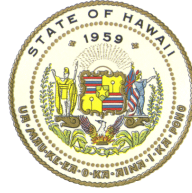
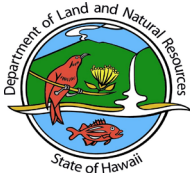


DAVID Y. IGE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**SUZANNE D. CASE**  
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

**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the Senate Committees on  
WATER AND LAND  
and  
GOVERNMENT OPERATIONS**

**Monday, February 14, 2022  
1:10PM**

**State Capitol, Conference 229, Via Videoconference**

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

Senate Bill 3135 proposes to amend Section 6E-42, Hawaii Revised Statutes (HRS), to delegate most historic preservation reviews under Section 6E-4,2 HRS, to the various counties. **The Department of Land and Natural Resources (Department) fully supports this Administration measure and offers comments.**

Senate Bill 3135 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 provides the basis for ensuring just such consistency.

Senate Bill 3135 SECTION 2 amends Section 6E-42, HRS, to authorize a county preservation officer to carry out most 6E-42 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.

The Department recommends that this measure be revised at Section 6E-42(d) to read

(d) The department shall retain authority for review under this section for projects affecting properties listed or nominated for inclusion in the Hawaii register of historic places or the national register of historic places or occurring within or affecting a designated historic district. *(Department proposed amending language italicized.)*

Senate Bill 3135 establishes 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 appropriates 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 also authorizes 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. The Department believes that such a program would help to ensure that at the time the documentation is submitted to the Department it is complete and compliant with rule, ensuring that the Department can complete its review in an effective and timely manner.

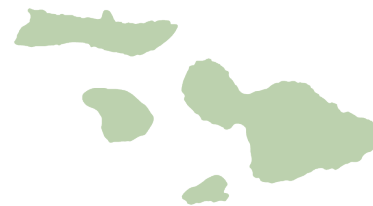
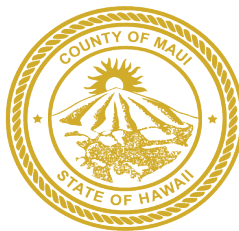
With respect to the third-party review program, the Department understands that this program would be implemented by parties external to the Department and would be funded directly by permit applicants. The Department does not envision the third-party review as a way to resolve the current review backlog. 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. As described in the measure, the third-party review program is designed 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 drafted.

Thank you for the opportunity to comment on this measure.

MICHAEL P. VICTORINO  
MAYOR

MICHELE CHOUTEAU MCLEAN, AICP  
DIRECTOR

JORDAN E. HART  
DEPUTY DIRECTOR



DEPARTMENT OF PLANNING  
COUNTY OF MAUI  
ONE MAIN PLAZA, 2200 MAIN STREET, SUITE 315  
WAILUKU, MAUI, HAWAII 96793

February 11, 2022

TESTIMONY OF MICHELE CHOUTEAU MCLEAN, AICP  
PLANNING DIRECTOR  
COUNTY OF MAUI

BEFORE THE  
SENATE COMMITTEE ON WATER AND LAND and  
THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS  
Monday, February 14, 2022, 1:10 P.M.  
Videoconference / Conference Room 229

**SB3135 RELATING TO HISTORIC PRESERVATION REVIEWS**

Senator Lorraine R. Inouye, Chair and Senator Sharon Y. Moriwaki, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair and Senator Donovan M. Dela Cruz, Vice Chair  
Honorable Members of the Senate Committees on Water and Land, and Government Operations

---

Thank you for this opportunity to testify on SB3135.

Along with the planning directors of the other three counties, I have concerns about the proposed bill and the conflicts that it could create. We support the State Historic Preservation Division and believe that they should receive the funding that they need to perform their important historic preservation duties, but that these duties should not be delegated to the counties.

Our concerns and recommendations are detailed in the attached letter.

Mahalo for your consideration of this testimony.

