

Committee on Beneficiary Advocacy and Empowerment
Trustee John Waihe'e IV, *Chair*
Trustee Kaleihikina Akaka, *Vice Chair*
Members



**STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS**

Trustee Leina'ala Ahu Isa, At-Large
Trustee Dan Ahuna, Kaua'i / Ni'ihau
Trustee Keli'i Akina, At-Large
Trustee Brendon Kalei'aina Lee, At-Large
Trustee Carmen Hulu Lindsey, Maui
Trustee Robert K. Lindsey, Jr., Hawai'i Island
Trustee Colette Y. Machado, Moloka'i / Lāna'i

**MEETING OF THE
COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT**

DATE: Wednesday, November 27, 2019
TIME: 1:30 p.m.
PLACE: Maui Ola Boardroom
Nā 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.

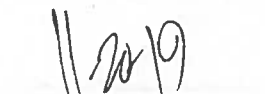
* Notice: Persons wishing to provide testimony are requested to submit 13 copies of their testimony to the Chief Executive Officer at 560 N. Nimitz, Suite 200, Honolulu, HI, 96817 or fax to 594-1868, or email BOTmeetings@oha.org 48 hours prior to the scheduled meeting. Persons wishing to testify orally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


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


Date

Committee on Beneficiary Advocacy and Empowerment
 Trustee John Waihe'e IV, *Chair*
 Trustee Kaleihikina Akaka, *Vice Chair*
Members



**STATE OF HAWAII
 OFFICE OF HAWAIIAN AFFAIRS**

Trustee Leina'ala Ahu Isa, At-Large
 Trustee Dan Ahuna, Kaua'i / Ni'ihau
 Trustee Keli'i Akina, At-Large
 Trustee Brendon Kalei'aina Lee, At-Large
 Trustee Carmen Hulu Lindsey, Maui
 Trustee Robert K. Lindsey, Jr., Hawai'i Island
 Trustee Colette Y. Machado, Moloka'i / Lāna'i

**MEETING OF THE
 COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT**

DATE: Wednesday, November 27, 2019
TIME: 1:30 p.m.
PLACE: Maui Ola Boardroom
 Nā 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.

Trustee John Waihe'e IV, Chair

Committee on Beneficiary Advocacy and Empowerment

Date

**STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
560 N. NIMITZ HIGHWAY, SUITE 200
COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT
MINUTES**

October 16, 2019 1:00 p.m.

ATTENDANCE:

Chairperson John Waihe'e, IV
Vice-Chairperson Kaleihikina Akaka
Trustee Dan Ahuna
Trustee Keli'i Akina
Trustee Brendon Kalei'āina Lee
Trustee C. Hulu Lindsey
Trustee Robert Lindsey
Trustee Colette Machado

EXCUSED:

Trustee Leina'ala Ahu Isa

BOT STAFF:

Alyssa-Marie Kau
Brandon Mitsuda
Crayn Akina
Kauikeaolani Wailehua
Lehua Itokazu

BOT STAFF (cont.):

Lei-Ann Durant
Lōpaka Baptiste
Maria Calderon
Melissa Wennihan
Nathan Takeuchi
Zuri Aki

ADMINISTRATION STAFF:

Sylvia Hussey, Ed. D., Ka Pouhana Kūikawā (Interim CEO)
Jenifer Jenkins, PP
Jocelyn Doane, PP
Keola Lindsey, ADV
Miles Nishijima, RMLA
Monica Morris, PP
Wayne Tanaka, PP

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:

MEMBERS			AT CALL TO ORDER (1:00 p.m.)	TIME ARRIVED
CHAIR	JOHN	WAIHE'E, IV	PRESENT	
VICE-CHAIR	KALEIHIKINA	AKAKA	PRESENT	
TRUSTEE	DAN	AHUNA	PRESENT	
TRUSTEE	KELI'I	AKINA	PRESENT	
TRUSTEE	BRENDON KALEI'ĀINA	LEE	PRESENT	
TRUSTEE	CARMEN HULU	LINDSEY	PRESENT	
TRUSTEE	ROBERT	LINDSEY	PRESENT	
TRUSTEE	COLETTE	MACHADO	PRESENT	

At the Call to Order, **EIGHT (8) Trustees are PRESENT**, thereby constituting a quorum.

EXCUSED from the BAE Meeting are:

MEMBERS			COMMENT
TRUSTEE	LEINA'ALA	AHU ISA	MEMO – REQUESTING TO BE EXCUSED

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**.

							1:01 p.m.
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA						EXCUSED
DAN	AHUNA	1		X			
VICE-CHAIR KALEIHIKINA	AKAKA			X			
KELI'I	AKINA			X			
BRENDON KALEI'ĀINA	LEE			X			
CARMEN HULU	LINDSEY			X			
ROBERT	LINDSEY		2	X			
COLETTE	MACHADO			X			
CHAIR JOHN	WAIHE'E			X			
TOTAL VOTE COUNT				8	0	0	1

MOTION: [X] UNANIMOUS [] PASSED [] DEFERRED [] FAILED

IV. UNFINISHED BUSINESS

None

V. NEW BUSINESS

A. 2020 Legislative Package Concepts Workshop**‡

Chair Waihe'e 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.

Package Development

- July – August
 - Internal outreach with OHA staff
 - External outreach with key stakeholders, experts and community leaders
- Compiled ~ 40 legislative proposals during this outreach
- Oct. 16 – BAE approval on Legislative Package concepts
- Nov. 6/Nov. 7 – BAE/BOT approval on Legislative Package language

Criteria

- Funding implications (OHA, state)
- How big of an issue?
 - Does it impact the broader Hawaiian community (broader public)? To what extent?
 - Is it state, county, or federal specific?

