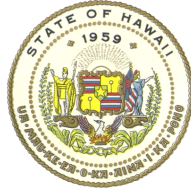


DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
FINANCE**

**Tuesday, March 2, 2021
12:00 PM**

State Capitol, Via Videoconference, Conference Room 308

**In consideration of
HOUSE BILL 821, HOUSE DRAFT 2
RELATING TO HISTORIC PRESERVATION**

House Bill 821, House Draft 2 proposes to: (1) authorize the Department of Land and Natural Resources (Department), in consultation with the Office of Hawaiian Affairs (OHA), to delegate to the impacted counties the responsibility for certain historic preservation project reviews, and also allow the Department to establish a program to certify third-party individuals and organizations to review documents for completeness and compliance with rule prior to submission of those documents to the Department; and (2) authorize the Board of Land and Natural Resources to adopt policies to govern these activities at a public meeting. **The Department supports this measure and offers comments.**

The proposed Section 6E-42(c), Hawaii Revised Statutes (HRS), in House Bill 821, House Draft 2 proposes to authorize the Department, in consultation with the OHA, to delegate to the impacted counties the responsibility for certain historic preservation project reviews, provided that the requirements of rules adopted to govern these activities are met. Section 6E-42, HRS, is essential to managing the places that embody Hawaii's unique historic and cultural heritage. Section 6E-42, HRS, requires state and county agencies to submit permits to the Department's State Historic Preservation Division (SHPD) for review when the permitting agency believes that the project has the potential to affect a historic property. Each year, SHPD receives thousands of permits and supporting reports and documentation for review.

In every other state in the Union, many of these reviews would be subject to review at the county or municipal level. Hawaii is unique in reserving to the state government the duty to carry out review and evaluation of potential effects to historic properties on all permits.

The Department believes that it is reasonable and appropriate to authorize the counties to assume responsibility for such reviews. Because the State of Hawaii places such a high value on its historic and cultural heritage, the Department believes that it is essential that there be a uniform

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
ACTING 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

program statewide, whether implemented at the state or county level. The people of Hawaii must be assured that these reviews are governed by a single set of rules and procedures, meeting a single set of standards. The program must provide for meaningful public participation regardless of whether the review is being carried out by the state or a county. Furthermore, it is essential that there be a single repository for all data on historic properties so that individuals will have a single place to look for that information, whether they are doing academic research, project planning, preparing reports and documentation supporting a project permit review, reviewing such documentation on behalf of the reviewing agency, or members of the public. The Department believes that House Bill 821, House Draft 2 as drafted ensures all of this.

The proposed Section 6E-42(f), HRS, in House Bill 821, House Draft 2 allows the Department to establish a program to certify third-party individuals and organizations to review documents for completeness and compliance prior to submission of those documents to the SHPD for review under Section 6E-42, HRS. Far too many submittals received by SHPD are incomplete, and many of the reports and documents submitted in support of permit review do not meet the minimum requirements set by rule. Such submittals must be rejected, returned, revised, and re-reviewed when resubmitted, sometimes more than twice. Such re-reviews comprise a significant portion of work carried out by SHPD, contributing to the backlog in permit reviews and delays in completing the Section 6E-42, HRS, review process.

Authorizing qualified third-party reviewers to review submittals before submission to SHPD should ensure that submittals that have undergone third-party review are complete and meet the requirements of rule. Third-party reviewers must be professionally qualified to review the documents submitted to them for review, thoroughly familiar with both contemporary reporting standards in their discipline, as well as the specific requirements of the applicable Hawaii Administrative Rules and be able to operate in a manner that is free of any conflict of interest.

The Department believes that House Bill 821, House Draft 2 as drafted ensures that third-party reviewers will be able to meet those standards.

Subsection (g) of House Bill 821, House Draft 2 proposes to direct the Board of Land and Natural Resources (BLNR) to adopt policies to govern this section at public meeting. Adoption of these policies is expressly exempt from Chapter 91, HRS. The current crisis has highlighted the need for the government of State of Hawaii to have greater flexibility in the rules and policies under which it operates than is possible under existing circumstances. The Department appreciates the intent of this provision in the measure, which would allow for more rapid responses. However, the Department believes that the process the BLNR will use to adopt rules should be clarified and suggests replacement of subsection (g) in the measure with the following language:

(g) Notwithstanding any other provision of law, the board of land and natural resources shall have the authority to adopt administrative rules or policies to implement this section. Adoption of such rules and policies is exempt from the requirements of chapter 91. Such rules and policies shall be adopted in accordance with the process set

forth below. All department of land and natural resources rules established by rule at the date of enactment may be deleted from the rule and adopted as an approved board of land and natural resources rule without the need to comply with the requirements of chapter 91 in deleting existing rules. Such rules and policies shall be subject to amendment or repeal in accordance with the process established in below:

