# SB 2487

# EDT-WTL

LINDA LINGLE GOVERNOR OF HAWAII





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

POST OFFICE BOX 621 HONOLULU, HAWAII 96809

# Testimony of LAURA H. THIELEN Chairperson

## **Before the Senate Committees on** ECONOMIC DEVELOPMENT AND TECHNOLOGY and WATER, LAND, AGRICULTURE AND HAWAIIAN AFFAIRS

Friday, February 19, 2010 1:15 PM State Capitol, Conference Room 016

## In consideration of SENATE BILL 2487 RELATING TO HISTORIC PRESERVATION

Senate Bill 2487 proposes to: (1) Require that the State Historic Preservation Officer (SHPO) be appointed from a list of at least three nominees submitted by the Board of Land and Natural Resources; (2) Require that the list of nominees be developed in consultation with the appropriate Hawaii and historic preservation organizations; and (3) Establishes qualifications of the SHPO. The Department of Land and Natural Resources (Department) opposes this measure.

The SHPO is a federally required position responsible for sign off on federal undertakings requiring compliance with National Historic Preservation Act (NHPA). Federal law, recognizing that states may have to take a broad look at federal undertakings, does not require the SHPO to meet National Park Service qualifications for architecture, history or archaeology, but does require that the SHPO have at least one staff person that meets each requirement. At present, the SHPO is the Chair of the Board of Land and Natural Resources and oversees the State Historic Preservation Division (SHPD). SHPD in turn, has three qualified archaeologists, one qualified architectural historian, one qualified historical architect and one qualified historian.

Senate Bill 2487 does not address federal requirements, but requires additional local knowledge as well as basic knowledge of the federal laws and regulations related to historic preservation. For the most part, the Deputy SHPO in Hawaii and/or SHPD staff has met these qualifications. It is the staff of SHPD participates in NHPA's Section 106 consultations.

#### LAURA H. THIELEN

CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEN C. KAWAHARA

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

The bill does not provide clear lines of authority and communication. It is not clear in this bill that the SHPO must be an employee of the Department. The measure is written as if the SHPO is a board or commission member selected and appointed from the general public. It is unclear who the SHPO would be responsible to. It is also unclear if staff within SHPD would be would be responsible to the new SHPO, or the Department Chair. Since, under this bill, the SHPO responsibilities and SHPD's responsibilities overlap, clear lines of authority and jurisdiction would be needed. The Department believes that the bill as written will not protect historic resources but will rather cause confusion in both the Department and SHPD.



# SB 2487 RELATING TO HISTORIC PRESERVATION

Senate Committees on Economic Development and Technology, and Water, Land, Agriculture and Hawaiian Affairs

February 19, 2010 1:15p.m. Room: 016

The Office of Hawaiian Affairs (OHA) <u>SUPPORTS</u>, <u>with amendments</u>, HB 2487, which amends Chapter 6E, Hawaii Revised Statutes (HRS), to require that the State Historic Preservation Officer be appointed from a list of at least three nominees submitted by the Board of Land and Natural Resources. The bill also requires that the list of nominees be developed in consultation with the appropriate Hawaii and historic preservation organizations, and establishes qualifications for the officer.

Traditionally, the governor-appointed chairperson of the Department of Land and Natural Resources (DLNR) has served as the State Historic Preservation Officer (SHPO) representing the historic preservation interests of the people of Hawai'i. The administrator of the State Historic Preservation Division (SHPD) within the DLNR has traditionally served as the Deputy State Historic Preservation Officer to provide technical and policy expertise in historic preservation matters to the SHPO.

Such that the SHPO possesses an integral and important role in the implementation and effectuation of the historic preservation rules, laws and policies throughout the islands, it is imperative that this position be regularly filled with a qualified and experienced individual knowledgeable about historic preservation laws and practice.

