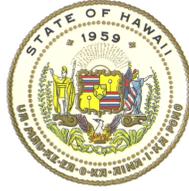


DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
WATER & LAND**

**Tuesday, March 15, 2022
8:30 AM
Conference Room 430, Via Videoconference**

**In consideration of
SENATE BILL 3135, SENATE DRAFT 2
RELATING TO HISTORIC PRESERVATION REVIEWS**

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

Senate Bill 3135, Senate Draft 2 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, Senate Draft 2 provides the basis for ensuring just such consistency.

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

Senate Bill 3135, Senate Draft 2 proposes to establish 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.

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

Senate Bill 3135, Senate Draft 2 proposes to appropriate an unspecified amount of 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, Senate Draft 2 also allows the Department to retain up to 10 percent of the funds appropriated to the counties for cover expenses associated with administering the appropriation to the Counties. The Department appreciates the inclusion of this provision.

Senate Bill 3135, Senate Draft 2 SECTION 2 also proposes to authorize 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.

As originally drafted in Senate Bill 3135, the Department understood that the third-party reviewer program would be implemented by parties external to the Department and that the third-party reviewers would be hired and paid directly by permit applicants. The Department understood this program would apply to projects prior to submission to the Department for review, and that it would be an ongoing program. As originally drafted, the Department did not envision 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. The Department also notes that even if the Legislature wished to fund Department contracting with third-party reviewers, the Department cannot, at this time, provide the Legislature with an estimate of what employment of third-party reviewers just to reduce the backlog to a manageable level would cost.

As originally envisioned in Senate Bill 3135, the third-party review program was intended 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 originally drafted and appreciates that the Senate Committee on Ways and Means accepted the Department's recommendations when it heard Senate Bill 3135 Senate Draft 1 and returned to the original language in Senate Bill 3135, Senate Draft 2.

Thank you for the opportunity to comment on this measure.

DAVID Y. IGE
GOVERNOR



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
ROSS M. HIGASHI
EDUARDO P. MANGLALLAN
PATRICK H. MCCAIN
EDWIN H. SNIFFEN

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 15, 2022
8:30 A.M.
State Capitol, Teleconference

S.B. 3135, S.D. 2
RELATING TO HISTORIC PRESERVATION REVIEWS

House Committee on Water and Land

The Department of Transportation (DOT) **supports** and offers comments to S.B 3135, S.D. 2 which transfers 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. It also provides financial assistance to the counties to hire qualified staff to conduct the reviews.

The DOT supports the suggested revisions to 6E-42 as it will streamline the permit process for private property by delegating reviews to the County preservation officers. The DOT also suggested amending 6E-8 in a similar way as the suggested amendments to 6E-42 in order to help streamline DOT projects. The DOT is supportive of efforts to streamline processes and improve the ability for it to deliver projects.

Thank you for the opportunity to provide testimony.



SB3135 SD2
RELATING TO HISTORIC PRESERVATION REVIEWS
House Committee on Water and Land

March 15, 2022

8:30 a.m.

Room 430

The Administration of the Office of Hawaiian Affairs (OHA) will recommend that the Board of Trustees **COMMENT** on SB3135 SD2, which will allow the State Historic Preservation Division (SHPD) to 1) share Hawai'i Revised Statutes Chapter (HRS) 6E historic preservation project review authority with a County Preservation Officer, provided certain conditions 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 the Department's requirements prior to submission of the documents to SHPD. Notably, certification of third-party reviewers shall be done in consultation with OHA.

OHA appreciates the intent of this measure to assist SHPD in fulfilling its important kuleana, and offers two amendments which will help ensure continuing protection for irreplaceable Native Hawaiian cultural sites and burials. OHA respectfully requests that SB3135 be amended to **1) not delegate HRS 6E-43 review and to explicitly reaffirm the authority of the Island Burial Councils over reviews pertaining to Native Hawaiian burials; and, 2) require consultation with OHA on any written agreement between the Department and the County certifying that the County has met the requirements prescribed in HRS 6E-42(c).**

1) SB3135 must not delegate HRS 6E-43 review and explicitly reaffirm the authority of the Island Burial Councils.

