

HB 376, hd1

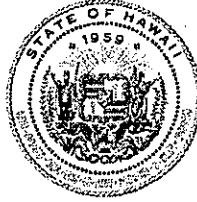
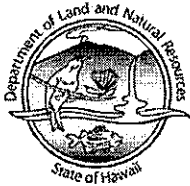
Measure Title:

RELATING TO STREAMLINING PERMIT, LICENSE, AND APPROVAL APPLICATION PROCESSING.

Report Title:

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. Effective July 1, 3000. (HB376 HD1)

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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COMMISSION ON WATER RESOURCE MANAGEMENT

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AQUATIC RESOURCES
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COMMISSION ON WATER RESOURCE MANAGEMENT
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CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the Senate Committees on
PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS
and
ECONOMIC DEVELOPMENT AND TECHNOLOGY**

**Thursday, March 17, 2011
2:45 PM
State Capitol, Conference Room 224**

**In consideration of
HOUSE BILL 376, HOUSE DRAFT 1
RELATING TO STREAMLINING PERMIT, LICENSE, AND APPROVAL
APPLICATION PROCESSING**

House Bill 376, House Draft 1 proposes to streamline the permitting process to promote the construction industry in Hawaii, including changing review times and guidelines for the State Historic Preservation Division (SHPD). The Department of Land and Natural Resources (Department) opposes the bill as the Department believes there must be a balance between encouraging construction and preserving our unique natural and cultural resources. In the long run our natural and cultural resources drive much tourism in our state and need to be treated as the important resources that they are.

The Department is specifically opposed to SECTION 3 of the bill which proposes a maximum of sixty days to complete a review and comment "beginning from the time the department is advised of the proposed project by the agency or officer." This language is problematic for the following reasons:

1. SHPD notes that it often takes more than sixty days for project proponents to respond to our comments and to ensure appropriate public response, particularly if the project is complex or controversial. If SHPD does not complete its initial review within 30 days, the Counties have the ability to move forward with a project (13-284.5, Hawaii Administrative Rules (HAR)), thus we believe that the current law addresses the need of construction project to move forward.
2. The start time for the 60 day clock is when the department is "advised of the proposed project by the agency or officer." Merely advising the department of a project does not ensure that the

required information (13-284, HAR) is provided to the department. 13-284, HAR clearly defines the materials needed for the clock to start, including the receipt of required fees. The Department believes the rules as they exist provide sufficient guidance.

3. The new language states, "Projects previously reviewed by the department pursuant to this section and found to have no impact . . . shall not be subject to subsequent department reviews under this section. Again, the rules provide guidance on this area (see 13-284, HAR generally and specifically (13-284 (5) (4) HAR, and allow for SHPD or an agency to determine that a project will have "no effect" based on previous studies or ground disturbance. The language provide in this bill could lead to confusion and further delay. For example, inventory studies done over ten years ago may have found no impact, but only tested a limited area. New information could change SHPD's determination on a project (i.e. Brescia).

SHPD feels that the current rules allow for the counties to take control of the Historic Preservation Review process through either moving forward if SHPD does not comment within 30 days, or hiring their own staff to do reviews per 13-284-5 (5) (2) HAR.



HB 376, HD 1
RELATING TO STREAMLINING PERMIT, LICENSE, AND APPROVAL APPLICATION
PROCESSING

Senate Committee on Public Safety, Government Operations and Military Affairs
Senate Committee on Economic Development and Technology

March 17, 2011

2:45 p.m.

Room: 224

The Office of Hawaiian Affairs (OHA) **OPPOSES** HB 376, HD 1, which would streamline portions of the review process for various county and state permits, licenses, and approvals.

HB 376, HD 1 grants counties the authority to delegate their 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:

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.

It is the responsibility of the counties, as instrumentalities of the state, to ensure that permit, license, and approval of applications comply with various laws, rules, court orders, and the state Constitution. Counties cannot pass off a constitutional mandate in the interests of quicker review for individual projects.