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
PHONE: (808) 768-8000 • FAX: (808) 768-6041  
DEPT. WEB SITE: [www.honolulu.gov](http://www.honolulu.gov) • CITY WEB SITE: [www.honolulu.gov](http://www.honolulu.gov)

RICK BLANGIARDI  
MAYOR



DEAN UCHIDA  
DIRECTOR  
DAWN TAKEUCHI APUNA  
DEPUTY DIRECTOR  
EUGENE H. TAKAHASHI  
DEPUTY DIRECTOR

January 28, 2022

The Honorable Lorraine R. Inouye, Chair  
Senate Committee on Water and Land  
Hawaii State Capitol  
415 South Beretania Street, Room 210  
Honolulu, Hawaii 96813

Dear Senator Inouye:

Subject: Senate Bill No. S.B. 3135 and H.B. 2167, Relating to Historic Preservation Reviews

The Planning Directors of all four Counties in Hawaii would like to thank you for the informational briefing your Committee held on the subject bill on January 10, 2022. As suggested at the meeting, the County Planning Directors have reviewed the bill and collectively provide the following comments and suggestions for your consideration.

We understand that the purpose of this Administration bill is to assign the responsibility for certain historic preservation project reviews under section 6E-42, Hawaii Revised Statutes, to the respective counties.

Pursuant to Section 6E-3, the Department of Land and Natural Resources (DLNR), State Historic Preservation Division (SHPD), is responsible for regulation of archaeological activities throughout the State. Section 6E-42 states that prior to any approval by the County of any project involving a permit, license, certificate, land use change, subdivision, or other entitlement for use, which may affect historic property, aviation artifacts, or a burial site, the agency or office shall advise the DLNR-SHPD and allow DLNR-SHPD an opportunity for review and comment on the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43, including those listed in the Hawaii register of historic places.

SHPD indicates that in every other state in the union, many of these reviews would be subject to review at the county or municipal level--only Hawaii requires reviews and evaluations at the state level. In order to improve protection of Hawaii's historic properties by ensuring more decisions are made at the local level, and promote more timely reviews, DLNR believes that it is reasonable and appropriate to authorize the Counties to assume responsibilities for such reviews.

Discussion:

At the Senate Water and Land Committee meeting of January 10, 2022, SHPD Administrator Alan Downer testified on the challenges SHPD has in recruiting and retaining qualified archaeologists and architects to conduct the required Section 6E-42 reviews. This has resulted in delays in SHPD's review of projects which has been further complicated by SHPD's internal procedures to prioritize certain projects over others.

The Counties (County of Kauai, City and County of Honolulu, County of Maui and County of Hawaii) have the following comments/concerns:

1. Decentralizing the review to have each County conduct a Section 6E-42 review for projects in their respective counties, may create problems of consistency, as once certified, each County's designated preservation officer will be acting independently. The bill does not address what happens if SHPD disagrees with a County's designated preservation officer's findings and recommendations, nor how disagreements would be settled.
2. Requiring the Counties to be responsible for Section 6E-42 reviews does not address the current challenges that SHPD is experiencing of hiring and retaining qualified archaeologists and architects to conduct the required Section 6E-42 reviews. It merely shifts the responsibility over to the Counties, who would likely face the same challenges. SHPD Administrator Alan Downer identified improvements in SHPD's recruiting, hiring and retention practices, which should be supported and funded. Furthermore, time should be given for these improvements to be implemented, to determine if they have been successful, before shifting significant new responsibilities to the Counties.
3. The Bill provides a one-time appropriation of \$750,000 in FY 2022-2023 (SHPD retaining 10 per cent for administrative expense), to the Counties for each to do the following:
  - i) Adopt an ordinance to govern the County's review process that is consistent with the new law and with any administrative rules adopted pursuant to this section;
  - ii) Designate a County preservation officer who meets the professional qualification standards established by DLNR;
  - iii) Hire qualified professional staff who meet standards established by DLNR to conduct the reviews;
  - iv) Establish sufficient internal organizational controls to ensure that the qualified professional staff can make independent determinations regarding the effects of projects on historic properties;
  - v) Ensure that the qualified professional staff can function in a manner that does not create a conflict of interest or the appearance of a conflict of interest;
  - vi) Provide for appropriate public notification in a manner consistent with standards established by DLNR;
  - vii) Ensure that copies of all reports, maps, and documents, including those reflecting the County preservation official's comments, recommendations, and decisions, are provided to DLNR to be incorporated into the historic preservation digital document management system and library; and
  - viii) Enter into a written agreement with DLNR in which DLNR certifies that the County has met the requirements of the Bill and is assuming responsibility for review of projects under section 6E-42; provided further that the delegation of authority shall automatically be suspended or terminated if the County is unable to retain sufficient qualified professional staff or if it becomes apparent that the County does not have sufficient staffing capacity to complete the delegated reviews in a timely manner.


