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GOVERNOR OF HAWAII



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

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

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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
WATER, LAND, AND HAWAIIAN AFFAIRS**

**Wednesday, February 5, 2020
9:00 AM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 2512
RELATING TO HISTORIC PRESERVATION**

House Bill 2512 proposes to authorize the Department of Land and Natural Resources (Department) to delegate to qualified archaeologists employed by the counties the authority to perform reviews of proposed projects under section 6E-42, under certain conditions; deem proposed projects to be approved if the archaeological review is not completed within a certain time frame; and grant challenges to archaeological reviews expedited hearings before the Supreme Court. **The Department appreciates the intent of this measure but offers the following comments.**

House Bill 2512 proposes to authorize the Department to delegate authority to qualified archaeologists employed by a county review and comment on the effects of a project subject to section 6E-42 review. The review by the county's qualified archaeologist would substitute the Department's review. House Bill 2512 also proposes to provide that projects submitted to the Department's State Historic Preservation Division (SHPD) shall be deemed automatically approved if the review is not completed within 30 calendar days. It also provides for challenges to archaeological reviews to be subject to an expedited hearing before the Supreme Court.

The Department believes that delegation of Section 6E-42, Hawaii Revised Statutes (HRS) reviews to the counties, when a county seeks such delegation can be accomplished with appropriate amendments to Section 6E-42, HRS. The Department prefers the language of House Bill 2542 for providing an appropriate framework for making such delegations. The standards House Bill 2512 proposes to provide for delegation are that the county request it and that it hire a qualified archaeologist. The Department believes the bill would benefit by defining "qualified" in this context rather than leaving it up to the counties, and by authorizing the Department to write rules defining this and to govern all other aspect of the delegation.

Furthermore, as drafted, House Bill appears to allow the delegation to occur on a project-by-project basis upon request of the applicant. The Department believes that a programmatic rather than project-by-project delegation would be more effective and uniform.

House Bill 2512 proposes to authorize challenges of archaeological reviews directly to the Supreme Court. It is unclear what provisions of an archaeological review could be appropriately subject to review by the Supreme Court or what judicial reviews House Bill 2512 intends to authorize by this provision.

House Bill 2512 proposes to authorize automatic approval of archaeological submissions if the review is not completed within 30 calendar days of submission. The Department notes that many delays in processing are caused by applications that are incomplete or reports that fail to meet the requirements of rule and must be revised to meet minimum standards. The purpose of Section 6E-42, HRS, review is to ensure that county and state agencies have the information necessary to give due consideration to a project's effects on historic properties prior to issuing a permit. Further, the current SHPD rules already authorize the counties to assume Departmental concurrence with the agencies determination if the Department does not comment within the comment periods specified in rule.

The Department notes that House Bill 2542 Relating To Land Development, includes specific provisions authorizing the Department to delegate section 6E-42 reviews to the counties. The amendments to section 6E-42 proposed in House Bill 2542 address the delegation clearly and in detail, authorize necessary rule making, allowing for the establishment of delegation of authority that is meaningful and provides for consideration of historic properties by county review in a manner consistent with the intent of Chapter 6E, HRS, and Section 6E-42, HRS, specifically. The Department favors the provisions of House Bill 2542 to accomplish the purpose of this bill.

Thank you for the opportunity to comment on this measure.



HB2512
RELATING TO HISTORIC PRESERVATION
Committee on Water, Land & Hawaiian Affairs

February 5, 2020

9:00 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment will recommend that the Board of Trustees **OPPOSE** HB2512, which would delegate the State Historic Preservation Division's (SHPD) authority to review projects pursuant to Hawai'i Revised Statutes (HRS) Chapter 6E to a "qualified" county archaeologist, and deem proposed projects as automatically approved by SHPD if its reviews for such projects are not completed within 30 days. While OHA does appreciate measures that are aimed at assisting SHPD in its important kuleana, OHA has substantial concerns that **the proposed delegation of SHPD's authority does not ensure any standards for "qualified" county archaeologists to carry out its responsibilities, and that the counties may lack adequate resources and information to allow such archaeologists to properly review projects under HRS Chapter 6E. Furthermore, the proposed automatic approval mechanism would potentially foreclose or unreasonably limit consultation and assessment opportunities that are critical to protecting iwi kūpuna, cultural sites, and other "historic properties" from avoidable and unnecessary impacts.**