Furthermore, HB 376, HD 1, reduces the possibility of a proposed project being comprehensively and impartially reviewed. Under HB 376, HD 1, architects and engineers, the third-party reviewers, would be "retained by an owner of the property being reviewed and all fees and costs for third-party review services shall be the responsibility of the owner of the property being reviewed." With owners having complete control over which third-party reviewer to contract with, OHA is concerned over the level of scrutiny to be applied if conflicts arise with construction codes or land use ordinances. Although a "[t]hird-party reviewer shall not have the authority to grant modifications, variances, waivers, exemptions or

other discretionary approvals," a third-party reviewer would be able to make a determination if such a discretionary approval is even necessary or if the project can proceed as a matter of course. In addition, such determinations would be without consequences, as HB 376, HD 1 also insulates third-party reviewers from liability unless their actions rise to the level where intentional misconduct, gross negligence, or malfeasance can be proven.

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. Rather than direct needed resources to SHPD, HB 376, HD 1 seeks to overhaul Chapter 6E and strip power from SHPD. If projects were automatically approved when the agency fails to complete reviews and offer comments within sixty days, the counties may fail to uphold the goals and intent of the Historic Preservation Program. The Legislature has already found with Section 1 of Chapter 6E, Hawaii Revised Statutes, 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.

Furthermore, HB 376, HD 1, reduces the authority of SHPD by precluding the review of previously approved projects. Archaeological surveys completed twenty years ago are often deemed to be inadequate by today's archeological standards. Unfortunately, previous approvals relied on these surveys. SHPD must be allowed to review previously approved projects in order to ensure that all historic properties are carefully protected with current and accurate information.

OHA understands that the approval process for projects can be lengthy. Even the current review process, which is fairly thorough, results in mistakes and missed problems. If the process is shortened, these errors will surely increase, and Hawai'i's natural and cultural resources will surely suffer as a result.

As such, OHA urges the committee to HOLD HB 376, HD 1. Mahalo for the opportunity to testify.

**PRESENTATION OF THE
BOARD OF PROFESSIONAL ENGINEERS, ARCHITECTS,
SURVEYORS AND LANDSCAPE ARCHITECTS**

TO THE SENATE COMMITTEE ON PUBLIC SAFETY,
GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS

AND

TO THE SENATE COMMITTEE ON ECONOMIC DEVELOPMENT
AND TECHNOLOGY

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Thursday, March 17, 2011
2:45 p.m.

WRITTEN TESTIMONY ONLY

**TESTIMONY ON HOUSE BILL NO. 376, H.D.1, RELATING TO STREAMLINING
PERMIT, LICENSE, AND APPROVAL APPLICATION PROCESSING.**

TO THE HONORABLE WILL ESPERO, CHAIR,
TO THE HONORABLE CAROL FUKUNAGA, CHAIR,
AND MEMBERS OF THE COMMITTEES:

My name is Jimmy Kobashigawa and I am the Executive Officer for the Board of Professional Engineers, Architects, Surveyors and Landscape Architects ("Board"). The Board wishes to provide written comments to clarify the intent of House Bill No. 376, H.D.1.

The purpose of House Bill No. 376, H.D.1 is to streamline 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 bill proposes to allow each county to provide a third-party with permit, license, and approval processing review powers to increase the efficiency and

timeliness of permit, license, or approval applications submitted to the State or respective county (emphasis added). Presumably, this may be interpreted to allow each county to delegate to a third-party the ability to approve an application for license to practice as an architect, engineer, surveyor or landscape architect in Hawaii.

Although in support of the intent to expedite the approval of construction projects, the Board would like to inform the Committee that pursuant to Chapter 464, Hawaii Revised Statutes, only the Board of Professional Engineers, Architects, Surveyors and Landscape Architects has the authority to license architects, engineers, surveyors and landscape architects in Hawaii. The Board already has in place the requirements for licensure, which include an applicant's education, experience and examination, and the expertise to evaluate the applications.

Therefore, the Board recommends that the bill be clarified that there is no intent to allow a third-party the ability to approve architects, engineers, surveyors and landscape architects for licensure to practice in Hawaii.