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.

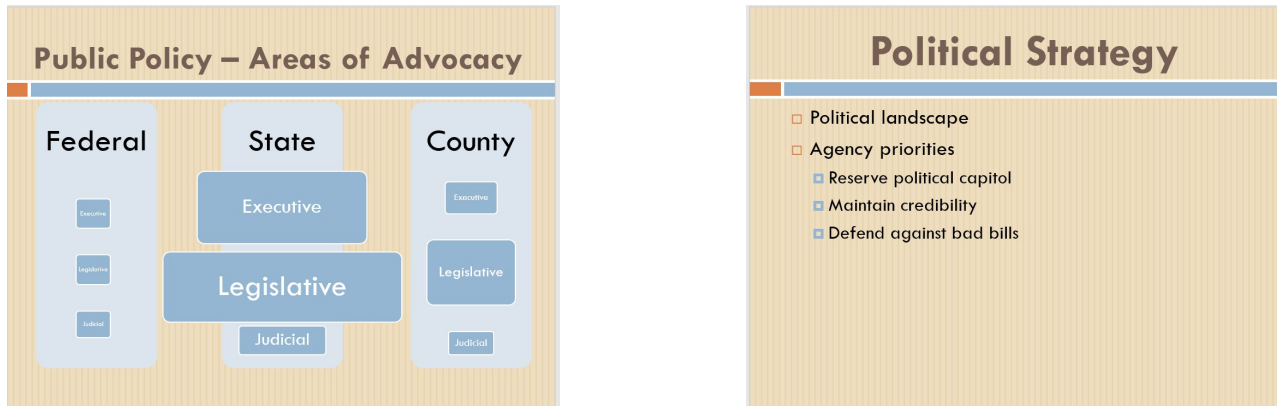
Criteria

- Feasibility
 - Likelihood of passing
 - Some measures introduced for purposes other than enactment
 - Education (e.g. Konohiki resolution)
 - Make statement (sugar sweetened beverage fee)
 - Start discussion (iwi to KIRC, PLT revenue)
 - For publicity (first year for HLIP assessment)

Criteria

- Solvability:
 - Have attempts been made to resolve administratively? Through compliance with existing policies?
 - Can it be solved through legislation?
 - Do stakeholders agree on the solution?
- Is OHA the appropriate lead?
 - Does it address our Strategic Plan?
 - Would it address a Hawaiian-specific problem? Would Hawaiians be disproportionately affected by problem/solution?
 - State lead – better chance, esp if impacts broader public
 - Community lead – Too controversial, too radical

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.

New Proposals

Ensuring Native Hawaiian Expertise in Land Use and Resource Management

- **Goal:** Greater recognition and incorporation of Hawaiian perspectives, expertise, and rights in land use and resource management decision-making.
- **Issues:**
 - Certain board and commission members (BLNR, CWRM, LUC) must attend a Native Hawaiian Law and Public Trust training course w/in 1 year, but not all comply.
 - Although BLNR & LUC have 1 dedicated seat for a member with NH expertise, decisions do not consistently reflect an appropriate consideration of NH knowledge, concerns, and rights.

New Proposals

Ensuring Native Hawaiian Expertise in Land Use and Resource Management (cont'd)

□ **Legislation:**

For training course compliance:

- Require an **annual report** by the state Boards and Commissions office of all individuals who fail to meet the one-year training deadline under the law;
- **Prohibit** individuals who fail to meet their training requirement from **serving on a permitted interaction group or voting on any matter** before their respective boards or commissions, until they attend a training course; and
- Require untrained individuals to take the training course or **be reconfirmed by the Senate** by the end of the regular legislative session following their deadline to attend a training;
- Make untrained board or committee members **personally liable** for breaches of trust.

For more meaningful NH perspectives:

- At least **half** of LUC & BLNR members must be appointed from a list of nominees submitted by OHA.

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.

New Proposals

Addressing Employment Discrimination Against Former Pa'ahao

- **Goal:** Reduce barriers to employment for former pa'ahao and facilitate successful re-entry.
- **Issue:** Allowing employers to access 10-year criminal records may unreasonably inhibit former pa'ahao from obtaining legitimate employment and re-integrating into society.
- **Legislation:** Limit background checks to a maximum time period of one year (down from ten years) prior to employment, except where employers are expressly permitted to inquire into criminal history (e.g. DOE – suitability to work with children, DPS – risks to dept, inmates, public).
 - National studies show criminal records have a significant impact on employment opportunities even for relatively minor and old convictions.
 - Recidivism mostly likely to occur within 2 year period following release.
 - Complements existing tax incentive for hiring pa'ahao in first year after release.

New Proposals

Addressing Systemic Housing Discrimination Against Indigent Native Hawaiians

- **Goal:** Provide housing relief for indigent Native Hawaiians on Section 8.
- **Issue:** NHs more likely to receive Section 8 housing vouchers or be on the waitlist for Section 8; however, **express discrimination** against prospective Section 8 tenants is rampant.
- **Likely Opposition:**
 - Wait times for landlord certification
 - Concerns about property damage and recovery
- **Legislation:**
 - Prohibit Section 8 discrimination in rental advertisements and decision-making
 - Note: HPHA started pre-certification program to reduce landlord eligibility wait times.

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.

