

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 Senate Committees on
WATER AND LAND
and
HAWAIIAN AFFAIRS**

**Tuesday, February 9, 2021
1:00 PM
State Capitol, Conference Room 016**

**In consideration of
SENATE BILL 510
RELATING TO HISTORIC PRESERVATION REVIEWS**

Senate Bill 510 proposes to 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 allows 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 requires adoption of rules adopted to govern these activities. **The Department supports this measure.**

Senate Bill 510 subparagraph (c) 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 effect 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 Senate Bill 510 as drafted ensures all of this.

Senate Bill 510 subparagraph (f) 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, 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 Senate Bill 510 as drafted ensures that third-party reviewers will be able to meet those standards.

Thank you for the opportunity to comment on this measure.



LATE

SB510

RELATING TO HISTORIC PRESERVATION REVIEWS

Ke Kōmike ‘Aha Kenekoa o ke Ki‘ina Hana a me nā Kumuwaiwai
Ke Kōmike ‘Aha Kenekoa o ke Kuleana Hawai‘i

Pepeluali 9, 2021

1:00 p.m.

Room 016

The Administration of the Office of Hawaiian Affairs (OHA) will recommend that the Board of Trustees **SUPPORT WITH AMENDMENTS** SB510, which will allow the State Historic Preservation Division (SHPD) to 1) in consultation with OHA, delegate to counties the responsibility for Hawai‘i Revised Statutes Chapter (HRS) 6E historic preservation project reviews, with exceptions and provided that certain requirements are met; and 2) establish a program to certify third-party individuals and organizations who will be authorized to review documents for completeness and compliance with the Department’s requirements prior to submission of the documents to SHPD.

This measure will allow SHPD to delegate some authority to external agents to more effectively fulfill its important kuleana while ensuring that longstanding statutory 6E protections for historic sites and burials will be upheld. OHA especially emphasizes that SB510 reaffirms the unique expertise and authority of the Island Burial Councils relating to Native Hawaiian burials, pursuant to HRS § 6E-43, -43.5 and -43.6, and their implementing regulations, precluding any delegation of the Councils’ responsibilities pertaining to Native Hawaiian burials.

OHA supports this measure as a means to improve administrative efficiency, and OHA seeks to help improve protections for irreplaceable Native Hawaiian cultural sites and burials. As such, OHA respectfully requests the opportunity to offer its own expertise to the Department at two critical points in the proposed delegation process. OHA offers two amendments to require Department to consult with OHA regarding **1) the scope of the delegation of authority to counties, to be memorialized via a written agreement; and 2) the certification of third-parties who may conduct HRS Chapter 6E document review.**

1) OHA should be consulted on the scope of delegation of historic preservation authority to the impacted counties via a written agreement.

Any delegation of historic preservation review authority to the counties should be memorialized in a written agreement with OHA as a consulting party. As the state agency mandated to assess the policies and practices of other state agencies for possible impacts to Native Hawaiians, OHA has been an important partner to SHPD for the last three decades. OHA has a vested interest in any long-term changes to the historic preservation review process. OHA seeks continued involvement in historic preservation review to help prevent inappropriate or inconsistent treatment of irreplaceable Hawaiian cultural resources and burial sites. **Including OHA as a consulting party to written agreements delineating new county authority will allow**

OHA to help guide requirements relating to Native Hawaiian cultural sites and better monitor County performance.

Accordingly, OHA respectfully requests an amendment to the language on page 4, lines 10-11, to require that OHA be a consulting party to any written agreements to memorialize the delegation of authority to the counties, to read as follows:

“(6) Entered into a written agreement with the department and in consultation with the Office of Hawaiian Affairs memorializing the scope of delegation to the county;”

2) OHA should be consulted on the certification of third-party individuals and organizations who may be certified to conduct HRS Chapter 6E document review.

