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GOVERNOR OF HAWAII



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

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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
Carty S. Chang
Interim Chairperson**

**Before the Senate Committee on
WAYS AND MEANS**

**Tuesday, April 7, 2015
1:35 PM
State Capitol, Conference Room 211**

**In consideration of
HOUSE BILL 830, HOUSE DRAFT 1, SENATE DRAFT 1
RELATING TO RESIDENTIAL PROPERTY**

House Bill 830, House Draft 1, Senate Draft 1 proposes to exempt privately owned residences from the definition of historic property and would prohibit the review of any project affecting a private residence requiring a state or county permit by the Department of Land and Natural Resources (Department) unless the residence has been entered into or nominated by the owner for entry into the Hawaii Register of Historic Places (Hawaii Register). It also amends Section 6E-42, Hawaii Revised Statutes (HRS), in a manner that is impossible to assess from language in the draft. **The Department appreciates the intent of this measure but recommends that it be held without action.**

While the Department agrees that there is a potential issue arising from the current statutory definition of historic property, which relies solely on age, it cannot support an amendment to the definition that categorically exempts private residences.

When this issue was before the Legislature during the 2014 session, the Legislature deferred action to give the State Historic Preservation Division (Division) in the Department the opportunity to address this matter. The Department appreciates that decision. The Division has made substantial progress in addressing the issue of review of residential permits. In January 2014, the average length of time for a residential permit review by the Department was seventeen calendar days, and the mode was seven. A year later, the average turnaround has been reduced to five calendar days, and the mode is three – a more than three-fold decrease in the average length of time it takes the Division to process a residential permit review.

Furthermore, the Division developed a list of project types that have no potential to effect historic properties. This list was distributed to the counties in February 2015, with the instruction that permits for project types on the list should no longer be submitted to the Division for review. The Division estimates that when fully implemented, the number of residential permits submitted to the Division for review will drop by more than thirty percent. The Division will continue to consider adding project types to this list, and continues to work with the counties to train staff and to consider ways in which the list can be made more useable by county staff, as well as to seek additional efficiencies in processing residential permit reviews.

Historic preservation is not simply an abstract “good.” Preserving the character of historic residences preserves the character of neighborhood, makes a property potentially eligible for reductions in country real estate assessments, preserves the character of commercial districts, and is an economic driver both in historic districts and throughout the islands.

Only a very small fraction of Hawai’i’s historic homes have been placed on the Hawaii Register. The overwhelming majority of residential structures in Hawaii have never been inventoried and evaluated to determine whether or not they are eligible for inclusion in the Hawaii register. Exempting residences from review before completing an inventory of Hawai’i’s buildings will inevitably result in inadvertent damage to or destruction of historic homes and to changes in the character of the neighborhoods in which they are located. In addition, as presently drafted, House Bill 830, House Draft 1, Senate Draft 1 exempts all homes not listed or nominated to the Hawaii Register. Implementing this exemption in historic districts, where structures are evaluated collectively rather than individually, will be all but impossible.

The Department believes that a comprehensive architectural survey of buildings is essential to protection and management of the Hawaii’s unique heritage as well as to resolving the issue of unnecessary permits reviews.

SECTION 3 of House Bill 830, House Draft 1, Senate Draft 1 amends Section 6E-42, HRS. As currently drafted House Bill 830, House Draft 1, Senate Draft 1 reads the section 6E-42, HRS, is amended “except as provided in section 6E- __” The absence of the specific section makes it impossible to determine what the Legislature intends with this amendment, and makes it impossible to assess the potential effects of this amendment.

Senate Bill 504, House Draft 1 will address these matters in a way that offers greater potential to resolve this issue without weakening the protection of Hawai’i’s important and unique cultural heritage. The Department strongly prefers the approach in Senate Bill 504, House Draft 1.

The Department recommends that House Bill 830, House Draft1, Senate Draft 1 be held without action.

BIA-HAWAII

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THE VOICE OF THE CONSTRUCTION INDUSTRY

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Testimony to the Senate Committee on Ways and Means Tuesday, April 07, 2015 1:35 P.M. State Capitol - Conference Room 211

RE: H.B. 830, H.D. 1, S.D. 1, RELATING TO RESIDENTIAL PROPERTY

Chair Tokuda, Vice Chair Kouchi, 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 **supports** H.B. 830, H.D. 1, S.D. 1, which creates an exemption from DLNR review for proposed projects on privately-owned single-family detached dwelling units that are not designated on, or nominated for, the Hawaii or National Registers of Historic Places or are not located in a historic district; and defines "dwelling unit". We recommend the defective date be changed to "upon approval."