Furthermore, since a great number of historic preservation issues directly impact the Native Hawaiian community, it is also imperative that the Native Hawaiian community be allowed substantive input into the qualifications and selection of this important individual charged with carrying out public trust duties. As such, we request that SB 2487's proposed amendments to HRS §6E-5(a) be changed from: "In developing the list of nominees, the board shall consult with appropriate Hawaii and historic preservation organizations" to "In developing the list of nominees, the board shall consult with appropriate <u>Native Hawaiian</u> and historic preservation organizations." This amendment to SB 2487 would provide clarity that the BLNR will consult with Native Hawaiian organizations, and not just any Hawai'i organization.

Therefore, OHA urges the Committees to PASS HB 2487, taking into account our above-mentioned concern. Thank you for the opportunity to testify.



VIA WEB: <a href="http://www.capitol.hawaii.gov/emailtestimony">http://www.capitol.hawaii.gov/emailtestimony</a>

To: Sen. Carol Fukunaga, Chair

Sen. Rosalyn Baker, Vice Chair

Committee on Economic Development and Technology

Sen. Clayton Hee, Chair Sen. Jill N. Tokuda, Vice Chair

Committee on Water, Land, Agriculture and Hawaiian Affairs

From: Kiersten Faulkner

Executive Director, Historic Hawai'i Foundation

Committee Date: Friday, February 19, 2010

1:15 p.m.

Conference Room 016

Subject: SB2487, Relating to Historic Preservation

On behalf of Historic Hawai'i Foundation (HHF), I am writing in support of SB2487, Relating to Historic Preservation. The bill requires that the State Historic Preservation Officer be appointed from a list of at least three nominees, requires consultation with appropriate organizations in developing the list, and establishes professional qualifications for the Officer.

The State Historic Preservation Officer (SHPO) is the single most important person related to historic preservation in the state. Each state appoints its SHPO to be the decision-maker and advocate related to the sites, structures, landscapes, districts and objects that are significant to the history of that state. The position is critically important for establishing and implementing a comprehensive historic preservation program that both initiates preservation actions (through planning, inventories, education, incentive and regulatory systems) and responds to proposals that may affect historic properties (through review of development proposals, capital improvements, tax credits and permits). All federal undertakings that may affect historic properties must have the concurrence of the SHPO before they can proceed.

While the daily tasks and management of the state's historic preservation program are delegated to the administrator of the division and the professional staff, the leadership and priorities are set by the SHPO. In these times, when the division's professional staff has been severely cut and hiring has been frozen, it has become even more apparent that having the right leadership in place is critical.

SB2487 helps to ensure that the SHPO will meet professional qualifications and have relevant experience for leading Hawaii's historic preservation program. This will help to increase the credibility and expertise of the office; we hope such an officer would then ensure that professional qualifications would also be required of all the professional staff who are charged with implementation of the program. By setting the standard for the top position, the entire historic preservation program could be elevated.

The historic, cultural and natural resources of Hawai'i are its greatest legacy and irreplaceable treasures. Decisions that affect their protection, use, interpretation and perpetuation have irreversible and dramatic consequences. HHF strongly supports measures that lead to better decision-making and implementation to safeguard these resources.

Therefore, HHF recommends that SB2487 be approved.

#### Historic Hawai'i Foundation

TO: Senator Carol Fukunaga, Chair

Senate Committee on Economic Development and Technology

and

Senator Clayton Hee, Chair

Senate Committee on Water, Land, Agriculture & Hawaiian Affairs

FROM: Sara L. Collins, Ph.D., Legislative Chair

Society for Hawaiian Archaeology sara.l.collins.sha@gmail.com

HEARING: February 19, 2010, 1:15 PM, Conference Room 016

SUBJECT: Testimony in SUPPORT of SB 2487 (Relating to the State Historic Preservation

Officer)

I am Dr. Sara Collins, Chair of the Legislative Committee of the Society for Hawaiian Archaeology (SHA). We have over 200 members that include professional archaeologists and advocates of historic preservation in general. On behalf of SHA, I am providing testimony in support of SB 2487, which amends State law to require that the State Historic Preservation (SHP) Officer be appointed from a list of at least 3 nominees, require that the list of nominees be developed in consultation with the appropriate Hawaii and historic preservation organizations, and establish qualifications of the SHP Officer. In general, we believe that the proposed amendments will clarify and strengthen the professional qualifications required of the SHP Officer.

