

STAND. COM. REP. NO. 230

Honolulu, Hawaii

Feb 9, 2007

RE: H.B. No. 1169  
H.D. 1

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fourth State Legislature  
Regular Session of 2007  
State of Hawaii

Sir:

Your Committees on Tourism & Culture and Water, Land, Ocean Resources & Hawaiian Affairs, to which was referred H.B. No. 1169 entitled:

"A BILL FOR AN ACT RELATING TO HISTORIC SITES,"

beg leave to report as follows:

The purpose of this bill is to protect historic sites by prohibiting landowners from removing, excavating, injuring, or destroying a potential native Hawaiian historic site on private property, unless the landowner has notified the Department of Land and Natural Resources (DLNR) of the proposed action and of the future use the landowner proposes for the potential native Hawaiian historic site. In addition, this bill, among other things, establishes procedures relating to the disposition of the potential native Hawaiian historic site and penalties for violations.

The Mayor of the County of Hawaii, the Planning Department of the County of Hawaii, Protect Keopuka Ohana, and a concerned individual supported this bill. DLNR supported the intent of this measure. The Society for Hawaiian Archaeology opposed this bill. Kuilima Resort Company submitted comments.

Your Committees find that this measure will provide additional protection for valuable, culturally significant sites that are located on private property.

HB1169 HD1 HSCR TAC-WLH HMS 2007-1970



Your Committees have amended this measure by:

- (1) Inserting a purpose section;
- (2) Removing DLNR's authority to review and comment upon the landowner's proposed action;
- (3) Clarifying that, for the proposed action submitted by the landowner:
  - (A) If the proposed use requires a permit or other entitlement for use, the landowner must complete the process provided for under section 6E-42, Hawaii Revised Statutes, prior to taking any action to remove, excavate, injure, or destroy the potential native Hawaiian historic site; and
  - (B) If the proposed use does not require a permit or other entitlement for use, DLNR must determine within sixty days whether the site in question warrants preservation, and the landowner shall not take action to remove, excavate, injure, or destroy the potential native Hawaiian historic site unless:
    - (i) DLNR determines that the site does not warrant preservation; or
    - (ii) The landowner records a covenant running with the land specifying that the landowner will not apply for a permit or other entitlement for use affecting the immediate area containing the potential native Hawaiian historic site, including surrounding areas, for 10 years from the date of recordation;
- (4) Deleting the provision allowing the Governor to allocate, from a contingency fund, an amount sufficient to acquire an option on the property or for immediate acquisition of the property, in condemnation cases where funds for the acquisition of property are not available;
- (5) Specifying that persons who knowingly violate the provisions of this bill shall be subject to penalties pursuant to section 6E-11.5, instead of section 6E-11(f);



- (6) Clarifying that a landowner shall be deemed to have constructive knowledge of potential native Hawaii historic sites on the landowner's property listed in the state inventory of historic places, or shown in any archaeological study of the property with the consent of the owner or the owner's predecessors in title;
- (7) Deleting the savings clause;
- (8) Changing its effective date to January 1, 2025, to encourage further discussion; and
- (9) Making technical, nonsubstantive amendments for style, clarity, and consistency.

As affirmed by the records of votes of the members of your Committees on Tourism & Culture and Water, Land, Ocean Resources & Hawaiian Affairs that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 1169, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 1169, H.D. 1, and be referred to the Committee on Judiciary.

Respectfully submitted on  
behalf of the members of the  
Committees on Tourism & Culture  
and Water, Land, Ocean  
Resources & Hawaiian Affairs,



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KEN ITO, Chair



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RYAN I. YAMANE, Chair