As currently written, SB3135 would allow a County Preservation Officer to assume HRS 6E-43 reviews, yet HRS 6E-43 currently requires that SHPD have the authority to 1) indicate if human skeletal remains or burial goods are to be moved; 2) interact with and provide administrative support to the Island Burial Councils for Native Hawaiian burials; 3) approve preservation or mitigation plans; and, 4) decide relocation or preservation in place for non-Native Hawaiian burials. Thus, the current language in SB3135 would be in conflict with HRS 6E-43 if adopted unless HRS 6E-43 is also amended.

To prevent this problem from occurring and to ensure the treatment of Native Hawaiian burials are determined by those with appropriate expertise, the measure should be amended to remove delegation of any HRS 6E-43 and to provide specific acknowledgment of the continuing authority of the Island Burial Councils over Native Hawaiian burials under HRS § 6E-43.5 and § 6E-43.6.

OHA respectfully requests that the language on page 5, lines 18-20 be amended and to add a new subsection as follows:

"(d) The department shall not delegate reviews or comments to the county for projects affecting properties listed in the Hawaii

register of historic places or the national register of historic places, or for projects subject to review under section 6E-43.

(e) The department shall not delegate any of the responsibilities established by sections 6E-43, 6E-43.5 and 6E-43.6 as it relates to burials, nor shall the authority of the island burial councils be diminished in any way."

2) OHA should be consulted on any written agreement between the Department and the County certifying that the County has met the requirements prescribed in HRS 6E-42(c).

OHA has a vested interest in any long-term changes to the historic preservation review process and seeks continued involvement in historic preservation review to help prevent inappropriate or inconsistent treatment of irreplaceable Hawaiian cultural resources and burial sites. **OHA would thus like to review any written agreement that would acknowledge a County is certified. Accordingly, OHA respectfully requests an amendment to the language on page 5, lines 7-8, to read as follows:**

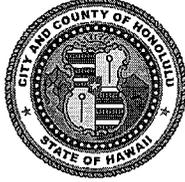
"(8) In consultation with the Office of Hawaiian Affairs, entered into a written agreement with the department in which the department certifies that the county has met the requirements of this section...;"

Mahalo nui loa for the opportunity to testify on this important measure.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honoluluapp.org • CITY WEB SITE: www.honolulu.gov

RICK BLANGIARDI
MAYOR



DEAN UCHIDA
DIRECTOR

DAWN TAKEUCHI APUNA
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

March 15, 2022

The Honorable David A. Tarnas, Chair
and Members of the Committee on Water & Land
Hawaii House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Tarnas and Committee Members:

**Subject: Senate Bill No. 3135, SD 2
Relating to Historic Preservation Reviews**

Attached is testimony signed by all four (4) County Planning Directors raising concerns/objections to certain sections of Senate Bill No. 3135, SD 2.

As the Bill has crossed over to the House, we are now in **strong opposition** to the sections of the Bill that delegate the State's responsibility to review proposed projects pursuant to Chapter 6E-42 HRS. Allowing the language to remain in the Bill will put the Counties in the same position as SHPD is in now with the inability to hire and retain qualified archaeological staff. It also is an unfunded mandate that shifts this responsibility to the Counties with insufficient funding to operate and maintain this new responsibility in the future.

As such, we strongly recommend that either this Bill be held in Committee, or that Section 2 (a) thru (d) be deleted.

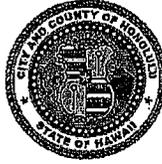
We are strongly opposed to Senate Bill No. 3135, SD 2, and appreciate the opportunity to provide our position on this matter.

Very truly yours,


Dean Uchida
Director

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU
650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
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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.

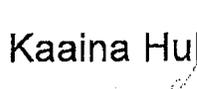
We would strongly suggest that the Legislature refine this third party program to allow SHPD to augment their staff by having certified third party individuals and/or organizations assist SHPD with their Section 6E-42 reviews. By allowing SHPD to bring in certified third party reviewers to supplement 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.

 Digitally signed by
Uchida, Dean
Date: 2022.01.26
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Dean Uchida, Director
City and County of Honolulu, Department of Planning and Permitting

 Digitally signed by
Ka'aina Hull
Date: 2022.01.26
16:46:53 -10'00'

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

 Digitally signed by
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)

Zendo Kern, Director
County of Hawaii, Planning Department

Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

West Hawai'i Office
74-5044 Ane Keohokālole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563



County of Hawai'i
PLANNING DEPARTMENT

Zendo Kern
Director

Jeffrey W. Darrow
Deputy Director

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

March 14, 2022

Testimony by
ZENDO KERN
Director, County of Hawai'i Planning Department
before the
Committee on Water & Land
Tuesday, March 15, 2022, 8:30 A.M.
State Capitol, Conference Room 430

In consideration of
SB 3135 SD2
Relating to Historic Preservation Reviews

Honorable Chair Tarnas, Vice Chair Branco and Members of the Housing Committee

Attached is testimony signed by all four (4) County Planning Directors raising concerns/objections to certain sections of Senate Bill No. 3135, SD 2.

