

February 8, 2024
Senate Committee on Hawaiian Affairs
Senate Committee on Water and Land
Thursday, February 8, 2024 at 1:15 pm

Aloha Chairs Shimabukuro and Inouye, Vice Chairs Fevella and Elefante, and members of the Committees:

For the bills on the agenda for February 8, 2024, I respectfully provide the following testimony based on my experience as a community housing developer for the last 30+ years and serving on the Maui Lanaʻi Island Burial Council.

SB 2653: I **support** this bill since it allows DHHL the option to review historic properties and burial sites for lands under its jurisdiction while still maintaining that reviewers will have the professional competence and experience in the field of historic preservation. This will result in expediting native Hawaiian beneficiaries getting off the DHHL waitlists and back onto the land and into long-term, stable housing.

Thank you for your consideration.

Best regards,

Everett Dowling
Member of the Maui Lanai Islands Burial Council



SB2653

RELATING TO HISTORIC PRESERVATION REVIEWS

Senate Committee on Hawaiian Affairs

Senate Committee on Water & Land

February 8, 2024

1:15 p.m.

Room 224

The Office of Hawaiian Affairs (OHA) provides the following **COMMENTS** on SB2653, which would eliminate the need for the Department of Hawaiian Homelands (DHHL) to consult with the State Historic Preservation Division (SHPD) regarding any proposed projects on DHHL lands under Hawai‘i Revised Statutes (HRS) § 6E-8. OHA appreciates measures such as these that are ultimately aimed at expediting the work that DHHL does for beneficiaries on their waitlist and assisting SHPD with their kuleana. OHA’s comments are provided to ensure that DHHL has adequate procedures and resources to appropriately review their projects for possible adverse impacts to historic properties; and, to recommend consultation with OHA as part of their review process for Criteria “e” sites.

First, OHA notes that SHPD has compiled and maintained extensive inventoried information over the past several decades, including archaeological publications and correspondences that date back to the late 1960s, for historic properties across the State of Hawai‘i. Additionally, SHPD regularly uses such information as well as established consultation and assessment processes to review proposed projects for potential impacts to iwi kūpuna, cultural sites, and other historic properties. **Accordingly, as SHPD has demonstrated, there is a clear need for informational resources, and established consultation and assessment processes in order to consistently and adequately protect iwi kūpuna, cultural sites, and other historic properties from development impacts as envisioned under HRS Chapter 6E’s historic preservation review framework.** OHA therefore recommends that DHHL commit to minimally acquire proper resources and establish review processes if they are to eliminate the need to consult with SHPD under HRS § 6E-8.

Second, OHA respectfully suggests that we be consulted during DHHL’s review process for assessing possible adverse impacts to historic properties that are significant under Criteria “e” for their importance to Native Hawaiians. As the state agency mandated to assess the policies and practices of other state agencies for possible impacts to Native Hawaiians, OHA has been an important partner to SHPD for the last three decades, and has assisted with identifying cultural sites and mitigation requirements to ensure that

irreplaceable Hawaiian cultural resources and burial sites are properly protected. OHA has also created databases with invaluable historic and archaeological information that has been useful in project related reviews and identifying appropriate Native Hawaiian beneficiaries for consultation. Further, consultation with OHA is already required in the current rules for Criteria "e" sites. Thus, we believe that consultation with OHA for Criteria "e" sites will provide a more consistent and appropriate level of protection for Native Hawaiian cultural and historic sites and resources on DHHL lands. We look forward to further expanding our partnership with DHHL.

To memorialize the suggested comments, OHA recommends the following additional language after line 16, page 2:

"(3) acquire adequate resources and establish processes for staff to perform the review; and,
(4) consult with the Office of Hawaiian Affairs during the review for sites that are significant under Criteria "e"."

