

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 MARCH 22, 2022 AT 1:01PM VIA VIDEOCONFERENCE

**HB 2135, HD2, RELATING TO HISTORIC PRESERVATION REVIEWS**

March 22, 2022

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 historic preservation review of the effect of any proposed state project for lands under its jurisdiction under certain conditions and subject to certain exceptions for state 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. This bill was approved by the Hawaiian Homes Commission and included in the Governor's administrative package by request of our department.

DHHL prefers the companion Senate bill, SB3103, which was previously heard and passed unamended by the Senate Committee on Water and Land. At a minimum, DHHL requests the sunset date be removed from this measure.

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 for lands under its jurisdiction.

Thank you for your consideration of our testimony.



**Department of Land and Natural Resources  
Hawaii State Aha Moku  
State of Hawaii  
Post Office Box 621  
Honolulu, Hawaii 96809**

Testimony of  
Hawaii State Aha Moku

Before the Senate Committees on  
Hawaiian Affairs  
Water and Land

Tuesday, March 22, 2022  
1:01 P.M.

State Capitol, Conference Room 016 & Videoconference

**IN SUPPORT OF  
SENATE BILL 2135 HD 2 with comments  
Relating to Historic Preservation Reviews and offers comments.**

Senate Bill 3103 relates to historic preservation reviews and allows the Department of Hawaiian Home Lands (DHHL) to assume historic preservation review of the effect of any proposed project for lands under its jurisdiction under certain conditions and subject to certain exceptions for state 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. This measure is to be repealed on June 30, 2027.

The Hawaii State Aha Moku (Aha Moku) supports this measure with comments.

Where we appreciate the intent of this bill that deals with historic properties on DHHL lands, we believe the interpretation of historic properties is anything that is over 50 years old. The measure complies with Section 6E-8, HRS as it calls for a fully qualified historic preservation professional. However, the bill is silent on what are the minimum qualifications for the position. We believe this is critically important and should be detailed in the bill.

While we fully support DHHL and its beneficiaries, the very nature of Hawaiian Homes is that native Hawaiians are awarded lands based on a chronological waiting list. Those beneficiaries who receive lots do not necessarily come from the lands that are awarded and therefore do not know the specific natural and cultural resources of the specific place they then live on. Oftentimes, their wants and needs conflict with the wants and needs of generational families of the same site. We believe that the proposed historic preservation professional, in addition to having the knowledge of at least archaeology, history, historic architecture or architectural history must also know or learn the traditional usage of the site and take steps to protect culturally significant areas if they exist on proposed and/or existing DHHL lands.

Thank you for the opportunity to comment on Senate Bill 3103.

Kawaikapuokalani Hewett, Ka Mea Ho'okumu  
Hawaii State Aha Moku  
808-382-6043  
[kahalelehua@outlook.com](mailto:kahalelehua@outlook.com)

Leimana DaMate, Luna Alaka'i/Executive Director  
Hawaii State Aha Moku  
808-640-1214  
[Leimana.k.damate@hawaii.gov](mailto:Leimana.k.damate@hawaii.gov)

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  
HAWAIIAN AFFAIRS  
and  
WATER AND LAND**

**Tuesday, March 22, 2022  
1:01 PM**

**State Capitol, Conference Room 016, Via Videoconference**

**In consideration of  
HOUSE BILL 2135, HOUSE DRAFT 2  
RELATING TO HISTORIC PRESERVATION REVIEWS**

House Bill 2135, 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.**

House Bill 2135, House Draft 2 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 Officer'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 or are located in a designated historic district.

During the 2020 Legislative Session, a similar bill was introduced that intended to affect this transfer of authority for reviews under Section 6E-8, HRS, from the Department to DHHL. The Department appreciates the revisions that have been made in this version of this measure as they largely address the concerns the Department had with that earlier version.

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 Hawaii, and that individual making findings under it be a fully qualified historic preservation professional. The Department

**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

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.

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 Department's State Historic Preservation Division staff includes 16 individuals exceeding the Secretary's standards.

The Department notes and appreciates that House Bill 2135, House Draft 2 incorporates all of the revisions requested in the Department's testimony when this measure was before the House Committee on Judiciary and Hawaiian Affairs.

Thank you for the opportunity to comment on this measure.



**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 & Land (WTL)

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

**Committee:** Tuesday, March 22, 2022  
1:01 p.m.  
Via Video Conference/Conference Room 016

**RE: HB 2135 HD2, Relating to Historic Preservation Reviews**

On behalf of Historic Hawaii Foundation (HHF), I am writing in **opposition to HB 2135 HD2**. 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 properties, cultural resources and iwi kūpuna, except for properties that are already designated on the Hawai'i Register of Historic Places.

Historic Hawai'i Foundation's concerns are related to several issues:

### 1. **Ethics and Conflicts of Interest**

Enabling a department to act both as applicant and the reviewing and approving agency for its own applications is self-dealing and presents 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 require 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 prove to be too inviting for the self-regulated entity to overcome.

Especially in these times of heightened awareness of the important for ethical decision-making and a clear commitment for public officials to act in the public interest, HHF strongly urges the Legislature to avoid enabling any public entity to engage in self-dealing or the appearance of acting against the public trust.

## 2. Professional Qualifications and Standards for Evaluation

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.

Without appropriate staffing, standards, procedures and resources, DHHL is ill-equipped to implement this responsibility in a timely, responsible and professional way.

