

# LATE TESTIMONY



LAND USE RESEARCH  
FOUNDATION OF HAWAII

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March 2, 2011

Representative Marcus R. Oshiro, Chair and Representative Marilyn B. Lee, Vice Chair  
Committee on Finance

**Wednesday, March 2, 2011 at 11:00 a.m. in CR 308**

**Support for H.B. No. 376 Relating to Streamlining Permit, License, and Approval Application Processing (Authorizes Counties to Contract with 3<sup>rd</sup> Party Review; SHPD 60 day comment period; 30 days for other agencies)**

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 is in **strong support** of the portion of HB 376, HD1 which authorizes counties to contract with a third-party reviewer to streamline construction permit, license, and other application processing; and is **also in support** of the sections of the bill which provide that applications will be deemed approved if the State Historic Preservation Division of the Department of Land and Natural Resources (SHPD) fails to review and comment within 60 days, and after 30 days if agencies fail to establish maximum time periods for permit and other application processing.

**HB 376.** The main provisions of HB 376 can be summarized as follows:

- (1) **Third Party Review.** Allows the counties to contract with licensed, qualified architects, and engineers to serve as third-party reviewers to certify compliance with various construction codes as well as land-use ordinances;
- (2) **SHPD 60-day review.** Limiting to 60 days the period within which the Department of Land and Natural Resources (DLNR) has to review and comment on pending state and county project approvals that affect historic properties, aviation artifacts, or burial sites before the proposed project will be deemed approved; and
- (3) **30-day review for other agencies.** Providing that if an agency has not adopted rules specifying the maximum period within which to grant or deny a business- or development-related permit, license, or approval, the application will be deemed approved 30 calendar days after a completed application is submitted to the State or respective county agency.

The House Water Land and & Ocean Resources Committee amended the bill in a HD1 version, by changing its effective date to July 1, 3000, to encourage further discussion.

**LURF's Position.** LURF **supports HB 376, HD1**, especially the provisions related to third-party review, which has been successfully implemented in the City and County of Honolulu.

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. Additionally, in 2010 the Senate Committee on Economic Development and Technology and the House Committee on Economic Revitalization, Business, and Military Affairs convened an informal small business discussion group to address the most critical issues facing the small business sectors. This bill is also a product of that working group which included representatives from the business sector, construction and trade industries, food and restaurant industries, retailing, the science and technology sector, the commercial transportation industry and interested stakeholders.

The intent of this bill is to implement one of the proposals of the Construction Task Force and the small business discussion group. 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.

We believe that the provisions of HB 376, HD1 will achieve those purposes, while also protecting historic properties and the health, safety of the public by authorizing each county to contract with a third-party reviewer to streamline the processing of applications and providing immunity for third-party reviewers except for acts of intentional misconduct, gross negligence, or malfeasance; by clarifying that previously approved projects that do not impact historic properties are not subject to subsequent reviews by the SPHD and providing that the maximum time period for SHPD review is sixty (60) days; and by addressing situations where counties do not have a maximum time period to process applications for permits, licenses, approvals, etc. by allowing agencies to establish a maximum time period that an application for permit, license, or approval shall be deemed granted if not acted upon by the designated agency, and specifying that if an agency does not have a maximum time period for approval, that the application shall be deemed approved (30) calendar days after a completed application is submitted.

We appreciate the opportunity to present our **support of HB 376, especially the third party review provisions**, and ask for your favorable consideration of this bill.



**LATE TESTIMONY**

Testimony of C. Mike Kido  
External Affairs  
The Pacific Resource Partnership

House Committee on Finance  
Representative Marcus Oshiro, Chair  
Representative Marilyn Lee, Vice Chair

HB 376, HD1 – Relating to Streamlining Permit, License, and Approval Application  
Processing

Wednesday, March 2, 2011

11:00 AM

Conference Room 308

Aloha Chair Oshiro, Vice Chair Lee and Members of the Committee:

My name is C. Mike Kido, External Affairs for the Pacific Resource Partnership (PRP), a labor-management consortium representing over 240 signatory contractors and the Hawaii Carpenters Union.