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, HI 96809

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

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FIRST DEPUTY

DEAN D. UYENO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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COMMISSION ON WATER RESOURCE
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CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
DAWN N. S. CHANG
Chairperson

Before the Senate Committees on
HAWAIIAN AFFAIRS
and
WATER AND LAND

Thursday, February 08, 2024
01:15PM

State Capitol Room 224& Via Videoconference

In consideration of
SENATE BILL 2653
RELATING TO HISTORIC PRESERVATION REVIEWS

Senate Bill 2653 proposes to amend Section 6E-8(b), Hawaii Revised Statutes (HRS), to allow the Department of Hawaiian Home Lands (DHHL) to assume historic preservation project review on lands under its jurisdiction. **The Department of Land and Natural Resources (Department) supports this measure.**

This bill proposes to amend Section 6E-8(b), HRS, to allow DHHL to assume responsibility to review the effects of projects on historic properties on its lands, provided DHHL appoints a "Hawaiian Home Lands Preservation Officer who has professional competence and experience in the field of historic preservation," and that DHHL ensures "that copies of all reports, maps, and documents, including those reflecting the Hawaiian Home Lands Preservation Official's comments, recommendations, and decisions, are provided to the department to be incorporated into the historic preservation digital document management system and library." The proposed amendment also provides that the Department will retain authority for any projects that affect properties listed in or nominated for inclusion in the Hawai'i or National Registers of Historic Places.

The Department believes that it is essential that there be a single set of standards for project reviews carried out under Section 6E-8, HRS, throughout the State of Hawai'i, and that the individuals making findings under it be a fully qualified historic preservation professional. The Department also believes

that it is essential that the Department remains the central repository for data relating to the location, importance, condition, and project review outcomes for the entire state. While the effects of this measure may be limited to DHHL lands, the information derived from DHHL's reviews will be important to understanding historic properties and decision making relating to them on neighboring lands or in the general vicinity. It is, therefore, critically important that this information be available to Department staff, planning and permitting agencies, external researchers, project planners, and cultural resources consultants who need it. As drafted, this measure ensures this.

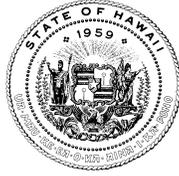
The Department appreciates that the proposed amendment to Section 6E-8, HRS, requires DHHL to employ a competent and experienced professional as a Hawaiian Home Lands Preservation Officer. The proposed amendment is silent on what are the minimum qualifications for that position. While Chapter 6E, HRS, is silent on the qualifications of the Department's professional staff, the Department notes that under federal law, it is required to maintain a professional staff that includes at least one professional meeting the minimum qualifications established in the Secretary of the Interior's Professional Qualification Standard in at least archaeology, history, and either historic architecture or architectural history. The state historic preservation division staff includes 16 individuals exceeding the Secretary's standards.

The Department appreciates that the Senate Committees on Hawaiian Affairs and Water and Land adopted the Department's recommendations from previous iterations of this bill (*see* Senate Bill 1354, Senate Draft 1 of 2023) ensuring that the Department will be notified that DHHL has (1) employed a qualified historic preservation professional to manage the review program, (2) developed procedures ensuring that all relevant documentation will be provided to the Department for inclusion in its archives and data management system, (3) that both the Department and the public will be notified prior to DHHL assuming Section 6E-8, HRS, responsibilities, and that (4) the Department will retain Section 6E-8, HRS, review responsibilities for projects affecting properties listed or nominated for inclusion in the Hawai'i Register of Historic Places or the National Register of Historic Places or located in a designated historic district.

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

JOSH GREEN, M.D.
GOVERNOR
STATE OF HAWAII
*Ke Kia'āina o ka Moku'āina 'o
Hawai'i*

SYLVIA J. LUKE
LT. GOVERNOR
STATE OF HAWAII
*Ka Hope Kia'āina o ka Moku'āina
'o Hawai'i*



KALI WATSON
CHAIRMAN, HHC
Ka Luna Ho'okele

KATIE L. DUCATT
DEPUTY TO THE CHAIRMAN
Ka Hope Luna Ho'okele

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

Ka 'Oihana 'Āina Ho'opulapula Hawai'i

P. O. BOX 1879
HONOLULU, HAWAII 96805

**TESTIMONY OF KALI WATSON, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEE ON HAWAIIAN AFFAIRS AND
THE SENATE COMMITTEE ON WATER & LAND
HEARING ON FEBRUARY 8, 2024 AT 1:15PM IN CR 224**

SB 2653, RELATING TO HISTORIC PRESERVATION REVIEWS

February 8, 2024

Aloha Chairs Shimabukuro and Inouye, Vice Chairs Fevella and Elefante, and Members of the Committees:

The Department of Hawaiian Home Lands (DHHL) strongly supports this bill which would allow the DHHL to assume historic preservation review of any proposed project for lands under its jurisdiction except for projects affecting properties listed or nominated for inclusion in the Hawaii register of historic places or the national register of historic places.