Section 6E-5, HRS, authorizes the Governor to appoint a "state historic preservation officer." This is required of all states wanting to participate in the nation-wide, federal historic preservation program and to receive annual grant support from the Historic Preservation Fund which is administered by the National Park Service. Under federal law and section 6E-5, HRS, the designated "state historic preservation officer" is responsible for ensuring that the state's comprehensive historic preservation program meets federal program requirements and that the SHP Office is staffed with qualified professionals.

When the State of Hawaii chose to participate in the federal historic preservation program in 1976 and enacted legislation to enable Hawaii's participation, the Legislature envisioned a Hawaii SHP Officer who would be of "professional competence" and have "experience in the field of historic preservation" (section 6E-5, HRS). The amendments proposed in SB 2487 serve to strengthen what the Legislature envisioned in 1976 by tying these qualifications to professional fields in historic preservation (architecture, architectural history, archaeology, and history) and related professions such as environmental studies, planning, cultural resource management or historic preservation.

In general, we concur with and support the provisions of SB 2487 with a couple of exceptions. First, we wonder if the reference to organizations to be consulted intends to include "Native Hawaiian" organizations, as opposed to "Hawaii" organizations. If so, then we recommend the following amended language in paragraph (a):

"In developing the list of nominees the board shall consult with appropriate Native Hawaiian Hawaii and historic preservation organizations."

Second, we believe that the qualifications required of nominees should be tied directly to the standards for historic preservation professionals established by the Secretary of the Interior at

36 CFR Part 61. These standards define the minimum education and experience required to perform identification, evaluation, registration, and treatment activities in the historic preservation professions of history, archaeology, architecture, and architectural history, or closely related fields. In other words, in order to be nominated, an individual must meet these standards and possess the requisite education, training, and experience to meet the Secretary's standards. We also recommend that closely related fields specifically include Hawaiian Studies. Our suggested amended wording for paragraph (b) is as follows:

(b) Nominees for state historic preservation officer shall meet the Secretary of the Interior's standards for historic preservation professionals in history, archaeology, architecture, architectural history or a closely related field such as Hawaiian studies, cultural resources management, planning, environmental studies, or historic preservation, or a closely related field.

We believe that this amendment should, in turn, reduce any ambiguity over who is and is not qualified for the position. Thus, if SB 2847 were enacted, the Hawaii SHP Officer would need to meet standards established for historic preservation professionals by the U.S. Secretary of the Interior ("Secretary of the Interior's Professional Qualifications Standards") which are long-standing and have been used widely in multiple circumstances as a measure of professional competence.

Thank you for considering our comments. We look forward to working with you and other stakeholders on strengthening and clarifying qualifications for the Hawai'i SHP Officer. Should you have any questions, please feel free to contact me at the above email address.

## JEANNINE JOHNSON

5648 Pia Street, Honolulu, Hawai'i 96821 Phone: 373-2874 (h) / 537-7261 (w) February 14, 2010

### COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY

Senator Carol Fukunaga, Chair Senator Rosalyn H. Baker, Vice Chair

### COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

Senator Clayton Hee, Chair Senator Jill N. Tokuda, Vice Chair

Re: SB 2487 Relating to Historic Preservation

Hearing: Friday, February 19, 2010 at 1:15 pm in Conference Room 016

Aloha mai kākou,

I strongly support SB2487 which requires that the state historic preservation officer be appointed from a list of at least 3 nominees submitted by the board of land and natural resources; requires that the list of nominees be developed in consultation with the appropriate Hawai'i and historic preservation organizations; and establishes qualifications of the officer.



