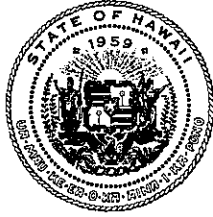


LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

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LAURA H. THIELEN  
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BOARD OF LAND AND NATURAL RESOURCES  
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ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**LATE**

TESTIMONY OF THE CHAIRPERSON  
OF THE BOARD OF LAND AND NATURAL RESOURCES

on Senate Bill 2644 – Relating To The State Historic Preservation Officer

BEFORE THE SENATE COMMITTEES ON  
ECONOMIC DEVELOPMENT AND TAXATION  
and  
AGRICULTURE AND HAWAIIAN AFFAIRS

February 19, 2008

Senate Bill 2644 proposes to amend Section 6E-5 Hawaii Revised Statutes, relating to the State historic preservation officer. The Department of Land and Natural Resources (Department) strongly opposes this bill.

Senate Bill 2644 requires that any person, who is appointed by the Governor as a state historic preservation officer (SHPO), meet the required standards established by the United States Secretary of Interior. The current organizational flow of the State Historic Preservation Division (SHPD) has the Chairperson of the Department (Chairperson) serving as the SHPO while the SHPD Administrator serves as the Deputy SHPO. Having the Chairperson serve as the SHPO allows for oversight over the SHPD and staff's work with federal partners. The United States Department of Interior requirements state, "The SHPO is responsible for maintaining a staff that meets the professional qualifications requirements of 36 CFR 61. At a minimum, a State must have full-time access to a historian, architectural historian, and archeologist who meet these professional qualifications." Thus, the current practice of having the Chairperson serve as SHPO and the Administrator serve as Deputy SHPO meets federal guidelines.

The Department agrees, however, that there should be qualification requirements in state law, and proposes the alternative language:

"(b) The state historic preservation officer or the deputy historic preservation officer shall: ..."

This amendment will ensure one or both the SHPO or Deputy SHPO meet the required minimum qualifications. It will also ensure the Administrator of SHPD is held strictly accountable to and by the Chairperson. Clear lines of accountability are essential for the oversight of this significant Division. Senate 2644 as written muddies accountability. The Department's proposed amendment however offers a solution which (1) Ensures qualified staff is overseeing the determinations of SHPD; and (2) The Administrator of SHPD is held to clear accountability.

**LATE****testimony**

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**From:** Jeannine Johnson [jeannine@hawaii.rr.com]  
**Sent:** Sunday, February 17, 2008 8:59 PM  
**To:** testimony  
**Subject:** Testimony in strong support of SB2557 (burial sites) and SB2644 (SHPD)  
**Attachments:** image001.jpg

Jeannine Johnson  
 5648 Pia Street, Honolulu, Hawai'i 96821  
 Phone: 373-2874 (h) / 523-5030 (w)  
 February 17, 2008

COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS

Senator Jill N. Tokuda, Chair  
 Senator J. Kalani English, Vice Chair

COMMITTEE ON ECONOMIC DEVELOPMENT AND TAXATION

Senator Carol Fukunaga, Chair  
 Senator Will Espero, Vice Chair

**Re:** SB 2557 - RELATING TO BURIAL SITES  
SB 2644 - RELATING TO THE STATE HISTORIC PRESERVATION OFFICER  
**Hearing:** Tuesday, February 19, 2008, at 2 pm in Conference Room 224

Aloha Chairs Tokuda and Fukunaga and Vice Chairs English and Espero,

I strongly support SB2557 which transfers jurisdiction of inadvertently discovered native Hawaiian burial sites from the department of land and natural resources to the appropriate island burial council; provides 60 days for burial council to make a determination on burial site treatment or removal; and allows state historic preservation officer to make a determination if council is unable after 60 days.

I also strongly support SB2644 which specifies the required qualifications for a state historic preservation officer and have professional experience with relation to historic preservation in Hawai'i.

On November 2, 2007, I attended an important discussion where the speakers were Tom Dye, President of the Society for Hawaiian Archaeology, and Moses Haia, of the Native Hawaiian Legal Corporation. Mr. Haia represents the descendents in the Ward Villages case where 53 sets of iwi kupuna were found *after* the historic preservation review process was substantially completed. Both pointed out serious problems in the State's Historic Preservation Division (SHPD):

- There have been 4 heads of the Department of Land and Natural Resources who have deferred their responsibility of "preserving, restoring, and maintaining historic and cultural property" to the Administration.
- In the Kuilima development, SHPD called for the developer to redesign the project to avoid areas with a high likelihood of burials, but seven months later did an about-face with the Ward Villages case.
- SHPD Administrator Melanie Chinen, a former auditor, had no historic preservation background

whatsoever, so she didn't grasp the issues.

