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GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
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

Department of Land and Natural Resources Testimony Transmittal Cover Sheet

Date Submitted: February 19, 2010

Testifier's Name/Title: Pua Aiu, Historic Preservation Division Administrator

Committee Name: HOUSE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES
(WLO)

Day and Date: Monday, February 22, 2010

Time/Location: 10:00 AM, Conference Room 325

Measure Number: HB 2434 HD 1 – RELATING TO PERMIT, LICENSE, AND APPROVAL
APPLICATION PROCESSING

Requested Copies: 1 (including original) to Room 438 in the State Capitol

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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony Of
LAURA H. THIELEN
Chairperson**

**Before The House Committee On
WATER, LAND AND OCEAN RESOURCES**

**Monday, February 22, 2010
10:00 am
State Capitol, Conference Room 325**

**In Consideration Of
HOUSE BILL 2434, HOUSE DRAFT 1
RELATING TO PERMIT, LICENSE, AND APPROVAL APPLICATION PROCESSING**

House Bill 2434, House Draft 1 proposes to establishes maximum time periods for designated agencies to process permit and other applications before it is deemed granted if not acted upon; authorizes each county to contract with a third-party reviewer to streamline the processing of applications; clarifies that previously approved projects that do not impact historic properties are not subject to subsequent reviews by the State Historic Preservation Division (SHPD) of the Department of Land and Natural Resources (Department). The Department does not take a position on this measure. However, the Department would like to clarify that projects previously reviewed by SHPD and having no effect on historic properties would not need to be reviewed again, if the project has not changed. If the same project has changes in footprint, plans or renovations of historic properties, then they should be re-reviewed to ensure that the changes do not affect historic properties.

LAURA H. THIELEN
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**PRESENTATION OF THE
CONTRACTORS LICENSE BOARD**

**TO THE HOUSE COMMITTEE ON
WATER, LAND, AND OCEAN RESOURCES**

**TWENTY-FIFTH LEGISLATURE
Regular Session of 2010**

**Monday, February 22, 2010
10:00 a.m.**

WRITTEN TESTIMONY ONLY

**TESTIMONY ON HOUSE BILL NO. 2434, H.D. 1, RELATING TO PERMIT, LICENSE,
AND APPROVAL APPLICATION PROCESSING.**

**TO THE HONORABLE KEN ITO, CHAIR,
AND MEMBERS OF THE COMMITTEE:**

The Contractors License Board ("Board") appreciates the opportunity to present testimony expressing its concerns with House Bill No. 2434, H.D. 1, which proposes to authorize each county to provide a third-party with permit, license, and approval processing review powers to increase the efficiency and timeliness of the approval process.

Section 2 of the bill (specifically page 2, lines 12 through 16) includes in this process license applications submitted to the State. While the intent of the bill does not appear to include contractor license applications, the language is very broad and the Board would like to express its opposition should the bill be interpreted in this manner.

Currently, each application for a contractor license is reviewed by the Board to ensure that the applicant is minimally qualified to perform contracting services for the public. The Board reviews financial information and experience certificates, and applicants must successfully complete license examinations. The Board feels that this

process supports the Board's purpose of protecting the public, and we are opposed to relinquishing this responsibility to a third-party.

Thank you for the opportunity to express our concerns regarding this bill.

**HB 2434 HD1
RELATING TO PERMIT, LICENSE, AND APPROVAL APPLICATION PROCESSING**

**PAUL T. OSHIRO
MANAGER – GOVERNMENT RELATIONS
ALEXANDER & BALDWIN, INC.**

FEBRUARY 22, 2010

Chair Ito and Members of the House Committee on Water, Land & Ocean Resources:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) on HB 2434 HD1, "A BILL FOR AN ACT RELATING TO PERMIT, LICENSE, AND APPROVAL APPLICATION PROCESSING." We support this bill.

The State and County process for the review of permits and other approvals for workforce housing and other projects often results in delays prior to the start of construction. It is envisioned that the enactment of statutory provisions to streamline and enhance the efficiency of the permit review and approval process along with provisions to establish maximum time periods for agencies to grant or deny related permits, licenses, and other approvals will expedite the start of construction for these projects which will result in the generation of construction and other related jobs.

Section 2 of this bill contains enabling legislation authorizing the Counties to offer third party review services for permits and other approvals. While we understand that the City & County of Honolulu presently authorizes the use of third party review services, we understand that liability concerns for entities providing these services has been cited as a deterrent in attracting third party review service providers. We note that contained in the enabling legislation are provisions to establish a liability threshold to

minimize liability exposure for providers of third party review services. We believe that these provisions should result in additional providers of third party review services.

