



SB504 SD1
RELATING TO HISTORIC PRESERVATION
Senate Committee on Ways and Means

March 3, 2015

9:10 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB504 SD1, which categorically exempts construction projects involving nearly all private residences from historic preservation review. While OHA does not object to narrowly-tailored exemptions from historic review processes for renovations to existing residential structures, ambiguities and inconsistencies within this measure may risk irreparable impacts to bona fide Native Hawaiian historic and cultural resources, including burials.

Insofar as protecting historic architecture is not central to our mission, OHA does not oppose the development of a more efficient process to reduce the number of old homes required to undergo historic review, where appropriate. However, OHA generally is concerned over any statutory amendments that could potentially weaken procedural protections for bona fide historic sites provided by HRS Chapter 6E. SB504 SD1, as drafted, contains ambiguities and statutory inconsistencies that may unintentionally reduce protections for truly historic properties, cultural sites, and iwi kūpuna, particularly in areas surrounding older residences that have not yet been nominated for listing on the Hawai'i register of historic places. Accordingly, should the Committee decide to pass this measure, OHA strongly urges the following amendments, to ensure that it achieves its purpose without compromising protections for bona fide cultural and historic sites.

First, in order to provide better internal consistency within chapter 6E, and to avoid procedural ambiguities with respect to existing regulatory provisions, **OHA recommends leaving the statutory definition of "historic property" intact and, instead, including a residential exemption in HRS Section 6E-42.** Section 6E-42 pertains to historic preservation review of private projects, such as those involving privately-owned residences, and is therefore the most appropriate place to specifically exempt these projects from review. In addition, OHA notes that this measure exempts from historic preservation review an indeterminate number of properties with potentially substantial historic

significance, as identified by SHPD in section 3 of this measure, but which have not yet been nominated for listing on the Hawai'i register of historic places, or which are not yet in an established historic district. Amending this measure to provide continued historic review protections for such properties may therefore be more consistent with the intent of section 3, which is to identify properties potentially deserving of such protections. Finally, due to the higher likelihood of impacts to unknown cultural sites and burials outside of the existing structure footprint of old properties, we recommend limiting any historic review exemptions to only those projects affecting properties' existing structures.

In order to effectuate the above recommendations, OHA offers the following specific amendments to SB504 SD1:

1. Replace the language on Page 3, line 16, through Page 4, line 5, with the following:

SECTION 2. Section 6E-42, Hawaii Revised Statutes, is amended to read as follows:

"6E-42 Review of proposed projects. (a) Before any agency or officer of the State or its political subdivisions approves 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 department and prior to any approval allow the department 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. If:

- (1) The proposed project consists of corridors or large land areas;

(2) Access to properties is restricted; or

(3) Circumstances dictate that construction be done in stages,

the department's review and comment may be based on a phased review of the project; provided that there shall be a programmatic agreement between the department and the project applicant that identifies each phase and the estimated timelines for each phase.

(b) Notwithstanding any other law to the contrary, this section shall not apply to a project affecting only the existing structure of a single-family residence fifty years or older unless the residence is listed on the Hawaii register of historic places, is nominated for listing on the Hawaii register of historic places, is located in a historic district, or is on a list maintained by the state historic preservation division of single-family residences that are likely to be eligible for listing on the Hawaii register of historic places or that are located in a potential historic district.

~~[(b)]~~ (c) The department shall inform the public of any project proposals submitted to it under this section that are not otherwise subject to the requirement of a public hearing or other public notification.

~~[(c)]~~ (d) The department shall adopt rules in accordance with chapter 91 to implement this section."

2. Add a new subparagraph (3) in subsection (a) of section, by inserting the following language above page 4, line 15:

- (3) Maintain a list of identified potential historic districts and single-family residences that are likely to be eligible for listing on the Hawaii register of historic places, provided that residences and districts may be removed from this list upon a finding that a residence is not eligible for listing on the Hawaii register of historic places or that a district is not eligible to be classified as a historic district.

Therefore, OHA urges the Committee to **HOLD** SB504 SD1, or to amend the measure as described above. Mahalo for the opportunity to testify.