; and

BE IT FURTHER RESOLVED that the Department of Land and Natural Resources is requested to report on the status and progress of its administrative rules proceedings to the Legislature no later than twenty days before the convening of the regular session of 2021; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Chairperson of the Board of Land and Natural Resources and the Chairperson of the Board of Trustees of the Office of Hawaiian Affairs.
C.R. NO. ___

OFFERED BY: ____________________________
By Request
A BILL FOR AN ACT

RELATING TO LANDOWNER LIABILITY.

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

SECTION 1. The legislature finds that article XII, section 7 of the Hawai‘i state constitution requires the state to protect and enforce the reasonable exercise of Native Hawaiian traditional and customary rights. The legislature further finds that Native Hawaiians are legally entitled to engage in the reasonable exercise of such rights and associated practices on both publicly and privately owned lands that are less than fully developed, regardless of whether or not they are granted express permission by landowners. However, notwithstanding the rights of Native Hawaiian cultural practitioners, public and private landowners and property managers may refuse to accommodate practitioners’ access to sites and resources on lands under their ownership or control, due to liability concerns. As a result, practitioners may often be forced to risk potential conflict with landowners or property managers as well as face potential citation and even arrest, in order to exercise their constitutionally recognized right to reasonably engage in Native Hawaiian traditional and customary practices.

OHA-6 Relating to Landowner Liability
The legislature finds that although there are statutory liability protections for private landowners who allow recreational users to access their lands free of charge, liability concerns regarding the scope of these protections continue to result in the denial of access to cultural practitioners seeking to enter private lands. In addition, the legislature finds that existing liability protections for landowners who allow the recreational access and use of private lands do not extend to public lands or landowners. Accordingly, the legislature finds that the state’s obligation to protect and enforce the constitutional rights of Native Hawaiians requires statutory amendments that can better facilitate the exercise of Native Hawaiian traditional and customary rights and associated practices, by explicitly extending liability protections to all landowners who specifically allow practitioners of Native Hawaiian traditional and customary practices to access and use their lands to engage in such practices.

The purpose of this Act is to establish a new chapter in the Hawai'i Revised Statutes that provides liability protections for public and private landowners who expressly allow practitioners of Native Hawaiian traditional and customary practices to access and use their lands to engage in such practices.
SECTION 2. The Hawai'i Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

§ -1 Purpose. The purpose of this chapter is to encourage owners of land to make land and water areas available for the exercise of Native Hawaiian traditional and customary rights and associated practices by limiting their liability toward persons entering thereon for such purpose.

§ -2 Definitions. As used in this chapter:

"Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land.

"Cultural practitioner" means any person who is on or about the premises that the owner of land either directly or indirectly invites or permits, without charge, entry onto the property for the purpose of engaging in a Native Hawaiian traditional and customary practice.

"Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to realty, other than lands owned by the government that are open to the public.

"Owner" means the possessor of a fee interest, a tenant, lessee, occupant, or person in control of the premises,
including but not limited to private individuals, corporations, trusts, and public entities.

"Native Hawaiian traditional and customary practice" means any practice that is exercised pursuant to article XII, section 7 of the Hawai‘i state constitution.

§ -3 Duty of care of owner limited. Except as specifically recognized by or provided in section -5, an owner of land owes no duty of care to keep the premises safe for entry or use by others for the purpose of engaging in a Native Hawaiian traditional and customary practice, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes, or to persons entering for a purpose in response to a cultural practitioner who requires assistance, either direct or indirect, including but not limited to rescue, medical care, or other form of assistance. For the purposes of this section, a statement or assertion that a person is seeking entry or use of the premises in order to engage in a Native Hawaiian traditional and customary practice shall be sufficient to establish that the person’s entry or use of the premises is for the purpose of engaging in such a practice.

§ -4 Liability of owner limited. (a) Except as specifically recognized by or provided in section -5 an owner of land who either directly or indirectly invites or permits
without charge any person to use the property for the purpose of engaging in a Native Hawaiian traditional and customary practice does not:

(1) Extend any assurance that the premises are safe for any purpose;

(2) Confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed;

(3) Assume responsibility for, or incur liability for, any injury to person or property caused by an act of omission or commission of such persons; and

(4) Assume responsibility for, or incur liability for, any injury to person or persons who enter the premises in response to an injured cultural practitioner.

(b) An owner of land who is required or compelled to provide access or parking for such access through or across the owner's property because of state or county land use, zoning, or planning law, ordinance, rule, ruling, or order, to reach property used for the purpose of engaging in a Native Hawaiian traditional and customary practice, shall be afforded the same protection as to such access, including parking for such access, as an owner of land who invites or permits any person to use that owner's property for the purpose of engaging in a Native Hawaiian traditional and customary practice under subsection (a).
§ -5 Exceptions to limitations. Nothing in this chapter limits in any way any liability which otherwise exists:

1. For wilful or malicious failure to guard or warn against a dangerous condition, use, or structure which the owner knowingly creates or perpetuates and for wilful or malicious failure to guard or warn against a dangerous activity which the owner knowingly pursues or perpetuates.

2. For injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for the use thereof, except that in the case of land leased to the State or a political subdivision thereof, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this section.

3. For injuries suffered by a house guest while on the owner's premises, even though the injuries were incurred by the house guest while engaged in one or more of the activities designated in section -2.

