

# SB 504

## Testimony –

Measure Title: RELATING TO HISTORIC PRESERVATION.

Report Title: State Historic Preservation Division; Architectural Survey and Study; Appropriation (\$)

Description: Includes only buildings, structures, objects, districts, areas, or sites that are significant in Hawaii's history, architecture, archeology, engineering, or culture in the definition of "historic property". Requires the state historic preservation division of the Department of Land and Natural Resources to initiate a pilot reconnaissance architectural survey project to document selected residences built between 1945 and 1980 and conduct a study of Hawaii mid-century architecture. Requires the division to provide the public and the counties with a list that identifies the types of projects that have no potential to affect a historic property; provide a list of properties identified by street address and tax map key that are likely to be ineligible for inclusion in the Hawaii register of historic places to the counties; and provide owners of historic property with notice of the property's likely eligibility in the Hawaii register of historic places. Appropriates funds.

Companion:

Package: None

Current Referral: HEA/WTL, WAM

Introducer(s): L. THIELEN

DAVID Y. IGE  
GOVERNOR OF HAWAII



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

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FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**Testimony of  
CARTY S. CHANG  
Interim Chairperson**

**Before the Senate Committees on  
HIGHER EDUCATION AND THE ARTS  
and  
WATER AND LAND**

**Wednesday, February 04, 2015  
03:05 PM  
State Capitol, Conference Room 224**

**In consideration of  
SENATE BILL 504  
RELATING TO HISTORIC PRESERVATION**

Senate Bill 504 proposes to amend the definition of historic property so that a property would only be considered historic if it is significant in Hawai'i's history, architecture, archaeology, engineering or culture. Senate Bill 504 would also require that the Department of Land and Natural Resources (Department) to develop and provide to the counties a list of types of projects that have no potential to effect a historic property, and provide the counties with another list of properties that are not eligible for inclusion in the Hawai'i register of historic places, and a third list of types of properties likely to be eligible for inclusion on the Hawai'i register and notify the owners of such properties of the likely eligibility. Senate Bill 504 also makes it clear that properties not eligible for inclusion in the Hawai'i register and projects that have no potential to affect historic properties shall not be subject to review by the Department under Chapter 6E, Hawaii Revised Statutes (HRS). Finally, Senate Bill 504 requires the Department to initiate a pilot project to begin inventorying the buildings of the Hawai'i and appropriates funds for that purpose in each of the 2015-2016 and 2016-2017 fiscal years. **The Department appreciates the intent of this measure and offers the following comments.**

The Department believes that Senate Bill 504 will significantly enhance the effectiveness of the government's historic preservation program. SECTION 2 clarifies the definition of historic property in a manner that will focus reviews on places that are historic rather than just more than fifty-years old. The amended definition provides the foundation for focusing the Department's efforts on Hawai'i's truly historic resources. SECTION 3 directs the Department to initiate a two-

year pilot, reconnaissance survey of Hawai'i's buildings and structures. In the communities surveyed, this will provide definitive answers to which buildings are historic and which ones are not. Buildings determined not historically significant will no longer be subject to Departmental review. This will eliminate all unnecessary reviews, provide the Department with information essential to making better historic preservation decisions, as well as free Departmental resources for proactive measures enhancing the protection of Hawai'i's truly historic buildings. SECTION 4 requires the Department to provide lists to the counties that determine which types of projects requiring county permits and which types of residences must be sent to the Department for review under §6E-42, HRS. It also requires the Department to notify owners of properties determined to be historic of this finding. These are essential, interim measures that will reduce the number of unnecessary reviews during the time before the comprehensive survey is completed. SECTION 5 appropriates general funds to the Hawaii Historic Preservation Special Fund for the pilot survey project and SECTION 6 authorizes expenditure of those funds for the purpose of the pilot survey project for the biennium.

Senate Bill 504 addresses a real issue and a perceived problem, both of which the Department has been working to resolve. The Department remains committed to resolving this matter. The perception that the Department's reviews of residential permits routinely takes far longer than they should persists. In 2014, the Department reviewed over 3,700 permit applications for residences fifty years old or older. Despite the stories that residential permits get delayed in the Department, sometimes for months and months, during 2014, on average, those reviews took five days, and the most common length for a review was three calendar days. Perception does not match reality.

The vast majority of those reviews were for residences that the Department must regard as historic properties because they meet the current statutory definition, which makes any building over fifty years old historic. Most of those residences for which permits were reviewed would not qualify for inclusion in the Hawai'i Register of Historic Places (Hawai'i Register). Even for homes that do appear to qualify for inclusion in the Hawai'i Register, many of the permits reviewed were for activities that would not affect the qualities of the home qualifying it for the Hawai'i Register.

- The Department recognizes that many of these reviews, even though completed in a very timely fashion, are simply unnecessary and burden the homeowner, the counties, and the Department.
- The issue of unnecessary reviews of residential permit applications arises from the fact that the §6E-2, HRS, defines any building more than fifty years old as a historic property.
- The overwhelming majority of structures in Hawai'i have never been inventoried and evaluated to determine whether or not they are eligible for inclusion in the Hawai'i register.
- Senate Bill 504 amends §6E-2, HRS, to require that the property be at least 50 years old and possess qualities that would qualify it for inclusion in the Hawai'i Register. The proposed language is clear and entirely consistent with nationally recognized standards, and the Department fully supports it. Further, the Department believes that this is a critical first step

in resolving the issue of unnecessary reviews while at the same time protecting Hawai'i's unique cultural and historic heritage.