Hawea Heiau in 2007 (above) and now (below)



Since 2007, members of the East Honolulu community where I live have raised concerns about the documented presence of historic properties within portions of a proposed construction project area in Hawai'i Kai, including petroglyphs, a traditional spring, wetlands, rock walls, and a heiau. Excavations nearby show a population in the area dating back to the 10<sup>th</sup> or 11th century. The heiau, Hawea, is a wahi pana, one of the most sacred sites in Maunalua and is named for the famous drum brought from Tahiti by La'amai Kahiki, sometime between 1300-1400 A.D. It is one of the only remnants left of a system of more than 15 heiau that surrounded Maunalua Bay and is still used by native Hawaiians for religious ceremonies. These heiau were located on ridge spurs overlooking the sea and alongside freshwater springs. Each had a line of sight connection to the other. With uses ranging from celestial observation, navigation, fishing and agriculture, the sites for these heiau were chosen with considerable care for their "mana" and unique geographic alignment. Preliminary assessment of this area indicates that it is eligible for the Hawai'i State Register of Historic Places under significance criteria D and E.

# COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

February 14, 2010

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Mr. Van James, author of Ancient Sites of O'ahu (Bishop Museum Press) and other authoritative texts, and resident of East Honolulu, has described the subject area in and around the proposed construction project as "one of the few remaining areas in Hawai'i Kai where remnants of ancient Hawaiian history can still be observed." Consequently, community members were outraged about proposed development plans to turn portions of this historically-significant and sacred cultural resource into a private recreational park for a luxury condominium. Despite repeated requests to the State Historic Preservation Division (SHPD) to protect this area, Hawea Heiau and the attached petroglyph complex was bulldozed into rubble and ancient walls buried under tons of debris over six months ago when construction crews without a permit bulldozed into the area.

The State's public trust doctrine protects and preserves what little remains of Hawaiians' historic and cultural legacy. Because a wahi pana merges the importance of a place with that of the spiritual, Hawaiians believe it is a physical link to our ancestral past and our future. Although SHPD has the responsibility of "preserving, restoring, and maintaining historic and cultural property, to ensure the administration of such historic and cultural property in a spirit of stewardship and trusteeship **for future generations**," the desecration of endangered historical and cultural properties continues. Melanie Chinen, the former SHPD director, had no historic preservation background whatsoever, so she didn't grasp the issues. During her tenure, SHPD lost all of its qualified archeologists, except one (21 highly trained professionals) with some positions turned over twice. There is a basic lack of understanding by the current Director of SHPD, Pua Aiu, on what a heiau is as she even claimed there was no Hawea heiau.

According to Price-Beggerly and McNeill, the "wholesale loss of cultural resources tends to accentuate the value of the few remaining sites in an area important to Hawaiian culture as reflected in its traditions and history. This makes it even more important that the cultural resources which are left be recovered or preserved." Please support SB2487 because it is OUR kuleana to make sure that the few remaining cultural resources which are left be preserved and that our kūpuna do not get erased from the land. Establishing qualifications for the Director of SHPD and appointing one from a list developed in consultation with those who mālama our cultural resources is a step in the right direction.

Sincerely,

Jeannine Johnson

cc: Sen. Sam Slom Rep. Lyla Berg

Rep. Barbara Marumoto

**LATE** 

#### **REGULAR SESSION OF 2010**

# COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS Friday, February 19, 2010 TIME: 1:15 p.m. Conference Room 016, State Capitol

I SUPPORT SB 2487, with amendments. The leadership of the State Historic Preservation Division must be grounded in historic preservation. The Lingle Administration has been an absolute disaster for historic preservation, so this requirement just scratches the surface of potential reform, but it is a modest start to repudiating the past 8 years of this Governor's sordid record.

The State Historic Preservation Officer must, by state statute, be professionally qualified. HRS § 6E-5. What is needed is greater specification of what constitutes the professional area of "historic preservation." Accordingly, I urge you to amend this bill to specify that the area of historic preservation include archaeology, cultural anthropology, or other areas related to the preservation of culture and history.

Procedurally, this bill requires the nomination of three candidates for the SHPO to come from the State Department of Land and Natural Resources. This source of nominations is illogical. There is no expertise within the DLNR to make such nominations. This bill should be amended to require that the Governor appoint from a list of 3 candidates submitted by the Office of Hawaiian Affairs, after consultation with appropriate Hawaiian organizations, to include, but not be limited to: the Association of Hawaiian Civic Clubs, Hui Malama I Na Kupuna O Hawai'i Nei, the Center for Hawaiian Studies, and each of the island burial councils.

