



HB1619
RELATING TO PROGRAMMATIC AGREEMENTS
House Committee on Water and Land

January 24, 2014

9:30 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) **STRONGLY SUPPORTS** HB1619, which is a bill in OHA's 2014 Legislative Package. HB1619 would amend the definition of a programmatic agreement in Hawai'i Revised Statutes Chapter 6E to ensure that programmatic agreements developed pursuant to the phased archaeological inventory survey review process established by Act 85 (Session Laws, 2013) are completed pursuant to the programmatic agreement requirements of the federal National Historic Preservation Act. This amendment ensures that the phased review process established under Act 85 is truly consistent with the thorough protections and planning mechanisms provided under federal law, as originally intended.

Broadly permissible phased archaeological review undermines the spirit of our state historic preservation laws and threatens valuable and irreplaceable historical resources, sites, and iwi kūpuna. Wherever possible, archaeological survey and review should be completed for the entire project area prior to permit approvals to provide the greatest opportunity to make any necessary adjustments to development plans and to plan for treatment of historical resources and iwi kūpuna. This comprehensive review process was established to fulfill the State of Hawai'i's vision to "provide leadership in preserving, restoring, and maintaining historic and cultural property...in a spirit of stewardship and trusteeship for future generations." This process was used successfully for over 30 years.

Act 85's stated purpose, which was reaffirmed by its proponents, is to establish a phased archaeological review process to "ensure consistency between state and federal law." However, Act 85 allows phased reviews for a far broader set of circumstances than those provided for by federal administrative regulations (36 CFR 800.4(b)(2) and 36 CFR 800.14(b)) and the guidelines for the phased review process under Act 85 are ambiguously defined. The most significant change offered by Act 85 is that it expands phased review provisions to a greater number of developers and projects without the detailed guidance for the phased review process delineated in federal regulation, which are necessary to preserve important historic sites.

HB1619 would provide better protection for iwi and wahi kūpuna by limiting the projects for which phased reviews could be used to those that are federally funded, under federal jurisdiction or require federal approval. This amendment would also require the projects accessing this process to follow the more thorough and well-established federal guidelines for phased reviews, rendering Act 85 truly consistent with federal processes as originally intended.

Therefore, OHA urges the committee to **PASS** HB1619. Mahalo for the opportunity to testify on this important measure.

TO: Representative Cindy Evans, Chair
Representative Nicole E. Lowen, Vice Chair
House Committee on Water & Land

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

HEARING: Friday, January 24, 2014 at 9:30 AM in Conference Room 325

SUBJECT: Testimony in SUPPORT of HB 1619, Relating to Programmatic Agreements

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. HB 1619 proposed to amend §6E-2, Hawaii Revised Statutes (HRS) by clarifying the definition of "programmatic agreement." The proposed amendment states that a programmatic agreement is to be prepared pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations." On behalf of SHA, I am providing testimony in support of HB 1619.

We believe that the proposed amendment will establish the correct context for the execution of programmatic agreements (PAs) by the State Historic Preservation Office (SHPO) on behalf of the State of Hawai'i. Programmatic agreements are normally prepared as part of historic preservation compliance pursuant to Federal, not State, law.

We agree with the proposed amendment and respectfully urge the committee to pass HB 1619 as worded.

Should you have any questions, please feel free to contact me at the above email address.

NEIL ABERCROMBIE
GOVERNOR



Testimony of
GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
FORD N. FUCHIGAMI
RANDY GRUNE
AUDREY HIDANO
JADINE URASAKI

IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

January 24, 2014
9:30 a.m.
State Capitol, Room 325

H.B. 1619
RELATING TO PROGRAMMATIC AGREEMENTS

House Committee on Water and Land

The Department of Transportation (DOT) **opposes this bill** and offers the following comments.

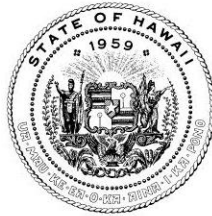
Section 6E of the Hawaii Revised Statutes (HRS) is a State law. The definition of “programmatic agreement” in HRS Section 6E-2 should not be pursuant to, or reference section 106 of the National Historic Preservation Act.

