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GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
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Testimony of
WILLIAM J. AILA, Jr.
Chairperson

Before the Senate Committee on
TECHNOLOGY AND THE ARTS
and
WATER AND LAND

Tuesday, March 18, 2014
2:05 AM
State Capitol, Conference Room 414

In consideration of
HOUSE BILL 1678, HOUSE DRAFT 1
RELATING TO HISTORIC PRESERVATION

House Bill 1678, House Draft 1, proposes to exempt from the statutory definition of "historic property" any private residence that has not been entered into or nominated by the owner of the residence onto the Hawaii register of historic places. It further proposes to clarify that nothing in Chapter 6E, Hawaii Revised Statutes (HRS), shall be construed to require review by the Department of Land and Natural Resources (Department) of a private residence fifty or more years old that has not been entered into or nominated by the owner of the residence for entry onto the Hawaii register of historic places. **The Department appreciates the intent of this measure and recommends that it be further amended.**

The Department agrees that House Bill 2633, House Draft 1 addresses an important issue. The Department reviews many county permit applications for projects in residences that meet the statutory definition of "historic property" but which are, in fact, merely old. The Department is committed to resolving the problem of unnecessary reviews but currently lacks the authority necessary by administrative means under the current statutory definition.

In 2013, the Department reviewed more than 3,000 permit applications for residences fifty years old or older. There is a perception that the Department's reviews routinely take far longer than they should. During 2013 on average, those reviews took seventeen days, and the most common length for a review was five calendar days. Perception does not match reality.

The vast majority of those reviews were for residences that the Department was obligated to regard as historic properties only because they meet the overly broad statutory definition making

LATE

WILLIAM J. AILA, JR.
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BOARD OF LAND AND NATURAL RESOURCES
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

any building over fifty years old “historic.” Most of those residences for which permits were reviewed would not qualify for inclusion in the Hawaii Register of Historic Places (Hawaii Register). Even for homes that would qualify for inclusion in the Hawaii Register, many of the permits reviewed were for activities that would not affect the qualities of the home qualifying it for the Hawaii 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 Department believes that the categorical exemption approach proposed in this measure will result in the inadvertent damage and loss of important historic properties, as well as posing significant administrative problems.
- The overwhelming majority of structures in Hawaii have never been inventoried and evaluated to determine whether or not they are eligible for inclusion in the Hawaii Register.
- Limiting review to only those properties already known to be eligible, guarantees that many of Hawaii’s valuable heritage resources will be inadvertently altered, damaged or destroyed.
- While most residential improvements have little or no likelihood of damaging archaeological properties, additions to residences do have such potential. A blanket exemption for residences not already included in or nominated for inclusion in the Hawaii Register will almost certainly result in damage to archeological sites and disturbance of iwi kapuna.
- Furthermore, the categorical exemption established here will create substantial administrative problems in historic districts as well as when projects otherwise subject to review under Chapter 6E, HRS, may affect private residences.
- Hawaii Register historic districts often include properties that do not contribute to the character of the district as well as those that contribute to defining it as a historic district. It is an unfortunate fact that for many of the historic districts designated in the early days of Hawai’i’s state historic preservation program, little or no effort was made to differentiate between the contributing and non-contributing structures. House Bill 1678, House Draft 1 offers no guidance on how residences within a historic district should be treated with respect to Chapter 6E, HRS, review.
- Because the amending language proposed in House Bill 1678, House Draft 1 categorically excludes private residences from the definition of historic property except in the unusual circumstances where they have previously been listed in or nominated for inclusion in the Hawaii Register, consideration of the effects of undertakings on private

residences not proposed by the homeowner but sponsored by or subject to approval by government agencies and otherwise subject to review under Chapter 6E, HRS, would be effectively precluded from consideration during Chapter 6E, HRS, review.

- An exemption in the statute is unnecessary and not good public policy. The Department suggests an alternative, three part strategy to address this matter.

Part 1. The Department believes that clarifying the definition of “historic property” to mean listed in or eligible for inclusion in the Hawaii Register of Historic Places is an *essential* first step and is *required* to make the second part viable.

