

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING
601 KAMOKILA BLVD STE 555
KAPOLEI HI 96707

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

**Before the House Committee on
FINANCE**

**Friday, February 22, 2013
11:00 AM
State Capitol, Room 308**

**In consideration of
HOUSE BILL 194, HOUSE DRAFT 1
RELATING TO HISTORIC PRESERVATION**

House Bill 194, House Draft 1 seeks to ensure that the State Historic Preservation Officer (SHPO) be a qualified historic preservation professional . . . who meets the professional qualification standards established by the United States Secretary of the Interior. House Bill 194, House Draft 1 also requires that the Governor notify the Speaker of the House and Senate President of the appointment and the appointee's identity and qualifications to serve in that position. This Bill also requires the SHPO be the Administrator of the State Historic Preservation Division (SHPD) and moves all exempt SHPD staff positions to Civil Service. The SHPO must also have professional experience with respect to historic preservation in Hawaii.

The Department of Land and Natural Resources (Department) opposes this bill for the following reasons:

1. Overall, this bill takes discretion away from the Governor in his or her ability to appoint a SHPO.
2. While the SHPO is usually the Chair of the Department, it is not required that the Chair also be the SHPO. However, if the SHPO is the Administrator of SHPD, there is the potential for instability in the Department as both positions are appointed by the Governor and under federal law, the SHPO has final signing authority on Federal projects.
3. The Department appreciates the change in HD1 that includes Hawaiian Studies majors. However, the Department notes that Hawaiian studies majors still do not meet the Secretary of Interior's professional standards, and therefore the language of this law conflicts with itself. The Department has included a copy of the Secretary of Interior's

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CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Professional Standards attached to this testimony. The Department suggests that the Legislature define the qualifications that would make the most sense for Hawaii.

4. The Department notes that there are no federal qualification requirements for the SHPO, nor is the SHPO always the administrator or director of a department in other states. This allows the Governor flexibility in naming a SHPO. There is however, a requirement for the SHPO's staff to meet the Secretary of Interior's standards. The Department feels that this requirement is more important as it ensures review staff are qualified.

NEIL ABERCROMBIE
GOVERNOR



BARBARA A. KRIEG
DIRECTOR

LEILA A. KAGAWA
DEPUTY DIRECTOR

STATE OF HAWAII
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235 S. BERETANIA STREET
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February 20, 2013

TESTIMONY TO THE
HOUSE COMMITTEE ON FINANCE

For Hearing on Friday, February 22, 2013
11:00 a.m., Conference Room 308

BY
BARBARA A. KRIEG, DIRECTOR

House Bill No. 194, H. D. 1
Relating to Historic Preservation

WRITTEN TESTIMONY ONLY

TO CHAIRPERSON SYLVIA LUKE AND MEMBERS OF THE COMMITTEES:

The purpose of HB 194, H. D. 1 is to strengthen the historic preservation division by requiring that the state historic preservation officer meet the required professional qualification standards established by the United States Secretary of the Interior, and by converting certain positions within the division to civil service status.

The Department of Human Resources Development (DHRD) has no position on the outcome of this bill, but offers **comments** regarding the conversion of exempt employees to civil service.

1. DHRD has policies and procedures in place for the appointment of exempt employees to replacement civil service positions; therefore, only those employees who are eligible for appointment to civil service positions without competition should be converted to civil service, in accordance with established policies and procedures.

In order to maintain consistency and fairness to all employees, we respectfully recommend that the language in Section 5 of the bill be replaced with the following:

“SECTION 5. Each position exempt from chapter 76, Hawaii Revised Statutes, assigned to the department of land and natural resources state historic preservation division, except for the division administrator position, shall be converted to civil service positions pursuant to chapter 76, Hawaii Revised Statutes. Employees who occupy exempt positions and are eligible to be appointed to replacement civil service positions without competition, shall be so appointed, and will serve an initial probation period, in accordance with established policies and procedures. Employees who are not eligible to be appointed to replacement civil service positions may apply through an open-competitive recruitment, if one is conducted. All employees who occupied exempt positions and are appointed to a civil service position shall not suffer any loss of vacation and sick leave credits previously earned, and other rights, benefits and privileges, in accordance with state personnel laws and this Act; provided that the employee possesses the minimum qualifications and public employment requirements for the class or position to which appointed; provided further that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.”

