



SB3154 SD1
RELATING TO HISTORIC PRESERVATION
House Committee on Water & Land

March 14, 2024

10:00 a.m.

Conference Room 430

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.

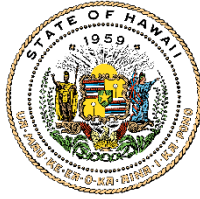
Unfortunately, it appears that HRS Chapter 6E currently does not make noncompliance with SHPD's mitigation action recommendations in itself a violation that can be meaningfully enforced. Similarly, Chapter 6E does not consistently provide enforcement mechanisms for noncompliance with other processes 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.

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

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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
DAWN N.S. CHANG
Chairperson

Before the House Committees on
WATER & LAND

Thursday, March 14, 2024
10:00AM

State Capitol, Conference Room 430 & Via Videoconference

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

Senate Bill 3154, Senate Draft 1 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 it has reviewed 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 physically damaged. The provisions of Senate Bill 3154, Senate Draft 1 would allow SHPD to pursue assessments for 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. This measure addresses this shortfall. Accordingly, the Department strongly supports this measure.

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



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TO: Representative Linda Ichiyama, Chair
Representative Mahina Poepoe, Vice Chair
Committee on Water & Land (WAL)

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

Committee: Thursday, March 14, 2024
10:00 a.m.
Via Video Conference and Conference Room 430

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.

SB-3154-SD-1

Submitted on: 3/11/2024 4:02:54 PM

Testimony for WAL on 3/14/2024 10:00:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|-----------------------|---------------------|---------------------------|---------------------------|
| Jacqueline S. Ambrose | Individual | Support | Written Testimony Only |

Comments:

Aloha,

Yes to clarifying that failure to comply with approved mitigation commitments, conduct an archaeological inventory survey, or comply with other administrative requirements pertaining to archaeology approved by the Department of Land and Natural Resources shall result in civil and administrative violations.

SB-3154-SD-1

Submitted on: 3/13/2024 10:27:35 PM

Testimony for WAL on 3/14/2024 10:00:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|--------------------------|--------------|--------------------|-------------------|
| Keomailani Hanapi Hirata | Individual | Support | Remotely Via Zoom |

Comments:

aloha aina kakou!

My name is Keomailani Hanapi Hirata. I come from the island of Molokai, where I was raised with my aina kupuna in the Ahupua'a o Ahaino, Mana'e. I testify as a keiki o ka aina o Molokai.

I am in support of Bill SB3154.

On the island of Molokai, there are currently multiple cases, of Archeologist that come from the United States Continent, foreign countries, and Archeologist from our Hawaii Universities that are illegally conducting research studies on our island. These Archeologist are taking our historical and cultural artifacts as well as our iwi kupuna and even our aina kupuna off our island to be tested in labs around the world. They claim "ignorance" to the laws in Hawaii and claim they did not know that there is a process to go through with the State Historic Preservation Division, Archelogy Branch and/or claiming they did not know that they need to consult with our islands Kupuna and community before conducting any research project. By the time these research projects are made public knowledge, severe damage has been done by these Archeologist to our artifacts, our iwi kupuna and our aina kupuna.

We have to hold all of these Archeologist accountable and responsible for what they are “intentionally” doing in the name of science; desecrating our historical and cultural artifacts, iwi kupuna and aina kupuna for their personal gain. Bill SB3154 is a step in the right direction.

I have a recommendation and comment for this bill:

1. (h) – “Federal funding” should be included with State and County funding for projects.

(h) Any person who knowingly violates this chapter with respect to burial sites shall also be prohibited from participating in the construction of any “FEDERAL”, state, and/or county funded project for ten years.

Comment: Federal government agencies issue grant funds for Archeology Research Projects at a higher rate than State or County.

Mahalo for allowing me to testify.