By consulting on the certification of potential third-party reviewers of historic preservation review documents, OHA will provide an additional safeguard for Native Hawaiian cultural resources and burial sites. Third-party reviewers can review documents for completeness and compliance with Department requirements, improving efficiency and allowing the Department to focus on its more important kuleana. To maximize the effectiveness of third-party review, it is critical that third-party reviewers be competent and responsible professionals with the requisite expertise. HRS Chapter 6E and its implementing regulations include standards for consultation on sites of importance to Native Hawaiians that are not considered or governed by archaeological methods. Therefore, specialized knowledge is required to adequately review historic preservation documents. With three decades of experience working with local archaeological firms, as well as extensive historic preservation process and mālama iwi practice expertise, OHA may offer unique insights to the certification of those who would fulfill this important role. OHA can help SHPD identify firms and individuals who have exercised the highest standards of care and professionalism toward the Native Hawaiian community and their cultural resources and ancestral burials. Accordingly, OHA respectfully requests amending page 5, lines 5-15 to require consultation with OHA for certification of third-party reviewers to whom HRS Chapter 6E review responsibilities may be delegated, to read as follows:

“(f) The department may establish a program to certify third-party individuals and organizations to review documents prior to submission of the documents to the department for review. Certification of third-party individuals and organizations shall be done in consultation with the office of Hawaiian affairs. A review by a third-party shall ensure that the information submitted is complete and complies with the department’s documentation requirements, that any accompanying data and analysis supports recommendations made in the submission, and that the project reviewed complies with all of the requirements imposed by the department and this chapter. Third-party reviewers certified by the department shall satisfy the following requirements:”

Accordingly, OHA urges the Committees to **PASS WITH AMENDMENTS** SB510. Mahalo nui loa for the opportunity to testify on this important measure.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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

LATE

The Thirtieth Legislature, State of Hawaii
The Senate
Committee on Water and Land
Committee on Hawaiian Affairs

Testimony by
Hawaii Government Employees Association

February 9, 2021

S.B. 510 – RELATING TO HISTORIC PRESERVATION REVIEWS

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly opposes the purpose and intent of S.B. 510, which proposes to allow the Department of Land and Natural Resources (DLNR) to outsource certain document review functions. These duties have historically and customarily been performed by employees of the State Historic Preservation Division (SHPD). These employees are qualified and capable of making independent determinations of document completeness and compliance.

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. As a start, the Department should increase the advertised compensation for these positions, to be competitive in the job market for new candidates. There are options to attract and retain applicants and these alternatives within state policies should be utilized rather than seeking to outsource this function to third-party individuals and organizations.

Thank you for the opportunity to testify on S. B. 510.

Respectfully submitted,

Randy Perreira
Executive Director

HISTORIC HAWAII FOUNDATION

TO: Senator Lorraine R. Inouye, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Committee on Water and Land (WTL)

Senator Maile S.L. Shimabukuro, Chair
Senator Jarrett Keohokalole, Vice Chair
Committee on Hawaiian Affairs (HWN)

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

Committee: Tuesday, February 9, 2021
1:00 p.m.
Via Video Conference/Conference Room 016

RE: SB 510, Relating to Historic Preservation Reviews

On behalf of Historic Hawai'i Foundation (HHF), I am writing **with comments on SB 510**. The bill relates to the duties of the State Historic Preservation Division of the Department of Land and Natural Resources for historic preservation reviews prior to any approvals being issued for development projects.

SB 510 would provide a means to delegate the State Historic Preservation Division's responsibilities to the Counties for actions conducted in accordance with HRS 6E-42 (Review of Proposed Projects). The bill establishes specific criteria and conditions under which such a delegation of authority could occur and continue. These conditions include SHPD certifying that the County has:

- Adopted an ordinance to govern the review process, consistent with State statute and administrative rules;
- Hired qualified professional staff who meet standards to conduct the reviews;
- Established internal controls to ensure independent determinations regarding effects of projects on historic properties;
- Ensured measures are taken against conflicts of interest and appearance of conflicts of interest;
- Provided for public notification; and
- Entered into a written agreement to memorialize the delegation of authority.

In addition, the delegation of authority would not apply to projects affecting properties listed in the Hawai'i or National Registers of Historic Places, nor would it apply to projects reviewed pursuant to HRS 6E-43 (prehistoric and historic burial sites).

The bill also would allow SHPD to certify third-party individuals and organizations to review documents prior to submitting to the documents to SHPD for review. Such a pre-review step would be for a check on completeness and compliance with document standards. The bill states that such third-party reviews would require:

- Staff who meet professional qualifications and standards;
- Sufficient internal controls to ensure qualified professional staff can make independent determinations and function in a manner that does not create a conflict or appearance of a conflict of interest; and
- The third-party reviewers must be independent from the party that drafted or generated the documents.