We do not believe that the \$750,000 appropriation shared by the four Counties is adequate to fulfill the obligations placed on each County to take over the Section 6E-42 review from the State. Also, as a one-time appropriation, it will be difficult for each of the Counties to take on the financial burden of providing the additional services that are currently being provided the State.

4. Proposed new Section 6E-42(e) of the Bill allows DLNR-SHPD to establish a program to certified third party individuals and organizations to review documents before submission of the documents to DLNR or designated County preservation officer for review.

We would strongly suggest that the Legislature refine this third party program to allow SHPD to augment their staff by having certified third party individuals and/or organizations assist SHPD with their Section 6E-42 reviews. By allowing SHPD to bring in certified third party reviewers to supplement the existing SHPD staff, SHPD can insure consistency in their review because the third party reviewers will be under direct supervision by the SHPD staff. The certified third party reviewers can be used to address any backlog of Section 6E-42 permits. They can also be used to address an increase in the volume of permits being sent to SHPD for Section 6E-42 reviews (i.e. surge pricing). The certified third party reviewers can be released once the volume of permits reaches a manageable level for the existing SHPD staff to review.

In closing, we strongly support full funding and personnel flexibility for SHPD so that it can hire and retain the staff it needs to perform its important historic preservation duties. We strongly oppose delegating certain duties to the Counties in the manner proposed by the bill. And we strongly support proposed new Section 6E-42E to allow SHPD to create a third party review process.

Thank you for the opportunity to provide our comments on the bill. Should you have any questions or require any additional information, please feel free to contact us directly.

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Dean Uchida, Director  
City and County of Honolulu, Department of Planning and Permitting

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Date: 2022.01.26  
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Ka'aina Hull, Director  
County of Kauai, Planning Department

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Michele McLean  
Date: 2022.01.26  
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Michele McLean, Director  
County of Maui, Planning Department

  
Zendo Kern (Jan 27, 2022 08:59 HST)

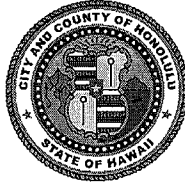
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Zendo Kern, Director  
County of Hawaii, Planning Department

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
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RICK BLANGIARDI  
MAYOR



DEAN UCHIDA  
DIRECTOR  
DAWN TAKEUCHI APUNA  
DEPUTY DIRECTOR  
EUGENE H. TAKAHASHI  
DEPUTY DIRECTOR

February 14, 2022

The Honorable Lorraine R. Inouye, Chair  
and Members of the Committee on Water & Land  
The Honorable Sharon Y. Moriwaki, Chair  
and Members of the Committee on Government Operations  
Hawaii State Senate  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chairs Inouye and Moriwaki, and Committee Members:

**Subject: Senate Bill No. 3135  
Relating to Historic Preservation Reviews**

The Department of Planning and Permitting, along with the directors of the three other County Planning Departments, offers **comments and recommendations** on Senate Bill No. 3135. Please see the attached.

Thank you for this opportunity to testify.

Very truly yours,

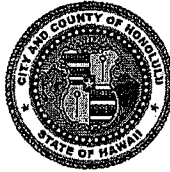
A handwritten signature in black ink, appearing to read "D. Uchida".

