

EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

**Senate Committees on Public Safety and Intergovernmental and Military Affairs,
and Water and Land**

Wednesday, February 7, 2024

3:00 p.m.

State Capitol, Conference Room 225 and Videoconference

Comments

S.B. No. 2331, Relating to Historic Preservation

Chairs Wakai and Inouye, Vice Chair Elefante, and members of the Senate Committees on Public Safety and Intergovernmental and Military Affairs, and Water and Land:

Thank you for the opportunity to offer comments on S.B. No. 2331, Relating to Historic Preservation.

S.B. No. 2331 includes a provision specifying that the governor may suspend laws under Chapter 6E, Hawaii Revised Statutes (HRS), relating to historic preservation requirements, only when there is an imminent or presently occurring emergency that threatens health and safety. The language in the bill defines the governor's emergency management powers during a state of emergency.

Our concern is that this bill could end up with unintended consequences limiting the governor's emergency powers to act during urgent situations besides imminent health and safety.

The purpose of this bill could be related to Governor Josh Green's efforts to address the immediate housing crisis in our State that was exacerbated by the Maui and Hawaii wildfires. Governor Green issued emergency proclamations relating to housing.

Pursuant to the governor's emergency powers to respond to disasters or emergencies under Chapter 127A, HRS, relating to emergency management, more recent iterations of the affordable housing proclamation do not contain provisions to suspend laws that were concerning to some advocates, such as Chapter 6E, HRS, and Chapter 343, HRS, relating to environmental impact statements.

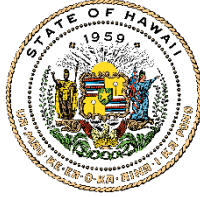
Testimony of Office of the Governor
S.B. No. 2331
February 7, 2024
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However, other emergency proclamations that have been issued have not raised these same concerns and still include Chapter 6E, HRS, including those for the Maui wildfires, homelessness, Axis deer, and Uncle Billy's demolition. As such, our concern is that statutorily limiting the governor's emergency authority could result in handcuffing the need for the executive branch to act quickly and expeditiously.

Thank you very much for the opportunity to provide comments on this measure.

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, HI 96809

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

Before the Senate Committees on
PUBLIC SAFETY AND INTERGOVERNMENTAL AND MILITARY AFFAIRS
and
WATER AND LAND

Wednesday, February 07, 2024

3:00PM

State Capitol Room 225 & Via Videoconference

In consideration of
SENATE BILL 2331
RELATING TO HISTORIC PRESERVATION

Senate Bill 2331 would amend Section 127A-13, Hawaii Revised Statutes (HRS) to limit the Governor's power to suspend the laws under chapter 6E HRS, relating to historic preservation requirements, only when there is an imminent or presently occurring emergency that threatens health and safety. **The Department of Land and Natural Resources (Department) appreciates the intent of this measure and offers comments.**

Section 127A HRS generally delegates to the Governor broad authority to declare a disaster and under a disaster declaration take the steps they deem necessary to protect the public health, safety, and welfare, and to preserve the lives, property, and environment of the State. Section 127A HRS give the Governor broad discretion in declaring a disaster and in implementing measures to respond to it. The Department believes that this discretion extends to reacting to threats that are reasonably foreseeable, but which may not be currently occurring or imminent. Current, imminent or reasonably foreseeable threats could well be to historic properties, archaeological sites, or burial sites, even though such threats may not be deemed to be threats to health and safety. Accordingly, the Department believes that this measures restriction of the Governor's authority to limit the applicability of 6E HRS relating to historic preservation to emergency situations representing threats to public health or safety and is presently occurring imminent is too restrictive.

Mahalo for the opportunity to provide comments on this measure.



SB2331

RELATING TO HISTORIC PRESERVATION

Senate Committee on Public Safety and Intergovernmental and Military Affairs
Senate Committee on Water and Land

February 7, 2024

3:00 p.m.

Conference Room 225

The Office of Hawaiian Affairs (OHA) will recommend that its Board of Trustees (BOT) provides the following **COMMENTS** on SB2331, which would clarify that the Governor may waive historic preservation requirements in an emergency proclamation only when there is an imminent or presently occurring emergency which threatens health and safety. OHA appreciates the measure's attempt to better refine the Governor's emergency powers but cautions that emergency situations warranting a Hawai'i Revised Statutes (HRS) 6E suspension not be applied inappropriately to address longstanding policy problems.

