



OHA-5

Encouraging Practitioner Access for Native Hawaiian Traditional and Customary Practices

This measure reinforces Native Hawaiian constitutional rights by encouraging landowners to accommodate cultural practitioners' access to their lands.

NATIVE HAWAIIAN TRADITIONAL AND CUSTOMARY PRACTICES

Hawai'i's property laws are very unique, in that our constitution, statutes, and court decisions support the rights of Native Hawaiians to engage in the reasonable exercise of Native Hawaiian traditional and customary practices on “less-than-fully-developed” lands, **even if such lands are privately owned, and even if a landowner does not grant a practitioner permission to access their lands.**

However, despite our well-established laws, private and even governmental landowners are often hesitant to provide Native Hawaiian practitioners with access to their lands, in many instances citing liability concerns. As a result, Native Hawaiian cultural practitioners may encounter physical barriers like fences, or may be forced to risk confrontation or even arrest, in order to exercise their constitutionally protected rights. Many practitioners may choose to discontinue engaging in place-based traditional and customary practices, due to the burdens and risks associated with accessing lands and sites without landowner permission.

HOW WILL OHA-5 REINFORCE PLACE-BASED NATIVE HAWAIIAN TRADITIONAL AND CULTURAL PRACTICES?

Without access to place, place-based practices can be lost forever. Native Hawaiian traditional and customary practices are often place-based, developed through generations of close connection to the resources and sites of specific locations. In order to reinforce the constitutional rights of Native Hawaiians and prevent the loss of cultural practices that have been preserved for generations, this measure seeks to offer liability protections to landowners who grant permission to Native Hawaiian traditional and customary practitioners to access private lands, or public lands that are not otherwise open to the general public. This would eliminate a major cited concern of both private and government landowners who refuse to accommodate the exercise of constitutionally-protected Native Hawaiian practices on their lands.