2. The conversion of exempt employees to civil service status will require the establishment of new civil service classes of work. To the extent that this bill would require the conversions to occur within a mandated timeframe, we currently lack the resources to accomplish this in a timely manner.

Thank you for the opportunity to provide comments on this measure.

TO: Representative Sylvia Luke, Chair
House Committee on Finance

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

HEARING: February 22, 2013, 11:00 AM, Conference Room 308, Agenda #1

SUBJECT: Testimony in SUPPORT of HB 194, HD 1, 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 testimony in strong support of HB 194, HD 1 which amends State law to require that the State Historic Preservation (SHP) Officer meet professional qualification standards established by the United States Secretary of the Interior, and also requires the Governor to give notice of the appointment of a SHP Officer to the legislature. In general, we believe that the proposed amendments will clarify and strengthen the professional qualifications required of the SHP Officer. In addition to requiring specific professional qualifications, training, and experience for the individual selected as SHP Officer, HB 194 also amends §6E-3(14) to require that professional staff hired to carry out the state's program in historic preservation be civil service, something that we have long advocated and that we believe will strengthen Hawai'i's SHP Office.

We testified on a previous version of the subject measure and are gratified to see that many of our suggested revisions were adopted by the House Committees on Water & Land and Energy & Environmental Protection. We also appreciate the recommended revisions proposed by the State Department of Human Resources Development that pertain to Section 5 of the bill and are pleased to see that much of this language has been added to HB 194, HD 1.

Thank you for considering our comments. We respectfully ask that HB 194, HD 1 be passed. We look forward to working with you and other stakeholders on strengthening and clarifying qualifications for the Hawai'i SHP Officer. Should you have any questions, please feel free to contact me at the above email address.



To: Rep. Sylvia Luke, Chair
Rep. Scott Y. Nishimoto, Vice Chair
Rep. Aaron Ling Johanson, Vice Chair
Committee on Finance

From: Kiersten Faulkner
Executive Director, Historic Hawai'i Foundation

Committee Date: Friday, February 22, 2013
11:00 a.m.
Conference Room 308

Subject: **HB 194 HD 1, Relating to Historic Preservation**

On behalf of Historic Hawai'i Foundation (HHF), I am writing in support of HB 194 HD1. The bill requires that the state historic preservation officer (SHPO) be the administrator of the state historic preservation division; that the SHPO meet professional qualification standards established by the United States Secretary of the Interior in a relevant discipline; and requires the governor to give notice of the appointment of a state historic preservation officer to the legislature. HHF does not have a position on Section 5, which would convert staff positions within the state historic preservation division to civil service positions.

Since 1974, Historic Hawai'i Foundation has been a statewide leader for historic preservation. HHF's 850 members and numerous additional supporters work to preserve Hawai'i's unique architectural and cultural heritage and believe that historic preservation is an important element in the present and future quality of life, economic viability and environmental sustainability of the state.

The State Historic Preservation Officer is the single most important person related to historic preservation in the state. Each state appoints its SHPO to be the decision-maker and advocate related to the sites, buildings, landscapes, districts and objects that are significant to the history of that state. The position is critically important for establishing and implementing a comprehensive historic preservation program that both initiates preservation actions (through planning, inventories, education, incentive and regulatory systems) and responds to proposals that may affect historic properties (through review of development proposals, capital improvements, tax credits and permits).

While the daily tasks and management of the state's historic preservation program are delegated to the administrator of the state historic preservation division and the professional staff, the leadership and priorities are set by the SHPO. The historic, cultural and natural resources of Hawai'i are its greatest legacy and irreplaceable treasures. Decisions that affect their protection, use, interpretation and perpetuation have irreversible and dramatic consequences. HHF strongly supports measures that lead to better decision-making and implementation to safeguard these resources.

Historic Hawai'i Foundation

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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.

STATE HISTORIC PRESERVATION OFFICERS & PROFESSIONAL QUALIFICATIONS

The National Historic Preservation Act of 1966, as amended, establishes a national program for the preservation of historic properties, and is based on a system of state-implemented historic preservation programs that meet the federal guidance and requirements. The national Act provides for the designation and appointment by the Governor of a “State Historic Preservation Officer” (SHPO) to administer each State’s historic preservation program in accordance with the Act [16 U.S.C. 470a(b)—State Historic Preservation Programs]. The Act provides for the “employment or appointment by such officer of such professionally qualified staff as may be necessary.”