First, OHA notes that HRS 127A-13 already allows the Governor to suspend any law that impedes emergency functions. Thus, providing an additional level of specificity to HRS 6E suspension is setting a precedent that encourages a refinement of these powers in a manner that OHA believes could prevent an overreach of power if properly worded. For this, we are cautiously appreciative and would subsequently expect that this new precedent also be applied to other types of laws, especially those affecting the public land trust and respective resources.

Second, while the refinement of emergency powers is helpful, the level of refinement must be reasonably applied and not inappropriately used to address policy problems. We offer a helpful hypothetical example: It would arguably be a misuse of power for the Governor to declare something like "crime" an emergency to address health and safety concerns of the public that are tangentially affected by ongoing crime. Arguably, the current situation in regards to crime and overcrowded prisons is a failure of past policy practices and reluctance to invoke radical change in such policies. In this hypothetical scenario, laws relating to the Land Use Commission and environmental review could be suspended to fast track things like private prisons on agricultural lands.

Somewhat similar to this hypothetical scenario, the Governor has attempted to suspend HRS 6E with his first Emergency Proclamation related to Housing in 2023. Indeed houselessness has been a longstanding problem for the State, but declaring it as an emergency with the intent to suspend laws could indeed be an overreach of power. Again,

the current situation regarding houselessness is a failure of past policies and practices to meaningfully ensure the availability of affordable housing. The 2023 Proclamation was met with severe criticism as essentially previously identified burials and protected historic properties could be disturbed and destroyed without consequence to address a problem that has persisted over many different Administrations. While there were later drafts that included an alternative means of HRS 6E compliance, these changes were never incorporated and the HRS 6E suspension was dropped.

OHA does also acknowledge that the Governor has responsibly suspended HRS 6E in other situations. For example, HRS 6E has been suspended for the Maui Wildfire cleanup work due to the imminent threat to health and safety from toxic debris and adverse environmental conditions. Fortunately in this case, assistance from the Federal Emergency Management Agency (FEMA) had its own set of Federal level historic preservation review that was still in play under the National Historic Preservation Act.

Thus, OHA respectfully suggests that the language in this measure be more specific in regards to emergencies to say something to the effect that HRS 6E can only be suspended where imminent or a currently occurring emergency can only be resolved by destruction or alteration of historic property within the emergency declaration period. Further, a supplemental (but expedited) process should be required when laws like HRS 6E are suspended to better refine the suspension application and ensure (in this case) that iwi kupuna and preservation sites are not unreasonably destroyed or harmed.

Mahalo for the opportunity to provide comments on this measure.



Celebrating 50 Years of Preserving Hawai'i's Places

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TO: Senator Glenn Wakai, Chair
Senator Brandon J.C. Elefante, Vice Chair
Committee on Public Safety & Intergovernmental & Military Affairs (PSM)

Senator Lorraine R. Inouye, Chair
Senator Brandon J.C. Elefante, Vice Chair
Committee on Water and Land (WTL)

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

Committee: Wednesday, February 7, 2024
3:00 p.m.
Via Video Conference and Conference Room 225

RE: **SB 2331, Relating to Historic Preservation**

On behalf of Historic Hawai'i Foundation (HHF), I am writing in **support for SB 2331**. The bill would clarify that the Governor may waive historic preservation requirements (HRS §6E) in an emergency proclamation only when there is an imminent or presently occurring emergency which threatens health and safety.

The definition of “emergency” is commonly understood to be an event or situation that is serious, unexpected and often dangerous, and which requires immediate action. These are acute situations, such as fires, floods, hurricanes, tsunami or other sudden events. In such circumstances, it is appropriate to take urgent action to protect lives and property without pausing for routine actions such as historic preservation reviews.

In contrast, there can also be serious, long-term and chronic conditions that are difficult to eradicate. These are pervasive and difficult issues that need sustained government and community efforts to address. These can include serious and dangerous trends (e.g. sea level rise, homelessness, crime), but they are not sudden or unexpected.

For the purposes of Emergency Proclamations, HHF agrees that waiving historic preservation requirements should only occur in the case of an urgent and acute threat; it should not be used for chronic issues that should be resolved through developing public policies, legislation, meaningful public input and consistent, fair and transparent implementation of regulations and programs.

Historic Hawai'i Foundation is a statewide nonprofit organization established in 1974 to encourage the preservation of historic buildings, sites, structures, objects and districts on all the islands of Hawai'i. As the statewide leader for historic preservation, HHF works to preserve Hawai'i's unique architectural and cultural heritage and believes that historic preservation is an important element in the present and future quality of life, environmental sustainability and economic viability of the state.