- SHPD had lost all of its qualified archeologists, except one (21 highly trained professionals) and some positions had been turned over twice.
- Ms. Chinen rewrote the positions ("dumbing them down") so that the state and lead archeologists do not have to even have the minimum qualifications to write a report that they review, and those that are hired have very little experience here in Hawai'i.
- Ms. Chinen pulled the plug on the State's geographic information system (GIS) which has not been maintained for the last 3 years and refused anyone access to it.
- SHPD has not maintained the computerized index of cultural and historic properties, a crucial resource needed to prepare a background search, since 2004.
- Hundreds of iwi kupuna lie in SHPD's care, often for years, waiting to be reinterred. The 64 sets of iwi kupuna retrieved from the Wal-Mart property are still being held hostage in storage and have even been tampered with.

Why was this allowed to happen? Mr. Dye said he thinks SHPD does not want information which would "constrain" their decision on cases. Mr. Haia believed it was a concerted effort for the disinterment of iwi kupuna so development can proceed. **He called it another "mahele" where Hawaiian ancestors are again dispossessed of their land/resting places.**

Since the establishment of the island burial councils in 1990 following the outrage of Hawaiians over the massive excavation of bones at Honokahua, all burial sites are deemed significant and shall be preserved in place until the appropriate island burial council determines whether to preserve in place or relocate (HRS 6E-43(b)). However, after construction has started, SHPD is the agency responsible to decide either to preserve in place or relocate iwi and must make that decision within one day after discovery.

When Wal-Mart started building, no archaeological inventory was required because the Department of Planning and Permitting made that determination even though they don't even have an archeologist on staff. In the Ward case, HCDA gave General Growth Properties (GGP) its permit so SHPD was not even required to review it. Later, GGP did voluntarily have a contract archeologist prepare a survey who found 11 sets of iwi in 3% of the area. This Cultural Surveys of Hawai'i archeologist:

- ignored the fact that 300+ sets of iwi were found in Kaka'ako during the Queen Street extension,
- did not properly conclude that if 11 sets were found in 3% of the land surveyed there were at least 320 in the other 97%, and
- even found a coffin but described it only as a box with nails with bones in it.

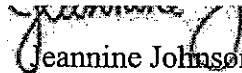
And the really sad part in all this is that **no one at SHPD properly concluded it was a burial area.**

When SHPD is dysfunctional and/or unable to perform its mandated duties by law or run by unqualified individuals with no experience in historic preservation, it is not the developers who suffer. It is my iwi kupuna who lived and died on sovereign land who suffer. Transferring the jurisdiction of inadvertently discovered native Hawaiian burial sites to the appropriate island burial council would mālama our iwi kupuna and is the pono thing to do.

Your support of these bills is respectfully requested.

Mahalo,

*Deborah Johnson*

  
Jeannine Johnson

cc via email: Sen. Sam Slom  
Sen. Fred Hemmings  
Rep. Lyla Berg  
Rep. Barbara Marumoto  
Tom Dye, President, Society for Hawaiian Archaeology  
Christopher M. Monahan, Ph.D.  
Van James  
Chris Cramer  
Hawai'i Thousand Friends

## testimony

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**From:** Kawika McKeague [kawikam@hawaii.rr.com]  
**Sent:** Monday, February 18, 2008 9:27 AM  
**To:** testimony  
**Subject:** SB 2644- EDT/AHW Committee Hearing (Tuesday, 2/19/08- 2:00 p.m.)

**LATE**

Letter of Support for SB 2644 (Relating to the State Historic Preservation Officer)

Ano'ai me ke aloha, e AHW Committee Chair Tokuda, EDT Committee Chair Fukunaga, and to the members of each respective Committee:

In its monthly meeting held on February 13, 2008, the O'ahu Island Burial Council (OIBC) voted to support the formation of a Legislative Committee (LC). The OIBC-LC is comprised of OIBC Chair Jace McQuivey, Councilmember Kehau Abad, Councilmember Hinaleimoana Wong, Councilmember Kekuewa Kikiloi, and myself. The purpose of the OIBC-LC is to advocate the position and interests of the larger Council in legislative action that are pertinent to the fulfillment of the Council's duties, as promulgated under Hawai'i Revised Statutes 6E-43.5(f)(3). One of these duties authorizes the Council to "make recommendations regarding appropriate management, treatment, and protection of native Hawaiian burial sites, and on any other matters relating to native Hawaiian burial sites." As such, it is the position of the Council that it is within its legal purview and culturally-mandated sense of kuleana to lend its recommendation within the legislative process.

