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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
DAWN N.S. CHANG
Chairperson**

**Before the Senate Committees on
WATER AND LAND
and
HAWAIIAN AFFAIRS**

**Tuesday, January 31, 2023
1:00PM**

State Capitol, Conference Room 224 Via Videoconference

**In consideration of
SENATE BILL 734
RELATING TO BURIAL SITES**

Senate Bill 734 proposes to establish a Department of Land and Natural Resources (Department) inter-division program between the State Historic Preservation Division (SHPD), the burial councils from each county, and the Office of Conservation and Coastal Lands (OCCL), and the Land Division (LD) in partnership with the Office of Hawaiian Affairs (OHA) to identify and protect, restore or relocate burial sites threatened by sea level rise, winter storms and erosion. **The Department appreciates the intent of this measure and offers comments.**

The Department recognizes that many Native Hawaiians lived near the shorelines, and thus, coastal erosion is a threat to iwi kupuna or Hawaiian burial sites. Every year seal level rise, winter storms, and erosion expose burial sites. While Section 6E-43, Hawaii Revised Statutes (HRS), and Chapter 13-300 Hawaii Administrative Rules (HAR) provide a framework for addressing these occurrences, these are generally measures after iwi kupuna have been discovered rather than proactive measures. However, the Department currently lacks the resources to timely respond to the exposure of burial sites from these events and does not have the capacity to proactively address iwi kupuna that could likely be exposed by coastal erosion caused by rising sea level. The Department believes that this measure provides a starting place for developing a program or coordinated approach that will allow the Department to address protection of burials threatened by sea level rise and climate change in a proactive, effective, and timely manner

The Department offers the following comments on portions of this measure that we believe need clarification or amendment.

Senate Bill 734 SECTION 1(b)(2) calls for the relocation of burials disturbed by sea level rise or extreme climate events “to areas further inland that have lineal genealogical or cultural significance....” There can be no question that some burials will need to be relocated away from high impact zones. The Department is aware, however, that not all descendants prefer relocation, the program should not be premised on the belief that there will be one proper solution to the treatment of all burial sites threatened by sea level rise and extreme weather events.

Senate Bill 734 SECTION 2(b)(4) directs the inter-division program to “develop policies and procedures to protect `iwi and burial sites that have not been relocated or that have been relocated.” However, such policies and procedures currently exist in HAR 13-300. The Department recommends that this subparagraph be deleted so that the inter-division group focuses its efforts on the development of proactive policies, procedures, and programmatic measures to address protection of burials impacted or potentially impacted by coastal erosion caused by sea level rise.

The Department appreciates the proposed appropriation of a blank amount of general fund to address program. The Department notes that required coordination and collaboration envisioned in Senate Bill 2067 will place an additional responsibility of the Department, which are not currently in the Governor’s budget request. In addition, the Department recommends that the appropriation include adequate fiscal resources that the Department may incur in the coordination and collaboration required by this measure by amending this section as suggested below.

Senate Bill 734 SECTION 4 appropriates a blank amount of general funds to the Department to carry out the purposes of the Act. The Department believes that at least \$250,000 may be necessary to initially implement the provisions of this measure.

Thank you for the opportunity to comment on this measure.



SB734

RELATING TO BURIAL SITES

Senate Committees on Water and Land; and, Hawaiian Affairs

January 31, 2022

1:00 p.m.

Room 224 and Videoconference

The Administration of the Office of Hawaiian Affairs will recommend that the Board of Trustees (BOT) **SUPPORT w/AMENDMENTS** SB734, which will require the State Historic Preservation Division (SHPD) to establish an inter-division program to address the location, movement, relocation and restoration of Hawaiian burials sites that are exposed or likely to be exposed by coastal erosion due to climate change. SHPD shall collaborate with the Office of Conservation and Coastal Lands, Island Burial Councils, and OHA in the development of this program to 1) identify iwi within low-lying areas affected by coastal erosion; 2) examine fiscal impacts of the movement and relocation of iwi affected by coastal erosion; 3) examine the role of climate change on burial sites; 4) take appropriate steps to move and relocate iwi from impacted burial sites to areas further in land; 5) provide guidance and technical assistance to communities, organizations, and other stakeholders; and, 6) develop policies and procedures to protect impacted iwi and burial sites that have not been relocated.

The bill currently obligates OHA with the funding needed for iwi relocation work. While OHA supports the proactive effort to care for iwi effected by coastal erosion and recognizes the importance of inter-agency dialog to address the matter, we believe the funding mechanism for iwi relocation work is prematurely being placed solely on OHA without regard for 1) existing rules and statutes that currently vests SHPD with the responsibility to implement the State’s historic preservation program; and, 2) language within the bill itself that calls for the inter-division program to examine fiscal impacts of the iwi relocation first and to subsequently provide recommendations to the legislature ahead of regular session 2023.

