



SB2591 SD2
RELATING TO BURIAL SITES
House Committee on Judiciary and Hawaiian Affairs

March 12, 2024

2:00 p.m.

Conference Room 325

The Office of Hawaiian Affairs will recommend to the Board of Trustees that it **SUPPORTS SB2591 SD2**. 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.

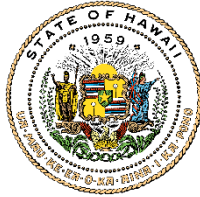
OHA supports disclosure of this information to raise awareness and to improve protections and access. Too often OHA has seen burials go unrecorded with the Bureau of Conveyances despite being mandated by the Hawai'i Administrative Rules (HAR). This creates problems for recognized descendants who want 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.

OHA appreciates the current draft of the bill which removed the additional requirement to record a historic property with the Hawai'i Registry of Historical Places. We believe that any future amendments must not encourage property owners to obscure burials. We must facilitate increased access for lineal or cultural descendants, not less.

For the above reasons, OHA urges the Committee to **PASS SB2591 SD2**. Mahalo for the opportunity to testify 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, HAWAII 96809

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

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LAND
STATE PARKS

Testimony of
DAWN N.S. CHANGE
Chairperson

Before the House Committees on
JUDICIARY & HAWAIIAN AFFAIRS

Tuesday, March 12, 2024
2:00 PM

State Capitol, Conference Room 325 & Via Videoconference

In consideration of
SENATE BILL 2591, SENATE DRAFT 2
RELATING TO BURIAL SITES

Senate Bill 2591, Senate Draft 2 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 is extremely difficult to properly plan for or protect places if they are not recorded or disclosed. The Department believes that this measure addresses these issues.

The Department notes that Senate Bill 2591, Senate Draft 2 does not specify who will have the duty to impose the fine, for example a court of competent jurisdiction or the Board of Land and Natural Resources. The Department recommends that the Committee clarify these points.

The measure also does not specify where the fines will be deposited, the General Fund, as special, revolving or trust fund within the Judiciary, the Historic Preservation Special Fund, or the Bureau of Conveyances Special Fund. The Department recommends that the fines be deposited in the Historic Preservation Special Fund. Although the action takes place at the BOC – the work done to confirm the burial/archeological site or historic property that was not disclosed will be borne by State Historic Preservation Division. As such, any fines levied should go toward offsetting the costs expended to investigating the violation.

Finally, the Department recommends that the following clarifying amendment be made so that it reads:

§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 fails to disclose and record with the bureau of conveyances, or in documents used to offer real property for sale, burial or archaeological sites are located on the landowner's property that the landowner knew of or should have known of.

Mahalo for the opportunity to testify in support this measure.

SB-2591-SD-2

Submitted on: 3/9/2024 6:39:30 AM

Testimony for JHA on 3/12/2024 2:00:00 PM

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

Comments:

Strongly support this long-overdue bill. Mahalo, Senators!

SB-2591-SD-2

Submitted on: 3/9/2024 5:38:46 PM

Testimony for JHA on 3/12/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Keoni Shizuma	Individual	Support	Written Testimony Only

Comments:

Aloha Chair, Vice Chair, and members of the committee,

I am in support of SB2591.

Hawaiians traditionally lived throughout our island chain, often in kauhale (villages) with other families and friends. In these kauhale areas, loved ones were buried.

Since introduction of the Western system of land ownership, and subsequent privatization of land, developments have occurred on top of and/or near buried bones, known as iwi. The iwi were in place prior to recent land construction and developments and have the right to remain in place, as well as be visited and cared for by descendants or family friends. This is similar to how it would be unacceptable to build a housing project on top of a graveyard, then prevent families from visiting those buried there, it should be unacceptable to do the same with Hawaiian burials.

While some may be in opposition stating concerns of liability, it shall be the responsibility of the land “owner” to provide safe access to those who have the right to visit the iwi that are located on their property. Again, these iwi were in place first and should be respected.

Thus, I support the right for lineal descendants to have access to these iwi or burials, while the land may be privately “owned.”

Mahalo nui loa for your time and consideration.

Keoni Shizuma