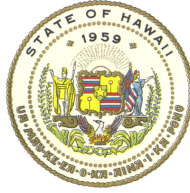


DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

ROBERT K. MASUDA
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M. KALEO MANUEL
ACTING 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

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
WATER AND LAND**

**Thursday, February 3, 2022
9:30AM
Via Videoconference**

**In consideration of
HOUSE BILL 2489
RELATING TO HISTORIC PRESERVATION**

House Bill 2489 proposes to amend Chapter 6E, Hawaii Revised Statutes (HRS), by defining and creating a separate “pre-contact historic property” category; amending the membership of the Hawaii historic places review board, increases the penalties generally for damage or destruction of historic properties and burial sites, providing even higher penalties if it is “pre-contact historic property”; and substantially increases the fines for criminal damage of historic properties. **The Department of Land and Natural Resources (Department) supports this measure in part and offers comments.**

House Bill 2489 SECTION 1 would amend the definition of historic property in Section 6E-2, HRS, by creating a separate category for “pre-contact historic property” which would mean

any building, structure, object, district, area, or site, including but not limited to heiau, unu, ahu, ko‘a fishing shrine, loko i‘a fishpond, agricultural complex, habitation complex, salt pond complex, and holua slide, that existed prior to 1779.

The Department believes that it is not necessary to create a separate category for pre-contact historic property. The current definition of historic property, which is any property that is more than 50-years old, clearly encompasses the places House Bill 2489 defines as pre-contact historic properties. The Department also notes that the limitations of archaeological methodology and limited oral historical documentation make it all but impossible in the vast majority of instances to determine whether a place pre- or post-dates Captain Cook’s arrival in Hawaii.

The Department does believe that the definition of historic property should be amended. The Department strongly prefers the proposed amended definition in Senate Bill 570.

House Bill 2489 SECTION 2 would amend Section 6E-3(7), Hawaii Revised Statutes (HRS), by specifically directing the Department to consult with the various counties and public and private entities engaged in historic preservation activities. The Department believes that this amendment is unnecessary as the Department consults on a regular basis with all individuals, organizations, and agencies involved in historic preservation.

SECTION 2 also would insert a new subparagraph (8) in Section 6E-3, HRS, directing the Department to develop, publish, and distribute “informational materials regarding statutory protections for burials, historic sites, and archaeological resources, including the process of project reviews established by [Chapter 6E, HRS].” While the Department believes it already has authority to develop, publish, and distribute educational materials, it supports this proposed amendment. The Department notes, however, that House Bill 2489 does not appropriate any funds, and the Department does not have the staff or resources to develop and distribute these or other important informational resources.

House Bill 2489 SECTION 3 proposes to amend Section 6E-11, HRS, by increasing the civil penalty for damage or destruction of historic property from a maximum of \$10,000 to \$20,000 per violation, and would provide a maximum penalty of \$30,000 if the property is a pre-contact historic property. The Department supports the increase in the civil penalty to \$20,000 per violation. The Department does not support the creation of a separate pre-contact historic property category; accordingly, the Department does not support the establishment of a separate penalty for damage to such properties. The Department also notes that enforcement of this higher penalty for pre-contact historic properties would be extremely difficult. As noted above it is often impossible to determine with precision how old early sites are. Under the proposed definition a property that was created in 1780 would not be pre-contact and not subject to the highest penalty level. For most early sites it is impossible to reliably determine age at that level of accuracy necessary to sustain a decision to enforce the higher penalty. The Department also notes that even at the current maximum penalties in Section 6E-11, HRS, in the last few years the board of land and natural resources has enforced very substantial penalties for violations of Section 6E-11, HRS.

SECTION 3 would also amend Section 6E-11, HRS, by requiring

Any landowner or developer responsible for any project where violations are found to have occurred shall execute any mitigation and preservation measures ordered by the department and shall be jointly and severally liable for any costs of mitigation and preservation.

The Department believes that this an important clarification and supports this amendment.

House Bill 2489 SECTION 4 proposes to amend Section 6E-11.5, HRS, with increases in the maximum the civil penalties for damage or destruction of historic properties from \$10,000 to \$20,000, and—to \$30,000 for damage or destruction of a pre-contact historic property. The

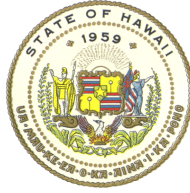
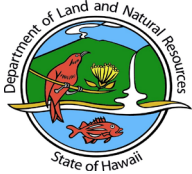
Department supports the increase from \$10,000 to \$20,000 but cannot support the \$30,000 for damage to pre-contact historic properties for the reasons stated above.

