

TESTIMONY

SB 2739

LATE

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From: Sara Collins [sara.l.collins.sha@gmail.com]
Sent: Tuesday, February 02, 2010 6:34 PM
To: WTL Testimony
Subject: Testimony in Opposition to SB 2937 (Relating to the Licensing of Archaeologists)

Senator Clayton Hee, Chair
Senate Committee on Water, Land, Agriculture & Hawaiian Affairs

FROM: Sara L. Collins, Ph.D., Legislative Chair
Society for Hawaiian Archaeology
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HEARING: February 3, 2010, 3:00 PM, Conference Room 229
SUBJECT: Testimony in OPPOSITION to SB 2739 (Relating to the Licensing of 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 2739 which establishes licensing requirements for archaeologists practicing archaeology in the State of Hawaii. SB 2739 has been introduced by the request of the Governor.

Our organization has a vested interest in the proposed amendments to Title 25 as many of our members are practicing archaeologists and would be subject to the license proposed in the bill. SB 2739 calls for the Director of the Department of Commerce and Consumer Affairs (DCCA) to establish an archaeological licensing program within that agency. The bill also designates SHA as the entity responsible for sponsoring the licensing examination to be administered by the University of Hawai'i (UH) anthropology department.

We are very sympathetic to the general intent of this bill which, we assume, is to help ensure that work conducted by archaeologists in Hawai'i provides a sound and reliable basis for decisions made during the State's historic preservation review process. The bill proposes to do this by creating a mechanism by which archaeologists could be prohibited from working in Hawai'i if their work is of poor quality, inaccurate, or fails to meet professional standards. We are very well aware of our public and private duty to the State's cultural and historic resources and the role we play in giving these resources due consideration through the historic preservation review process and the state and county land use planning process. We do not object, in principle, to being regulated or to having our work be subject to appropriate scrutiny.

Proposals to license archaeologists in Hawai'i are not new. Licensing has been raised periodically in proposed legislation and each time it failed to advance through the legislative process because it was clear, even without a sunrise audit, that there were not enough practicing archaeologists to justify the expense and resources needed to establish and implement licensing procedures or to oversee disciplinary actions. The fee schedules needed to sustain, or even defray, these administrative costs would be exorbitant per license given the low number of potential licensees. Such costs would inevitably be passed on to those required to hire archaeologists and would add another burden of expense to landowners and businesses, both small and large, that must apply for permits or governmental approvals. The license proposed in this bill is in addition to the annual permit already required by SHPD to practice archaeology in the state. As such, the bill introduces another layer of bureaucracy. We believe that the benefits of having a licensing process do not outweigh these additional burdens to the profession or the public.

General Objections To SB 2739

LATE TESTIMONY

We oppose this bill because we do not believe a licensing procedure is an effective, efficient, or fiscally sound way to address the issue of substandard or intentionally erroneous archaeological work. In fact, we believe it will do little to address the problem where it is most immediately apparent and can do the most harm. This is when a proposed project is being reviewed through the existing process contained in Chapter 6E, Hawaii Revised Statutes (HRS). The Department of Land and Natural Resources (DLNR) already has the statutory responsibility to regulate archaeology in the state (§6E-3) and a process established through statute and administrative rules to review archaeological work to assess whether it is adequate or inadequate (HRS §6E-8 and §6E-42; Hawaii Administrative Rules (HAR) 13-275 through -284).

We strongly believe that the intent of this bill is best served by ensuring that the State Historic Preservation Division (SHPD) has the capacity to fulfill the responsibilities it already has and has had for several decades. In many respects the proposed licensing is little more than a band-aid on much larger problem that involves many issues and factors that are not all strictly related to the profession of archaeology. We do not believe that SHPD should abrogate its responsibilities to DCCA, the UH, or to SHA.

We question the purpose of and need for this bill which appears to relieve DLNR and SHPD of their mandated regulatory roles as defined in Chapters 6E-3 and HAR 13-275 through -284. It appears as though the administration desires to "pass the buck" by pushing its regulatory responsibilities onto DCCA and also the UH Anthropology staff and SHA who will not be compensated for a considerable workload. Furthermore, the subject bill was introduced without meaningful consultation with either SHA or the UH Anthropology staff, despite the fact that the bill calls for these entities to play integral role in establishing licensing standards.

Specific Objections to SB 2739

Proposed Section 2 addresses coordination with Chapter 6E, HRS and its implementing regulations. It appears that if the licensing scheme proposed by SB 2739 is implemented, the archaeological permit system authorized under HAR 13-282 will also still be in effect, thus imposing double fees on our members. We do not see any benefit to this. Certainly, there is no apparent benefit to historic and cultural resources.

Proposed Section 3 restricts the use of the title "archaeologist" to licensed archaeologists. We believe that this is unnecessarily restrictive since many individuals who may not meet the professional qualifications listed at proposed Section 1 are in fact archaeologists, by education, training and experience. These individuals frequently serve as field directors, lab directors, and crewmembers, and have carried out fieldwork and studies of high quality over the years. The effect of the requirements in Proposed Section 3 would be to bar two-thirds or more of our membership from working in archaeology. What good purpose would this serve?

