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GOVERNOR
STATE OF HAWAII
*Ke Kia'āina o ka Moku'āina 'o
Hawaii*

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



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 Hawaii'i

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TESTIMONY OF KALI WATSON, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEE ON WATER & LAND AND
THE SENATE COMMITTEE ON HAWAIIAN AFFAIRS
HEARING ON MARCH 19, 2024 AT 1:15PM IN CR 224

HB 2029, HD2, RELATING TO HISTORIC PRESERVATION REVIEWS

March 19, 2024

Aloha Chairs Inouye and Shimabukuro, Vice Chairs Elefante and Fevella, 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.

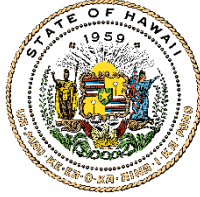
The intent of this bill is to streamline the historic preservation review process by allowing DHHL to assume this review, provided certain requirements for DHHL including the requirement to post the date DHHL will assume responsibility for a project review on DHHL's website at least forty-five days in advance. This legislative proposal was approved by the Hawaiian Homes Commission and included in the Governor's administrative package by request of DHHL.

DHHL understands that the Senate version of this bill, known as SB2653, SD1, noted additional requirements for DHHL to '(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".' However, DHHL prefers this version of the bill, as HB2029, HD2, and strongly recommends that the SB2653, SD1 amendments simply be added to the Committee report.

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
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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 Senate Committees on
WATER AND LAND
And
HAWAIIAN AFFAIRS

Tuesday, March 19, 2024
01:15PM

State Capitol Room 224 & Via Videoconference

In consideration of
HOUSE BILL 2029 HOUSE DRAFT 2
RELATING TO HISTORIC PRESERVATION REVIEWS

House Bill 2029 House Draft 2 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.



Celebrating 50 Years of Preserving Hawai'i's Places

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

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

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

Committee: Tuesday, March 19, 2024
1:15 p.m.
Via Video Conference and Conference Room 224

RE: **HB 2029 HD 2, Relating to Historic Preservation Reviews**

On behalf of Historic Hawai'i Foundation (HHF), I am writing in **opposition to HB 2029 HD 2**. 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.

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

1. **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

Historic Hawai'i Foundation is a statewide nonprofit organization established in 1974 to encourage the preservation of historic buildings, sites, structures, objects and districts on all the islands of Hawai'i. As the statewide leader for historic preservation, HHF works to preserve Hawai'i's unique architectural and cultural heritage and believes that historic preservation is an important element in the present and future quality of life, environmental sustainability and economic viability of the state.

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.

2. **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.

3. **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.

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.

HB-2029-HD-2

Submitted on: 3/14/2024 3:38:31 PM

Testimony for HWN on 3/19/2024 1:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Jacqueline S. Ambrose	Individual	Support	Written Testimony Only

Comments:

Aloha,

Yes to allowing the Department of Hawaiian Home Lands 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.

Establishes certain written notice requirements for the Department of Hawaiian Home Lands