

DAVID Y. IGE
GOVERNOR OF
HAWAII



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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
SUZANNE D. CASE
Chairperson

Before the
Senate Committees on
LABOR, CULTURE AND THE ARTS
and
WATER AND LAND

Wednesday, February 5, 2020
1:15PM
State Capitol, Conference Room 229

In consideration of
SENATE BILL 2076
RELATING TO HISTORIC PRESERVATION REVIEWS

Senate Bill 2076 proposes to amend Section 6E-42, Hawaii Revised Statutes (HRS), to authorize the Department of Land and Natural Resources (Department) to delegate permit reviews under Section 6E-42, HRS, to the counties, provided the counties establish a program to carry out such reviews in a manner consistent with section 6E-42 and the relevant administrative rules and that the Department certifies the county program. Senate Bill 2031 also proposes to amend Section 6E-42, HRS, to authorize the Department to establish a program to certify individuals or organizations to conduct third-party reviews to ensure that submissions to the Department for review under Section 6E-42, HRS, are complete and meet the requirements of governing regulations. **The Department supports this measure and offers comments.**

Senate Bill 2076 sets forth the requirements for such delegations, which the Department believes will ensure that the counties have qualified professionals to carry out the reviews, that reviewers are able to function in an independent manner, in a manner that avoids an appearance of a conflict of interest, and that the county provides for proper public notification of projects being reviewed. Senate Bill 2076 also requires that the delegation be made under a written agreement between the county and the Department, and that it will automatically terminate if the county loses the staff necessary to complete the reviews. Senate Bill 2076 reserves to the Department projects subject to review under Section 6E-8, HRS (state and county projects, projects occurring on state or county land), and Section 6E-10 (properties listed in the Hawaii or national registers of historic places). The Department believes that the provisions of this amendment allow for an

appropriate of delegation of review authority to the counties, if they wish to assume this duty, while assuring that the reviews will be carried out in a manner ensuring professional independence and in manner consistent with the requirements of chapter 6E, and to the standards necessary to ensure proper consideration of the state's historic properties in the permit review process.

The Department recommends that the following language be inserted (grey highlight) in the draft amendment on page 4, line 2 immediately following "...does not create..." insert "a conflict of interest or" immediately prior to "...an appearance...", so that paragraph (4) would read

"Ensured that the qualified professional staff can function in a manner that does not create a conflict of interest or an appearance of a conflict of interest;".

Senate Bill 2076 also authorizes the Department to create a program to certify third-party reviewers who would be authorized to review submissions required for compliance with the requirements of Section 6E-42, HRS, prior to submission to the Department. Under this provision, third-party reviewers would ensure that submissions are complete, meet the requirements of the administrative rules, and that the data and analysis support the recommendations of the submission prior to submission to the Department. The Department believes that this provision may help address the persistent problem of incomplete submissions, submissions that do not meet the minimal requirements of the rules, and submissions that make recommendations not supported by the reported data or analysis. The Department believes that such review may expedite the Department's review of permits under Section 6E-42HRS.

The Department recommends that the following language be inserted (grey highlight) at page 5, line 15 immediately following "...does not create..." insert "a conflict of interest or" and immediately prior to "... an appearance...", so that paragraph (2) would read

"Individuals and organizations that apply for certification shall demonstrate that they have established sufficient internal organizational controls to ensure that the qualified professional staff can make independent determinations regarding the effects of projects on historic properties and can function in a manner that does not create a conflict of interest or an appearance of a conflict of interest;".

The Department believes that the provisions of Senate Bill 2076 offer the potential to expedite Section 6E-42, HRS, permits reviews while ensuring that significant historic properties receive consideration consistent with existing practice.

Thank you for the opportunity to comment on this measure.



SB2076
RELATING TO HISTORIC PRESERVATION REVIEWS
Senate Committee on Labor, Culture and the Arts
Senate Committee on Water and Land

February 5, 2020

1:15 p.m.

