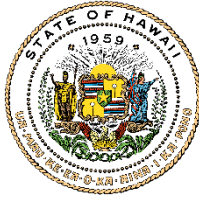


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

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
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DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
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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 Committee on
WAYS AND MEANS
Thursday, February 22, 2024
10:05AM
State Capitol Room 211 & Via Videoconference

In consideration of
SENATE BILL 2653 SENATE DRAFT 1
RELATING TO HISTORIC PRESERVATION REVIEWS

Senate Bill 2653 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.**

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.

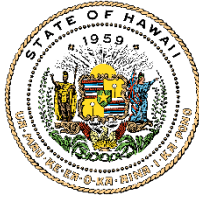
The Department appreciates that the proposed amendment to Section 6E-8, HRS, requires DHHL to employ a competent and experienced professional as a Hawaiian Home Lands Preservation Officer. The proposed amendment is silent on what are the minimum qualifications for that position. While Chapter 6E, HRS, 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 | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
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Mahalo for the opportunity to provide testimony in support of this measure.



SB2653 SD1
RELATING TO HISTORIC PRESERVATION REVIEWS
Senate Committee on Ways and Means

February 22, 2024

10:05 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) provides the following **SUPPORT** on SB2653 SD1, 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. However, SHPD would retain authority to review projects listed or nominated for inclusion to the Hawai‘i Register of Historic Places (HRHP) or the National Register of Historic Places (NRHP). OHA appreciates measures such as these that are ultimately aimed at responsibly expediting the work that DHHL does for beneficiaries on their waitlist and assisting SHPD with their kuleana. Previously, OHA commented on the earlier version of this bill requesting 1) that we be consulted for Criteria “e” type sites (as already required by the current Administrative Rules); and, 2) assurances that adequate resources and processes would be set in place for qualified DHHL staff to effectively carry out their reviews.

OHA appreciates the inclusion of our suggested amendment pertaining to Criteria “e” sites and addressing our concerns regarding resources and capacity. In theory, DHHL could establish their own historic preservation review program responsibly.

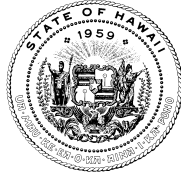
Should this measure eventually be enacted, OHA would recommend that SHPD still be consulted as part of the acquisition of resources and establishment of review processes. SHPD has compiled and maintained extensive inventoried information over the past several decades, including archaeological publications 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. As such, DHHL could indeed benefit from consultation with SHPD.

Should this measure not pass, DHHL could still explore possibly entering into a Memorandum of Agreement (MOA) with SHPD for projects on DHHL lands. Such a MOA is allowable under the current HRS 6E framework and has been employed effectively by various agencies and the military in the past with qualified staff in place.

Mahalo for the opportunity to testify on this measure.

JOSH GREEN, M.D.
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

P. O. BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY OF KALI WATSON, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS
HEARING ON FEBRUARY 22, 2024 AT 10:05AM IN CR 211

SB 2653, SD1, RELATING TO HISTORIC PRESERVATION REVIEWS

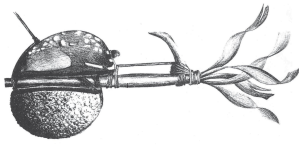
February 22, 2024

Aloha Chair Dela Cruz, Vice Chair Moriwaki, and Members of the Committee:

The Department of Hawaiian Home Lands (DHHL) supports this bill but submits comments on the amendments made to it. SB2653, SD1 allows 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; provided that, among other requirements, the DHHL consult with the Office of Hawaiian Affairs during the review for certain sites.

The intent of this bill is to streamline the historic preservation review process by allowing DHHL to assume this review. DHHL prefers the original version of bill SB2653, which did not require consultation with the Office of Hawaiian Affairs for sites that are significant under criteria "e", and which 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.



SOCIETY FOR HAWAIIAN ARCHAEOLOGY

P.O. BOX 22458 HONOLULU, HAWAII 96823

TO: Senator Donovan Dela Cruz, Chair
Senator Sharon Moriwaki, Vice Chair
Committee on Ways and Means (WAM)

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

HEARING: February 22, 2024, 10:05 AM, Conference Room 211 & Videoconference

SUBJECT: Testimony regarding SB 2653 SD1, 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 SD1 as written.**

The intent of SB 2653 SD1 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 to be filled by an SOI-qualified historic preservation professional within SHPD would ensure that the individual 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 SD1 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.



Celebrating 50 Years of Preserving Hawai'i's Places

680 Iwilei Road Suite 690, Honolulu HI 96817 • (808) 523-2900 • preservation@historichawaii.org • www.historichawaii.org

TO: Senator Donovan M. Dela Cruz, Chair
Senator Sharon Y. Moriwaki, Vice Chair
Committee on Ways and Means (WAM)

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

Committee: Thursday, February 22, 2024
10:05 a.m.
Via Video Conference and Conference Room 211

RE: SB 2653 SD 1, Relating to Historic Preservation Reviews

On behalf of Historic Hawai'i Foundation (HHF), I am writing in **opposition to SB 2653 SD 1**. The bill would amend Hawai'i Revised Statutes §6E to allow the Department of Hawaiian Home Lands (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.

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.

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.