The bill is intended to address a specific problem of tract subdivision homes in areas such as Hawaii Kai, Kaneohe, Halawa, Aiea, Pearl City, Waipahu and Mililani which are or will be in the near future, fifty (50) years old. The fact that these tract subdivision homes are fifty (50) years old AUTOMATICALLY defines them as "historic property" pursuant to Section 6E-2 HRS.

In recent years, ministerial approvals (i.e. County Building Permits) have been referred to the State Historic Preservation Division for review in accordance with Chapter 6E, Section 42 which states:

"§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 (Emphasis added)."

SHPD's interpretation of the law causes many renovation and remodeling type building permits on homes over 50 years old to be routed to SHPD for compliance with Chapter 6E HRS. These include homes and entire subdivisions that were constructed in the 1950's and 1960's. Each year more and more tract type subdivision homes become eligible simply because they are 50 years old or older.

The growing volume of permits being submitted has created a backlog at SHPD in the time and manpower required to review and process these permits. Furthermore, while SHPD is conducting its review, the City and County of

Honorable Chair Jill N. Tokuda
Senate Committee on Ways and Means
April 07, 2015
H.B. 830, H.D. 1, S.D. 1
Testimony of BIA-Hawaii

Honolulu is unable to effectively complete the processing of the building permit, creating backlogs at two agencies for the same permit.

We appreciate that there are homes in Hawaii that are fifty (50) years old or older which are considered to be architecturally significant and worthy of preservation. These home should be preserved by either placement on or nomination for inclusion in the Hawaii Register of Historic Places. The proposed bill would simply remove, from the definition of historic property, any private residences that have not been entered, or nominated by the owner of the residence for entry, onto the Hawaii register of historic places. The bill focuses only on vertical residential structures that haven't been nominated or placed on the Hawaii Register of Historic Places and does not apply to any subsurface work.

We believe that the proposed language in H.B. 830, H.D. 1, S.D. 1, addresses this specific problem, as it would allow for the bulk of work on residential structures to move forward without unnecessary delays, and allow SHPD to refocus limited resources on residences that are worthy to be placed on the Hawaii Register of Historic Places.

We appreciate the opportunity to express our **support** for H.B. 830, H.D. 1, S.D. 1.



**Testimony to the Senate Committee on Ways and Means
Tuesday, April 7, 2015 at 1:35 P.M.
Conference Room 211, State Capitol**

RE: HOUSE BILL 830 HD1 SD1 RELATING TO RESIDENTIAL PROPERTY

Chair Tokuda, Vice Chair Kouchi, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **strongly supports** HB 830 HD1 SD1, which creates an exemption from DLNR review for proposed projects on privately-owned single-family detached dwelling units that are not designated on, or nominated for, the Hawaii or National Registers of Historic Places or are not located in a historic district.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 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 members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The bill is intended to address a specific problem of tract subdivision homes in areas such as Hawaii Kai, Kaneohe, Halawa, Aiea, Pearl City, Waipahu and Mililani which are or will be in the near future, fifty (50) years old. The fact that these tract subdivision homes are fifty (50) years old AUTOMATICALLY defines them as "historic property" pursuant to Section 6E-2 HRS.

In recent years, ministerial approvals (i.e. County Building Permits) have been referred to the State Historic Preservation Division for review in accordance with Chapter 6E, Section 42 which states:

"§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 (Emphasis added)."

SHPD's interpretation of the law has caused many renovation and remodeling type building permits on houses older than 50 years old to be routed to SHPD for compliance with Chapter 6E HRS. These include homes and entire subdivisions that were constructed in the



1950's and 1960's. Each year more and more tract type subdivision homes become eligible simply because they are 50 years old or older.

The volume of permits being submitted has created a backlog at SHPD in the time require to review and process the permits. Furthermore, while SHPD is conducting its review, the City and County of Honolulu is unable to complete processing the building permit effectively, creating backlogs at two agencies for the same permit.

We also understand that there are homes in Hawaii that are fifty (50) years old or older which are considered to be architecturally significant and worthy of preservation. These homes should be preserved by either placing them or nominating them for inclusion on the Hawaii Register of Historic Places. The proposes bill would simply remove, from the definition of historic property, any private residences that have not been entered, or nominated by the owner of the residence for entry, onto the Hawaii register of historic places. The bill focuses only on vertical residential structures that haven't been nominated or placed on the Hawaii Register of Historic Places and does not apply to any subsurface work.