- SECTION 3 would require the Department to initiate a phased architectural inventory of Hawai'i's buildings. The Department believes that the survey is the definitive solution to unnecessary reviews, while at the same time protecting Hawai'i's heritage.
- Senate Bill 504 also would require the Department to create and distribute to the counties a list of types of projects that have no potential to affect historic properties. The Department believes that this is another essential, interim step in eliminating unnecessary reviews. As part of its efforts to address this matter, the Department has developed such a list, which will be distributed to the counties during the week of February 2, 2015. Accordingly, the Department regards SECTION 4(a)(1) as unnecessary and recommends that it be deleted.
- SECTION 4(a)(3) requires the Department to create a list of properties that are likely to be eligible for inclusion in the Hawai'i register and to notify the owners of such properties of that fact. However, this list cannot be created in the abstract but must be developed based on analysis of the findings of the survey that is to be initiated under SECTION 3 of Senate Bill 504. Meeting the target completion date for this list of January 2, 2016 will not be possible as, at best, only the first year of the pilot survey project will be completed by that date.
  - The Department recommends that SECTION 4(a)(3) be revised as follows:

(3) Develop a list of properties determined eligible for inclusion in the Hawai'i register of historic places by the Department and notify the owner of each property of the property's eligibility no later than sixty days after the Department makes its determination based on analysis of the findings in relevant portions of the pilot project reports.
- SECTION 5 appropriates \$300,000 out of the General Fund in both Fiscal Years 2015-2016 and 2016-2017 to be deposited into and, under the authorization in Section 6, expended out from the Hawaii Historic Preservation Special Fund for the purpose of initiating a pilot architectural survey of residences in Hawai'i. Senate Bill 504 makes it clear that this funding is for the first two years of a phased, multi-year survey project. The Department is confident that substantial progress can be made during this initial two-year period this initial two-year period, we note that it is unlikely that all communities in the Hawai'i can be surveyed in the next two years. Additional funds may be needed in subsequent years in order to complete a comprehensive survey of the buildings in Hawai'i.
- As noted above, the Department regards the inventory as essential to resolving the issue of unnecessary reviews, while also providing protection to Hawai'i's unique heritage and increasing the Department's and the State's capacity to focus efforts on the most important historic places in Hawai'i. The inventory cannot be completed within the constraints of the

Department's existing budget. Funding is essential to undertaking this task. The Department notes, however, that this funding is not in the Governor's budget and there is a potential impact on the State's budget from this provision.

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

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MAYOR



GEORGE I. ATTA, FAICP  
DIRECTOR

ARTHUR D. CHALLACOMBE  
DEPUTY DIRECTOR

February 4, 2015

The Honorable Brian T. Taniguchi, Chair  
and Members of the Committee on Higher  
Education and the Arts

The Honorable Laura H. Thielen, Chair  
and Members of the Committee on Water  
and Land

Hawaii State Senate  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chairs Taniguchi, Thielen, and Members:

Subject: Senate Bill No. 504  
Relating to Historic Preservation

The Department of Planning and Permitting (DPP) **supports** Senate Bill No. 504, which would require the State Historic Preservation Division (SHPD) of the Department of Land and Natural Resources (DLNR) to initiate a pilot reconnaissance architectural survey project to document selected residences built between 1945 and 1980, and conduct a study of Hawaii mid-century architecture. The Bill also requires the division to provide the public and the counties with a list that identifies the types of projects that have no potential to affect a historic property; provide a list of properties identified by street address and tax map key that are likely to be eligible for inclusion in the Hawaii Register of Historic Places to the counties, and provide owners of historic property with notice of the property's likely eligibility in the Hawaii Register of Historic Places.

Pursuant to the provisions of Hawaii Revised Statutes, Section 6E-42, the counties are required to refer the building permit applications for properties that may have historic significance. Many of these properties are privately owned residences that, although 50 years old or older and meeting the statutory definition of historic property, after analysis and review by SHPD, the determination and findings were that

The Honorable Brian T. Taniguchi, Chair  
and Members of the Committee on Higher  
Education and the Arts

The Honorable Laura H. Thielen, Chair  
and Members of the Committee on Water  
and Land

Hawaii State Senate

Re: SB504

February 4, 2015


Page 2 of 2

many properties had no historic significance. Further, for many of the projects, the scope of work performed is limited to minor alterations.

This Bill proposes that SHPD draft a list of projects that have no potential to affect historic properties based on analysis of prior reviews. With the initiation of such a list, the county planning and permitting agencies can reduce significantly the number of building permit applications required for SHPD review, thereby streamlining the permitting process, and at the same time reducing the large volume of project referrals for SHPD review.

In summary, we recommend that this Bill be passed out of committee. Thank you for this opportunity to comment on the proposals detailed in Senate Bill No. 504.

Very truly yours,

A handwritten signature in black ink, reading "George I. Atta". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

George I. Atta, FAICP  
Director

GIA:fmt  
SB504mf

# BIA-HAWAII

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THE VOICE OF THE CONSTRUCTION INDUSTRY

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## Testimony to the Senate Committee on Water and Land Wednesday, February 4, 2015 3:05 p.m. State Capitol - Conference Room 224

### **RE: SENATE BILL NO. 504 RELATING TO AGRICULTURE**

Chair Thielen, and Vice Chair Galuteria, and members of the Committee:

My name is Gladys Marrone, Chief Executive Officer for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

BIA-HAWAII provides the following comments on S.B. 504, which proposes to:

1. Identify only buildings, structures, objects, districts, areas, or sites that are significant in Hawaii's history, architecture, archeology, engineering, or culture in the definition of "historic property".
2. Require the state historic preservation division of the Department of Land and Natural Resources to initiate a pilot reconnaissance architectural survey project to document selected residences built between 1945 and 1980 and conduct a study of Hawaii mid-century architecture.
3. Require the division to provide:
  - a. The public and the counties with a list that identifies the types of projects that have no potential to affect a historic property;
  - b. A list of properties identified by street address and tax map key that are likely to be ineligible for inclusion in the Hawaii register of historic places to the counties; and,
  - c. Owners of historic property with notice of the property's likely eligibility in the Hawaii register of historic places.
4. Appropriates funds in the amount of \$600,000.00 for this effort.

BIA Hawaii has been and continues to be concerned about the unnecessary automatic review of residences that are older than 50 years. We recognize that there are many unique residences that are older than 50 years, and the property owners of these structures have the opportunity to secure real property tax relief if they voluntarily place their homes on the register. However, there are also large subdivisions of tract homes around Oahu (i.e. Kaneohe, Hawaii Kai, Manoa, Halawa, Aiea, Pearl City, Waipahu, etc.) which were constructed in the 1960's that are or will be older than 50 years old. Subjecting homeowners in these tract subdivision to a building permit review by SHPD simply because of the age of the dwelling, seems to be unnecessary and unreasonable.