Dean Uchida  
Director

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
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RICK BLANGIARDI  
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DEAN UCHIDA  
DIRECTOR

DAWN TAKEUCHI APUNA  
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI  
DEPUTY DIRECTOR

January 28, 2022

The Honorable Lorraine R. Inouye, Chair  
Senate Committee on Water and Land  
Hawaii State Capitol  
415 South Beretania Street, Room 210  
Honolulu, Hawaii 96813

Dear Senator Inouye:

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We would strongly suggest that the Legislature refine this third party program to allow SHPD to augment their staff by having certified third party individuals and/or organizations assist SHPD with their Section 6E-42 reviews. By allowing SHPD to bring in certified third party reviewers to supplement the existing SHPD staff, SHPD can insure consistency in their review because the third party reviewers will be under direct supervision by the SHPD staff. The certified third party reviewers can be used to address any backlog of Section 6E-42 permits. They can also be used to address an increase in the volume of permits being sent to SHPD for Section 6E-42 reviews (i.e. surge pricing). The certified third party reviewers can be released once the volume of permits reaches a manageable level for the existing SHPD staff to review.

In closing, we strongly support full funding and personnel flexibility for SHPD so that it can hire and retain the staff it needs to perform its important historic preservation duties. We strongly oppose delegating certain duties to the Counties in the manner proposed by the bill. And we strongly support proposed new Section 6E-42E to allow SHPD to create a third party review process.

Thank you for the opportunity to provide our comments on the bill. Should you have any questions or require any additional information, please feel free to contact us directly.



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Dean Uchida, Director  
City and County of Honolulu, Department of Planning and Permitting



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Ka'aina Hull, Director  
County of Kauai, Planning Department



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Date: 2022.01.26  
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Michele McLean, Director  
County of Maui, Planning Department



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Zendo Kern (Jan 27, 2022 08:59 HST)

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Zendo Kern, Director  
County of Hawaii, Planning Department

Council Chair  
Alice L. Lee

Vice-Chair  
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore  
Tasha Kama

Councilmembers  
Gabe Johnson  
Kelly Takaya King  
Michael J. Molina  
Tamara Paltin  
Shane M. Sinenci  
Yuki Lei K. Sugimura



Director of Council Services  
Traci N. T. Fujita, Esq.

Deputy Director of Council Services  
David M. Raatz, Jr., Esq.

**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

February 13, 2022

TO: Honorable Lorraine R. Inouye, Chair  
Senate Committee on Water and Land  
  
Honorable Sharon Y. Moriwaki, Chair  
Senate Committee on Government Operations

FROM: Alice L. Lee  
Council Chair

DATE: February 13, 2022

SUBJECT: **SUPPORT FOR SB 3135, 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.



COMMERCIAL REAL ESTATE  
DEVELOPMENT ASSOCIATION  
HAWAII CHAPTER

February 14, 2022

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

Senator Sharon Moriwaki, Chair  
Senator Donovan M. Dela Cruz, Vice Chair  
Committee on Government Operations

RE: **SB 3135 - Relating to Historic Preservation Reviews**  
**Hearing date: February 14, 2022 at 1:10PM**

Aloha Chair Inouye, Chair Moriwaki and members of the committees,

Mahalo for the opportunity to submit testimony on behalf of NAIOP Hawaii in **SUPPORT WITH COMMENTS** on SB 3135. 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 allows for the transfer of authority for 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 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. While we appreciate authorizing the counties to conduct these reviews under SB 3135, NAIOP recommends the adoption of the preferred language in HB 821 which establishes a program for third-party individuals and organizations to conduct document reviews on proposed projects.

Senator Lorraine Inouye, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair  
Committee on Water and Land  
February 14, 2022  
Page 2

This amendment offers another avenue for historic preservation reviews by qualified individuals.

Enabling 3rd party reviews to be conducted will assist DLNR and the counties by significantly reducing the current caseload and backlog. Moreover, 3rd party reviews will expedite future reviews and allow for the development of much needed housing and critical infrastructure.

Further, amending the bill to include 3rd 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 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 "Camp", with a stylized flourish at the end.

Jennifer Camp, President  
NAIOP Hawaii

# HISTORIC HAWAII FOUNDATION

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

Senator Sharon Y. Moriwaki, Chair  
Senator Donovan M. Dela Cruz, Vice Chair  
Committee on Government Operations (GOV)

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

**Committee:** Monday, February 14, 2022  
1:10 p.m.  
Via Video Conference/Conference Room 229

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

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





**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 Water & Land  
Committee on Government Operations

Testimony by  
Hawaii Government Employees Association

February 14, 2022

**S.B. 3135 – RELATING TO HISTORIC PRESERVATION REVIEWS**

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO has comments on S.B. 3135, 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.