- (1) The department of land and natural resources shall make available on the website of the department of land and natural resources each proposed rule and policy, together with the full text of the proposed rule or policy.
- (2) The department of land and natural resources shall post notice of consideration of proposed rule or policy 30 days prior to the board of land and natural resources meeting at which the rule or policy will be considered by the board of land and natural resources on the department of land and natural resources' website. The notice shall include:
 - (A) The full text of the proposed rule or policy; and
 - (B) The date, time, and place where the board of land and natural resources meeting will be held and where interested persons may provide written testimony or be heard on the proposed rule or policy adoption, amendment, or repeal.
- (3) The board of land and natural resources shall afford all interested persons opportunity to submit data, views, or arguments, orally or in writing. The board of land and natural resources shall fully consider all written and oral submissions respecting the proposed rule or policy. The board of land and natural resources shall make its decision at the public meeting.

- (4) Any administrative rule or policy hereafter adopted, amended, or repealed shall become effective ten days after adoption by the board of land and natural resources, or if the board of land and natural resources specifies a later effective date, the later date shall be the effective date.
- (5) The department of land and natural resources shall prepare a copy of the rule changes according to the ramseyer format and post this on the department of land and natural resources' website.

Thank you for the opportunity to comment on this measure.



HB821 HD2
RELATING TO HISTORIC PRESERVATION REVIEWS
Ke Kōmike Hale o ka ‘Oihana ‘Imi Kālā
House Committee on Finance

Malaki 2, 2021

12:00 p.m.

Lumi 308

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on HB821 HD2, which would 1) allow the State Historic Preservation Division (SHPD) to delegate to counties the responsibility for Hawai‘i Revised Statutes Chapter (HRS) 6E historic preservation project reviews, provided certain conditions are met; 2) allow SHPD to establish a program to certify third-party individuals and organizations who will be authorized to review documents for completeness and compliance with the SHPD’s requirements prior to submission of the documents to SHPD; and 3) specify that SHPD or county reviews or comments may not be later revoked, amended, or expanded unless there is an authorized physical change to the site that would render the review or comments invalid.

OHA appreciates the intent of this measure to assist SHPD with fulfilling its important kuleana, and further appreciates the inclusion of amendments to require consultation with OHA throughout the historic preservation review county delegation process, and in the proposed third-party certification program. However, **OHA still has concerns about language that will prohibit SHPD or a county from revoking, amending or expanding prior reviews or comments; this prohibition would deprive SHPD of its ability to ensure updated or modernized review of projects that may have been delayed for decades, including through the application of new information and techniques that could better help identify and protect important cultural sites and burials.**

OHA notes that SHPD does sometimes request that an updated archaeological inventory survey (AIS) or field inspection be completed when prior historic preservation review occurred many years or decades ago, and the underlying archaeological work utilized information, methods, or technologies that have now become outdated. Notably, as we move forward through time, advances in technology and archaeological methods allows for better site recordation and interpretation. The current Hawai‘i Administrative Rules are silent on the shelf life for an AIS, but do allow for SHPD to review whether or not adequate efforts have been made to identify historic properties. OHA believes that the lack of a specified shelf life is to allow SHPD to assess archaeological methods and technologies used in older archaeological work to see if any kind of updated work is needed.

Furthermore, subsequent archaeological work associated with other projects could have occurred on adjacent or nearby parcels to a previously surveyed site, with new findings that could affect site interpretation on the previously surveyed parcel. Accordingly, current

administrative rules allow SHPD to factor in findings from nearby or adjacent parcels when determining if any updated work is needed on a parcel even though historic preservation review may have been completed many years ago. Ultimately, OHA believes the current language in the bill, which may foreclose SHPD's consideration of new information in requesting additional historic preservation review work, has the potential to harm cultural sites and burials from situations that could be easily avoided.

As such, should the Committee choose to move this measure forward, OHA recommends that the language on page 5, lines 7-10, prohibiting the amendment, expansion, or revocation of reviews or comments be stricken from the bill, so that SHPD can decide whether or not adequate work has been done to identify historic properties and if any updates are needed as allowed for in its current administrative rules.

Mahalo nui loa for the opportunity to testify on this important measure.

Sandra-Ann Y.H. Wong

Attorney at Law, a Law Corporation

1050 Bishop Street, #514

Honolulu, Hawaii 96813

**TESTIMONY ON HB821, HD2
HOUSE COMMITTEE ON FINANCE
TUESDAY, MARCH 2, 2021 at NOON**

Aloha Chair Luke, Vice Chair Cullen, and Members of the Committee:

On behalf of Dowling Company, Inc, thank you for the opportunity to provide comments to HB821, HD2 which aims to provide a solution to the current backlog at the State Historic Preservation Division (“SHPD”). As noted in the bill, the backlog results in costly delays to affordable housing and other important construction projects.