Instead of requiring DHHL to consult with the Department of Land and Natural Resources regarding the effect of a project upon historic properties or burial sites, this bill would streamline the process by allowing DHHL to assume this review. This legislative proposal was approved by the Hawaiian Homes Commission and included in the Governor's administrative package by request of our Department.

Thank you for your consideration of our testimony.



Celebrating 50 Years of Preserving Hawai'i's Places

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TO: Senator Maile S.L. Shimabukuro, Chair
Senator Kurt Fevella, Vice Chair
Committee on Hawaiian Affairs (HWN)

Senator Lorraine R. Inouye, Chair
Senator Brandon J.C. Elefante, Vice Chair
Committee on Water and Land (WTL)

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

Committee: Thursday, February 8, 2024
1:15 p.m.
Via Video Conference and Conference Room 224

RE: **SB 2653, Relating to Historic Preservation Reviews**

On behalf of Historic Hawai'i Foundation (HHF), I am writing in **opposition to SB 2653**. The bill would amend Hawai'i Revised Statutes §6E to allow the Department of Hawaiian Homelands (DHHL) to assume the historic preservation project reviews under HRS 6E-8, eliminating the role of the State Historic Preservation Division (SHPD) of the Department of Land and Natural Resources in determining and resolving potential effects of the projects upon historic properties, cultural resources and iwi kūpuna, except for properties that are nominated for or designated in the Hawai'i or National Registers of Historic Places.

State law (HRS §6E-8), currently requires that prior to any state, county or public project commencing, that the proposed project shall be referred to SHPD for its review of the proposed project's potential effect on historic properties, aviation artifacts, or burial sites, especially those listed on the state register of historic places. The proposed project shall not commence until the department gives its written concurrence.

SHPD's review of proposed projects is an important safeguard to ensure that historic properties and cultural resources are identified and appropriate treatment measures are in place during planning and design work, which also then limits surprises or delays during construction.

The Department of Hawaiian Homelands does not have qualified staff, subject matter expertise, an appropriate administrative framework or other capacity to conduct these reviews or to resolve effects that projects may have on historic properties.

Furthermore, such a review process would essentially be self-dealing and have inescapable conflicts of interest. HHF is strongly concerned that DHHL would fail to prioritize and take actions to protect and preserve cultural sites, burials and historic properties affected by its actions in circumstances in which cultural resources conflict with its development aims.

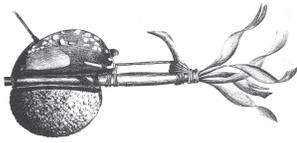
The bill does not include any safeguards to ensure professional judgment, eliminate conflicts and ensure ethical decision-making. It is unwise to allow for any regulated entity to self-enforce, as the temptation to make pretextual determinations at the expense of historic and cultural preservation outcomes may be too tempting for the self-regulated entity to overcome.

HHF also notes that DHHL projects are often subject to Federal historic preservation regulations, especially in the case in which federal funds are used to leverage housing development and/or infrastructure.

In those cases, Section 106 of the National Historic Preservation Act applies. The Code of Federal Regulations (36 CFR Part 800) governs issues related to historic preservation and includes specific roles and responsibilities for the State Historic Preservation Officer (SHPO). While the technical reviews may be delegated to qualified preservation professionals in the fields of architecture, architectural history or archaeology, the SHPO is ultimately responsible for the authorization and approval of the Section 106 process and resolution of potential effects on historic properties.

SHPD professional staff are versed in these and other differences and are able to ensure that review and compliance procedures address them. If a double-review with DHHL's in-house personnel were introduced, the Federal and State review processes would be segregated, adding conflict, confusion and contradiction.

For these reasons, **Historic Hawai'i Foundation respectfully asks the committee to hold the bill and not pass it on further.** Thank you for the opportunity to comment.