The Department should consider alternatives within its current policies or seek additional positions and funding from the Legislature, rather than contracting out a necessary government function.

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

Respectfully submitted,

Randy Perreira  
Executive Director

**SB-3135**

Submitted on: 2/13/2022 1:18:53 AM

Testimony for WTL on 2/14/2022 1:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Kimeona Kane	Individual	Support	No

Comments:

aloha kākou,

Mahalo for working towards better protections for our cutlural lifeways. It is imperative that the State work to preserve and protect our many cultral sites and the very relative things that are received from these spaces. Our history needs to be perpetuate and not destroyed. There has been MANY delayed responses to wrong doings and sadly our people kanaka and supporters are resorting to putting their lives in danger to demonstrate how incredibly important these features are. There has to be more done, with quicker responses to community concerns, deeper investigation into wrong doing, stronger foundations when sites are considered for impact, as well as more inclusivity of lineal descendants. Please continue to invest into these protections, we should not have to learn from a book or a museum when our culture, spaces, lifeways and everything in between are still very much here and present and thriving.

Mahalo nui and please strengthen these protections.

Kimeona Kane

**SB-3135**

Submitted on: 2/13/2022 8:51:50 AM

Testimony for WTL on 2/14/2022 1:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Sara Collins	Individual	Oppose	No

Comments:

Aloha Chairs Inouye and Moriwaki, and members of the Committees,

As a historic preservation professional and qualified archaeologist who has worked in Hawai‘i for over 40 years, I write to OPPOSE SB 3135 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:

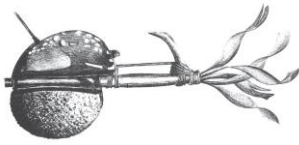
- A one-time appropriation of \$750,000 is way too little to fund the start up of comprehensive historic preservation review programs in all four counties. Will the state continue to fund these programs in subsequent years or will the counties need to assume the costs of this regulatory review?
- The 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 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 3, 2023.

In view of the above concerns, I respectfully ask that the committees HOLD SB 3135 and not pass it any further. Instead, I believe that legislative efforts should focus on strengthening existing programs at SHPD. This would include 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.



**LATE**

**SOCIETY FOR HAWAIIAN ARCHAEOLOGY**

P.O. BOX 22458 HONOLULU, HAWAII 96823

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

Senator Sharon Moriwaki, Chair  
Senator Donovan Dela Cruz, Vice Chair  
Committee on Government Operations (GVO)

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 14, 2022, 1:10PM, Conference Room 229 & 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) 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.
- 3) 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.

**LATE**

**SB-3135**

Submitted on: 2/13/2022 5:33:49 PM

Testimony for WTL on 2/14/2022 1:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Angus Raff-Tierney	Individual	Oppose	No

Comments:

Aloha, I have worked in Historic Preservation in hawaii for seven years, and oppose this bill. My main concern in delegating the SHPDs responsibilities they don't have the review experience or easy access to the SHPD library. It also fragments out the shpd review process into smaller silos where communication is more difficult differences are exaggerated.

I recognize there are issues with the SHPD, but think its better to build it up stronger rather than parcel it up. If HICRIS worked as it was designed as a virtual report library this would help but at the current rate it will take years, and would not be ready by 2023.

**LATE**

**SB-3135**

Submitted on: 2/13/2022 5:46:56 PM

Testimony for WTL on 2/14/2022 1:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Angus Raff-Tierney	Individual	Oppose	No

Comments:

Aloha, I have worked in Historic Preservation in hawaii for seven years, and oppose this bill. My main concern in delegating the SHPDs responsibilities is DHHL don't have the review experience or easy access to the SHPD library. It also fragments out the DHHL review process into smaller silos where communication is more difficult and differences are exaggerated.

I recognize there are issues with the SHPD, but think its better to build it up stronger rather than parcel it up. If HICRIS worked as it was designed as a virtual report library this would help but at the current rate it will take years. The bill says to ensure that all copies of reports and documents associated with the area are included, but it will be difficult to tell if the proponent has done this if HICRIS is not complete and there is nothing to compare it to,