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SYLVIA LUKE  
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STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
KA 'OIHANA KUMUWAIWAI 'ĀINA

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FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Testimony of  
DAWN N. S. CHANG  
Chairperson

Before the Senate Committee on  
WAYS AND MEANS

Wednesday, February 22, 2023  
9:30AM

State Capitol, Conference Room 211, Via Videoconference

In consideration of  
SENATE BILL 1354, SENATE DRAFT 1  
RELATING TO HISTORIC PRESERVATION REVIEWS

Senate Bill 1354, Senate 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.**

Senate Bill 1354, Senate 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.

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 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. 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 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.

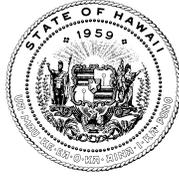
The Department appreciates that the Senate Committees on Hawaiian Affairs and Water and Land adopted the Department's recommended revisions when crafting Senate Bill 1354, Senate Draft 1 ensuring that the Department will be notified that DHHL has (1) employed a qualified historic preservation professional 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 Hawaii 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.

**LATE**

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

**SYLVIA J. LUKE**  
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*Ka Hope Kia 'āina o ka Moku 'āina  
'o Hawaii 'i*



**IKAIKA ANDERSON**  
CHAIRMAN DESIGNATE, HHC  
*Ka Luna Ho 'okele*

**KATIE L. DUCATT**  
DEPUTY DESIGNATE TO THE  
CHAIRMAN  
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**STATE OF HAWAII**  
**DEPARTMENT OF HAWAIIAN HOME LANDS**

*Ka 'Oihana 'Āina Ho 'opulapula Hawaii 'i*

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**TESTIMONY OF IKAIKA ANDERSON, CHAIRMAN-DESIGNATE  
HAWAIIAN HOMES COMMISSION  
BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS  
HEARING ON FEBRUARY 22, 2023 AT 9:30AM IN CR 211**

**SB 1354, SD 1 RELATING TO HISTORIC PRESERVATION REVIEWS**

February 22, 2023

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) supports this bill that 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. 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. DLNR provided comments and recommended amendments to the bill which is acceptable to DHHL. DHHL should be held to the same standards of review as DLNR.

Thank you for your consideration of our testimony.

# HISTORIC HAWAII FOUNDATION

**TO:** Senator Donovan M. Dela Cruz, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair  
Committee on Ways & Means (WAM)

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

**Committee:** Wednesday, February 22, 2023  
9:30 a.m.  
Via Video Conference/Conference Room 211

**RE: SB 1354 SD 1, Relating to Historic Preservation Reviews**

On behalf of Historic Hawaii Foundation (HHF), I am writing in **opposition to SB 1354 SD 1**. 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.

**SB-1354-SD-1**

Submitted on: 2/20/2023 10:03:23 AM

Testimony for WAM on 2/22/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Carol Kwan	Individual	Support	Written Testimony Only

Comments:

I support allowing DHHL to perform its own historical reviews for properties not listed as historical properties. Given that DHHL is for Hawaiians, it should have proper reverence for Hawaiian archaeological sites. And SHPD is extremely slow at reviewing anything. If DHHL is to spend the \$600M that the legislature gave it last session, the development process needs to be streamlined.

Carol Kwan