Currently, the State Historic Preservation Division under the Department of Land and Natural Resources has complete oversight on state-funded activities to ensure consistency with Section 6E of the HRS. Section 106, the federal counterpart of Section 6E, applies to activities involving a federal undertaking, where the lead federal agency has complete oversight.

Redefining the definition of “programmatic agreement” to include Section 106 or any federal laws will negatively impact project delivery for the DOT. For example, currently for a state-funded project, the Section 106 process is not required. Enacting this bill would require complying with both Sections 6E and 106. This may delay the advertising of state-funded projects in a timely manner. The intent of a programmatic agreement is to streamline the process to provide an efficient method in the project delivery.

Thank you for the opportunity to provide testimony.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

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

ESTHER KLA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
WILLIAM J. AILA, Jr.
Chairman**

**Before the House Committee on
WATER & LAND**

**Friday, January 24, 2014
9:30 AM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 1619
RELATING TO PROGRAMMATIC AGREEMENTS**

House Bill 1619 proposes to amend Section 6E-2, Hawaii Revised Statutes (HRS), by inserting reference to Section 106 of the National Historic Preservation Act into the definition of “programmatic agreement.” **The Department of Land and Natural Resources (Department) acknowledges the intent of this legislation, but believes it is unnecessary.**

House Bill 1619 proposes to amend Section 6E-2, HRS, to clarify the definition of “programmatic agreement” by inserting language to the effect that such an agreement must be entered into as an outcome of the process established under Section 106 of the National Historic Preservation Act.

- The Department believes that the current definition in Section 6E-2, HRS, is already quite clear.
- The Department is currently drafting rules to implement the phasing provisions adopted by the Legislature last year.
- The rules are based on the current statutory definition that requires compliance with federal laws.
- Projects subject to compliance with federal law must meet the requirements of Section 106 of the National Historic Preservation Act.
- These rules will soon be ready to start the public comment process.

The Department appreciates the opportunity to testify on House Bill 1619.

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

LATE

Uploaded via Capitol Website

January 24, 2014

TO: HONORABLE CINDY EVANS, CHAIR, HONORABLE NICOLE LOWEN,
VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON WATER
AND LAND

SUBJECT: **CONCERNS WITH H.B. 1619 RELATING TO PROGRAMMATIC
AGREEMENTS.** Amends the definition of "programmatic agreement" to specify
the federal law pursuant to which programmatic agreements must be developed.

HEARING

DATE: Friday, January 24, 2014
TIME: 9:30 a.m.
PLACE: Conference Room 325

Dear Chair Evans, Vice Chair Lowen and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over six hundred general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

The GCA is has concerns with H.B. 1619, which proposes to amend the definition of programmatic agreement in Section 6E-2, HRS by referencing Section 106 of the National Historic Preservation Act and its implementing regulations.

There is grave concern that the proposed amendment may hinder important and necessary state infrastructure projects. This proposed amendment is not necessary as the current statutory language, which was just amended last session, requires that state projects be in compliance with federal laws.

For these reasons, GCA respectfully requests that this Committee defer this measure.



LATE

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

FROM: Kiersten Faulkner, Executive Director
Historic Hawaii Foundation

Committee: Friday, January 24, 2014
9:30 a.m.
Conference Room 325

RE: HB 1619, Relating to Programmatic Agreements

On behalf of Historic Hawaii Foundation (HHF), I am writing in **support for HB1619**. The bill proposes to amend §6E-2, Hawaii Revised Statutes (HRS) by clarifying the definition of “programmatic agreement.” The proposed amendment states that a programmatic agreement is to be prepared pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations.

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.

Currently, the statute refers vaguely to “federal laws” when requiring a programmatic agreement to identify, assess and treat effects to historic properties. The amendment will provide the appropriate citation and reference to the National Historic Preservation Act.

Historic Hawai‘i Foundation supports this change and recommends approval. Thank you for the opportunity to comment.