Section 3 of this bill exempts projects previously reviewed by the State Historic Preservation Division and found to have no impact on historic properties and burial sites from subsequent reviews by this division. We believe that this provision will assist in streamlining the Historic Preservation review portion of the permitting process.

Sections 4 and 5 of this bill clarifies certain provisions in the existing statute that requires the establishment of maximum time periods for consideration of business or development related permits. We understand that these provisions will ensure that deadlines are set for the review of a broader range of permits, which will essentially provide applicants with an estimated time frame on the disposition of their permit applications.

Based on the aforementioned, we respectfully request your favorable consideration on this bill. Thank you for the opportunity to testify.

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

February 22, 2010

Honorable Ken Ito, Chair
Committee on Water, Land and Ocean Resources
State Capitol, Room 325
Honolulu, HI 96813

RE: HB2434, HD1 Relating to Permit, License and Approval Application Processing

Dear Chair Ito and Members of the Committee on Water, Land and Ocean Resources:

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii strongly supports HB2434, HD1 Relating to Permit, License, and Approval Application Processing.

HB 2434, HD1 is the result of one of the recommendations of the Construction Industry Task Force as one way to assist the construction industry by streamlining the permit, license, and approval application process. The Task Force was established by SCR 132, CD1, to determine the economic contributions of the construction industry in Hawaii. SCR 132 also requested the Task Force to develop and propose state actions, for the purpose of preserving and creating new jobs in the local construction industry, that should include but are not limited to incentives for the renovation or construction of hotels and other tourism-related facilities, and to determine the anticipated impact of those actions on the State's economy.

HB2434, HD1 establishes a maximum time period that an application for permit, license, or approval shall be deemed granted if not acted upon by the designated agency; authorizes each county to contract with a third-party reviewer to streamline the processing of applications; clarifies that previously approved projects that do not impact historic properties are not subject to subsequent reviews by the SHPD.

. Thank you for the opportunity to share our views with you.

Karen I. Nakamura

Chief Executive Officer, BIA-Hawaii



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Email submittal: <http://www.capitol.hawaii.gov/emailtestimony>

Testimony by Harry Saunders
President, Castle & Cooke Hawaii
February 20, 2010

Before the House Committee on

WATER, LAND, AND OCEAN RESOURCES

February 22, 2010
10:00 am
Room 325

In Support of HB 2434 HD1

RELATING TO PERMIT, LICENSE, AND APPROVAL APPLICATION PROCESSING

Chair Ito, Vice Chair Har, and Members of the Committee on WATER, LAND, AND OCEAN RESOURCES.

I am Harry Saunders, President of Castle & Cooke Hawaii. We support HB 2434 HD1 because it addresses one of the critical areas indentified by the Construction Industry Task Force.

As a member of the Construction Industry Task Force, established by Senate Concurrent Resolution No. 132, S.D. 1 (2009), we were directed to determine the direct contributions of the construction industry to the local economy as well as its impact on related industries, such as tourism and housing. We were also tasked with developing and proposing state actions that would promote overall economic growth, create jobs and accelerate construction and its associated positive impacts on the economy.

Based on its findings, the task force developed recommendations and proposed actions to address a number of issues, which was presented in a report to the 2010 Legislature. HB 2434 HD1 addresses the issue identified by the task force as follows:

Workforce Housing: The need for workforce housing in Hawaii is great, however, the poor economy has dramatically decreased the number of projects being built. In an effort to stimulate construction of more affordable/workforce housing projects, the task force's Workforce Housing committee, presented several recommendations to

improve state and county workforce housing requirements and permitting processes such as:

- ✓ Accelerating the review process for both state and county permits and other approvals, to expedite the start of construction for workforce housing projects;
- ✓ Temporarily lowering the county affordable/workforce housing requirements to stimulate immediate housing construction; and
- ✓ Studying the need for a state mortgage guaranty fund, to combat the scarcity of financing loans as a result of the economic downturn.

In response to the current economic climate, we ask for your consideration and support of HB 2434 HD1 as it will help to generate an immediate impact on our state's delicate economy by creating jobs and providing homes for Hawaii Families. HB 2434 HD1 will bring action and positive change to spur our economy.

