



SB1124
RELATING TO HISTORIC PRESERVATION REVIEWS
Ke Kōmike ‘Aha Kenekoa o ke Kuleana Hawai‘i
Ke Kōmike ‘Aha Kenekoa o ka Wai a me ka ‘Āina

Peleluali 9, 2021

1:00 p.m.

Lumi 016

The Administration of the Office of Hawaiian Affairs (OHA) will recommend that the Board of Trustees provide **COMMENTS** on SB1124, which would eliminate the need for the Department of Hawaiian Homelands (DHHL) to consult with the State Historic Preservation Division (SHPD) and instead conduct its own historic preservation review under Hawai‘i Revised Statutes (HRS) § 6E-8, for any proposed projects on DHHL lands. OHA appreciates measures that are ultimately aimed at expediting the work that DHHL does to serve their beneficiaries, and further appreciates that this measure may assist SHPD with their kuleana. OHA offers the following comments and recommendations to better ensure the success of the modified historic preservation review process proposed in this measure, namely: 1) to highlight the need for DHHL to retain qualified staff and resources to appropriately review their projects for possible adverse impacts to historic properties; and 2) to recommend consultation with OHA as part of their review process.

First, OHA notes that archaeologists hired by SHPD are required to possess minimum qualifications and that archaeologists currently permitted by SHPD to do archaeological field work in Hawai‘i must also follow a set of standards established in SHPD’s administrative rules. OHA further notes that 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 qualifying standards, 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.** OHA therefore recommends that DHHL commit to minimally hire qualified staff and to acquire proper resources or secure access to proper resources if they are to eliminate the need to consult with SHPD under HRS § 6E-8.

Second, OHA respectfully suggests that OHA be consulted during DHHL’s review process for assessing possible adverse impacts to historic properties. As the state agency mandated to assess the policies and practices of other state agencies for possible impacts to Native Hawaiians, OHA has been an important partner to SHPD for the last three decades, and has assisted with identifying cultural sites and developing mitigation

requirements to ensure that irreplaceable Hawaiian cultural resources and burial sites are properly protected. OHA has also created databases with invaluable historic and archaeological information that has been useful in project related reviews and identifying appropriate Native Hawaiian beneficiaries for consultation. Thus, we believe that consultation with OHA will provide a more consistent and appropriate level of protection for Native Hawaiian cultural and historic sites and resources on DHHL lands.

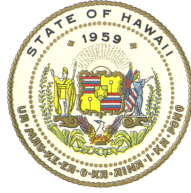
To memorialize the comments and recommendations above, OHA recommends amending page 1, line 18, to read as follows:

"burial site[-], provided that the department of Hawaiian home lands:

- (1) retains qualified historic preservation staff;
- (2) acquires adequate resources or access to adequate resources for staff to perform the review; and
- (3) consults with the Office of Hawaiian Affairs during the review."

Mahalo for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committees on
WATER AND LAND
and
HAWAIIAN AFFAIRS**

**Tuesday, February 9, 2021
1: 00 PM
State Capitol, Conference Room 016**

**In consideration of
SENATE BILL 1124
RELATING TO HISTORIC PRESERVATION REVIEWS**

Senate Bill 1124 proposes to allow the Department of Hawaiian Home Lands (DHHL) to assume review of the effect of any proposed project subject to review under Section 6E-8, Hawaii Revised Statutes (HRS), on historic properties or burial sites for lands under its jurisdiction. **The Department of Land and Natural Resources (Department) appreciates the intent of this measure and offers comments.**

SECTION 2 of Senate Bill 1124 proposes to amend Section 6E-8, HRS, to authorize DHHL "assume review of any project" on DHHL lands in lieu of review by the Department.

