

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
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STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

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DAWN N.S. CHANG
CHAIRPERSON
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DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
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ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
DAWN N. S. CHANG
Chairperson

Before the House Committee on
FINANCE

Tuesday, February 28, 2023
10:00 AM

State Capitol, Conference Room 308 Via Videoconference

In consideration of
HOUSE BILL 202, HOUSE DRAFT 2
RELATING TO HISTORIC PRESERVATION REVIEWS

House Bill 202, House Draft 2 proposes to amend Sections 6E-8, 6E-10, and 6E-42, Hawaii Revised Statutes (HRS), to require the Department of Land and Natural Resources (Department) to contract with third-party reviewers for affordable housing projects, if the Department is unable to complete its reviews in sixty days, provided that the consultant meets the Department's professional qualifications and experience, will be make their recommendation to the Department in thirty days, and that the contract is approved by the appropriate Island Burial Council. **The Department supports this measure with recommended amendments.**

The Department recognizes the need to support affordable housing units in Hawai'i and acknowledges that even though review of such projects is one of our highest priorities, reviews of such submissions are not always completed as promptly as project proponents might like or within the time provided by the administrative rules. The Department acknowledges and appreciates the support of the Legislature by creating 14 new positions in the Department's State Historic Preservation Division (SHPD) during the last session. The Department believes once filled, these positions will provide SHPD with the capacity to reduce the time it takes to complete Chapter 6E, HRS, of most projects, including affordable housing projects.

The Department does not have funds to contract with third-party consultants and this mandate is not included in the Department's budget. While we believe this authorization may facilitate more timely review of affordable housing projects, funds would need to be appropriated. The Department appreciates that House Bill 202, House Draft 2 appropriates a blank amount of funds for third-party reviewers. The Department notes that it cannot estimate the number of times that third-party reviews may be needed in the coming fiscal year. Furthermore, it is difficult to determine in advance the cost estimate for a third-

party consultant contract, thus, Department cannot advise the Committee on a meaningful estimate of the costs and budgetary requirements of such third-party contracts.

The Department believes that difficulty in estimating, and budgeting third-party consultants can be overcome by providing a statutory mechanism providing for the project proponent to pay for the third-party consultant selected and approved by the Department. The Department recommends amending this measure by adding a new subparagraph (4) beginning a page 5, line 4:

(4) The project proponent shall pay for the reasonable fee requirements of the third party consultant; provided that the project proponent may contract with or sponsor any county, housing authority, non—profit organization, or person, to meet the fee requirements.

Insert a new subparagraph (4) on page 8, beginning at line 12:

(4) The project proponent shall pay for the reasonable fee into the State Historic Special Fund, which the Department will use this fee to meet the funding requirements of the contract with the third party consultant; provided that the project proponent may contract with or sponsor any county, housing authority, non—profit organization, or person, to meet the fee requirements.

Insert a new subparagraph (4) on page 12, beginning at line 3:

(4) The project proponent shall pay for the reasonable fee into the State Historic Special Fund, which the Department will use this fee to meet funding requirements of the contract with the third party consultant; provided that the project proponent may contract with or sponsor any county, housing authority, non—profit organization, or person, to meet the fee requirements.

The Department believes that these amendments will resolve funding and budgeting questions and avoid any possible appearance of a conflict of interest.

Mahalo for the opportunity to testify in support of this measure.

HISTORIC HAWAII FOUNDATION

TO: Representative Kyle T. Yamashita, Chair
Representative Lisa Kitagawa, Vice Chair
Committee on Finance (FIN)

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

Committee: Tuesday, February 28, 2023
10:00 a.m.
Via Video Conference and Conference Room 308

RE: HB 202 HD2, Relating to Historic Preservation Reviews

On behalf of Historic Hawai'i Foundation (HHF), I am writing **with comments and concerns about HB 202 HD 2.**

The bill relates to the duties of the Department of Land and Natural Resources for historic preservation reviews of state projects (HRS 6E-8); private property listed on the state register of historic places (HRS 6E-10); and other private property (HRS 6E-42). The bill provides for these reviews to be delegated to third-party consultants for projects in circumstances where the State Historic Preservation Division (SHPD) anticipates being unable to complete its review in 60 days.

