

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 15, 2022 AT 1:00PM VIA VIDEOCONFERENCE

SB 3103 RELATING TO HISTORIC PRESERVATION REVIEWS

February 15, 2022

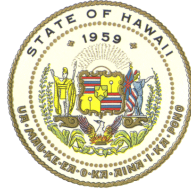
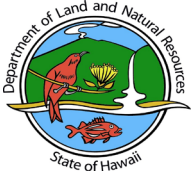
Aloha Chair Shimabukuro, Chair Inouye, and members of the Committees:

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 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. 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. DLNR provided comments and recommended amendments on the companion measure in the House, which is acceptable to DHHL.

Thank you for your consideration of our testimony.

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

**Testimony of
SUZANNE D. CASE
Chairperson**

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

**Tuesday, February 8, 2022
1:00PM**

State Capitol, Conference Room 016, Via Videoconference

**In consideration of
SENATE BILL 3103
RELATING TO HISTORIC PRESERVATION REVIEWS**

Senate Bill 3103 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 and offers comments.**

Senate Bill 3103 amends 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 Hawaii or national registers of historic places.

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

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 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 state historic preservation division staff includes 16 individuals exceeding the Secretary's standards.

Senate Bill 3103 SECTION 2 states that DHHL "may assume" responsibility for project reviews under Section 6E-8, HRS. As currently drafted, this measure is permissive, it does not require DHHL to assume this responsibility.

The Department appreciates that this may be intended to allow DHHL time to address the staffing requirement, and development of the administrative processes necessary to meet the standards set forth in the measure at Section 6E-8(b)(1), HRS. The Department notes that it is critically important that all interested parties know well in advance of when the transition from Department to DHHL review will occur. The Department recommends that Senate Bill 3103 SECTION 2 be revised by inserting a new subparagraph (b)(3) as follows:

(3) Hawaiian home lands shall provide the Department with written notice:

(A) That it has employed a qualified preservation officer, and

(B) A description of the procedures it will employ to ensure that all of the documentation described in (2) will be provided to the department.

(4) Hawaiian home lands will provide the department written notice of the date on which it will assume responsibility for project review under this section least 45 days prior to the date when Hawaiian home lands will assume those duties; and post this information on its website.

Under Senate Bill 3103, the Department will retain review responsibilities on lands under Hawaiian home lands jurisdiction when a project will affect places included in or nominated for inclusion in the Hawaii or national registers of historic places. The Department recommends that this provision be revised as follows

The department shall retain authority for review under this section for 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.*

(Department proposed revision italicized.)

Thank you for the opportunity to comment on this measure.



**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, February 15, 2022
1:00 P.M.

State Capitol, Conference Room 016 & Videoconference

**The Hawaii State Aha Moku supports the Intent of
SENATE BILL 3103
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 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 Hawaii State Aha Moku (Aha Moku) supports the intent of this measure and offers comments.

Where we appreciate the intent of this bill that deals with historic properties on DHHL lands. As we believe, the interpretation of historic properties is anything that is over 50 years old. The measure complies with Section 6E-8, HRS can 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.

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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 15, 2022
1:00 p.m.
Via Video Conference/Conference Room 016

RE: SB 3103, Relating to Historic Preservation Reviews

On behalf of Historic Hawaii Foundation (HHF), I am writing in **opposition to SB 3103**. 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.

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

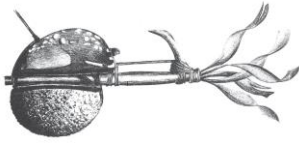
development aims? The bill does not include any safeguards to ensure professional judgment, eliminate conflicts and ensure ethical decision-making. It is unwise to allow for any regulated entity to self-enforce, as the temptation to make pretextual determinations at the expense of historic and cultural 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.



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: February 15, 2022, 1:00PM, Conference Room 016 & Videoconference

SUBJECT: Testimony regarding SB 3103, 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 3103 as written.**

The intent of SB 3103 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.

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. 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, 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. The wording of Section 2(b)(1) should be amended to state clearly that staff at DHHL who are responsible for carrying out historic preservation review compliance will meet the Secretary of Interior's qualifications.

Should SB 3103 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.

SB-3103

Submitted on: 2/10/2022 12:38:38 PM

Testimony for HWN on 2/15/2022 1:00:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---------------------|---------------------------|-----------------------------------|
| Dara Carlin, M.A. | Individual | Support | No |

Comments:

Stand in Support.

SB-3103

Submitted on: 2/14/2022 11:49:21 AM

Testimony for HWN on 2/15/2022 1:00:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|--------------|--------------|--------------------|----------------------------|
| Sara Collins | Individual | Oppose | No |

Comments:

Aloha Chairs Shimabukuro and Inouye, and Members of the Committees,

As a historic preservation professional and qualified archaeologist who has worked in Hawai‘i for over 40 years, including 10 years at the State Historic Preservation Division as a regulator, I write to OPPOSE SB 3103 as written. I believe the proposed amendments to Chapter 6E-8 are unnecessary and may result in harming historic properties.

I am concerned that these changes effectively allow DHHL to review and make final determinations unilaterally, except those affecting HRHP/NRHP properties (listed and nominated) for which SHPD-DLNR would also have review responsibilities. The current wording of Chapter 6E-8 already allows DHHL to "consult" with DLNR on historic properties' compliance reviews. DHHL does not need additional leeway to complete their historic preservation compliance requirements under Chapter 6E-8.

If this bill goes forward, the wording of proposed Section 2(b)(1) should be amended to state clearly that all staff at DHHL who are responsible for carrying out historic preservation review compliance *shall* meet the Secretary of Interior's professional qualifications standards as found here: <https://www.nps.gov/subjects/historicpreservation/upload/standards-guidelines-archeology-historic-preservation.pdf>.

I respectfully ask that the committees HOLD SB 3103 and not move it forward.

Mahalo for considering my testimony. Please feel free to contact me if I can provide more information.

Mālama pono,

Sara L. Collins, Ph.D.