SOCIETY FOR HAWAIIAN ARCHAEOLOGY

P.O. BOX 22458 HONOLULU, HAWAII 96823

TO: Senator Maile Shimabukuro, Chair
Senator Kurt Favella, Vice Chair
Committee on Hawaiian Affairs (HWN)

Senator Lorraine Inouye, Chair
Senator Brandon J.C. Elefante, Vice Chair
Committee on Water and Land (WTL)

FROM: Mara Mulrooney, Ph.D.
President, Society for Hawaiian Archaeology
membership@hawaiianarchaeology.org

HEARING: February 8, 2024, 1:15 PM, Conference Room 224 & Videoconference

SUBJECT: Testimony regarding SB 2653, Relating to Historic Preservation Reviews

I am Mara Mulrooney, President of the Society for Hawaiian Archaeology (SHA). We have over 150 members including professional archaeologists and advocates of historic preservation. On behalf of SHA, **we oppose SB 2653 as written.**

The intent of SB 2653 allows the Department of Hawaiian Home Lands to assume historic preservation review of the effect of any proposed project for lands under its jurisdiction except for projects affecting properties listed or nominated for inclusion in the Hawaii register of historic places or the national register of historic places.

SHA is concerned that these changes effectively allow DHHL to review and make final determinations, except those affecting HRHP/NRHP properties (listed and nominated) for which SHPD-DLNR would also have review responsibilities. The current wording of 6E-8 already allows DHHL to "consult" with DLNR on historic properties' compliance reviews.

Rather than "designate the review to a Hawaiian home lands preservation officer having professional competence and experience in the field of historic preservation", SHA would advocate for a dedicated position within the SHPD-DLNR to assist with reviews for DHHL projects. Moving this position within SHPD would ensure compliance with federal laws relating to historic preservation. Further, reenvisioning this position as one within SHPD would ensure that the preservation officer would have access to all of SHPD's records in order to conduct adequate reviews of DHHL projects, and would not have any conflict of interest in doing so.

Should SB 2653 pass out of this committee, we request to be consulted as a stakeholder in future deliberations on an amended bill. Should you have any questions, please feel free to contact me at the above email.

Mahalo for the opportunity to comment.

<https://hawaiianarchaeology.org/>

The Society for Hawaiian Archaeology is a registered tax-exempt organization established in 1980 to promote and stimulate interest and research in the archaeology of the Hawaiian Islands, encourage a more rational public appreciation of the aims and limitations of archaeological research, serve as a bond among those interested in Hawaiian archaeology, both professionals and non-professionals, and aid in directing their efforts into more scientific channels as well as encourage the publication of their results, advocate and assist in the conservation of archaeological data, discourage unethical commercialism in the archaeological field and work for its elimination.

SB-2653

Submitted on: 2/4/2024 11:37:23 PM

Testimony for HWN on 2/8/2024 1:15:00 PM

Submitted By	Organization	Testifier Position	Testify
De Mont Kalai Manaole	Testifying for Hoomana Pono, LLC	Support	In Person

Comments:

We **STRONGLY SUPPORT** this bill.

SB-2653

Submitted on: 2/2/2024 5:18:54 PM

Testimony for HWN on 2/8/2024 1:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Lu Ann Mahiki Lankford-Faborito	Individual	Support	Written Testimony Only

Comments:

support

SB-2653

Submitted on: 2/4/2024 9:57:39 PM

Testimony for HWN on 2/8/2024 1:15:00 PM

Submitted By	Organization	Testifier Position	Testify
cindy freitas	Individual	Support	Written Testimony Only

Comments:

I'm in Support of SB 2653

SB-2653

Submitted on: 2/7/2024 6:30:34 AM

Testimony for HWN on 2/8/2024 1:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Foster Ampong	Individual	Oppose	Written Testimony Only

Comments:

I oppose SB2653.

SB-2653

Submitted on: 2/5/2024 10:59:52 AM

Testimony for HWN on 2/8/2024 1:15:00 PM

Submitted By	Organization	Testifier Position	Testify
josephine tanimoto	Individual	Support	Written Testimony Only

Comments:

Aloha. Mahalo for the opportunity to support DHHL to review-with reservations.

In the past, DHHL has had many funding issues. My example in Kawaihae is no funding for potable water, at least. Currently, our over 10,000 acre homestead cannot be completed because not enough potable water. Kailapa Subdivision is between 2-gulches and transmission lines are costly (we have been told and still no planning in 35 years). ACT 279 is for the waitlist, which could be placed here on DHHL, but the Commission decided to buy land on Kauai. The Lalamilo Well was planned without Kawaihae considerations.

