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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, January 31, 2013 10:04 PM  
**To:** waltestimony  
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**Subject:** Submitted testimony for HB939 on Feb 1, 2013 08:00AM  
**Attachments:** HB 939-HM-SLC.pdf

**HB939**

Submitted on: 1/31/2013

Testimony for WAL/OMH on Feb 1, 2013 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sara L Collins	Society for Hawaiian Archaeology	Comments Only	Yes

Comments: While we support the intent of HB 939 we have comments on aspects of the bill. Please see the attached comments.

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TO: Representative Cindy Evans, Chair  
House Committee on Committee on Water & Land and  
  
Representative Faye P. Hanohano, Chair  
House Committee on Ocean, Marine Resources & Hawaiian Affairs

FROM: Sara L. Collins, Ph.D., Legislative Chair  
Society for Hawaiian Archaeology  
sara.l.collins.sha@gmail.com

HEARING: Friday, February 1, 2013 8:00 AM, Room 325

SUBJECT: Comments on HB 939, Relating to Enforcement of Violations by the Department of  
Land and Natural Resources

I am Dr. Sara Collins, Chair of the Legislative Committee of the Society for Hawaiian Archaeology (SHA). We have over 150 members that include professional archaeologists and advocates of historic preservation in general. The subject bill proposes to establish an alternative method of civil enforcement that may be used by the Board of Land and Natural Resources (BLNR) when processing natural and cultural resource violation cases. We support the intent of this bill, which appears to add flexibility to the enforcement process while making follow-through more likely in violations cases that come before the BLNR. We have some comments though on aspects of the bill that, to us, may need further clarification.

As we understand it, HB 939 would amend Chapter 171-6, Hawaii Revised Statutes (HRS) as follows.

- Amends §171-6(15) to apply to both natural and cultural resources, including §§6D (Cave Law) and 6E (Historic Preservation) as well as Title 12 (Public Lands).
- Adds §171-6(20), which describes the option of performing community service instead of or in addition to any fines imposed by the BLNR in adjudicating a violations case. The community service work must be performed under the supervision of a governmental agency, a benevolent or charitable organization, or a community service group deemed appropriate by the board until satisfactory compliance is certified by the board or its designated agent.
- Adds §171-6(21), which calls for the suspension or revocation of a license or permit issued under the authority of the board or department, or the denial of any application for the issuance of such a license or permit, if the board finds that the licensee, permittee, or applicant is in violation of any of the provisions of title 12 or chapter 66D or 66E, or any rule adopted thereunder until satisfactory compliance is certified by the board or its designated agent
- Adds §171-6(22), which directs the appropriate county authorities of motor vehicles to deny any application for the registration of a motor vehicle if the board finds that the applicant failed to discharge a condition imposed by the board pursuant to any of the provisions of title 12 or chapter §§6D or 6E, or any rule adopted thereunder until satisfactory compliance is certified by the board or its agent.

We support the intent of these proposed amendments because they could strengthen the ability of the Department of Land and Natural Resources to protect historic and cultural resources and to do so more effectively. Hawai'i's historic preservation laws are among the strongest in the nation but agencies and individuals have long struggled to enforce these laws or to have them enforced.

The full the potential of these strong laws has yet to be realized. Lack of enforcement is one of the most prominent issues raised any time our members or communities are asked what needs to be done to protect archaeological sites and other types of historic properties. The approaches proposed in this amendment are worth a try.

We also believe that the community service option could also help groups and agencies that are currently caring for historic sites. Regarding community service, we would recommend that anyone electing to engage in this form of restitution should be assigned to work with an established entity who is currently in an approved and ongoing program of caretaking at a historic site. In all cases, any service work on a historic site should only commence when there is an appropriate and approved plan, and such work is done under the supervision of appropriate agencies such as the Division of State Parks or State Historic Preservation Division.

One reservation we have about these amendments is their possible effect on permits issued to archaeologists by the Department of Land and Natural Resources to conduct archaeological activities in the State of Hawai'i (Hawaii Administrative Rule 13-282). We presume that the licenses and permits referred to in proposed amendment §171-6(21) include this permit. We are still in the process of examining the possible consequences of HB 939 on this particular permit and may have additional comments to make should this bill progress further. We also note that §6E has existing civil and administrative (§§6E-11 through 6E-11.6), and criminal (§§6E-71 through 6E-74) penalty sections. It is possible that these statutes may also need to be amended in order to incorporate the new sections proposed for §171-6.

Thank you for the opportunity to provide comments on HB 939. Should you have any questions, please feel free to contact me at the above email address.