

SOCIETY FOR HAWAIIAN ARCHAEOLOGY

P.O. BOX 22458 HONOLULU, HAWAII 96823

TO: Senator Donovan Dela Cruz, Chair
Senator Gilbert Keith-Agaran, Vice Chair
Committee on Ways and Means (WAM)

FROM: Mara Mulrooney, Ph.D.
President, Society for Hawaiian Archaeology
membership@hawaiianarchaeology.org

HEARING: February 24, 2022, 10:00 AM, Conference Room 211 & Videoconference

SUBJECT: Testimony regarding SB 3135, Relating to Historic Preservation Reviews

I am Mara Mulrooney, President of the Society for Hawaiian Archaeology (SHA). We have over 150 members including professional archaeologists and advocates of historic preservation. On behalf of SHA, **we oppose SB 3135.**

The intent of SB 3135 is to transfer authority for certain reviews of projects in conjunction with section 6E-42, Hawaii Revised Statutes, from the Department of Land and Natural Resources to the Counties. Provides financial assistance to the Counties to hire qualified staff to conduct the reviews.

The State Historic Preservation Division has not been able to retain sufficient qualified staff members to conduct historic preservation reviews of projects. SB 3135 is intended to assist with remedying this by delegating reviews to qualified staff at the county level. While we agree that the SHPD needs assistance, we oppose SB 3135 for the following reasons:

- 1) Decentralizing the review process under chapter 6E has the potential to result in inconsistencies and could lead to a lack of consensus between different reviewing bodies (the State and the Counties).
- 2) If reviews are delegated to the county level, the counties would need to have access to all of the resources (correspondence, library, etc.) at SHPD to complete comprehensive reviews. These files are not currently digitized, meaning that gaining access to them by county reviewers would pose a considerable challenge.
- 3) The suggested one-time monetary appropriation is not sufficient to set up the structure to make this arrangement feasible, and funds would need to be allocated on an annual basis to maintain such a program.
- 4) In order to be effective, SB 3135 would require the hiring and retention of qualified archaeologists and architects. SHPD has been unable to recruit and retain qualified staff, and this challenge would likely be experienced at the county level as well.

We suggest that additional support be provided to SHPD to address their current challenges prior to any consideration of the delegation of historic preservation reviews.

Should SB 3135 pass out of this committee, we request to be consulted as a stakeholder in future deliberations on an amended bill. Should you have any questions, please feel free to contact me at the above email.

Mahalo for the opportunity to comment.

<https://hawaiianarchaeology.org/>

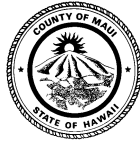
The Society for Hawaiian Archaeology is a registered tax-exempt organization established in 1980 to promote and stimulate interest and research in the archaeology of the Hawaiian Islands, encourage a more rational public appreciation of the aims and limitations of archaeological research, serve as a bond among those interested in Hawaiian archaeology, both professionals and non-professionals, and aid in directing their efforts into more scientific channels as well as encourage the publication of their results, advocate and assist in the conservation of archaeological data, discourage unethical commercialism in the archaeological field and work for its elimination.

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COUNTY COUNCIL
COUNTY OF MAUI
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WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

February 22, 2022

TO: Honorable Donovan M. Dela Cruz, Chair
Senate Committee on Ways and Means

FROM: Alice L. Lee
Council Chair

DATE: February 22, 2022

SUBJECT: **SUPPORT FOR SB 3135, SD1, RELATING TO HISTORIC
PRESERVATION REVIEWS**

Thank you for the opportunity to testify in **SUPPORT** of this important measure. The purpose of this measure is to transfer authority and appropriate funds for certain reviews of projects in conjunction with Section 6E-42, Hawaii Revised Statutes, from the Department of Land and Natural Resources to counties.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

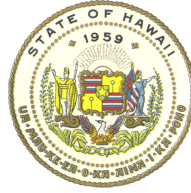
I **SUPPORT** this measure for the following reasons:

1. The County of Maui recently hired an archeologist to improve management and oversight of historic preservation reviews with the intent to protect environmental resources and our cultural history.
2. Hawaii is the only state that does not require historic preservation reviews at the county or municipal level.
3. This measure appropriates funding for administrative staffing to assist with historic preservation reviews, which is needed to ensure success.

