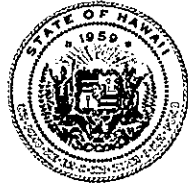


TESTIMONY

SB 2531



LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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LAWRENCE M. REIFURTH
DIRECTOR
RONALD BOYER
DEPUTY DIRECTOR

**PRESENTATION OF THE
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

TO THE SENATE COMMITTEE ON WATER, LAND,
AGRICULTURE, AND HAWAIIAN AFFAIRS

and

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION of 2010

Wednesday, February 3, 2010
2:45 p.m.

TESTIMONY ON SENATE BILL NO. 2531, RELATING TO ARCHAEOLOGISTS.

TO THE HONORABLE CLAYTON HEE, CHAIR, AND
TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEES:

My name is Celia Suzuki, Acting Licensing Administrator of the Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs ("Department"). The Department appreciates the opportunity to testify on Senate Bill No. 2531, Relating to Archaeologists.

Senate Bill No. 2531 creates a new chapter to regulate the licensure of archaeologists. Section 26H-6, Hawaii Revised Statutes, requires that new regulatory measures being considered for enactment be referred to the Auditor for a sunrise

analysis. Referral shall be by concurrent resolution that identifies a specific legislative bill to be analyzed. The statute further requires that the analysis shall set forth the probable effects of regulation, assess whether its enactment is consistent with the legislative policies of the Hawaii Regulatory Licensing Reform Act, and assess alternative forms of regulation. Senate Concurrent Resolution No. 68 has been introduced and requests the Auditor to perform a sunrise analysis of the regulation of the profession or archaeology.

The Department strongly supports a sunrise study on this measure, as mandated by law, before regulating the licensure of archaeologists. Thank you for the opportunity to provide testimony on Senate Bill No. 2531.

From: Jeannine Johnson [jeannine@hawaii.rr.com]
Sent: Monday, February 01, 2010 7:40 PM
To: WTLTestimony
Cc: Rep. Lyla B. Berg; Sen. Sam Slom
Subject: Testimony in Strong Support of SB2531 Relating to Archaeologists

Re: SB2531 Relating to Archaeologists
Wednesday, February 3, 2010 at 2:45 pm - Conference Room 229

Aloha mai kākou,

I strongly support SB2531 requiring licensing for archaeologists and creating a Board of Archeologists. The Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs is responsible for 25 professional boards and commissions and 22 licensing programs. In total, the Division licenses 47 different professions and vocations for a total of 124,218 licenses. Professions range from over 19,000 realtors, 10,000 doctors, mixed martial arts (19 licenses) to port pilots (10 licenses). Even my hairdresser is required to have a license. I think that archeologists, which perform some of the most detailed, important work on Hawai'i's historical and sometimes very sacred artifacts (iwi kupuna) and places (heiau) should be licensed too.

Mahalo,

Jeannine

Jeannine Johnson
5648 Pia Street
Honolulu, Hawai'i 96821
Ph: 373-2874 / 537-7261 (work)
Email: jeannine@hawaii.rr.com
"PUPUKAHI I HOLOMUA"
(Unite in Order to Progress)

From: annmarie@hawaii.rr.com
Sent: Monday, February 01, 2010 10:51 PM
To: WTLTestimony
Cc: Sen. Clayton Hee; Sen. Jill Tokuda
Subject: SB 2531 Relating to Archaeologists - Testimony in Strong Support of SB 2531

SB 2531 Relating to Archaeologists

Wednesday, February 3, 2010 at 2:45 pm - Conference Room 229

Aloha to the Water, Land, Agriculture, and Hawaiian Affairs Committee,

I am writing in **strong support of SB2531** Relating to Archaeologists which looks to create a 10 member Board of Review for Archeological licensing in the State of Hawai'i.

The importance of establishing this archeological licensing board will strengthen the quality, integrity and cultural awareness of archeologists practicing in the State of Hawai'i. Archeologist will be held to a high standard for their profession and that same standard will apply to all who practice archeology in Hawai'i by the criteria, both scientific and cultural, set by this licensing board which ensures that our historic sites, our Hawaiian sacred places, and our cultural sites and the iwi of our kupuna will be studied and handled with the utmost care, respect and with cultural knowledge.

The representatives on this Archeological Review board represent a wide spectrum of people and agencies concerned about the well-being of our historic and sacred sites. This includes representatives with knowledge of our Hawaiian and non-Hawaiian historic sites. All are of importance to the history of Hawai'i.

A Board of Review for Archeological licensing in the State of Hawai'i make sense. The cultural treasures of our Hawaiian islands should be handled and studied by those who meet the criteria to have a license to do such work in the islands.

I am in strong support of SB 2531 and ask for the support of the Water, Land, Agriculture and Hawaiian Affairs Committee for for this most important bill for the people, land and culture of Hawai'i.

Mahalo for your consideration.

Aloha,
Ann Marie Kirk
PO Box 25342
Honolulu, Hawai'i

annmarie@hawaii.rr.com

Testimony in Support of SB2531

I am writing in support of the proposed licensing of archaeologists through SB 2531. Because of the disarray of the State Historic Preservation Department, archaeologists in Hawai'i are currently accountable to the developers who hire them. I support this bill that will increase accountability through licensing of archaeologists charged with studying historic sites. I also support reducing the incentive to "willfully destroy historic properties" that is mentioned in the bill. Too many important historic sites have been destroyed and this practice needs to end.

Mahalo ,

Chris Cramer

Historian

Honolulu, Hawai'i

HISTORIC HAWAII FOUNDATION

VIA EMAIL: WTLtestimony@capitol.hawaii.gov

To: Sen. Clayton Hee, Chair
Sen. Jill N. Tokuda, Vice Chair
Committee on Water, Land, Agriculture and Hawaiian Affairs

Sen. Rosalyn H. Baker, Chair
Sen. David Y. Ige, Vice Chair
Committee on Commerce and Consumer Protection

From: Kiersten Faulkner
Executive Director, Historic Hawai'i Foundation

Committee Date: Wednesday, February 3, 2010
2:45 p.m.
Conference Room 229

Subject: **SB2531, Relating to Archaeologists**

On behalf of Historic Hawai'i Foundation (HHF), I am writing with comments on SB 2531 and SB2739, both of which requires licensing for archaeologists in the State and creates the board of archaeologists. While there are differences between the bills, we offer these general comments on the underlying intent.

SB2531 and SB2739 would establish a framework for the licensing of professional archaeologists. Best practices in historic preservation require that both professional work and regulatory compliance relating to the historic preservation review process (primarily from ground-disturbing activities) be conducted by those who have met professional qualifications in education, training and experience in the appropriate discipline, including the practice of archaeology. Standards for most professional disciplines also include a code of conduct or ethics, requirements for continuing education, a method of professional oversight, and due process for investigating alleged violations. Standards and procedures for increased professionalism would help to ensure that the historic and cultural sites of Hawai'i are treated appropriately and that the larger public interest is protected.

It is unclear if a professional license administered by a new board of archaeologists is the best mechanism for accomplishing these goals. The increased scrutiny and accountability may be necessary to achieve these ends, but it may also be possible to achieve the same goals without establishing, funding, staffing and managing a new state bureaucracy. This is an area in which HHF believes that a more comprehensive review of the state's overall historic preservation program, including the management and regulatory structure and qualifications of staff, management, consultants and professionals, is necessary. Rather than address these issues ad hoc, we would like to see a thoughtful and deliberate approach that includes recommendations for planning, regulations, incentives, education, integration with federal and county processes, and use of best practices in the preservation industry.

Therefore, HHF recommends that SB2531 and SB2739 be deferred, and that the legislature direct the department of land and natural resources to convene a review of best practices and models for good preservation systems that can be implemented comprehensively, with recommendations to be submitted to the legislature next year.

Historic Hawai'i Foundation

680 Iwilei Road, Suite 690 • Honolulu, HI 96817 • Tel: 808-523-2900 • FAX: 808-523-0800 • www.historichawaii.org

Historic Hawai'i Foundation was established in 1974 to encourage the preservation of historic buildings, sites and communities on all the islands of Hawai'i. As the statewide leader for historic preservation, HHF works to preserve Hawai'i's unique architectural and cultural heritage and believes that historic preservation is an important element in the present and future quality of life and economic viability of the state.

TO: Senator Clayton Hee, Chair
Senate Committee on Water, Land, Agriculture & Hawaiian Affairs
And
Senator Roslyn H. Baker, Chair
Senate Committee on Commerce & Consumer Protection

FROM: Sara L. Collins, Ph.D., Legislative Chair
Society for Hawaiian Archaeology
sara.l.collins.sha@gmail.com

HEARING: February 3, 2010, 2:45 PM, Conference Room 229
SUBJECT: Testimony in OPPOSITION to SB 2531 (Relating to Archaeologists)

I am Dr. Sara Collins, Chair of the Legislative Committee of the Society for Hawaiian Archaeology (SHA). We have over 200 members that include professional archaeologists and advocates of historic preservation in general. On behalf of SHA, I am providing testimony in opposition to SB 2531, which requires licensing for archaeologists in the State and creates the board of archaeologists. The provisions of this measure would directly affect many of our members if it is passed and implemented as written.