Although we support the intent of the bill and strongly supported the HD1, we are opposed to the amendments that were included in the HD2 in regards to requiring “SHPD” to consult with a semi-autonomous self-governing body on the following: (i) as it delegates its authority under HRS Chapter 6E to the counties; (ii) in any written agreement between SHPD and a county memorializing the delegation of HRS Chapter 6E authority; and (iii) on the certification of 3rd party individuals and organizations who may conduct HRS Chapter 6E review. This extra layer of consultation will impede the bills original intent to provide a solution to the current backlog at the SHPD. Instead, this extra layer of consultation will add to the current backlog and may amplify the problem.

Therefore, we current request that the Committee amend the bill to its HD1 version.

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



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Thirty-First Legislature, State of Hawaii
House of Representatives
Committee on Finance

Testimony by
Hawaii Government Employees Association
March 2, 2021

H.B. 821, H.D. 2 – RELATING TO HISTORIC PRESERVATION

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly opposes the intent of H.B. 821, H.D. 2, specifically the language which allows the Department of Land and Natural Resources (DLNR) to establish a program to certify third-party individuals and organizations in consultation with the Office of Hawaiian Affairs, to review documents for completeness and compliance prior to submission of those documents to the department, provided certain requirements are met. Certifying a third-party for this function contradicts what has customarily and historically been performed by employees currently employed within the State Historic Preservation Division (SHPD). These employees meet the existing qualifications and standards established by the department and are capable of making independent determinations.

To address the backlog of projects needing review, the department should be making a stronger effort to recruit and fill the vacant positions that currently exist. One of the challenges the division faces with recruitment is the compensation being offered to potential candidates. The department has options to attract and retain applicants and should be considering alternatives within its policies rather than seeking outside third-party individuals and organizations.

Thank you for the opportunity to testify on H.B. 821, H.D. 2.

Respectfully submitted,

Randy Perreira
Executive Director

LATE *Testimony submitted late may not be considered by the Committee for decision making purposes.



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE HOUSE COMMITTEE ON FINANCE
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 308
TUESDAY, MARCH 2, 2021 AT 12:00 P.M.**

To The Honorable Sylvia Luke, Chair;
The Honorable Ty J.K. Cullen, Vice Chair; and
Members of the Committee on Finance,

COMMENTS ON HB821 HD2 RELATING TO HISTORIC PRESERVATION

Aloha, my name is Pamela Tumpap. I am the President of the Maui Chamber of Commerce, in the county most impacted by the COVID-19 pandemic in terms of our dependence on the visitor industry and corresponding rate of unemployment. I am writing share our comments on HB821 HD2.

The Maui Chamber of Commerce is a strong supporter of affordable housing and rentals and we appreciate the intent to expedite projects. We always think it is a good idea to hire third party consultants if SHPD is not able to complete work in a timely fashion. However, we have some reservations about delegating projects to the counties as we are unsure of their ability to address this and the cost to handle the level of work. We have reached out to our county and understand they are considering this bill at this time.

Mahalo for your consideration of our testimony.

Sincerely,

Pamela Tumpap

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.



**HOUSE COMMITTEE ON FINANCE
State Capitol, Via Videoconference
415 South Beretania Street
12:00 PM**

March 2, 2021

RE: HB 821 - RELATING TO HISTORIC PRESERVATION

Chair Luke, Vice Chair Cullen, and members of the committee:

My name is Beau Nobmann, 2021 President of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities we all call home.

BIA-Hawaii offers the following comments on HB 821, which authorizes the state historic preservation division, in consultation with the office of Hawaiian affairs, to delegate the responsibility of historic preservation project reviews to the impacted county and establish a program for third-party individuals and organizations to conduct document reviews on proposed projects.

BIA-Hawaii is generally in support of the intent to streamline SHPD review, however we oppose HB 821, as it will not accomplish this goal. As written the bill still requires SHPD review even after the third party review is complete. This seems to add another step to the existing process rather than streamline it. Our members' experience with third party review at other agencies that use this rule find that it creates no time saving unless the third party review replaces the agencies' review. Instead this measure seems to create the need for a new consultant to prepare applications to SHPD rather than actually act as a third party reviewer.

The state of Hawaii is in a dire housing crisis which has been further exacerbated by the ongoing pandemic situation. The building industry is one of the very few economic drivers in the state throughout the COVID pandemic, and giving them more opportunity to provide our residents with affordable housing would have a positive impact on our community.

We appreciate the opportunity to express our views on HB 821.