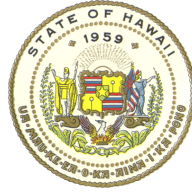
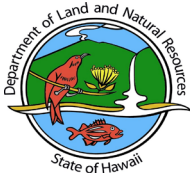


DAVID Y. IGE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
SUZANNE D. CASE  
Chairperson**

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

**Wednesday, February 2, 2022  
1:00PM  
Conference Room 229 & Via Videoconference**

**In consideration of  
SENATE BILL 1411  
RELATING TO HISTORIC PRESERVATION**

Senate Bill 1411 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.**

Senate Bill 1411 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, Mia 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 Senate Bill 1411 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.

**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

Senate Bill 1411 SECTION 2 would amend Section 6E-3(7), 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].” 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 Senate Bill 1411 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.

Senate Bill 1411 SECTION 3 would amend Section 6E-5.5, HRS, to require that at least two members of the Hawaii historic places review board have at least two members knowledgeable in traditional native Hawaiian history and culture. During the 2021 session the Legislature amended chapter 6E-5.5 reducing the historic places review board from ten to seven members. The Department believes that requiring at least two members be from any one of the five types of required expertise is not helpful and recommends against adoption of this provision.

SECTION 3 would also amend Section 6E-5.5(b)(1), HRS, which directs the historic places review board to “order and enter historic properties into the Hawaii register of historic places on the basis of their value to Hawaii's heritage, including but not limited to native Hawaiian culture and history.” The historic places review already has authority to include places important Hawaiian culture and history. The Department believes that this proposed amendment is unnecessary and should not be approved.

Senate Bill 1411 SECTION 4 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 4 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.

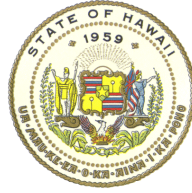
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The Department also suggests Section 6E-11.5, HRS, be amended to raise the minimum penalty per violation from \$500 to \$1,500.

Finally, Senate Bill 1411 SECTION 6 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.

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  
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**Wednesday, February 2, 2022  
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Thank you for the opportunity to comment on this measure.



**Department of Land and Natural Resources  
Hawaii State Aha Moku  
State of Hawaii  
Post Office Box 621  
Honolulu, Hawaii 96809**

Testimony of  
Hawaii State Aha Moku

Before the Senate Committees on  
Agriculture and Environment  
Water and Land

Tuesday, February 2, 2022  
1:00 P.M.

State Capitol, Conference Room 229 & Videoconference

**In SUPPORT of  
Senate Bill 1411  
Relating to Historic Preservation**

Senate Bill 1411 defines pre-contact historic property; Clarifies that the historic preservation program includes providing consultation to counties and public and private agencies involve in historic preservation and the development, publication and distribution of materials about protections of burials, historic sites and archaeological resources; Amends the composition and duties of the Hawaii Historic Places Review Board; Increases civil and administrative fines for certain violators of historic and preservation requirements and makes violators liable for costs associated with mitigation or restoration measures. **The Hawaii State Aha Moku (Aha Moku) supports this measure and offers comments.**

SB 1411 SECTION 1 amends the definition of historic property to be

“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”.

While Aha Moku understands the currently standing definition which is any property that is more than 50 years old is considered historic. Normally government does its best to address these areas, but it is clearly not enough to the native Hawaiian communities who also strive to protect generational significant cultural areas on all eight islands. DLNR and the State Historic Preservation Division (SHPD) consistently work on archeological methodology which includes oral documentation. In the past decade, generational families and cultural practitioners have come forward to reveal their oral histories, practices including religious practices (heiau, unu, ahu, ko’a fishing shrines, loko’ia fishponds, agricultural complexes, habitation complexes, salt pond complexes and holua slides). However, while these entities are noted, there is no actual protection of these areas. (Note: Salt ponds in Hanapepe, Kaua’i, as an example).

The Hawaii State Aha Moku System encompasses the eight main Hawaiian Islands and supports the traditional and generational knowledge of the people who are connected to each of the 46 moku and 606 ahupua’a. The system was brought forward from the 9<sup>th</sup> century, a time where sustainability and protection of resources ensured existence. It was a time where the focus of the people of the land was on survival.

Today, the State of Hawaii is facing the same issues in ensuring the continued existence of native Hawaiian traditional and cultural practices with the influx of development and the constant encroachment of commercialism.

SECTION 2, sub-paragraph 8 directs DLNR to “develop, publish and distribute to the public informational materials regarding statutory protections for burials, historic sites, and archaeological resources, including the process of project reviews established by this chapter.”