The Constitution recognizes the value of conserving historic and cultural property for the public good; the purpose of HRS 6E is to implement “the public policy of this State to provide leadership in preserving, restoring and maintaining historic and cultural property...and to conduct activities, plans and programs in a manner consistent with the preservation and enhancement of historic and cultural property” (HRS 6E-1).

State law (HRS §6E-8), currently requires that prior to any state, county or public project commencing, that the proposed project shall be referred to SHPD for its review of the proposed project's potential effect on historic properties, aviation artifacts, or burial sites, especially those listed on the state register of historic places. The proposed project shall not commence until the department gives its written concurrence. SHPD review and comment is also required for privately-owned projects (see §6E-10, §6E-42 and §6E-43).

SHPD's review of proposed projects is an important safeguard to ensure that historic properties and cultural resources are identified and appropriate treatment measures are in place during planning and design work, which also then limits surprises or delays during construction.

SUMMARY OF HHF CONCERNS and RECOMMENDATIONS

The bill does not demonstrate how the proposed third-party consultant would achieve either the aims of appropriate treatment and preservation of Hawaii's historic and cultural resources, nor how the third-party consultant would achieve the aims of expediting development proposals and project reviews.

The measure would allow SHPD to retain a third-party consultant to conduct the historic preservation reviews on behalf of the department in the event that SHPD is unable to complete its review within 60 days. The bill implies that SHPD would develop and maintain a list of individuals or organizations who are qualified as third-party consultants who can be activated on demand.

Rather than establish a new program and divert SHPD's resources and professional staff to overseeing and managing third-party reviewers, HHF recommends that SHPD be provided with the adequate professional staffing and resources to execute its statutory responsibilities.

In addition to issues of effectiveness, HHF is also concerned with several practical issues, including: professional qualifications that would be required; selection and contracting procedures; how conflicts of interest would be addressed; how the third-party consultant decisions would be reviewed and incorporated into the administrative record; what resources the Division would need to manage the third-party consultants and review processes; and how the decisions reached by the third-party reviewers would be institutionalized, communicated and tracked.

Rather than introduce an entirely new bureaucracy to the process, Historic Hawai'i Foundation recommends that SHPD be provided with the resources for personnel, technology, equipment and training to do the job for which it has been entrusted. If the Division is fully staffed and supported, the issues of timeliness and quality of reviews would be addressed at the source, and the proposed work-around is moot.

ISSUE #1: Qualifications and Logistics for Third-Party Consultants

Although the reliance on third-party reviewers could be a viable approach for matters such as building or zoning codes, most architects and engineers do not possess the specialized technical training to allow them to make determinations of effect on historic properties and provide meaningful review comments to ensure appropriate treatment of historic properties. We are concerned with the issue of ensuring that the reviewers have knowledge, understanding and expertise in native Hawaiian cultural resources or values, especially if the third-party consultants are selected from out-of-state.

HHF appreciates that the measure makes reference to education and experience standards and qualifications for preservation professionals as determined by SHPD rules. HHF recommends that the administrative rules also include a quality control and audit procedure that ensures the appropriateness and quality of the reviews, data tracking, implementation of review comments, and reporting.

HHF recommends that additional criteria and standards be established for any such third-party consultants. At minimum, the criteria should include:

- Professional qualifications and standards that each consultant shall demonstrate;
- Sufficient internal controls to ensure qualified third-party consultant 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 consultants must be independent from the party that drafted or generated the project or program submittal that is the subject of the review.

It is unclear what action is required of SHPD once it receives the third-party consultant's recommendation. What action is the department expected to take? Do state personnel then review the third-party consultant's recommendations? If there are discrepancies or conflicts, how will they be resolved? Is SHPD responding to the original applicant or to the third-party reviewer? How will appropriate quality control and checks and balances be sustained? These issues will need to be addressed either in the bill or in the implementing rules and regulation.

HHF recommends that the bill include a deadline by which DLNR is to develop the draft rules for public input and comment, as well as a deadline for the final version of the rules be presented to the Board of Land and Natural Resources for action.

ISSUE #2: Integration with Federal Historic Preservation Reviews

The review and compliance process currently outlined in State statute and rules is substantially parallel to a similar process in Federal regulations, which provides for the identification, review and agreement on treatment of historic properties in cases where federal funding, land, permits or other approvals apply. However, there are key differences that need to be accommodated.