Thank you for the opportunity to provide comments on House Bill No. 376, H.D.1.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

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The Twenty-Sixth Legislature, State of Hawaii
The Senate
Committee on Public Safety, Government Operations & Military Affairs
Committee on Economic Development and Technology

Testimony by
Hawaii Government Employees Association

March 17, 2011

H.B. 376, H.D. 1 - RELATING TO STREAMLINING
PERMIT, LICENSE, AND APPROVAL APPLICATION
PROCESS

The Hawaii Government Employees Association opposes H.B. 376, H.D. 1. 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. This bill would allow each county to contract with a third party to certify compliance with building, electrical, mechanical, plumbing and structural codes as well as land use ordinances, by reviewing an application for permit, license or approval.

The HGEA maintains that any consideration of contracting services of this nature to a third party provider is clearly contrary to the Konno Supreme Court decision stating that all work "customarily and historically" done by government employees should remain with government. The review process is currently done by County employees and the accountability of the issuance of permits, licenses and approvals remains with the Counties. In addition, these third party reviewers are granted immunity from liability except for acts of intentional misconduct, gross negligence or malfeasance. Essentially, they are insulated from all liability, except for the most egregious of errors.

The HGEA supports the efficiency and streamlining of the review process for the purpose of expediting construction projects. However, there is no compelling reason to allow an outside third party to do the work which is currently done by County employees.

Another concern is the automatic approval provisions applicable to the State Historic Preservation Division and agencies responsible for granting a business or development-related permit license or approval. We oppose the 60-day and 30-day automatic approval provision. Such automatic approval deadlines are problematic and may lead to unintended adverse consequences.

Thank you for the opportunity to testify in opposition of H.B. 376, H.D. 1.

Respectfully submitted,

Nora A. Nomura

Deputy Executive Director

**HISTORIC
HAWAII
FOUNDATION**

VIA WEB: www.capitol.hawaii.gov/emailtestimony

TO: Senator Will Espero, Chair
Senator Michelle Kidani, Vice Chair
Committee on Public Safety, Government Operations and Military Affairs

Senator Carol Fukunaga, Chair
Senator Glenn Wakai, Vice Chair
Committee on Economic Development and Technology

FROM: Kiersten Faulkner, Executive Director
Historic Hawaii Foundation

Committee: Thursday, March 17, 2011
2:45 p.m.
Conference Room 224

RE: **HB376, HD1, Relating to Streamlining Permit, License, and Approval Application Processing**

On behalf of Historic Hawaii Foundation (HHF), I am writing in **opposition to HB376, HD1** unless amended. The bill would authorize third-party review of applications; establish maximum time periods for designated agencies to process permits and other applications before they are deemed granted if not acted upon; and eliminate subsequent reviews by the state historic preservation division (SHPD).

HB376, Section 3 would amend HRS §6E-42, which relates to the review process and timelines for “projects” that have potential effects on historic properties. “Project” is defined in HRS §6E-2 as “any activity directly undertaken by the State or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the State or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the State or its political subdivisions.”

The bill would mandate that once SHPD has provided one approval of a proposed project—whether by affirming a determination of no effect on historic properties or through inaction—subsequent reviews would not be allowed.

Historic Hawaii Foundation finds this section of the bill most concerning as written, but suggests that **an amendment could resolve the issue by adding language to clarify that “projects” refers to each distinct application for approval, entitlement or funding, and not to a single sweeping approval of any and all development activity that may ever occur on a particular piece of property.** This would close a loophole that could otherwise cause unintended consequences that would be devastating to historic and cultural resources of Hawai‘i.

P.O. Box 1658 • Honolulu, HI 96806 • Tel: 808-523-2900 • FAX: 808-523-0800 • www.historichawaii.org

Historic Hawai‘i Foundation was established in 1974 to encourage the preservation of historic buildings, sites and communities on all the islands of Hawai‘i. As the statewide leader for historic preservation, HHF works to preserve Hawai‘i’s unique architectural and cultural heritage and believes that historic preservation is an important element in the present and future quality of life, environmental sustainability and economic viability of the state.