New Proposals

Protecting Our Ancestors

- **Goal:** Better protect iwi kupuna and historic/archaeological sites.
- **Issue:** SHPD declines to investigate potential impacts to iwi kupuna/historic sites for unpermitted grading or construction activities after-the-fact:
 - Lack of risk creates financial incentive to build first, apply for permits later.
 - No permits means no HP review, no mitigation or protections as conditions of work.

New Proposals

Protecting Our Ancestors (cont'd)

- **Legislation:**
 - **Mandatory minimum fines** to disincentivize unpermitted grading or construction activities that would **otherwise trigger HP review**;
 - Prohibit, subject to significant fines, any further work or permit issuance for the subject property, unless and until a SHPD **site inspection, paid for by landowner**;
 - Hold landowners and contractors jointly liable for all **assessment and mitigation costs** associated with unpermitted activities;
 - Establish a **citizen complaint process** and informational resources for citizens to document/report (anonymously, if necessary) impacts to iwi kupuna or historic sites;
 - Require the **posting of notice** at worksites regarding iwi kupuna and historic preservation laws, and informing workers and the public of the citizen complaint process; and
 - Expressly affirm that **Historic Preservation Special Fund** monies can be used for enforcement activities.

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.

New Proposals

Protecting our Ancestors Part 2 (Rulemaking Resolution)

- **Goal:** Ensure long-awaited rule amendments address concerns relating to iwi and archaeological site protection.
- **Issue:** Rule amendments are being proposed to SHPD rules for the first time in two decades; however, uncertainty exists as to whether longstanding iwi and archaeological site protection issues will be addressed.

New Proposals

Protecting our Ancestors Part 2 (Rulemaking Resolution)

- **Legislation:** Resolution urging SHPD rule amendments including, but not limited to, provisions that:
 - Improve accountability for archaeologists responsible for surveying development sites;
 - Broaden the authority and responsibilities of the Island Burial Councils;
 - Amend assessment requirements to reduce the likelihood of "inadvertently discovered" burial sites during construction activities;
 - Expand protections of "inadvertently discovered" burial sites and iwi kupuna;
 - Improve requirements for consistent consultation with descendants and knowledgeable individuals throughout the historic preservation review process;
 - Require the metes and bounds recordation of preservation sites at the Bureau of Conveyances; and
 - Create a process to document and address rule violations by cultural resource contractors.

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.

New Proposals

Facilitating Practitioner Access On Private Lands

- **Goal:** Encourage private landowner accommodation of cultural practitioners and facilitate the perpetuation of Native Hawaiian traditional and customary practices.
- **Issue:** Landowners are reluctant to provide access to cultural practitioners due to liability concerns; practitioners must risk conflict or citation/arrest to exercise their right to perpetuate their practices.
- **Legislation:**
 - Provide liability protection to landowners who expressly permit practitioners to access their lands, from legal claims arising from such access.

New Proposals

Capital Improvement Project Budget Request for OHA's Wahiawā Lands

- **Goal:** OHA is working to plan, permit, and otherwise prepare for the construction of a water storage and distribution system on OHA's 511-acre property in Wahiawā.
- **Issue:** Water is integral to OHA's plans for Wahiawā; while OHA has secured water from ADC, need to build storage and delivery infrastructure (est. cost of \$3 million).
- **Legislation:** Capital Improvement Budget Request for \$3 million.
 - Note: OHA has committed funding in FY 20 (\$200k) and 21 (\$300k) for the planning and permitting of the system and is starting the procurement process.

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.

Possible Future Proposals/Discussions

- OHA = Sovereign Immunity Analogous to the State
- Audit Implications
 - CLA Audit
 - 2019 Budget Bill
- Lot I (Kakaako)

Coordinated Advocacy

Sentencing Reform

- **Goal:** To address the inhumane and costly overcrowding in our detention facilities and mitigate the disproportionate impacts caused by four decades of "tough-on-crime" sentencing policies (including mandatory minimum and enhanced sentencing laws).
- An ad-hoc group of judges, lawyers, community advocates, etc. will take the lead; OHA staff has been supporting and recommends further coordinated advocacy to support their work.
- **Legislation under consideration:**
 - Making certain offenses eligible for **community-based sentences** rather than incarceration;
 - Reducing the length and severity of custodial sentences by **redefining or reclassifying crimes**, or **repealing mandatory minimum sentences**;
 - **Reducing or eliminating sentencing enhancements** for repeat offenders in **certain classes of offenses**;
 - Shortening lengths of incarceration by **expanding opportunities to earn sentence credits** (which shave off time in custody and advance parole eligibility timelines); and
 - Reducing the number of people entering jails and prisons for violations of community supervision requirements by implementing evidence-based practices such as **graduated responses to violations** as well as **community-based alternative sanctions**.

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.

2020 Legislative Schedule

- Aug./Sept. – Internal/External Outreach
- Aug. 21 – 2019 Legislative Overview with BAE
- Oct. 16 – Legislative Package Concepts Workshop with BAE
- Oct. 17 – Legislative Package Concepts Workshop with BOT
- Nov. 6 – Legislative Package Final Language Approval with BAE*
- Nov. 7 – Legislative Package Final Language Approval with BOT*
- Jan. 3 – Deadline to submit OHA Annual Report
- Jan. 6** – Deadline to submit OHA Legislative Package*
- Jan. 15 – Opening of 2020 Legislative Session*

* Pending confirmation and approval
**Need to confirm date

Pau

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 Waihe’e asks if there is any discussion. There is none.

Chair Waihe’e asks if any members vote NO or ABSTAIN. There are no dissenting votes.

