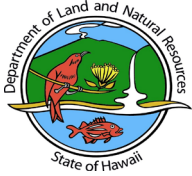


DAVID Y. IGE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
SUZANNE D. CASE  
Chairperson**

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

**Friday, February 26, 2021  
9:30AM**

**State Capitol, Via Videoconference, Conference Room 211**

**In consideration of  
SENATE BILL 869, SENATE DRAFT 2  
RELATING TO AFFORDABLE HOUSING**

Senate Bill 869, Senate Draft 1 proposes to amend Sections 6E-8, 6E-10, and 6E-42, Hawaii Revised Statutes (HRS), by requiring the State Historic Preservation Division (Division) of the Department of Land and Natural Resources (Department) to contract reviews under these provisions of the Chapter 6E, HRS, for certain affordable housing projects to third-party reviewers if the department determines it will be unable to complete the review within established timelines. **The Department appreciates the intent of this measure and offers comments.**

Senate Bill 869, Senate Draft 1 proposes to amend Sections 6E-8, 6E-10, and 6E-42, HRS, by requiring the Division to contract reviews under those sections of the HRS to third-party reviewers for affordable housing projects when at least 80 percent of the units will be affordable, and the Division determines that it cannot complete the required review within the timelines established by rule.

The Department is aware of Hawaii's affordable housing problem and fully supports measures that will help to alleviate it. The Department regrets that it is unable to support this measure because it requires the Division to engage third-party reviewers but does not appropriate funds for that purpose. The budget of the Division, which implements the review process under these various sections of the law, is extremely lean. There are no funds in the Governor's Fiscal Year 2022 budget for the Division to contract for such services and there are no funds in that budget that could be reprogrammed to support contracting with third-part reviewers as would be required if this measure is enacted.

Subsection (f) of SECTION 2, page 6, lines 11-12 and Subsection (e) of SECTION 4, page 13, lines 11-12 direct the Department to adopt rules to implement these provisions. The rule making process is long, often taking 12 -24 months to complete. Complying with the existing process would substantially delay implementation of the amendments proposed in this measure should

**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

they be enacted. Accordingly, the Department recommends that these subsections be amended by substituting the present language with the following:

Notwithstanding any other provision of law, the board of land and natural resources shall have the authority to adopt administrative rules or policies to implement this section. Adoption of such rules and policies shall be exempt from the requirements of chapter 91. Such rules and policies shall be adopted in accordance with the process set forth below. All department of land and natural resources rules established by rule at the date of enactment may be deleted from the rule and adopted as an approved board of land and natural resources rule without the need to comply with the requirements of chapter 91 in deleting existing rules. Such rules and policies shall be subject to amendment or repeal in accordance with the process established herein:

(1) The department of land and natural resources divisions shall make available on the website of the department of land and natural resources each proposed rule and policy, together with the full text of the proposed rule or policy.

(2) The department of land and natural resources shall post notice of consideration of proposed rule or policy 30 days prior to the board of land and natural resources meeting at which the rule

or policy will be considered by the board of land and natural resources on the department of land and natural resources' website. The notice shall include:

(A) The full text of the proposed rule or policy; and

(B) The date, time, and place where the board of land and natural resources meeting will be held and where interested persons may provide written testimony or be heard on the proposed rule or policy adoption, amendment, or repeal.

(3) The board of land and natural resources shall afford all interested persons opportunity to submit data, views, or arguments, orally or in writing. The board of land and natural resources shall fully consider all written and oral submissions respecting the proposed rule or policy. The board of land and natural resources shall make its decision at the public meeting.

Should the funding issue be resolved, the Department notes that all projects that would be subject to review under Section 6E-10, HRS, will require a permit subject to Section 6E-42, HRS, and the Department believes that the proposed amendment to Section 6E-10, HRS, is unnecessary and recommends that this amending language be removed.

Thank you for the opportunity to comment on this measure.