The professional staff of the historic preservation division has been steadily eroded over the past several years. Currently, there is only one staff member to provide all architectural project reviews for the entire state, include federal undertakings. The division has lost its architectural branch chief, its preservation architect, its architectural historian and other professional, clerical and support positions. The lack of funding, staffing and support for the division makes it difficult for it to meet its mandates for high quality and timely review of projects. This leads to frustration by those seeking approvals, as well as by those whose priority is the protection of the state's historic and cultural resources.

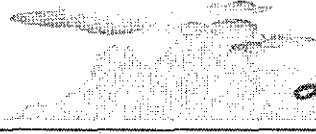
The bill attempts to address this impasse by setting a maximum number of reviews and a maximum number of days for those reviews. While the intent may be to provide greater timeliness and certainty to developers, it will come at the expense of protections for historic sites and cultural resources. The absolute deadline on taking action could also lead to a quick denial of projects rather than a slower and more thoughtful approval, simply in an attempt to meet the deadlines. The state's historic and cultural resources should not be penalized by removing protections at the local or the state level.

The provision limiting the number of SHPD reviews per undertaking disregards the reality that developments have multiple phases of design and construction and there is a need to check-in at key points, especially if the undertaking changes. In most development undertakings, there is a continuum of due diligence, planning, entitlements, design and construction. It is rare that all possible effects on historic properties are known at each stage of the development and design process. For example, the area of potential effect for historic sites is less defined at the time of a land use change or subdivision than it is at the time of construction. The certainty and specificity of SHPD's review is directly proportionate to the level of information provided to it, which can and does change as undertakings evolve.

For example, while SHPD may determine that no historic properties are affected by a simple change in entitlements, that same undertaking could very well have an effect at the time of site planning and construction. This is especially true when the historic properties are unknown (such as from sub-surface archeological sites or native Hawaiian burials), undocumented (such as cultural landscapes or traditional cultural properties), when the project takes many years from concept to execution (in which time structures may become eligible for the historic register by virtue of increasing age or significance), or when the scope and scale of the undertaking changes.

It is also a rare development that does not change in its details from the time of concept, to schematic design, to design development, to construction. At any of these stages, a historic property that was not previously anticipated to be affected could become at risk. Therefore, an earlier determination of no adverse effect may not hold true when the undertaking becomes more specific and more information is provided, and vice versa.

HB376 Section 2 provides for third party reviewers to certify that proposals are in compliance with applicable codes and standards. **HHF requests that this section be amended to require that any architects, engineers or other third parties that review an application for a permit, license or approval for a project that affects historic properties meet the education and experience standards and qualifications for preservation professionals as defined by the Secretary of the Interior's Standards.** This will help ensure that reviewers are qualified to make the determinations entrusted to them when making decisions that impact the historic and cultural resources of the Islands and refers to industry standards in federal statute.



Hawaii's Thousand Friends

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March 17, 2011

COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS

Senator Will Espero, Chair
Senator Michelle Kidani, Vice Chair

COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY

Senator Carol Fukunaga, Chair
Senator Glenn Wakai, Vice Chair

HB 376 HD1

RELATING TO STREAMLINING PERMIT, LICENSE, AND APPROVAL APPLICATION PROCESSING

Hawaii's Thousand Friends 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 60 days, and after 30 days if agencies fail to establish maximum time periods for permit and other application processing.

The changes proposed to §46 to allow third-party permit, license, and approval processing review sets up untold opportunities for conflict of interest such as an owner hiring an architect to conduct a third-party review who works with or is employed by the same company that designed the property being reviewed. This proposed change has the fox guarding the hen house.

The State Historic Preservation Division (SHPD) has been plagued with problems for many years forcing the National Park Service to conduct a technical site visit and evaluation. So instead of making unreasonable and unattainable demands, as this bill does by setting arbitrary time limits, on SHPD legislators should be reviewing the federally mandated requirements and audit recommendations to understand what is needed to make SHPD more efficient.

Instead of imposing arbitrary time limits on government agencies whose responsibility is to protect the public's interests, ensure public involvement and the appropriateness of a project, attention should be given on how best to assist the terribly underfunded and understaffed county and state agencies.