							2:35 p.m.
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA‘ALA	AHU ISA						EXCUSED
DAN	AHUNA	1		X			
VICE-CHAIR KALEIHIKINA	AKAKA			X			
KELI‘I	AKINA			X			
BRENDON KALEI‘ĀINA	LEE		2	X			
CARMEN HULU	LINDSEY			X			
ROBERT	LINDSEY			X			
COLETTE	MACHADO			X			
CHAIR JOHN	WAIHE‘E			X			
TOTAL VOTE COUNT				8	0	0	1

MOTION: [X] UNANIMOUS [] PASSED [] DEFERRED [] FAILED

Chair Waihe’e 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

Committee on Beneficiary Advocacy and Empowerment
Trustee John Waihe'e IV, *Chair*
Trustee Kaleihikina Akaka, *Vice Chair*
Members



**STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS**

Trustee Leina'ala Ahu Isa, At-Large
Trustee Dan Ahuna, Kaua'i / Ni'ihau
Trustee Keli'i Akina, At-Large
Trustee Brendon Kalei'aina Lee, At-Large
Trustee Carmen Hulu Lindsey, Maui
Trustee Robert K. Lindsey, Jr., Hawai'i Island
Trustee Colette Y. Machado, Moloka'i / Lāna'i

**MEETING OF THE
COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT**

DATE: Wednesday, November 27, 2019
TIME: 1:30 p.m.
PLACE: Maui Ola Boardroom
Nā 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.

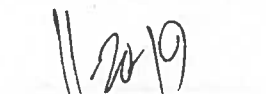
* Notice: Persons wishing to provide testimony are requested to submit 13 copies of their testimony to the Chief Executive Officer at 560 N. Nimitz, Suite 200, Honolulu, HI, 96817 or fax to 594-1868, or email BOTmeetings@oha.org 48 hours prior to the scheduled meeting. Persons wishing to testify orally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


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


Date



OHA

Action Item

Committee on Beneficiary Advocacy and Empowerment

November 27, 2019

BAE #19-02

Action Item Issue: To support the inclusion of new legislative proposals in the 2020 OHA Legislative Package

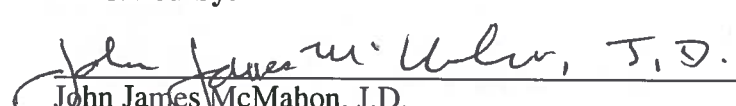
Prepared by:


Jocelyn M. Doane
Pou Kāko'o Kulekele Aupuni, Public Policy Manager

11/20/19

Date

Reviewed by:


John James McMahon, J.D.
Ka Pōhaku Kihī Paia Kū, Advocacy Counsel

11/20/19

Date

Reviewed by:


Keola Lindsey
Ka Poukihi Kū, Chief Advocate

11/20/19

Date

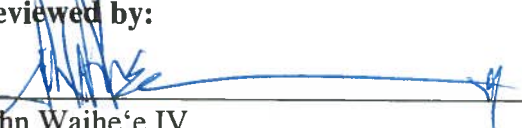
Reviewed by:


Sylvia M. Hussey, Ed.D.
Ka Pouhana Kūikawā, Interim Chief Executive Officer

11/21/19

Date

Reviewed by:


John Waihe'e IV
Luna Ho'omalua o ke Kōmike BAE
Chairperson, Committee on Beneficiary Advocacy and Empowerment

11/27/19

Date

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)

THIRTIETH LEGISLATURE, 2020
STATE OF HAWAII

____.B. NO.____

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:

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;

____.B. NO.____

(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~~] Office 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.

____.B. NO.____

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.

____.B. NO.____

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.

____.B. NO.____

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

____.B. NO.____

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

THIRTIETH LEGISLATURE, 2020
STATE OF HAWAII

____.B. NO.____

A BILL FOR AN ACT

RELATING TO EMPLOYMENT DISCRIMINATION.

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

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

____.B. NO.____

1 sentence imposed for the employee's or prospective employee's
2 conviction.

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

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

17 (2) The department of education pursuant to section
18 302A-601.5;

19 (3) The department of health with respect to employees,
20 providers, or subcontractors in positions that place
21 them in direct contact with clients when providing
22 non-witnessed direct mental health services pursuant
23 to section 321-171.5;

____.B. NO.____

- 1 (4) The judiciary pursuant to section 571-34;
- 2 (5) The counties pursuant to section 846-2.7(b)(5), (33),
- 3 (34), (35), (36), and (38);
- 4 (6) Armed security services pursuant to section 261-17(b);
- 5 (7) Providers of a developmental disabilities domiciliary
- 6 home pursuant to section 321-15.2;
- 7 (8) Private schools pursuant to sections 302C-1 and
- 8 378-3(8);
- 9 (9) Financial institutions in which deposits are insured
- 10 by a federal agency having jurisdiction over the
- 11 financial institution pursuant to section 378-3(9);
- 12 (10) Detective agencies and security guard agencies
- 13 pursuant to sections 463-6(b) and 463-8(b);
- 14 (11) Employers in the business of insurance pursuant to
- 15 section 431:2-201.3;
- 16 (12) Employers of individuals or supervisors of
- 17 individuals responsible for screening passengers or
- 18 property under title 49 United States Code section
- 19 44901 or individuals with unescorted access to an
- 20 aircraft of an air carrier or foreign carrier or in a
- 21 secured area of an airport in the United States
- 22 pursuant to title 49 United States Code section
- 23 44936(a);

____.B. NO.____

1 (13) The department of human services pursuant to sections
2 346-97 and 352-5.5;

3 (14) The public library system pursuant to section
4 302A-601.5;

5 (15) The department of public safety pursuant to section
6 353C-5;

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

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

14 (18) The department of health pursuant to section
15 321-15.2."