§ -6 Persons using land. Nothing in this chapter shall be construed to:

1. Create a duty of care or ground of liability for injury to persons or property.
(2) Relieve any person using the land of another for the purposes of engaging in a Native Hawaiian traditional or customary practice from any obligation which the person may have in the absence of this chapter to exercise care in the person's use of such land and in the person's activities thereon, or from the legal consequences of failure to employ such care."

SECTION 6. This Act shall take effect upon its approval.

INTRODUCED BY: ________________________________

BY REQUEST

OHA-6 Relating to Landowner Liability
A BILL FOR AN ACT

RELATING TO A WATER STORAGE AND DISTRIBUTION SYSTEM FOR CERTAIN AGRICULTURAL LAND IN WAHIAWĀ, OʻAHU.

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

SECTION 1. The director of finance is authorized to issue general obligation bonds in the sum of $3,000,000 or so much thereof as may be necessary and the same sum or so much thereof as may be necessary is appropriated for fiscal year 2020-2021 for the purpose of funding construction costs of a water storage and distribution system on agricultural lands owned by the Office of Hawaiian Affairs in Wahiawā, Oʻahu surrounding the Kūkaniloko Birthing Stones site.

The project will include the water storage structures, site work, security fencing, piping, distribution pumps, and stub outs to feed an irrigation system.

The sum appropriated shall be expended by the Office of Hawaiian Affairs for the purposes of this Act.

SECTION 2. The appropriation for the capital improvement project authorized by this Act shall not lapse at the end of the fiscal biennium for which the appropriation is made; provided

Kūkaniloko Bill
that all moneys from the appropriation unencumbered as of June 30, 2022 shall lapse as of that date.

SECTION 3. This Act shall take effect on July 1, 2020.

INTRODUCED BY:______________________________

By Request
STATE OF HAWA'I
OFFICE OF HAWA'IAN AFFAIRS

MEETING OF THE
COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT

DATE: Wednesday, November 27, 2019
TIME: 1:30 p.m.
PLACE: Mauli Ola Boardroom
Na Lama Kukui
560 N. Nimitz Highway
Honolulu, HI 96817

AGENDA

I. Call to Order
II. Public Testimony*
III. Approval of Minutes
   A. October 16, 2019
IV. Unfinished Business
   A. ACTION ITEM: BAE #19-02: Approval of 2020 OHA Legislative Package**
   B. Consultation with OHA Corporate Counsel attorney Everett Ohta, Esq. regarding questions and issues pertaining to the Board’s powers, duties, privileges, and liabilities related to a 2006 Memorandum of Agreement between the Kaua‘i Island Utility Cooperative and the Office of Hawaiian Affairs. HRS § 92-5(a)(4).
   C. Consultation with Board Counsel Robert G. Klein, Esq., regarding questions and issues pertaining to the Board’s powers, duties, privileges, and liabilities with respect to legal issues pertaining to sovereign immunity. HRS § 92-5(a)(4).
V. New Business
VI. Executive Session***
   A. Approval of Executive Session Minutes for March 16, 2016
   B. Consultation with OHA Corporate Counsel attorney Everett Ohta, Esq. regarding questions and issues pertaining to the Board’s powers, duties, privileges, and liabilities related to a 2006 Memorandum of Agreement between the Kaua‘i Island Utility Cooperative and the Office of Hawaiian Affairs. HRS § 92-5(a)(4).
   C. Consultation with Board Counsel Robert G. Klein, Esq., regarding questions and issues pertaining to the Board’s powers, duties, privileges, and liabilities with respect to legal issues pertaining to sovereign immunity. HRS § 92-5(a)(4).
VII. Community Concerns*
VIII. Announcements
IX. Adjournment

If you require an auxiliary aid or accommodation due to a disability, please contact Raina Gushiken at telephone number 594-1772 or by email at: rainag@oha.org no later than three (3) business days prior to the date of the meeting.

*Notice: Persons wishing to provide testimony are requested to submit 13 copies of their testimony to the Chief Executive Officer at 560 N. Nimitz, Suite 200, Honolulu, HI 96817 or fax to 594-1868, or email BOTmeetings@oha.org 48 hours prior to the scheduled meeting. Persons wishing to testify orally may do so at the meeting, provided that oral testimony shall be limited to five minutes.

**Notice: Trustees may establish or revise an OHA position on ANY proposed bill / resolution / executive message currently moving through the state legislature or other relative elected body. The Matrices, which are available for public review in the meeting room at the stated meeting, provide a brief description of each bill, the bill’s number, the bill’s title, the bill’s intent, and the proposed and specific OHA position on each measure, current through 11/26/19. However, the Trustees both in committee and as the Board of Trustees (BOT) reserve the right to discuss any and all bills on the Matrices, as well as those that time does not permit to be placed on the Matrices, in order to discharge their fiduciary obligations as Trustees of the Office of Hawaiian Affairs.

***Notice: This portion of the meeting will be closed pursuant to HRS § 92-5.

†Notice: The 72 Hour rule, pursuant to OHA BOT Operations Manual, Section 49, shall be waived for distribution of new committee materials.

Trustee John Waihe‘e IV, Chair
Committee on Beneficiary Advocacy and Empowerment