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DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
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February 5, 2018

TESTIMONY TO THE
HOUSE COMMITTEE ON OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS

For Hearing on February 6, 2018
9:45 a.m., Conference Room 312

BY
Department of Human Resources Development
RYKER WADA
INTERIM DIRECTOR

House Bill No. 2438
Relating to the Hawaiian Language

WRITTEN TESTIMONY ONLY

TO CHAIRPERSON ING, VICE CHAIR DECOITE AND MEMBERS OF THE
COMMITTEE:

Thank you for the opportunity to provide **comments** on H.B. 2438.

H.B. 2438 amends Section 1 of Chapter 78 to address knowledge of and the ability to communicate in the Hawaiian language for certain officers and employees of the State of Hawaii. Under the proposed bill, the Director of Human Resources Development (“DHRD”) is charged with developing rules to implement two distinct requirements. First, H.B. 2438 makes the knowledge of and the ability to communicate in the Hawaiian language a desirable, but not mandatory, qualification in the hiring of all officers and employees of the State of Hawaii. Second, the proposed bill requires that all officers and employees “whose primary duties involve public relations or the dissemination of information to the general public” to have “basic skills and ability to communicate in the Hawaiian language.”

Although the Hawaiian language is an official language of the State of Hawaii, and the preservation and proliferation of the Hawaiian language is an admirable and important

cultural initiative, this must be balanced with existing laws relating to discrimination.

Current State and Federal law prohibit employers from discriminating against prospective or current employees on the basis of the individual's protected class, including, but not limited to, national origin, ancestry, and race. Because linguistic characteristics are closely associated with national origin, ancestry, and race, employment policies relating to desirable and mandatory language requirements must be carefully evaluated. Generally, language fluency or language proficiency requirements are only permissible if required for the effective performance of the position for which it is imposed. Because the degree of fluency that may be lawfully required varies from one position to the next, the Equal Employment Opportunity Commission ("EEOC"), which is the Federal agency charged with enforcement of Federal anti-discrimination laws, advises¹ employers to assess the level of fluency required for a job *on a case-by-case basis*. The EEOC expressly advises against applying uniform fluency requirements to a broad range of dissimilar positions or requiring a greater degree of fluency than is necessary for a position as such a requirement may result in a violation of Title VII of the Civil Rights Act, and related State laws.

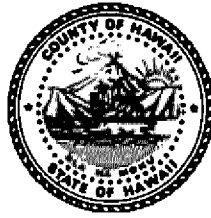
Additionally, the State of Hawaii, as an employer, is prohibited under State and Federal anti-discrimination laws from adopting policies or procedures that result in a disparate impact on protected classes. Language requirements, including bilingualism requirements, may have a disparate impact on current and prospective employees who are not of national origins, races, or ethnicities that are traditionally associated with speaking the required languages.

We hope this testimony assists the Legislature in its continued efforts to balance knowledge of and awareness of the Hawaiian language, with the diversity and inclusion of the State's workplace.

Thank you for the opportunity to testify on this bill.

1 The EEOC's full guidance on national origin discrimination is available at https://www.eeoc.gov/laws/guidance/national-origin-guidance.cfm#_ftnref107

Harry Kim
Mayor



Wil Okabe
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February 5, 2018

LATE

Representative Kaniela Ing, Chair
Committee on Ocean, Marine Resources & Hawaiian Affairs
Hawai'i State Capitol, Room 312
Honolulu, HI 96813

Dear Chair Ing and Committee Members:

**Re: HB 2438 Relating to Hawaiian Language Skills for Public Servants
Hearing Date: 02/06/18 – 9:45 am; Conference Room 312**

HB 2438 would (1) enshrine in law that "knowledge of and ability to communicate in the Hawaiian language" is a "desirable but not mandatory qualification in the hiring of all public officers and employees." and (2) mandate that "all officers and employees whose primary duties involve public relations or the dissemination of information to the general public shall have basic skills and ability to communicate in the Hawaiian language." I cannot support these two provisions.

Hawaiian is an official language of this State, and the people of Hawai'i, especially the people of the First Nation of Hawai'i, are justifiably proud that the native language has rebounded after nearly being lost, and is once again a vibrant and dynamic method of communication. Furthermore, I believe that people who have the authority to hire personnel for the State or counties would consider a knowledge of Hawaiian as a positive attribute in any applicant. However, employment decisions generally are made based on a multitude of factors, and it is not possible to put a comprehensive list of those factors into statute. Singling out the ability to communicate in Hawaiian would raise that single skill to a level superior to all others, and I don't think that is warranted. As position descriptions are drafted during the hiring process, I am sure that Hawaiian communication skills can be listed among the qualifications when the hiring authority deems it appropriate for a particular position.

As for mandating basic proficiency in Hawaiian for all public relations staff, it seems clear that such a mandate would eliminate many individuals who are providing, or in the future could provide, great service to the public in spite of their lack of skill in Hawaiian. It is not in the public interest to lose these dedicated people who are contributing, or may want to contribute in the future, to our community through public service.