Furthermore, I urge you to amend the bill to require an annual report to the Legislature to highlight the administration of the program, especially the burial protection laws under its charge.

Alan T. Murakami 916D Auloa Road Kailua, Hawai`I 96734

Ph. 721-3070

#### SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AMD TECHNOLOGY

Senator Carol Fukunaga, Chair Senator Rosalyn H. Baker, Vice Chair

### SENATE COMMITTEE ON WATER, LAND, AGRICULTURE AND HAWAIIAN AFFAIRS

Senator Clayton Hee, Chair Senator Jill N. Tokuda, Vice Chair

Friday, February 19, 2010 House Conference Room 325 1:15 PM

# SENATE BILL 2487 RELATING TO HISTORIC PRESERVATION

Aloha Co-Chairs Hee, Fukunaga, Vice Chairs Baker and Tokuda, and Committee Members:

This testimony is respectfully submitted in strong support for Senate Bill 2487. Relating to Historic Preservation. Senate Bill 2487 requires that a) the state historic preservation officer be appointed from a list of at least 3 nominees submitted by the board of land and natural resources; b) requires that the list of nominees be developed in consultation with the appropriate Hawaii and historic preservation organizations, and c) establishes qualifications of the officer

Over the past decade I have directly observed and experienced administrative discrepancies and deficiencies within the State Historic Preservation Division (SHPD) due to the absence of qualifications, including academic, cultural and experiential historic preservation disciplines, of the various SHPD administrators as well as the State Historic Preservation Officers. Within the past five years these discrepancies and deficiencies have escalated to alarming levels that increasingly threaten Hawaii's irreplaceable historic and cultural sites - despite the dedicated efforts of qualified and experienced specialists under these administrators who themselves possess the required disciplines and struggle to maintain the integrity of the understaffed division's overwhelming work.

However, the vast majority of these qualified specialists with required disciplines have vacated their positions in exodus because of continuing internal difficulties stemming from inadequately qualified administrators and branch chiefs working under the direction of inadequately qualified Hawaii Historic Preservation Officers, the Chairpersons of the Board of Land and Natural Resources. Thus from the top of the department to the bottom of the division, qualifications must be evaluated and deficiencies corrected.

In fact, the SHPD's work is so vital for present and future generations that it may be advisable to ensure that it become an independent department under the direction of a fully qualified State Historic Preservation Officer rather than the DLNR chairperson. In the alternative, it would benefit the public interest to ensure that DLNR chairpersons meet the qualifications and disciplines normally required of state historic preservation officers.

An SHPD management and operations audit should also be requested for the State Auditor to follow up on the State's previous SHPD audit to determine and define the recurring failures, and to further advise the State Legislature on remedies which might be enacted to eliminate, or at the very least mitigate, the recurring problems within this present DLNR division for immediate relief. Also included in this audit should be an accounting and full consideration of the 2009 National

Park Service's federal assessment of the SHPD, and the findings and recommendations contained in their forthcoming report.

The protection and preservation of Hawaii's irreplaceable historic and cultural assets is of the utmost concern because these sites are in greater jeopardy today than when the State's audit of the SHPD was conducted nearly a decade ago. These historic and cultural assets can never be replaced, they cannot be traded one for another, nor can they be destroyed or moved to make way for commercial structures that erase the historic integrity within a historic area for all time.

Many historic and cultural sites are destroyed or irreparably damaged unknowingly because of the absence of long-neglected documentation. Some are intentionally compromised, such as the allowance of an obtrusive store building encroachment into the Kapi'olani Park historic landscape in exchange for a promise of more protection for another historic site, the Natatorium, which did not happen. Trade-offs of the integrity of historic sites and other such dealings should not be tolerated and allowed to continue – as they have been.

Requisite qualifications and disciplines of the Hawaii State Historic Preservation Officer and a management audit of the State Historic Preservation Division and its recommended remedies *cannot come soon enough* to ensure the protection, respect and preservation that Hawaii's treasured, irreplaceable historic and cultural sites and landscapes warrant and deserve.