The Department believes that it is reasonable to authorize the DHHL to assume responsibility for reviews under Section 6E-8, HRS. Because the state of Hawaii places such a high value on its historic and cultural heritage, the Department believes that it is essential that there be a uniform program statewide. The people of Hawaii must be assured that these reviews are governed by a single set of rules and procedures, meeting a single set of standards. The program must provide for meaningful public participation regardless of whether the review is being carried out by the Department or DHHL. Furthermore, it is essential that there be a single repository for all data on historic properties so that individuals will have a single place to look for that information, whether they are doing academic research, project planning, preparing reports and documentation supporting a project review, reviewing such documentation on behalf of the reviewing agency, or members of the public. The Department believes that Senate Bill 1124 as drafted does not ensure that a uniform statewide process will continue to exist.

The Department recommends amending Senate Bill 1124 by inserting the following language:

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

SECTION 2. Section 6E—8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) At the request of the department of Hawaiian home lands, [~~prior to~~] the department shall delegate responsibility for review of any project relating to lands under its jurisdiction [~~, shall consult with the department~~] pursuant to this section, and pursuant to administrative rules adopted thereunder, to the the department of Hawaiian home lands; provided that the department has certified that the department of Hawaiian home lands has:

(1) Adopted rules governing the review process consistent the department’s rules governing reviews under this section;

(2) Hired qualified professional staff who meet standards established by the department to conduct the reviews;

(3) Established sufficient internal organizational controls to ensure that the qualified professional staff can make independent determinations regarding the effects of projects on historic properties;

(4) Ensured that the qualified professional staff can function in a manner that does not create a conflict of interest or an appearance of a conflict of interest;

(5) Provided for appropriate public notification in a manner consistent with standards established by the department;

(6) Provided further that the delegation of authority shall automatically be suspended or terminated if the department of Hawaiian homelands is unable to retain its qualified professional staff or if it becomes apparent that the it does not have sufficient staffing capacity to complete the delegated reviews in a timely manner; and

(7) The department of Hawaiian homelands shall consult with the department on reviews for projects projects affecting properties listed in the Hawaii register of historic places or the national register of historic places.

Thank you for the opportunity to comment on this measure.

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 SENATE COMMITTEES ON HAWAIIAN AFFAIRS & WATER AND LAND
HEARING ON FEBRUARY 9, 2021 AT 1:00PM IN CR 016

SB 1124 RELATING TO HISTORIC PRESERVATION REVIEWS

February 9, 2021

Aloha Chair Shimabukuro, Chair Inouye, and members of the Committees:

The Department of Hawaiian Home Lands (DHHL) strongly supports this bill that allows DHHL to assume review of the effect of any proposed project on historic properties or burial sites for lands under its jurisdiction. This bill was approved by the Hawaiian Homes Commission and included in the Governor's administrative package by request of our department.

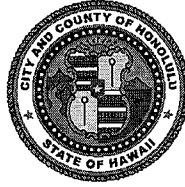
Instead of requiring DHHL to consult with the Department of Land and Natural Resources regarding the effect of a project upon historic properties or burial sites, this bill would streamline the process by allowing DHHL to assume this review.

Thank you for your consideration of our testimony.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI
MAYOR



DEAN UCHIDA
DIRECTOR DESIGNATE
DAWN TAKEUCHI APUNA
DEPUTY DIRECTOR
EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

February 9, 2021

LATE

The Honorable Donna Mercado Kim, Chair
and Members of the Committee on
Higher Education

The Honorable Lorraine R. Inouye, Chair
and Members of the Committee on
Water and Land

Hawaii State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chairs Kim, Inouye, and Committee Members:

**Subject: Senate Bill No. 1224
Relating to University Districts**

The Department of Planning and Permitting (DPP) **opposes** Senate Bill No. 1224, which would allow the creation of university districts through which the University of Hawaii (UH) system would be exempt from each county's zoning ordinances, planning, and permitting processes. The university districts may include real property that is held by the UH in partnership with a "qualified person," which may be a private individual or corporation.