As the Bill has crossed over to the House, we are now in **strong opposition** to the sections of the Bill that delegate the State's responsibility to review proposed projects pursuant to Chapter 6E-42 HRS. Allowing the language to remain in the Bill will put the Counties in the same position as SHPD is in now with the inability to hire and retain qualified archaeological staff. It also is an unfunded mandate that shifts this responsibility to the Counties with insufficient funding to operate and maintain this new responsibility in the future.

As such, we strongly recommend that either this Bill be held in Committee, or that Section 2 (a) thru (d) be deleted.

We are strongly opposed to Senate Bill No. 3135, SD 2, and appreciate the opportunity to provide our position on this matter.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
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RICK BLANGIARDI
MAYOR



DEAN UCHIDA
DIRECTOR

DAWN TAKEUCHI APUNA
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

January 28, 2022

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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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 - 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.



Digitally signed by
Uchida, Dean
Date: 2022.01.26
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Dean Uchida, Director
City and County of Honolulu, Department of Planning and Permitting

Kaaina Hull

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

**Michele
McLean**

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Michele McLean
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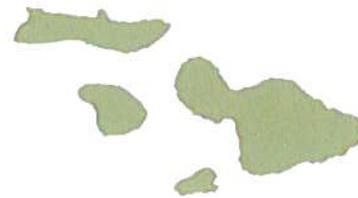
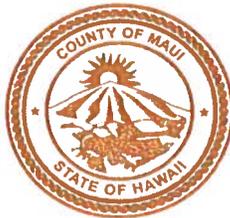
Michele McLean, Director
County of Maui, Planning Department

Zendo Kern

[Zendo Kern \(Jan 27, 2022 08:59 HST\)](#)

Zendo Kern, Director
County of Hawaii, Planning Department

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

March 14, 2022

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

BEFORE THE HOUSE COMMITTEE ON WATER & LAND
Tuesday, March 16, 2022, 8:30 A.M.
Videoconference / Conference Room 430

SB 3135, SD2 RELATING TO HISTORIC PRESERVATION REVIEWS.

Representative David A. Tarnas, Chair
Representative Patrick Pihana Branco, Vice Chair
Honorable Members of the House Committee on Water & Land

Aloha Chair Tarnas, Vice Chair Branco and Committee Members,

We oppose SB 3135, SD2.

Attached is testimony signed by all four County Planning Directors raising concerns/objections to certain sections of the bill.

As the bill has crossed over to the House, we remain in strong opposition to the sections of the bill that delegate to the Counties the State's responsibility to review proposed projects pursuant to Chapter 6E-42 HRS. Allowing this language to remain in the bill will put the Counties in the same position that SHPD is in now with the inability to hire and retain qualified archaeological staff. It also is an unfunded mandate that shifts this responsibility to the Counties with insufficient funding to operate and maintain this new responsibility in the future.

As such, we strongly recommend that either this bill be deferred, or that Sections 2 (a) thru (d) be deleted.

We are strongly opposed to Senate Bill No. 3135, SD 2, and appreciate the opportunity to provide our position on this matter.

Mahalo for your consideration.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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

 Digitally signed by
Uchida, Dean
Date: 2022.01.26
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Dean Uchida, Director
City and County of Honolulu, Department of Planning and Permitting

 Digitally signed by
Kaaina Hull
Date: 2022.01.26
16:46:53 -10'00'

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

 Digitally signed by
Michele McLean
Date: 2022.01.26
16:44:07 -10'00'

Michele McLean, Director
County of Maui, Planning Department


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

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

March 14, 2022

TO: Honorable David A. Tarnas, Chair
House Committee on Water and Land

FROM: Alice L. Lee
Council Chair

DATE: March 14, 2022

SUBJECT: **SUPPORT FOR SB 3135, SD2, 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.