As related to S2644, the OIBC believes that the proposed amended definition of the State Historic Preservation Officer (SHPO) provides stronger and clearer language that complies with the responsibilities of the SHPO iterated in Title I, Section 101(b)(3) of the National Historic Preservation Act (NHPA). We believe this amended definition will ensure that the State Historic Preservation Division (SHPD) will continue to receive necessary federal funding that allows SHPD to oversee Section 106 projects under NHPA.

However, we also support additional amendments to the proposed definition of the SHPO's qualifications to include provisions that the SHPO must possess specific expertise, knowledge, and/or experience in Hawaiian cultural practices. Additionally, the SHPO should also have a clear understanding and ability to work within Hawai'i's diverse communities and their representing cultural influences. Finally, we believe that the SHPO needs to be intellectually demonstrative, sensitive, and familiar with the extent of political, social, economic, and cultural issues related to land tenure management and practices upon Hawai'i's most critical cultural resource that is the underpinning of Hawai'i's identity and integrity- that being the sacred wahi kanu (burial grounds and sites) of our ancestral past.

As a Council, we welcome the opportunity to further participate and comment on this measure with each respective Committee.

Mahalo for your time and consideration to our thoughts shared.

Sincerely,

Mark Kawika McKeague,  
OIBC 'Ewa District Representative  
OIBC Vice-Chair  
OIBC Legislative Committee Member

TO: Senator Carol Fukunaga, Chair  
Senator Will Espero, Vice Chair  
Committee on Economic Development and Taxation

**LATE**

Senator Jill Tokuda, Chair  
Senator J. Kalani English, Vice Chair  
Committee on Agriculture and Hawaiian Affairs

FROM: Ty P. Kāwika Tengan, Assistant Professor  
Departments of Ethnic Studies and Anthropology, University of Hawai'i-Mānoa

HEARING: Tuesday, February 19, 2008, 2:00 pm, Conference Room 224

**SUBJECT: Support of SB2644, Relating to the State Historic Preservation Officer**

Aloha. My name is Ty Tengan and I am an assistant professor in the Departments of Ethnic Studies and Anthropology at the University of Hawai'i at Mānoa. Today I submit testimony in full support of SB2644.

I have been involved in matters dealing with archaeology, anthropology, and burial sites protection since 1996 when I was still an undergraduate. While a graduate student in anthropology at UH Mānoa, I received a Research Assistantship to support the efforts of community organizations working to repatriate human remains and burial objects from Mōkapu on O'ahu. As an assistant professor of ethnic studies and anthropology here, my research, teaching and service have revolved around the practices and politics of anthropology, repatriation, and cultural sites, and I have been actively involved in the creation of an applied archaeology program. In the community I have worked with approximately forty-five other Native Hawaiians involved in archaeology and anthropology to form an organization called Nāki'ikeaho, which has called for a greater level of Native Hawaiian participation in archaeology, anthropology, historic preservation, cultural resource management, land stewardship and burial sites protection. Through Nāki'ikeaho and my affiliation with the Department of Anthropology, I have become a member of the Friends of the State Historic Preservation Division (SHPD), a coalition of archaeologists, Native Hawaiians, and other community members that have worked to resolve the present crisis at SHPD and to implement long term changes and improvements in the historic preservation community.

It is vitally essential that the State Historic Preservation Officer (SHPO) be qualified according to national standards set forth by the Secretary of the Interior. The lack of a qualified SHPO has recently led to the deterioration of the SHPD and the consequent neglect of Hawaiian burials, cultural resources and archaeological sites. This bill will help to ensure that the SHPO will have the professional qualifications that will be needed to help rebuild and repair SHPD in the short term and to maintain the strength of the division in the future. All of this will enable the state to fulfill its mandate to protect our past. I strongly urge the committees to pass SB2644. Mahalo.