On behalf of Castle & Cooke, Mahalo on your consideration of our testimony. If you have any questions, please feel free to contact us:

Harry Saunders, President
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Richard Mirikitani, Senior Vice President and Counsel
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HISTORIC HAWAII FOUNDATION

VIA WEB: www.capitol.hawaii.gov/emailtestimony

TO: Rep. Ken Ito, Chair
Rep. Sharon E. Har, Vice Chair
Committee on Water, Land and Ocean Resources

FROM: Kiersten Faulkner, Executive Director
Historic Hawaii Foundation

Committee: Monday, February 22, 2010
10 a.m.
Conference Room 325

RE: HB2434, HD1
Relating to Permit, License, and Approval Application Processing

On behalf of Historic Hawaii Foundation (HHF), I am writing in opposition to HB2434, HD1, which establishes maximum time periods for designated agencies to process permits and other applications before they are deemed granted if not acted upon; authorizes third-party review of applications; and eliminates subsequent reviews by the state historic preservation division (SHPD).

HB2434 HD1 Section 3 relates to the review process and timelines for projects that have potential effects on historic properties. Historic Hawaii Foundation finds this section of the bill most concerning. HRS 6E-42 provides that the state and its political subdivisions shall provide the state historic preservation division the opportunity to review and comment on any project that has the potential to affect historic properties. There are already timeframes associated with that review, with 30 days provided for historic properties that are not designated on the Hawaii register of historic places, and 90 days for designated historic properties. The bill would change the timeline to 45 days for all properties, including those designated on the historic register. The bill would further mandate that once SHPD has provided one approval of a proposed project—whether by affirming a determination of “no effect” or through inaction—subsequent reviews would not be allowed.

The professional staff of the historic preservation division has been steadily eroded over the past several years. Currently, there are three archeologists, one preservation architect and one architectural historian to provide all project reviews for the entire state, include federal undertakings. The division has lost clerical and support positions, as well as approvals for contracting for additional staff. The lack of funding, staffing and support for the division makes it difficult for it to meet its mandates for high quality and timely review of projects. This leads to frustration by those seeking approvals, as well as by those whose priority is the protection of the state’s historic and cultural resources.

The bill attempts to break this impasse by setting a maximum number of reviews and a maximum number of days for those reviews. While the intent may be to provide greater timeliness and certainty to developers, it will come at the expense of protections for historic sites and cultural resources. The absolute deadline on taking action could also lead to a quick denial of projects rather than a slower and more thoughtful approval, simply in an attempt to meet the deadlines. The state's historic and cultural resources should not be penalized by removing protections at the local or the state level by giving the remaining staff even less time in which to review projects.

The provision limiting the number of SHPD reviews per project disregards the reality that projects have multiple phases of design and construction and there is a need to check-in at key points. In most development projects, there is a continuum of due diligence, planning, entitlements, design and construction. It is rare that all possible effects on historic properties are known at each stage of the development and design process. For example, the area of potential affect for historic sites is less defined at the time of a land use change or subdivision than it is at the time of construction. The certainty and specificity of SHPD's review is directly proportionate to the level of information provided to it, which can and does change as projects evolve.

For example, while SHPD may determine that no historic properties are affected by a simple change in entitlements, that same project could very well have an effect at the time of site planning and construction. This is especially true when the historic properties are unknown (such as from sub-surface archeological sites or native Hawaiian burials), undocumented (such as cultural landscapes or traditional cultural properties), or when the project takes many years from concept to execution (in which time structures may become eligible for the historic register by virtue of increasing age or significance). It is also a rare development that does not change in its details from the time of concept, to schematic design, to design development, to construction. At any of these stages, a historic property that was not previously anticipated to be affected could become at risk. Therefore, an earlier determination of no adverse effect may not hold true when the project becomes more specific and more information is provided, and vice versa.

Therefore, HHF recommends that HB2434 HD1 Section 3 be deleted.

HB2434 HD1 Section 2 provides for third party reviewers to certify that proposals are in compliance with applicable codes and standards. HHF requests that this section be amended to require that any architects, engineers or other third parties that review an application for a permit, license or approval for a project that affects historic properties meet the education and experience standards and qualifications for preservation professionals as defined by the Secretary of the Interior's Standards. This will help ensure that reviewers are qualified to make the determinations entrusted to them when making decisions that impact the historic and cultural resources of the Islands.

In establishing appropriate rules and procedures related to integrating protection of historic properties with contemporary uses, there are many good models that allow for a more systematic and predictable approach, including the use of Certified Local Governments with local preservation ordinances; programmatic agreements; and preservation planning. These methods should be explored for additional ways to address both real and perceived conflicts in a way that is thoughtful and deliberate, without sacrificing the historic resources of the state in the process.