First, OHA notes that archaeologists that are currently permitted by SHPD to do archaeological field work in Hawai'i must follow a set of standards established in SHPD's Hawai'i Administrative Rules; archaeologists hired by the State to work for SHPD also require minimum qualifications. **In allowing SHPD to delegate its archaeological and historic preservation review work to "qualified" county archaeologists, this bill does not offer or require any specified minimum qualifications or review process for such archaeologists; while minimum qualifications and a review process could potentially be described via additional administrative rules, given that SHPD has not adopted any new or amended rules over the past 15 years, it is unclear whether and how SHPD would be able to promulgate such rules in a timely manner.** OHA thus has concerns about potentially unqualified archaeologists being employed by the counties to make important decisions that will affect the well-being of cultural sites that stand to be impacted by development and related activities.

Second, OHA is concerned that counties simply may not have the resources and institutional memory that SHPD has, that would be necessary to ensure consistent and adequate protection of iwi kupuna, cultural sites, and other historic properties. For example, SHPD has compiled and maintained extensive inventoried information over the past fifty years for historic properties across the State of Hawai'i. The SHPD library includes archaeological publications and correspondences that date back to the late

1960s. These materials are utilized by SHPD staff on a regular basis when conducting their historic preservation review of proposed projects. The counties are unlikely to have information of commensurate detail and comprehensiveness and it is unclear how “qualified” county archaeologists, particularly those based on the neighbor islands, would obtain such information in their independent review of projects delegated to them. Accordingly, OHA has significant concerns regarding the ability of county archaeologists, even if sufficiently qualified, to carry out the historic preservation review responsibilities delegated to them in a consistent and adequate manner, in light of the counties’ lack of information, institutional memory, and other resources regularly relied upon by SHPD staff.

Finally, the proposed automatic SHPD approval for proposed projects after a 30-day review period raises grave concerns regarding direct and indirect impacts to iwi kūpuna, cultural sites, and similar historic properties and sites that should be protected under Chapter 6E. Notably, SHPD recommendations often include mitigations for ground disturbing work as well as consultation requirements that minimize risks to irreplaceable historic properties and sites. Particularly for larger and highly impactful projects, a 30-day review timeframe would not allow SHPD to conduct an adequate level of consultation and assessment necessary for the development of mitigation recommendations that can meaningfully minimize impacts to such 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. The mandatory 30-day approval time frame for all projects will therefore almost certainly result in unintended and avoidable impacts to iwi kupuna, cultural sites, and other historic properties. As such, OHA cannot support this measure’s proposal to mandate the automatic approval of projects under HRS Chapter 6E, particularly in such a narrow window of time.

OHA notes that there may be ways to achieve this measure’s goals and points to relevant SHPD language in HB2542/SB3104 and SB2076, which would also proposes to allow SHPD to delegate HRS 6E review to the county but only after the county meets certain standards and without the automatic approval language.

For the above reasons, OHA respectfully requests that the Committee **HOLD** HB2512. Mahalo for the opportunity to testify on this measure.

TO: Rep. Ryan I. Yamane, Chair
Rep. Chris Todd, Vice Chair
House Committee on Water, Land, and Hawaiian Affairs

**SOCIETY FOR HAWAIIAN
ARCHAEOLOGY**



FROM: Angus Raff-Tierney, M.A., Legislative Committee Chair,
Society for Hawaiian Archaeology
angusrafftierney@yahoo.com

HEARING: February, 5 2020, 9:00 AM, Conference Room 325

SUBJECT: Comments on HB 2512, Relating to Historic Preservation

I am Angus Raff-Tierney, Chair of the Legislative Committee of the Society for Hawaiian Archaeology (SHA). We have over 150 members including professional archaeologists and advocates of historic preservation. On behalf of SHA, I present our comments on HB 2512 (Relating to Historic Preservation).

