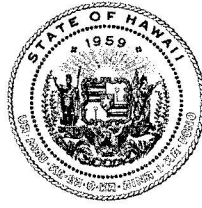
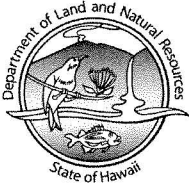


LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
LAURA H. THIELEN
Chairperson

Before the House Committee on
WATER, LAND AND OCEAN RESOURCES

Monday, February 23, 2009
9:30 AM
State Capitol, Conference Room 325

In consideration of
HOUSE BILL 520
RELATING TO BUILDINGS

House Bill 520 proposes to repeal the requirement of archival photographs for permits allowing the demolition, construction, or other alteration of a historic building because of the cost in time and money. The Department of Land and Natural Resources (Department) appreciates the intent of and is working to correct the deficiencies of Act 228, Session Laws of Hawaii 2008, (Act 228). The Department offers the following comments and recommends that this measure be amended.

Act 228 created photographic standards for the documentation of historic buildings that are to be altered, demolished or impacted, by requiring owners of historic buildings are required to submit archival-quality photographs to the Department prior to the issuance of a building-related permit. The provisions in this Act apply to all privately owned and public buildings that are at least fifty years old. While fifty years is usually the age at which a building may be considered as eligible for listing on the Hawaii or National Register of Historic Places, every building over fifty years of age is not eligible for listing on the State or National Register. A structure must possess historic integrity in terms of its setting, design, materials, workmanship, location, and association in order to be eligible for listing on the these registers.

The intent of Act 228 is to ensure that a quality record of historic buildings lives on even after the buildings are demolished. While the Department and its State Historic Preservation Division acknowledges the benefit of creating an inventory of Hawaii's built environment, the Department is nonetheless concerned that this Act places a financial burden on owners of buildings over fifty years of age without considering the structure's condition. In addition, while photographs are a valuable tool for State Historic Preservation Division when reviewing applications for eligibility for listing on the state or national register, the Department certainly does not need photographs for all buildings over 50 years old nor is there the capacity to

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

maintain an inventory of this overly-broad category of buildings. In some cases, buildings over 50 years old are not be eligible for listing on the state or national register, or may be deteriorated to such a degree that it may not warrant the expense of the archival-quality documentation or even a standard photograph for that matter. Despite these deficiencies the Department believes that Act 228 needs to be revised rather than repealed. The Department recommends that the requirement of archival photographs shall only apply to:

- 1) Demolition or major alteration to the exterior of a building over 50 years old; and
- 2) The building has been determined to be eligible for listing on the state or national register, as determined by a qualified professional, from one or more of the following entities:
 - a) the State Historic Preservation Division; or
 - b) County Certified Local Government; or
 - c) A qualified professional in a published final Environmental Assessment (EA) or Environmental Impact Statement (EIS), provided that the State Historic Preservation Division may later determine that a building initially identified as eligible listing on the state or national register in an EA or EIS is actually not eligible.

The Department requests that the State Historic Preservation Division be given 20 days to complete their review. While staff can quickly assess from a photo if a building or structure is of interest, they may need a bit more time to contact the landowner and discuss mitigation options to see if they're amendable to changes and if not, to obtain archival photographs if the building is worth documenting.

Digital photos or other types of photos are fine for the initial review. The Department would only ask for archival photos if the building is deemed by the State Historic Preservation Division important for documentation. Act 228 may need to be amended to state that the State Historic Preservation Division has the ability to request archival photos in the event the owner moves forward with the proposed construction of a building that is eligible for listing, and the proposed demolition or alterations would result in a loss of the historic integrity of the building.

