



2018 OHA Legislative Package

OHA-5

HB1745/SB2134

Native Hawaiian Law Training Course

The State of Hawai‘i’s constitution places mandates upon the state to protect Native Hawaiian traditional and customary rights, but until recently there was no requirement that officials with such responsibilities receive training related to the fulfillment of these responsibilities. Act 169 (Session Laws 2015) gave new life to Hawai‘i’s constitutional mandates to protect Native Hawaiian traditional and customary rights and uphold the public trust, by requiring certain state board and commission members to attend a Native Hawaiian Law Training Course. **After two highly successful and well-received years, HB1745/SB2134 now seeks to require additional relevant state and county officials to also take the training course**, so that they too may understand and make decisions that are consistent with their constitutional and fiduciary obligations to Native Hawaiians and the public.

New state and county officials who would be required to attend the Native Hawaiian Law Training Course include department heads and relevant administrators from the **Department of Land and Natural Resources**, the **Department of Transportation**, and the **Department of Health**, as well as the heads of the **county planning departments** and members of the **county councils and planning commissions**. All of the individuals occupying these positions administer resources and programs that directly impact Native Hawaiian traditional and customary rights and Hawai‘i’s natural and cultural resources, and all accordingly hold specific, affirmative legal obligations to the Native Hawaiian community and the larger public. HB1745/SB2134 would provide these individuals with a critical opportunity to better understand their obligations to protect and enforce the unique rights of Native Hawaiians, and to ensure that our natural and cultural resources are properly protected and conserved for present and future generations.

WHAT WILL THIS BILL DO?

HB1745/SB2134 would require additional state and county officials to attend a Native Hawaiian Law Training Course, funded by OHA, so that they can better understand the state’s legal obligations to Native Hawaiians and the public trust in our natural and cultural resources.

WHAT TYPES OF LEGAL OBLIGATIONS EXIST RELATING TO NATIVE HAWAIIANS AND THE PUBLIC TRUST?

Examples of the state’s legal obligations towards Native Hawaiians and the public trust include: analyzing the impacts and mitigation options for decisions that affect Native Hawaiian traditional and customary practices; ensuring that natural and cultural resources are used and managed for the benefit of the present and future generations; and following procedural protections for iwi kūpuna and sacred sites.

WHY IS THIS BILL NECESSARY?

While Act 169 already requires key board and commission members to attend the training course, the proposals and recommendations presented to these members are first developed by agency staff and approved by the department heads and administrators named in this bill; these

department heads and administrators also oversee the day-to-day implementation of agency programs in ways that can impact Native Hawaiian rights and natural and cultural resources. **Requiring relevant department heads and administrators to also attend the training course will therefore better ensure that a broader range of government actions, including policy recommendations and program implementation, more fully reflect the state's legal obligations to Native Hawaiians and the public trust.**

Similarly, the county council members and planning officials named in this bill render critical decisions on county land uses that can significantly impact Native Hawaiian rights and natural and cultural resources; accordingly, requiring these individuals to attend the training course will better ensure that county planning and land use decision-making also protect Native Hawaiian rights and uphold the public trust.

ARE THERE ANY FISCAL IMPLICATIONS OF THE BILL?

No. OHA has funded and will continue to fund the administration of the training course. **Rather, this bill is likely to save the state and counties money and resources that may otherwise need to be expended on contested policy decisions that fail to protect the rights of Native Hawaiians or properly fulfill the public trust.**