Respectfully submitted,

Handwritten signature of Harry Kim in black ink.
Harry Kim
Mayor, County of Hawai'i

HB-2438

Submitted on: 2/5/2018 10:44:21 AM

Testimony for OMH on 2/6/2018 9:45:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Leimomi Khan	Hawaiian Affairs Caucus, DPH	Support	No

Comments:

The Hawaiian Affairs Caucus, DPH supports HB2438.

Acknowledging that the Hawaii State Constitution recognizes the Hawaiian language as an official language for Hawaii and the increased number of Hawaii's population now speaking and writing in Hawaiian, and respecting the indiginous people of Hawaii, it is timely to now make knowledge of the Hawaiian language a desirable qualification for all state positions, most especially all public information officers. We also support the translation of the Hawaii State Constitution into the Hawaiian language.

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Unity, Equality, Aloha for all



To: HOUSE COMMITTEE ON OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS

For hearing Tuesday, February 6, 2018

Re: HB 2438

RELATING TO THE HAWAIIAN LANGUAGE.

Makes knowledge of the Hawaiian language a desirable qualification for all state positions. Requires all public information officers of the State to have basic skills in the Hawaiian language. Requires the University of Hawaii to develop and implement a program to translate public documents, including the State Constitution, into the Hawaiian language. Makes an appropriation.

TESTIMONY SUPPORTING SOME PROVISIONS AND OPPOSING OTHERS

Hawaiian language is a great treasure for the people of Hawaii and for the world. Therefore it is appropriate to adopt Hawaiian language as a desirable qualification in the hiring and promotion of state government officers and employees, regardless of race.

It is also appropriate to distinguish between two categories of employees. "Back of the house" employees are not engaged in public relations or tourism activities; therefore it is desirable but not essential for them to speak Hawaiian. However, employees who speak to local residents and tourists on behalf of the people of Hawaii and the Aloha Spirit need to be able to speak Hawaiian words and sentences with correct pronunciation and grammar. They should also have some knowledge about place names and the legends associated with them.

No budget appropriations are needed to support language instruction for government employees. Surely each department already receives annual funding for employee training. Government or private employees in Hawaii have many opportunities earn the favor of their supervisors by learning Hawaiian informally through community groups. Not all good things require the appropriation of tax dollars.

OHA already has bills under consideration seeking to expand its empire by forcing government employees in a long and ever-widening list of agencies to attend mandatory training programs at OHA's expense. Let OHA include language instruction in those programs. Let OHA spend some of its \$600 Million to help government employees improve their level of fluency in Hawaiian language.

What is objectionable in this bill is the appropriation of tax dollars for "a program to translate public documents, including the State Constitution, into the Hawaiian language."

In 2017 the original version of SB560 proposed to appropriate \$25,000.00 for that fiscal year, and an additional \$25,000 for the following fiscal year, for the University of Hawaii to translate the Hawaii state constitution into the Hawaiian language. The bill proposed here greatly broadens the scope of the translation project to include not only the state Constitution but also an unspecified collection of other state documents at a correspondingly inflated cost. If such a project is started with only the state Constitution for \$50,000, just imagine how many millions of dollars will eventually be demanded to translate the

Hawaii Revised Statutes, and eventually thousands of case-law documents such as decisions by the state Supreme Court, the Intermediate Court of Appeals, the lower courts, and the rules proclaimed by the regulatory agencies.

Come on, folks, it should not be necessary to appropriate any money to get the State Constitution translated into Hawaiian language.

How many millions of dollars have already been spent to establish programs at the University of Hawaii whose purpose is to produce students who are fluent in Hawaiian language at all levels of expertise from bachelors to doctoral degrees?

Surely the professors of Hawaiian language could find students in their classes who would be capable and willing to do the translation manuahi (for free). Students might work as individuals in competition with each other to see whose translation is best. Or the translation job might be done as a class project with students working together cooperatively on a portion of the constitution each week until the entire document has been translated.

Similar projects have been done where students translate articles in the Hawaiian language newspapers from the 1800s into English; so why not have students translate the English language state constitution into Hawaiian?

Not every good thing requires an appropriation of taxpayer dollars. Furthermore, if money were actually necessary to do this project, then the first place to look for the money should be the very wealthy OHA (\$600 Million) or Kamehameha Schools (\$10 Billion to \$15 Billion).

As an aside, the Constitution mandates there must be a ballot question this year asking whether there should be a Constitutional Convention. So it would be nice for this committee to ask the Legislative Reference

Bureau and the legislature's webmaster to locate and place on the legislature's website a "clean copy" of the latest version of our state Constitution, which does not force readers to follow the labyrinths of footnotes and citations to court decisions which have forced changes to the 1978 version -- for example, the U.S. Supreme Court decision in *Rice v. Cayetano* abolished the original 1978 racial restriction on who can vote for OHA trustees, and the followup 9th Circuit Court decision in *Arakaki v. State* abolished the original 1978 racial restriction on who can run as a candidate and/or be appointed to the OHA board.

This bill should make it clear that the version of the Constitution to be translated into Hawaiian should be the clean copy posted on the legislature's website which has been updated to incorporate all amendments adopted by ballot votes and all changes forced by court decisions.

