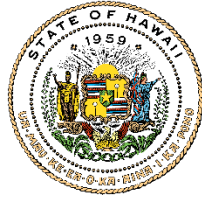


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

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BOATING AND OCEAN RECREATION
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COMMISSION ON WATER RESOURCE
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CONSERVATION AND COASTAL LANDS
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 Committees on
HAWAIIAN AFFAIRS
and
WATER AND LAND

Wednesday, February 8, 2023
1:05AM

State Capitol, Conference Room 229, Via Videoconference

In consideration of
SENATE BILL 1354
RELATING TO HISTORIC PRESERVATION REVIEWS

Senate Bill 1354 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.**

Senate Bill 1354 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 Hawaii 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 individual 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. 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 Hawaiian home lands preservation officer. The proposed amendment is silent on what are the minimum qualifications for that position. While chapter 6E 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 1354 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 1354 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.

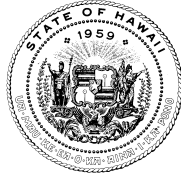
Under Senate 1354, the Department will retain review responsibilities on lands under DHHL jurisdiction when a project will affect places included in or nominated for inclusion in the Hawaii or national registers of historic places. The Department recommends that this provision be revised as follows:

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 bolded and italicized.)

Mahalo for the opportunity to provide testimony in support of this measure with amendments.

JOSH GREEN, M.D.
GOVERNOR
STATE OF HAWAII
*Ke Kia 'āina o ka Moku'āina 'o
Hawaii 'i*

SYLVIA J. LUKE
LT. GOVERNOR
STATE OF HAWAII
*Ka Hope Kia 'āina o ka Moku'āina
'o Hawaii 'i*



IKAIKA ANDERSON
CHAIRMAN DESIGNATE, HHC
Ka Luna Ho'okele

KATIE L. DUCATT
DEPUTY DESIGNATE 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
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**TESTIMONY OF IKAIKA ANDERSON, CHAIRMAN-DESIGNATE
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEES ON WATER AND LAND &
HAWAIIAN AFFAIRS
HEARING ON FEBRUARY 8, 2023 AT 1:05PM IN CR 229**

SB 1354, RELATING TO HISTORIC PRESERVATION REVIEWS

February 8, 2023

Aloha Chair Inouye, Chair Shimabukuro, 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.

Thank you for your consideration of our testimony.

LATE



SB1354
RELATING TO HISTORIC PRESERVATION REVIEWS
Senate Committee on Water and Land; and, Hawaiian Affairs

February 8, 2023

1:05 PM

Room 229

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on SB1354, 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. OHA appreciates measures such as these that are ultimately aimed at expediting the work that DHHL does for beneficiaries on their waitlist and assisting SHPD with their kuleana. OHA’s comments are provided though to ensure that DHHL has qualified staff and resources to appropriately review their projects for possible adverse impacts to historic properties; and, to recommend consultation with OHA as part of their review process when sites important to Native Hawaiians are encountered.

First, OHA notes that archaeologists hired by the State to work for SHPD are required to possess minimum qualifications and that archaeologists currently permitted by SHPD to do archaeological field work in Hawai‘i must follow a set of standards established in SHPD’s Hawai‘i 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 acquire proper resources if they are to eliminate the need to consult with SHPD under HRS § 6E-8.

Second, OHA respectfully suggests that we be consulted during DHHL’s review process for assessing possible adverse impacts to historic properties that are important to Native Hawaiians. This would be consistent with current requirements for sites that are found significant under State Criterion “E”. As the state agency mandated to assess the



SB1354
RELATING TO HISTORIC PRESERVATION REVIEWS
Senate Committee on Water and Land; and, Hawaiian Affairs

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 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 suggested comments, OHA recommends the following underlined amendment and additional language to lines 7-14, page 2:

“provided that the department of Hawaiian homelands:

- (1) Designate the review to a Hawaiian home lands preservation officer who has professional competence and experience in the field of historic preservation, and has adequate resources to perform the historic review;
- (2) Ensure 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. And
- (3) Consults with the Office of Hawaiian Affairs for historic properties that important to Native Hawaiians”



SB1354
RELATING TO HISTORIC PRESERVATION REVIEWS
Senate Committee on Water and Land; and, Hawaiian Affairs

OHA appreciates this opportunity to comment on SB1354. Mahalo nui loa.

HISTORIC HAWAII FOUNDATION

TO: Senator Lorraine R. Inouye, Chair
Senator Brandon J.C. Elefante Vice Chair
Committee on Water & Land (WTL)

Senator Maile S.L. Shimabukuro, Chair
Senator Kurt Fevella, Vice Chair
Committee on Hawaiian Affairs (HWN)

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

Committee: Wednesday, February 8, 2023
1:05 p.m.
Via Video Conference/Conference Room 229

RE: SB 1354, Relating to Historic Preservation Reviews

On behalf of Historic Hawaii Foundation (HHF), I am writing in **opposition to SB 1354**. The bill would amend Hawai'i Revised Statutes §6E to allow the Department of Hawaiian Homelands (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. 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.

SB-1354

Submitted on: 2/6/2023 8:36:04 AM

Testimony for HWN on 2/8/2023 1:05:00 PM

Submitted By	Organization	Testifier Position	Testify
Keomailani Hanapi Hirata	Individual	Oppose	Written Testimony Only

Comments:

I OPPOSE SB1354.

The Department of Hawaiian Homelands as a "developer "should NOT be in charge of making its own historic reviews and determinations, for any of their projects! This is a huge conflict of interest and especially puts our cultural sites and properties at risk.

On the island of Molokai we are seeing these types of actions happening with private organizations, where they are the developer and are able to do their own Environmental Assessments, historic reviews and determinations, to push their projects through.

Alternative solution: The State Historic Preservation Division, under the Department of Land and Natural Resources, needs to be fully funded and properly staffed, to include clearer policies and procedures and active leadership.