

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

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



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

P.O. BOX 621
HONOLULU, HAWAII 96809

DAWN N.S. CHANG
CHAIRPERSON
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
DAWN N. S. CHANG
Chairperson

Before the Senate Committee on
JUDICIARY

Thursday, February 20, 2025
10:01 AM

State Capitol Conference Room 016 & Videoconference

In consideration of
SENATE BILL 79, SENATE DRAFT 1
RELATING TO HISTORIC PRESERVATION REVIEWS

Senate Bill 79, Senate Draft 1 would amend Chapter 6E, Hawaii Revised Statutes (HRS) to require the Department of Land and Natural Resources to determine the effect of any proposed State housing project within ninety days of a request for determination and sets forth the historic review requirements based on the project area's known historic, cultural, and archaeological resources. **The Department of Land and Natural Resources (Department) supports this measure and offers recommended amendments.**

Chapter 6E, HRS, provides the framework for a comprehensive statewide historic preservation program in Hawai'i. A key part of that program is the review of projects as required by sections 6E-8, 6E-10, 6E-42, and 6E-43 HRS. These statutory provisions reflect the Legislature's intent to require project proponents to consider the impact of their projects on iwi kūpuna, as well as historic and cultural resources.

The Department recognizes the need to streamline the historic preservation review process in order to help address the current housing crisis in Hawai'i and support the State's efforts to provide affordable housing. This bill will allow affordable housing project to proceed in an expedited manner while establishing measures that will support the identification, documentation, and avoidance of iwi kūpuna, as well as historic and cultural resources during planning and construction of affordable housing projects. The amendments and additions to Chapter 6E, HRS and alternative approaches established within this bill are both reasonable and feasible.

Mahalo for the opportunity to provide testimony on this measure.

TESTIMONY WITH COMMENTS ON SB79 SD1
RELATING TO HISTORIC PRESERVATION
Senate Committee on Judiciary

February 20, 2025

10:01 a.m.

Room 016

Aloha e Chair Rhoads, Vice Chair Gabbard, and Members of the Committee on Judiciary:

The Office of Hawaiian Affairs (OHA) provides **COMMENTS** on SB79 SD1, which proposes to expedite the review of any state housing project by: 1) establishing a 90-day time limit for the State Historic Preservation Division (SHPD) to provide a determination of effect on any proposed State housing project; and, 2) requiring SHPD to designate archaeological sensitivity areas with predetermined historic preservation review requirements for each type of area (high, moderate, nominal). OHA is concerned that while the bill may be well intended to enable a faster historic preservation review process for much needed housing, it seems to ignore the lack of resources at SHPD and inexperience that agencies may have when reviewing archaeological information. Further, it is unclear if subsection (d) of this bill would strip the Island Burial Councils (IBC) of their authority to make recommendations on the appropriate treatment of previously identified burial sites.

OHA is the constitutionally established body responsible for protecting and promoting the rights of Native Hawaiians.¹ As part of our constitutional and statutory mandate, OHA has been intimately involved with historic preservation related advocacy for decades and is granted specific kuleana under the Hawai'i Historic Preservation law, Hawai'i Revised Statutes (HRS) Chapter 6E, and implementing regulations.² Thus, we are well aware of the pitfalls within the current laws and rules, and where amendments to these laws and rules would improve the state's historic preservation process.

First, while OHA supports in concept the utility of establishing archaeological sensitivity areas much in the way the military assesses its own lands, the development of such a system and the cost may far outstrip SHPD's current resources and thus be difficult to implement in the immediate future. OHA suggests that the better way for the legislature to initiate this type of system for state housing projects is to appropriate sufficient resources and delegate the details of this kind of program to SHPD for rulemaking, as customary, to allow for the agency with expertise in this area to develop the best way for such a system to move forward. Per HRS 6E-3(3), SHPD is already required to establish a statewide inventory to identify and document historic properties and burial sites owned by the State and the Counties; however, with limited resources, SHPD has not been able to effectively implement this statutory mandate. Absent completion of this process, it would be difficult for SHPD to meaningfully designate archaeological sensitivity areas.

¹ Haw. Const. Art. XII Sec.5

² See HRS 6E-3, 43, -43.5, 43.6; and, HAR 13-284-6(c) and HAR 13-275-6(c).

OHA is willing to work with SHPD on their HRS 6E-3(3) mandate to inventory historic properties and burial sites on State lands, and would further ask that in the development of an archaeological sensitivity system that OHA be consulted as part of the process. If done properly, such a system could be used in other places and context to minimize the costs of complying with HRS Chapter 6E.

Second, OHA observes that subsection (d) states that if any adverse effect cannot be avoided, the “agency or officer shall mitigate the adverse effect.” The subsection goes on to specifically list “burial treatment” as a form of mitigation. However, OHA notes that HRS Chapter 6E-43 and implementing rules specifically vest the Island Burial Councils (IBCs) with the authority to decide the disposition of previously identified burials, identify descendants, and make recommendations on measures to protect any Native Hawaiian burials within the project footprint. Thus, agencies should consult with the appropriate IBC and allow them to make mitigation decisions regarding previously identified burial sites located within the project area.