Lastly, the Department would appreciate the assistance of the Legislative Reference Bureau in developing the inventory. The Department can also augment the inventory case by case as we go forward with new reviews.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honolulu.dpp.org • CITY WEB SITE: www.honolulu.gov

MUFI HANNEMANN
MAYOR



DAVID K. TANOUE
ACTING DIRECTOR
ROBERT M. SUMITOMO
DEPUTY DIRECTOR

February 23, 2009

The Honorable Ken Ito, Chair
and Members of the Committee on Water,
Land, & Ocean Resources
State House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Ito and Members:

**Subject: House Bill 520
Relating to Buildings**

The Department of Planning and Permitting (DPP) **submits comments on** House Bill 520, repealing the amendments made by Act 228, Session of Laws of Hawaii 2008, which requires the taking of photographs of actual or potential historic buildings before demolition, construction, or alteration of the buildings. Act 228's broad application did result in delays and some hardship for permit applicants as they were directed to the State Historic Preservation Division for Act 228 compliance. We estimate that there are over 53,000 structures on Oahu which fall under Act 228's purview.

Thank you for the opportunity to testify.

Sincerely yours,

A handwritten signature in black ink, appearing to read "David K. Tanoue", is written over a horizontal line.

David K. Tanoue, Acting Director
Department of Planning and Permitting

DKT: jmf
hb520-tht.doc



February 23, 2009

Representative Ken Ito, Chair
Committee on Water, Land & Ocean Resources
State Capitol, Conference Room 325
415 South Beretania Street
Honolulu, Hawaii 96813

Representatives Ito:

Subject: **House Bill No. HB 520 Relating to Buildings**

My name is Dean Uchida, Vice President of the Hawaii Developers' Council (HDC). We represent over 200 members and associates in development-related industries. The mission of Hawaii Developers' Council (HDC) is to educate developers and the public regarding land, construction and development issues through public forums, seminars and publications.

It is also the goal of HDC to promote high ethics and community responsibility in real estate development and related trades and professions.

The HDC strongly supports H.B. No. 520 as it proposes to repeal the amendments made by Act 228, Session Laws of Hawaii 2008, which require the taking of photographs of actual or potential historic buildings before demolition, construction, or alteration of the buildings.

We understand the original intent of Act 228 was to provide for adequate documentation of old buildings in Hawaii prior to demolition. The legislation apparently was in response to the demolition of the Varsity Theater which was torn down without any photographic documentation of the building.

While we can understand and support the intent of Act 228, we have subsequently found how difficult it is to craft legislation that addresses the problem without creating "unintended consequences."

The unintended consequence has been the delays in permitting as a determination is made on whether the building is historic or not because Act 228 was not limited to demolition of the building but any modification of the building. The threshold of law only being applied to building that are fifty (50) years old or older would involve many structures around the state including all tract homes and subdivisions built prior to 1959. This would include the large tract subdivision built in parts of Hawaii Kai, Halawa, Aiea, Pearl City and Waipahu.

Since Act 228 was signed, there have been several attempts to “fix” the bill this session. However, because the law applies to any modification of a building including demolition, and there is no standard on what would constitute a “Historic Building,” no resolution was reached.

While we strongly support repeal of Act 228, we also support the need for the legislature to formulate legislation to achieve a similar purpose as Act 228, but with more reasonable and practical application.

Thank you for this opportunity to express our views.

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

February 23, 2009

TO: THE HONORABLE REPRESENTATIVE KEN ITO, CHAIR AND MEMBERS
OF THE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES

SUBJECT: H.B.520, RELATING TO BUILDINGS

NOTICE OF HEARING

DATE: Monday, February 23, 2009
TIME: 9:30 a.m.
PLACE: Conference Room 325

Dear Chair Ito and Members of the Committee on Water, Land, & Ocean Resources:

The General Contractors Association (GCA), an organization comprised of over five hundred and sixty (560) general contractors, subcontractors, and construction related firms, **strongly supports** the passage of H. B. 520, Relating to Buildings.

While Act 228, SLH, 2008, was laudatory in concept, to preserve a pictorial record of significant historic buildings that were proposed for demolition, it had the unintended consequences of adding substantial cost and time to the demolition of buildings that were not of significant historic value but fifty years or older. The amendment proposed in H. B. 520 would correct the oversight to require archival quality photographs of structures that have historic significance and are on the state or federal historic registers.

The GCA **strongly supports** the amendments proposed in H. B. 520 and recommends its passage.

Thank you for the opportunity to provide our views on this issue.