In the case of many public projects, including transportation and other infrastructure, as well as affordable housing projects, federal funds are frequently used for land acquisition and/or project financing. In those cases, Section 106 of the National Historic Preservation Act applies. The Code of Federal Regulations (36 CFR Part 800) governs issues related to historic preservation and includes specific roles and responsibilities for the State Historic Preservation Officer (SHPO). While the technical reviews may be delegated to qualified preservation professionals in the fields of architecture, architectural history or archaeology, the SHPO is ultimately responsible for the authorization and approval of the Section 106 process and resolution of potential effects on historic properties.

In the cases where federal funds, lands, permitting, licenses or approvals are required, the proposed use of third-party consultants would result in a double review process: one by the third-party reviewer for purposes of HRS §6E and one by the SHPD personnel for compliance with 36 CFR 800.

There are key differences between State and Federal historic preservation regulations, including:

- Federal law requires the agency or department to consult with other parties, including preservation organizations; other individuals or organizations with an interest in the historic resource or the proposed project; and Native Hawaiian Organizations that attach religious or cultural significance to the historic property. Hawai'i Administrative Rules include only a limited duty to consult with other interested parties. Third-party consultants would be ill-equipped to manage or participate in the consultation process and could not represent the SHPD views.
- Federal law requires that review of projects include not only direct effects within the footprint of the project, but also indirect and cumulative effects, in which the entirety of the effect is identified and evaluated, and appropriate measures are taken. State law is primarily concerned only with direct effects and seldom looks beyond the immediate consequences to a larger picture. Third-party consultants would be ill-equipped to understand the cumulative effects or how to address them.
- Another significant difference between State and Federal regulations as they apply to historic resources is that State law is explicitly concerned with protection of Native Hawaiian burials and cultural resources, whereas Federal law is much less direct. Early identification of other types of historic properties—buildings, structures, archaeological sites—is relatively simple in that they can almost always be seen. However, subsurface or submerged historic properties are usually not previously identified. Third-party consultants would likely be unaware of unseen historic properties or have information on how to identify and resolve effects to them.

SHPD professional staff are versed in these and other differences and are able to ensure that review and compliance procedures address them. If a double-review with third-party consultants were introduced, the review processes would be segregated, adding conflict, confusion and contradiction.

Besides being inefficient and ineffective, the use of third-party consultants has the potential to remove an important safety net for the preservation and protection of the historic and cultural resources of Hawai'i and would introduce more uncertainty in the development process.

Given the ambiguities of the policy and proposed direction, and the availability of simpler and more direct solutions, HHF recommends that HB 202 be deferred.

Thank you for the opportunity to comment.



COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION
HAWAII CHAPTER

February 27, 2023

Representative Kyle Yamashita, Chair
Representative Lisa Kitagawa, Vice Chair
Committee on Finance

RE: HB 202 HD1 - Relating to Historic Preservation Reviews
Hearing date: February 28, 2023 at 10:00AM

Aloha Chair Ichiyama, Vice Chair Takayama and members of the committee,

Mahalo for the opportunity to submit testimony on behalf of NAIOP Hawaii in **SUPPORT** on HB 202 HD1. 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.

HB 202 HD1 is intended to promote more timely reviews of projects by authorizing the Department of Land and Natural Resources (DLNR) State Historic Preservation Division (SHPD) to contract its review of the proposed state projects, projects on privately owned historic property, and projects affecting historic properties to third-party consultants if the department will not be able to complete its review within sixty days.

Primarily, HB 202 HD1 seeks to address the significant delays that permit applicants face in obtaining county permits that require review under section 6E-42, Hawaii Revised Statutes. Currently, the backlog of historic reviews is 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 and cultural sites, however, a balance needs to be found to increase efficiency while maintaining the quality of reviews.

NAIOP Hawaii appreciates the work of the previous committee, however, we would recommend amending the language back to make the contracting of these third-party reviews mandatory. Allowing for the contracting of review to be discretionary would not be consistent with the intent of the measure to expedite reviews. The SHPD should be required to contract with third parties if the department is unable to process reviews in a timely manner within 60 days.