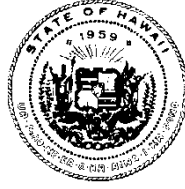
Third, the bill ignores the lack of historic preservation professionals within State and County agencies that historically has led to poor HRS 6E submittals and inexperienced individuals making preliminary effect determinations. In OHA’s experience, delays in the HRS 6E process most often arise because individuals at the lead agency making the initial determination lack the qualifications to do so and do not provide SHPD with sufficient documentation to justify the determination. To OHA’s knowledge, only of a few State/County agencies (i.e., Department of Transportation, County of Maui) have archaeologists on staff who are qualified to perform effects determinations and aid in compliance with HRS 6E. Under the current bill, agencies are responsible for making a good-faith effort to avoid or minimize any effect to a significant historic property within a project area. Absent qualified staff, the task would be difficult to perform or oversee (assuming the work is contracted out). Accordingly, to better expedite project review, it is necessary for the legislature to provide sufficient funding for lead agencies to retain qualified staff to make determinations of potential effects and oversee historic preservation actions (i.e., inventory survey, monitoring, preservation mitigations).

Mahalo for the opportunity to testify on this measure. We look forward to seeing our **COMMENTS** on SB79 SD1 carefully considered.

LATE

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



DEAN MINAKAMI
EXECUTIVE DIRECTOR

Statement of
DEAN MINAKAMI
Hawaii Housing Finance and Development Corporation
Before the

SENATE COMMITTEE ON JUDICIARY

February 20, 2025 at 10:01 a.m.
State Capitol, Room 016

In consideration of
S.B. 79 SD1
RELATING TO HISTORIC PRESERVATION REVIEWS.

Chair Rhoads, Vice Chair Gabbard, and members of the Committee.

HHFDC **supports with amendment** SB 79 SD1, which requires the Department of Land and Natural Resources to determine the effect of any certain proposed housing projects within ninety days of a request for determination. It establishes historical review requirements based on the project area's known historic, cultural, and archaeological resources, and establishes procedures and notification requirements if previously unidentified human remains or previously unidentified historic or cultural resources are discovered.

Lengthy and backlogged historic preservation reviews historically prevent the timely development of affordable housing and increase their costs. The goal of the bill is to streamline the historic review process while avoiding or minimizing any effect on significant historic properties. We are hopeful that this bill will accelerate the historic review process, especially for projects that likely will not have significant effects.

The SD1 version of the bill changed the protocol for "Moderately sensitive areas" to require an archaeological inventory survey (AIS). The time for preparation and approval of an AIS can be well over a year which marginalizes the effectiveness of this proposal. Under the protocol as first proposed, developers would already commit to perform archaeological monitoring during construction in moderately sensitive areas.

We therefore question the need for an AIS and request that the bill be **amended** by reverting to the bill's original language for "Moderately sensitive areas."

Thank you for the opportunity to testify on this bill.

SB-79-SD-1

Submitted on: 2/18/2025 7:17:14 PM

Testimony for JDC on 2/20/2025 10:01:00 AM

Submitted By	Organization	Testifier Position	Testify
Amanda Ybanez	Individual	Support	Written Testimony Only

Comments:

Chairwoman of Kalihi Palama NB # 15 is in strong support.

LATE

SB79

He Mele komo a he mele aloha no na kupuna o ke au i hala Aloha mai kakou.

Aloha,

My name is Cindy Freitas and I'm a Native Hawaiian descended of the native inhabitants of Hawai'i prior to 1778 and born and raised in Hawai'i.

I am also a practitioner who still practice the cultural traditional customary practices that was instill in me by my grandparents at a young age from mauka (MOUNTAIN TO SEA) to makai in many areas.

I'm in OPPOSITION for SB79

Due to concerns over its potential to unnecessarily delay critical housing projects, create bureaucratic inefficiencies, and impede the Department of Hawaiian Home Lands (DHHL) from fulfilling its mandate to provide housing for Native Hawaiian beneficiaries.

Unnecessary Delays and Bureaucratic Red Tape

While preserving cultural and historic sites is important, this bill introduces **uncertain and potentially lengthy delays** in housing development. Requiring the Department of Land and Natural Resources (DLNR) to issue a determination within 90 days may seem reasonable, but in practice, DLNR is already overburdened with a backlog of environmental and historic reviews. If additional time is required for further studies, this could **stall urgently needed housing projects** and drive up development costs.

Furthermore, the bill does not establish **clear guidelines for what constitutes a "complete" request** for determination, which could lead to disputes over whether the 90-day clock has even started. This uncertainty could leave projects in limbo, discouraging responsible development.

Overreach in DHHL Oversight

Requiring DHHL to **consult with DLNR before any project on Hawaiian Home Lands** places an unnecessary hurdle in the path of delivering housing for Native Hawaiians. DHHL already has its own processes for assessing environmental and cultural impacts and should not be forced to defer to another agency that does not have the same kuleana (responsibility) to serve Native Hawaiian beneficiaries. This bill **undermines DHHL's autonomy** and creates yet another layer of oversight that could slow down much-needed homestead developments.

Lack of Balanced Consideration for Housing Needs

Hawai'i is facing a severe housing crisis, and Native Hawaiians are among those most impacted. Adding further layers of regulation and review could **increase development costs and deter investment in housing projects**. Rather than creating additional barriers, policymakers should focus on **streamlining processes** to ensure that culturally appropriate, affordable housing is delivered in a timely manner.

Conclusion

While I support responsible and culturally sensitive development, **SB79** is not the right approach. It introduces **unnecessary bureaucratic hurdles, risks delaying housing projects, and imposes restrictions on DHHL that could ultimately harm Native Hawaiian beneficiaries.** I respectfully urge the committee to **oppose this measure** and instead pursue solutions that **balance preservation with the urgent need for housing.**

Mahalo,

____/s/____

Cindy Freitas