HISTORIC HAWAII FOUNDATION COMMENTS

HHF does not have a concern with the proposed conditions and criteria under which a County could assume primary responsibility for conducting historic preservation reviews. The conditions are reasonable and establish checks and balances to ensure that such a county-level program would be conducted by qualified professionals and in accordance with clear standards and guidelines.

However, we note that the State already has a mechanism to accomplish a partnership between the State and its subdivisions for the purposes of historic preservation: the Certified Local Government (CLG) program. This partnership between federal, state and local jurisdictions was authorized by the National Historic Preservation Act and enabled by HRS 6E-14 and -15. Three counties (Hawai'i, Kaua'i and Maui) are established CLGs.

The criteria to qualify and remain a CLG include:

- Enforce Appropriate State or Local Legislation for the Designation and Protection of Historic Properties
- Establish an Adequate and Qualified Historic Preservation Review Commission by State or Local Legislation
- Maintain a System for the Survey and Inventory of Properties that Furthers the Purposes of the Act
- Provide for Adequate Public Participation in the Local Historic Preservation Program
- Satisfactorily Perform the Responsibilities Delegated to it Under the Act
- Provide Statistics for Annual Reporting Requirements

It appears that the only changes between the status quo and the proposed bill is whether or not a County's enabling ordinance explicitly includes the authority to conduct project reviews for compliance with HRS 6E-42, and whether the County commits to hiring, training and retaining qualified staff members to implement such a program.

The section of the bill related to third-party reviews is ambiguous. HHF does not object to establishing a process and procedure by which the quality and completeness of submittals is improved. But it is unclear why specific legislative action is needed in order for a state agency to establish a screening process to check if a submittal follows formatting and content requirements, including whether the analysis supports the recommendations.

Would such a third-party review be part of SHPD's program, a County program or an Applicant's responsibility? The bill implies that SHPD would have a certified list of individuals or organizations who are qualified to screen submittals and note if they are complete. Certainly, complete and accurate submittals are necessary for reviewers to be able to assess a project and its effects. It is unclear why legislative authority is needed to require complete information for an agency to conduct its statutory responsibilities. This appears to be a function that should be integrated into standard operating procedures, submittal requirements and guidelines, and rules or regulations.

In short, HHF does not object to the sections of the bill related to historic preservation reviews, but is confused about why the issues are not addressed by means of existing programs and authorities, and by means of providing adequate professional staffing and resources at both the State and County levels.

Thank you for the opportunity to comment.



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

LATE

**HEARING BEFORE THE SENATE COMMITTEE ON WATER & LAND AND
THE COMMITTEE ON HAWAIIAN AFFAIRS
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 016
TUESDAY, FEBRUARY 9, 2021 AT 1:00 P.M.**

To The Honorable Lorraine R. Inouye, Chair;
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair; and
Members of the Committee on Water & Land,

To The Honorable Maile S. L. Shimabukuro, Chair;
The Honorable Jarrett Keohokalole, Vice Chair; and
Members of the Committee on Hawaiian Affairs,

COMMENTS ON SB510 RELATING TO HISTORIC PRESERVATION REVIEWS

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 SB510.

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.

LATE

TO: Senator Lorraine R. Inouye, Chair
Committee on Water and Land

Senator Gilbert S.C. Keith-Agaran , Vice Chair
Committee on Water and Land

Senator Maile S.L. Shimabukuro, Chair
Committee on Hawaiian Affairs

Senator Jarett Keohokalole, Vice Chair
Committee on Hawaiian Affairs

FROM: Alana K. Pakkala

SUBJECT: HEARING OF FEBRUARY 9, 2021; TESTIMONY IN SUPPORT OF SB 510
RELATING TO HISTORIC PRESERVATION REVIEWS

Thank you for the opportunity to submit testimony in **support** of this important measure. The protection and preservation of State's historic lands and its significant sites and artifacts are extremely important to the entire community of Hawaii. The need for review and approval to meet the demand for construction and improvements to infrastructure, without the proper review and approval can result in improper historic preservation of sacred grounds and sites. While it is truly important to preserve the land, the delegation of archaeology review and establishment of third party review for the State Historic Preservation Division workload, provided a certification program is set up, will relieve the backlog and help meet the demand for housing and critical infrastructure.

I commend the legislature for recognizing measures needed to be undertaken to alleviate our state's need of affordable housing.