The Department also suggests Section 6E-11.5, HRS, be amended to raise the minimum penalty per violation from \$500 to \$1,500.

Finally, House Bill 2489 SECTION 5 amends Section 6E-12, HRS, by increasing the penalty for offering for sale or trade or removal of historic objects or human skeletal remains and associated burial good from a maximum of \$10,000 to \$25,000. The Department supports this proposed amendment.

Thank you for the opportunity to comment on this measure.

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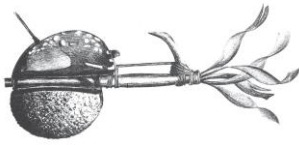
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Thank you for the opportunity to comment on this measure.



SOCIETY FOR HAWAIIAN ARCHAEOLOGY

P.O. BOX 22458 HONOLULU, HAWAII 96823

TO: Senator Lorraine R. Inouye, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Committee on Water & Land (WTL)

Senator Mark Nakashima, Chair
Senator Scot Matayoshi, Vice Chair
Committee on Judiciary & Hawaiian Affairs (JHA)

Senator Sylvia Luke, Chair
Senator Ty Cullen, Vice Chair
Committee on Finance (FIN)

FROM: Mara Mulrooney, Ph.D.
President, Society for Hawaiian Archaeology
membership@hawaiianarchaeology.org

HEARING: February 3, 2022, 9:30AM, Conference Room 430 & Videoconference

SUBJECT: Testimony regarding HB 2489, Relating to Historic Preservation

I am Mara Mulrooney, President 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 oppose HB 2489 as written.**

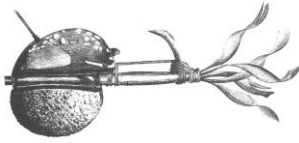
The intent of HB 2489 is to ensure better protection of vulnerable historic properties and artifacts. If developed using appropriate language, HB 2489 may provide a clearer framework outlining the regulations and standards for the State's historic preservation program. Currently, Hawai'i State Legislature Chapter 6E Section 2 identifies historic properties as "any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old." HB 2489 will revise Hawai'i State Legislature Chapter 6E Section 2 by amending a new definition to include pre-contact historic properties. The new amendment would read as follows.

"Pre-contact historic property" means any building, structure, object, district, area, or site, including but not limited to heiau, unu, ahu, ko'a fishing shrine, loko i'a fishpond, agricultural complex, habitation complex, salt pond complex, and holua slide, that existed prior to 1778."

While we agree with the intent of the proposed amendments, we are concerned that the attempt to define "pre-contact historic property" is problematic. Without very specific data, archaeologists and historians cannot tell, with any certainty, if the site existed prior to 1778. This introduces ambiguity to the process and may inadvertently omit historic properties that were built and used following initial contact with westerners (post-1778) that are reflective of continued Native Hawaiian cultural practices and lifeways during the post-contact period. The proposed amendments to Section 3(f) appear to be well-intentioned, but leave loopholes for violators. In a court of law, it would be difficult to say with certainty that a historic property was in existence prior to 1778. The proposed amendment would also require proof that the Department has consulted with the Office of Hawaiian Affairs. We agree that the fines for landowners and developers who cause loss of, or damage to, historic properties should be raised, and that landowners and developers must be responsible for the execution of mitigation or preservation measures. We do not agree that this responsibility should only apply to pre-contact historic properties; instead, it should be applicable to all historic properties as currently defined under the National Historic Preservation Act (NHPA) and/or under HRS Chapter 6E.

<https://hawaiianarchaeology.org/>

The Society for Hawaiian Archaeology is a registered tax-exempt organization established in 1980 to promote and stimulate interest and research in the archaeology of the Hawaiian Islands, encourage a more rational public appreciation of the aims and limitations of archaeological research, serve as a bond among those interested in Hawaiian archaeology, both professionals and non-professionals, and aid in directing their efforts into more scientific channels as well as encourage the publication of their results, advocate and assist in the conservation of archaeological data, discourage unethical commercialism in the archaeological field and work for its elimination.



SOCIETY FOR HAWAIIAN ARCHAEOLOGY

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Should HB 2489 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 the opportunity to comment.

<https://hawaiianarchaeology.org/>

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HB-2489

Submitted on: 2/1/2022 8:39:57 PM

Testimony for WAL on 2/3/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Barbara Barry	Individual	Support	No

Comments:

Aloha,

I strongly support HB2389,

Mahalo,

Barbara Barry