Part 2(a). The Department should be directed to consult with affected parties and experts to develop a list of architectural styles that are that likely to be eligible for the Hawaii Register. Examples of such architectural styles in a format similar to a “Peterson’s Guide” will be developed and provided to the counties as a guide to what should be sent to the Department for review under Section 6E-42, HRS, and what should not.

Peterson’s Guides have allowed millions of non-ornithologists to reliably identify birds. During the second World War, guides based on Peterson’s methodology were used to successfully train military personnel and coast watchers to identify ships and aircraft. It seems likely that a similar guide could be used by individuals with no training or background in historic architecture to determine what types of residences that need to be sent to the Department for review and what ones did not.

Part 2 (b) In addition, the Department should be directed to develop a list of the kinds of projects that would not be subject to Department review. This list would also be provided to the counties so that only those projects with a potential to effect the character defining features of a historic house would be sent for review by the Department.

This list of project types is likely to be more important than the architectural style guide, as it will include types of projects that the Department has concluded on technical grounds will not affect a historic property. Since even a historic home need not undergo review for such projects, there would be no need to consider whether or not the home is historic. Such projects would be excluded from review under Chapter 6E, HRS.

The Department should be given a deadline of October 1, 2014 for the project list and a deadline of January 1, 2015 to complete both activities and provide the materials to the counties for implementation.

Part 3. The Department should also be directed to develop a plan for completing a comprehensive inventory of historic buildings in Hawaii. The plan, together with a proposed budget should be provided to the Legislature two weeks before the start of the 2015 legislative session.

The Department estimates that this approach will reduce the number of projects sent to it for review by at least 80%. This reduction will be accomplished quickly, and based on solely on

technical considerations of whether or not a property has the potential to be historic and/or whether or not the project has the potential to affect any character defining characteristics of the residence of if it is historic.

The Department suggests the following amendments to this measure:

SECTION 1. Section 6E-2, Hawaii Revised Statutes, is amended by amending the definition of "historic property" to read as follows:

""Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, [which] that is over fifty years old[-]included in or eligible for inclusion in the Hawaii register of historic places." provided 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."

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

§6E-42 Review of proposed projects. (a) Before any agency or officer of the State or its political subdivisions approves any project involving a permit, license, certificate, land use change, subdivision, or other entitlement for use, which may affect historic property, aviation artifacts, or a burial site, the agency or office shall advise the department and prior to any approval allow the department an opportunity for review and comment on the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43, including those listed in the Hawaii register of historic places. If:

- (1) The proposed project consists of corridors or large land areas;
- (2) Access to properties is restricted; or
- (3) Circumstances dictate that construction be done in stages, the department's review and comment may be based on a phased review of the project; provided that there shall be a programmatic agreement between the department and the project applicant that identifies each phase and the estimated timelines for each phase.

(b) Residences not listed in or eligible for inclusion in the Hawaii register of historic places and projects determined by the department to not affect historic properties in accordance with the requirements of Act of 2014, shall not be subject to review by the department pursuant to this section and shall not be submitted to the department for review.

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

~~(e)~~ (d) The department shall adopt rules in accordance with chapter 91 to implement this section.

SECTION 3. (a)(i) The department will develop technical guidance identifying the types of projects with no potential to affect a historic property. This list will be provided to the counties no later than October 1, 2014. (ii) The department will also provide technical guidance for use by the counties that will identify types of properties likely to eligible for inclusion in the Hawaii register of historic places. The department will provide this guidance to the counties by January 2, 2015. (b) Properties not eligible for inclusion in the Hawaii register of historic places and projects identified in the department's technical guidance developed under (a) above shall not be subject to review under section 6E-42, Hawaii Revised Statutes, and the counties shall not submit them to the department for review under section 6E-42.

SECTION 4. The department will develop a plan for completing a comprehensive inventory of historic buildings in the State of Hawaii. The plan, together with a proposed budget will be reported to the legislature, two weeks prior to the start of the 2015 Legislative Session.

The Department believes that this language resolves the administrative problems that arise from the language proposed in House Bill 1678, House Draft 1 as currently written, providing the Department with the statutory basis for addressing the issue, eliminating unnecessary reviews while at the same time protecting Hawai'i's unique cultural and historic heritage.