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

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

INTRODUCED BY: _____

By Request

THIRTIETH LEGISLATURE, 2020
STATE OF HAWAII

____.B. NO.____

A BILL FOR AN ACT

RELATING TO HISTORIC PRESERVATION.

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

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

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

15 Unfortunately, these goals are undermined when landowners
16 and developers circumvent required permits and, likewise, the
17 historic preservation review process they trigger. As a result,

1 it is impossible to know whether and how many significant
2 historic resources have been destroyed.

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

- 9 (1) Explicitly clarifying that any failure to comply with
10 advisement or approval processes that would trigger
11 state historic preservation review shall be a
12 violation of chapter 6E, Hawai'i Revised Statutes;
- 13 (2) Authorizing the state historic preservation division
14 of the department of land and natural resources to
15 issue an order to stop work immediately where such a
16 violation has occurred until a site inspection by
17 department staff or an approved archaeologist is
18 conducted and a work schedule for recommended
19 mitigation or restoration measures is approved by the
20 board of land and natural resources;
- 21 (3) Providing that any violators shall be responsible for
22 the costs of site inspections and any mitigation or
23 restoration measures recommended;

____.B. NO.____

- (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:

1 "(a) Before any agency or officer of the State or its
2 political subdivisions commences any project which may affect
3 historic property, aviation artifact, or a burial site, the
4 agency or officer shall advise the department and allow the
5 department an opportunity for review of the effect of the
6 proposed project on historic properties, aviation artifacts, or
7 burial sites, consistent with section 6E-43, especially those
8 listed on the Hawaii register of historic places. The proposed
9 project shall not be commenced, or if it has already begun,
10 continued, until the department has given its written
11 concurrence. If:

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

14 (2) Access to properties is restricted; or

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

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

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

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

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

12 SECTION 3. Section 6E-42, Hawai'i Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) Except as provided in section 6E-42.2, before any
15 agency or officer of the State or its political subdivisions
16 approves any project involving a permit, license, certificate,
17 land use change, subdivision, or other entitlement for use,
18 which may affect historic property, aviation artifacts, or a
19 burial site, the agency or office shall advise the department
20 and prior to any approval allow the department an opportunity
21 for review and comment on the effect of the proposed project on
22 historic properties, aviation artifacts, or burial sites,

1 consistent with section 6E-43, including those listed in the
2 Hawaii register of historic places. If:

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

5 (2) Access to properties is restricted; or

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

8 the department's review and comment may be based on a phased
9 review of the project; provided that there shall be a
10 programmatic agreement between the department and the project
11 applicant that identifies each phase and the estimated timelines
12 for each phase.

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

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

20 "**§6E-10.5 Enforcement.** (a) If the board of land and
21 natural resources determines that any person has violated or is
22 violating this chapter, or any rule adopted pursuant to this
23 chapter, the board shall serve written notice by certified mail

____.B. NO.____

1 or personal service upon the alleged violator or violators
2 specifying the alleged violation and may include with the
3 notice:

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

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

10 [~~(2)~~] (3) An order imposing penalties provided in section
11 6E-11.6; and

12 [~~(3)~~] (4) An order that the alleged violator or violators
13 appear before the board for a hearing at a time and
14 place specified in the notice or to be set later and
15 answer the charges complained of.

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

22 (1) Shall order the violator or violators to cease and
23 desist from the activities that violate this chapter

____.B. NO.____

1 or any rule adopted thereunder and to stop work in any
2 parcel or parcels where unauthorized or unapproved
3 work has commenced, until the board accepts the
4 written schedule required by this subsection;

5 (2) Shall order the alleged violator or violators to
6 submit a written schedule within thirty days
7 specifying the measures to be taken and the time
8 within which the measures shall be taken to bring that
9 person into compliance with this chapter or any rule
10 adopted thereunder[-]; provided that for violations
11 involving the commencement or continuation of work
12 without a written concurrence from the department as
13 required by 6E-8(a) or an approval from an agency or
14 office that would have triggered historic preservation
15 review requirements as required by 6E-42(c), the
16 written schedule shall include findings and a timeline
17 of mitigation or restoration measures for any impacted
18 or potentially impacted burial site or historic
19 property as recommended by department staff or an
20 archaeologist approved by the department who has
21 conducted an inspection of the site, provided further
22 that the violator or violators shall be responsible
23 for all costs of any site inspection. The board shall

____.B. NO.____

1 accept or modify the submitted schedule within sixty
2 days of receipt of the schedule. Any schedule not
3 acted upon after sixty days of receipt by the board
4 shall be deemed accepted by the board;

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

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

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

17 (c) If the board determines that any person has violated
18 an accepted schedule or an order issued pursuant to this
19 section, the board shall impose penalties by sending a notice in
20 writing, either by certified mail or by personal service to that
21 person, describing such non-adherence or violation with
22 reasonable particularity.

1 (d) Any order issued pursuant to this chapter shall become
2 final, unless the person or persons named therein requests in
3 writing, not later than twenty days after notice of violation
4 and order is served, a hearing before the board. Upon request
5 for a hearing, the board shall require that the alleged violator
6 or violators appear before the board for a hearing to answer the
7 charges issued, at a time and place specified in the notice or
8 otherwise set by the board.