Perhaps, the idea is to build revenue sources and the historic sites are in the way. These historic sites have not been nominated on the State and National registries (that I know of). There is no funding, in all these years. This community has tried to get this done. Perhaps you can figure this one out. Mahalo

SB-2653

Submitted on: 2/7/2024 9:55:51 AM

Testimony for HWN on 2/8/2024 1:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Keomailani Hanapi Hirata	Individual	Comments	In Person

Comments:

Aloha 'aina kakou,

My name is Keomailani Hanapi Hirata, I am a keiki o ka aina o Molokai.

I will be testifying, in person, to SB2653.

Mahalo

SB-2653

Submitted on: 2/6/2024 5:11:24 AM

Testimony for HWN on 2/8/2024 1:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Hannah K Anae	Individual	Oppose	Written Testimony Only

Comments:

I oppose, there should be proper check and balances.

SB-2653

Submitted on: 2/7/2024 11:29:10 AM

Testimony for HWN on 2/8/2024 1:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Wainani Traub	Individual	Oppose	Written Testimony Only

Comments:

I oppose SB 2653 as written.

The intent of SB 2653 allows the Department of Hawaiian Home Lands to assume historic preservation review of the effect of any proposed project for lands under its jurisdiction except for projects affecting properties listed or nominated for inclusion in the Hawaii register of historic places or the national register of historic places.

SHA is concerned that these changes effectively allow DHHL to review and make final determinations, except those affecting HRHP/NRHP properties (listed and nominated) for which SHPD-DLNR would also have review responsibilities. The current wording of 6E-8 already allows DHHL to "consult" with DLNR on historic properties' compliance reviews.

Rather than "designate the review to a Hawaiian home lands preservation officer having professional competence and experience in the field of historic preservation", SHA would advocate for a dedicated position within the SHPD-DLNR to assist with reviews for DHHL projects. Moving this position within SHPD would ensure compliance with federal laws relating to historic preservation. Further, re-envisioning this position as one within SHPD would ensure that the preservation officer would have access to all of SHPD's records in order to conduct adequate reviews of DHHL projects, and would not have any conflict of interest in doing so.

SB-2653

Submitted on: 2/7/2024 3:56:43 PM

Testimony for HWN on 2/8/2024 1:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Peter R. Mills	Individual	Oppose	Written Testimony Only

Comments:

TO: Senator Maile Shimabukuro, Chair
Senator Kurt Favella, Vice Chair
Committee on Hawaiian Affairs (HWN)
Senator Lorraine Inouye, Chair
Senator Brandon J.C. Elefante, Vice Chair
Committee on Water and Land (WTL)

FROM: Peter R. Mills

HEARING: February 8, 2024, 1:15 PM, Conference Room 224 & Videoconference

SUBJECT: Testimony regarding SB 2653, Relating to Historic Preservation Reviews

I am a past member of the Hawaii Historic Places Review Board, a professor of anthropology at the University of Hawaii at Hilo for the last 27 years, and director of our Heritage Management MA program. I oppose SB 2653 as written.

The intent of SB 2653 allows the Department of Hawaiian Home Lands to assume historic preservation review of the effect of any proposed project for lands under its jurisdiction except for projects affecting properties listed or nominated for inclusion in the Hawaii register of historic places or the national register of historic places.

While SHPD has often been short of staff to assist DHHL and other entities with timely review, cost-effective solutions rarely involve replicating the roles of SHPD in multiple branches of state government, and effectively removing consultation with technical experts from the review and compliance process. I am concerned that these changes effectively allow DHHL to review and make final determinations, except those affecting HRHP/NRHP properties (listed and nominated) for which SHPD-DLNR would also have review responsibilities. The current wording of 6E-8 already allows DHHL to consult; with DLNR on historic properties' compliance reviews.

Rather than “designate the review to a Hawaiian home lands preservation officer having professional competence and experience in the field of historic preservation”, SHA would advocate for a dedicated position within the SHPD- DLNR to assist with reviews for DHHL projects. Moving this position within SHPD would ensure compliance with federal laws relating to historic preservation. Further, re-envisioning this position as one within SHPD would ensure that the preservation officer would have access to all of SHPD’s records in order to conduct adequate reviews of DHHL projects, and would not have any conflict of interest in doing so.

Should you have any questions, please feel free to contact me at the above email.

Mahalo for the opportunity to comment.