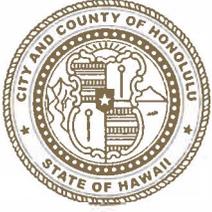
The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

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.

ocs:proj:legis:22legis:testimony:sb3135_sd2_paf22-018(70)a_jbf



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 202
HONOLULU, HAWAII 96813-3065
TELEPHONE: (808) 768-5010 • FAX: (808) 768-5011

**Testimony of Councilmember Carol Fukunaga
CORRECTED – Written Only**

**Before the House Committee on
Water and Land**

**Tuesday, March 15, 2022 – 8:30 AM
Via Videoconference**

Regarding Senate Bill 3135, SD2

Senate Bill 3135, SD2 proposes amendments to Section 6E-42, Hawaii Revised Statutes (HRS), to delegate most historic preservation reviews under Section 6E, HRS, to the various counties.

As your Committee considers delegating most historic preservation reviews under Section 6E, HRS, to the counties, I encourage State Historic Preservation Division of the Department of Land and Natural Resources and the State Legislature to consider whether additional state guidance for the counties to interpret and enforce Chapter 6E, HRS, should be added to this measure.

More specifically, older urban Honolulu communities have experienced a disturbing surge in the number of ‘monster’ or excessively-large structures being built in older neighborhoods during the past decade. The Honolulu City Council attempted to address the growing problem of inadequate setbacks and on-street parking to accommodate excessively-large structures, or drainage issues associated with concrete foundations displacing mature trees and yard vegetation, by adopting *Ordinance 19-3* on May 1, 2019.

The purpose of this measure was to curb the proliferation of excessively-large structures – particularly those in older urban neighborhoods like Kaimuki, Wilhemina Rise, Kapahulu, Palolo Valley, Manoa valley, Punchbowl, Nuuanu-Pauoa Valley, Alewa and Kamehameha Heights, Kalihi Valley and Aiea/Halawa Heights. The purpose and findings of *Ordinance 19-3* are stated as follows:

SECTION 1. Purpose and Findings. The purpose of this ordinance is to address the problem of the illegal use of large residential structures in residential districts.

Today’s residential development standards have been in place and, for the most part, remained unchanged since the late 1960s.

The City Council finds that additional development standards that are consistent with the purpose and intent of the Land Use Ordinance are necessary to preserve and protect the character and livability of our residential areas, to conserve the beauty and historic character of our neighborhoods, to reduce storm water runoff into our coastal waters, to cool our communities, to address climate change, and to minimize impacts to existing infrastructure.

A select number of new regulations may also curb the growing problem of regulatory abuses and significant negative impacts to our neighborhoods, while leaving much of the existing

development standards in place to encourage orderly development. These amendments to the Land Use Ordinance are intended to allow for one-family and two-family households, but not negatively impact the ability of extended families or multigenerational households to build homes in the residential districts.

Residential zoning lots with large detached dwellings that are covered in concrete surfaces from property line to property line increase storm water runoff and raise ambient temperatures. These large structures are also incongruous with the historic and aesthetic integrity of established neighborhoods. The risks associated with large detached dwellings with many occupants include adverse effects on municipal sewage systems, street parking availability, and public safety.

Unfortunately, clever property owners and contractors soon found ways to bypass the stricter floor ratio/size and other prohibitions in **Ordinance 19-3**, and ‘monster home’ structures have proliferated in Honolulu as such builders saw opportunities to use them for short-term vacation rentals, and for longer-term rentals in which the number of residents exceed the limit of five unrelated individuals that are permitted to rent rooms in neighborhoods zoned for single-family residences.

The older urban subdivision of Pacific Heights in Council District 6 is one example of a neighborhood for which I have received complaints about 9 excessively-large structures now under construction that are adjacent to properties that are currently listed on the Hawaii Historic Register, or close to residential properties that meet the criteria for being entered into the Hawaii register of historic places.

On January 31, 2022, City Department of Planning and Permitting (DPP) revoked the building permit for one of the structures under construction on Pacific Heights Road, citing examples in which the construction was not in compliance with its building permit. The property owner has appealed the permit revocation, and is currently taking actions to comply with the building permit.

This project was also the subject of January 18, 2022 State Historic Preservation Division (SHPD) correspondence to Department of Planning and Permitting, in which SHPD advised DPP that the department should have submitted the application for building permit to SHPD before granting the building permit due to its proximity to residential properties that were on the Hawaii Historic Register or that met the criteria for being entered into the Hawaii register of historic places.

