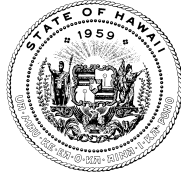


JOSH GREEN, M.D.
GOVERNOR
STATE OF HAWAII
*Ke Kia 'āina o ka Moku 'āina 'o
Hawaii 'i*

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



KALI WATSON
CHAIRPERSON, HHC
Ka Luna Ho 'okele

KATIE L. LAMBERT
DEPUTY TO THE CHAIR
Ka Hope Luna Ho 'okele

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
Ka 'Oihana 'Āina Ho 'opulapula Hawaii 'i

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TESTIMONY OF KALI WATSON, CHAIR
HAWAIIAN HOMES COMMISSION
BEFORE THE HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
HEARING ON FEBRUARY 27, 2025 AT 2:00PM IN CR 325

HB 1087, HD 1, RELATING TO HISTORIC PRESERVATION REVIEWS

February 26, 2025

Aloha Chair Tarnas, Vice Chair Poepoe, and Members of the Committee:

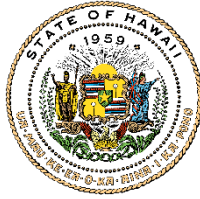
The Department of Hawaiian Home Lands (DHHL) **supports** this bill which 1) allows DHHL to assume historic preservation review of the effect of any proposed project for lands under its jurisdiction except for projects affecting properties listed or nominated for inclusion in the Hawaii register of historic places or the national register of historic places and 2) transfers the administrative placement of the island burial councils to the Office of Hawaiian Affairs.

DHHL prefers the original version of HB1087 which was approved by the Hawaiian Homes Commission and included in the Governor's administrative package by request of DHHL. The intent of this bill is to streamline the historic preservation review process with timeliness and efficiency by allowing DHHL to assume this review responsibility given certain requirements. HB1087, HD1 would relieve the Department of Land and Natural Resources (DLNR) from having the responsibility to assume historic preservation review for DHHL, while ensuring that DLNR shall remain informed and copied by DHHL on all reports, maps, and documents to be incorporated into DLNR's historic preservation digital document management system.

Thank you for your consideration of our testimony.

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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DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
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CIARA W.K. KAHANE
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

Testimony of
DAWN N. S. CHANG
Chairperson

Before the House Committee on
JUDICIARY & HAWAIIAN AFFAIRS

Thursday, February 27, 2025
2:00 PM

House Conference Room 325 & Videoconference

In consideration of
HOUSE BILL 1087, HOUSE DRAFT 1
RELATING TO HISTORIC PRESERVATION REVIEWS

House Bill 1087, House Draft 1 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) acknowledges the intent of this measure and offers the following comments.**

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, significance, integrity, and project review outcomes related to historic properties 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.

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. However, the proposed amendment lacks minimum qualifications for the DHHL preservation officer position. Section 13-281-3 of the Hawai'i Administrative Rules (HAR) specify the professional qualifications for archaeology, architecture or architectural history, and physical anthropology. To maintain professional standards associated with a successful and competent historic preservation program, the Department recommends amending the bill to require that the Hawaiian Home Lands Preservation Officer meet at least one of these professional qualifications and that they are supported by professional staff that meet the other critical professional areas.

Additionally, the measure does not specify how DHHL will “review the effect of any proposed project relating to lands under its jurisdiction.” It is important to clarify that DHHL will follow the same rules and process established under Chapter 6E, HRS, and Title 13, HAR, or establish a new statute and rules that are complimentary to the existing historic preservation review process and rules.

Furthermore, the measure is silent on how DHHL will consider the treatment and affects of projects to iwi kūpuna; and does not specify how DHHL will consult and coordinate with appropriate Island Burial Councils and recognized descendants. The Department recommends that DHHL propose amendments that will take into account how they will consult and coordinate with appropriate Island Burial Councils and recognized descendants, if they will administer responsibilities associated with burial sites in accordance with existing statutes and rules at Chapter 6E, HRS, and Chapter 13-300, HAR, or whether they will establish their own that are complimentary to the existing burial site program processes and rules.

Lastly, the measure moves the Island Burial Councils from the State Historic Preservation Division to the Office of Hawaiian Affairs (OHA). The Department supports the intent of this measure to transfer the responsibilities of supporting the Island Burial Councils to the OHA who advocate for the protection and preservation of iwi kupuna, engage with cultural and lineal descendants of the appropriate treatment for iwi kupuna, and recruit for the island burial council members. SHPD's role under chapter 6E, is as a regulator to ensure compliance with the provisions of chapter 6E. However, OHA will need staff to support the Island Burial Councils and will need to have the funding to support additional positions. They will need to either amend existing administrative rules or write their own administrative rules, as they pertain to the formation and management of the Island Burial Councils.