The United States Department of the Interior is responsible for many of the stipulations in the National Historic Preservation Act and has adopted Professional Qualification Standards that define minimum education and experience required to perform identification, evaluation, registration and treatment activities in relationship to historic and cultural properties [36 CFR Part 61]. The Professional Qualification Standards include the areas of History, Archaeology, Architectural History, Architecture, and Historic Architecture. As a condition of being recognized as a qualified state program under the National Act, each State is required to employ adequate staff that meet the professional qualifications, and to ensure that the program elements and activities are conducted by the qualified preservation professionals (e.g. reviewing properties and projects to determine historic significance and impacts, and such topics as preservation planning, identification, evaluation, registration, historical documentation, architectural and engineering documentation, archaeological documentation, and treatment of historic properties).

The State of Hawai‘i has also established the position of State Historic Preservation Officer to be responsible for the state’s comprehensive historic preservation program and to meet the federal requirements [HRS §6E-5]. The Hawai‘i SHPO is appointed by the governor and “shall be appointed on the basis of professional competence and experience in the field of historic preservation and shall be placed in the department (of land and natural resources) for the purposes of the state program.”

STATE COMPARISONS

All of the States, Territories and the District of Columbia have Historic Preservation Officers (as do recognized Native American tribes). Of these, almost all preservation programs are located within another State unit, usually related to such areas as natural or cultural resource protection, environment, parks, culture, tourism, planning or economic development. Three of the states have established their State Historic Preservation Offices as an “independent agency.”

The SHPOs of 40 states are appointed by their governors, either directly or by law when they hold the title by virtue of being appointed to another position by the governor. The remaining 10 states have a variation of the process in which there is an interim step, usually another board or commission that makes the appointment or forwards the nominee to the governor for action. For those states where the historic preservation division or program is housed within a larger resource protection department, the title of SHPO may be held either by the department head, by the division head, or by a staff member within the division.

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Several States include general language related to qualifications, but only West Virginia specifically requires the SHPO to meet certain professional qualifications of education and experience.

HAWAII SHPO

Like most other States, Hawaii houses its historic preservation program within a larger resource protection agency, the Department of Land and Natural Resources. The Chairperson of DLNR is appointed by the Governor and confirmed by the Senate.

Hawaii's current practice is to designate the Chairperson of the Department of Land & Natural Resources as the State Historic Preservation Officer. The Chairperson/SHPO has final authority over the state's historic preservation program, but delegates the primary duties and functions to the Administrator of the State Historic Preservation Division. In turn, the Administrator hires preservation professionals to oversee the daily work, including historians, preservation architects, architectural historians, archaeologists, genealogists, and cultural experts. A certain number of staff positions are required to meet the Professional Qualification Standards as defined in federal regulations, at least for those activities and responsibilities required by federal law.

SHPO QUALIFICATIONS

It is vital that the personnel charged with implementation of the legal, regulatory and other functions of the office be qualified in their fields and meet the professional qualifications for their duties. It is also vital that the Chairperson/SHPO and the Administrator understand and support an effective and efficient preservation program, including supporting the professional judgments of the qualified staff members.

HB 194 HD1 would require that the title and responsibility of State Historic Preservation Officer be the Administrator of the State Historic Preservation Division rather than the Chairperson of its parent agency, the Department of Land and Natural Resources. The measure would further require that the SHPO/Administrator meet minimum qualifications of education and experience in a preservation-related field. HB 194 HD 1 would exempt the incumbent Administrator from this requirement, but would apply to future employees.

HHF recommends that the historic preservation program and its staff collectively meet professional qualifications and have relevant experience for leading Hawaii's historic preservation program. This will help to increase the credibility and expertise of the entire office by ensuring that professional qualifications are required of all the professional staff who are charged with implementation of the program. HHF also supports the intent of having the SHPO meet professional qualifications and have relevant experience for leading Hawaii's historic preservation program. By setting the standard for the top position, the entire historic preservation program could be elevated.

Thank you for the opportunity to comment.