Department of Planning and Permitting’s February 14, 2022 response to SHPD pointed out:

However, to our knowledge, SHPD has never broadly interpreted Hawaii Revised Statutes (HRS) Section 6E-42 to include a property with a project that is adjacent to, across the street from and/or neighboring a historic property or properties, meaning a property with a project for which no historic property, burial and/or archaeologically significant site is on that property.

I therefore urge that your Committee consider amendments to **Senate Bill 3135, SD2** that include SHPD review of a property that is adjacent to, and/or across from a historic property or properties. Thank you for the opportunity to submit written testimony on this measure.

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR
MICHAEL A. DAHLIG, MANAGING DIRECTOR

Testimony of Kaaina Hull
Director, Planning Department, County of Kaua'i

Before the
House Committee on Water & Land
March 15, 2022 at 8:30 am
Room 430 & Via Videoconference

In consideration of
Senate Bill 3135 SD2
Relating to Historic Preservation Reviews

Aloha Chair Tarnas, Vice-Chair Branco, and Committee Members:

The County of Kaua'i Planning Department submits its testimony in **strong opposition** of SB 3135 SD2.

Along with the other planning directors of the other three counties, we are submitting the attached letter that iterates our concerns with certain sections of Senate Bill No. 3135, SD 2. We remain strongly opposed to Senate Bill No. 3135, SD 2. Thank you for the opportunity to testify on this matter.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 788-6041
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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.
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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;
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 - 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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Uchida, Dean
Date: 2022.01.26
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Dean Uchida, Director
City and County of Honolulu, Department of Planning and Permitting



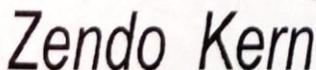
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Ka'aina Hull, Director
County of Kauai, Planning Department



Digitally signed by
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)

Zendo Kern, Director
County of Hawaii, Planning Department



March 14, 2022

Representative David A. Tarnas, Chair
Representative Patrick Branco, Vice Chair
Committee on Water and Land

RE: **SB 3135 SD2 - Relating to Historic Preservation Reviews**
Hearing date: March 15, 2022 at 8:30AM

Aloha Chair Tarnas, Vice Chair Branco and members of the committee,

Mahalo for the opportunity to submit testimony on behalf of NAIOP Hawaii in **SUPPORT** on SB 3135 SD2. 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 SD2 allows for the transfer of authority for certain 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 SD2 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. NAIOP strongly supports the recent amendments made in the previous committee that defines the role of third-party reviewers for DLNR. The amended language allows DLNR to establish a program to certify qualified third-party individuals and organizations to review documents before submission to DLNR. Additionally, the language requires the standard of review must comply with DLNR documentation requirements to ensure that projects reviewed by qualified third-parties comply with the statute.

Representative David A. Tarnas, Chair
Representative Patrick Branco, Vice Chair
Committee on Water and Land
March 14, 2022
Page 2

Enabling third-party reviews to be conducted will assist DLNR and the counties by significantly reducing the current caseload and backlog. Moreover, third-party reviews will expedite future reviews and allow for the development of much needed housing and critical infrastructure. This amendment offers another avenue for historic preservation reviews by qualified individuals.

Moreover, permitting third-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 SD2 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: Representative David A. Tarnas, Chair
Representative Patrick Pihana Branco, Vice Chair
Committee on Water & Land (WAL)

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

Committee: Tuesday, March 15, 2022
8:30 a.m.
Via Video Conference and Conference Room 430

RE: SB3135 SD2, Relating to Historic Preservation

On behalf of Historic Hawai'i Foundation (HHF), I am writing **with comments on SB 3135 SD1**. 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 SD1 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 House of Representatives
Committee on Water and Land

Testimony by
Hawaii Government Employees Association

March 15, 2022

S.B. 3135, S.D. 2 – RELATING TO HISTORIC
PRESERVATION REVIEWS

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO would like to provide comments on S.B. 3135, S.D. 2, 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.

It is also our understanding that there are currently three (3) vacancies in the State Historic Preservation Division, two (2) of which are unfunded positions and one (1) frozen position that cannot be filled. Prior to considering third-party reviewers, the Department should consider alternatives within its current policies or prioritize filling its current vacant positions.

Thank you for the opportunity to testify on S.B. 3135, S.D. 2.

Respectfully submitted,

Randy Perreira
Executive Director