Accordingly, we strongly support the utilization of qualified third-party consultants to review projects in order to meet the intended statutorily required 90-day review timeline. Currently, SHPD is facing challenges in completing the overwhelming number of reviews due to capacity issues in the department. Allowing third-party consultants to conduct reviews will significantly reduce the current caseload while expediting future reviews that allow for the development of much needed housing and critical infrastructure.

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

Additionally, the language of HB 202 requires third-party consultants to meet qualifications for preservation professionals pursuant to rules adopted by SHPD. This ensures that reviews will be conducted by qualified consultants to meet the high standards of review. NAIOP Hawaii supports this provision of the measure which seeks to balance the interests of all stakeholders by expediting quality reviews.

To further the intent of the measure to expedite reviews, we recommend an amendment to remove the burial council approval language in each respective section. Currently, the measure requires the proper burial council approve of the select qualified third-party consultant. This process is duplicative and unnecessary due to SHPD's ability to set the qualifications that a third-party consultant must meet in order to conduct the reviews. Essentially, the public interests will be protected as the most qualified individuals will be selected to uphold the high standards of review conducted by SHPD. This amendment preserves the protection of cultural sites while furthering the intent of the measure to expedite reviews.

Furthermore, NAIOP Hawaii recommends that SHPD be required to assign the reviews to a third-party consultant no later than 60 days after submission of an application to SHPD if the department determines it will be unable to complete its review within 60 days. Specifically, language in the newly amended Sections 6E-8(d), 6E-10(e), and 6E-42(c) to state the following:

"The department shall retain a third-party consultant to conduct the review described under subsection (a) no later than sixty days after application submittal if, after an initial evaluation, the department determines that:"

This amendment is consistent with the intent of the bill to expedite reviews and alleviate the overwhelming volume of work SHPD currently faces.

NAIOP greatly supports the intent of the measure to identify a solution to the significant backlog of much needed projects awaiting SHPD review. Ultimately, HB 202 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,



Jennifer Camp, President
NAIOP Hawaii



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

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

The Thirty-Second Legislature, State of Hawaii
The House of Representatives
Committee on Finance

Testimony by
Hawaii Government Employees Association

February 28, 2023

H.B. 202 H.D.2 – RELATING TO HISTORIC PRESERVATION
REVIEWS

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO has comments on H.B. 202, H.D. 2, which allows the Department of Land and Natural Resources to retain third-party consultants to conduct reviews on proposed construction, alteration, disposition, or improvement of any nature on a historic property, when the department will not be able to provide its written concurrence or non-concurrence within sixty-days of the landowner's notification.

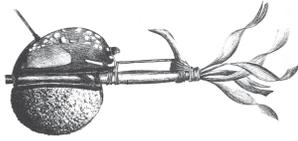
Retaining a third-party for this function contradicts what has customarily and historically been performed by civil service employees within the State Historic Preservation Division. These employees meet the existing qualifications and standards established by the department and can make independent determinations.

The Department should consider alternatives within its current policies or seek additional positions and funding from the Legislature rather than contracting out a necessary government function when reviews cannot be completed within sixty days. Civil service duties and responsibilities should be reserved for civil servant.

Thank you for the opportunity to testify on H.B. 202, H.D. 2.

Respectfully submitted,

Randy Perreira
Executive Director



SOCIETY FOR HAWAIIAN ARCHAEOLOGY

P.O. BOX 22458 HONOLULU, HAWAII 96823

TO: Representative Kyle T. Yamashita, Chair
Representative Lisa Kitagawa, Vice Chair
Committee on Finance (FIN)

FROM: Mara Mulrooney, Ph.D.
President, Society for Hawaiian Archaeology
membership@hawaiianarchaeology.org

HEARING: February 28, 2023 10:00 AM, CR 308 & Videoconference

SUBJECT: Testimony in **opposition** of HB 202, Relating to Historic Preservation

I am Mara Mulrooney, President of the Society for Hawaiian Archaeology (SHA). We have over 150 members including professional archaeologists and advocates of historic preservation. On behalf of SHA, we **oppose** and offer comments on HB 202.

The intent of HB 202 authorizes the department of land and natural resources, through the state historic preservation division, to contract its review of proposed state projects, projects on privately owned historic property, and projects affecting historic properties to third-party consultants if the department will not be able to complete its review within sixty days.

