

HB830 HD1

LATE

TESTIMONY

Measure Title: RELATING TO RESIDENTIAL PROPERTY.

Report Title: DLNR; Historic Preservation; Review; Private Residence

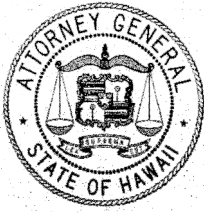
Description: Exempts from the definition of "historic property" any private residence that has not been entered, or nominated by the owner of the residence for entry, onto the Hawaii Register of Historic Places. Clarifies that nothing in Chapter 6E, HRS, shall be construed to require a review by the DLNR for any private residence exempted under the new "historic property" definition. (HB830 HD1)

Companion:

Package: None

Current Referral: HEA/WTL, WAM

Introducer(s): YAMANE, AQUINO, CULLEN, HAR, ICHIYAMA, ITO, KOBAYASHI, C. LEE, LOPRESTI, MIZUNO, MORIKAWA, NAKASHIMA, NISHIMOTO, OSHIRO, SAY, SOUKI, TAKAYAMA, TAKUMI, THIELEN, TOKIOKA, TSUJI, YAMASHITA, Rhoads, Saiki



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:

H.B. NO. 830, H.D. 1, RELATING TO RESIDENTIAL PROPERTY.

BEFORE THE:

SENATE COMMITTEES ON HIGHER EDUCATION AND THE ARTS
AND ON WATER AND LAND

DATE: Monday, March 23, 2015

TIME: 3:30 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Cindy Young, Deputy Attorney General

Chairs Taniguchi and Thielen and Members of the Committees:

The Department of the Attorney General appreciates the objective of this bill, but we recommend that the bill be revised to eliminate redundancy and possible confusion.

The purpose of this bill is to exempt from the definition of the term “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.

H.B. No. 830, H.D. 1, appears to add a redundant provision, section 6E-10(f), Hawaii Revised Statutes, which provides: “Nothing in this chapter shall be construed to require the department to review any proposed construction, alteration, disposition, or improvement of a private residence that has not been entered, or nominated by the owner of the residence for entry, onto the Hawaii register of historic places.”

We understand the intent of the bill is to exempt from review permits for proposed projects on historic properties. As drafted, the amendment to add subsection (f) appears to be redundant with the provision of the bill amending the definition of the term “historic property” because the amendment to the term “historic property” in the bill already achieves that purpose.

In addition to being redundant, the new subsection (f) could be interpreted to exempt from review any new construction, alteration, disposition, or improvement of a private residence even if a burial site or aviation artifact may be affected. Laws are interpreted to give effect to all words in the law. So, the provision could be interpreted more broadly to eliminate the requirement for the Department of Land and Natural Resources to review any proposed

construction related to a private residence under chapter 6E – even if, for example, the construction uncovered iwi, when section 6E-43.6, Hawaii Revised Statutes, should apply.

We respectfully request that the Committees revise the bill by deleting the new subsection (f) from section 6E-10. Thank you for the opportunity to testify.

TO: Senator Brian T. Taniguchi, Chair
Senate Committee on Higher Education and the Arts
Senator Laura H. 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

HEARING: March 23, 2015, 3:30 PM, Conference Room 224

SUBJECT: Testimony in STRONG OPPOSITION to HB 830, HD1 (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 STRONG OPPOSITION to HB 830 (Relating to Residential Property). HB 830, HD1 proposes to amend Chapter 6E 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. HB 830, HD1 also clarifies that nothing in Chapter 6E, HRS, shall be construed to require a review by the DLNR for any private residence exempted under the new "historic property" definition. Our detailed objections to this bill follow.

HB 830 would amend two sections of Chapter 6E, Hawaii's historic preservation law, as follows:

- (1) The definition of "historic property" in Section 6E-2 to limit its application by inserting new language "provid[ing] that historic property shall not include 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."
- (2) Section 6E-10, relating to review of privately owned historic property, would be amended by inserting a new subsection (f) providing that "Nothing in this chapter shall be construed to require the department to review any proposed construction, alteration, disposition, or improvement of a private residence that has not been entered, or nominated by the owner of the residence for entry, onto the Hawaii register of historic places."

We believe the bill is flawed in several ways.

First, it is our understanding that the perceived evil – lengthy review times by the State Historic Preservation Division of the Department of Land and Natural Resources (SHPD) -- has largely been resolved. SHPD staff report that the current processing time for residential permits is now less than a week, on average. Delays in such permit reviews still exist but these lie mostly with the County agencies issuing the permits, not with SHPD; the bill does not address these problems. Furthermore, the review process will be further streamlined with the use of a list of categorically exempt types of projects now under development by SHPD. As the problem is well on the way to resolution through appropriate agency actions, no legislative action is required.

Even if the above points were not true, however, the proposed legislation is a flawed remedy. The proposed amendment to the definition of "historic property", by itself, would eliminate any threat that projects involving only existing residential structures would be subject to a requirement for historic review (although we would prefer to see the word "existing" inserted to eliminate any ambiguity suggesting that NEWLY CONSTRUCTED residential properties not still be subject to review). If this modification to the definition of historic property" is adopted, the proposed new subsection (f) to Section 6E-10 should be deleted from the bill as it would be unnecessary.

More seriously, however, the proposed exemption at subsection (f) is dangerously over-broad in that it would exempt “any proposed CONSTRUCTION, alteration, disposition, or improvement of a private residence . . .” This could be interpreted as exempting from review, for example, a project for the NEW CONSTRUCTION of a 400-acre housing development on PREVIOUSLY UNDISTURBED land, even if important cultural resources OR BURIALS were found to be present on the land. This is unacceptable and would violate constitutional provisions protecting cultural resources important to Native Hawaiians.

Consequently, we respectfully ask the committees to HOLD HB 830, HD1 and not pass it any further. Should, however, the bill pass out of this committee, we request to be consulted as a stakeholder in future deliberations on an amended bill. Should you have any questions, please feel free to contact me at the above email address. Mahalo for considering our testimony.