ATTACHMENT: Chart of SHPO Comparisons by State (as of 2/6/13)

STATE HISTORIC PRESERVATION OFFICERS
Appointment Process Qualifications
February 6, 2013

STATE/TERRITORY	Location of State Historic Preservation Office	Selection Process for State Historic Preservation Officer (SHPO)	Status
Alabama	independent agency	governor appointee	at will
Alaska	Department of Natural Resources, Division of Parks and Outdoor Recreation, Office of History and Archaeology	Designated by governor; traditionally Chief of History and Archaeology	CEO of Historic Preservation Office is classified; but governor could appoint someone else SHPO
Arizona	Division of State Parks	Parks director appoints a committee to interview candidates; parks board recommends; governor designates	
Arkansas	Department of Heritage	governor appointee	at will
California	Natural Resources Agency, Department of Parks and Recreation, Office of Historic Preservation	appointed by governor, can apply for job	at pleasure of governor
Colorado	Department of Higher Education, State Historical Society state agency, Office of Archaeology & Historic Preservation	governor appoints	at will
Connecticut	Department of Economic & Community Development, Arts, Historic Preservation and Tourism	Deputy Commissioner SHPO appointed by governor, no statutory language	at will
Delaware	Department of State, Division of History & Cultural Affairs	governor appoints	
District of Columbia	Office of Deputy Mayor for Economic Development & Planning, Office of Planning, Historic Preservation Office	mayor appoints	
Florida	Department of State, Division of Historic Resources	SHPO runs Division of Historic Resources, appointed by governor on recommendation of Secretary of State	at will to Secretary of State
Georgia	Department of Natural Resources, Division of Historic Preservation	Department Secretary appointed by governor	at will
Hawaii	Department of Land and Natural Resources, Historic Preservation Division	SHPO is chair of the department, appointed by governor, confirmed by Senate. SHPO appoints administrator of Historic Preservation Division	at will
Idaho	Department of Idaho Historical Society	appointed by governor; may be director of historical society or not (director appointed by board of trustees)	at will
Illinois	Division w/in Department Archives and History	governor appointee	at will, hired by agency board, consent of governor
Indiana	Director of Department of Natural Resources; Deputy SHPO is Director of Division of Historic Preservation	governor appoints Director of Natural Resources as SHPO, by state statute	SHPO and all SHPO office professional staff at will
Iowa	Department of Cultural Affairs, unit of State Historical Society	Administrator of State Historical Society is SHPO, confirmed by governor	administrator at will of director of cultural affairs; staff merit
Kansas	Historical Society (state agency)	State law makes director of Historical Society SHPO	at will of governor, advised by Society board
Kentucky	Tourism, Arts & Heritage Cabinet, Heritage Council, Historic Preservation Office	governor appoints from 3 "qualified" nominees from Heritage Council	
Louisiana	Department Culture & Tourism	Department Head, appointed by Lt Gov who oversees the department	at will
Maine	Cultural Affairs Council, Historic Preservation Commission	Commission appoints Director, qualified by special training or experience in historic preservation, by law serves as SHPO on governor's appointment	
Maryland	Department of Planning, Division of History & cultural Programs, Maryland Historical Trust	governor appoints	at will
Massachusetts	Reports to elected Secretary of Commonwealth	Appointed by Secretary of Commonwealth; MA law designates MHC sole agency for SHPO duties	SHPO/Ex Dir state employee, may be fired for cause
Michigan	Housing Authority, board appointed by governor	Housing board appointed by governor; CEO serves as SHPO (title follows appointment)	SHPO at will, division director civil service
Minnesota	Historical Society (non profit organization)	SHPO CEO of MN HS by state law	SHPO at will, reports to MN HS Board
Mississippi	Department of Archives and History, Historic Preservation Division	Director = SHPO by custom	Architect/historian on self-perpetuating board, confirmed by Senate, director 6 yr contract
Missouri	Department of Natural Resources, Division of State Parks	Department head is SHPO; division director is Deputy SHPO by state law	both at will, pleasure of governor; confirmed by Senate; director of SHPO office merit
Montana	Montana Historical Society; Historic Preservation program	governor appoints SHPO from a list of 3 from Historical Society director and Board of Directors	SHPO at will
Nebraska	Historical Society (state agency)	traditionally NE Historical Society recommends, not required; governor appoints 3 of 15 members of Historical Society board	at will to Board
Nevada	Department of Conservation	governor appointee	SHPO at will, was merit
New Hampshire	Department of Cultural Resources, Historic Preservation Division	Commission does a search, recommends to governor, who nominates to Executive Council. SHPO heads historic preservation division	unclassified, 4-yr terms; may be fired for cause
New Jersey	Department of Environmental Protection	governor appoints; usually Commissioner of Department	Commissioner at-will; Deputy SHPO has some civil service protect
New Mexico	Department of Cultural Affairs, Historic Preservation Division	Department head appointed by governor; SHPO runs division and hired thru regular hiring process	at will
New York	Office of Parks, Recreation and Historic Preservation rec and hp	appointed by governor; SHPO is deputy commissioner	SHPO at will; DSHPO some civil service protection
North Carolina	Department of Cultural Resources, Office of Archives and History	SHPO=Deputy Secretary of Office of Archives and History, in consultation with Historical Commission	Department Sect exempt
North Dakota	Historical Society	Historical Society Director appointed by Board, serves as SHPO	
Ohio	Division of Historical Society (non-profit organization)	varied over time, from historical society executive director to historic preservation division head	CEO of historical society serves at pleasure of board, 9 of 21 board members appointed by governor
Oklahoma	Historical Society	governor designates historical society executive director as SHPO by state law	ED reports to OHS board
Oregon	Department of Parks and Recreation	appointed by governor, traditionally head of parks and rec; deputy runs historic preservation office	SHPO at will; deputy merit
Pennsylvania	History and Museum Commission, Bureau of Historic Preservation	SHPO is executive director of PHMC; hired by Commission and approved by governor.	DSHPO serve at pleasure of Governor
Rhode Island	stand alone office	appointed by governor	SHPO at will, Exec Director reports to commission of governor appointees
South Carolina	Department of Archives and History	governor appointee, director of department	state personnel laws include agency directors
South Dakota	Department of Tourism, Historic Preservation Division, Historical Society	Secretary of Tourism hires Director of Historical Society, subject to approval of Governor; historically governor appoints SHPO	Society Director, at will
Tennessee	Department of Environment and Conservation, Historical Commission	Appointed by Commission	
Texas	independent agency	governor appoints historic commission, who hires executive director; governor appoints SHPO	at will