SB 2531 proposes the following amendments by adding a new chapter to Hawaii Revised Statutes (HRS) that covers the licensing of archaeologists and includes the following provisions:

- Defines "archaeologist" and establishes a Board of Archaeologists, presumably at the Department of Commerce and Consumer Affairs (DCCA);
- Specifies that the Board of Archaeologists shall have ten members the majority of whom are not archaeologists or are not required to have any qualifications in archaeology;
- Assigns powers and duties to the Board that include developing licensing standards and requirements for archaeologists, setting fee schedules, and executing disciplinary actions as well as rule-making authority;
- Establishes procedures for the payment of fees and renewal or reinstatement of licenses;
- Prohibits conducting archaeological fieldwork, altering historic sites or removing items from them, and diving or operating any submersible vehicle or equipment within 500 feet of a submerged historic property;
- Restricts the issuing of archaeological licenses to applicants who can prove that they can conduct fieldwork in a manner that reflects the cultural beliefs and attitudes of the Hawaiian people and who otherwise complies with eligibility requirements set by the Board.

We believe that the subject bill is well intended. We also think that its proponents want to ensure that archaeological work is done to a high standard and that only qualified people carry out archaeological studies in the State. As written, however, the bill is deeply flawed and would actually be counter-productive if it were passed. We provide some comments as follows to illustrate this point:

- Draft Section 7(1) requires an applicant to prove to the Board that s/he can conduct archaeological fieldwork in "a responsible manner that reflects the cultural beliefs and attitudes of the Hawaiian people." As worded, this statement appears to require the endorsement of specific entities in order to obtain a license. Leaving aside the major problem of determining who represents the "Hawaiian people" in matters pertaining to the Board of Archaeologists, we question the utility of this requirement and wonder how it could be enforced without resorting to arbitrary and capricious decision-making. If the intent is to ensure that licensed archaeologists engage in meaningful consultation with Native Hawaiian communities and other stakeholders in the historic preservation process, we believe that this wording should be changed to reflect that intent.

- Several provisions of the bill appear to conflate the practice of archaeology with the multiple, non-archaeological factors and decisions that shape the historic preservation review process. Archaeologists provide technical information and assessments and we agree that this work and the resulting reports should be credible and meet professional standards. Decisions on which historic properties will be preserved or be subject to other forms of mitigation, the decisions that are generally the most controversial, are essentially proposals submitted to the SHPD for decision-making. These proposals often include the land use preferences of the landowner and the preferences of those consulted during the project planning process. The resulting decisions on the treatment of historic properties are not strictly archaeological decisions. In the case of Chapter 6E-42, HRS, SHPD itself makes recommendations to the county or state agency that is issuing the permits or land use approvals and makes the final determinations. These recommendations and potential differences of opinion over these recommendations should not be subject to professional censure as can sometimes be the case. This bill would appear to reinforce this misplaced frustration over the broader process and decisions made during this process. All of the above further underscores the requirement SHPD has to fulfill its responsibilities on the law and its own regulations.

In view of the above problems, we respectfully ask that you OPPOSE passage of SB 2531. Thank you for considering our comments. We look forward to working with you and other stakeholders on the important issue of ensuring that only archaeological work of high quality is conducted in the State of Hawai'i. Should you have any questions, please feel free to contact me at the above email address.

February 2, 2010

To: Senator Clayton Hee, Chair

Jill Tokuda, Vice Chair

Water, Land, Agriculture and Hawaiian Affairs

From: Linda Kaleo o Kalani Paik

Re: **Testimony in support of SB2531 establishing a Board to license Archaeological firms in the State of Hawaii**

I strongly support SB2531. The formation of this Board would ensure licensing of archaeological firms in the State of Hawaii are reviewed in a fair and impartial means. This would also give the Board the authority to deny a license to firms not in accordance with 6E and HAR 300.

The composition of the Board by having those other than archaeologists gives integrity to the Board. The cultural component would ensure that all licensed archaeologists be educated in Hawaiian archaeology and in the spirit of preservation and protection.

This Board would be independent of the State Historic Preservation Division which is in dire need of reform.

Sincerely,

Linda Kaleo o Kalani Paik
P.O. Box 235393
Honolulu, HI 96823
808-354-7765

TESTIMONY

SB 2531

(END)