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

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

21 (1) Affirm or modify any penalties imposed;

22 (2) Modify or affirm the order previously issued; or

1 (3) Issue an appropriate order or orders for the
2 prevention, abatement, or control of the violation or
3 for the taking of such other corrective action as may
4 be appropriate.

5 Any order issued after a hearing may prescribe timetables
6 for necessary action in preventing, abating, or controlling the
7 violation. If, after a hearing on an order or penalty contained
8 in a notice, the board finds that no violation has occurred or
9 is occurring, the board shall rescind the order or penalty.

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

16 (1) Notice was given;

17 (2) A hearing was held, or the time granted for requesting
18 a hearing has run without such a request;

19 (3) The administrative penalty was imposed; and

20 (4) The penalty remains unpaid.

21 (g) In connection with any hearing held pursuant to this
22 section, the board may subpoena the attendance of witnesses and
23 the production of evidence on behalf of all parties."

1 SECTION 5. Section 6E-11, Hawai'i Revised Statutes, is
2 amended by amending subsections (f) and (g) to read as follows:

3 "(f) Any person who violates this section shall be fined
4 not more than [~~\$10,000~~] \$25,000 for each separate violation. If
5 the violator directly or indirectly has caused the loss of, or
6 damage to, any historic property or burial site, the violator
7 shall be fined an additional amount determined by the
8 environmental court or an administrative adjudicative authority
9 to be equivalent to the value of the lost or damaged historic
10 property or burial site. Each day of continued violation of
11 this provision shall constitute a distinct and separate
12 violation for which the violator may be punished. Land owners
13 and developers responsible for projects where violations are
14 found to have occurred shall execute any mitigation and
15 preservation measures ordered by the department and shall be
16 jointly and severally liable for the costs of such mitigation
17 and preservation. Equipment used by a violator for the taking,
18 appropriation, excavation, injury, destruction, or alteration of
19 any historic property or burial site, or for the transportation
20 of the violator to or from the historic property or burial site,
21 shall be subject to seizure and disposition by the State without
22 compensation to its owner or owners.

1 (g) Any person who [~~knowingly~~] violates this chapter with
2 respect to burial sites shall also be prohibited from
3 participating in the construction of any state or county funded
4 project for ten years. The department shall maintain a list of
5 violators who have violated this chapter with respect to burial
6 sites during the preceding ten years and the dates and locations
7 of such violations, provided that the list shall be transmitted
8 to all other state departments and the counties annually, and
9 made available to the public."

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

12 **"§6E-11.5 Civil penalties.** Except as provided in section
13 6E-11, any person who violates this chapter, or any rule adopted
14 pursuant to this chapter shall be fined not less than \$500 nor
15 more than [~~\$10,000~~] \$25,000 for each separate violation. Each
16 day of each violation constitutes a separate violation."

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

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

- 21 (1) For permanent and temporary staff positions;
- 22 (2) To replenish goods;
- 23 (3) To produce public information materials;

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

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

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

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

12 "§6E- Citizen complaint intake hotline. (a) The
13 department shall establish an intake hotline by which citizens
14 may confidentially report via telephone or electronic
15 communication alleged violations of this chapter.

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

22 (c) Beginning on July 1, 2021, a copy of the department's
23 informational poster shall be prominently posted at all

____.B. NO.____

1 worksites where ground disturbing construction activities take
2 place to provide notice of the citizen complaint intake hotline
3 to construction personnel or the public."

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

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

INTRODUCED BY: _____

By Request

THIRTIETH LEGISLATURE, 2020
STATE OF HAWAII

____.C.R. NO. _____

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.

1 WHEREAS, our State's cultural heritage is imbued in its
2 historic and cultural resources; and
3

4 WHEREAS, preservation of irreplaceable historic properties
5 and cultural resources as well as responsible stewardship of
6 precious and sacred iwi kupuna is of utmost importance to Native
7 Hawaiians and the State; and
8

9 WHEREAS, Chapter 6E, Hawai'i Revised Statutes, authorizes
10 the Department of Land and Natural Resources (Department),
11 through its State Historic Preservation Division, to adopt rules
12 in accordance with Chapter 91, Hawai'i Revised Statutes, in order
13 to administer historic preservation review laws and regulate the
14 treatment and protection of invaluable historic properties and
15 resources throughout the state; and
16

17 WHEREAS, the Department's historic preservation rule
18 chapters have not been updated in over fifteen years or longer
19 in some instances; and
20

21 WHEREAS, the Department's historic preservation rules are,
22 in places, incomplete, ineffective, and inadequate to provide
23 clear guidance on historic preservation processes and strong
24 protection for historic resources and iwi kupuna; and
25

26 WHEREAS, the Department's historic preservation rules
27 contain no standards for professional responsibility in
28 archaeology and no process to regulate archaeology permits or
29 discipline archaeologists who engage in practices that cause
30 harm to historical resources or departmental resource waste; and
31

1 WHEREAS, the Department's historic preservation rules fail
2 to distinguish requirements for projects aimed at developing
3 land which may harm, displace, or destroy historic and cultural
4 resources and projects aimed at rehabilitating, restoring,
5 preserving, and or stewarding historic or cultural resources;
6 and
7

8 WHEREAS, the Department's historic preservation rules have
9 failed to adequately effectuate statutory protections for burial
10 sites, especially in areas with large concentrations of skeletal
11 remains, as contemplated in Section 6E-63, Hawai'i Revised
12 Statutes; and
13

14 WHEREAS, under current historic preservation rules,
15 "previously identified" burials are burials identified during an
16 archaeological inventory survey (AIS) or burials previously
17 registered with the State Historic Preservation Division; and
18