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**

AFSCME LOCAL 152, AFL-CIO

888 MILILANI STREET, SUITE 601 • HONOLULU, HAWAII 96813-2991



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The Twenty-Fourth Legislature, State of Hawaii  
Hawaii State Senate  
Committee on Economic Development and Taxation  
Committee on Agriculture and Hawaiian Affairs

**LATE**

Testimony by  
Hawaii Government Employees Association  
February 19, 2008

**S.B. 2644 – RELATING TO THE STATE  
HISTORIC PRESERVATION OFFICER**

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 2644, which establishes standards for the State Historic Preservation Officer within the Department of Land and Natural Resources. This position performs an important role in preserving historical sites throughout the state. We believe past problems with the division were due in large part to the State Historical Preservation Officer lacking appropriate job qualifications.

S.B. 2644 requires that the person appointed by the Governor meet the qualifications set by the U.S. Secretary of the Interior. The Governor must also inform the Legislature about the person’s qualifications to serve in that position.

The State Historic Preservation Officer should be a qualified historic preservation official in architecture, architectural history, archaeology, history, culture or a closely related field. The position should also be filled with someone that has professional experience with historical preservation in Hawaii.

Thank you for the opportunity to testify in support of S.B. 2644.

Respectfully submitted,

Nora A. Nomura  
Deputy Executive Director



February 19, 2008

**LATE**

TO: Senator Jill N. Tokuda, Chair  
Senator J. Kalani English, Vice Chair  
Senate Committee on Agriculture and Hawaiian Affairs

Senator Carol Fukunaga, Chair  
Senator Will Espero, Vice Chair  
Senate Committee on Economic Development and Taxation

FROM: David Lawrence Brown, MA  
Former Branch Chief Archaeologist/Hawaii State Archaeologist  
Phone: (808) 696-9454  
Email: [david\\_lawrence\\_brown@yahoo.com](mailto:david_lawrence_brown@yahoo.com)

HEARING: February 19, 2008, 2:00pm, Senate Conference Room 224

SUBJECT: Testimony in Support of SB <sup>2644</sup>~~2246~~ Relating to the State Historic Preservation Officer

I am David Lawrence Brown, a former Branch Chief Archaeologist of the Hawaii State Historic Preservation Division. I am testifying in support with reservations of SB 2246, a bill for an act that amends section 6E-5, Hawaii Revised Statutes (HRS), to elucidate and reinforce the professional qualifications required of the Hawaii State Historic Preservation Officer (SHPO).

As drafted, SB <sup>2644</sup>~~2246~~ seeks to connect existing State of Hawaii legislative doctrine (6E-5, HRS) regarding the qualifications required of a SHPO with the federal professional qualifications set forth by the U.S. Secretary of the Interior. ("Secretary of the Interior's Professional Qualifications Standards -- CFR 36 Part 61).

I support the intentions and purpose of SB 2246, as this bill seeks to require that any gubernatorial candidate appointed to the position of SHPO meet the minimum federal qualifications.

My support comes with the following reservation:

It is without question that our state historic preservation program has tragically suffered the consequences of what can happen when a SHPO and Deputy SHPO fail to meet the State professional qualification requirements under section 6E-5, HRS, and the national standards. More alarming, the appointments without regard for minimal professional qualifications and ethics allowed certain individuals to operate with callous disregard for the mission of a state historic preservation program. This ultimately lead to the breakdown of the State Historic Preservation Division, the exodus of over 20 qualified historic preservation professionals, and the irreversible damage, destruction, and loss of many nonrenewable historic resources (cultural, architectural, and archaeological).

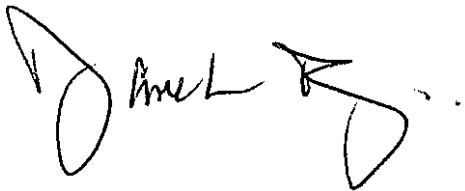


This inexcusable situation must not be allowed to occur in the future. The SHPO and Deputy SHPO must be able to uphold the regulatory and ethical obligations of their appointments, disregarding all political and special agendas that detract from the mission of historic preservation.

Furthermore, the SHPO alone cannot meet all the obligations required to properly manage the State Historic Preservation Division. The Administrative duties greatly exceed the capacity of any single individual's capabilities. The day-to-day operations of the office, budgeting, clerical management, and business related tasks are better suited to someone holding an MBA with experience in historic preservation. The SHPO must be allowed to focus efforts on historic preservation, the management of the Branch Chiefs, and the function and overall operations of the program without having to double duty.

Thank you for the opportunity to testify. If you have any questions or concerns, please let me know.

David Lawrence Brown, MA

A handwritten signature in black ink, appearing to read "David Lawrence Brown". The signature is stylized and includes a large initial "D" on the left and a large initial "B" on the right.