Placing arbitrary time limits on government agencies will not make the approval of projects more efficient. Instead expedited processes will leave communities with no other choice but to reactively oppose developments even if they are good.

HB 376 HD1 is unfair to government agencies and the public and should be held in committee.

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Hawaii

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March 16, 2011

Senate Committees on Public Safety, Government Operations, and Military Affairs (PGM) and Economic Development and Technology (EDT)

Hearing Date: Thursday, March 17, 2011, 2:45 PM, Conference Room 224

Honorable Chairs Senator Will Espero and Chair Carol Fukunaga and Honorable Members of the Committees:

**Subject: HB 376 – TESTIMONY IN SUPPORT (to portions of the bill)
Relating to Streamlining Permit, License, and Approval Application Processing**

Dear Chair Espero, Chair Fukunaga, and Members of PGM and EDT Committees:

The American Council of Engineering Companies of Hawaii (ACECH) represents 67 member firms with over 1,300 employees throughout Hawaii, most of which are small businesses. We are comprised of the most highly qualified engineers, land surveyors, scientists, and other specialists. ACECH is in agreement with Section 2 of the bill, related to the use of third parties to review permit applications. With respect to Sections 3 and 4, while our member firms are often frustrated by long agency review and approval times, we question whether automatic approvals as stipulated in the proposed language will achieve the intended result without compromising public health, welfare, and safety.

Firstly, with respect to Section 2 and the proposed use of third-party reviewers, we believe this measure could expedite permit processing if applicants are willing to pay the third-party review fees. This option would be available whether or not agencies have set a timetable for their approval process.

The issue of automatic approvals is more complex. Both Section 3 and Section 4 impose automatic approval deadlines. Section 4 of the bill adds the following to HRS 91-13.5: "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; provided that the completed application is submitted to the State or respective county on or after January 1, 2012."

The term "completed application" is significant. Who defines what a "completed application" entails? Currently, an application is judged "complete" by the reviewing agency, whom essentially provides a confirmation to the applicant that they are following the appropriate rules and requirements. Assuming automatic approval provides an applicant substantial risk of fines (for example, for violation of the Clean Water Act) or for legal action if their application is not sound, in our experience, most applicants choose to follow the standard permitting process, even when given the option for automatic approval.

HB 376 Testimony
ACECH
March 16, 2011

In 2000, the Legislative Reference Bureau (LRB) conducted a study of automatic approvals as set forth in Act 164 (Session Laws of Hawaii 1998), which was codified as HRS 91-13.5. In a 209-page report, the LRB identified a number of concerns with respect to automatic approvals. Concerns matched by the engineering profession include the potential risk to public safety and welfare. The LRB stated: "One example of a conflict created by section 91-13.5, HRS is in the area of county Building Code Standards. The issue is whether the automatic approval of building permits that do not comply with the Building Code may jeopardize the public's health and safety. On the one hand, it may be argued that even if a building permit that does not meet Building Code standards is automatically approved, county agency rules still provide for building inspections and opportunities to remedy the problem before an occupancy permit is issued. On the other hand, it is argued that various factors – including limited staff and agency resources, the complexity of the issues, and the need for too many additional permits requiring input from both reviewing and issuing agencies before a final building permit is issued – unreasonably endanger the public's health and safety by allowing insufficient time for permit review and force the agency to focus most of its attention on responding to permit applications to prevent automatic approval rather than on proactive planning or environmental management."

The building permit and other permit systems are in place to protect public safety and welfare (including quality of life and the environment). We suggest that automatic approvals defeat the purpose of the permitting system and the associated safeguards. The LRB's report also noted that threatening automatic approvals can produce "low quality" rules if the timetables are unrealistic, as intense pressure is imposed on the agency. For these reasons, we do not believe automatic approvals are the answer.

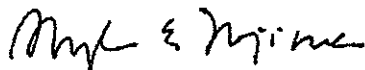
In summary, we propose the following actions with respect to HB 376:

1. Retain Section 2 to provide applicants an option to expedite the review period of County permits and
2. Delete Sections 3 and 4 setting automatic approval periods.

We appreciate the opportunity to provide testimony regarding HB 376. Please do not hesitate to contact us if you have any questions regarding our testimony.