19 WHEREAS, "inadvertently discovered" burials are all other
20 burials including burials found during exploratory testing that
21 may use the same exact methodologies as an AIS and that may
22 occur prior to the commencement of work; and
23

24 WHEREAS, the current distinction between what are
25 considered "previously identified" burials and "inadvertently
26 discovered" burials leads to vastly different decision-making
27 processes, with "previously identified" burial disposition
28 determinations made by the Island Burial Councils and
29 "inadvertently discovered" burial disposition determinations
30 made by the State Historic Preservation Division; and
31

32 WHEREAS, the Island Burial Councils possess far more
33 appropriate expertise to advise upon, and make determinations
34 about dispositions of burials and moepu, irregardless of their
35 classification as "previously identified" or "inadvertently
36 discovered"; and
37

38 WHEREAS, the distinction between "previously identified"
39 burials and "inadvertently discovered" burials does not warrant
40 such vastly differential treatment such that burial councils are
41 completely left out of decision-making on burial dispositions
42 for "inadvertently discovered" burials, especially when the
43 "inadvertently discovered" burials are located in close

1 proximity to previously identified burials, leading to patchwork
2 and inconsistent burial treatment plans; and
3

4 WHEREAS, the different processes, treatments, and
5 dispositions applied respectively to "previously identified" and
6 "inadvertently discovered" burials has incentivized
7 irresponsible archaeological testing practices that minimize the
8 prior identification of burial sites, and that has thereby
9 resulted in the disinterment of countless burials contrary to
10 the intent of Hawai'i's historic preservation laws; and
11

12 WHEREAS, the Department's historic preservation rules
13 require recordation of the metes and bounds of unmarked burial
14 sites with the Bureau of Conveyances to provide perpetual
15 protection to such sites, but they do not require the same for
16 historic preservation sites such as heiau, which has caused the
17 unintentional destruction of many historic properties; and
18

19 WHEREAS, the Department's historic preservation rules
20 require consultation with descendants and knowledgeable
21 individuals to inform determinations on the historic
22 significance of sites, but these consultation requirements are
23 inconsistently effectuated and inadequately enforced; and
24

25 WHEREAS, the inadequacy of the Department's historic
26 preservation rules has caused much confusion, costly litigation,
27 and the destruction of invaluable and irreplaceable historic
28 resources and cultural sites as well as iwi kupuna; now,
29 therefore,
30

31 BE IT RESOLVED by the [originating chamber] of the
32 Thirtieth Legislature of the State of Hawai'i, Regular Session of
33 2021, the [non-originating chamber] concurring, that the
34 Department of Land and Natural Resources is requested to adopt
35 administrative rules that strengthen historic resource
36 protections by:
37

- 38 (1) Improving accountability for archaeologists
39 responsible for surveying, recording, and making
40 recommendations for treatment of historic resources
41 discovered on development sites;
42 (2) Developing an alternative or streamlined historic
43 preservation process to facilitate the approval of
44 preservation plans and permits for projects

- 1 specifically aimed at rehabilitating, preserving, or
2 stewarding historic properties or cultural resources;
3 (3) Standardizing and formalizing the archaeological
4 inventory survey sampling and reporting requirements
5 to improve thoroughness and consistency;
6 (4) Creating a process to allow for the reclassification
7 of "inadvertently discovered" burials as "previously
8 identified", especially where burials are discovered
9 during exploratory testing authorized or ordered by
10 the Department or where burials are discovered in
11 concentrations;
12 (5) Empowering the Island Burial Councils with greater
13 authority, responsibility, and deference to advise in
14 the historic preservation review process and determine
15 the treatment of Native Hawaiian burials;
16 (6) Providing stronger and periodic training to Island
17 Burial Councils on their statutory and administrative
18 authorities and responsibilities;
19 (7) Requiring landowners to record the metes and bounds of
20 preservation sites with the Bureau of Conveyances to
21 ensure perpetual protection of culturally significant
22 and irreplaceable historic sites and resources;
23 (8) Clarifying requirements for consultation with the
24 Native Hawaiian community and organizations throughout
25 the historic preservation review process when Native
26 Hawaiian historic and cultural sites are threatened by
27 development; and
28 (9) Providing for stricter fines, clearer enforcement
29 processes, and a process by which citizens may report
30 the discovery and potential destruction of burials and
31 other historic resources, to improve the effectuation
32 of historic preservation review process and the
33 enforcement of historic properties protections; and
34

35 BE IT FURTHER RESOLVED that the Department of Land
36 and Natural Resources is requested to report on the status and
37 progress of its administrative rules proceedings to the
38 Legislature no later than twenty days before the convening of
39 the regular session of 2021; and
40

41 BE IT FURTHER RESOLVED that certified copies of this
42 Concurrent Resolution be transmitted to the Chairperson of
43 the Board of Land and Natural Resources and the Chairperson of
44 the Board of Trustees of the Office of Hawaiian Affairs.

____C.R. NO. ____

1

OFFERED BY: _____
By Request

THIRTIETH LEGISLATURE, 2020
STATE OF HAWAII

____.B. NO.____

A BILL FOR AN ACT

RELATING TO LANDOWNER LIABILITY.