Hawaii's Thousand Friends

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COMMITTEE ON WATER, LAND, AND OCEAN RESOURCES

Rep. Ken Ito, Chair

Rep. Sharon Har, Vice Chair

HB 2434 HD1

RELATING TO PERMIT, LICENSE, AND APPROVAL APPLICATION PROCESSING

February 22, 2010

Committee Chair and Members;

Hawaii's Thousand Friends, a statewide non-profit water and land use planning organization, opposes HB 2434 HD1 that establishes maximum time periods for designated agencies to process permit and other applications before it is deemed granted if not acted upon and that authorizes third-party review.

Under the guise of "streamlining the process" HB 2434 HD1 effectively cuts out any timely and meaningful public involvement and review of the appropriateness of a project.

On Oahu the limitation of 45 days for an agency to approve or reject a project places an impossible time frame on neighborhood boards to act on an application since they only meet once a month.

As has been the norm if a community is not given adequate opportunity to properly examine and discuss a project the natural impulse will be to pressure applicable agencies and elected officials urging them to "just say no" no matter the merit of the project.

The boldness of HB 2434 HD1 in declaring that a completed application, note not an approved application but just completed, by 1/1/2011 is automatically approved if agencies have not adopted rules setting a maximum time period to grant or deny a permit or license reeks of special interests with projects already in mind.

Under our current planning system it is the counties and the state's responsibility to protect the public's interest by ensuring that a permit, license and application comply with all applicable laws and rules. This obligation cannot be abrogated to a special interest third party just for the sake of expediency.

It is inconceivable that Hawaii's cultural resources could be lost just because the State Historic Preservation Division, which is terribly underfunded and understaffed, was unable to respond within the required 45 days.

HB 2434 HD1 places the very fabric of our democratic and open system of government at risk. Therefore, Hawaii's Thousand Friends urges the Committee to hold SB 2434.

JEANNINE JOHNSON

5648 Pia Street, Honolulu, Hawai'i 96821

Phone: 373-2874 (h) / 537-7261 (w)

February 22, 2010

COMMITTEE ON WATER, LAND, & OCEAN RESOURCES

Rep. Ken Ito, Chair

Rep. Sharon E. Har, Vice Chair

Re: HB 2434, HD1 Relating to Permit, License, and Approval Application Processing
Hearing: Monday, February 22, 2010 at 10:00 am in Conference Room 325

Aloha Chair Ito, Vice Chair Har and Honorable Committee Members,

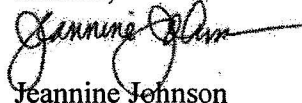
I vehemently oppose HB2434, HD1 which establishes maximum time periods for designated agencies to process permit and other applications before it is deemed granted if not acted upon; authorizes each county to contract with a third-party reviewer to streamline the processing of applications; clarifies that previously approved projects that do not impact historic properties are not subject to subsequent reviews by the State Historic Preservation Division (SHPD).

I found it interesting that the purpose of this bill is to streamline portions of the review process for permits, licenses, and approvals to facilitate construction and other related jobs. My husband is a project manager in the construction industry for a company that constructs new as well as renovates old residential and commercial projects and has never mentioned that he was unable to receive any permit or license within a necessary time period required. I can only assume that **the real purpose of this bill is to cut out due process and allow developers carte blanche for their large-scale projects.**

In the later part of the last century, developers had free rein to build their hotels in filled-in wetlands, thousands of homes in filled in fishponds and thousands of condos in a filled in salt lake resulting in a wholesale loss of our cultural resources. In this century, though, there are many environmental and cultural concerns the public has regarding Hawaiian burial sites, horrendous traffic due to overbuilding, water capacity, and inadequate infrastructure. I shudder to think what would happen if every proposed project were automatically approved when an agency failed to complete its review within 45 days. We've also recognized the inadequacy of archaeological surveys and environmental impact statements completed decades ago. SHPD must be allowed to review previously approved projects to ensure that all historic properties and cultural resources are preserved.

Finally, Representative Angus L. K. McKelvey, Chair of the Economic Revitalization, Business, & Military Affairs Committee emailed me on February 16, 2010, to state that "I too have **serious concerns about this bill** and have noted them to the Chair of the next committee should they decide to hear it." Your opposition is therefore respectfully requested.

Mahalo,



Jeannine Johnson

cc: Sen. Sam Slom
Rep. Lyla Berg
Rep. Barbara Marumoto