

DAVID Y. IGE
GOVERNOR OF HAWAII



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

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
JUDICIARY**

**Tuesday, February 23, 2021
9:45 AM
State Capitol, Via Videoconference**

**In consideration of
SENATE BILL 510, SENATE DRAFT 1
RELATING TO HISTORIC PRESERVATION REVIEWS**

Senate Bill 510, Senate Draft 1 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 require adoption of rules to govern these activities. **The Department supports this measure.**

Subsection (c) of Senate Bill 510, Senate Draft 1 on page 3 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, 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, 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 program statewide, whether implemented at the state or county level. The people of Hawaii

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

ROBERT K. MASUDA
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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

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, Senate Draft 1 as drafted ensures all of this.

Subsection (f) of Senate Bill 510, Senate Draft 1 on page 5 proposes to allow 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 to the submitting party, corrected and resubmitted, 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, Senate Draft 1 as drafted ensures that third-party reviewers will be able to meet those standards.

Thank you for the opportunity to comment on this measure.



SB510 SD1
RELATING TO HISTORIC PRESERVATION REVIEWS
Ke Kōmike ‘Aha Kenekoa o ka Ho‘okolokolo

Pepeluali 23, 2021

9:45 a.m.

Hālāwai Keleka‘a‘ike

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB510 SD1, 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 SHPD’s requirements prior to submission of the documents to SHPD. **OHA does offer two suggestions to improve the effectiveness of this measure in facilitating historic preservation review while maintaining critical protections for irreplaceable Native Hawaiian historic sites and burials.**

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 emphasizes that SB510 SD1 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, while maintaining protections for irreplaceable Native Hawaiian cultural sites and burials. To improve the effectiveness of this measure, **OHA respectfully offers to provide its own expertise to SHPD at two critical points in the proposed delegation process, specifically during SHPD’s determination of the scope of the historic preservation review authorities to be delegated to the counties, and in its certification of third-parties who may conduct HRS Chapter 6E document review.**

1) OHA consultation on the scope of delegation of historic preservation authority to the impacted counties

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. Accordingly, OHA believes its continued involvement in historic preservation will help to prevent inappropriate or inconsistent treatment of irreplaceable Hawaiian cultural resources and burial sites. **OHA therefore offers to provide its services as a consulting party to written agreements delineating new county authorities over historic preservation review, which could be effectuated by the following amended language for page 4, lines 10-11, to read as follows:**

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

2) OHA consultation 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 can provide an additional safeguard for Native Hawaiian cultural resources and burial sites. As proposed in this measure, third-party reviewers would review documents for completeness and compliance with SHPD requirements, improving efficiency and allowing SHPD to focus on its more important kuleana. To maximize the effectiveness of such third-party review, it is critical that third-party reviewers be competent and responsible professionals with the requisite expertise. Notably, 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 consistent with the standards established under Chapter 6E.

With three decades of experience working with local archaeological firms, as well as extensive historic preservation process and mālama iwi practice expertise, OHA can offer unique insights to the certification of those who would fulfill this important role. This includes helping 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 offers an amendment to page 5, lines 5-15, to ensure consultation with OHA for certification of third-party reviewers to whom HRS Chapter 6E document 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 Committee to **PASS** SB510 SD1. Mahalo nui loa for the opportunity to testify on this important measure.

LATE



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEE ON JUDICIARY
HAWAII STATE CAPITOL, VIA VIDEOCONFERENCE
TUESDAY, FEBRUARY 23, 2021 AT 9:45 A.M.**

To The Honorable Karl Rhoads, Chair;
The Honorable Jarrett Keohokalole, Vice Chair; and
Members of the Committee on Judiciary,

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.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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

LATE

The Thirty-First Legislature, State of Hawaii
The Senate
Committee on Judiciary

Testimony by
Hawaii Government Employees Association

February 23, 2021

S.B. 510, S.D.1 – RELATING TO HISTORIC PRESERVATION REVIEWS

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly opposes the intent of S.B. 510, S.D.1 specifically the language which allows the Department of Land and Natural Resources (DLNR) 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 department, provided certain requirements are met. Certifying a third-party for this function contradicts what has customarily and historically been performed by employees currently employed within the State Historic Preservation Division. These employees meet the existing qualifications and standards established by the department and are capable of making independent determinations.

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

Thank you for the opportunity to testify on S.B. 510, S.D.1.

Respectfully submitted,

Randy Perreira
Executive Director