Without any geographical limits, the UH could, on its own, or in partnership with any private "qualified person," develop any land within the City & County of Honolulu, exempt from the City's zoning ordinances, long-range General Plan and Development Plans, and permitting processes, which help to ensure health, safety and connectivity, as well as consistency with the community's values, priorities, and visions for the future. In particular, UH West Oahu, Leeward Community College, and Honolulu Community College, all part of the UH system, located within the City's transit oriented development (TOD) zones, would be allowed to develop inconsistent with TOD plans.

For these reasons, we ask that this Bill be held in Committee.

The Honorable Donna Mercado Kim, Chair
and Members of the Committee on
Higher Education

The Honorable Lorraine R. Inouye, Chair
and Members of the Committee on
Water and Land

Hawaii State Senate

February 9, 2021

Senate Bill No. 1224

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Thank you for the opportunity to provide testimony.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. Uchida", written in a cursive style.

Dean Uchida
Director Designate

HISTORIC HAWAII FOUNDATION

TO: Senator Maile S.L. Shimabukuro, Chair
Senator Jarrett Keohokalole, Vice Chair
Committee on Hawaiian Affairs (HWN)

Senator Lorraine R. Inouye, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Committee on Water and Land (WTL)

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

Committee: Tuesday, February 9, 2021
1:00 p.m.
Via Video Conference/Conference Room 016

RE: SB 1124, Relating to Historic Preservation Reviews

On behalf of Historic Hawaii Foundation (HHF), I am writing in **opposition to SB 1124**. 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 and cultural properties.

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. Would DHHL prioritize and take actions to protect and preserve cultural sites, burials and historic properties affected by its actions, or would it wave away those effects in self-interest to pursue 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.

February 09, 2021

Senate Committee on Hawaiian Affairs

Senator Maile S.L. Shimabukuro, Chair

Senator Jarrett Keohokolole, Vice Chair

Senate Committee on Water and Land

Senator Lorraine R. Inouye, Chair

Senator Gilbert S.C. Keith-Agaran, Vice Chair

Re: SB 1124 RELATING TO HISTORIC PRESERVATION REVIEWS

Allows the Department of Hawaiian Home Lands to assume review of the effect of any proposed project on historic properties or burial sites for lands under its jurisdiction

Aloha Chairs Shimabukuro and Inouye, Vice Chairs Keohokolole and Keith-Agaran, and members of both Committees,

My name is Homelani Schaedel, a beneficiary residing in Malu'ōhai homestead in Kapolei.

Allowing the Department of Hawaiian Home Lands (DHHL) to assume responsibility as stated in the purpose of this bill will expedite the process and accelerate progress of their projects when developing lands for use by their beneficiaries.

DHHL understands its' fiduciary duty to beneficiaries includes the preservation of the values, traditions, and culture of native Hawaiians.

I ask for your support and passage of this bill.

Mahalo for the opportunity to present my testimony.

TO: Senator Maile S.L. Shimabukuro, Chair
Committee on Hawaiian Affairs

Senator Jarett Keohokalole, Vice Chair
Committee on Hawaiian Affairs

Senator Lorraine R. Inouye, Chair
Committee on Water and Land

Senator Gilbert S.C. Keith-Agaran, Vice Chair
Committee on Water and Land

FROM: Alana K. Pakkala

SUBJECT: HEARING OF FEBRUARY 9, 2021; TESTIMONY IN SUPPORT OF SB 1124
RELATING TO HISTORIC PRESERVATION REVIEWS

Thank you for the opportunity to submit testimony in **support** of this important measure. The protection and preservation of the State's historic properties and burial sites is extremely important to the entire community of Hawaii. By allowing the Department of Hawaiian Home Lands to assume the review of proposed projects, this will support and relieve the backlog that the State Historic Preservation Division faces and will result in proper review and approvals needed for housing and critical infrastructure in the State.

I commend the legislature for recognizing measures needed to be undertaken to alleviate our state's need of affordable housing.