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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

Wednesday, March 11, 2020  
09:00 AM

State Capitol, Conference Room 325

In consideration of  
SENATE BILL 2249, SENATE DRAFT 1  
RELATING TO HISTORIC PRESERVATION

Senate Bill 2249, Senate Draft 1 proposes to amend Section 6E-11, Hawaii Revised Statutes (HRS) to clarify the definition of civil and administrative violations to include conducting certain archaeological activities by any person who (1) has not complied with the provisions of Sections 6E-8 and 6E-42, HRS; (2) who has conducted archaeological activities without obtaining the necessary permits from the Department of Land and Natural Resources (Department) or required permits or approvals from the appropriate county or state agency; or (3) failed comply with any terms or conditions of a mitigation plan approved by the Department or any agreed upon mitigation condition or commitment. **The Department strongly supports this measure.**

Senate Bill 2249, Senate Draft 1 proposes to address the persistent issue involving archaeological activities conducted in violation of Sections 6E-8 or 6E-42, HRS, in particular failure to carry out approved mitigation plans or commitments. Senate Bill 2249, Senate Draft 1 proposes to provide essential clarifications that certain archaeological activities not consistent with Sections 6E- and 6E-42, HRS, including activities that are not consistent with the activities specified in a permit or approval, or an approved mitigation plan or commitment, are violations of Section 6E-11, HRS.

The Department believes that the provisions of Senate Bill 2249, Senate Draft 1 will support the efforts of participants in Chapter 6E, HRS, review processes, 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 by clarifying the definitions of civil and administrative violations to ensure greater compliance with the Section 6E-8 and 6E-42, HRS, review processes.

Thank you for the opportunity to comment on this measure.



**SB2249 SD1**  
RELATING TO HISTORIC PRESERVATION  
House Committee on Water, Land, & Hawaiian Affairs

March 11, 2020

9:00 a.m.

Room 325

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The Office of Hawaiian Affairs **SUPPORTS** SB2249 SD1, which would make it a civil and administrative violation for any person to 1) conduct archaeological monitoring prior to the 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 specifically requires the precise execution of historic preservation mitigation actions recommended during SHPD's historic preservation review process, as necessary to better ensure the protection of the State's invaluable historic properties. **OHA supports strong enforcement mechanisms for Hawai'i Revised Statutes (HRS) Chapter 6E, intended to protect cultural sites from irreversible damage and deter irresponsible archaeological practices.**

HRS Chapter 6E acknowledges the deep significance of the State's historic and cultural heritage, and provides 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 protect these valuable sites, burials, and other properties from construction and similar activities.

Any failure to conscientiously follow the historic preservation review processes laid out in Chapter 6E, including the mitigation actions and other recommendations made 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 adverse effects where historic properties are likely to be discovered during ground-disturbing work. However, if monitoring is not carefully aligned with an archaeological monitoring plan, previously identified sites can be overlooked, damaged, or even 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 occur.

Unfortunately, it appears that HRS Chapter 6E currently does not provide meaningful enforcement provisions for noncompliance with SHPD's mitigation action recommendations. Similarly, Chapter 6E does not consistently provide enforcement mechanisms for noncompliance with other processes and procedures otherwise described under the Chapter, such as 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 our 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 processes for accountability. 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 that the Committee PASS SB2249 SD1. Mahalo for the opportunity to testify on this measure.

**SB-2249-SD-1**

Submitted on: 3/9/2020 11:29:02 AM

Testimony for WLH on 3/11/2020 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rayne	Individual	Support	No

Comments:

**SB-2249-SD-1**

Submitted on: 3/10/2020 4:03:18 PM

Testimony for WLH on 3/11/2020 9:00:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Karen Thatcher	Individual	Oppose	No

Comments:

**LATE**

**SB-2249-SD-1**

Submitted on: 3/10/2020 9:42:44 PM

Testimony for WLH on 3/11/2020 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Angus Raff-Tierney	Society for Hawaiian Archaeology	Support	No

Comments:

Testimony in support with comments on SB 2249 SD1, Relating to Historic Preservation

I am Angus Raff-Tierney, Chair of the Legislative Committee of the Society for Hawaiian Archaeology (SHA). We have over 150 members including professional archaeologists and advocates of historic preservation. On behalf of SHA, we support and offer comments on SB 2249 SD1 (Relating to Historic Preservation).

The intent of SB 2249 is to ensure better protection of vulnerable historic properties, and to provide more accountability and transparency in historic preservation compliance, as managed by the State Historic Preservation Division (SHPD). There have been too many instances of archaeology firms and developers taking advantage of the lack of oversight and inability to intact consequences by the SHPD. This has allowed, in some cases, the destruction of sites with important research data and the states treasured heritage.

However, we caution that as it is currently written, the definitions herein are too vague. They leave open the possibility of fines being levied against persons that are not the intention of the bill. There are archaeological activities and work that are not governed by permits that can be conducted on sites from afar without ever setting foot on the site being researched, and without causing any damage to it. Examples of this archaeology are the following: background research, studying already curated collections, aerial photography, and other remote sensing. While it is clearly not the intent of this bill to target this non-invasive archaeology, we suggest adding language that clarifies this so that if it becomes law it is not misconstrued.

Should the bill pass out of this committee, we request to be consulted as a stakeholder in future deliberations on an amended bill. Should you have any questions, please feel free to contact me at the above email. Mahalo for considering our testimony.

**SB-2249-SD-1**

Submitted on: 3/11/2020 7:21:07 AM

Testimony for WLH on 3/11/2020 9:00:00 AM



<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Trisha Kehaulani Watson	Honua Consulting	Support	No

Comments:

Aloha Chair Yamane and the Distinguished Members of this Committee,

I am writing to express my **STRONG SUPPORT** for this measure **WITH AMENDMENTS**. I believe it is essential to clarify that this measure if not intended to create a mechanism to pursue violations against persons, like regular homeowners, who unknowingly impact historic resources, rather this is an essential tool to levy violations against persons and businesses who intentionally harm historic resources or proceed with projects in sensitive areas when they have previous knowledge that historic resources may be in the project area.

This is also an essential tool to ensure companies permitted to conduct archaeological work in the state are following the laws and regulations. In my opinion, this is the most important change this measure would make to the existing law.

I urge you to please pass this measure with the noted amendments.

Mahalo,

Trisha Kehaulani Watson, JD, PhD