

Honolulu, Hawaii

FEB 19 2021

RE: S.B. No. 1124
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-First State Legislature
Regular Session of 2021
State of Hawaii

Sir:

Your Committees on Hawaiian Affairs and Water and Land, to which was referred S.B. No. 1124 entitled:

"A BILL FOR AN ACT RELATING TO HISTORIC PRESERVATION REVIEWS,"

beg leave to report as follows:

The purpose and intent of this measure is to allow the Department of Hawaiian Home Lands to undertake review of the effect of any proposed project on historic properties or burial sites for lands under its jurisdiction.

Your Committees received testimony in support of this measure from the Department of Hawaiian Home Lands and two individuals. Your Committee received testimony in opposition to this measure from the Historic Hawai'i Foundation. Your Committees received comments on this measure from the Office of Hawaiian Affairs and Department of Land and Natural Resources.

Your Committees find that the protection and preservation of prehistoric and historic native Hawaiian burial sites help to ensure that native Hawaiian ancestors are afforded dignity and respect. The Department of Hawaiian Home Lands seeks to streamline the process regarding the effect of any proposed project on historic properties or burial sites for lands under its jurisdiction. The State Historic Preservation Division of the Department of Land and Natural Resources is currently responsible



for the coordination of the evaluation and management under chapter 6E, Hawaii Revised Statutes. Issues before the State Historic Preservation Division can be contentious, highly emotive, and often involve complex aspects of landowner, familial, and cultural rights. Your Committees find that many housing projects are delayed because of the State's Historic Preservation Division's inability to efficiently and effectively provide necessary reviews to ensure compliance with the State Historic Preservation Law.

Additionally, section 6E-8(b), Hawaii Revised Statutes requires the Department of Hawaiian Home Lands to consult with the Department of Land and Natural Resources regarding the effect of the project upon historic property or a burial site prior to any proposed project relating to lands under its jurisdiction. Therefore, because of the Department of Hawaiian Home Lands' expertise of burial sites of native Hawaiian origin on its lands, this measure seeks to allow the Department to undertake review of the proposed project on historic properties or burial sites for lands under its jurisdiction.

Your Committees have heard the concerns of the Office of Hawaiian Affairs regarding the success of the modified historic preservation review process proposed in this measure, especially to highlight the need for the Department of Hawaiian Home Lands to retain qualified staff and resources to appropriately review their projects for possible adverse impacts to historic properties and to recommend consultation with the Office of Hawaiian Affairs as part of their review process. There is a need for qualifying standards, informational resources, and established consultation and assessment processes to protect iwi kupuna, cultural sites, and other historic properties from development impacts as envisioned under chapter 6E, Hawaii Revised Statutes. The Office of Hawaiian Affairs has proposed an amendment that the Department of Hawaiian Home Lands should retain qualified historic preservation staff and acquire adequate resources to access adequate resources for staff to perform the review.

Your Committees also heard the concerns from the Historic Hawai'i Foundation that the State Historic Preservation Division'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 limits surprises or delays during construction. Additional concerns were presented that the Department of Hawaiian Home Lands 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 and could result in conflicts of inflicts without proper safeguards to ensure professional judgment and ensure ethical decision-making.

Your Committees also heard the concerns of the Department of Land and Natural Resources that this measure does not ensure a uniform statewide process or single repository for all data. The Department of Land and Natural Resources suggested amendments to provide that the Department of Hawaiian Home Lands:

- (1) Adopt rules governing the review process consistent with the Department of Land and Natural Resources rules governing reviews;
- (2) Hire qualified professional staff who meet standards established by the Department of Land and Natural Resources to conduct the reviews;
- (3) Establish sufficient internal organizational controls to ensure that the qualified professional staff can make independent determinations regarding the effects of projects on historic properties;
- (4) Ensure 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) Provide for appropriate public notification in a manner consistent with standards established by the Department of Land and Natural Resources;
- (6) Provide further that the delegation of authority shall automatically be suspended or terminated if the Department of Hawaiian Home Lands 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) Consult with the Department of Land and Natural Resources on reviews for projects affecting properties listed in the Hawaii register of historic places or the national register of historic places.

Your Committees find that these amendments raise concerns that merit further consideration, and requests that your Committee on Judiciary further examine those issues and concerns raised by the agencies on these measures.

The Historic Hawai'i Foundation also presented concerns that Department of Hawaiian Home Lands projects are subject to federal historic preservation regulations under Section 106 of the National Historic Preservation Act.

Your Committees have amended this measure by:

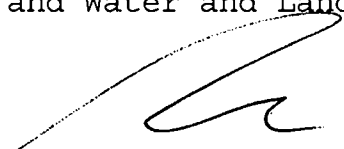
- (1) Inserting an effective date of July 1, 2050, to encourage further discussion; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the records of votes of the members of your Committees on Hawaiian Affairs and Water and Land that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 1124, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 1124, S.D. 1, and be referred to your Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committees on Hawaiian Affairs
and Water and Land,



LORRAINE R. INOUE, Chair



MAILE S.L. SHIMABUKURO, Chair



The Senate
 Thirty-First Legislature
 State of Hawai'i

Record of Votes
Committee on Water and Land
WTL

Bill / Resolution No.:* <i>SB 1124</i>	Committee Referral: <i>HWN/WTL, JDC</i>	Date: <i>2-9-2021</i>
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The Committee is reconsidering its previous decision on this measure.
 If so, then the previous decision was to: _____

The Recommendation is:

Pass, unamended 2312 Pass, with amendments 2311 Hold 2310 Recommit 2313

Members	Aye	Aye (WR)	Nay	Excused
INOUYE, Lorraine R. (C)	✓			
KEITH-AGARAN, Gilbert S.C. (VC)	✓			
MISALUCHA, Bennette E.	✓			
RIVIERE, Gil	✓			
FEVELLA, Kurt	✓			
TOTAL	5			

Recommendation: Adopted Not Adopted

Chair's or Designee's Signature:
Bennette E. Misalucha

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*Only one measure per Record of Votes