HHF suggests the DHHL could develop such in-house capacity to improve the quality of its identification, evaluation and treatment recommendations for cultural resources when preparing submittals for SHPD's review. This would both increase DHHL's capacity for cultural resource management and streamline the SHPD review and approval process, without compromising the state's commitment to cultural resource protection or abdicating its responsibilities for objective review.

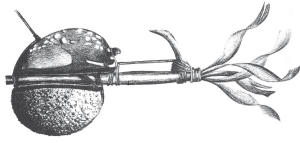
## 3. Conflicts and Confusion Between State and Federal Authorities

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 archaeology, architecture or architectural history, 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. This is counter-productive and will undermine the actual intent of the bill to streamline DHHL development.

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.



**LATE**

**SOCIETY FOR HAWAIIAN ARCHAEOLOGY**

P.O. BOX 22458 HONOLULU, HAWAII 96823

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

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

Senator Donovan Dela Cruz, Chair  
Senator Gilbert Keith-Agaran, Vice Chair  
Committee on Ways and Means (WAM)

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

HEARING: March 22, 2022, 1:01 PM, Conference Room 016 & Videoconference

SUBJECT: Testimony in **opposition** of HB 2135, 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 HB 2135 as written.**

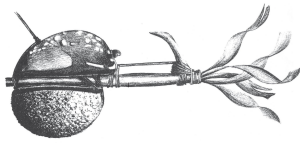
The intent of HB 2135 is to allow the Department of Hawaiian Home Lands (DHHL) to assume historic preservation review of the effect of any proposed project for lands under its jurisdiction except for projects affecting properties listed or nominated for inclusion in the Hawai'i Register of Historic Places (HRHP) or the National Register of Historic Places (NRHP), or located in a designated historic district.

Currently, the Secretary of the Interior's Professional Qualifications Standards identifies the National Historic Preservation Act (NHPA) Section 112 and Section 106 regulations, at §800.2(a)(1), requiring that agencies responsible for protecting historic properties to ensure the protection of state properties, artifacts, and material culture, by their employees or contractors, meet the professional standards as determined by the Secretary of the Interior (SOI). These standards are applied to each statutorily identified discipline as it is practiced in historic preservation nationwide. NHPA outlines the required education, experience, and products that together provide an assurance that the program and project manager, applicant, employee, consultant, or advisor will be able to perform competently on the job and be respected within the larger historic preservation community.

SHA is concerned that these changes effectively allow DHHL to review and make final determinations without any input or consultation with the SHPD, except those affecting HRHP/NRHP properties (listed and nominated) for which SHPD-DLNR would also have review responsibilities. The current wording of

<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.



## SOCIETY FOR HAWAIIAN ARCHAEOLOGY

P.O. BOX 22458 HONOLULU, HAWAII 96823

6E-8 already allows DHHL to consult with DLNR on historic properties' compliance reviews. In addition, the SHPD should have the ability to not concur with any determination made by DHHL's historic preservation staff for the purposes of accountability and to ensure compliance with the provisions of HRS 6E. When determinations are made by DHHL, they should be shared promptly with SHPD, and SHPD should have a period to provide a notice of non-concurrence with the determination.

The current bill, as written, does not provide any checks or balances between DHHL and SHPD, which is contrary to Federal Laws regarding State Historic Preservation Programs. Projects established by DHHL are often subjected to Federal historic preservation regulations, especially when federal funds are being used within housing development and infrastructure. SHA recognizes, in such a case like this, Section 106 of the National Historic Preservation Act applies. However, the Code of Federal Regulations (36 CFR Part 800) identifies issues that are related to historic preservation and determines the specific responsibilities for the State Historic Preservation Officer (SHPO).

Although technical reviews may be assigned to qualified professionals in the fields of archaeology and architectural history, the SHPO is most responsible for the authorization of the Section 106 process to justify potential effects on historic properties. Until such time as DHHL being granted THPO status under the NHPA, the SHPD must be actively involved in the State's historic preservation review processes for all historic properties. Decentralizing the review process under Chapter 6E has the potential to result in inconsistencies and could lead to a lack of consensus between different reviewing bodies (SHPD and DHHL).

If HB 2135 is adopted, the wording of Section 2(b)(1) should be amended to state clearly that DHHL will employ staff members who are minimally SOI-qualified for History, Archaeology and Architectural History as required for State Historic Preservation Programs under 36 CFR Part 16. At a minimum, qualified staff members should include an SOI-qualified archaeologist and an SOI-qualified architectural historian.

Should this bill 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 your consideration of our testimony.

Mara Mulrooney, Ph.D.  
President, Society for Hawaiian Archaeology

<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.



**LATE**

**HB-2135-HD-2**

Submitted on: 3/22/2022 12:18:00 AM

Testimony for HWN on 3/22/2022 1:01:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Kimeona Kane        | Individual          | Comments                  | Written Testimony Only |

Comments:

aloha nui,

Kimeona Kane from Waimānalo. I strongly believe that the protections of our cultural resources, spaces, burials, sites etc be protected from desecration. Understanding this, and recognizing the challenges that SHPD and DLNR are facing, I would support DHHL creating a mechanism that allows for oversight. I am concerned that if not working in conjunction with DLNR/SHPD and others who have held this kuleana, we will again, find ourselves struggling to protect these cultural aspects. Maintaining the highest degrees of honor to tradition and culture is critical and DHHL is not the best representative of this, hence my concerns. Another thing that is of great importance is accessibility. One of the most challenging things for a public member to participate in, is these types of processes and discussions. and there should be an expectation that whatever is created is transparent and inclusive. We must not allow development to destroy our cultural connections.

Mahalo for listening to my thoughts,  
kimeona kane