STATE HISTORIC PRESERVATION OFFICERS
Appointment Process Qualifications
February 6, 2013

	STATE/TERRITORY	Location of State Historic Preservation Office	Selection Process for State Historic Preservation Officer (SHPO)	Status
46	Utah	Department of Heritage & the Arts, Division of State History	Department Director appoints Division Director with concurrence of Board of State History; qualified by education/training in state history	
47	Vermont	Agency of Commerce & Community Development, Department of Economic, Housing & Community Development, Division for Historic Preservation	Reports to commissioner of department	Selected by state hiring process, exempt employee
48	Virginia	Department of Natural Resources, Historic Preservation Agency	governor appoints director, serves as SHPO by state law	at will
49	Virgin Islands	Department of Planning and Natural Resources, Historic Preservation Division	governor appoints commissioner of department as SHPO, confirmed by legislature	at will
50	Washington	independent agency	Governor appoints, Senate confirms	at will
51	West Virginia	Division of Culture and History	governor appoints commissioner of division as SHPO, Senate confirms. Professional requirements	at will
52	Wisconsin	Historical Society	appointed by director of Historical Society	at will
53	Wyoming	Department of State Parks and Cultural Resources, Division of Cultural Resources		

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 20, 2013 3:54 PM
To: FINTestimony
Cc: MSMatson@hawaii.rr.com
Subject: Submitted testimony for HB194 on Feb 22, 2013 11:00AM

HB194

Submitted on: 2/20/2013

Testimony for FIN on Feb 22, 2013 11:00AM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
MS Matson	Individual	Support	No

Comments: Strongly support. SHPD must be administratively overhauled in accordance with federal laws and guidelines a) to properly upgrade and continue its work without fail, b) to benefit the greater public interest for present and future generations by protecting and preserving Hawai'i's irreplaceable ancient sites and cultural landscapes, and c) to ensure Hawai'i's legacy of culturally diverse historic sites publicly treasured over time. There must also be comprehensive recognition and complete recordation by SHPD of all Hawai'i's historic assets on each island to ensure their protection, preservation and restoration.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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