

LATE TESTIMONY



HB 2434

RELATING TO PERMIT, LICENSE, AND APPROVAL APPLICATION PROCESSING
House Committee Economic Revitalization, Business and Military Affairs

February 9, 2010

8:30 a.m.

Room: 312

The Office of Hawaiian Affairs (OHA) **OPPOSES** HB 2434, which would streamline portions of the review process for various county and state permits, licenses and approvals.

HB2434 allows the counties to hand off their solemn mandates to protect Hawai'i's natural and cultural resources to "third-party reviewers." This is unacceptable. Article XI, Section 1, of the state Constitution expressly spells out the state's mandate to protect Hawai'i's natural resources. It states that:

For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

Moreover, Article XII, Section 7, of the Hawai'i Constitution indicates that the state must protect traditional practices, which are intrinsically linked to cultural sites and natural resources.

The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

It is the responsibility of the counties, as instrumentalities of the state, to ensure that permit, license and approval applications comply with various laws, rules, court orders and the state Constitution.

Counties cannot pass off this kuleana to someone else just to speed up the process.

Further, counties have the experience and expertise to ensure the legal compliance of proposals, while also safeguarding the interests of the public; architects and engineers, who would be the third-party reviewers, do not have these qualifications. The third-party reviewers have no incentive to look out for the best interest of the counties. There are no provisions in this bill that would require these third-party reviewers to review applications objectively. Instead, third-party reviewers will be beholden to their employers, who will be the owners of the properties being reviewed. This creates an untenable fox-guarding-the-hen-house situation.

The bill's proposed changes to Chapter 6E, Hawaii Revised Statutes, are equally problematic. The State Historic Preservation Division (SHPD) is suffering from a severe lack of resources, which have led to major delays in the review and approval of projects. The answer to fix this issue is to direct more resources to SHPD, not to overhaul Chapter 6E and strip power from SHPD. With SHPD's current state of distress, if projects were automatically approved when the agency failed to complete reviews and offer comments within 45 days (as contemplated by HB2434), nearly every proposed project would be approved and the state would utterly fail the intent of its Historic Preservation Program. The Legislature has already found with Section 1 of Chapter 6E, HRS, that:

The Constitution of the State of Hawaii recognizes the value of conserving and developing the historic and cultural property within the State for the public good. The legislature declares that the historic and cultural heritage of the State is among its important assets and that the rapid social and economic developments of contemporary society threaten to destroy the remaining vestiges of this heritage. The legislature further declares that it is in the public interest to engage in a comprehensive program of historic preservation at all levels of government to promote the use and conservation of such property for the education, inspiration, pleasure, and enrichment of its citizens. The legislature further declares that it shall be the public policy of this State to provide leadership in preserving, restoring, and maintaining historic and cultural property, to ensure the administration of such historic and cultural property in a spirit of stewardship and trusteeship for future generations, and to conduct activities, plans, and programs in a manner consistent with the preservation and enhancement of historic and cultural property.

HB 2434 would also reduce the power of SHPD by precluding the division from reviewing previously approved projects.

Archaeological surveys completed 20 years ago are often wholly inadequate. Unfortunately, past SHPD approvals relied on these surveys. Large development projects like Kuyilima on the North Shore of Oʻahu were once deemed to have little impact on historic resources and were therefore approved. But when reviewed today, with improved archaeological methods and new information, major impacts to historic properties are discovered. SHPD must be allowed to review previously approved projects to ensure that all historic properties are carefully analyzed with the most current and accurate information.

OHA understands that the approval process for projects can be lengthy. But even with the state's and counties' current review process, which is fairly thorough, mistakes are still made and problems are still missed. If the process is shortened, more problems will be missed, and Hawai'i's natural and cultural resources will surely suffer as a result.

Therefore, OHA urges the Committee to HOLD HB 2434. Thank you for the opportunity to testify.

LATE TESTIMONY

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Testimony by Harry Saunders
President, Castle & Cooke Hawai'i
February 8, 2010

Before the House Committee on
Economic Revitalization, Business & Military Affairs

February 9, 2010
8:30 a.m.
Room 312

In Support of HB 2434
RELATING TO PERMIT, LICENSE AND APPROVAL APPLICATION PROCESSING

Chair McKelvey, Vice Chair Choy and Members of the Economic Revitalization, Business & Military Affairs Committee.

I am Harry Saunders, President of Castle & Cooke Hawai'i. We support HB 2434 because it addresses one of the critical areas indentified by the Construction Industry Task Force.

As a member of the Construction Industry Task Force, established by Senate Concurrent Resolution No. 132, S.D. 1 (2009), we were directed to determine the direct contributions of the construction industry to the local economy as well as its impact on related industries, such as tourism and housing. We were also tasked with developing and proposing state actions that would promote overall economic growth, create jobs and accelerate construction and its associated positive impacts on the economy.