Room 229

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment will recommend that the Board of Trustees provide **COMMENTS** on SB2076, which would 1) allow the State Historic Preservation Division (SHPD) to delegate its historic preservation review responsibilities under Hawai'i Revised Statute (HRS) Chapter 6E to counties that have met certain requirements, and 2) allow SHPD to establish a program where third-party individuals and organizations may be certified and authorized to pre-review historic preservation review documents for completeness, prior to submission of the documents to SHPD. OHA does appreciate measures such as these that are aimed at assisting SHPD with its important kuleana, and further appreciates that the proposed requirements for counties to receive delegated historic preservation review authority may address concerns relating to the professional standards, informational resources, and institutional processes necessary to carry out such authority. OHA defers to SHPD administration as to whether a contracted third party reviewer, a qualified county archaeologist tasked with conducting delegated historic preservation reviews, or a dedicated SHPD staff position would be the most efficient way to conduct the pre-reviews contemplated under this measure.

First, OHA notes that archaeologists that are currently permitted by SHPD to do archaeological field work in Hawai'i must follow a set of standards established in SHPD's Hawai'i Administrative Rules; archaeologists hired by the State to work for SHPD are also required to possess minimum qualifications and meet similar standards. OHA further notes that SHPD has compiled and maintained extensive inventoried information over the past several decades, including archaeological publications and correspondences that date back to the late 1960s, for historic properties across the State of Hawai'i; SHPD regularly uses such information as well as established consultation and assessment processes to review proposed projects for potential impacts to iwi kūpuna, cultural sites, and other historic properties. **Accordingly, as SHPD has demonstrated, there is a clear need for qualifying standards, informational resources, and established consultation and assessment processes in order to consistently and adequately protect iwi kūpuna, cultural sites, and other historic properties from development impacts as envisioned under HRS Chapter 6E's historic preservation review framework.** OHA therefore appreciates the prerequisite conditions that this bill would require counties to meet, in order to receive delegated historic preservation review authority from SHPD.

Second, OHA appreciates this measure's proposal to allow SHPD to certify and authorize third party entities to pre-review historic preservation review applications and documents, as a means of reducing the administrative burdens currently placed on SHPD staff. OHA does respectfully suggest consulting with SHPD administration, regarding whether it may be more efficient and effective to authorize SHPD to contract with such third parties, compared to the alternative approaches of having such pre-reviews conducted by county archaeologists delegated SHPD's historic preservation review authority, or by a dedicated position within SHPD itself.

Mahalo for the opportunity to testify on this measure.

TO: Senator Brian T. Taniguchi, Chair
Senator Les Ihara, Jr., Vice Chair
Senate Committee on Labor, Culture, and the Arts

Senator Kaiali'i Kahele, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Senate Committee on Water and Land

**SOCIETY FOR HAWAIIAN
ARCHAEOLOGY**



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

HEARING: February, 5 2020, 1:15 PM, Conference Room 229

SUBJECT: Comments on SB 2076, Relating to Historic Preservation

I am Angus Raff-Tierney, Chair of the Legislative Committee of the Society for Hawaiian Archaeology (SHA). We have over 150 members including professional archaeologists and advocates of historic preservation. On behalf of SHA, I present our comments on SB 2076 (Relating to Historic Preservation).

We support the intent of SB 2076 which is to address the demand for construction that would be delayed by the State Historic Preservation Division's (SHPD) unacceptable large backlog of projects reviewed under Section 6E-42. SB 2076 would allow the counties to review some 6E-42 projects meeting certain requirements. However, currently the SHPD is the only entity that houses the previous reports, records and other documents that are required to make these reviews. The SHPD has been digitizing their documents to put on an online portal that would allow access from any computer. Completion of this "HCRIS" project would be critical for the many bills coming up this session that hope to outsource some of the SHPD's review powers to counties or third parties, yet this project continues to be affected by delays.

We offer the following comments and hope that they will be useful in amending future versions of the subject bill.

Section 2, Proposed amendments to Section 6E-42, Hawaii Revised Statutes (HRS):

“(e) The department may establish a program to certify third—party individuals and organizations to review documents prior to submission of the documents to the department for review...”

Having third parties reviewing documents would likely become competing firms reviewing each other's work. This would create the appearance of a conflict of interest. Keeping the review process entirely with government employees, be they SHPD or county would keep the process independent. SHA suggests that this portion related to third party reviews be stricken from the bill.