Gordon Fernandez

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 17, 2014 3:38 PM
To: TECTestimony
Cc: greg@ccs-hawaii.com
Subject: Submitted testimony for HB1678 on Mar 18, 2014 14:05PM

LATE

HB1678

Submitted on: 3/17/2014

Testimony for TEC/WTL on Mar 18, 2014 14:05PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Greg Thielen	Individual	Support	No

Comments: I am in very strong support of HB 1678 HD 1. The delays in building permits for homes of no historical significance is ridiculous.

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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GCA of Hawaii
GENERAL CONTRACTORS ASSOCIATION OF HAWAII
Quality People. Quality Projects.

Uploaded via Capitol Website

March 14, 2014

TO: HONORABLE GLENN WAKAI, CHAIR, HONORABLE CLARENCE NISHIHARA,
AND MEMBERS OF THE SENATE COMMITTEE ON TECHNOLOGY AND THE
ARTS

HONORABLE MALAMA SOLOMON, CHAIR, HONORABLE BRICKWOOD
GALUTERIA, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON
WATER AND LAND

SUBJECT: **SUPPORT OF H.B. 1678, HD1. RELATING TO HISTORIC PROPERTY.**
Exempts private residences not on or nominated by the owner to the Hawaii
Register of Historic places from designation as historic property and related
review by the Department of Land and Natural Resources in connection with
project permit or land use applications. Effective July 1, 2050. (HB1678 HD1)

HEARING

DATE: Tuesday, March 18, 2014
TIME: 2:05 p.m.
PLACE: Conference Room 414

Dear Chairs Wakai and Solomon, Vice Chairs Nishihara and Galuteria and Members of the
Committees,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over six
hundred general contractors, subcontractors, and construction related firms. The GCA was
established in 1932 and is the largest construction association in the State of Hawaii. The GCA's
mission is to represent its members in all matters related to the construction industry, while
improving the quality of construction and protecting the public interest.

The GCA is **in support** of H.B. 1678, HD1, which would amend the definition of historic
property by excluding any private residence not entered or nominated by the owner for entry into
the Hawaii register of historic places. This measure would also eliminate the assumption that all
homes over fifty years old are subject to 6E, HRS Review.

Under current practice, county ministerial approvals (i.e. building permits) for homes over fifty
years old are being routed to the State Historic Preservation Division for review, comment and
public hearing prior to any approvals. This is causing major delays for repair, remodel and
maintenance projects of older residential homes. This bill will alleviate homeowners' frustration
over the current practice.

GCA supports H.B. 1678, HD1 and respectfully requests that your Committee pass this measure.

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JW, Inc.

Ryan Engle

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Stephen Hanson

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**Testimony to the Senate Committees on Technology and the Arts and
Water & Land**

Tuesday, March 18, 2014

2:10 p.m.

State Capitol - Room 414

RE: H.B. 1678 H.D. 1, Relating to Historical Preservation

Dear Chairs Wakai and Solomon, Vice-Chairs Nishihara and Galuteria, and members of the Committees:

My name is Gladys Marrone, Government Relations Director 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 has **strongly supports** H.B. 1678 H.D.1, which exempts private residences not on or nominated by the owner to the Hawaii Register of Historic places from designation as historic property and related review by the Department of Land and Natural Resources in connection with project permit or land use applications.

The State Historic Preservation Division's (SHPD) interpretation of §6E-42, Hawaii Revised Statutes (HRS), which has changed after 2008, has caused many, if not all, 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. The volume of permits being submitted has created a backlog at SHPD in the time required to review and process permits, as well as at the City and County of Honolulu's Department of Planning and Permitting (DPP), as they are unable to conclude the processing of the building permit.

SHPD's review process cannot force a homeowner to adhere to any of its recommendations; basically a toothless review. It does inform a homeowner that their home is historical and potentially significant, but private property owners are free to do what they want with their property, regardless of any comments or positions taken by SHPD.

As acknowledged by SHPD in committee hearings, the actual number of historic properties they see as historically significant is the proverbial needle in the haystack of overall permit volume. It makes no sense, and frankly is unreasonable, to subject 100% of homes over 50 years old to this review so that 5% or less can be commented on.