There are many pressing issues facing the state. However, historic preservation and environmental protections are themselves important societal objectives. The State of Hawai'i cannot place the already endangered and irreplaceable cultural and natural resources of our islands at further risk. The environmental and cultural resources that HRS §6E aims to safeguard are not renewable resources; once they are destroyed, they can never be restored.

Addressing serious community concerns and protecting Hawaii's unique and special places are not and should not be mutually exclusive. The historic places, natural resources, scenic beauty, and exceptional culture of Hawai'i are among the strongest reasons people want to live here. Policies and systems meant to identify and protect these resources should not be disregarded merely because of impatience with doing the hard work of finding real solutions.

Thank you for the opportunity to comment.

SB-2331

Submitted on: 2/3/2024 4:01:09 PM

Testimony for PSM on 2/7/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Bianca Isaki	Individual	Oppose	Written Testimony Only

Comments:

Aloha Senators - please hold SB2331. The term "emergency" has been too widely applied to any number of phenomena and longstanding social issues. Allowing our historic preservation laws can be suspended during an "emergency will create an exception that swallows the statute.

Yours,

Bianca Isaki

SB-2331

Submitted on: 2/4/2024 8:47:50 AM

Testimony for PSM on 2/7/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ralph Hasegawa	Individual	Oppose	Written Testimony Only

Comments:

Aloha, I oppose this bill. The statutes that this bill grants the Governor authority to suspend should individually be amended. They were passed after careful and thorough consideration, and allowing the Governor to suspend them without allowing a process for those considerations to be reviewed again bypasses many, many constituents.

SB-2331

Submitted on: 2/4/2024 8:33:23 PM

Testimony for PSM on 2/7/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Tamara Paltin	Individual	Support	Written Testimony Only

Comments:

support this clarification and SB2331

SB-2331

Submitted on: 2/5/2024 3:54:48 AM

Testimony for PSM on 2/7/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Timothy Rieth	Individual	Support	Written Testimony Only

Comments:

As a professional archaeologist, I support SB2331. The state's historic preservation measures, when enforced, ensure protection of Hawai'i's physical history and heritage. Only under the most dire emergencies should these measures be circumvented.

SB-2331

Submitted on: 2/6/2024 6:49:16 AM

Testimony for PSM on 2/7/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Hannah K Anae	Individual	Support	Written Testimony Only

Comments:

Historic preservation is significant in the history of our lives, but if it critically jeopardizes our present lives, only then should the consideration be foremost for allowing the governor such power to waive historic preservation requirements with an emergency proclamation.

SB-2331

Submitted on: 2/6/2024 12:10:34 PM

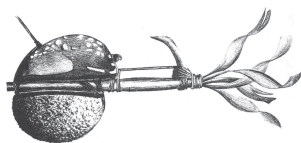
Testimony for PSM on 2/7/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Rona Ikehara-Quebral	Individual	Support	Written Testimony Only

Comments:

I wholeheartedly support SB2331 and the efforts of Senator Maile Shimabukuro and colleagues. I am a lifelong resident of Hawai'i and have worked in Cultural Resources Management for over 35 years. All of us who live in Hawai'i have the kuleana to protect the significant cultural resources left behind by those who lived before us, that is their legacy to the people of Hawai'i. The historic preservation requirements are in place to ensure that ancient cultural resources, including burials, are properly documented, protected, and preserved. This bill is to ensure that only in the most dire of circumstances should these preservation requirements can be waived, if it promotes the safety and health of the people of Hawai'i. Aloha for supporting this bill.

LATE



SOCIETY FOR HAWAIIAN ARCHAEOLOGY

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

TO: Senator Glen Wakae, Chair
Senator Brandon J.C. Elefante, Vice Chair
Committee on Public Safety and Intergovernmental and Military Affairs (PSM)

Senator Lorraine Inouye, Chair
Senator Brandon J.C. Elefante, Vice Chair
Committee on Water and Land (WTL)

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

HEARING: February 7, 2024, 3:00 PM, Conference Room 225 & Videoconference

SUBJECT: Testimony regarding SB 2331, Relating to Historic Preservation

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 support SB 2331.**

The intent of SB 2331 is to allow the Governor to suspend historic preservation laws under Chapter 6E, relating to historic preservation requirements, in the event of a state of emergency declared by the governor pursuant to section 127A-14. We agree that this is appropriate only when there is an imminent or presently occurring emergency which threatens health and safety and support this bill as written.

Should SB 2331 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.