PRP **supports** HB 376, HD1 – Relating to Streamlining Permit, License, and Approval Application Processing which authorizes counties to contract with a third-party reviewer to streamline construction permit, license, and other application processing; provides that applications will be deemed approved if historic preservation division fails to review and comment within sixty days, and after thirty days if agencies fail to establish maximum time periods for permit and other application processing.

As stated in SCR 132 Construction Industry Task Force report:

Recommendation

- Authorize the counties to provide third-party reviews for permit processing.  
Establish liability thresholds for third-party review services:
  - Authorize licensed architects and engineers that are qualified by a county to certify compliance for Building, Electrical, Mechanical/Plumbing, Land User Ordinance, and Structural Codes for building permit and other approvals.
  - Third-party reviewers shall be retained by an owner and all fees and costs for third-party review services shall be the responsibility of the owner.

- Third-party reviewers shall conduct plan review services for the purpose of certifying that the proposed plans and specifications are in compliance with federal, state, and county laws, codes, ordinances, rules, and other requirements.
- Certifications by third-party reviewers shall be limited to only those areas approved by the county and in which the third-party reviewer is duly qualified.
- Third-party reviewers shall not have the authority to grant modifications, variances, waivers, exemptions, or other discretionary approvals.
- Private individuals or entities providing third-party review services shall be immune from liability, except for intentional misconduct, gross negligence, or malfeasance.

PRP understands and appreciates the difficulty faced by the Legislature in determining ways to achieve a quick economic recovery and thus support HB 376, HD1 to help streamline and enhance the efficiency of the permit and license review and the approval process. This process involves only ministerial permits and not discretionary department approval which 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 much needed in our economy.

Thank you for the opportunity to share our opinion and we kindly ask for your support of HB 376, HD1 – Relating to Streamlining Permit, License, and Approval Application Processing.

# LATE TESTIMONY



*Hawaii's Thousand Friends*

25 Malunui Ave., Suite 102., PMB 282 • Kailua, HI 96734 • Phone/Fax: (808) 262-0682 E-mail: htf@lava.net

## COMMITTEE ON FINANCE

Rep. Marcus Oshiro, Chair  
Rep. Marilyn Lee, Vice Chair

### HB 376 HD1 RELATING TO STREAMLINING PERMIT, LICENSE, AND APPROVAL APPLICATION PROCESSING

March 2, 2011

#### Committee Chair and Members:

Hawaii's Thousand Friends, a statewide non-profit water and land use planning organization, opposes HB 376 HD1 that authorizes counties to contract with a third-party reviewer to streamline construction permit, license, and other application processing; provides that applications will be deemed approved if historic preservation division fails to review and comment within sixty days, and after thirty days if agencies fail to establish maximum time periods for permit and other application processing

Under the guise of "streamlining the process" HB 376 HD1 effectively cuts out any timely and meaningful public involvement and review of the appropriateness of a project.

On Oahu the limitation of 60 days for an agency to review and comment on a project places an impossible time frame on neighborhood boards to act on an application since the Boards and committees only meet once a month.

As has been the norm if a community is not given adequate opportunity to properly examine and discuss a project and come to a decision the natural impulse is to pressure applicable agencies and elected officials to "just say no" no matter the merits of the project.

The boldness of HB 376 HD1 in declaring that a department only has 60 days from the time the department is *advised* of a project in which to review and comment reeks of special interests with projects already in mind.

Note that under HB 376 HD1 the clock starts ticking when someone from somewhere *advises* State Historic Preservation Division of a project. It is conceivable that applications could come in at any time within those 60 days leaving SHPD even less time to review and comment.

The proposed time limits stated in the bill - If an agency has not adopted rules specifying the maximum time period to grant or deny a permit, license, or approval pursuant to this section, the

application shall be deemed approved thirty calendar days after a completed application is submitted to the state or respective county agency...impinges on the public's right to a contested case just because an agency has not adopted rules.

Case in point. At an August 19, 2009 hearing on a HCDA submitted Special Management Area (SMA) application before the Office of Planning (OP) a Honolulu resident requested a contested case. The meeting was stopped because OP, the designated reviewer of SMA permits under HCDA's jurisdiction, did not have rules governing a contested case.

In November 2009 three parties wrote to OP requesting a contested case on the same SMA application. On January 11, 2010 the then director of OP Abbey Mayer approved the proposed project and issued the Special Management Area Use Permit.

On January 20, 2010 several residents requested a contested case hearing and an explanation of what rules OP would follow in the contested case process since OP did not have rules governing a contested case. A contested case was never held.

The bottom line is, if HB 376 HD1 is passed there is no way any of these parties could request or be granted a contested case because OP has never adopted rules outlining the contested case process.

Under HB 376 HD1 the public will be denied due process just because of arbitrary time limits and the failure of an agency to adopt rules. The public should not be punished just because an agency or department failed to adopt rules.

Under our current planning system it is the counties and the state's responsibility to protect the public's interest by ensuring that a permit, license and application comply with all applicable laws and rules. This obligation should not be abrogated to a special interest third party just for the sake of expediency especially since private developers would hire their own reviewers.

It is inconceivable that Hawaii's cultural and historical resources could be lost just because the State Historic Preservation Division, which is severely underfunded and understaffed, was unable to respond within the required 60 days.

Because archaeologists and other historic preservation professionals are not now "licensed" by DLNR or SHPD, it does not appear that this bill would allow the employment of private archaeologists to conduct Chapter 6E review now conducted by SHPD.

HB 376 HD1 places the very fabric of our democratic, participatory and open system of government at risk and must be held in committee.

## FINTestimony

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From: mailinglist@capitol.hawaii.gov  
Sent: Tuesday, March 01, 2011 9:32 PM  
To: FINTestimony  
Cc: danielal@hawaii.edu  
Subject: Testimony for HB376 on 3/2/2011 11:00:00 AM

Testimony for FIN 3/2/2011 11:00:00 AM HB376.

Conference room: 308  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Daniel Alexander  
Organization: Individual  
Address:  
Phone:  
E-mail: [danielal@hawaii.edu](mailto:danielal@hawaii.edu)  
Submitted on: 3/1/2011

**LATE TESTIMONY**

Comments:

This bill would establish a system of historical preservation bound to fail! The Historical Preservation agency is systematically underresourced and setting up a permitting system with such a limited time frame would lead to automatic permitting of countless projects that threaten or destroy valuable sites. If greater efficiency in the historical preservation is the objective, then the department should be allocated greater resources to speed up the permitting process. Please, act rationale! And don't establish a system that is bound to permanently destroy countless timeless treasures!

# LATE TESTIMONY

March 1, 2011

**House Committee on Finance**  
**Representative Marcus R. Oshiro, Chair**  
**Representative Marilyn B. Lee, Vice Chair**

**Public Hearing: Wednesday, March 2, 11:00 a.m., Room 308**

**Re: HB 376 HD 1, Relating to Streamlining Permit, License, and Approval Application Processing**

Dear Chair Oshiro, Vice Chair Lee, and members of the Committee,

I oppose House Bill 376.

Automatic approvals are a shockingly shortsighted solution to agencies' inability to process applications in a timely manner. Permits should not be granted by default, but following careful consideration of the merits and impacts of each project. Please defer this bill.

Thank you for the opportunity to testify.

Nicole Lowen  
MA Candidate  
Department of Urban and Regional Planning  
University of Hawaii at Manoa  
nlowen@gmail.com  
Honolulu, HI 96816



## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**ent:** Wednesday, March 02, 2011 7:11 AM  
**To:** FINTestimony  
**Cc:** neil@hawaii.edu  
**Subject:** Testimony for HB376 on 3/2/2011 11:00:00 AM

Testimony for FIN 3/2/2011 11:00:00 AM HB376

Conference room: 308  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Neil Frazer  
Organization: Individual  
Address:  
Phone:  
E-mail: [neil@hawaii.edu](mailto:neil@hawaii.edu)  
Submitted on: 3/2/2011

**LATE TESTIMONY**

**Comments:**  
There are less risky ways to make Hawaii more business friendly.

## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 02, 2011 11:56 AM  
**To:** FINTestimony  
**Cc:** henry.lifeoftheland@gmail.com  
**Subject:** Testimony for HB376 on 3/2/2011 11:00:00 AM

Testimony for FIN 3/2/2011 11:00:00 AM HB376

Conference room: 308  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Life of the Land  
Organization: Life of the Land  
Address:  
Phone:  
E-mail: [henry.lifeoftheland@gmail.com](mailto:henry.lifeoftheland@gmail.com)  
Submitted on: 3/2/2011

**LATE TESTIMONY**

**Comments:**

We are in a recession, but we should not use the economic turmoil to damage the environment. If developers want to rush a project they should pay an additional fee to cover the cost of reasonable agency review. Automatic approval is not the answer.

## FINTestimony

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n: mailinglist@capitol.hawaii.gov  
Sent: Wednesday, March 02, 2011 10:32 AM  
To: FINTestimony  
Cc: reachbrianbell@yahoo.com  
Subject: Testimony for HB376 on 3/2/2011 11:00:00 AM

Testimony for FIN 3/2/2011 11:00:00 AM HB376

Conference room: 308  
ifier position: oppose  
ifier will be present: No  
Submitted by: Brian Bell  
Organization: Individual  
Address:  
Phone:  
E-mail: [reachbrianbell@yahoo.com](mailto:reachbrianbell@yahoo.com)  
Submitted on: 3/2/2011

**LATE TESTIMONY**

Comments:  
Aloha Chair Oshiro and Members of the Committee:

I am writing to voice my opposition to HB376, which would automatically approve projects if an agency fails to pass rules and meet a sixty day deadline to review the project. This is a bad bill and I only need two examples to prove why:

- Imagine if drugs were automatically approved by the FDA after 30 days. What about airplanes, bridges, or roads? People might die. The same can happen constructing buildings, plus you might run into potentially unwanted side-effects like more uncontrolled sprawl with empty parking structures, no sidewalks, no character, no sense of place, and the paving over of what is left of our precious aina.

2- 3rd party reviewers (i.e. self regulation) cannot take the place of government regulatory employees. If in doubt, just look at the oil spill last year:  
[http://www.huffingtonpost.com/2010/05/20/oil-self-regulation-happe\\_n\\_582980.html](http://www.huffingtonpost.com/2010/05/20/oil-self-regulation-happe_n_582980.html)

Why should the public suffer the effects of poor planning because of issues with agency delay?

Thank-you for the opportunity to testify.

Brian Bell  
4626 Sierra Dr.  
Honolulu, HI 96816  
808-227-7087

In strong opposition to HB 376

# LATE TESTIMONY

Please reform SHPD. This bill does nothing to improve the problems with SHPD and will make the problems much worse by automatically approving projects no matter how detrimental they are to our state.

mahalo,

*Chris Cramer*

Chris Cramer

Honolulu, HI

## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 02, 2011 10:19 AM  
**To:** FINTestimony  
**Cc:** palmtree7@earthlink.net  
**Subject:** Testimony for HB376 on 3/2/2011 11:00:00 AM

Testimony for FIN 3/2/2011 11:00:00 AM HB376

Conference room: 308  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: janice palma-glennie  
Organization: Individual  
Address:  
Phone:  
E-mail: [palmtree7@earthlink.net](mailto:palmtree7@earthlink.net)  
Submitted on: 3/2/2011

**LATE TESTIMONY**

**Comments:**

Aloha,  
this and all "automatic approval" legislation is made for developers, not the public. It cuts the public out of their democratic process and makes a mockery of government oversight of critical natural, cultural, and social resources.  
Please say "NO" to this horrible bill.  
Mahalo.