Based on its findings, the task force developed recommendations and proposed actions to address a number of issues, which was presented in a report to the 2010 Legislature. HB 2434 addresses the issue identified by the task force as follows:

Workforce Housing: The need for workforce housing in Hawai'i is great, however, the poor economy has dramatically decreased the number of projects being built. In an effort to stimulate construction of more affordable/workforce housing projects, the task force's Workforce Housing committee, presented several recommendations to improve state and county workforce housing requirements and permitting processes such as:

- ✓ Accelerating the review process for both state and county permits and other approvals, to expedite the start of construction for workforce housing projects;
- ✓ Temporarily lowering the county affordable/workforce housing requirements to stimulate immediate housing construction; and
- ✓ Studying the need for a state mortgage guaranty fund, to combat the scarcity of financing loans as a result of the economic downturn.

In response to the current economic climate, we ask for your consideration and support of HB 2434 as it will help to generate an immediate impact on our state's delicate economy by creating jobs and providing homes for Hawai'i families. HB 2434 will bring action and positive change to spur our economy.

On behalf of Castle & Cooke, mahalo for your consideration of our testimony. If you have questions, please feel free to contact us:

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**HB 2434
RELATING TO PERMIT, LICENSE, AND APPROVAL APPLICATION PROCESSING**

**PAUL T. OSHIRO
MANAGER – GOVERNMENT RELATIONS
ALEXANDER & BALDWIN, INC.**

FEBRUARY 9, 2010

Chair McKelvey and Members of the House Committee on Economic Revitalization,
Business & Military Affairs:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) on HB 2434, "A BILL FOR AN ACT RELATING TO PERMIT, LICENSE, AND APPROVAL APPLICATION PROCESSING." We support this bill.

The State and County process for the review of permits and other approvals for workforce housing and other projects often results in delays prior to the start of construction. It is envisioned that the enactment of statutory provisions to streamline and enhance the efficiency of the permit review and approval process along with provisions to establish maximum time periods for agencies to grant or deny related permits, licenses, and other approvals will expedite the start of construction for these projects which will result in the generation of construction and other related jobs.

Section 2 of this bill contains enabling legislation authorizing the Counties to offer third party review services for permits and other approvals. While we understand that the City & County of Honolulu presently authorizes the use of third party review services, we understand that liability concerns for entities providing these services has been cited as a deterrent in attracting third party review service providers. We note that

contained in the enabling legislation are provisions to establish a liability threshold to minimize liability exposure for providers of third party review services. We believe that these provisions should result in additional providers of third party review services.

Section 3 of this bill exempts projects previously reviewed by the State Historic Preservation Division and found to have no impact on historic properties and burial sites from subsequent reviews by this division. We believe that this provision will assist in streamlining the Historic Preservation review portion of the permitting process.

Sections 4 and 5 of this bill clarifies certain provisions in the existing statute that requires the establishment of maximum time periods for consideration of business or development related permits. We understand that these provisions will ensure that deadlines are set for the review of a broader range of permits, which will essentially provide applicants with an estimated time frame on the disposition of their permit applications.

Based on the aforementioned, we respectfully request your favorable consideration on this bill. Thank you for the opportunity to testify.

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BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

February 9, 2010

Representative Angus McKelvey, Chair
Committee on Economic Revitalization, Business and Military Affairs
State Capitol, Room 312
Honolulu, Hawaii 96813

RE: HB 2434 RELATING TO PERMIT, LICENSE, AND APPROVAL APPLICATION PROCESSING.

Dear Chair McKelvey and Members of the Committee on Economic Revitalization, Business and Military Affairs:

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii) Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii strongly supports HB2434 Relating to Permit, License, and Approval Application Processing.

HB 2434 is the result of one of the recommendations of the Construction Industry Task Force as one way to assist the construction industry by streamlining the permit, license, and approval application process. The Task Force was established by SCR 132, CD1, to determine the economic contributions of the construction industry in Hawaii. SCR 132 also requested the Task Force to develop and propose state actions, for the purpose of preserving and creating new jobs in the local construction industry, that should include but are not limited to incentives for the renovation or construction of hotels and other tourism-related facilities, and to determine the anticipated impact of those actions on the State's economy.

HB2434 establishes a maximum time period that an application for permit, license, or approval shall be deemed granted if not acted upon by the designated agency; authorizes each county to contract with a third-party reviewer to streamline the processing of applications; clarifies that previously approved projects that do not impact historic properties are not subject to subsequent reviews by the SHPD.

. Thank you for the opportunity to share our views with you.