February 24, 2021

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

SUBJECT: SB869 SD1 Relating to Affordable Housing, Friday, February 26, 2021, 9:30AM  
PLACE: Conference Room 211

### Testimony in Support

Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee on Ways and Means: Thank you for this opportunity to submit testimony in strong support of SB869 SD1. As a 53-year-old non-profit (501(c)-3) developer and manager of low-income rental housing that relies on HHFDC for awards of LIHTCs, Private Activity Bonds and Rental Housing Revolving Funds, we are required to have our projects reviewed by the State Historic Preservation Division (SHPD). We, therefore, have first-hand knowledge of the production delays incurred because of this review requirement.

"SB869 SD1 requires the state historic preservation division to contract its review of proposed state projects, projects on privately owned historic property, and projects affecting historic properties to third party consultants if the projects involve the development of affordable housing and the division, after an initial evaluation, determines it will not be able to complete its review within 60 days. Establishes requirements for qualified third parties providing review services."

In general, EAH supports any administrative, legislative, or other action to expedite the SHPD review process. Regarding this bill, we trust that the Legislature will also provide the funds necessary to allow SHPD to implement the bills intent. A quicker review will help to place more affordable rental units online to serve those most in need of housing, now!

Mahalo for the opportunity to submit our thoughts on this issue.

Sincerely,

Kevin R. Carney, RB-16444  
(PB), NAHP-E  
Vice President, Hawaii



**SB869 SD1**  
RELATING TO AFFORDABLE HOUSING  
Senate Committee on Ways and Means

Pepeluali 26, 2020

9:30 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) provides the following **COMMENTS** on SB869 SD1, which would delegate State Historic Preservation Division (SHPD) review to a qualified third party consultant for any development where at least 80% of the units are intended as affordable housing, if, upon initial evaluation, SHPD determines that it will not be able to provide written concurrence or non-concurrence within 60 days of a filing request, and further determines that the third party consultant will be able to provide a recommendation to SHPD within 30 days of the filing request. While OHA does appreciate measures that are aimed at assisting SHPD in its important kuleana and expediting affordable housing projects, **OHA has concerns about the possibility of an automatic approval occurring if the third party consultant cannot complete a review in 30 days, which may result in direct and indirect impacts to cherished and irreplaceable iwi kūpuna, cultural sites, and similar historic properties and sites.**

Particularly for larger and highly impactful projects, a 30-day review timeframe may not always allow SHPD to conduct an adequate level of consultation and assessment necessary for the development of mitigation recommendations that can meaningfully minimize impacts to historic properties and sites. OHA notes that on average, SHPD can take anywhere from one month to six months to review a project, depending on the project's complexity, and larger projects may require extensive archaeological surveys that in the past have resulted in reports that are thousands of pages long. In order to ensure that surveys initiated under this measure are able to be fully completed, thereby avoiding potential avoidable and irreparable impacts to cherished iwi kūpuna and irreplaceable cultural sites, OHA recommends that the following language be inserted after page 6, line 3; page 9, line 11; and page 13, line 3:

"provided that if the third party fails to complete the review in 30 days, the department shall finish the review unless a written extension is approved by the department following a written request from the third party consultant."

Mahalo for the opportunity to testify on this measure.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION  
AFSCME Local 152, AFL-CIO

**LATE**

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

The Thirtieth Legislature, State of Hawaii  
The Senate  
Committee on Ways and Means

Testimony by  
Hawaii Government Employees Association

February 26, 2021

S.B. 869, S.D.1 – RELATING TO AFFORDABLE HOUSING

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly opposes the intent of S.B. 869, S.D.1 which requires the Department of Land and Natural Resources (DLNR), through the State Historic Preservation Division (SHPD) to contract its review of proposed state projects, projects on privately owned historic property and projects affecting historic properties to a third-party consultant if it involves the development of affordable housing and the department is unable to complete its review within sixty (60) days. Contracting a third-party to perform these functions contradicts what has been customarily and historically 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 any delays for approvals on affordable housing projects, 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 the 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 consultants.

Thank you for the opportunity to testify on S.B. 869, S.D.1.

Respectfully submitted,

Randy Perreira  
Executive Director