

HISTORIC HAWAII FOUNDATION

To: Rep. Cindy Evans, Chair
Rep. Nicole E. Lowen, Vice Chair
Committee on Water & Land

Rep. Chris Lee, Chair
Rep. Cynthia Thielen, Vice Chair
Committee on Energy & Environmental Protection

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

Committee Date: Friday, February 8, 2013
8:30 a.m.
Conference Room 325

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

On behalf of Historic Hawai'i Foundation (HHF), I am writing in support of the intent of HB 194. The bill requires that the historic preservation officer meet professional qualification standards established by the United States Secretary of the Interior, and requires the governor to give notice of the appointment of a state historic preservation officer to the legislature.

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 Hawaii'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 (SHPO) 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.

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

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 SHPO and the Administrator understand and support an effective and efficient preservation program, including supporting the professional judgments of the qualified staff members.

It is less clear whether the person of the SHPO absolutely has to be qualified in one of the preservation fields him/herself. If that were the case, either the Chairperson of DLNR would always be a preservation professional (rather than having other qualifications, such as in law, planning, land or water resource management); or the SHPO would not be the Chairperson of DLNR (for instance, the Administrator could be the designated SHPO). Either scenario would have implications for the overall management and oversight of the entire Department of Land & Natural Resources, not just the Historic Preservation Division.

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)

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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 SHPD 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	w/in Minnesota Historical Society (non profit org)	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	Historic Society	Historical Society Director appointed by Board, serves as SHPO	
Ohio	Division of Historical Society (non-profit)	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	Historical Society Department of Tourism, Historic Preservation Division	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		

lowen2-Anosh

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 07, 2013 8:16 AM
To: waltestimony
Cc: michael.j.golojuch@hawaii.gov
Subject: Submitted testimony for HB194 on Feb 8, 2013 08:30AM
Attachments: HB194_HRD_2-8-13_WAL_EEP_HistoricPreservation.pdf

HB194

Submitted on: 2/7/2013

Testimony for WAL on Feb 8, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara A. Krieg	Department of Human Resources Development	Comments Only	No

Comments: Please see written testimony.

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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TO: Representative Cindy Evans, Chair
House Committee on Water & Land

Representative Chris Lee, Chair
House Committee on Energy & Environmental Protection

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

HEARING: February 8, 2013, 8:30 AM, Conference Room 325

SUBJECT: Testimony in SUPPORT of HB 194, 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 general support of HB 194, 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 also have some additional comments and recommended revisions to the subject bill and provide them below.

Background

Section 6E-5, HRS, authorizes the Governor to appoint a "state historic preservation officer." This is required of all states wanting to participate in the nation-wide, Federal historic preservation program and to receive annual grant support from the Historic Preservation Fund that is administered by the National Park Service. Under Federal law (National Historic Preservation Act [NHPA], as amended, 16 U.S.C. 470 et seq.) and §6E-5, Hawaii Revised Statutes (HRS), the designated "state historic preservation officer" is responsible for ensuring that the state's comprehensive historic preservation program meets Federal program requirements and that the SHP Office is staffed with qualified professionals.

When the State of Hawaii chose to participate in the federal historic preservation program in 1976 and enacted legislation to enable Hawaii's participation, the Legislature envisioned a Hawaii SHP Officer who would be of "professional competence" and have "experience in the field of historic preservation" (section 6E-5, HRS). The amendments proposed in HB 194 generally serve to strengthen what the Legislature envisioned in 1976 by tying these qualifications to professional fields in historic preservation (architecture, architectural history, archaeology, and history) and closely related disciplines.

Recommended Revisions to HB 194

In general, we concur with and support the provisions of HB 194 with a few exceptions. First, the language in the first paragraph of Section 1 should be revised to portray more accurately the Hawai'i SHP Officer's responsibilities under Federal and State law. We propose the following revisions (suggested wording is underlined):

SECTION 1. The legislature finds that the state historic preservation officer's duties pursuant to the National Historic Preservation Act, as amended, (16 U.S.C. 470 et seq.) include reviewing nominations for the National Register of Historic Places and maintaining data on historic places in Hawaii that have not yet been nominated for the National Register of Historic Places. Pursuant to the National Historic Preservation Act, the state historic preservation officer also serves as the State's consultant to federal agencies regarding their historic preservation responsibilities in Hawaii

including determining the impact of Federal agency undertakings on properties that are listed on or eligible for listing on the National Register of Historic Places. Federal agencies also consult with the appropriate state historic preservation officer during their identification of historic properties and their assessment of the effect of an undertaking on a historic property.

Second, we recommend omitting the requirement to have any nominee for the position of SHP Officer undergo a Senate confirmation process, as proposed in the amendment to §6E-5 (a). While perhaps well intended, we believe that this proposal unnecessarily complicates what should be an appointment made primarily on the basis of professional qualifications and a demonstrated record of work in historic preservation in Hawai'i. We also note that the SHP Officer is not a cabinet-level position.

Third, we also recommend that the fields of specialization as described in proposed §6E-5(b)(1) specifically include Hawaiian Studies. Our suggested wording is as follows:

(b) Be a qualified historic preservation professional in architecture, architectural history, archaeology, history, Hawaiian studies, or a closely related field, who meets the professional qualification standards established by the United States Secretary of the Interior;

Fourth, the proposed amendments at §6E-5(c) do not correctly reflect the SHP Officer's responsibilities and role vis-à-vis the Federal government. We offer the following revisions which we believe more accurately describe the SHP Officer's role:

(c) The state historic preservation officer shall be the administrator of the state historic preservation division and shall be placed in the department for the purposes of the state program. The state historic preservation officer shall ensure that the division fulfills all the responsibilities of a State Historic Preservation Office as established under Federal law and regulation.

Thank you for considering our comments. 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.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION
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Testimony of
WILLIAM AILA, JR
Chairperson

Before the House Committee on
WATER & LAND

Friday, February 8, 2013
8:30 am
State Capitol, Conference Room 325

In consideration of
HOUSE BILL 194
RELATING TO HISTORIC PRESERVATION

House Bill 194 seeks to: (1) 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, (2) Require 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, and (3) Require that the SHPO be the Administrator of the Department of Land and Natural Resources' (Department) State Historic Preservation Division (SHPD) and also possess professional experience with respect to historic preservation in Hawaii. **The Department opposes this bill for the following reasons:**

1. The SHPO is usually the Chair of the Department. This ensures clarity in lines of reporting and authority. To have the SHPO be subordinate to the Chair, while also having ultimate signing authority blurs lines of authority and inserts instability into the Department's organizational chart. The Chair already goes through the Advice and Consent process of the Senate as stipulated under Section 26-34, Hawaii Revised Statutes.
2. The Department believes that these changes proposed in this bill could severely hamper its ability to hire a SHPO and sufficient professional and technical staff. First, there is a limited pool of people who meet the Secretary of Interior's (SOI) Standards in the State of Hawaii. SHPD has difficulty hiring archaeologists and both of its architectural historian and historic architect are from outside the State of Hawaii. Second, the Advice and Consent requirement will likely have a chilling effect on some SHPO candidates.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
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DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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CONSERVATION AND COASTAL LANDS
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

3. The SOI's Standards are limiting for Hawaii. For example, there are no standards for "culture." While the Department suggests adding people with degrees in Hawaiian studies, or significant knowledge of Hawaiian culture, these people however would not necessarily also meet the qualifications of the SOI.
4. The Department notes that there are no qualification requirements for the SHPO, nor is the SHPO always the administrator or director of a department in other states. In essence, this allows the Governor flexibility in naming a SHPO.