We strongly believe that the proposed language in HB 830 HD1 SD1 is the most appropriate to address the specific problem, as it would allow for the bulk of work on residential structures to move forward without unnecessary delays, and allow SHPD to focus on residences that are worthy to be placed on the Hawaii Register of Historic Places.

We appreciate the opportunity to express our strong support for HB 830 HD1 SD1.

April 7, 2015

The Honorable Jill Tokuda, Chair

Senate Committee on Ways and Means
State Capitol, Room 211
Honolulu, Hawaii 96813

RE: H.B. 830, H.D.1, S.D.1, Relating to Residential Property

HEARING: Tuesday, April 7, 2015, at 1:35 p.m.

Aloha Chair Tokuda, Vice Chair Kouchi and Members of the Committee,

I am Myoung Oh, Government Affairs Director, submitting written testimony on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,400 members. HAR **provides comments and offers amendments on H.B. 830, H.D.1, S.D.1**, which creates an exemption from DLNR review for proposed projects on privately-owned single-family detached dwelling units that are not designated on, or nominated for, the Hawaii or National Registers of Historic Places or are not located in a historic district. Defines "dwelling unit

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."

Simply put, 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.

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.

While HAR appreciates the latest draft, HAR prefers the H.D.1 version as it would better help to address this issue by exempting from the definition of "historic property" any private residence that has not been entered, or nominated by the owner of the residence for entry, onto the Hawaii Register of Historic Places.

Mahalo for the opportunity to submit written testimony.

TO: Senator Jill N. Tokuda, Chair
Senator Ronald D. Kouchi, Vice Chair
Senate Committee on Ways and Means

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

HEARING: April 7, 2015, 1:35 PM, Conference Room 211
SUBJECT: Testimony in SUPPORT of HB 830, SD1 (Relating to Residential Property)

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 presenting testimony in SUPPORT of HB 830, SD 1 (Relating to Residential Property). HB 830, SD1 proposes to amend Chapter 6E, Hawaii Revised Statutes (HRS) by adding a new section and amending existing Chapter 6E-42, HRS, as follows:

"§6E- Excluded activities for privately-owned single-family detached dwelling units. (a) Applications for proposed projects on privately-owned single-family detached dwelling units that are not designated on or nominated for the Hawaii or National registers of historic places or located in a historic district shall be exempt from the requirements of section 6E-42.

(b) For the purposes of this section, "dwelling unit" means a building or portion thereof designed or used exclusively for residential occupancy and having all necessary facilities for permanent residency such as living, sleeping, cooking, eating, and sanitation. A single-family detached dwelling is an individual, freestanding, unattached dwelling unit, typically built on a lot larger than the structure itself, resulting in an area surrounding the dwelling."

SECTION 3. Section 6E-42, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [Before] Except as provided in section 6E- , 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."

In general, we concur with these proposed amendments and believe that HB 830, SD1 is a much better bill than the prior version. We do recommend one additional amendment, though, in order to clarify that the above language is **not** interpreted as exempting NEW CONSTRUCTION of single-family residences on previously undisturbed land, which is an interpretation that needs to be unambiguously excluded from these exclusions. Consequently, we recommend the following amendments to HB 830, SD1:

"§6E- Excluded activities for privately-owned single-family detached dwelling units. (a) Applications for proposed projects on existing privately-owned single-family detached dwelling units that are not designated on or nominated for the Hawaii or National registers of historic places or located in a historic district shall be exempt from the requirements of section 6E-42.

If this language is adopted, we believe that the proposed amendments to Chapter 6E, HRS will be less likely to result in adverse effects to historic properties, including burials and other archaeological sites.

Should you have any questions, please feel free to contact me at the above email address. Mahalo for considering our testimony.

HISTORIC HAWAII FOUNDATION

TO: Senator Jill N. Tokuda, Chair
Senator Ronald D. Couchi, Vice Chair
Committee on Ways & Means

FROM: Kiersten Faulkner, Executive Director
Historic Hawaii Foundation

Committee: Tuesday, April 7, 2015
1:35 p.m.
Conference Room 211

RE: HB 830, HD1, SD1, Relating to Residential Property

On behalf of Historic Hawaii Foundation (HHF), I am writing in **strong opposition to HB 830, HD1, SD1**. The bill would amend Hawai'i Revised Statutes §6E create an exemption from historic preservation review affecting privately-owned single-family detached dwelling units that are not designated on or nominated for the state or national registers of historic places, or located in a historic district.

The State's historic preservation program is designed to provide 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.

The proposed exemption would treat one property type— single family detached dwelling units — differently than all other property types, which is arbitrary and capricious. It would remove fair access to the state's preservation program and its protection for historic properties based on factors unrelated to the inherent characteristics or merit of the historic property, thus unfairly excluding home owners from equal treatment under the law. Excluding residential structures from the preservation program will inevitably lead to harm and destruction of these historic resources.

