

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on:
WATER, LAND, AND HAWAIIAN AFFAIRS**

**Friday, February 7, 2020
9:30 AM**

State Capitol, House Conference Room 325

**In consideration of
HOUSE BILL 2443
RELATING TO HISTORIC PRESERVATION**

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

House Bill 2443 proposes to amend Section 6E-11, Hawaii Revised Statutes (HRS), to clarify the definition of civil and administrative violations to include the conducting of certain archaeological activities by any person who (1) has not complied with the provisions in Sections 6E-8 and 6E-42, HRS; (2) conducted archaeological activities without obtaining the required permits from the department or required permits or approvals from the appropriate county or state agency; or (3) failed to comply with any of the terms or conditions of a mitigation plan approved by the department or any agreed upon mitigation condition or commitment. **The Department of Land and Natural Resources (Department) supports this measure and offers comments.**

House Bill 2443 addresses the persistent issue involving archaeological activities being conducted in violation with the Sections 6E-8 and 6E-42, HRS. House Bill 2443 clarifies certain archaeological activities that are not consistent with Sections 6E-8 and 6E-42, HRS, including activities that may not be consistent with the activities specified in a permit or approval, or a mitigation plan or commitment.

The Department believes that House Bill 2443 will support the efforts of all participants in the Chapter 6E, HRS, historic preservation review process, including agencies, developers and their project contractors and consultants, private landowners, the Native Hawaiian community, and historic preservation advocates, as well as the Department's State Historic Preservation Division (SHPD) by clarifying the definition of civil and administrative to ensure greater compliance with the Sections 6E-8 or 6E-42, HRS, historic preservation review.

The Department recommends that page 3, lines 5-14 in SECTION 1 be revised (proposed insertions underlined) and renumbered to read:

(d) It shall be a civil and administrative violation for any person to:

- (1) Conduct archaeological work that is not consistent with the activities authorized by the permit or any permit stipulations;
- (2) Conduct archaeological work without an archaeological permit;
- (3) Conduct archaeological monitoring prior to approval of an archaeological monitoring plan by the department;
- (4) Violate or fail to carry out the terms of an archaeological monitoring plan approved by the department;
- (5) Violate or fail to carry out any of the terms or conditions of a preservation plan approved by the department;
- (6) Carry out data recovery activities without a data recovery plan approved by the department; and
- (7) Violate or fail to carry out any agreed upon mitigation condition or commitment.

Thank you for the opportunity to comment on this measure.



HB2443
RELATING TO HISTORIC PRESERVATION
House Committee on Water, Land, & Hawaiian Affairs

February 7, 2020

9:30 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB2443, which would make it a civil and administrative violation for any person to 1) conduct archaeological monitoring prior to approval of an archaeological monitoring plan; 2) fail to carry out the terms of an archaeological monitoring plan approved by the State Historic Preservation Division (SHPD); 3) violate any terms of a preservation plan approved by SHPD; 4) carry out data recovery activity without an approved data recovery plan; or 5) fail to carry out agreed upon mitigation commitments. The bill would accordingly better ensure compliance with carefully developed monitoring and preservation plans and other mitigation actions recommended and approved by SHPD, by giving SHPD the tools it needs to enforce such compliance. **OHA supports strong enforcement mechanisms for Hawai'i Revised Statutes (HRS) Chapter 6E, including statutory amendments that can deter irresponsible archaeological and development practices and thereby better protect iwi kūpuna and cultural sites from irreversible damage.**

Hawai'i Revised Statutes (HRS) Chapter 6E acknowledges the deep significance of the state's historic and cultural heritage, and provides for a comprehensive program of historic preservation management. For example, HRS Section 6E-11 prohibits any person from knowingly taking, appropriating, excavating, injuring, destroying, or altering any historic property or burial on State and private lands. The state historic preservation review process laid out in Chapter 6E also allows SHPD to recommend and approve mitigation and preservation actions to help preserve these valuable sites, burials, and other properties, and to protect them from damage and desecration.