**Testimony before the Committee on Water, Land & Ocean Resources
House of Representatives, Regular Session of 2009**

**by Philip Hauret
Senior Land Agent, Land & Rights of Way Department
Hawaiian Electric Company, Inc.**

February 23, 2009

House Bill 520, Relating to Buildings

Chair Ito and Members of the Committee:

My name is Phil Hauret and I am testifying on behalf of the Hawaiian Electric Company (HECO) and its subsidiaries, Hawaii Electric Light Company and Maui Electric Company.

We do not believe HB 520 is the best vehicle to address concerns relating to Act 228 and recommend that the Committee hold it.

As background, HECO was the only private party to express concerns last year about Act 228, which this bill attempts to repeal. HECO owns and continues to operate a number of older buildings that were either affected by Act 228, or will soon be. We also participated in the working group that was formed late last year to address the negative and unintended consequences of Act 228.

While a number of bills have been introduced this year to address the pitfalls of Act 228, we believe HB 592 is a better vehicle than this bill for addressing them. HB 592 came out of the working group and is preferable to other legislation because it attempts to improve upon Act 228, without repealing it entirely. It more narrowly defines the universe of properties and alterations that trigger the submittal of photographs, establishes broader standards for the photographs themselves, and launches a process whereby a listing of truly historic properties, whether on an existing register or not, is identified going forward.

Thank you for the opportunity to testify.



**House Committee on Water, Land & Ocean Resources
February 23, 2009
Conference Room 325
9:30 a.m.
State Capitol**

Subject: House Bill No. HB 520 Relating to Buildings

Chair Ito, Vice Chair Har and members of the committee:

My name is Jim Tollefson, President of the Chamber of Commerce of Hawaii. The Chamber of Commerce of Hawaii works on behalf of its members and the entire business community to:

- Improve the state's economic climate
- Help businesses thrive

The Chamber of Commerce of Hawaii strongly supports H.B. No. 520 as it proposes to repeal the amendments made by Act 228, Session Laws of Hawaii 2008, which require the taking of photographs of actual or potential historic buildings before demolition, construction, or alteration of the buildings.

We understand the original intent of Act 228 was to provide for adequate documentation of old buildings in Hawaii prior to demolition. The legislation apparently was in response to the demolition of the Varsity Theater which was torn down without any photographic documentation of the building.

While we can understand and support the intent of Act 228, we have subsequently found how difficult it is to craft legislation that addresses the problem without creating "unintended consequences."

The unintended consequence has been the delays in permitting as a determination is made on whether the building is historic or not because Act 228 was not limited to demolition of the building but any modification of the building. The threshold of law only being applied to building that are fifty (50) years old or older would involve many structures around the state including all tract homes and subdivisions built prior to 1959. This would include the large tract subdivision built in parts of Hawaii Kai, Halawa, Aiea, Pearl City and Waipahu.

Since Act 228 was signed, there have been several attempts to "fix" the bill this session. However, because the law applies to any modification of a building including demolition, and there is no standard on what would constitute a "Historic Building," no resolution was reached.

While we strongly support repeal of Act 228, we also support the need for the legislature to formulate legislation to achieve a similar purpose as Act 228, but with more reasonable and practical application.

Thank you for this opportunity to express our views.

HISTORIC HAWAII FOUNDATION

VIA FAX: 586-8504

To: Representative Ken Ito, Chair
Representation Sharon E. Har, Vice Chair
Committee on Water, Land & Ocean Resources

From: Kiersten Faulkner *Kiersten Faulkner*
Executive Director, Historic Hawai'i Foundation

Committee Date: Monday, February 23, 2009
9:30 a.m.
Conference Room 325

Subject: **Opposition to HB520, Relating to Buildings**

On behalf of Historic Hawai'i Foundation (HHF), I am writing in strong opposition to HB520, related to repealing current law that requires the State Historic Preservation Division (SHPD) to receive photographs of historic properties prior to permitting their demolition or alteration.

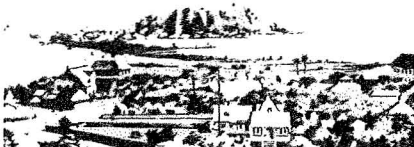
Although HHF supports efforts to provide technical corrections to current law related to photo-documentation of buildings over 50 years old, HB520 goes well beyond that scope and would undermine other powers and responsibilities related to state and county mandates to protect historic sites.