We are opposed, however to SHPD's concept of trying to expand the definition of historic by adding a list of criteria to the review process. Our reason is that we believe, if not are certain, it will breakdown in the face of real world review

Honorable Glenn Wakai, Chair
Senate Committee on Technology and the Arts
Honorable Malama Solomon, Chair
Senate Committee on Water & Land
March 18, 2014
H.B. 1678 H.D. 1
Testimony of BIA-Hawaii

practices and become unenforceable. A clear guideline is necessary. SHPD has also acknowledged in committee that someone with architectural knowledge would be required to implement such a list, which will do nothing to improve the current situation.

This reduction in SHPD staff review time can free them to reallocate their resources to vigorously pursue truly historically significant homes, as they are required to do under §6E-3 (3), HRS. If thousands of permits can be reviewed, then thousands of homes can now instead be surveyed and inventoried. Many creative measures and technologies are available that could help reduce this number dramatically.

We believe that H.B. 1678 H.D. 1 would allow for the bulk of work on residential structures to move forward without unnecessary delays, allow SHPD to focus on residences that are worthy to be placed on the Hawaii Register of Historic Places, and restore a degree of common sense that has been lost in the current process. This can, and should be, done while preserving the true intent of §6E, HRS, and historic preservation of our important historical and cultural resources.

Thank you for the opportunity to express our **strong support** on H.B. 1678 H.D. 1.

Gordon Fernandez

From: wei fang <weiweifang@gmail.com>
Sent: Monday, March 17, 2014 5:18 PM
To: TECTestimony; WTLTestimony
Subject: SB2633 SD1 and HB 1678 HD1, bills proposed to amend the definition of historic property

Dear Committee Members:

I'm writing as a resident of Manoa, small business owner in Kaka'ako, and engaged voter to oppose SB2633 SD1 and HB 1678 HD1, bills proposed to amend the definition of historic property.

Though these bill ostensibly attempt to improve the permit process, they are radically misguided and attack a falsely perceived problem, rather than offering up any real, broadly beneficial solution.

recommendations for improving the permit review process, these bills instead opt for a misguided and radical approach of simply declaring all residential property to be historically insignificant, unless it is part of the minority that has already formally designated.

Making residential properties ineligible for historic review and closing down the pipeline of properties that would involve the State Historic Preservation Department in their permitting, does not address the fundamental problem of the state not devoting efficient and sufficient resources to SHPD. It merely indiscriminately buries several critically important issues all together, leaving them to become a tangle of problems and regrets for future generations to confront.

These bill were ostensibly written to make it easier to support "Development." But development should not be defined as getting through permitting as fast as you can. it should be defined as increasing the longterm value of our limited land-based resources - sometimes this means replacing an older building with a new one, but sometimes it means taking care to preserve the buildings that distinguish one neighborhood or district from another through their unique character, and sometimes it means not building at all in order to put land to diverse economic and environmental uses.

SHPD's work is part of this important process of discovery of a property's highest and best use. We should not see this departments work, or the prospect of living in a place with many older structures as a burden or hurdle. I urge you as elected representatives to see SHPD's work as a service that builds true, longterm value to Hawaii's unique culture and history - culture and history that millions of people from around the world come to experience, and that against all odds, keep many of us connected to this place.

With today's technology and all that we have know of the longterm struggles that result from misguided attempts at erasing the history of others, we should be working towards more appropriate and common-sense solutions to the perceived issue an inefficient permitting and an under-resourced Historic Preservation Department.

Please take the longview on this and vote to oppose SB2633 SD1 and HB 1678 HD1.

Mahalo,
Wei Fang

Gordon Fernandez

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 18, 2014 9:34 AM
To: TECTestimony
Cc: paulakomarajr@yahoo.com
Subject: Submitted testimony for HB1678 on Mar 18, 2014 14:05PM

HB1678

Submitted on: 3/18/2014

Testimony for TEC/WTL on Mar 18, 2014 14:05PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Paul A. komara, Jr.	Individual	Oppose	No

Comments: Leave the character of Hawaii alone! The occupation of Hawaii has destroyed enough.
Aloha, Paul

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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