A BILL FOR AN ACT

RELATING TO HAWAIIAN EXPERTISE IN LAND USE AND RESOURCE MANAGEMENT.

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

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

Unfortunately, despite the regular provision of notice to board and commission administrators, 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 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 this 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, Hawaii's political history, the public land trust, Native Hawaiian traditional and customary rights, Hawaii'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 Act 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, Hawaii Revised Statutes, is amended to read as follows:

"§10-42(4) Training relating to native Hawaiian and Hawaiian traditional and customary rights, natural resources and access rights, and the public trust. (a) All council, board,
and commission members identified in section 10-41(a) shall complete the training course administered by the office of Hawaiian affairs pursuant to this section within twelve months of the date of the member's initial appointment. Members who fail to complete the training course within the required period shall be:

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

(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 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 and 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.

The office of Hawaiian 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.

The office of Hawaiian affairs shall offer the training course at least twice per year.

The governor shall provide to the office of Hawaiian 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, Hawaii 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.

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 ('aina) 'aina.

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.

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 a vacancy attributable to the expiration of a
term, the list shall be submitted on the first
business day of December prior to the expiration of
the term; 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.

(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, Hawaii Revised Statutes, is
amended by amending subsection (a) to read as follows:

"[+] (a) [+] 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
land practices[\textsuperscript{7}], 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 a vacancy attributable to the expiration of a
term, the list shall be submitted on the first
business day of December prior to the expiration of
the term; 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, Hawaii 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, Hawaii 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, Hawaii 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, Hawaii 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
Report Title:
Office of Hawaiian Affairs (OHA) Package; Department of Land and Natural Resources; BLNR; State Land Use Commission; Council; Board; Commission; Members; Training; Appointment

Description:
Prohibits council, board, and commission members from serving if the member has not completed, within the requisite time, the required training course related to native Hawaiian and Hawaiian traditional and customary rights, native Hawaiian and Hawaiian natural resource protection and access rights, and the public trust, including the State's trust responsibility. Requires that at least 4 members of each the board of land and natural resources and the state land use commission be appointed from a list submitted by the office of Hawaiian affairs.

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