Sincerely,

AMERICAN COUNCIL OF ENGINEERING COMPANIES OF HAWAII



Sheryl E. Nojima, PhD, PE
President



Sierra Club Hawai'i Chapter

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SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY

March 17, 2011, 2:45 P.M.
(Testimony is 3 page long)

TESTIMONY IN STRONG OPPOSITION TO HB 376 HD1 WITH PROPOSED AMENDMENTS

Aloha Chair Espero, Chair Fukunaga, and Members of the Committee:

The Hawai'i Chapter of the Sierra Club *strongly opposes* HB 376 HD1, which could -- intentionally or not -- automatically approve undesirable development projects throughout Hawai'i. While we support efforts to encourage economic development, this measure may undermine the desired goals of the policy and run counter to the concept of a democratically administered society.

I. Section 2 - Protecting Transparency and Accountability.

Shifting governmental functions to the construction industry seems like a simple way to save costs and improve efficiency, but section 2 of this measure could eliminate transparency, accountability, and enforceability of most basic building standards.

Under the proposed language, large developments could be shifted over to third party review without any ability for the public to monitor or comment on the progress of the project. HB 376 says "license or approval," meaning complex actions like zoning and subdivision could be taken out of the public arena (counties have consistently argued these processes are not discretionary).

Further, documents would not be available for public inspection. Hearings would not occur. Decisions impacting communities would suddenly be hidden from the public.

There is also a question of enforceability. If a third-party reviewer approves shoddy or unsafe projects, there may be no way to regulate standards designed to protect the health and safety of the public. The reviewer would be shielded from most liability and may no longer be in the state if a disaster were to occur and innocent homeowners were hurt or killed.

II. Sections 3 and 4 -- Ham-Fisted Means that Eliminate Public Protection.

Section 3 of this measure creates a 60-day automatic approval of any historic property review. Section 4 requires agencies enact rules limiting the time to approve or deny *any* permit. Without the adoption of agency rules, a 30 day “automatic approval” would be created.

The “automatic approval” of any permit is simply poor policy. Permits should be granted on their merits, not by mistake or governmental inefficiency. *No community should suffer because government failed to perform.* Consider:

- What happens when a building is automatically approved that doesn't meet health and safety standards? Is the State liable for any resulting injuries?
- What happens when additional information is required by the department or agency and the deadline passes?
- What happen when complex issues like subdivision approval of a massive development project -- that directly impacts traffic, public access, and smart growth -- are automatically approved because of timing blunder?
- What happens if an applicant fails to submit all the necessary information? Would building, electrical and plumbing permits be deemed “approved” because the agency did not have a completed application?
- What happens when there is a complex environmental assessment that needs to be completed pursuant to Haw. Rev. Stat. Chapter 343 and the deadline passes?
- What happens when a contested case hearing is requested pursuant to chapter 91, HRS, and for any other period for administrative appeals and review and the deadline passes?
- Is it ever appropriate to automatically approve a permit that will irreparably damage the environment or native Hawaiian rights? Doesn't that violate protections provided by the State Constitution

The problems with this bill are staggering. For example, what if agencies aren't able to enact rules in a timely fashion? Some agencies are struggling to pass rules over six years old. Theoretically, numerous approvals and permits could be deemed automatically approved because of one malfunctioning agency. Do we really want health/welfare/safety requirements ignored? Do we want residents to wonder why their government allowed a poorly-sited landfill placed next to them?

III. Other Options.

In looking at the perceived problem of agency delay, it is unclear what is the scope of the problem. Is it an actual problem or merely a perception? What agencies are misbehaving? Are there are other reasons for unusual delay that might be solved through other means?

The Senate may consider requesting DBEDT investigate the situation and make a detailed report as to the length of review of each type of permit/approval and the reason for the length of time. Or thinking outside of the box, the Senate could propose the creation of an Office of the Ombudsman to appropriately investigate the issue and be empowered to take different forms of action.

By identifying actual issues, we may be able to solve real problems rather than applying a ham-fisted, one-size-fits-all "solution" to a perceived problem.

Mahalo for this opportunity to provide testimony.

