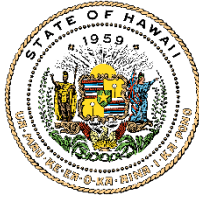


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CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
DAWN N. S. CHANG
Chairperson

Before the Senate Committee on
JUDICIARY

Friday, February 23, 2024
09:30AM

State Capitol Room 016 & Via Videoconference

In consideration of
SENATE BILL 3154 SENATE DRAFT 1
RELATING TO REGULATION OF ARCHAEOLOGICAL ACTIVITIES

Senate Bill 3154 amends section 6E-11 Hawaii Revised Statutes (HRS) to clarify that it is an administrative and civil violation to fail to complete administrative requirements of plans necessary to comply with the requirements of section 6E-42, HRS, or to fail to complete work in accordance with plans approved by the Department of Land and Natural Resources (Department) State Historic Preservation Division (SHPD) without SHPD's prior written approval. **The Department strongly supports this measure.**

SHPD does not have the resources to field check compliance with administrative requirements for projects reviewed it has under section 6E-42, HRS. Nevertheless, SHPD is regularly notified by the public that apparent violations are occurring. When SHPD follows up on such complaints, we regularly find that violations of administrative requirements have occurred. At this time, however, SHPD can only recommend that assessments be made by the Board of Land and Natural Resources when the balance of the evidence supports the conclusion that a historic property, archaeological resource or burial site has been damaged. The provisions of Senate Bill 3154 Senate Draft 1 would allow SHPD to pursue assessments of administrative violations that do not result in demonstrable damage to a historic property, archaeological resource, or burial site.

Regulation of archaeological activities is one of the specific purposes for which SHPD was established. If administrative violations occur without penalty, SHPD cannot regulate archaeological activity. Furthermore, while an administrative violation may not result in damage to a historic property,

archaeological resource, or burial site, this may just be by accident. It may also be the case that the violation removes all evidence that such damage has occurred.

The Department views such violations as serious, but it lacks the tools to ensure that they do not occur or that when they occur, there are disincentives for further occurrences. Accordingly, the Department strongly supports this measure.

Mahalo for the opportunity to provide testimony in support of this measure.



SB3154 SD1
RELATING TO HISTORIC PRESERVATION
Senate Committee on Judiciary

February 23, 2024

9:30 a.m.

Room 016

The Office of Hawaiian Affairs **SUPPORTS** SB3154 SD1, which would make it a civil and administrative violation for any person to 1) fail to comply with agreed upon archaeological mitigation commitments; 2) fail to conduct archaeological work as specified in an archaeological inventory survey plan (AISP) or an archaeological monitoring plan (AMP) approved by the department; 3) alter an approved AISP or AMP without prior written approval from the department; 4) carry out project development within a preservation area or burial preserve approve by the department without prior written approval of the department; and, 5) failing to complete and submit required reports. **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.**

For the above reasons, OHA urges the Committee to **PASS** SB3154 SD1. Mahalo for the opportunity to testify on this measure.



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TO: Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair
Committee on Judiciary (JDC)

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

Committee: Friday, February 23, 2024
9:30 a.m.
Via Video Conference and Conference Room 016

RE: SB 3154 SD 1, Relating to Regulation of Archaeological Activities

On behalf of Historic Hawai'i Foundation (HHF), I am writing in **strong support for SB 3154 SD 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 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 bill provides additional tools for enforcement by making it clear that projects shall be constructed in accordance with the terms and conditions under which they are approved. If the project changes, the proponent needs to submit those changes for re-evaluation. Otherwise, the project needs to comply with the agreements that led to the approval. Failure to comply with the mitigation commitments and the approved preservation plan would be a violation of the statute.

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.