For the foregoing reasons, I **SUPPORT** this measure.

ocs:proj:legis:22legis:testimony:sb3135_sd1_paf22-018(55)a_jbf

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committees on
WAYS AND MEANS**

**Thursday, February 24, 2022
10:00AM**

State Capitol, Conference Room 211, Via Videoconference

**In consideration of
SENATE BILL 3135, SENATE DRAFT 1
RELATING TO HISTORIC PRESERVATION REVIEWS**

Senate Bill 3135, Senate Draft 1 proposes to amend Section 6E-42, Hawaii Revised Statutes (HRS), to delegate most historic preservation reviews under Section 6E-42, HRS, to the various counties. **The Department of Land and Natural Resources (Department) fully supports this Administration measure and offers comments.**

Senate Bill 3135, Senate Draft 1 correctly notes that Hawai'i is the only state in the Union that reserves to the state government authority to carry out reviews of county permits for their potential effects on historic properties. In all other states such reviews are reserved to local levels of government, i.e., the municipalities, or counties. The Department believes that the delegation proposed by this measure is entirely appropriate.

The Department believes that it is essential that the processes implemented by various counties be uniform and that there is consistency in the Section 6E-42, HRS, review process across the state compliant with the processes set forth in the relevant Hawaii Administrative Rules. The Department believes that Senate Bill 3135, Senate Draft 1 provides the basis for ensuring just such consistency.

Senate Bill 3135, Senate Draft 1 SECTION 2 amends Section 6E-42, HRS, to propose to authorize a county preservation officer to carry out most Section 6E-42, HRS, reviews. Reviews for projects that might affect properties listed in or nominated for inclusion in the Hawaii or National Registers of Historic Places or occurring in designated historic districts would be reserved to the Department.

Senate Bill 3135, Senate Draft 1 proposes to establish a two-step process for accomplishing the delegation to the counties. The first step requires each county to establish a program that meets the requirements detailed in the measure to assume Section 6E-42, HRS, review authority. Senate Bill 3135, Senate Draft 1 proposes to appropriate an unspecified amount of funds to help the Counties defray the expenses incurred during this planning and development process in the first year after enactment, which is the final year of the current biennium. The Department notes that the counties will certainly have annual operating expenses for this program that will have to be covered by appropriations from future budgets. Senate Bill 3135, Senate Draft 1 also allows the Department to retain up to 10 percent of the funds appropriated to the counties for cover expenses associated with administering the appropriation to the Counties. The Department appreciates the inclusion of this provision.

Senate Bill 3135, Senate Draft 1 SECTION 2 also proposes to authorize the Department to establish a program to certify third-party reviewers who would be authorized to review documentation for accuracy, completeness, and compliance with the minimum requirements of the Department's administrative rules. Senate Bill 3135 Senate Draft 1 revised subsection (e) appears to require the Department to directly employ the certified third-party reviewers, and limits them to working until the backlog is reduced to a level that can be resolved by Department staff without the continuing assistance of the third-party reviewers.

As originally drafted in Senate Bill 3135, the Department understood that the third-party reviewer program would be implemented by parties external to the Department and that the third-party reviewers would be hired and paid directly by permit applicants. The Department understood this program would apply to projects prior to submission to the Department for review, and that it would be an ongoing program. As originally drafted, the Department did not envision third-party review as a way to resolve the current review backlog. Neither this measure nor the Governor's budget appropriates funds for the Department to cover such expenses should the intent be for the Department to directly employ the third-party reviewers. The Department also notes that even if the Legislature wished to fund Department contracting with third-party reviewers, the Department cannot, at this time, provide the Legislature with an estimate of what employment of third-party reviewers just to reduce the backlog to a manageable level would cost.

