

HB-320-HD-1

Submitted on: 2/14/2021 9:35:17 PM

Testimony for JHA on 2/17/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Max Castanera	Individual	Support	No

Comments:

Aloha,

Please consider passing HB 320 to protect Hawaii's historic sites! There should be penalties for disturbing archeological/historical sites without permission from the land owner. Mahalo for your consideration.



HB320 HD1
RELATING TO HISTORIC PRESERVATION
House Committee on Judiciary & Hawaiian Affairs

Pepeluali 17, 2021

2:00 p.m.

Lumi 325

The Office of Hawaiian Affairs **SUPPORTS** HB320 HD1, which would make it 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 by the State Historic Preservation Division (SHPD) of an archaeological monitoring plan; 4) violate or fail to carry out any of the terms or conditions of an archaeological monitoring plan or a preservation plan approved by the SHPD; 5) carry out data recovery activities without a data recovery plan approved by the SHPD; or 6) violate or fail to carry out any agreed upon mitigation condition or commitment. Language is also added that would make the use of explosives associated with land development or land alteration activities without the approval of SHPD a civil and administrative violation. **OHA supports stronger enforcement mechanisms, such as those proposed in this measure, 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 for a comprehensive program of historic preservation management and protection. Notably, the state historic preservation review processes laid out in Chapter 6E specifically allow SHPD to recommend and approve mitigation and preservation actions to help protect invaluable sites, burials, and other properties, and protect them from damage and desecration. **Full compliance with these review processes, including the mitigation and preservation actions identified through the processes is critical to preventing irreparable harm to Native Hawaiian cultural sites and iwi kūpuna of immeasurable importance to the Native Hawaiian community, and which may be the last remaining vestiges of our islands’ deep cultural and historical foundation.**

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. 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 better realize the need for precise compliance with archaeological monitoring and preservation plans and other actions established under the provisions of HRS Chapter 6E, and ensure greater 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 help to restore public trust in the administration and implementation of our historic preservation laws and processes.**

Finally, OHA notes and appreciates that the proposed language to require SHPD approval for the use of explosives for land development or alteration activities will also serve to protect Native Hawaiian historic properties and sites from unnecessary or inadvertent desecration and destruction.

For the above reasons, OHA urges the Committee to **PASS** HB320 HD1. Mahalo for the opportunity to testify on this measure.

HISTORIC HAWAII FOUNDATION

TO: Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair
Committee on Judiciary & Hawaiian Affairs (JHA)

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

Committee: Wednesday, February 17, 2021
2:00 p.m.
Via Video Conference/Conference Room 325

RE: **HB 320 HD1, Relating to Historic Preservation**

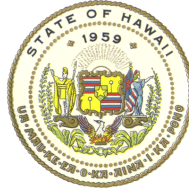
On behalf of Historic Hawaii Foundation, I am writing in **support for HB 320 HD 1**. The bill would clarify the standards and applicability for assessing penalties for violations of HRS 6E related to historic preservation, especially as it relates to archaeological projects that proceed without the 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 covert 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.

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
JUDICIARY & HAWAIIAN AFFAIRS**

**Wednesday, February 17, 2021
2: 00 PM**

State Capitol, Via Videoconference, Conference Room 325

**In consideration of
HOUSE BILL 320, HOUSE DRAFT 1
RELATING TO HISTORIC PRESERVATION**

House Bill 320, House Draft 1 proposes to makes it a civil and administrative violation for any person to engage in certain archaeological activities without obtaining the required permission or approval from the department of land and natural resources. **The Department of Land and Natural Resources (Department) supports this measure.**

House Bill 320, House Draft 1 proposes to amend Section 6E-1, Hawaii Revised Statutes (HRS), clarifying that any person who engages in certain archaeological activities without obtaining the required permission or approval from the Department has committed a civil and administrative violation. This clarification is necessary to ensure that the Department is able to effectively regulate “archaeological activities throughout the state” as it is required to do by Section 6E-3, HRS, as well as ensure that monitoring and mitigation commitments are carried out as agreed to between the permitting agency, project proponent, and the Department.

House Bill 320, House Draft 1 proposes to clarify that it is a violation carrying potentially significant fines to fail to implement measures agreed upon protecting significant historic properties and burial sites or to violate such agreed upon measures that are the outcome of the project review process established by Sections 6E-8 and 6E-42, HRS. House Bill 320, House Draft 1 also proposes to make it clear that archaeological activities must be carried out as agreed to among permitting agencies, the Department, project proponent, and consulting archaeologists; and that failure to do so is potentially subject to significant financial penalties.

The Department believes that these clarifications will make it possible for the Department to ensure that conditions agreed to that are intended to protect significant historic properties and burials are more consistently completed, and that archaeological activities are carried out in a manner consistent with the Department’s standards and requirements.

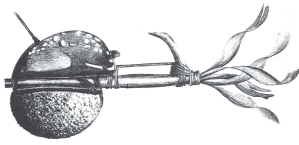
Thank you for the opportunity to comment on this measure.

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

ROBERT K. MASUDA
FIRST DEPUTY

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



SOCIETY FOR HAWAIIAN ARCHAEOLOGY

P.O. BOX 22458 HONOLULU, HAWAII 96823

TO: Rep. Mark M. Nakashima, Chair
Rep. Scott Z. Matayoshi, Vice Chair
House Committee on Judiciary and Hawaiian Affairs

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

HEARING: February 17, 2021, 2:00 PM, Conference Room 325

SUBJECT: Testimony in **support** of HB 320 HD1, 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 **support** and offer comments on HB 320 HD1 (Relating to Historic Preservation).

The intent of HB 320 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 companies taking advantage of the lack of oversight and inability to enact consequences by the SHPD. This has allowed, in some cases, the destruction of sites with important research data and the State's treasured heritage. We further believe that the SHPD should be provided with the support and funding necessary to adequately enforce protections to our State's cultural and archaeological heritage.

Should HB 320 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 your consideration of our testimony.

<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.

HB-320-HD-1

Submitted on: 2/16/2021 10:32:51 PM

Testimony for JHA on 2/17/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Angus Raff-Tierney	Individual	Support	No

Comments:

I support HB320 as we need to make cultural resource management companies accountable for their work. The State Historic Preservation Division does not have the authority, staff, and funding required to properly protect these sacred places. This bill will partially address this issue.