Karen I. Nakamura

***LATE TESTIMONY**



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February 9, 2010

**Support and Comments regarding
HB 2434 Relating to Permit License, and Approval Application Processing
(Maximum time for permit approval)**

Honorable Representative Angus L.K. McKelvey, Chair,
Representative Isaac W. Choy, Vice Chair and
Members of the House Committee on Economic Revitalization, Business & Military
Affairs,

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF has **major comments and concerns, but also strongly supports HB 2434**, which establishes a maximum time period that an application for permit, license, or approval shall be deemed granted if not acted upon by the designated agency; specifies that if an agency does not have a maximum time period for approval, that the application shall be deemed approved thirty (30) calendar days after a completed application is submitted; authorizes each county to contract with a third-party reviewer to streamline the processing of applications; provides immunity for third-party reviewers except for acts of intentional misconduct, gross negligence, or malfeasance; clarifies that previously approved projects that do not impact historic properties are not subject to subsequent reviews by the State Historic preservation Division (SHPD); provides that the maximum time period for SHPD review is forty-five (45) days.

The counties, however, have legitimate and major concerns regarding whether the deadlines are unrealistic and unreasonable, given current circumstances. Thus, we strongly encourage the private and public stakeholders to work together with the counties to develop policies, procedures and funding opportunities which can lead to realistic and reasonable implementation of this bill.

The process of reviewing permits, licenses, and approvals for workforce housing and other projects submitted to the State and each county is long and often results in significant delays prior to the start of each project. The proponents of this bill envision that the enactment of certain statutory provisions will help to streamline and enhance the efficiency of the permit and license review and approval process. For example, statutory provisions that establish a maximum time period for agencies to grant or deny related permits, licenses, and approvals, will expedite the start of construction for workforce housing projects throughout the State and will result in the generation of construction and other related jobs that are badly needed in the economy.

Senate Concurrent Resolution No. 132, S.D. 1 (2009), established a Construction Industry Task Force to determine the economic contributions of the construction industry in Hawaii. As directed in the concurrent resolution, the Task Force has developed a series of proposals for state actions to preserve and create new jobs in the local construction industry. The intent of this bill is to implement one of the Task Force's proposals.

Accordingly, the purpose of this bill is to streamline portions of the review process for permits, licenses, and approvals to minimize time delays and to expedite the start of construction for workforce housing and other projects that will result in the generation of construction and other related jobs.

The counties have a legitimate and major concern, however, which should be addressed - they are concerned that the permit approval requirement would impose an unrealistic deadline and restriction on the counties' review of ministerial permits for affordable housing projects under Section 201H, Hawaii Revised Statutes. Ministerial permits for building, grading, construction, etc., are meant to ensure public health and safety, and ministerial permits which are not properly reviewed may create health, safety, financial, legal and other related problems. County officials correctly note that the main reason for permit review delays is because the initial application and plans are incomplete, or the applicant fails to address the county reviewer's comments and/or provide the requested documentation. The County has also indicated that in certain circumstances, county employees may be forced to work overtime to meet the approval deadlines, and that funding overtime may become a problem.

We would respectfully recommend that your Committee consider amendments and/or recommend further policies or rules, which would place responsibility on the project's developer and consultants to ensure that their permit applications are complete, that timely responses to county comments are provided and request documentation or corrections are made on a timely basis. We are also confident that private and public stakeholders could work together with the counties to develop policies, procedures and funding opportunities which can lead to realistic and reasonable implementation of this bill.

We appreciate the opportunity to present our **comments, concerns and strong support of HB 2434**, and we ask for your favorable consideration of this bill.

Thank you for the opportunity to express our **support for HB 2434**.

JEANNINE JOHNSON

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Phone: 373-2874 (h) / 537-7261 (w)

February 8, 2010

LATE TESTIMONY

COMMITTEE ON ECONOMIC REVITALIZATION, BUSINESS, & MILITARY AFFAIRS

Rep. Angus L.K. McKelvey, Chair

Rep. Isaac W. Choy, Vice Chair

Re: HB 2434 Relating to Permit, License, and Approval Application Processing
Hearing: Tuesday, February 9, 2010 at 8:30 am in Conference Room 312

Aloha Chair McKelvey, Vice Chair Choy and Honorable Committee Members,

I vehemently oppose HB2434 which establishes a maximum time period that an application for permit, license, or approval shall be deemed granted if not acted upon by the designated agency; authorizes each county to contract with a third-party reviewer to streamline the processing of applications; clarifies that previously approved projects that do not impact historic properties are not subject to subsequent reviews by the State Historic Preservation Division (SHPD).

I found it interesting that the purpose of this bill is to streamline portions of the review process for permits, licenses, and approvals to facilitate construction and other related jobs. My husband is a project manager in the construction industry and has never mentioned that he was unable to receive any permit or license within the time period required. I can only assume that **the real purpose of this bill is to cut out due process and allow developers carte blanche for their projects.**

Your opposition to this unwarranted bill is respectfully requested.

Sincerely,

Jeannine Johnson

cc: Sen. Sam Slom
Rep. Lyla Berg
Rep. Barbara Marumoto