



HB711
RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS
House Committee on Hawaiian Affairs

February 9, 2011

8:30 a.m.

Room: 329

The Office of Hawaiian Affairs (OHA) offers the following comments on HB711, which seeks to transfer the functions and duties of the historic preservation division of the Department of Land and Natural Resources (DLNR) relating to Hawaiian burial sites to the OHA.

OHA clearly recognizes the important kuleana our Native Hawaiian community possesses to mālama “our most cherished possession”, the iwi of our beloved kūpuna. The responsibilities of the Burial Sites Program, as administered by the State Historic Preservation Division (SHPD) and DLNR, are vast and immense. The care, management, and protection of the estimated hundreds of thousands of unmarked ancestral Native Hawaiian burial sites situated throughout the State of Hawai‘i can be contentious, highly emotive, and often involve complex aspects of landowner, familial, and cultural rights.

Enforcement Powers

One paramount issue the bill raises would be whether the inherent police powers of the DLNR would transfer to OHA with the statutory amendments. An implied right of entry onto private property for purposes of responding to, and investigating the inadvertent discoveries of human skeletal remains, is afforded to DLNR as with the Honolulu Police Department and Office of the Medical Examiner. The efficacy of OHA’s role in investigating and determining proper treatment of human remains would rest on an ability to quickly access private, County and State parcels, often prior to exhaustive determinations of land ownership and boundary lines.

Ethnicity Determinations

Another key issue regarding the HB711 centers on the shared jurisdiction between the DLNR and OHA with regards to the classification of ethnicity of the affected burial site or human skeletal remains in question. In response to concerns expressed by the Native Hawaiian community during promulgation of Chapter 13-300, Hawaii Administrative Rules (HAR) which effectively implement the portions of Chapter 6E, Hawaii Revised Statutes (HRS) pertaining to the treatment of

unmarked burial sites, the handling and exposure of iwi kūpuna was kept to a minimum. This was in direct response to the cultural attitudes and views of the sanctity of iwi in the Hawaiian culture and Native Hawaiian views on desecration and harm.

Such that Chapter 6E, HRS, made a jurisdictional distinction between ancestral Native Hawaiian remains and the remains of other ethnic groups with regards to the processes for determining appropriate treatment, methods were adopted to help clarify ethnicity of remains. Currently, in Chapter 13-300, HAR, the procedure for determining ethnicity is designed to meet the spirit and intent of the law while respecting the expressed concerns of the Native Hawaiian community. OHA remains concerned that should a clearer determination of ethnicity be required, that a process of more intrusive examination and testing may result from the best of intentions, thus creating more harm to the kūpuna.

Capacity

Lastly, the bill raises other related issues, such as OHA's ability to promulgate administrative rules, as Chapter 13-300, HAR, would certainly have to be revised and amended, and public hearings held. There are also serious issues regarding the budgeting and allocation of current OHA resources for a kuleana of this magnitude as well as logistical and programmatic practicalities which will need to be well-thought out for a statewide program. The transfer of duties outlined in the proposed legislation would not only envision a transfer of Burial Sites Program staff but potentially a portion of archaeological review staff as well. Unmarked burial sites are often interspersed amongst a cultural landscape which includes many other types of historic properties. Their collective treatment by SHPD often proves a better method of mitigation as opposed to segregating just the human burial sites out for disparate consideration and treatment.

DLNR possesses staffing and division expertise spread throughout the organization with various divisions assisting SHPD in fulfilling their mission such as the Division of Conservation and Resource Enforcement (DOCARE), State Parks, Land Division, Bureau of Conveyances and the Division of Forestry which provides an internal support network on all islands to help effectuate the responsibilities of fulfilling Chapter 6E, HRS. It is unclear as to the structural realignment of OHA services and functions needed to fulfill this important kuleana.

Liability

OHA is concerned with the possible abrogation of the duties and responsibilities of the DLNR under the current constitutional and statutory mandates to protect the traditional and customary cultural practices of the Native Hawaiian people by simply transferring this kuleana to OHA. Through our advocacy, and in assisting a multitude of beneficiaries with historic preservation

concerns, OHA may very well inherit years of serious neglect, insufficient inventories, poor record keeping and a program in such serious disarray, that OHA would be exposed to lawsuit and serious liability by beneficiaries harmed by such previous malfeasance. In order to move forward to rehabilitate the program, the foundation must be solid and reliable; otherwise the best efforts will be set up to fail.

Conclusion

OHA is extremely cognizant that to raise a beloved lāhui, the foundation must be pono and there is no greater kuleana than to care for our ancestors, our beloved iwi kūpuna. OHA is up to the challenge. However, a kuleana of this magnitude requires extreme diligence regarding all legal, economic, cultural and social facets to ensure that such a transfer of responsibilities is truly successful and does not result in more failure and irreparable harm due to hasty implementation.

OHA remains committed to continue strongly advocating for the proper identification, protection and treatment of our beloved iwi kūpuna and stand ready to not only recommend, but to assist, and where deemed more effective, participate directly in this important kuleana. Thank you for this opportunity to testify.

COMMITTEE ON HAWAIIAN AFFAIRS

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Support HB 711 with amendments

This is a very good idea to transfers the functions and duties of the Historic Preservation Division of DLNR relating to Hawaiian burial sites to the Office of Hawaiian affairs.

I would like to amend this bill by transferring the Historic Preservation Division from DLNR to the Office of Hawaiian Affair. OHA and Historic Preservation Division are charged with the same function and should be under the control of OHA instead of only portion of the functions.

Historic Preservation Division is short handed as is with no additional fund. OHA has the funding and will be able to over the most important issue with the Hawaiian Community which is preserving the history, culture of the Hawaiian ancestors.