The bill essentially instructs SHPD to do what they are statutorily required to do so we are puzzled as to why the legislation is necessary and why additional funds have to be appropriated to undertake this effort.

Thank you for the opportunity to express our views on this matter.



# BIA-HAWAII

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## Testimony to the Senate Committee on Water and Land

Wednesday, February 4, 2015

3:05 p.m.

State Capitol - Conference Room 224

### RE: SENATE BILL NO. 504 RELATING TO AGRICULTURE

Chair Thielen, and Vice Chair Galuteria, and members of the Committee:

My name is Gladys Marrone, Chief Executive Officer for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

BIA-HAWAII is **opposed** to S.B. 504, which proposes to:

1. Identify only buildings, structures, objects, districts, areas, or sites that are significant in Hawaii's history, architecture, archeology, engineering, or culture in the definition of "historic property".
2. Require the state historic preservation division of the Department of Land and Natural Resources to initiate a pilot reconnaissance architectural survey project to document selected residences built between 1945 and 1980 and conduct a study of Hawaii mid-century architecture.
3. Require the division to provide:
  - a. The public and the counties with a list that identifies the types of projects that have no potential to affect a historic property;
  - b. A list of properties identified by street address and tax map key that are likely to be ineligible for inclusion in the Hawaii register of historic places to the counties; and,
  - c. Owners of historic property with notice of the property's likely eligibility in the Hawaii register of historic places.
4. Appropriates funds in the amount of \$600,000.00 for this effort.

BIA Hawaii has been, and continues to be, concerned about the unnecessary automatic review of residences that are older than 50 years. We recognize that there are many unique residences that are older than 50 years, and the property owners of these structures have the opportunity to secure real property tax relief if they voluntarily place their homes on the register. However, there are also large subdivisions of tract homes around Oahu (i.e. Kaneohe, Hawaii Kai, Halawa, Aiea, Pearl City, Waipahu, etc.) which were constructed in the 1960's that are, or will be, older than 50 years old. Subjecting homeowners in these tract subdivision to a building permit review by SHPD simply because of the age of the dwelling, seems to be unnecessary and unreasonable.

The bill essentially instructs SHPD to do what they are statutorily required to do under §6E-3(3), *development of a statewide survey and inventory to identify and document historic properties, aviation artifacts, and burial sites, including all those owned by the State and the counties*, so we are puzzled as to why the legislation is necessary and why additional funds have to be appropriated to undertake this effort.

Thank you for the opportunity to express our views on this matter.

# HISTORIC HAWAII FOUNDATION

**TO:** Senator Brian T. Taniguchi, Chair  
Senator Lorraine R. Inouye, Vice Chair  
Committee on Higher Education & the Arts

Senator Laura H. Thielen, Chair  
Senator Brickwood Galuteria, Vice Chair  
Committee on Water & Land

**FROM:** Kiersten Faulkner, Executive Director  
Historic Hawaii Foundation

**Committee:** Wednesday, February 4, 2015  
3:05 p.m.  
Conference Room 224

**RE: SB 504, Relating to Historic Preservation**

On behalf of Historic Hawaii Foundation (HHF), I am writing in **support for the intent of SB 504, with suggested amendments.** The bill would amend Hawai'i Revised Statutes §6E to refine the definition of historic property to criteria related to historic significance and integrity; would provide funding support for a reconnaissance architectural survey to inventory the historic buildings in the state; would provide enabling language for the State Historic Preservation Division to develop lists of projects that have no potential to effect a historic property; and would require the State Historic Preservation Division to identify properties that are eligible for the state register of historic places and also identify properties that are not eligible for the state register.

## BACKGROUND

The constitution of the State of Hawai'i recognizes the value of conserving and developing the historic and cultural property within the State for the public good, and the Legislature has declared that it is in the public interest to engage in a comprehensive program of historic preservation at all levels of government to promote the use and conservation of such property for the education, inspiration, pleasure and enrichment of its citizens.

In order to meet this mandate and to ensure that the historic and cultural resources of Hawai'i are treated appropriately, it is necessary to have a framework based on criteria and standards to define and differentiate which properties are subject to the state's historic preservation program.

## SB 504 Section 1.

The preamble or legislative intent of the bill summarizes concerns from the development community related to historic preservation review and compliance, and specifically finds that the requirement "has had a negative impact on development."

The problem appears to be overstated. The department's analysis of its response times indicates that in 2014, the State Historic Preservation Division review took 5 days on average, and the most common length

for a review was 3 calendar days. This is a reasonable turnaround time for any government action, and significantly less than the time allowed within the regulatory parameters.

The construction industry also alleges that historic preservation is a detriment to the industry. This is an extremely shortsighted and ill-informed assessment of the overall effect. National studies of the economic benefits of historic preservation have found:<sup>i</sup>

- **Rehabilitation projects create jobs:** in a typical rehabilitation project, 60%-70% of the total cost is labor. Laborers are almost always hired locally, which supports the local economy, and is a direct and quantifiable benefit for the trades and construction industry.
- **Rehabilitation costs are roughly the same as building new:** if no demolition is required, a major rehabilitation will cost between 12% less and 9% more than new construction. If demolition is included in the new construction costs, rehabilitation costs less by 3%-6%.
- **Historic destinations attract visitors:** cultural heritage travelers on average spend more (\$994 per trip vs. \$611) and travel more often (average 5 trips compared with slightly less than 4). This type of tourism both protects the culture and identity of a place, while also providing economic benefits for the host community.

Previous legislative discussion on this subject matter raised concerns with the volume of aging properties and how the historic preservation review process is managed. There has also been discussion of the workload on the state and county agencies in processing the review and compliance actions.

As we are mindful of these concerns, Historic Hawai'i Foundation also notes that the overriding public policy should be to evaluate proposed changes to the law not only for efficient processing, but also in effectiveness in protecting historic properties.