We do not agree with this section because DLNR already has a State Burial Council. And while we believe that the Burial Councils need strong amendments, those do not include publishing and identifying burial sites to the public that are sacred to the families of these places.

SECTION 3 (a) requires “The Hawaii Historic Review Board shall consist of seven members (ten members have been reduced to seven in legislature 2021) and shall include one qualified member of each of the following disciplines: archaeology, architecture, history, and sociology. In addition, there shall be two people knowledgeable in traditional Hawaiian society and culture.

Aha Moku supports this addition! While each of the disciplines already stated are necessary, the very nature of these disciplines is rooted in western methodology and must consult with cultural communities who are not native Hawaiian. As the host culture, we believe it is important that a stronger practical emphasis is put on the knowledge of traditional Hawaiian society and culture. We remind this committee that Hawaiian culture and its societies have been proven to be unique and different in their practices on each of the eight main Hawaiian Islands. Because much of this slowly emerging oral history within the 46 traditional moku within Hawaii, we believe it is important that two people knowledgeable in knowing the differences of each island in cultural practices be a part of this review board.

We support all further amendments and clarifications listed in Senate Bill 1411. Mahalo for the opportunity to offer testimony on this measure

Leimana DaMate, Luna Alaka’i/Executive Director  
Hawaii State Aha Moku  
808-640-1214  
[Leimana.k.damate@hawaii.gov](mailto:Leimana.k.damate@hawaii.gov)

Rocky Kaluhiwa, Kahu Nui O Pae’Aina  
Hawaii State Aha Moku  
808-286-7955  
[rockykaluhiwa1122@gmail.com](mailto:rockykaluhiwa1122@gmail.com)



**SB-1411**

Submitted on: 1/30/2022 10:04:08 AM

Testimony for WTL on 2/2/2022 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Shannon Rudolph	Individual	Support	No

Comments:

Support

# STRONG SUPPORT for HB1358 Relating to Historic Preservation

Senator Lorraine R. Inouye  
Chair, Committee on Water and Land  
Hawaii State Capitol  
Room 210

**Aloha Chair Inouye, Vice Chair Keith-Agaran, and Members,**

If we are to lose Native Hawaiian historic sites in Hawai'i itself, where else will we find them? I lament a day when children can only go to a museum to see remnants of taro cultivation practices, fishpond technology, and traditional fishing nets, yet we are already heading down that path right now. Stone agricultural terraces remain standing deep in Ahuimanu; holding their form deep in the forest due to skilled Hawaiian masonry from hundreds of years ago. Yet will they soon be paved over and lost for every generation beyond ours? There is no other Hawai'i in the world. In this universe. We must protect this heritage.

Thank you for your consideration in passing this bill.

Mahalo nui loa,

**Daniel Lee**

## TESTIMONY IN STRONG SUPPORT of SB1411 Relating to Historic Preservation

Senator Lorraine R. Inouye  
Chair, Committee on Water and Land  
Hawaii State Capitol  
Room 210

Mahalo piha Chair Inouye, Vice Chair Keith-Agaran, and Members for hearing this bill:

This is an important bill that codifies rightly the protections needed for the most vulnerable and arguably most important historic resources our islands have. There is no other Hawai‘i in this world, and if we, as a State, continue to lose artifacts built prior to western contact, we lose them forever. It is our obligation to protect that which exists nowhere else in the world, nowhere else in human history, and that which is paramount to the identity and collective memory of what it means to be Hawaiian.

Our future generations need to witness and understand Hawaiian lifestyle, to understand and take pride in how our lo‘i was the pride of Polynesia, how brave warriors raced each other across lava fields on holua slides, or how masterful heiau were constructed.

Thank you for your consideration.

With Aloha,

Rikako Ishiki

TO: WATER AND LAND COMMITTEE  
FROM: KŪ'IKE KAMAKEA-OHELO  
DATE: 2/1/22  
RE: Testimony in support of SB1411

Aloha e ke kōmike WTL,

My name is Kū'ike Kamakea-Ohelo and I am Kanaka Maoli, a lineal descendant of the first ancestors to settle in these islands we call home. Our robust history, language and people have faced the threat of extinction since the time of Captain Cook. Today, our home is used as a personal playground for wealthy settlers and the tourist industry often trampling over historic remnants of our past and desecrating places in the name of progress and vanity. I am writing you today in support of passing SB1411.