It would also be useful to post on the legislature's website the two-volume proceedings of the State Constitutional Convention of 1978, which includes official committee reports and also transcripts of floor debates that are helpful in deciphering legislative intent (In August 2017 State Senator Les Ihara posted it on the internet).

HB-2438

Submitted on: 2/5/2018 1:48:03 PM

Testimony for OMH on 2/6/2018 9:45:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Ho'omanapono Political Action Committee (HPAC)	Support	Yes

Comments:

We are in STRONG SUPPORT of this bill. As Hawaiian is an official language of this state, it has been a travesty for native Hawaiians to NOT have the Hawaiian language to have equal footing as English. It must be remembered that it is the English Language that is foreign in Hawai'i! Mahalo.



UNIVERSITY OF HAWAII SYSTEM
Legislative Testimony

LATE

Testimony Presented Before the
House Committee on Ocean, Marine Resources, & Hawaiian Affairs
February 6, 2018 at 9:45 a.m.

By
Marcia Y. Sakai
Interim Chancellor, University of Hawai'i at Hilo

HB 2438 – RELATING TO THE HAWAIIAN LANGUAGE

Chair Ing, Vice Chair DeCoite and Members of the Committee:

Thank you for the opportunity to submit testimony on HB 2438. The bill proposes, among other things, that the University of Hawai'i develop and implement a program to translate public documents, including the State Constitution, into the Hawaiian language.

The University of Hawaii has no position on Section 1 of the bill and defers to the Department of Human Resources Development for this section.

The University does support and appreciate the inclusion of UH Hilo in Section 3 of this bill as it relates to the translation of the State Constitution into the Hawaiian language. Through the UH Hilo College of Hawaiian Language, Ka Haka 'Ula O Ke'elikōlani, we are well positioned to develop and implement a program that trains highly skilled individuals, while utilizing the expertise of our faculty and staff to assist in translating the Hawaii State Constitution into the Hawaiian language.

The University has concerns on the lack of a definition of "public documents" as identified in Section 3 of the bill. The University is unsure of the magnitude of such an undertaking and cannot support this part of the bill as currently written. The University supports the intent of Section 3 of this measure if the appropriation is adequate to implement such a program and that its passage does not replace or adversely impact priorities as indicated in our BOR Approved Supplemental Budget.

Thank you for the opportunity to provide testimony on HB 2438. Aloha.

HB-2438

Submitted on: 2/5/2018 4:12:27 PM

Testimony for OMH on 2/6/2018 9:45:00 AM



Submitted By	Organization	Testifier Position	Present at Hearing
Jeanne Kapela		Support	No

Comments:

Aloha Chair Ing and members of the committee,

I am a 23-year-old Native Hawaiian woman. I grew up in the Kona community on the Big Island, but my family was not affluent. We had enough to get by, but little more. Looking back on my childhood, I can see that the struggles we faced were not only the result of individual choices, but stemmed from generations of dispossession and cultural trauma faced by the Native Hawaiian people in their homeland.

Ever since the onslaught on annexation in 1898, the Hawaiian people have been marginalized. Hawaiian children comprise the largest demographic in the public school system, yet Hawaiian language and cultural programming is scarce and has been cut back to make room for standardized testing. Hawaiians are also dramatically overrepresented in the state's prison system. People of Native Hawaiian ancestry make up roughly 25 percent of the state's population, but approximately 39 percent of incarcerated detainees, according to a comprehensive study by the Office of Hawaiian Affairs. The situation is even worse for Hawaiian women, who comprise 19.8 percent of the state's female population, but 44 percent of the state's female inmate population. We are routinely denied access to sacred lands and silenced in conversations about how to care for our beloved 'Āina, including atop the summit of Mauna Kea.

State officials cannot make informed decisions about how government policies will impact the indigenous community without a better understanding of Hawaiian history and Hawaiian's cultural practices. Language is a central part of our culture. As an emerging young leader, I want to build a future in which myself and my children are filled with aloha and reverence for the manner in which who we were yesterday shapes who we are today and where we will voyage tomorrow. For the sake of future generations of Hawaiians and the preservation of their previous heritage, I humbly ask you to pass this bill.

Mahalo,

Jeanne Kapela

HB-2438

Submitted on: 2/3/2018 4:05:43 PM

Testimony for OMH on 2/6/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Hawaiian Civic Club of Honolulu	Support	No

Comments:

HB-2438

Submitted on: 2/2/2018 12:41:59 PM

Testimony for OMH on 2/6/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl		Support	No

Comments:

Supporting all ways to bring Hawaiian language to the place it should be in our islands. People should not be invisible because of the language spoken. My only question: will the funds be adequately allocated to cover all the costs? They should be with no problem.

You might also consider making stronger language for schools in allowing the use of Hawaiian Language. In addition, DA BUS should have more signs in Hawaiian which they do not currently have.

HB-2438

Submitted on: 2/2/2018 7:56:17 PM

Testimony for OMH on 2/6/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kaulana Dameg		Support	No

Comments:

HB-2438

Submitted on: 2/5/2018 9:25:32 AM

Testimony for OMH on 2/6/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	OCC Legislative Priorities	Support	No

Comments: