

HB320
RELATING TO HISTORIC PRESERVATION
Ke Kōmike Hale o ka Wai a me ka ‘Āina

Pepeluali 9, 2021

9:15 a.m.

Lumi 430

The Administration of the Office of Hawaiian Affairs will recommend that the Board of Trustees **SUPPORT** HB320, 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 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, and with the other provisions of Chapter 6E 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. Mahalo for the opportunity to testify on this measure.

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 Committees on
WATER & LAND
and
HOUSING**

**Tuesday, February 9, 2021
9: 15 AM
State Capitol, Conference Room 430**

**In consideration of
HOUSE BILL 320
RELATING TO HISTORIC PRESERVATION**

House Bill 320 proposes to make 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 amends Section 6E-11, Hawaii Revised Statutes (HRS), clarifying 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 clarifies that 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 & 6E-42, HRS. House Bill 320 also makes it clear that archaeological activities must be carried out as agreed to among permitting agencies, the department, and archaeologist; 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 agree 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

HISTORIC HAWAII FOUNDATION

LATE

TO: Representative David A. Tarnas, Chair
Representative Patrick Pihana Branco, Vice Chair
Committee on Water & Land (WAL)

Representative Nadine Nakamura, Chair
Representative Troy N. Hashimoto, Vice Chair
Committee on Housing (HSG)

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

Committee: Tuesday, February 9, 2021
9:15 a.m.
Via Video Conference/Conference Room 430

RE: HB 320, Relating to Historic Preservation

On behalf of Historic Hawaii Foundation, I am writing in **support for HB 320**. 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.

LATE

HB-320

Submitted on: 2/8/2021 4:28:08 PM

Testimony for WAL on 2/9/2021 9:15:00 AM

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

Comments:

Aloha,

My name is Dr. Trisha Kehaulani Watson. I am the owner of Honua Consulting, which is one of only a very few of Native Hawaiian owned cultural resource management firms in Hawaii.

I am in STRONG SUPPORT of this measure and urge your committee to pass it.

There are many firms that work very hard to have a productive relationship with the State Historic Preservation Division so that we may all conduct the important work of preserving historic sites and cultural resources effectively and with integrity. This important bill would give SHPD and DLNR the authority to take much needed steps against bad actors and ensure there is appropriate action taken when people act in a manner that violates state laws or administrative rules. This authority is critical if we are to collectively ensure the protection of these important resources.

I am very happy to answer any questions, discussion further, or support this effort however I can.

Mahalo nui,

Trisha Kehaulani Watson

LATE

HB-320

Submitted on: 2/8/2021 4:32:39 PM
Testimony for WAL on 2/9/2021 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Hallett H. Hammatt	Cultural Surveys Hawaii	Comments	No

Comments:

Cultural Surveys Hawai'i has been performing archaeological services in Hawai'i since 1982, and throughout our history we have encountered situations that require an archaeologist to be involved in crucial projects that involve public safety and welfare. It seems the intent of the bill is to protect historic properties, including archaeological sites and burials. We are often called into the field to protect historic properties which could potentially be affected by activities involving repair or maintenance of crucial infrastructure, such as water lines, sewer lines, and electric lines. Although we always notify the State Historic Preservation Division (SHPD) before undertaking these activities, we do not always receive a timely response because of their heavy workload. We are often compelled to proceed to protect potential historic properties that may be affected by these activities. Thus while we applaud House efforts to strengthen historic preservation in Hawai'i, we have concerns that HB320 as written could be construed as prohibiting any actions to safeguard historic properties without prior SHPD written consent.

LATE

HB-320

Submitted on: 2/8/2021 8:39:09 PM
Testimony for WAL on 2/9/2021 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Vanessa Lee Miller	Individual	Support	No

Comments:

I am in STRONG SUPPORT of this measure and urge your committee to pass it.

There are many firms that work very hard to have a productive relationship with the State Historic Preservation Division so that we may all conduct the important work of preserving historic sites and cultural resources effectively and with integrity. This important bill would give SHPD and DLNR the authority to ensure there is appropriate action taken when people act in a manner that violates state laws or administrative rules. This authority is critical if we are to collectively ensure the protection of these important resources.

HB-320

Submitted on: 2/9/2021 8:15:29 AM

Testimony for WAL on 2/9/2021 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Presley Wann	Individual	Comments	No

Comments:

Aloha Kakou,

As a former appointee to the Kaua'i/ Niihau Island Burial Council NaPali representative under Gov.Cayetano and Gov. Lingle, I am strongly in support of HB 320. As a lineal descendant of Ha'ena and the NaPali coast, I feel that this bill would strengthen, clarify, and reinforce existing laws to protect our archaeological sites.

Mahalo NuiLoa, Presley Wann