

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

JOSH GREEN
LT. GOVERNOR
STATE OF HAWAII



WILLIAM J. AILA, JR.
CHAIRMAN
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879
HONOLULU, HAWAII 96805

**TESTIMONY OF WILLIAM J. AILA, JR, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
HEARING ON FEBRUARY 23, 2022 AT 2:00PM VIA VIDEOCONFERENCE**

HB 2135, HD1, RELATING TO HISTORIC PRESERVATION REVIEWS

February 23, 2022

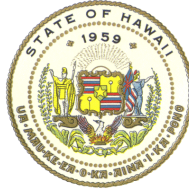
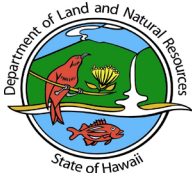
Aloha Chair Nakashima, Vice Chair Matayoshi, and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) strongly supports this bill that allows DHHL to assume historic preservation review of the effect of any proposed project for lands under its jurisdiction under certain conditions and except for projects affecting properties listed or nominated for inclusion in the Hawaii register of historic places or the national register of historic places or located in a designated historic district. This bill was approved by the Hawaiian Homes Commission and included in the Governor's administrative package by request of our department.

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 for lands under its jurisdiction.

Thank you for your consideration of our testimony.

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
JUDICIARY AND HAWAIIAN AFFAIRS**

**Tuesday, February 23, 2022
2:00PM**

State Capitol, Conference Room 325, Via Videoconference

**In consideration of
HOUSE BILL 2135, HOUSE DRAFT 1
RELATING TO HISTORIC PRESERVATION REVIEWS**

House Bill 2135, 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) supports this measure.**

House Bill 2135 House Draft 1 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 Hawaii or national registers of historic places or are located in a designated historic district.

During the 2020 Legislative Session, a similar bill was introduced that intended to affect this transfer of authority for reviews under Section 6E-8, HRS, from the Department to DHHL. The Department appreciates the revisions that have been made in this version of this measure as they largely address the concerns the Department had with that earlier version.

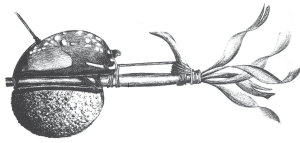
The Department believes that it is essential that there be a single set of standards for project reviews carried out under Section 6E-8, HRS, throughout the State of Hawaii, and that individual making findings under it be a fully qualified historic preservation professional. The Department also believes 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 project effects would be reviewed under the provisions of this measure may be limited to DHHL lands, this information will be important to understanding historic properties and decision making relating to them on neighboring lands or in 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 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 notes and appreciates that House Bill 2135, House Draft 1 incorporates all of the revisions requested in the Department's testimony when this measure was before the House Committee on Water and Land.

Thank you for the opportunity to comment on this measure.



SOCIETY FOR HAWAIIAN ARCHAEOLOGY

P.O. BOX 22458 HONOLULU, HAWAII 96823

TO: Senator Mark M. Nakashima
Senator Scot Z. Matayoshi (Vice President)
Committee on Judiciary & Hawaiian Affairs (JAH)

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

HEARING: February 23, 2022, 2:00 PM, Conference Room 325 & Videoconference

SUBJECT: Testimony regarding HB 2135, 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 HB 2135 as written.**

The intent of HB 2135 is to allow the Department of Hawaiian Home Lands (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 Hawai'i Register of Historic Places (HRHP) or the National Register of Historic Places (NRHP), or located in a designated historic district.

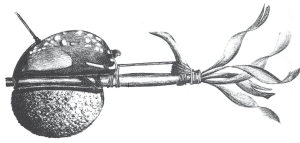
Currently, the Secretary of the Interior's Professional Qualifications Standards identifies the National Historic Preservation Act (NHPA) Section 112 and Section 106 regulations, at §800.2(a)(1), requiring that agencies responsible for protecting historic properties to ensure the protection of state properties, artifacts, and material culture, by their employees or contractors, meet the professional standards as determined by the Secretary of the Interior (SOI). These standards are applied to each statutorily identified discipline as it is practiced in historic preservation nationwide. NHPA outlines the required education, experience, and products that together provide an assurance that the program and project manager, applicant, employee, consultant, or advisor will be able to perform competently on the job and be respected within the larger historic preservation community.

SHA is concerned that these changes effectively allow DHHL to review and make final determinations without any input or consultation with the SHPD, 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. In addition, the SHPD should have the ability to not concur with any determination made by DHHL's historic preservation staff for the purposes of accountability and to ensure compliance with the provisions of HRS 6E. When determinations are made by DHHL, they should be shared promptly with SHPD, and SHPD should have a period to provide a notice of non-concurrence with the determination. The current bill, as written, does not provide any checks or balances between DHHL and SHPD, which is contrary to Federal Laws regarding State Historic Preservation Programs. Until such time as DHHL being granted THPO status under the NHPA, the SHPD must be actively involved in the State's historic preservation review processes for all historic properties. Decentralizing the review process under Chapter 6E has the potential to result in inconsistencies and could lead to a lack of consensus between different reviewing bodies (SHPD and DHHL).

If HB 2135 is adopted, the wording of Section 2(b)(1) should be amended to state clearly that DHHL will employ staff members who are minimally SOI-qualified for History, Archaeology and Architectural History as required for

<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.



SOCIETY FOR HAWAIIAN ARCHAEOLOGY

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State Historic Preservation Programs under 36 CFR Part 16. At a minimum, qualified staff members should include an SOI-qualified archaeologist and an SOI-qualified architectural historian.

Should this bill 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/>

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LATE

**HISTORIC
HAWAII
FOUNDATION**

TO: Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair
Committee on Judiciary & Hawaiian Affairs (JHA)

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

Committee: Wednesday, February 23, 2022
2:00 p.m.
Via Video Conference/Conference Room 325

RE: HB 2135 HD1, Relating to Historic Preservation Reviews

On behalf of Historic Hawaii Foundation (HHF), I am writing in **opposition to HB 2135 HD1**. The bill would amend Hawai'i Revised Statutes §6E to allow the Department of Hawaiian Homelands (DHHL) to assume the historic preservation and burial treatment 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 kupuna, except for properties that are already designated on the Hawai'i Register 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.