JEANNINE JOHNSON

5648 Pia Street, Honolulu, Hawai'i 96821

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

March 14, 2011

COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS

COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY

Re: HB 376, HD1 Relating to Streamlining Permit, License & Approval App. Processing
Hearing: Thursday, March 17, 2011 at 2:45 pm in Conference Room 224

Aloha mai kākou,

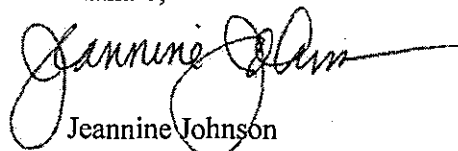
I vehemently oppose HB 376, HD1 which authorizes counties to contract with a third-party reviewer to streamline construction permit, license, and other application processing; provides that applications will be deemed approved if historic preservation division fails to review and comment within 60 days, and after 30 days if agencies fail to establish maximum time periods for permit and other application processing.

In the later part of the last century, developers had free rein to build their hotels in filled-in wetlands, thousands of homes in filled in fishponds and thousands of condos in a filled in salt lake resulting in a wholesale loss of our cultural resources. In this century, though, there are many environmental and cultural concerns the public has regarding Hawaiian burial sites and sacred places. I shudder to think what would happen if every proposed project were automatically approved when the State Historic Preservation Department (SHPD) failed to complete its review within 60 days.

As you know, SHPD has the responsibility of "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." Over the past seven years, however, there have been management and staffing problems, backlogged paperwork, a severe lack of resources and inability to maintain an inventory of historic sites. So many problems, in fact, that the National Park Service investigated the Department and issued a report that confirmed it had significant operational problems.

According to Patricia Price-Beggerly and J.R. McNeill, the "wholesale loss of cultural resources tends to accentuate the value of the few remaining sites in an area important to Hawaiian culture as reflected in its traditions and history. This makes it even more important that the cultural resources which are left be recovered or preserved." Please oppose this bill because it is OUR kuleana to make sure that the few remaining cultural resources which are left are preserved and that our kūpuna do not get erased from the land.

Mahalo,



Jeannine Johnson

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 16, 2011 9:08 AM
To: PGM Testimony
Cc: lisarey@hawaii.edu
Subject: Testimony for HB376 on 3/17/2011 2:45:00 PM

Testimony for PGM/EDT 3/17/2011 2:45:00 PM HB376

Conference room: 224
Testifier position: oppose
Testifier will be present: No
Submitted by: Lisa Hinano Rey
Organization: Individual
Address:
Phone:
E-mail: lisarey@hawaii.edu
Submitted on: 3/16/2011

Comments:

I am generally in opposition of this bill. Please do not pass it as written.

Mahalo

From: Janice Palma-Glennie [palmtree7@hawaiiantel.net]
Sent: Wednesday, March 16, 2011 8:55 AM
To: PGM Testimony
Subject: HB376 Deny automatic approvals!

Importance: High

Aloha, Chairman and committee members,

This bill, HB 376, is one of the most onerous bills before you this session.

By approving it, you would undermine the public's right to take part in land use planning by denying under-paid, under-staffed planners sufficient time to properly assess a development's merits or faults.

Please say NO to this bill.

Mahalo for your consideration of my views.

Sincerely,
Janice Palma-glennie
PO Box 4849
Kailua-Kona HI 96745

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 16, 2011 8:53 AM
To: PGM Testimony
Cc: palmtree7@earthlink.net
Subject: Testimony for HB376 on 3/17/2011 2:45:00 PM

Testimony for PGM/EDT 3/17/2011 2:45:00 PM HB376

Conference room: 224
Testifier position: oppose
Testifier will be present: No
Submitted by: janice palma-glennie
Organization: Individual
Address:
Phone:
E-mail: palmtree7@earthlink.net
Submitted on: 3/16/2011

Comments:

This is one of the WORST BILLS you will decide upon.
PLEASE SAY "NO" TO THIS AUTOMATIC APPROVAL LAW WHICH UNDERMINES THE
PUBLIC'S RIGHT TO TAKE PART IN LAND USE DECISION-MAKING.
Mahalo.