Currently, the State Historic Preservation Division's (SHPD) Hawai'i Cultural Resource Information System (HICRIS) manages all historic preservation reviews, including Chapter 6E-42. The HICRIS maintains both public and private data such as prior correspondence, reports, and plans. HB 202 does not indicate how access to these records will be managed so that third-party reviewers would have access to all pertinent information in order to complete reviews.

The State Historic Preservation Division has not been able to retain sufficient qualified staff members to conduct historic preservation reviews of projects. HB 202 is intended to assist with remedying this by delegating reviews to third-party reviewers. While we agree that the SHPD needs assistance, we oppose HB 202 for the following reasons:

- 1) Decentralizing the review process under chapter 6E has the potential to result in inconsistencies and could lead to a lack of consensus between different reviewing bodies (the State and third party reviewers).
- 2) If reviews are delegated, third-party reviewers would need to have access to all of the resources (correspondence, library, etc.) at SHPD to complete comprehensive reviews. These files are not currently digitized, meaning that gaining access to them by third-party reviewers would pose a considerable challenge.
- 3) There will likely be conflicts of interest in hiring qualified third-party reviewers.

We suggest that additional support be provided to SHPD to address their current challenges prior to any consideration of the delegation of historic preservation reviews.

Should HB 202 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 the opportunity to comment

<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.



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE HOUSE COMMITTEE ON
FINANCE
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 308
TUESDAY, FEBRUARY 28, 2023 AT 10:00 A.M.**

To The Honorable Kyle T. Yamashita, Chair
The Honorable Lisa Kitagawa, Vice Chair
Members of the Committee on Finance

SUPPORT FOR HB202 HD2 RELATING TO HISTORIC PRESERVATION REVIEWS

The Maui Chamber of Commerce **supports HB202 HD2** which authorizes the department of land and natural resources, through the state historic preservation division (SHPD) to contract its review of proposed state projects, projects on privately owned historic property, and projects affecting historic properties to third-party consultants if the department will not be able to complete its review within sixty days.

The Chamber knows that there are many factors behind the delay in obtaining building permits and is favor of measures that will help streamline the process. We feel that the SHPD can benefit from the help of third-party support in assisting with the backlog of Historic Preservation Reviews which is only going to get bigger as more buildings fall within their jurisdiction.

Mahalo for the opportunity to offer testimony in **SUPPORT of HB202 HD2**.

Sincerely,

A handwritten signature in cursive script that reads "Pamela Tumpap".

Pamela Tumpap
President



**HOUSE COMMITTEE ON FINANCE
State Capitol
415 South Beretania Street
10:00**

February 28, 2023

RE: HB 201 - RELATING TO HISTORIC PRESERVATION

Chair Yamashita, Vice Chair Kitagawa, and members of the committee:

My name is Max Lindsey, 2023 Government Relations Committee Chair 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. Our members build the communities we all call home.

BIA-Hawaii is in support of HB 202, Relating to Historic Preservation. This bill would require the Department of Land and Natural Resources State Historic Preservation Division (SHPD), subject to approval from the appropriate island burial council, to contract its review of proposed state projects, projects on privately owned historic property, and projects affecting historic properties to third-party consultants if the department will not be able to complete its review within sixty days.

BIA-Hawaii is generally in support of the intent to streamline SHPD review. Allowing SHPD to outsource projects to third-party reviewers would help reduce their current backlog.

The state of Hawaii is in a dire housing crisis. As the Legislature is aware, the cost of housing in Hawaii is extremely high, with Oahu's median price of homes being currently over \$1 million. Approximately 153,967 U.S. households are priced out of buying a home for every \$1000 increase in price, according to the National Association of Home Builders (NAHB). We are in support of legislation that would allow for the building of much-needed housing at every price point in Hawaii.

We appreciate the opportunity to express our support for HB 202.

HB-202-HD-2

Submitted on: 2/27/2023 9:40:03 AM

Testimony for FIN on 2/28/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Sheena Lopes	Individual	Oppose	Written Testimony Only

Comments:

We shouldn't be taking away the responsibilities of SHPD and giving it off to people less qualified to review projects. Furthermore, Burial Council SHOULD be consulted in the case that project reviews are passed on to third-parties. Instead of taking SHPD's kuleana away, we should be funding SHPD for more qualified peoples to be hired in order to make the reviews in the appropriate timeframe, NOT passing off the job to people who's kuleana isn't SHPD.