Sincerely,

Michelle S. Matson President, Kapi'olani Park Advisory Council February 19, 2010



To: Senator Clayton Hee, Chair

Jill Tokuda, Vice Chair

Water, Land, Agriculture and Hawaiian Affairs

From: Linda Kaleo o Kalani Paik

Re: Testimony in <u>support</u> of SB2487 requiring the State Historic Preservation Officer be appointed from a list of at least three nominees.

I strongly support SB2487 but would like to ask that the following suggestions be considered:

- The purpose for the SHPO is to oversee the preservation of historic sites. Though the bill defines a cultural component as part of the qualifications, the language leaves room for interpretation in the "other related fields" language and this loop hole has been demonstrated as the more common usage in making a selection. Therefore, I would suggest that the SHPO be an individual whose qualifications include at a minimal, cultural expertise in Hawaiian history and culture and the ability to discern and apply cultural appropriateness to decisions when encountering cultural resources. The majority of the responsibility of this position affects cultural resources in one form or another.
- The SHPO selection not be based upon science but upon the ability to protect and preserve sites. This individual should be a preservationist rather than an archaeologist or architect. Though these may not exclude an individual, more weight should be given to an individual whose background has demonstrated a proven track record of preservation efforts. At present, science is given more credence than our oral and cultural knowledge but it is science that changes constantly as new and improved methodology or finds are discovered. However, our mo`olelo has not changed in hundreds of years and I think it only logical that the person in this position embrace the knowledge of our ancestors.
- 3) Consultation with preservation groups and appropriate Hawaiian organizations should spell out at least a core of acceptable groups such as Trust for Public Land, The Nature Conservancy, Hawaiian Civic Clubs, Hawaiian burial rites practitioners, Hawaiian cultural practitioners, Office of Hawaiian Affairs, the Hawaii representative from the Native American Advisory Council on Historic Preservation,

recognized Cultural Assessment Providers by the federal government, to name a few and not leave the decision to the party forming the consultation group and using their mana'o in determining appropriateness of any individual or group.

The missing component in the efforts to have a sound State Historic Preservation Division has been the lack of a strong presence from a cultural perspective. Majority of the problems that the Division faces is due to the lack of confidence by the Hawaiian community and the community at large for the effective preservation and protection of resources.

I thank you for your time.

Sincerely,

Linda Kaleo o Kalani Paik P.O. Box 235393 Honolulu, HI 96823 808-354-7765



Testimony in Support of SB 2487
RELATING TO HISTORIC PRESERVATION
Feb. 19, 2010 at 1:15 - Conference Room 016

Aloha Chair Hee and Committee Members,

I support SB 2487, but ask your for consideration for amendments which I believe will strengthen the proposed legislation.

Page 1 Line 7 Add

"by the board of land and natural resources, NATIVE HAWAIIAN ORGANIZATIONS; OHA, HAWAI'I ISLAND BURIAL COUNCILS, HAWAIIAN CIVIC CLUBS, THE UNIVERSITY OF HAWAI'I CENTER FOR HAWAIIAN STUDIES AND THE TRUST FOR PUBLIC LAND,

- Page 1 Line 9 Add
- "nominees, the board shall consult with appropriate NATIVE Hawaiian and historic preservation organizations."
- Page 2 Line 14 ADD

"values of native Hawaiians AND NATIVE HAWAIIAN BURIAL RITES; and"

- \* Page 2 Line 16 INSERT Number 6
- Experience in Hawaiian archeology and cultural anthropology either with a degree or ten years of experience of field work in Hawai'i;

Our sacred historic and cultural sites in Hawai'i are priceless. The person chosen for the responsibility of overseeing the preservation, care and protection of these sites, must be highly qualified and culturally knowledgeable and sensitive. We must accept no less.

I humbly ask your support of SB 2487 and the suggested amendments to SB 2847.

Mahalo, Ann Marie Kirk

PO Box 25342 Honolulu, Hawaii 96825 annmarie@hawaii.rr.com