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 16, 2011 8:09 AM
To: PGM Testimony
Cc: nlowen@gmail.com
Subject: Testimony for HB376 on 3/17/2011 2:45:00 PM

Testimony for PGM/EDT 3/17/2011 2:45:00 PM HB376

Conference room: 224
Testifier position: oppose
Testifier will be present: No
Submitted by: Nicole Lowen
Organization: Individual
Address:
Phone:
E-mail: nlowen@gmail.com
Submitted on: 3/16/2011

Comments:
Aloha Chair and Members of the committee,

I oppose HB 376.

The measures in this bill relating to automatic approvals take a dangerously heavy-handed approach to addressing issues with agency review. Approvals should be issued based on the merits of a project following careful consideration of any negative impacts it may have. Agency delay may be due to issues of under-staffing or budget shortfalls; these issues should be addressed directly rather than issuing automatic approvals. This bill is alarmingly short-sighted and could lead to some potentially terrible outcomes. Please defer this bill or consider amending it eliminate the measures for automatic approvals.

Thank You,

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

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 16, 2011 10:22 AM
To: PGM Testimony
Cc: kci@hawaii.rr.com
Subject: Testimony for HB376 on 3/17/2011 2:45:00 PM

Testimony for PGM/EDT 3/17/2011 2:45:00 PM HB376

Conference room: 224
Testifier position: oppose
Testifier will be present: No
Submitted by: Kim Isaak
Organization: Individual
Address:
Phone:
E-mail: kci@hawaii.rr.com
Submitted on: 3/16/2011

Comments:

Please address the real issue of inadequate resources to process permits and licenses verses automatic approval for pending development related permits and licenses. This law will set terrible precedence and establish very poor planning and development practices. The people do not want a few in power to define their future development priorities and landscapes. Thank you for your consideration.

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 16, 2011 12:57 PM
To: PGM Testimony
Cc: ndavlantes@aol.com
Subject: Testimony for HB376 on 3/17/2011 2:45:00 PM

Testimony for PGM/EDT 3/17/2011 2:45:00 PM HB376

Conference room: 224
Testifier position: oppose
Testifier will be present: No
Submitted by: Nancy Davlantes
Organization: Individual
Address:
Phone:
E-mail: ndavlantes@aol.com
Submitted on: 3/16/2011

Comments:

The concept behind this bill, which would automatically issue permits and approvals to business or developers if an agency doesn't meet a deadline, does not address the reasons for agency delay, which is a lack of adequate staffing. Instead, this bill would very likely punish the public with poor planning for which we all would be sorry. It's throwing the baby out with the bathwater.

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 16, 2011 5:17 PM
To: PGM Testimony
Cc: babyjean@hotmail.com
Subject: Testimony for HB376 on 3/17/2011 2:45:00 PM

Testimony for PGM/EDT 3/17/2011 2:45:00 PM HB376

Conference room: 224
Testifier position: oppose
Testifier will be present: No
Submitted by: Ronnie Perry
Organization: Individual
Address:
Phone:
E-mail: babyjean@hotmail.com
Submitted on: 3/16/2011

Comments:
I strongly oppose bill this bill.

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 17, 2011 12:03 AM
To: PGM Testimony
Cc: abaalto@gmail.com
Subject: Testimony for HB376 on 3/17/2011 2:45:00 PM

Testimony for PGM/EDT 3/17/2011 2:45:00 PM HB376

Conference room: 224
Testifier position: oppose
Testifier will be present: No
Submitted by: anthony aalto
Organization: Individual
Address:
Phone:
E-mail: abaalto@gmail.com
Submitted on: 3/17/2011

Comments:

Aloha Chairs Fukunaga and Espero and members of the committees Thank you for this opportunity to testify.

This bill has the potential to fast-track unwarranted or ill-considered development by creating an automatic approval mechanism to penalize government agencies that may not be able to respond expeditiously due to lack of funding and even lac of information from the developer.

This sort of automatic approval is poor legislation and will lead to poor planning and construction. I respectfully urge you to reject this bill.

Mahalo
anthony aalto