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

1 SECTION 1. The legislature finds that article XII, section
2 7 of the Hawai'i state constitution requires the state to protect
3 and enforce the reasonable exercise of Native Hawaiian
4 traditional and customary rights. The legislature further finds
5 that Native Hawaiians are legally entitled to engage in the
6 reasonable exercise of such rights and associated practices on
7 both publicly and privately owned lands that are less than fully
8 developed, regardless of whether or not they are granted express
9 permission by landowners. However, notwithstanding the rights
10 of Native Hawaiian cultural practitioners, public and private
11 landowners and property managers may refuse to accommodate
12 practitioners' access to sites and resources on lands under
13 their ownership or control, due to liability concerns. As a
14 result, practitioners may often be forced to risk potential
15 conflict with landowners or property managers as well as face
16 potential citation and even arrest, in order to exercise their
17 constitutionally recognized right to reasonably engage in Native
18 Hawaiian traditional and customary practices.

1 The legislature finds that although there are statutory
2 liability protections for private landowners who allow
3 recreational users to access their lands free of charge,
4 liability concerns regarding the scope of these protections
5 continue to result in the denial of access to cultural
6 practitioners seeking to enter private lands. In addition, the
7 legislature finds that existing liability protections for
8 landowners who allow the recreational access and use of private
9 lands do not extend to public lands or landowners. Accordingly,
10 the legislature finds that the state's obligation to protect and
11 enforce the constitutional rights of Native Hawaiians requires
12 statutory amendments that can better facilitate the exercise of
13 Native Hawaiian traditional and customary rights and associated
14 practices, by explicitly extending liability protections to all
15 landowners who specifically allow practitioners of Native
16 Hawaiian traditional and customary practices to access and use
17 their lands to engage in such practices.

18 The purpose of this Act is to establish a new chapter in
19 the Hawai'i Revised Statutes that provides liability protections
20 for public and private landowners who expressly allow
21 practitioners of Native Hawaiian traditional and customary
22 practices to access and use their lands to engage in such
23 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,

1 including but not limited to private individuals, corporations,
2 trusts, and public entities.

3 "Native Hawaiian traditional and customary practice" means
4 any practice that is exercised pursuant to article XII, section
5 7 of the Hawai'i state constitution.

6 § -3 **Duty of care of owner limited.** Except as
7 specifically recognized by or provided in section -5, an
8 owner of land owes no duty of care to keep the premises safe for
9 entry or use by others for the purpose of engaging in a Native
10 Hawaiian traditional and customary practice, or to give any
11 warning of a dangerous condition, use, structure, or activity on
12 such premises to persons entering for such purposes, or to
13 persons entering for a purpose in response to a cultural
14 practitioner who requires assistance, either direct or indirect,
15 including but not limited to rescue, medical care, or other form
16 of assistance. For the purposes of this section, a statement or
17 assertion that a person is seeking entry or use of the premises
18 in order to engage in a Native Hawaiian traditional and
19 customary practice shall be sufficient to establish that the
20 person's entry or use of the premises is for the purpose of
21 engaging in such a practice.

22 § -4 **Liability of owner limited.** (a) Except as
23 specifically recognized by or provided in section -5 an owner
24 of land who either directly or indirectly invites or permits

1 without charge any person to use the property for the purpose of
2 engaging in a Native Hawaiian traditional and customary practice
3 does not:

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

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

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

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

14 (b) An owner of land who is required or compelled to
15 provide access or parking for such access through or across the
16 owner's property because of state or county land use, zoning, or
17 planning law, ordinance, rule, ruling, or order, to reach
18 property used for the purpose of engaging in a Native Hawaiian
19 traditional and customary practice, shall be afforded the same
20 protection as to such access, including parking for such access,
21 as an owner of land who invites or permits any person to use
22 that owner's property for the purpose of engaging in a Native
23 Hawaiian traditional and customary practice under subsection
24 (a).

1 § **-5 Exceptions to limitations.** Nothing in this chapter
2 limits in any way any liability which otherwise exists:

3 (1) For wilful or malicious failure to guard or warn
4 against a dangerous condition, use, or structure which
5 the owner knowingly creates or perpetuates and for
6 wilful or malicious failure to guard or warn against a
7 dangerous activity which the owner knowingly pursues
8 or perpetuates.

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

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

20 § **-6 Persons using land.** Nothing in this chapter shall
21 be construed to:

22 (1) Create a duty of care or ground of liability for
23 injury to persons or property.

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

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

9

INTRODUCED BY: _____

BY REQUEST

THIRTIETH LEGISLATURE, 2020
STATE OF HAWAII

____.B. NO.____

A BILL FOR AN ACT

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

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

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

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

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

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

____.B. NO. _____

1 that all moneys from the appropriation unencumbered as of June
2 30, 2022 shall lapse as of that date.

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

4

5 INTRODUCED BY: _____

6

By Request

Committee on Beneficiary Advocacy and Empowerment
 Trustee John Waihe'e IV, *Chair*
 Trustee Kaleihikina Akaka, *Vice Chair*
 Members



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS

Trustee Leina'ala Ahu Isa, At-Large
 Trustee Dan Ahuna, Kaua'i / Ni'ihau
 Trustee Keli'i Akina, At-Large
 Trustee Brendon Kalei'aina Lee, At-Large
 Trustee Carmen Hulu Lindsey, Maui
 Trustee Robert K. Lindsey, Jr., Hawai'i Island
 Trustee Colette Y. Machado, Moloka'i / Lāna'i

**MEETING OF THE
 COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT**

DATE: Wednesday, November 27, 2019
TIME: 1:30 p.m.
PLACE: Maui Ola Boardroom
 Nā 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*** *Material from this section will be provided directly from Corporation Counsel*
 - 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.


 Trustee John Waihe'e IV, Chair

Committee on Beneficiary Advocacy and Empowerment


 Date