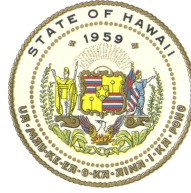
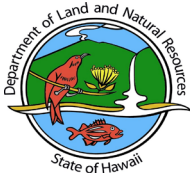


DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
CULTURE, ARTS, & INTERNATIONAL AFFIARS**

**Wednesday, February 10, 2021
10:00AM**

State Capitol, Via Videoconference, Conference Room 329

**In consideration of
HOUSE BILL 1358
RELATING TO HISTORIC PRESERVATION**

House Bill 1358 proposes to: (1) define "pre-contact historic property"; (2) clarify that the Historic Preservation Program includes providing consultation to counties and public and private agencies involved in historic preservation and the development, publication, and distribution of materials about protections for burials, historic sites, and archaeological resources; (3) amend the composition and duties of the Hawaii Historic Places Review Board; (4) increase civil and administrative fines for certain violations of historic and preservation requirements; and (5) make violators liable for costs associated with mitigation or restoration measures. **The Department of Land and Natural Resources (Department) acknowledges the intent of this measure and offers the following comments.**

SECTION 1 of House Bill 1358 proposes to amend Section 6E-2, HRS, by inserting a definition of a "pre-contact historic property" to mean historic properties that pre-date Captain Cook's arrival in the Hawaiian islands. Such properties are already clearly included in the Section 6E-2, HRS, definition of "historic property" and the Department does not believe that SECTION 1 of this bill is needed and recommends it be deleted.

SECTION 2 of House Bill 1358 proposes to amend Section 6E-3(7), HRS, by clarifying that the statewide Historic Preservation Program administered by the Department's State Historic Preservation Division (SHPD) is to provide "consultation" to the counties, and public and private entities involved in historic preservation activities. The Department believes that there is no substantive difference between "technical assistance" and consultation. SHPD staff already consults with the counties, state agencies, and private parties to the extent possible within the limited financial resources available to it. The Department and SHPD believe that such consultation is necessary, consistent with Chapter 6E, HRS, and remains committed to consulting to the extent possible given our limited resources.

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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

SECTION 2 of House Bill 1358 proposes to amend Section 6E-3, HRS, by inserting a new paragraph that would read

(8) Development, publication, and distribution to the public of informational materials regarding statutory protections for burials, historic sites, and archaeological resources, including the process of project reviews established by this chapter.

The Department fully supports this provision as it believes that communication about these issues would be highly beneficial. The Department notes, however, such activities cannot be accomplished within existing staff and budget constraints. SHPD could only effectively implement such communication activities if it is provided with additional staffing and/or budgetary resources.

SECTION 3 of House Bill 1358 proposes to amend Section 6E-5.5, HRS, by requiring that the Governor appoint two members to the Hawaii Historic Places Review Board (Review Board) who have expertise in traditional Hawaiian society and culture. The Department respectfully opposes this provision. House Bill 1031, which the Department supports, reduces the number of members on the Review Board from 10 to 7. The Review Board would still be required to have at least one member with expertise in traditional Hawaiian society and culture. Requiring that two members on this smaller Review Board be from any particular area of expertise is problematic.

SECTION 3 of House Bill 1358 proposes to also amend Section 6E-5.5(b)(1), HRS, to read

Order and enter historic properties into the Hawaii register of historic places on the basis of their value to Hawaii's heritage [;], including but not limited to native Hawaiian culture and history;

The Department believes that this proposed amendment is unnecessary as it is clear that such places are eligible for inclusion in the Hawaii Register. The Review Board, which has authority to list places in the Hawaii Register, recently listed Pu'u Kapolie in the Hawaii Register specifically for its significance to Hawaiian tradition and culture. This action makes it clear that such places are eligible for inclusion in the Hawaii Register.

SECTION 4 of House Bill 1358 proposes to amend Section 6E-1, HRS, by increasing the maximum penalty for a violation from \$10,000 to \$20,00 for each individual violation, and to a maximum of \$30,000 per violation for damage to a "pre-contact historic property." The Department appreciates the intent to levee higher fines but notes that \$10,000 per individual violation is already a very substantial penalty. This is especially true since the Department views damage to the individual components of a historic property as subject to this penalty as an individual violation. For example, if an archaeological site comprises ten features, damage to any of the individual features would be potentially subject to the \$10,000 penalty. If the entire site is damaged or destroyed, the penalty would be a maximum of \$100,000 (\$10,000 for each feature) not \$10,000 for destroying the site.

Furthermore, the Department opposes the revision of a \$30,000 penalty to be assessed "as determined by the department in consultation with the office of Hawaiian affairs...." The

Department recommends that this phrase be deleted as it is impossible to determine what is meant. Does it require that the Department consult with the Office of Hawaiian Affairs (OHA) to determine if the property is “pre-contact”? Is the Department being directed to consult with OHA regarding the penalty assessment?

SECTION 4 of House Bill 1358 proposes to amend Section 6E-11.5, HRS, by inserting

Any landowner or developer responsible for any project where violations are found to have occurred shall execute any mitigation and preservation measures ordered by the department and shall be jointly and severally liable for any costs of mitigation and preservation. (House Bill 1358, page 6, line 20)

The Department has required property owners or developers as appropriate to carry out mitigation or preservation measures in the past. Nevertheless, the Department believes the clarification provided by this is helpful and appropriate.

SECTION 5 of House Bill 1358 proposes to make conforming amendments to Section 6E-11.5, HRS, increasing the maximum penalty from \$10,000 to \$20,000. As well as providing for a maximum penalty of \$30,000 for violation affecting a “pre-contact” historic property. The Department’s comments on these provisions are identical to the comments made regarding the proposed amendments to Section 6E-11, HRS.

Finally, SECTION 5 of House Bill 1358 proposes to amend Section 6E-12(d), HRS, to increase the penalty for offering for sale or trade any object of part a skeleton or associated burial good from \$10,000 to \$25,000. The Department supports this increase in penalty.

Thank you for the opportunity to comment on this measure.

HB-1358

Submitted on: 2/9/2021 5:46:24 PM

Testimony for CAI on 2/10/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl B.	Individual	Support	No

Comments:

Support

ANd let's historically preserve all sites that are important to Hawaiian culture and traditions. To be reluctant to do so for a Mauna, only because of perceived importance of a tool of astronomy is lacking in foresight and understanding.

HB-1358

Submitted on: 2/9/2021 10:37:07 PM

Testimony for CAI on 2/10/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Daniel Lee	Individual	Support	No

Comments:

STRONG SUPPORT for HB1358 Relating to Historic Preservation

Aloha Chair Gates, members,

If we are to lose Native Hawaiian historic sites in Hawai'i itself, where else will we find them? I lament a day when children can only go to a museum to see remnants of taro cultivation practices, fish pond technology, and traditional fishing nets, yet we are already heading down that path right now. Stone agricultural terraces remain standing deep in Ahuimanu; holding their form deep in the forest due to skilled Hawaiian masonry from hundreds of years ago. Yet will they soon be paved over like the agricultural terraces sacrificed for the building of the H-3 Highway?

Thank you for your consideration in passing this bill.

Mahalo nui loa,

Daniel Lee