**Therefore, Historic Hawai'i Foundation recommends that SB 504 Section 1 be amended to add to the legislative intent that:**

The historic and cultural resources of Hawaii are a great legacy and irreplaceable treasures. Historic properties depict the architectural, social and economic history of the Hawaiian Islands. The natural beauty of Hawaii is complemented by its neighborhoods, small towns, vernacular architecture, design, engineering and construction methods, and other characteristics of the distinctive built environment of these islands. The historic properties of Hawaii are a reflection of its physical setting and social history. It is in the public interest to engage in a comprehensive program of historic preservation at all levels of government to promote the use and conservation of such property for the education, inspiration, pleasure and enrichment of its citizens. In order to meet this mandate and to ensure that the historic and cultural resources of Hawai'i are treated appropriately, it is necessary to have a framework based on criteria and standards to define and differentiate which properties are subject to the state's historic preservation program.

#### SB 504 Section 2

This section would amend the definition of "historic property" to add considerations of historic significance and integrity.

Currently, HRS §6E-2 defines historic properties as any building, structure, object, district, area, or site, including heiau and underwater site, which is over 50 years old. This definition has the advantage of being easy to understand and simple to evaluate, as it relies on a single piece of data: age of construction.

However, that definition is also unnecessarily broad, and assumes that age is equivalent to historic importance. Within the discipline and practice of historic preservation, there are two additional criteria used to screen properties: historic **significance** and **integrity**.

The standard of whether or not a property qualifies for designation on the National or Hawai'i State Register of Historic Places (typically called a "determination of eligibility") is the most common baseline for evaluating historic properties. This determination first examines the intrinsic qualities that describe the property's significance, which is the historic importance or association. Significance is commonly referred to by the relevant section of the eligibility criteria for the historic register, which are summarized as:

- A. Historical events;
- B. Historical persons;
- C. Design patterns or construction; or
- D. Data or information potential.

The second aspect of eligibility is historic integrity, which are those elements of a historic property that convey any or some of its significance. Integrity assesses whether or not a "preservable" entity still exists that would be recognizable by the group that used the property historically. The elements of integrity are location, setting, design, materials, workmanship, association and feeling.

By amending the state's definition of historic property to include only those that meet the cumulative standards of age, significance and integrity (collectively, meeting the criteria or possessing the characteristics to be entered into the Hawai'i register of historic places), there will be a respected, credible and disciplined way to prioritize the truly historic properties from those that are merely old.

It would also make the state's definition consistent with the standards and implementing regulations of the National Historic Preservation Act, which is used for all federal undertakings.

Historic Hawai'i Foundation believes this refinement of the definition would further the cause of preserving the historic and cultural resources of the State, while narrowing the focus of the historic preservation program to the appropriate priorities. **Therefore, HHF recommends approval of the bill's Section 2.**

### SB 504 Section 3.

This section requires the State Historic Preservation Division to initiate a reconnaissance architectural survey project with a focus on mid-20<sup>th</sup> century communities and subdivisions to serve as a basis for evaluating the historic and architectural significance of those structures.

Historic Hawai'i Foundation strongly supports the use of Inventory and Survey projects to identify historic properties and districts that are most significant and should be the subject of preservation treatments. This type of inventory has been neglected for several decades, so the official list of historic properties underrepresents certain property types, including those from the recent past (e.g. post-World War II).

A comprehensive survey of every parcel in the state is a long-term project that will take several years, so Historic Hawai'i Foundation concurs with the need for a phased approach. As the stock of mid-century housing is the least understood and most pressing concern, HHF agrees with prioritizing those neighborhoods for attention. However, it should be noted that many individual parcels and districts from

before World War II have not yet been adequately surveyed and should also be added to the State's inventory of historic properties.

### **HHF recommends approval of the bill's Section 3.**

#### SB 504 Section 4 Paragraph (1)

This section addresses the triggers for the State Historic Preservation Division review and comment on "the effect of the proposed project on historic properties." The purpose of the review process is to help ensure the preservation and appropriate use of historic properties, and to provide opportunities for correction should a proposed action be found to inflict irreversible harm.

The measure would direct SHPD to develop a list of categories of projects which have a low likelihood to affect the historic property's integrity or character, and which therefore should not be referred to SHPD for review and comment. A similar approach, often referred to as "categorical exclusions," has been used effectively in programmatic agreements with federal agencies in order to prioritize efforts on those undertakings with the greatest potential to harm historic properties, and to limit the amount of time, money and other resources that would otherwise be diverted to unnecessary reviews.

Historic Hawai'i Foundation supports this approach, and agrees that it is a reasonable and responsible way to address the need to have a rational basis for eliminating review of projects that are unlikely to affect historic properties, while continuing to provide review and comment of more substantial work that could inflict harm.

### **HHF has several recommendations to refine and clarify the proposal:**

1. The list of projects with no potential to effect historic properties should be clearly noted to **apply only to projects submitted under HRS §6E-42** (private property not designated on the state register of historic places) and not to §6E-8 (public property) or §6E-10 (property designated on the state register of historic places).
2. **A formal implementation mechanism or structure needs to be included.** The current proposal appears to take the form of a letter from SHPD to the Counties as an advisory not to submit such projects to SHPD for review and comment. We note that SHPD has issued previous advisories about projects that do not adversely affect historic properties, but the Counties declined to follow the advice. The result was inconsistent referrals and requests for comment, an unpredictable process and an exacerbation of the frustration with the overall preservation program. In addition, any such advisory should not be limited to the Counties, but should also include any additional State agencies and officers that issue land use approvals, such as the Hawai'i Community Development Authority and the Department of Hawaiian Homelands.

Rather than rely only on an advisory letter, SHPD should either institutionalize the approach through rule-making, or should develop and execute a formal agreement(s) with relevant agencies and officers through a Memorandum of Agreement or Intergovernmental Agreement. This would provide a legal framework, institutionalize the understanding and terms, and provide for amendment or termination as needed.

#### SB 504 Section 4 Paragraphs (2) and (3)



These sections direct SHPD to identify all properties, by address and tax map key, that are not eligible for the state register of historic places, as well as the properties that are eligible, and to complete the determinations by the end of the calendar year.

