

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621
HONOLULU, HAWAII 96809

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

RYAN K.P. KANAKA'OLE
FIRST DEPUTY

DEAN D. UYENO
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

Testimony of
DAWN N. S. CHANGE
Chairperson

Before the Senate Committee on
JUDICIARY

Wednesday, February 28, 2024
10:00 AM

State Capitol, Conference Room 016 & Via Videoconference

In consideration of
SENATE BILL 2591, SENATE DRAFT 1
RELATING TO BURIAL SITES

Senate Bill 2591 Senate Draft 1 proposes to impose a fine on any landowner for failure to disclose and record the existence of burial sites or archaeological sites on their property to the Bureau of Conveyances that the landowner knew or should have known of, and for failure to record their property with the Hawaii Register of Historic Places prior to or concurrently with a real estate transaction when the landowner knew or should have known that an obligation existed to record with the Bureau of Conveyances. **The Department of Land and Natural Resources (Department) supports this measure.**

Section 2 of this bill amends chapter 508 Hawaii Revised Statutes (HRS) to impose a fine of \$1,000 for knowingly failing to record the presence of an archaeological site, burial site or property listed in the Hawaii Register of Historic Places or for failure disclose the presence of such at the time of a real estate transaction.

Use of a property is sometimes affected by the presence of previously identified or listed historic properties or burial sites. Such properties should be, but are not always, recorded with the Bureau of Conveyances. Even when such properties are recorded, the Department is aware that their presence is not always disclosed to the buyer at the time of a real estate transaction. As a consequence of the failure to record or disclose, property owners are sometimes surprised to learn of the presence of historic properties or burials on their land. Occasionally they only learn of the presence of such sites after they have been disturbed or damaged. New owners of a property should not find out after the fact that such

sites exist on their land. Moreover, it extremely difficult properly plan for or protect places if they are not recorded or disclosed. The Department believes that this measure addresses these issues.

Mahalo for the opportunity to testify in support this measure.



SB2591 SD1
RELATING TO BURIAL SITES
Senate Committee on Judiciary

February 28, 2024

10:00 a.m.

Room 016

The Office of Hawaiian Affairs will recommend to the Board of Trustees that it **SUPPORTS SB2591 SD1 and request amendments.** If passed, the bill would fine land owners \$1,000 should they not disclose a burial site, archaeological site, or historic property on their property. For burials and archaeological sites, they must be recorded with the bureau of conveyances on the landowner’s property deed. Further, a historic property must be recorded with the Hawai‘i Register of Historic Places (HRHP) prior to or concurrently with a real estate transaction when the landowner knew of or should have known that the obligation existed.

OHA supports disclosure of this information to raise awareness and to improve protections and access. Too often OHA has seen burials go unrecorded with the Bureau of Conveyances despite being mandated by the Hawai‘i Administrative Rules (HAR). This creates problems for recognized descendants who want to care for and access the burials. The problem is further compounded when burial protections enshrined in a burial treatment plan (BTP) are observed by one landowner but not the succeeding landowner due to a failure to record the burial properly. Even with letters from OHA and the State Historic Preservation Division (SHPD) calling for access and adherence to burial protections, OHA has witnessed pushback from private landowners in some cases. Thus, this measure should help alleviate this issue that has at times ended up in costly litigation.

However, the additional requirement to record a historic property with the HRHP may be unnecessary and overly onerous. The process to get on the HRHP can take time to get agendized with the Hawai‘i Historic Places Review Board. Additionally, application materials often need to be completed by a historic preservation professional creating additional unnecessary barriers. Most historic properties are typically eligible for the HRHP but never listed due to the additional processes involved. While such a listing with the HRHP can provide additional tax breaks to the landowner and provide greater awareness of the property’s existence during permitting processes, OHA feels its ultimately not necessary to be listed on the HRHP when being considered as part of HRS 6E (State level historic preservation) or National Historic Preservation Act (Federal level historic preservation) review. Having the historic property listed with the property deed at the Bureau of Conveyances should be enough to ensure proper recordation and provide

necessary evidence if access or protection issues get litigated. Thus, we recommend the following amendments highlighted:

SECTION 1. The purpose of this Act is to impose a fine of \$1,000 on any private landowner who:

(1) —Fails to disclose and record the existence of burial sites or archaeological sites on their property to the bureau of conveyances that the landowner knew or should have known of; and

~~(2) Fails to record their property with the Hawaii register of historic places prior to or concurrently with a real estate transaction when the landowner knew or should have known that an obligation existed.~~

SECTION 2. Chapter 508D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§508D- Failure to record or disclose a burial site, archaeological site, or historic property; penalty. There shall be imposed a fine of \$1,000 on any landowner who:

(1) Fails to disclose and record with the bureau of conveyances burial or archaeological sites located on the landowner's property that the landowner knew of or should have known of; or

~~(2) Fails to record their property with the Hawaii register of historic places prior to or concurrently with a real estate transaction when the landowner knew of or should have known that an obligation existed."~~

For the above reasons, OHA urges the Committee to **PASS SB2591 SD1 with our proposed amendments**. Mahalo for the opportunity to testify on this measure.

SB-2591-SD-1

Submitted on: 2/20/2024 3:16:20 PM

Testimony for JDC on 2/28/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Lynette Cruz	Testifying for Malama Makua	Support	Written Testimony Only

Comments:

Long overdue! Absolutely support!

SB-2591-SD-1

Submitted on: 2/23/2024 8:17:07 AM

Testimony for JDC on 2/28/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
TJaye Forsythe	Individual	Support	Written Testimony Only

Comments:

I support