As originally envisioned in Senate Bill 3135, the third-party review program was intended to ensure that project submittals are complete, and compliant with the requirements of rule prior to submission to the Department. The Department supports this provision as originally drafted and recommends that Senate Bill 3135, Senate Draft 1 be revised (highlighted in yellow) on page 6 to return the third-party review provisions to the language as originally drafted as follows:

(e) The department may establish a program to certify third-party individuals and organizations to review documents before submission of the documents to the department or designated county preservation officer for review to ensure consistency. [Third-party reviewers shall be utilized to address backlogs within the department and may be released once the volume of permits reaches a manageable level for the existing department staff

to review.] Certification of third-party individuals and organizations shall be done in consultation with the office of Hawaiian affairs.

Thank you for the opportunity to comment on this measure.



TO: Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Committee on Ways and Means (WAM)

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

Committee: Thursday, February 24, 2022
10:00 a.m..
Via Video Conference/Conference Room 211

RE: **SB 3135 SD1, Relating to Historic Preservation Reviews**

On behalf of Historic Hawai'i Foundation (HHF), I am writing **with comments on SB 3135 SD1**. 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.

SB 3135 SD1 would provide a means to delegate the State Historic Preservation Division (SHPD) 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;
- Provide that an administrative record is kept; 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; and
- 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.

We also note that while the bill would shift the responsibility for some historic preservation reviews from the State to the Counties, SHPD would still need to oversee and ensure that the Counties comply with the conditions, including promulgating rules for the delegation of authority and enforcement of its terms. It is unlikely that standing up a new program at the State and for all of the Counties could be achieved within six months by the proposed deadline of January 2023. To achieve the bill's terms, SHPD and all four Counties would need to complete rule-making; establish administrative procedures; establish new professional positions; recruit, hire and train new staff; and take other actions to effectuate the 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.

SB-3135-SD-1

Submitted on: 2/23/2022 10:57:28 AM

Testimony for WAM on 2/24/2022 10:00:00 AM



Submitted By	Organization	Testifier Position	Remote Testimony Requested
Sara Collins	Individual	Oppose	No

Comments:

Aloha Chair Dela Cruz and Members of the Committee,

As a historic preservation professional and qualified archaeologist who has worked in Hawai‘i for over 40 years, I write to OPPOSE SB 3135, SD 1 as written. Having also worked as a regulatory archaeologist for 10 years at the State Historic Preservation Division (SHPD), I believe the proposed amendments to Chapter 6E-42 are unnecessary, unworkable, and may result in harming historic properties. I cite the following concerns in opposing SB 3135, SD 1:

- Currently, all historic preservation reviews, including Chapter 6E-42, are managed entirely through the HICRIS system housed at SHPD. Once entered, submittals for review are processed entirely within this framework. In addition, HICRIS holds all available data such as prior correspondence, reports, and plans. How will access to HICRIS be managed at the county level? I see nothing in this bill to indicate how this will work, let alone be in place by January 2, 2023. The initial cost of acquiring and setting up HICRIS (<https://dlnr.hawaii.gov/wp-content/uploads/2018/08/I-1.pdf>) was \$750,000? How much is the yearly license currently? How much will it cost to expand access to and use of HICRIS to the counties?
- Currently, the implementing regulations for Chapter 6E-42, HRS, at HAR 13-284, require that a weekly notice of all review requests received by SHPD and determinations made by them must be posted online at SHPD's website. The subject bill should be amended to ensure that the counties are required to provide these data to SHPD in a timely manner so as to be included in the weekly posts.
- The creation of four additional historic preservation review agencies at the counties will surely introduce inconsistency into the 6E-42 review process. What happens when -- not if -- SHPD disagrees with a determination made by a county historic preservation officer?
- In addition to the four county-level agencies, the establishment of third-party review programs in each county will create even more inconsistency. What happens when SHPD disagrees with a determination made by a county's third-party reviewer?
- Finally, it is my understanding that SHPD has been engaged in a major revision of the review process rules, including those (HAR 13-284) that implement Chapter 6E-42, HRS. I do not know the timeline or status of this revision process since SHPD has not informed the public of its progress. SB 3135, SD1 says that "The department shall adopt rules in accordance with chapter 91 to implement this section." How and when will this happen? It seems unlikely that the significant changes proposed in the subject bill could be

incorporated into the ongoing revisions, such that the resulting amended regulations will be adopted by January 2, 2023.