Currently, the marker of 50 years of age provides a bright line for all property types, and further evaluation of a property's significance, historic integrity and other elements of eligibility for the register of historic places occurs through the process outlined in Hawai'i Administrative Rules. Properties that have the inherent characteristics that comprise historic significance are provided with the opportunity to participate in the historic preservation program, leading to greater understanding, appreciation and protection for the architectural, social, economic, and cultural heritage of Hawai'i.

Historic Hawai'i Foundation believes that excluding residential property from the definition of historic property is unnecessarily broad and harmful. Therefore, HHF opposes the bill and respectfully asks that it be held in committee without further action.

Proposed Amendments

Historic Hawai'i Foundation feels that there are more appropriate mechanisms to ensure the protection of historic properties through focusing the department's review and comment process on those projects which

have the potential to inflict harm on historic resources. HHF recommends that HB830, HD1, SD1 be amended to an SD2 that would include a mechanism to remove minor project types from the department's review. Draft language is included below for your consideration:

6E-42 Review of proposed projects. (a) Except as provided in section 6E-42.5, 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....

6E-42.5 Excluded activities for privately-owned, single-family detached dwelling units.

- a) The department shall develop and annually publish a list of excluded activities to include categories of construction, alteration, disposition, improvement, repair or ordinary maintenance activities to privately-owned single-family detached dwelling units that do not represent a change in design, material, outer appearance or other characteristics which might otherwise qualify such structures for the Hawaii register of historic places.
- b) Applications for proposed projects:
 - i. On privately-owned single-family detached dwelling units that are not designated on or nominated for the Hawaii or National registers of historic places or located in a historic district; and
 - ii. Solely involving activities on the list of excluded activities maintained by the department pursuant to subsection (a);
shall be exempt from the requirements of section 6E-42.
- c) The list of excluded activities maintained by the department under subsection (a) shall be provided to officers and agencies of the State and any of its political subdivisions responsible for the implementation of section 6E-42 on an annual basis.
- d) The list required under subsection (a) shall be effective for a period of one year from final publication, notwithstanding chapter 91, provided that any proposed list shall be published on the website of the office of the lieutenant governor for a period of not less than thirty days, and that public notice of any such proposed list shall be mailed to all persons who have made a timely written request of the agency for advance notice of its list publication. All interested persons shall be given an opportunity to submit data, views, or arguments regarding the list, orally or in writing. The agency shall fully consider all written and oral submissions respecting the proposed list.
- e) For the purposes of this section, "dwelling" means a building or portion thereof designed or used exclusively for residential occupancy and having all necessary facilities for permanent residency such as living, sleeping, cooking, eating and sanitation. A single-family detached dwelling is an individual, freestanding, unattached dwelling unit, typically built on a lot larger than the structure itself, resulting in an area surrounding the dwelling.

Conclusion

Since 1974, Historic Hawai'i Foundation has been a statewide leader for historic preservation. Historic Hawai'i Foundation's members and numerous additional supporters work to preserve Hawai'i's unique architectural and cultural heritage and believe that historic preservation is an important element in the present and future quality of life, economic viability and environmental sustainability of the state.

Therefore, Historic Hawai'i Foundation opposes HB 830, HD1, SD1 and respectfully asks the committee either to amend the bill as described above, or to hold the bill in committee.

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

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: darakawa@lurf.org
Subject: Submitted testimony for HB142 on Apr 7, 2015 13:35PM
Date: Monday, April 06, 2015 6:51:10 AM

HB142

Submitted on: 4/6/2015

Testimony for WAM on Apr 7, 2015 13:35PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
David Z. Arakawa	Individual	Comments Only	No

Comments: The Land Use Research Foundation of Hawaii SUPPORTS the intent of HB 142, HD1, SD1, relating to AFFORDABLE HOUSING ON HAWAIIAN HOMELANDS, which Requires that twenty-five per cent of proceeds from the transfer of credits be used by the Department of Hawaiian Home Lands (DHHL) to develop rentals; Requires that fifty per cent of credits issued to the DHHL be subject to a memorandum of agreement with the issuing county; Makes permanent the provisions for affordable housing credits for affordable housing developed on Hawaiian home lands. Effective date 6/29/2050. (HB 830, HD1, SD1) Some of the counties may oppose this bill, thus, LURF respectfully recommends that DHHL and the counties discuss and resolve outstanding issues relating to this measure and that this bill be amended accordingly.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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