The applicability of Act 228 Session Laws of Hawai'i 2008 includes the requirement that archival black and white photos of all buildings over 50 years old be provided to DLNR prior to demolition or alteration. However, HB520 would not only repeal that portion of the law, but also goes on to mandate that no state or county agency shall require photos of *any* sort of *any* building, including those listed on the Hawai'i or National Register of Historic Places, eligible for the historic register, or over 50 years old.

This is a draconian response to a well-intentioned but poorly-executed law. It over-reaches by undermining existence protections of historic sites by removing the basic requirement for information prior to state and county action. This is true not only for buildings potentially historic, but those that have already been designated historic.

While HHF agrees that Act 228 needs technical corrections, it needs to be done thoughtfully and deliberately, in a way that does not compromise the safeguards for Hawai'i's irreplaceable historic legacy. If the current net is too broad by applying to too many sites, the proposed repeal is even more excessive by exempting too many sites. In seeking efficiency, the State must not sacrifice effective mechanisms to protect historic resources. Hawai'i's precious heritage is too important to be discarded so thoughtlessly.

Although HHF strongly opposes the overly-broad amendments to the general powers and review authority of SHPD under HRS 6E-43, we do concur that technical corrections are necessary to amend the law requiring owners of historic buildings to provide archival-quality black and white



HISTORIC HAWAII FOUNDATION

photographs of any building older than 50 years to SHPD prior to demolition, construction, or other alteration of a historic building.

The intent of the photo-documentation law is to build a photographic record of the built environment of Hawai'i, capturing images of the historic buildings prior to permitting construction or demolition activities that would alter or destroy them. However, the Act included overly broad language that does not differentiate those structures that meet the requirements of inclusion on the state register of historic places from those that do not. It also does not include definitions of the types of permits that represent substantial alteration, and it does not include standards and protocols for the types of the photographs that would meet the legislative intent.

Not all historic buildings have the level of significance that would necessitate preservation or restoration. In addition, many alteration and rehabilitation activities are benign or beneficial for the maintenance, repair and preservation of historic structures. For both ineligible buildings and insubstantial work, high quality photographs are unnecessary and present an undue burden to both applicants and government agencies.

For those structures which are historically significant and for which substantial alteration, addition or demolition is proposed, the public benefit is served by having a state depository of photographic documentation for future study, understanding the context of the site, historic analysis and a complete architectural record. For projects of this kind, technical specifications based on nationally-accepted standards should be used to provide predictability and consistency.

The law as currently constituted has four areas that should be addressed:

1. The types of historic resources to which the requirement would apply;
2. The types of permits to which the requirement would apply;
3. The standards for the type, number, size, format and quality of required photographs; and
4. Explicit rule-making authority for the Department of Land and Natural Resources and the county governments that are Certified Local Governments under the National Historic Preservation Act.

Rather than repeal Act 228 completely, HHF recommends that the bill be amended to address these issues. Further, those technical corrections should occur prior to repealing the current system.

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



BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

February 23, 2009

Representative Ken Ito, Chair
Committee on Water, Land & Ocean Resources
State Capitol, Conference Room 325
415 South Beretania Street
Honolulu, Hawaii 96813

Representatives Ito:

Subject: **House Bill No. HB 520 Relating to Buildings**

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-HAWAII strongly supports H.B. No. 520 as it proposes to repeal the amendments made by Act 228, Session Laws of Hawaii 2008, which require the taking of photographs of actual or potential historic buildings before demolition, construction, or alteration of the buildings.

We understand the original intent of Act 228 was to provide for adequate documentation of old buildings in Hawaii prior to demolition. The legislation apparently responded to the demolition of the Varsity Theater which was torn down without any photographic documentation of the building.

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Thank you for this opportunity to express our views.

A handwritten signature in black ink, reading "Karen L. Nakamura". The signature is written in a cursive, flowing style.

Chief Executive Officer
BIA-Hawaii