In view of the above concerns, I respectfully ask that the committees HOLD SB 3135, SD1 and not pass it any further. Instead, I believe that legislative efforts should focus on strengthening existing programs at SHPD. This would include additional funding to speed up the inclusion of legacy data in the HICRIS system or conversion of the exempt professional review positions to civil service, as mandated by the Legislature years ago (cf. Chapter 6E-3(14)).

Mahalo for considering my testimony. Please feel free to contact me if I can provide more information.

Mālama pono,

Sara L. Collins, Ph.D.

February 23, 2022

Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Committee on Ways and Means

RE: **SB 3135 SD1 - Relating to Historic Preservation Reviews**
Hearing date: February 24, 2022 at 10:00AM

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran and members of the committees,

Mahalo for the opportunity to submit testimony on behalf of NAIOP Hawaii in **SUPPORT** on SB 3135 SD1. NAIOP Hawaii is the local chapter of the nation's leading organization for office, industrial, retail, residential and mixed-use real estate. NAIOP Hawaii has over 200 members in the State including local developers, owners, investors, asset managers, lenders and other professionals.

SB 3135 SD1 allows for the transfer of authority for certain reviews of projects in conjunction with section 6E-42, Hawaii Revised Statutes (HRS), from the Department of Land and Natural Resources (DLNR) to the Counties. The bill authorizes counties to assume responsibilities for such historic review to improve protection of Hawaii's historic properties by ensuring more decisions are made at the regional level and promote more timely reviews. SB 3135 SD1 also appropriates funding to the counties to enable the hiring of qualified staff to conduct reviews.

Currently, there is a significant backlog of historic reviews that are encumbering permits throughout the state. Consequently, much needed housing, economic development, and critical infrastructure projects often face significant delays in permit approvals and project implementation. NAIOP understands the great importance that these reviews hold in preservation of Hawaii's historic cultural sites, however, a balance needs to be found that both increases efficiency while maintaining the quality of reviews.

NAIOP greatly supports the intent of the measure to identify a solution to the significant backlog of much needed projects awaiting SHPD review. NAIOP strongly supports the recent amendments made in the previous committee that defines the role of third-party reviewers for DLNR. The amended language allows DLNR to establish a program to certify qualified third-party individuals and organizations to review documents before submission to DLNR. Additionally, the language requires the standard of review must comply with DLNR documentation requirements to ensure that projects reviewed by qualified third-parties comply with the statute.

Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Committee on Ways and Means
February 23, 2022
Page 2

Enabling third-party reviews to be conducted will assist DLNR and the counties by significantly reducing the current caseload and backlog. Moreover, third-party reviews will expedite future reviews and allow for the development of much needed housing and critical infrastructure. This amendment offers another avenue for historic preservation reviews by qualified individuals.

Moreover, permitting third-party reviews offers the benefit of having market demand drive the number of reviewers entering the space. The more demand, the more qualified reviewers will take on the liability and responsibility of these historic preservation project reviews. This will allow market forces to help solve this issue.

Ultimately, SB 3135 SD1 addresses a critical issue in the development of more affordable housing and critical infrastructure for Hawaii residents. NAIOP appreciates the Legislature's commitment to collaborating on this issue and look forward to working together.

Mahalo for your consideration,

A handwritten signature in black ink, appearing to read "J Camp", with a stylized flourish at the end.

Jennifer Camp, President
NAIOP Hawaii



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
The Senate
Committee on Ways and Means

Testimony by
Hawaii Government Employees Association

February 24, 2022

S.B. 3135 S.D.1 – RELATING TO HISTORIC
PRESERVATION REVIEWS

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO has comments on S.B. 3135 S.D.1, specifically the language which allows the Department of Land and Natural Resources to establish a program to certify third-party individuals and organizations to review documents for completeness and compliance prior to submission.

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. These employees meet the existing qualifications and standards established by the department and can make independent determinations.

It is also our understanding that there are currently three (3) vacancies in the State Historic Preservation Division, two (2) of which are unfunded positions and one (1) frozen position that cannot be filled. Prior to considering third-party reviewers, the Department should consider alternatives within its current policies or prioritize filling its current vacant positions.

Thank you for the opportunity to testify on S.B. 3135 S.D.1.

Respectfully submitted,

Randy Perreira
Executive Director