This mandate amounts to a parcel-level evaluation of every property in the state, and would need to include vast amounts of research, context studies, field work, public meetings, and professional support. While it would be desirable to have a definitive analysis of every possible historic property, this is infeasible in scope.

In addition, new information becomes available regularly. While a property built today is not historic, it may become so within the next 50 years by virtue of its potential association with events, persons or characteristics that future generations will find significant. In other words, a finding of “not eligible” would not be a permanent condition, but could change as history progresses.

However, there is a middle ground. SHPD regularly makes determinations of eligibility as it responds to projects that are presented to it for review and comment. Once SHPD has determined whether or not a particular property is or is not eligible for the historic register, that information should be tracked by site identification (such as Tax Map Key or address). Future projects may be routed accordingly. Currently, the City & County of Honolulu sends successive permit applications to SHPD for comment even after the State has determined that the property is not historic and has asked for no further review.

**Therefore, Historic Hawai‘i Foundation recommends that the bill be amended to clarify that as SHPD makes determinations of eligibility for the register of historic places, such determinations shall be the basis for submitting projects to the department for review under section 6E-42.**

However, the requirement for SHPD to initiate and complete a statewide determination of eligibility for every parcel should be deleted.

#### SB 504 Sections 5 and 6

These sections appropriate funds for the purpose of conducting the architectural survey project and implementing the Act.

**HHF recommends approval of Sections 5 and 6.**

We look forward to continuing to work with the legislature to address these concerns and issues. Thank you for the opportunity to comment.

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#### <sup>i</sup> *References:*

Lahr, Michael L., David Listoken, et al. *Economic Impacts for Historic Preservation in Nebraska*. New Brunswick, New Jersey: Center for Urban Policy Research, Rutgers, The State University of New Jersey, October 2007.

Mandala Research, LLC. “The Cultural and Heritage Travelers Study.” 2009

Rypkema, Donovan D. *The Economics of Historic Preservation: A Community Leader’s Guide*. Washington DC: National Trust for Historic Preservation, 1994.

----. 2005 “Economic Sustainability and Historic Preservation.” Speech presented at the National Preservation Conference, Portland, Oregon, October 1, 2005.

Wichman, Wendy. *The Economic Benefits of State Historic Preservation Investment Tax Credits*. Honolulu, Hawai‘i: Historic Hawai‘i Foundation, 2008.



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February 4, 2015

**Testimony to the Joint Senate Committee on Higher Education  
and the Arts and Committee on Water and Land  
Wednesday, February 4, 2015  
3:05 p.m.  
State Capitol - Conference Room 224**

**RE: SENATE BILL NO. 504 RELATING TO HISTORIC PRESERVATION**

Dear Chairs Taniguchi and Thielen, Vice-Chairs Lowen, and members of the Committee,

I am Greg Thielen, President and RME of Complete Construction Services. I am a Small Business Owner and have over 20 years experience in the Construction Industry. I am also a Past President of BIA Hawaii and serve as the Hawaii State Representative to the National Association of Home Builders.

I am here to strongly **OPPOSE** Senate Bill 504 and would urge the committee's to instead move forward with SB 520. Prior to the passing of Act 228 in 2008 the State Historic Preservation Division (SHPD) followed HRS 6E-10 which clearly limits their review of privately owned Historic Property to those on the "Hawaii register of historic places". After the passage of Act 228 in 2008 all properties over 50 years old were not only required to submit to SHPD for review, they were also required to provide "archival photographs" as part of that process. To it's credit the 2009 legislature saw the negative fall out of Act 228 and less than 9 months after passing it into law it was repealed. Unfortunately the concept of SHPD reviewing everything was on the table and the agency moved aggressively to maintain this new found control on the building permit process. Using HRS 6E-42 they instructed the Counties to submit all building permits for properties over 50 years old after the repeal of Act 228.

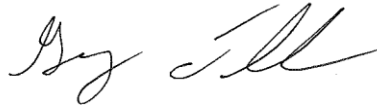
I would urge the Committee members to look beyond the letter of the law as written and look at the legislative intent surrounding this issue of Historic Review. Ask yourselves the following simple questions –

1. 6E-42 was passed into law years after 6E-10 was already on the books. If the intent was for 6E-42 to supercede 6E-10, why wasn't 6E-10 deleted when the law was amended?
2. When the legislature repealed Act 228 in 2009, the justification cited was the negative impact SHPD was having on the building permit process and the onerous requirements on the average home owner. Wasn't the legislative intent to restore the review process to pre-2008 levels?

**SB 520** accomplished the clear legislative intent of both 6E-10 and the repeal of Act 228. By granting exemptions to homes not on the Hawaii register of historic places or in a historic district. Furthermore this bill will free up two staffers at SHPD that currently conduct 6E reviews and allow them to conduct a survey without additional funding. The bill you are hearing today (**SB 504**) **doesn't accomplish anything** other than wasting taxpayer dollars and continuing the status quo of unnecessary and burdensome reviews of every house over 50 years old.

Thank you for the opportunity to provide this testimony.

Sincerely,

A handwritten signature in black ink, appearing to read 'Greg Thielen', written in a cursive style.

Greg Thielen  
President/RME





# Native Hawaiian LEGAL CORPORATION

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## SENATE BILL 504 RELATING TO HISTORIC PRESERVATION

### BEFORE THE SENATE COMMITTEE ON EDUCATION AND THE ARTS AND THE SENATE COMMITTEE ON WATER AND LAND

DATE: Wednesday, February 4, 2015  
TIME: 3:05 p.m.  
PLACE: Conference Room 224

#### COMMITTEE ON HIGHER EDUCATION AND THE ARTS

Senator Brian T. Taniguchi, Chair  
Senator Lorraine R. Inouye, Vice Chair

#### COMMITTEE ON WATER AND LAND

Senator Laura H. Thielen, Chair  
Senator Brickwood Galuteria, Vice Chair

RE: SB 504: RELATING TO HISTORIC PRESERVATION

Mahalo nui for this opportunity to testify in opposition to SB 504, Relating to Historic Preservation.