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



**SUPPORT WITH COMMENTS ON HOUSE BILL 1087_HD1
RELATING TO HISTORIC PRESERVATION**

House Committee on Judiciary and Hawaiian Affairs
Hawai'i State Capitol

February 26, 2025

2:00 p.m.

Room 325

Dear Chair Tarnas, Vice Chair Poepoe, and Members of the House Committee on
Judiciary and Hawaiian Affairs:

The Office of Hawaiian Affairs (OHA) submits this testimony in **SUPPORT WITH COMMENTS ON HB1087 HD1**. This measure would allow the Department of Hawaiian Home Lands (DHHL) to assume historic preservation review for projects on the lands under its jurisdiction. HB 1087_HD1 was also amended in the last Committee to propose transferring the administrative of the Island Burial Councils (IBCs) established pursuant to Hawai'i Revised Statutes § 6E-43 from the Department of Land and Natural Resources State Historic Preservation Division (SHPD) to OHA.

Support for DHHL Conducting In-House Review

OHA supports HB 1087_HD1 because as set forth in the bill this in-house program could help address the increasing housing needs of native Hawaiians while also providing quality historic review necessary for the protection of iwi kūpuna .

The historic review process set out HRS chapter 6E need not delay housing construction when implemented properly. However, many of the initial archaeological assessment and effects determinations are made by agency staff or private consultants that either do not have the training or the mandate to properly identify historic sites, particularly iwi kūpuna. This can lead to project delays when SHPD is forced to review inadequate submissions. On the other hand, dedicated staff with sufficient training can help ensure that burials and other historic sites are identified in advance, ensuring timely protection of historic sites **and** project approvals.

Because DHHL commits in HB 1087_HD1 to hire a preservation officer OHA supports this proposal. However, to ensure that the preservation officer meets the existing archaeological qualification under SHPD's rules, HAR 13-281, OHA suggests the following amendments at page 2 lines 7-12:

Designate the review to a Hawaiian home lands preservation officer who has ~~professional competence and experience in the field of historic preservation~~ the professional qualifications for archaeologists, architectural historians, ethnographers, historians, and physical anthropologists and who has received a written delegation of authority to review the effect of department of Hawaiian home land projects on historic property or a burial site from the state historic preservation officer.

This amendment was not adopted in the last hearing and OHA would like to reiterate the importance of a preservation officer who meets the qualifications currently included in the SHPD rules.

Qualified Support for OHA to Administer the IBCs

OHA is supportive in concept of taking over the administration of the IBCs but is concerned about the related administrative rulemaking amendments and costs of supporting the IBCs fully, which could delay implementation. OHA suggests that instead the bill establish a working group to determine a process for transferring the administration of the IBCs from SHPD to OHA. This is necessary to ensure that the IBCs are not left without interim support while the agencies coordinate and operationalize a transfer of the duties and responsibilities related to supporting the IBCs.

Mahalo nui for the opportunity to submit this testimony.



HISTORIC HAWAII FOUNDATION

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TO: Representative David A. Tarnas, Chair
Representative Mahina Poepoe, Vice Chair
Committee on Judiciary & Hawaiian Affairs (JHA)

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

Committee: Thursday, February 27, 2025
2:00 p.m.
Via Video Conference and Conference Room 325

RE: **HB 1087 HD1, Relating to Historic Preservation Reviews**

On behalf of Historic Hawai'i Foundation (HHF), I am writing in **opposition for HB 1087**. The bill would amend Hawai'i Revised Statutes §6E to allow the Department of Hawaiian Homelands (DHHL) to assume authority for conducting its own historic preservation reviews for its developments under HRS §6E-8, eliminating the role of the State Historic Preservation Division (SHPD) of the Department of Land and Natural Resources (DLNR) 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. The bill also transfers administrative placement of the Island Burial Councils from the Department of Land and Natural Resources to the Office of Hawaiian Affairs.

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.

Historic Hawai'i Foundation has three major concerns with the bill:

1. **Conflicts of Interest and Potential for Ethical Violations:** DHHL is a developer; no developer should be in the role of self-regulation and review of its own projects when the consequences will impact the public trust. 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 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.

2. **DHHL lacks qualified staff and a preservation review framework.** 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.

HHF recommends that DHHL develop its in-house expertise for developing and managing historic preservation projects first, using the existing review and compliance process mandated by HRS §6E. If DHHL can demonstrate competence and efficiency under the existing system, it would be more credible in its claims to be able to manage more responsibilities.

Historic Hawai'i Foundation recommends that the legislature support DHHL is building its in-house expertise through additional staffing, training, project management support and other means to enhance its ability to comply with regulations to protect historic, cultural and natural resources. This would be a strong and needed phase in which DHHL could establish a track record to show how it will address cultural resource management and compliance actions.

3. **Conflicts Between State and Federal Compliance Systems:** DHHL projects are often subject to Federal historic preservation regulations, especially in cases 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.