Should the bill pass out of this committee, we request to be consulted as a stakeholder in future deliberations on an amended bill. Should you have any questions, please feel free to contact me at the above email. Mahalo for considering our testimony.

<https://hawaiianarchaeology.org/>

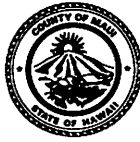
The Society for Hawaiian Archaeology is a registered tax-exempt organization established in 1980 to promote and stimulate interest and research in the archaeology of the Hawaiian Islands, encourage a more rational public appreciation of the aims and limitations of archaeological research, serve as a 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.

Council Chair
Alice L. Lee

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

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



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

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

February 3, 2020

TO: The Honorable Brian T. Taniguchi, Chair
SENATE COMMITTEE ON LABOR, CULTURE AND THE ARTS

The Honorable Kaiali'i Kahele, Chair
SENATE COMMITTEE ON WATER AND LAND

FROM: Alice L. Lee
Council Chair

SUBJECT: **HEARING OF FEBRUARY 5, 2020; TESTIMONY IN SUPPORT OF SB 2076, RELATING TO HISTORIC PRESERVATION**

Thank you for the opportunity to testify in **support** of this important measure. The purpose of this measure is to allow the Department of Land and Natural Resources, State Historic Preservation Division to delegate to the impacted counties the responsibility for historic preservation project reviews, provided that certain requirements are met.

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. Section 6E-42, Hawai'i Revised Statutes, plays an essential role in the protection and management of the State's historic places, burial sites, and aviation artifacts. Section 6E-42 requires agencies and officers of the State and its subdivisions, prior to project approval, to submit for review by the Department of Land and Natural Resources, State Historic Preservation Division all projects that may affect historic properties.
2. Many affordable-housing projects are delayed because of the State Historic Preservation Division's inability to efficiently and effectively provide necessary reviews to ensure compliance with State historic preservation law.
3. I support this measure because it authorizes the counties to employ qualified archaeologists to perform necessary reviews under Chapter 6E, Hawai'i Revised Statutes.

Honorable Brian T. Taniguchi
Honorable Kaiali'i Kahele
February 3, 2020
Page 2

4. I support this bill because it ensures compliance with State preservation law while helping to eliminate delay of affordable-housing projects.

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

ocs:proj:legis:20legis:20testimony:sb2076_paf20-061(5)_jbf

SB-2076

Submitted on: 2/4/2020 10:03:01 PM

Testimony for LCA on 2/5/2020 1:15:00 PM

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

Comments:

Dear Chair Taniguchi and Chair Kahele,

I am writing to express my **STRONG OPPOSITION** to SB2076. While I can appreciate the intent of this bill, the measure, as written, would only create significant issues in the area of historic preservation and ultimately prove counter productive to its stated goals.

I urge the Committees to **HOLD** this bill until a better solution can be devised.

Thank you,

Trisha Kehaulani Watson, JD, PhD



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEE ON
LABOR, CULTURE & THE ARTS AND COMMITTEE ON WATER & LAND
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 229
WEDNESDAY, FEBRUARY 5, 2020 AT 1:15 PM.**

To The Honorable Brian T. Taniguchi, Chair;
The Honorable Les Ihara, Vice Chair; and
Members of the Committee on Labor, Culture & The Arts,

To The Honorable Kaiali'i Kahele, Chair;
The Honorable Gilbert S.C. Keith-Agaran Vice Chair; and
Members of the Committee on Water & Land,

**TESTIMONY IN SUPPORT OF SB2076 RELATING TO HISTORIC PRESERVATION
REVIEWS**

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce, with approximately 650 members. I am writing share our support of SB2076.

Affordable housing and rentals are one of our top priorities this year. In working with developers, two of the biggest obstacles to expediting these projects are state and county redundancies and the time it takes to go through various reviews. As reviews take more time and if there are any delays, this translates to higher costs which are passed on to homeowners. This bill helps to address these issues by delegating the counties the responsibility for historic preservation project reviews. All efforts to gain more affordable housing and rentals in Maui County and throughout the State of Hawaii should be a top state priority. Therefore, we support this bill.

We appreciate the opportunity to testify on this matter and ask that this bill be passed.

Sincerely,

Pamela Tumpap

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.