My name is Moses Haia and I am the Executive Director of the Native Hawaiian Legal Corporation. The Native Hawaiian Legal Corporation is very concerned with this bill's attempt to amend the definition of "historic property". This term is legally significant and cannot be viewed in isolation.

The historic preservation review process is rooted in the definition of "historic property." The term is used throughout Hawai'i Administrative Rules 13-275, 13-276, 13-280, 13-277, 13-279, 13-284, 13-300; rules which govern the entire review process. If the legislature amends the definition of "historic property" it effectively, and automatically, amends these rules. If the definition of "historic property" is amended as proposed, these rules would be amended in a manner that would render them non-sensical and, as such, impossible to implement. It would, in essence, bring the entire historic preservation review process to a grinding halt. It would have the same effect repealing all the existing rules would have.

If you read those rules you will see how they would become effectively inoperable if the definition of "historic property" is changed.

The Hawai'i Supreme Court observed in *Kaleikini v. Yoshioka*, 128 Hawai'i 53, 70 (2012), "one of the central purposes of state historic preservation law . . . is to require that the effects on historic properties be reviewed prior to the approval of a project." It explained that the plain language of the rules

*Services made possible with major funding from the Office of Hawaiian Affairs*

**Niolo.** Upright, straight, stately, tall and straight as a tree without branches; sharply peaked, as mountains. Fig., righteous, correct.

RE: SB 504—Relating to Historic Preservation

clearly set out a sequential process for obtaining the SHPD's concurrence to a project. Where an AIS is required, it forms part of the first step in this process, i.e., identification and inventory of historic properties in the project area. HAR § 13-275-5. Once an adequate AIS has been submitted, the significance of "each property" is evaluated. HAR § 13-275-5(g); see also HAR § 13-275-6. If significant historic properties are present, the impact of the proposed project on the properties must be assessed. HAR § 13-275-7. If the project will affect significant historic properties, the agency must submit mitigation commitments, "proposing the form of mitigation to be undertaken for each significant historic property[.]" HAR § 13-275-8(a) (emphasis added). The rules do not authorize the issuance of a determination letter until these mitigation commitments have been accepted by the SHPD. HAR § 13-275-8(c).

*Id.* at 75. The historic preservation review process is "designed to identify significant historic properties in project areas and then to develop and execute plans to handle impacts to the significant properties in the public interest." *Id.* at 57.

By adding the word "significant" to the definition of historic property, the analysis of "significance" would have to take place before the historic preservation review process was even triggered – rendering the existing rules unimplementable and causing mass confusion as to implementation.

If the legislature seeks to carve out this exception to the historic preservation review process, it can be accomplished by carving out a narrow exception that does not alter the definition of "historic property."

Again, mahalo for this opportunity to provide testimony in opposition to SB 504.

February 4, 2015

**The Honorable Laura Thielen, Chair**  
Senate Committee on Water and Land

**The Honorable Brian Taniguchi, Chair**  
Senate Committee on Higher Education and the Arts  
State Capitol, Room 224  
Honolulu, Hawaii 96813

**RE: S.B. 504, Relating to Historic Preservation**

**HEARING: Wednesday, February 4, 2015, at 3:05 p.m.**

Aloha Chair Thielen, Chair Taniguchi and Members of the Joint Committees:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,400 members. HAR **strongly supports** S.B. 504, which includes only buildings, structures, objects, districts, areas, or sites that are significant in Hawaii's history, architecture, archeology, engineering, or culture in the definition of "historic property". Additionally, this measure requires the State Historic Preservation Division (SHPD) of the Department of Land and Natural Resources to initiate a pilot reconnaissance architectural survey project to document selected residences built between 1945 and 1980 and conduct a study of Hawaii mid-century architecture. SHPD is required to provide the public and the counties with a list that identifies the types of projects that have no potential to affect a historic property; provide a list of properties identified by street address and tax map key that are likely to be ineligible for inclusion in the Hawaii Register of Historic Places to the counties; and provide owners of historic property with notice of the property's likely eligibility in the Hawaii Register of Historic Places.

According to the Department of Business, Economic Development, and Tourism's State of Hawai'i Databook 2013, nearly 40% of private residences on Oahu were built in 1969 or earlier. As the number of residences that are 50 years old or older increase over time, it is prudent for the State to reexamine the current processes and procedures regarding historic properties.

Under Hawaii Revised Statutes ("HRS"), §6E-2, historic property is defined as, "any building, structure, object, area or site, including heiau and underwater site, which is over fifty years old."

Additionally, under HRS §6E-42, prior to approval of any project involving a permit, license, certificate, land use change, subdivision, or other entitlement for use, which may affect historic property, the State Historic Preservation Division (SHPD) is to be advised.

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Prior to any approval, SHPD must be allowed an opportunity for review and comment on the effect of the proposed project on the historic property. Also, SHPD must inform the public of any project proposals submitted to it that are not otherwise subject to the requirement of a public hearing or other public notification.

HAR believes that the definition of historic property of 50 years old or older is overly broad, and includes far too many homes that have no qualities that would qualify it for inclusion on the Hawaii Register of Historic Places. By only including buildings, structures, objects, districts, areas, or sites that are significant in Hawaii's history, architecture, archeology, engineering, or culture in the definition of "historic property" the list of historic properties will be streamlined while still protecting the most significant properties.

Mahalo for the opportunity to testify.



**Testimony to the Senate Committee on Water and Land**

**Wednesday, February 4, 2015**

**3:05 p.m.**

**State Capitol - Conference Room 224**

**RE: SENATE BILL NO. 504 RELATING TO AGRICULTURE**

Chair Thielen, and Vice Chair Galuteria, and members of the Committee:

My name is Paul Vierling, General Manager for Hawaii Geophysical Services, LLC (HGS). We provide subsurface engineering services to Hawaii's engineering and construction industry.

