

THIRTIETH LEGISLATURE, 2020  
STATE OF HAWAI'I

\_\_\_\_.B. NO.\_\_\_\_

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# 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:**

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

13           Unfortunately, despite the regular provision of notice to  
14 board and commission administrators, a significant number of  
15 board and commission members subject to the mandatory training  
16 course continue to fail to comply with their training course  
17 completion responsibility. As a result, critical land use and

1 resource management decision-making may continue to be less than  
2 fully informed on Native Hawaiian concepts, practices, and  
3 rights.

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

16       These issues in turn have led and continue to lead to  
17 substantial conflict, distrust in government decisions and  
18 processes, and even legal action against the State, and may  
19 further foreclose critical opportunities to ensure our islands'  
20 resiliency and self-sufficiency through culturally-informed land  
21 use and resource management.

1           Accordingly, the legislature intends to ensure a deeper  
2 understanding among board and commission members of the State's  
3 legal responsibilities to Native Hawaiians, Hawai'i's political  
4 history, the public land trust, Native Hawaiian traditional and  
5 customary rights, Hawai'i's water laws and the public trust  
6 doctrine, and laws relating to Native Hawaiian burials. The  
7 legislature further intends to ensure greater recognition and  
8 incorporation of Hawaiian knowledge, values, and rights in land  
9 use and resource management decision-making. The purpose of  
10 this measure is to:

- 11           (1) Prohibit council, board, and commission members who  
12           fail to meet their training course completion  
13           requirement from serving on a permitted interaction  
14           group or voting on matters before their respective  
15           councils, boards, or commissions;
- 16           (2) Require council, board, and commission members who  
17           fail to meet their training course completion  
18           requirement to complete their training requirement or  
19           be reconfirmed by the senate by the end of the regular  
20           legislative session following their training course  
21           completion deadline;

1           (3) Require the Office of Hawaiian Affairs and the  
2           department of land and natural resources to compile an  
3           annual report of council, board, and commission  
4           members who have failed to complete their training  
5           course requirement, and to submit the report to the  
6           governor and legislature no later than twenty days  
7           prior to the convening of the regular legislative  
8           session;

9           (4) Require four members of the board of land and natural  
10          resources to be nominated from a list provided to the  
11          governor by the Office of Hawaiian Affairs; and

12          (5) Require four members of the land use commission to be  
13          nominated from a list provided to the governor by the  
14          Office of Hawaiian Affairs.

15          SECTION 2. Section 10-42, Hawai'i Revised Statutes, is  
16          amended to read as follows:

17                "~~{}~~§10-42~~{}~~ **Training relating to native Hawaiian and**  
18 **Hawaiian traditional and customary rights, natural resources and**  
19 **access rights, and the public trust.** (a) All council, board,  
20 and commission members identified in section 10-41(a) shall  
21 complete the training course administered by the ~~[office]~~ Office  
22 of Hawaiian ~~[affairs]~~ Affairs pursuant to this section within

1 twelve months of the date of the member's initial appointment.

2 Members who fail to complete the training course within the  
3 required period shall be:

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

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

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

1        (c) The Office of Hawaiian Affairs and the department of  
2 land and natural resources shall prepare an annual report of all  
3 council, board, and commission members who have failed to meet  
4 the training requirement in this section as of September 21 of  
5 each year, which shall be made available for public inspection  
6 at the Office of Hawaiian Affairs, the department of land and  
7 natural resources, and submitted to the governor and the  
8 legislature no later than twenty days prior to the convening of  
9 each regular session of the legislature.

10        [~~(b)~~] (d) The [office] Office of Hawaiian [affairs,]  
11 Affairs, at its own expense, shall establish, design, and  
12 administer a training course relating to native Hawaiian and  
13 Hawaiian traditional and customary rights, native Hawaiian and  
14 Hawaiian natural resource protection and access rights, and the  
15 public trust, including the State's trust responsibility. The  
16 training course shall include:

- 17        (1) Historical information, explanations, and discussions  
18                of key state laws, state constitutional provisions,  
19                and court rulings that reaffirm and provide for the  
20                protection of native Hawaiian and Hawaiian rights; and  
21        (2) A discussion of the importance of public trust

1 resources and various programs to native Hawaiian and  
2 Hawaiian rights.

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

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

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

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

17 "**§26-15 Department of land and natural resources.** (a)  
18 The department of land and natural resources shall be headed by  
19 an executive board to be known as the board of land and natural  
20 resources, except for matters relating to the state water code  
21 where the commission on water resource management shall have  
22 exclusive jurisdiction and final authority.

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

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

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

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

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

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

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

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

21          [~~(e)~~] (d) The functions and authority heretofore exercised  
22 by the commissioner and board of public lands (including the

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

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

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

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

- 6 (1) For vacancies attributable to the expiration of terms,  
7 the list shall be submitted on the first business day  
8 of December prior to the expiration of the terms; and  
9 (2) For a vacancy that occurs during a board member's  
10 term, the list shall be submitted within thirty  
11 business days after the vacancy occurs.

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

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

1 shall not be subject to challenge on the basis that the  
 2 requirement of section 26-15, Hawai'i Revised Statutes, that four  
 3 members of the board be appointed from lists submitted by the  
 4 Office of Hawaiian Affairs, has not been met.

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

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

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

INTRODUCED BY: \_\_\_\_\_

By Request