Further, the same bill (which failed to pass) was put forth last legislative session and got criticized for drafters not consulting with OHA. Once again, this measure is being put forth without anyone consulting with OHA. Thus, the collaborative inter-agency dialog suggested in the bill appears disingenuous. This practice needs to stop as it usurps the powers of OHA’s BOT and disrespects OHA autonomy as any thoughts or reservations we may have on the matter are not taken into consideration.

- 1) Existing rules and statutes currently vest SHPD with the responsibility to implement the State’s historic preservation program.*

HRS 6E-3 establishes SHPD as being a division of the Department of Land and Natural Resources to carry out the historic preservation program. Notably, this work includes the development of a state-wide inventory to identify and document historic properties, inclusive

of burial sites. As SHPD currently receives National Park Service funds to carry out the historic preservation program, the cost burden for any actions executed under the historic preservation program should remain with SHPD unless statutes and respective rules are amended. The bill as proposed does in fact recommend that the SHPD identify and adopt rules to carry out the relocation work.

Current administrative rules vests the jurisdiction of protecting inadvertently discovered human remains with SHPD. Notably, most iwi identified along coastlines are discovered inadvertently, without any kind of permit or archaeological inventory survey nexus. In these cases, SHPD must make decisions on relocation or preservation in place, and further develop a burial site component of a preservation plan. OHA would assume that this trend will continue after establishment of the inter-division program prescribed in this bill, and that the current rules as written should prevail uninhibited until appropriately changed via the HRS 91 process. Notably, the rule making process does allow for public comment opportunities that will indeed be important to the development of any rules related to historic preservation, especially those pertinent to burial sites.

It is further solely SHPD's job to administratively assist the Island Burial Council and ensure protocols are carried out per the rules for various situations dealing with the discovery of human remains. It is currently SHPD that is responsible for going out to identify iwi that are reported and contacting the Island Burial Council moku representative and OHA. Historically, SHPD has failed to notify OHA of inadvertent burial discoveries in a timely manner. Inserting OHA into a more meaningful role throughout the process and obligating OHA funds would require further thought and examination. Thus, charging OHA with the costs to move and relocate iwi at this time is premature, and being dictated in way that ignores existing rules and statutes that require SHPD to shoulder historic preservation program responsibilities.

2) Language within the bill calls for SHPD to examine fiscal impacts of iwi relocation and to provide recommendations to the legislature ahead of the 2023 session.

OHA supports the current inter-division effort to address this important issue and believes that the bill rightfully calls for the inter-division program to examine the fiscal impact of iwi relocation. As an examination has yet to occur, OHA believes it is premature to solely designate OHA as being responsible for iwi relocation costs as SHPD is currently charged with administering the historic preservation program. **It is further somewhat disingenuous to the inter-division cause proposed by the bill to designate OHA with such a responsibility without even consulting with OHA first.** The bill proposes what seems to be a sincere collaborative effort, where each of the participating inter-division agencies provide input on how best to address the impacts of coastal erosion on iwi, both financially and practically.

OHA would further assume that the forthcoming inter-division program report to the legislature would include the results of the fiscal impact analysis with recommendations made collaboratively with each of the participating inter-division agencies. As such, the bill should not dictate where funding will come from for any iwi relocation effort beyond those funds already provided to SHPD for implementation of the historic preservation program. **Deciding**

the funding mechanisms beyond those already afforded to SHPD for the historic preservation program presumes an understanding of OHA's existing financial commitments and undermines the collaborative nature of the inter-division effort.

OHA respectfully offers the following language to replace that found on page 3, lines 8-10 of this bill, to read as follows:

"for iwi found, [~~the office of Hawaii affairs~~] the Department of Land and Natural Resources shall cover costs related to the movement and relocation of iwi impacted by coastal erosion over fifty years old until recommendations can be made by the inter-division program to appropriately allocate alternative funding sources, and the State Historic Preservation Division can alter respective rules to enable the sharing of historic preservation program responsibilities."

Ultimately, assigning a funding obligation to OHA at this time for iwi relocation work is premature, uninformed, and misaligned with current SHPD responsibilities under the historic preservation program.

Mahalo for the opportunity to provide support on this measure with suggested amendments.

SB-734

Submitted on: 1/28/2023 8:41:14 PM

Testimony for WTL on 1/31/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Keomailani Hanapi Hirata	Individual	Support	Written Testimony Only

Comments:

I support SB734, with caution. The Hawaii State Historic Preservation Division needs clearer policies and procedures in their system to address the protection of iwi kūpuna and they also need better communication and working relationships with island burial councils.

The Hawaii State Laws surrounding the protection of iwi kūpuna needs to be stronger.

SB-734

Submitted on: 1/29/2023 10:13:55 PM

Testimony for WTL on 1/31/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dana Keawe	Individual	Support	Written Testimony Only

Comments:

I strongly support SB734