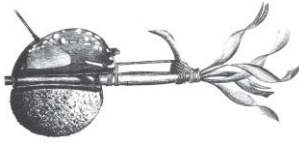
By passing SB1411 I am hopeful that places like Hūnānāniho in Waimānalo, previously known as Waimānalo Bay Beach Park will be nominated and entered into the Hawai'i register of historic places as outlined in Section 3 and hopefully protected under Section 2 and a strengthened comprehensive intergovernmental Historic Preservation Program. Preserving the history of a place through its significant historic resources gives a community its unique character. It is also an important way for us to transmit our understanding of the past to future generations ensuring the wailua(spirit) of our ancestors live on.

My deepest aloha and mahalo to the committee as you determine the future of SB1411. History is the path along which thousands have passed. In closing, I leave you with a quote by a young and brilliant Ali'i Liholiho, Kamehameha II -

“Na wai ho'i ka 'ole o ke akamai, he alahēle i ma'a i ka hele 'ia e o'u mau makua.” “Who would not be wise on a path walked upon by my parents and ancestors?”

Me ka ha'aha'a,

Kū'ike Kamakea-Ohelo



## SOCIETY FOR HAWAIIAN ARCHAEOLOGY

P.O. BOX 22458 HONOLULU, HAWAI'I 96823

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

Senator Karl Rhoads (Chair)  
Senator Jarrett Keohokalole (Vice Chair)  
Committee on Judiciary (JDC)

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

HEARING: February 2, 2022, 1:00PM, Conference Room 229 & Videoconference

SUBJECT: Testimony regarding SB 1411, Relating to Historic Preservation

**LATE**

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 SB 1411 as written.**

The intent of SB 1411 is to ensure better protection of vulnerable historic properties and artifacts. If developed using appropriate language, SB 1411 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." SB 1411 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, ahū, Mia fishing shrine, loko i'a fishpond, agricultural complex, habitation complex, salt pond complex, and holua slide, that existed prior to 1779."

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 1779. This introduces ambiguity to the process and may inadvertently omit historic properties that were built and used following initial contact with westerners (post-1779) that are reflective of continued Native Hawaiian cultural practices and lifeways during the post-contact period. The proposed amendments to Section 4(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 1779. 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.

Should SB 1411 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/>

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.

# THE KŪPUNA CAUCUS



Tuesday, February 1, 2022

**LATE**

To: Senate Committee on Water and Land  
Hon. Lorraine R. Inouye, Chair  
Hon. Gilbert S.C. Keith-Agaran, Vice Chair

Re: SB 1411 RELATING TO HISTORIC PRESERVATION

Hearing: Wednesday, February 2, 2022, 1:00 p.m., Conference Room 229 & videoconference

Position: Strong support

Aloha Chair Inouye, Vice Chair Keith-Agaran, and Members of the Committee on Water and Land:

The Kupuna Caucus of the Democratic Party of Hawai‘i strongly supports SB 1411. This bill defines "pre - contact historic property;" clarifies that the comprehensive historic preservation program includes providing consultation to counties and public and private agencies involved in historic preservation and the development, publication, and distribution of materials about protections for burials, historic sites, and archaeological resources; amends the composition and duties of the Hawaii historic places review board; increases civil and administrative fines for certain violations of historic and preservation requirements and makes violators liable for costs associated with mitigation or restoration measures.

The Kupuna Caucus supports this bill because there is a definite need to protect and preserve pre-contact historic property. We have seen evidence of pre-contact historic property such as heiau, unu, ahu, ko`a fishing shrines, loko i`a fishponds, and other pre-contact historic properties defaced, desecrated, vandalized, and stolen by some acting with intentional, willful conduct, and others acting inadvertently and unknowingly. In any event, these national treasures need greater protection and preservation. Pre-contact historic properties have value, historically, culturally, and traditionally, rendering them priceless.

This measure also calls for the publication of informational materials to educate the general public, visitors and residents alike, to appreciate the traditional and cultural significance of pre-contact historic native Hawaiian property, a resource that is sorely needed.

# THE KŪPUNA CAUCUS



February 1, 2022

Page 2

In addition, to assist in curtailing criminal behavior, the increases in fines from no more than \$10,000 to \$20,000, and in certain instances to \$25,000 for violations to prehistoric or historic human skeletons or associated burials, and \$30,000 for the loss or damage to pre-contact historic property appear appropriate given the sacredness, rarity, and cultural significance and traditional importance of various pre-contact historic properties.

We greatly appreciate your continuing support for the protection and preservation of pre-contact historic properties. Thank you for the opportunity to testify.

*Melodie Atejia*

Kupuna Caucus of the  
Democratic Party of Hawai'i

Email: [Legislativepriorities@gmail.com](mailto:Legislativepriorities@gmail.com)