Proposed Section 4(2) authorizes the Director of DCCA to work with the "University of Hawaii anthropology program" to prepare and administer examinations that will be sponsored by SHA. To our knowledge, there is no such thing as the "University of Hawaii anthropology program." The University of Hawai'i at Manoa, the University of Hawai'i at West O'ahu, and the University of Hawai'i at Hilo each have an anthropology department or program with qualified archaeologists on staff. Who or what is meant by this phrase? We note that teaching staff at all three schools are coping with significant budget cuts and increased workloads – how are they to accommodate the unfunded requirements imposed on them by SB 2739? With regard the proposal that SHA sponsor the licensing examinations, we would point out that we have no office or facilities or staff available for such an undertaking. Finally, we are puzzled by the complete lack of any reference to SHPD or DLNR in this section. Given these agencies' integral role in the historic preservation review and compliance process as outlined in Chapter 6E, HRS, it is disturbing to see that, according to SB 2739, they will not be part of the licensing process.

Proposed Section 6 covers disciplinary actions to which archaeological licensees would be subject. Our general concerns with this section arise from the vague language used. The broad authority to be granted to the Director to undertake disciplinary actions fails to include any criteria linking the imposition of sanctions to a demonstrated breach of any recognized code of professional standards and ethics. This omission would leave archaeologists uncertain as to their responsibilities under the law. More specifically, we wonder what the term "fraudulent act" is meant to include. Would such fraud pertain only to archaeological work conducted in

LATE TESTIMONY
Hawai'i, or to archaeological work in general, or is the word "fraud" construed more broadly. For example, a licensed archaeologist bounces a personal check, has he or she committed a fraudulent act under SB 2739?

Proposed Remedies to Some of the Problems SB 2739 Is Meant to Address

Instead of the licensing scheme proposed by SB 2739, we would recommend that the following actions be undertaken to improve the quality of archaeological work carried out under SHPD's jurisdiction. While not all of these recommendations are "revenue-neutral," they are probably less expensive than establishing a licensing program at DCCA and they will certainly take far less time to implement than the one to two years required for licensing:

- **Don't accept bad work.** SHPD should not approve archaeological reports and plans until they are of acceptable quality and meet the standards described in HAR 13-276 – 280 and -283. While this policy seems obvious, we do not understand why SHPD finds it so difficult to carry out.
- SHPD must hire and retain staff who are qualified archaeologists and who also have experience in Hawaiian archaeology. Currently, only one island – Hawai'i – has dedicated archaeological review staff. The archaeological review positions for Kaua'i, O'ahu, and Maui County are all vacant and unlikely to be filled, if they aren't eliminated during the current fiscal crisis.
- The SHPD review process needs greater transparency. We believe that a more open review process, whereby the public could easily see the reports and plans reviewed as well as the review letters, would go a long way towards improving the quality of archaeological work and, incidentally, providing the public with information they may need to select a consulting archaeologist. With the installation of the Xerox DocuShare system at SHPD, the division can provide electronic documents for posting on websites or transmission to interested parties. For example, the following steps can be taken quickly and without great expense:
 - The division has resumed its weekly posting of review determinations and we commend them for doing so. It would, however, be more helpful to the public to see the actual review comments made by SHPD. We recommend that the division also post to its website every historic preservation review letter it produces as soon as it is signed. These review letters could be sorted by archaeological firms' names as well as Tax Map Keys or other identifiers, making it even easier for the public and interested parties to see how one company's work compares with the others'.
 - HAR 13-275 and -284 also require the division to post a list of incoming reports and plans once a week; the explicit purpose of this posting is to allow the public to comment on the work done. For at least the last two years all individuals and firms submitting archaeological reports and plans to SHPD for review have been required to submit electronic copies in PDF format. These documents could also be posted soon after they are received, thus allowing SHPD to fulfill its public disclosure requirements as defined in HAR 13-275 and -284.

Established in 1980, SHA has been vitally concerned since its formation with the quality of archaeological work carried out in the State of Hawai'i. Our Standards and Ethics Committee previously handled peer reviews and allegations of inferior work conducted by archaeologists (some of them SHA members, others non-members) throughout much of the 1980s. With the growth and development of the Historic Preservation Program at the Division of State Parks and then the establishment of SHPD in 1990, SHA stepped back from many of its peer review activities as our members' confidence grew in the way SHPD conducted regulatory reviews of archaeological work under Chapter 6E, HRS as well as Federal statutes such as Section 106 of the National Historic Preservation Act. Thus, SHA has been longtime advocate for setting professional standards in archaeology and ensuring that archaeological work done meets those standards.

Therefore, in view of the above facts, we respectfully ask that you OPPOSE SB 2739. Thank you for considering our comments. We look forward to working with you and other stakeholders on the important issues of the quality of archaeological work and who should bear responsibility for ensuring that only

archaeological work of a high quality is carried out in the State of Hawai'i. Should you have any questions, please feel free to contact me at the above email address.

LATE TESTIMONY

TESTIMONY

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