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GOVERNOR OF HAWAII



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

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on:
LABOR, CULTURE AND THE ARTS**

**Thursday, January 30, 2020
2:45 PM
State Capitol, Conference Room 224**

**In consideration of
SENATE BILL 2249
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

Senate Bill SB 2249 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 supports this measure and offers comments.**

Senate Bill 2249 addresses the persistent issue involving archaeological activities being conducted in violation with the Sections 6E-8 and 6E-42, HRS. Senate Bill 2249 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 Senate Bill 2249 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.



SB2249
RELATING TO HISTORIC PRESERVATION
Senate Committee on Labor, Culture, and the Arts

January 30, 2020

2:45 p.m.

Room 224

The Office of Hawaiian Affairs Committee on Beneficiary Advocacy and Empowerment (OHA) will recommend that the Board of Trustees **SUPPORT** SB2249, 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 specifically requires the precise execution of historic preservation mitigations 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, which intends 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, and protect them from damage and desecration.

The failure to conscientiously follow the 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 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 irreplaceable sites and burials may result.

Unfortunately, it appears that HRS Chapter 6E currently does not make noncompliance with SHPD's mitigation action recommendations in itself a violation that can be meaningfully enforced. Similarly, Chapter 6E does not consistently provide enforcement mechanisms for noncompliance with other processes and procedures 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 and other processes established under HRS Chapter 6E, and clarify a process for accountability on 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 that the Committee **PASS** SB2249. Mahalo for the opportunity to testify on this measure.

SB-2249

Submitted on: 1/29/2020 8:27:14 PM

Testimony for LCA on 1/30/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Angus Raff-Tierney	Testifying for Society for Hawaiian Archaeology	Support	No

Comments:

TO: Senator Brian T. Taniguchi, Chair

Senator Les Ihara, Jr., Vice Chair

Senate Committee on Labor, Culture, and the Arts

FROM: Angus Raff-Tierney, M.A., Legislative Committee Chair,

Society for Hawaiian Archaeology

angusrafftierney@yahoo.com

HEARING: January 30, 2020, 2:45 PM, Conference Room 224

SUBJECT: Testimony in **SUPPORT WITH AMENDMENTS** of SB 2249, 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 WITH AMENDMENTS** SB 2249 (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). However, we see 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. The vague definitions are in the following section:

Section 1, Proposed amendments to Section 6E-11, Hawaii Revised Statutes (HRS):

“(e) It shall be a civil and administrative violation for any person to carry out any archeological activities without first obtaining a permit from the department, or written approval of any plan required by the department or its rules.”

There are currently no formal definitions for “archaeological activities” in Chapter 6E, HRS, nor within this bill. Without defining this term, academic researchers, or other non-intrusive archaeological work could be accidentally targeted. With subsection (e) removed, SB 2249 loses none of it’s ability to fine violators, and would be less ambiguous.

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.

HISTORIC HAWAII FOUNDATION

TO: Senator Brian T. Taniguchi, Chair
Senator Les Ihara Jr., Vice Chair
Committee on Labor, Culture and the Arts

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

Committee: Thursday, January 30, 2020
2:45 p.m.
Conference Room 224

RE: SB2249, Relating to Historic Preservation

On behalf of Historic Hawaii Foundation, I am writing in **support for the intent of SB2249**, with comments and recommendations. 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.

SB-2249

Submitted on: 1/27/2020 8:20:40 PM

Testimony for LCA on 1/30/2020 2:45:00 PM

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

Comments:

SB-2249

Submitted on: 1/29/2020 12:10:34 AM

Testimony for LCA on 1/30/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kama Hopkins	Individual	Support	No

Comments: