

TO: Senator Carol Fukunaga, Chair,
Senate Committee on Economic Development and Technology
and
Senator Donovan M. Dela Cruz, Chair, Senate Committee on Water, Land, and
Housing

FROM: Sara L. Collins, Ph.D., Legislative Chair
Society for Hawaiian Archaeology
sara.l.collins.sha@gmail.com

HEARING: March 19, 2012, 1:45 PM, Conference Room 016
SUBJECT: Comments on HB 1972, H.D.2 (Relating to Historic Preservation)

I am Dr. Sara Collins, Chair of the Legislative Committee of the Society for Hawaiian Archaeology (SHA). We have over 150 members that include professional archaeologists and advocates of historic preservation in general. On behalf of SHA, I am providing comments on HB 1972, HD 2 which proposes to limit Department of Land and Natural Resources (DLNR) fees for its comprehensive historic preservation program to amounts sufficient to cover the annual operating costs of the program, taking into account all other sources of program income.

Currently, the State Historic Preservation Division (SHPD) of DLNR charges various fees when carrying out its regulatory reviews pursuant to §§ 6E-7, 6E-8, 6E-42, and 6E-43.5, Hawaii Revised Statutes (HRS). The fees imposed for reviewing documents subject to these sections of the statute are set by Hawaii Administrative Rules (HAR) 13-275 and 13-284. HAR 13-275 and 13-284 were adopted through the process defined in Chapter 91, HRS, which included public hearings. The public hearings resulted in many comments that significantly improved prior drafts of these rules. HB 1972, HD 2 proposes to amend Chapter 6E-3(15) to allow DLNR to periodically adjust the fees so as ensure they are proportional to nature and complexity of the projects or services provided. The subject bill also provides that these fees may be adjusted “from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this chapter, do not surpass the annual operating costs of the comprehensive historic preservation program.”

We have the following comments:

- We recommend that the subject bill be amended to retain the current statutory wording “partially defray” in order to more accurately portray the role that fees play in SHPD’s overall budget. We also recommend amending the subject bill to include language that restricts the expenditure of moneys raised from review fees to support for the staff which do the reviews. The funds should not be diverted to any other purpose in the historic preservation program.

- We assume that the assessment of review fees will continue to be a part of the regulatory process, as defined in HAR 13-275 and 13-284, in which any proposed increase in fees will subject to a public hearing in which interested parties may participate. If this is not the case then we recommend that adjustment of fees be accomplished through deliberations by the Board of Land and Natural Resources, which would allow opportunities for public comment.

In view of the above comments, our recommended amendments to the subject bill are as follows:

- (15) The charging of fees to at least partially defray the costs of administering sections 6E-3(13), 6E-8, 6E-42 of this chapter shall be
- (a) proportional to the nature and complexity of the projects or services provided;
 - (b) used exclusively to support of the staff who conduct these activities;
 - (c) established through a process that provides for public participation in accordance with Chapter 92F; and
 - (d) adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this chapter, do not surpass the annual operating costs of the comprehensive historic preservation program.

Thank you for the opportunity to provide comments on HB 1972. Should you have any questions, you may reach me at the above email address.