

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
WATER AND LAND
And
HOUSING**

**Tuesday, February 9, 2021
9: 15 AM
State Capitol, Conference Room 430**

**In consideration of
HOUSE BILL 821
RELATING TO HISTORIC PRESERVATION REVIEWS**

House Bill 821 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.**

House Bill 821 subparagraph (c) would 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, Hawaii Revised Statutes (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

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

historic and cultural heritage, the Department believes that it is essential that there be a uniform 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 as drafted ensures all of this.

House Bill 821 subsection (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 House Bill 821 as drafted ensures that third-party reviewers will be able to meet those standards.

Thank you for the opportunity to comment on this measure.

Sandra-Ann Y.H. Wong

Attorney at Law, a Law Corporation

1050 Bishop Street, #514

Honolulu, Hawaii 96813

**TESTIMONY IN SUPPORT OF HB821
HOUSE COMMITTEE ON WATER AND LAND
TUESDAY, FEBRUARY 9, 2021 at 9:15 A.M.**

Aloha Chair Tarnas, Vice Chair Branco, and Members of the Committee:

Thank you for the opportunity to provide testimony in support of HB821 which aims to provide a solution to the current backlog at the State Historic Preservation Division. As noted in the bill, the backlog results in costly delays to affordable housing and other important construction projects.

To make the solution even more effective in solving the backlog issue, I would like to offer a friendly amendment. I request that the Committee add a new provision between your proposed subsection (d) on p. 4 to read:

“(e) All comments by the department or county under (a) or (c) above shall be made in writing and promptly transmitted to the agency or officer of the State having project approval authority and may not be thereafter revoked, amended or expanded in the absence of an unauthorized physical change to the site that would render said comments invalid.”

The proposed amendment, with the rest of the bill, will do the following:

1. It will expedite the review process;
2. It will make things more transparent;
3. Fairness, it will ensure that the rules of the game are not changed mid-stream. Developers rely on these comments in making their decisions to invest, and it is unfair for the developer to have the comments revoked, amended, or expanded if there has been no unauthorized physical change to the site;
4. It will reduce the cost of housing in Hawaii; and
5. It will encourage more investment in housing in Hawaii which is good for our citizens and our economy.

Thank you for the opportunity to testify in support of this measure.

Everett R. Dowling
2005 Main Street
Wailuku, Hawaii 96793

February 7, 2021

Rep. David Tarnas
Chair
Committee on Water and Land
Hawaii State Capitol, Room 430
415 South Beretania Street
Honolulu, HI 96813

Dear Rep. Tarnas,

Thank you for the opportunity to provide testimony in support of HB821 which aims to provide a solution to the current backlog at the State Historic Preservation Division. As noted in the bill, the backlog results in costly delays to affordable housing and other important construction projects.

To make the solution even more effective in solving the backlog issue, I would like to offer a friendly amendment. I request that the Committee add a new provision between your proposed subsection (d) on p. 4 to read:

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The proposed amendment, with the rest of the bill, will do the following:

1. It will expedite the review process;
2. It will make things more transparent;
3. Fairness, it will ensure that the rules of the game are not changed on the developer mid-stream. Developers rely on these comments in making their decisions to invest, and it is unfair for the developer to have the comments revoked, amended, or expanded if there has been no unauthorized physical change to the site;
4. It will reduce the cost of housing in Hawaii; and
5. It will encourage more investment in housing in Hawaii which is good for our citizens and our economy.

Best Regards,

Everett Dowling

Everett Dowling



LATE

TO: Representative David A. Tarnas, Chair
Representative Patrick Pihana Branco, Vice Chair
Committee on Water & Land (WAL)

Representative Nadine Nakamura, Chair
Representative Troy N. Hashimoto, Vice Chair
Committee on Housing (HSG)

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

Committee: Tuesday, February 9, 2021
9:15 a.m.
Via Video Conference/Conference Room 430

RE: HB 821, Relating to Historic Preservation

On behalf of Historic Hawai'i Foundation (HHF), I am writing **with comments on HB 821**. The bill relates to the duties of the Department of Land and Natural Resources for historic preservation reviews prior to any approvals being issued for development projects.

HB 821 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.



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 Water & Land
Committee on Housing

Testimony by
Hawaii Government Employees Association
February 9, 2021

H.B. 821 – RELATING TO HISTORIC PRESERVATION

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly opposes the purpose and intent of H.B. 821, 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 H.B. 821.

Respectfully submitted,

Randy Perreira
Executive Director



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

LATE

**HEARING BEFORE THE HOUSE COMMITTEE ON HOUSING AND
COMMITTEE ON WATER & LAND
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 430
TUESDAY, FEBRUARY 9, 2021 AT 9:15 A.M.**

To The Honorable Nadine K. Nakamura, Chair;
The Honorable Troy N. Hashimoto, Vice Chair; and
Members of the Committee on Housing,

To The Honorable David A. Tarnas, Chair;
The Honorable Patrick Pihana Branco, Vice Chair; and
Members of the Committee on Water & Land,

COMMENTS ON HB821 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.

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 these 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.