HGS provides the following comments on S.B. 504, which proposes to:

1. Identify only buildings, structures, objects, districts, areas, or sites that are significant in Hawaii's history, architecture, archeology, engineering, or culture in the definition of "historic property".
2. Require the state historic preservation division of the Department of Land and Natural Resources to initiate a pilot reconnaissance architectural survey project to document selected residences built between 1945 and 1980 and conduct a study of Hawaii mid-century architecture.
3. Require the division to provide:
  - a. The public and the counties with a list that identifies the types of projects that have no potential to affect a historic property;
  - b. A list of properties identified by street address and tax map key that are likely to be ineligible for inclusion in the Hawaii register of historic places to the counties; and,
  - c. Owners of historic property with notice of the property's likely eligibility in the Hawaii register of historic places.
4. Appropriates funds in the amount of \$600,000.00 for this effort.



HGS has been and continues to be concerned about the unnecessary automatic review of residences that are older than 50 years. We recognize that there are many unique residences that are older than 50 years, and the property owners of these structures have the opportunity to secure real property tax relief if they voluntarily place their homes on the register. However, there are also large subdivisions of tract homes around Oahu (i.e. Kaneohe, Hawaii Kai, Manoa, Halawa, Aiea, Pearl City, Waipahu, etc.) which were constructed in the 1960's that are or will be older than 50 years old. Subjecting homeowners in these tract subdivisions to a building permit review by SHPD simply because of the age of the dwelling, seems to be unnecessary and unreasonable.

The bill essentially instructs SHPD to do what they are statutorily required to do so we are puzzled as to why the legislation is necessary and why additional funds have to be appropriated to undertake this effort.

Thank you for the opportunity to express our views on this matter.

Sincerely,

Paul Vierling, General Manager



## **Testimony to the Senate Committee on Water and Land**

**Wednesday, February 4, 2015**

**3:05 p.m.**

**State Capitol - Conference Room 224**

**RE: SENATE BILL NO. 504 RELATING TO AGRICULTURE**

Chair Thielen, and Vice Chair Galuteria, and members of the Committee:

My name is Paul Vierling, Industry and Government Relations Chair for the National Utility Locating Association of Hawaii (NUCA-Hawaii), the Voice of the Utility Locating Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. NUCA-Hawaii is a not-for-profit professional trade organization chartered in 2012, and affiliated with the National NUCA Association.

NUCA-HAWAII provides the following comments on S.B. 504, which proposes to:

1. Identify only buildings, structures, objects, districts, areas, or sites that are significant in Hawaii's history, architecture, archeology, engineering, or culture in the definition of "historic property".
2. Require the state historic preservation division of the Department of Land and Natural Resources to initiate a pilot reconnaissance architectural survey project to document selected residences built between 1945 and 1980 and conduct a study of Hawaii mid-century architecture.
3. Require the division to provide:
  - a. The public and the counties with a list that identifies the types of projects that have no potential to affect a historic property;
  - b. A list of properties identified by street address and tax map key that are likely to be ineligible for inclusion in the Hawaii register of historic places to the counties; and,
  - c. Owners of historic property with notice of the property's likely eligibility in the Hawaii register of historic places.

Paul Vierling, Industry and Government Relations Chair  
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808-254-8484  
[paulv@hawaiiigs.com](mailto:paulv@hawaiiigs.com)



4. Appropriates funds in the amount of \$600,000.00 for this effort.

HGS has been and continues to be concerned about the unnecessary automatic review of residences that are older than 50 years. We recognize that there are many unique residences that are older than 50 years, and the property owners of these structures have the opportunity to secure real property tax relief if they voluntarily place their homes on the register. However, there are also large subdivisions of tract homes around Oahu (i.e. Kaneohe, Hawaii Kai, Manoa, Halawa, Aiea, Pearl City, Waipahu, etc.) which were constructed in the 1960's that are or will be older than 50 years old. Subjecting homeowners in these tract subdivisions to a building permit review by SHPD simply because of the age of the dwelling, seems to be unnecessary and unreasonable.

The bill essentially instructs SHPD to do what they are statutorily required to do so we are puzzled as to why the legislation is necessary and why additional funds have to be appropriated to undertake this effort.

Thank you for the opportunity to express our views on this matter.

Sincerely,

Paul Vierling, Industry and Government Relations Chair

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Paul Vierling, Industry and Government Relations Chair  
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TO: Senator Brian Taniguchi, Chair  
Senate Committee on Higher Education and the Arts

Senator Laura Thielen, Chair  
Senate Committee on Water and Land

FROM: Sara L. Collins, Ph.D., President  
Society for Hawaiian Archaeology  
[sara.l.collins.sha@gmail.com](mailto:sara.l.collins.sha@gmail.com)

HEARING: February 4, 2015, 3:05 PM, Conference Room 224  
SUBJECT: Testimony in STRONG OPPOSITION to SB 504 (Relating to Historic Preservation)

I am Dr. Sara Collins, President of the Society for Hawaiian Archaeology (SHA). We have over 150 members that include professional archaeologists and advocates of historic preservation in general. On behalf of SHA, I am providing testimony in OPPOSITION to SB 504 (Relating to Historic Preservation). SB 504 amends portions of Chapter 6E, Hawaii Revised Statutes (HRS) in the following ways:

- Includes only buildings, structures, objects, districts, areas, or sites that are significant in Hawaii's history, architecture, archeology, engineering, or culture in the definition of "historic property".
- Requires the state historic preservation division of the Department of Land and Natural Resources to initiate a pilot reconnaissance architectural survey project to document selected residences built between 1945 and 1980 and conduct a study of Hawaii mid-century architecture.
- Requires the division to provide the public and the counties with a list that identifies the types of projects that have no potential to affect a historic property; provide a list of properties identified by street address and tax map key that are likely to be ineligible for inclusion in the Hawaii register of historic places to the counties; and provide owners of historic property with notice of the property's likely eligibility in the Hawaii register of historic places.
- Appropriates funds to carry out the specified actions.

We have a number of concerns with the proposed actions and STRONGLY OPPOSE enactment of SB 504 in its current form. We provide detailed comments below.