We support the intent of HB 2512 which is to address the unacceptably large backlog of projects to be reviewed by the State Historic Preservation Division (SHPD) under Chapter 6E-42, Hawaii Revised Statutes (HRS). This excessive backlog has resulted in delays affecting residential and commercial projects due to SHPD's failure to complete timely reviews of county permits. HB 2512 would allow the counties to review some Chapter 6E-42 projects normally reviewed by SHPD if the counties meet certain requirements.

We have two concerns with this bill. First, the SHPD is the only entity that houses the previous reports, records and other documents that are required to conduct these reviews. The proposed county review staff must have access to these documents, either electronically or in person at SHPD offices. The SHPD has been digitizing their documents to put on an online portal that would allow remote access from any computer but the system is not yet available for remote or public use. Completion and availability of this "HCRIS" project would be critical to expedite the process as proposed in many bills coming up this session, including those hoping to outsource some of the SHPD's review powers to counties or third parties. Completion of this project continues to be delayed. Second, a process is needed to ensure that the state historic preservation process is applied consistently among participating counties and SHPD.

We offer the following comments on the automatic approval process and hope that they will be useful in amending future versions of the subject bill. The subject should be amended so as to delete all of the proposed amendment Chapter 6E-42 (d):

"(d) The proposed project shall be deemed automatically approved by the state historic preservation division if the archaeological review under this section is not completed within thirty calendar days."

Having an automatic approval built into the process would make it vulnerable to future lawsuits, as HRS Chapter 91-13.5 forbids specifying a maximum time period in this case. Furthermore, if a project is automatically approved and it turns out to have blocked traditional native Hawaiian customary practices, it would be in conflict with the ruling of *Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission* (79 Hawai'i 425 [1995]). Thus, SHA suggests that this portion related to automatic approval be stricken from the bill.

<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.

Should the bill 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 considering our testimony.

<https://hawaiianarchaeology.org/>

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HB-2512

Submitted on: 2/1/2020 7:05:34 AM

Testimony for WLH on 2/5/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments:

HB-2512

Submitted on: 2/3/2020 3:49:38 PM

Testimony for WLH on 2/5/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Chair Alice L. Lee	Individual	Support	No

Comments:

HB-2512

Submitted on: 2/3/2020 11:33:29 PM

Testimony for WLH on 2/5/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Azuma Chrupalyk	Individual	Support	No

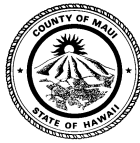
Comments:

Council Chair
Alice L. Lee

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

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



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

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

February 4, 2020

LATE

TO: The Honorable Ryan I. Yamane, Chair
House Committee on Water, Land & Hawaiian Affairs

FROM: Kelly Takaya King
Councilmember

SUBJECT: **HEARING OF FEBRUARY 5, 2020; TESTIMONY IN SUPPORT OF HB 2512, RELATING TO HISTORIC PRESERVATION**

Thank you for the opportunity to testify in **support** of this important measure. The purpose of this measure is to authorize DLNR to delegate to qualified archaeologists employed by the counties the authority to perform reviews of proposed projects under the historic preservation program and deem these proposed projects automatically approved if the archaeological review is not completed within 30 calendar days.

This measure is similar to one in the Maui County Council's Legislative Package. I offer this testimony in my capacity as an individual member of the Maui County Council.

I support this measure for the following reasons:

1. Maui County is experiencing a housing crisis that is impacted by the current State Historic Preservation Division (SHPD) process.
2. This measure would help alleviate SHPD's back-log that prevents them from processing affordable and workforce housing projects in a timely manner.
3. Allowing counties to hire qualified archeologists will support affordable housing initiatives and help fast track housing solutions.

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

HB-2512

Submitted on: 2/4/2020 9:58:37 PM

Testimony for WLH on 2/5/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Trisha Kehaulani Watson	Honua Consulting	Oppose	No

Comments:

Dear Chair Yamane and Vice Chair Todd,

I am writing to express my **STRONG OPPOSITION** to HB2512. While I appreciate the intent of this bill, as drafted, it would only create additional problems in the field of historic preservation and ultimately prove significantly counter productive to its stated goals.

I urge you to **HOLD** this bill until a better solution can be identified.

Thank you,

Trisha Kehaulani Watson, JD, PhD