The failure to conscientiously follow the processes laid out in Chapter 6E, including monitoring and preservation plans and other mitigation actions recommended or approved by SHPD during such processes, can seriously threaten cultural and historical sites and burials. For example, archaeological monitoring is often recommended to minimize potential adverse effects of ground-disturbing activities where historic properties like iwi kūpuna are known or likely to occur. However, if monitoring is not carefully and specifically aligned with a SHPD-recommended archaeological monitoring plan, even previously identified sites can be overlooked, damaged, or destroyed. Further, archaeological monitoring plans lay out "stop-work" protocols to protect historic properties or burials when they are inadvertently discovered during construction. These protocols are thoughtfully crafted to protect sites and burials as they are discovered, as

well as preserve other sites likely to be in their immediate vicinity. When these protocols are not followed, irreparable harm to irreplaceable sites and burials may result.

Unfortunately, it appears that HRS Chapter 6E does not currently include noncompliance with SHPD's mitigation recommendations and approvals, specifically, as a violation that can be meaningfully enforced. Similarly, Chapter 6E does not consistently provide enforcement mechanisms for noncompliance with other processes described under the Chapter, including the historic preservation review process for state projects. Accordingly, SHPD has limited ability to enforce its own statutory processes and statutorily authorized conditions that protect Hawai'i's cultural and historical sites and resources.

This measure would emphasize and realize the need for precise compliance with archaeological monitoring and preservation plans, as well as other processes established under HRS Chapter 6E, and clarify a process for accountability in these matters. In so doing, **this measure will help protect cultural and historical sites and burials, deter unscrupulous and irresponsible archaeology and development practices, and restore public trust in the administration and implementation of our historic preservation laws and processes.**

For the above reasons, OHA urges the Committee to **PASS** HB2443. Mahalo for the opportunity to testify on this measure.

HISTORIC HAWAII FOUNDATION

TO: Representative Ryan I. Yamane, Chair
Representative Chris Todd, Vice Chair
Committee on Water, Land & Hawaiian Affairs

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

Committee: Friday, February 7, 2020
930 a.m.
Conference Room 325

RE: HB2443, Relating to Historic Preservation

On behalf of Historic Hawaii Foundation, I am writing in **support for HB2443**. The bill would clarify the standards and applicability for assessing penalties for violations of HRS 6E related to historic preservation, especially as it relates to archaeological projects that proceed without the prior approval of the State Historic Preservation Division of the Department of Land and Natural Resources, or that proceed without complying with permitting terms or conditions approved by the department.

Historic Hawai'i Foundation (HHF) agrees that there is a growing and pervasive disregard for the statute and implementing rules, regulations and procedures that are developed to protect and preserve properties of historic and cultural significance. We have seen both blatant and unintentional actions that result in the destruction of cultural sites, demolition of historic properties and disturbance of iwi kūpuna in a variety of circumstances across the state.

The intent of the bill is to provide additional tools for enforcement, including the authority for the Department to investigate and act in circumstances outlined by the bill. HHF shares the State's goals to ensure enforcement of the laws that were designed to take into account effects on historic properties both during planning and implementation of projects. HHF supports measures in pursuit of these goals and any legislative remedies to achieve them.

Thank you for the opportunity to comment.

HB-2443

Submitted on: 2/4/2020 10:16:54 PM

Testimony for WLH on 2/7/2020 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Trisha Kehaulani Watson	Honua Consulting	Support	No

Comments:

Dear Chair Yamane and Vice Chair Todd,

I am writing to express my **STRONG SUPPORT** for this measure. This measure would go a long way to rectify many of the challenges SHPD faces. Many firms, like mine, work very hard to follow all the statutes and regulations, and we advocate strongly for our clients to do the same. The lack of consequences for those who knowingly and willingly violate these same laws leads to a multitude of challenges for SHPD that cause the backlogs and delays that impact us all.

I strongly urge you to **PASS** this measure unamended.

Thank you,

Trisha Kehaulani Watson, JD, PhD

HB-2443

Submitted on: 2/4/2020 7:57:33 PM

Testimony for WLH on 2/7/2020 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments:

HB-2443

Submitted on: 2/4/2020 6:21:46 PM

Testimony for WLH on 2/7/2020 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl	Individual	Comments	No

Comments:

What if the person is acting for a corporation, foreign government etc.? Is it only if a "person" takes something? Who determines if it is an artifact or of value? We've seen this on the Mauna, at burial grounds on O`ahu.. who determines?