With regard to Section 2 of SB 504:

The problem that SB 504 seeks to solve is the impact of Hawaii's historic preservation laws on "private residences that are or will soon be fifty years old." This problem has already been substantially resolved. We understand from SHPD personnel that the division has greatly improved its procedures for processing approvals for private residences. The average turnaround time for the review of residential permits is now five (5) days and the mode is three (3) days. Accordingly, SHPD's problem has already been substantially resolved and does not need a further legislative "fix" as proposed in SB 504. There are still delays on the part of the County agencies working with SHPD that this bill does not address.

Furthermore, we understand that SHPD is in the process of developing a list of exemptions analogous to those which the Environmental Council may approve under HRS section 343-6(a)(2) to "Establish procedures whereby specific types of actions, because they will probably have minimal or no significant effects on the environment, are declared exempt from the preparation of an environmental assessment" that would further streamline the historic preservation review process. To our knowledge, there is no statutory basis for SHPD to implement an exemption list of the type proposed in SB 504. Consequently, such a list won't address the issues at hand. Instead, we recommend an ongoing agreement process, resulting in an agreement document that can be modified over time and be subject to Board of Land and Natural Resources (BLNR) review and approval in a public meeting. Such agreement documents could also be prepared for 6E-8 projects.

Second, and more importantly, the proposed amendment to the definition of "historic property" would apply to ALL properties potentially subject to review under Chapter 6E, NOT merely the private

residences that are the supposed justification of the proposed revision. If indeed the application of Chapter 6E to private residences is the problem, it would be simple to enact a simple AND NARROWLY DRAFTED amendment to the definition of “historic property” that would resolve the issue at hand without impacting the entirety of the program. We propose the following language to address that concern:

“‘Historic property’ means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old[.]provided that the term historic property shall not include any existing private single-family residence that has not been entered, or nominated by the owner of the residence for entry, onto the Hawaii register of historic places.”

#### With regard to Section 3:

The amendment to the definition of “historic property” we proposed in the preceding section would eliminate the need for the architectural pilot program proposed in Section 3 of SB 504.

#### With regard to Section 4:

The requirement to prepare the lists proposed in Section 4 would impose extensive new obligations on SHPD to be accomplished in an impossibly short period of time, by agency that is under-staffed due to lags in hiring qualified personnel. To date, the Architecture Branch still has one vacancy – the Branch Chief position -- in a staff of three and there is no indication when this vacancy might be filled. Even if the survey work were contracted out, the timeframe proposed is too short for this to be completed by the dates indicated. Although amending the completion dates is one solution to the problems we see with Section 4, we are not in a position to make such a recommendation.

Although funding of \$300,000 is proposed, the moneys are to come either from the State Historic Preservation Special Fund (Special Fund) or from a legislative appropriation. A review of DLNR’s annual reports to the legislature on the Special Fund for the years 2011 – 2015 indicates that the Special Fund has never exceeded \$100,000 in any year so it is not realistic to consider the Special Fund as a primary source of funding for the proposed actions. In addition, if the appropriation is out of the Special Fund, its ceiling will need to be raised twofold to allow this level the spending. It is not clear to us that SB 405 permits this budgetary action.

It would no doubt be possible to develop an exemption list of the type proposed in Section 4(a)(2) analogous the lists approved by the Environmental Council under HRS Section 343-6(a)(2) mentioned above, and indeed we understand SHPD staff are now preparing such a list. It would be totally impossible, however, to create the parcel-by-parcel lists for all four counties as proposed in Sections 4(a)(2) and 4(a)(3) of the proposed legislation; the information simply is not available and cannot possibly be assembled within the ridiculously short time period proposed. Furthermore, SB 405 makes no provision to provide SHPD with the very substantial additional resources necessary to develop such lists.

#### With regard to Sections 5 and 6

While it may be desirable to develop the pilot project proposed here, we believe the amendment to the definition of “historic property” we propose above could substantially reduce the need for such a program, unless it is believed to be desirable for reasons unrelated to the supposed adverse impact of Chapter 6E on private residences.

We respectfully ask that this bill be HELD due to its many problems. Should SB 405 be passed on we request the opportunity to work with other stakeholders and interested parties to address the issues raised. Mahalo for considering our comments. Should you have any questions, please feel free to contact me at the above address.

**Testimony to the Senate Committee on Education and the Arts and the  
Committee on Water and Land  
Wednesday, February 4, 2015 at 3:05 P.M.  
Conference Room 224, State Capitol**

**RE: SENATE BILL 504 RELATING TO HISTORIC PRESERVATION**

Chairs Taniguchi and Thielen, Vice Chairs Inouye and Galuteria, and Members of the Committees:

The Chamber provides the following **comments** on SB 504 which proposes to:

1. Identify only buildings, structures, objects, districts, areas, or sites that are significant in Hawaii's history, architecture, archeology, engineering, or culture in the definition of "historic property".
2. Require the state historic preservation division of the Department of Land and Natural Resources to initiate a pilot reconnaissance architectural survey project to document selected residences built between 1945 and 1980 and conduct a study of Hawaii mid-century architecture.
3. Require the division to provide:
  - a. The public and the counties with a list that identifies the types of projects that have no potential to affect a historic property;
  - b. A list of properties identified by street address and tax map key that are likely to be ineligible for inclusion in the Hawaii register of historic places to the counties; and,
  - c. Owners of historic property with notice of the property's likely eligibility in the Hawaii register of historic places.
4. Appropriates funds in the amount of \$600,000.00 for this effort.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber has been and continues to be concerned about the unnecessary automatic review of residences that are older than 50 years. We recognize that there are many unique residences that are older than 50 years, and the property owners of these structures have the opportunity to secure real property tax relief if they voluntarily place their homes on the register. However, there are also large subdivisions of tract homes around Oahu (i.e. Kaneohe, Hawaii Kai, Manoa, Halawa, Aiea, Pearl City, Waipahu, etc.) which were constructed in the 1960's that are or will be older than 50 years old. Having to subject homeowners in these tract subdivision



to a building permit review by SHPD simply because of the age of the dwelling, seems to be unnecessary and unreasonable.

The bill essentially instructs SHPD to do what they are statutorily required to do so we are puzzled as to why the legislation is necessary and why additional funds have to be appropriated to undertake this effort.

Thank you for the opportunity to express our views on this matter.