

SB3097

Measure Title: RELATING TO CIVIL PENALTIES ON HISTORIC PRESERVATION.
Report Title: Historic Preservation; Civil Penalties; Court Costs
Description: Allows a prevailing private party plaintiff seeking injunctive relief against a defendant for any violation of chapter 6E, Hawaii Revised Statutes, or its implementing regulations, to recover reasonable attorney's fees and litigation costs from the defendant.
Companion:
Package: None
Current Referral: WTL/JDL, WAM
Introducer(s): HEE

<u>Sort by Date</u>		Status Text
1/23/2014	S	Introduced.
1/27/2014	S	Passed First Reading.
1/27/2014	S	Referred to WTL/JDL, WAM.
1/30/2014	S	The committee(s) on WTL/JDL has scheduled a public hearing on 02-07-14 1:30PM in conference room 225.
2/4/2014	S	The committee(s) on WTL/JDL has rescheduled its public hearing to 02-07-14 1:45PM in conference room 225.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, Jr.
Chairperson**

**Before the Senate Committees on
WATER AND LAND
and
JUDICIARY AND LABOR**

**Friday, February 07, 2014
1:45 AM
State Capitol, Conference Room 225**

**In consideration of
SENATE BILL 3097
RELATING TO CIVIL PENALTIES ON HISTORIC PRESERVATION**

Senate Bill 3097 proposes to allow a private party prevailing against a defendant for a violation of Chapter 6E, Hawaii Revised Statutes, to recover reasonable attorney's fees and litigation costs from the defendant. **The Department of Land and Natural Resources (Department) respectfully opposes this measure.**

The Department appreciates the intent of this measure.

- The Department supports the provisions of this measure that provides for prevailing plaintiff in a suit to recover reasonable fees and litigation costs against private parties.
- The Department cannot support awarding of fees and litigation costs against the State. The Department believes that the State should not waive its sovereign immunity in such situations.

The Department respectfully urges the Committees to hold this legislation.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
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



TO: Senator Malama Solomon, Chair
Senator Brickwood Galuteria, Vice Chair
Committee on Water & Land

Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Committee on Judiciary and Labor

FROM: Kiersten Faulkner, Executive Director
Historic Hawaii Foundation

Committee: Friday, February 7, 2014
1:30 p.m.
Conference Room 225

RE: SB 3097, Relating to Civil Penalties on Historic Preservation

On behalf of Historic Hawaii Foundation (HHF), I am writing in **strong support of SB 3097**. The bill would allow a prevailing private party plaintiff seeking injunctive relief against a defendant for any violation of HRS §6E or its implementing regulations, to recover reasonable attorney's fees and litigation costs from the defendant.

Since 1974, Historic Hawai'i Foundation has been a statewide leader for historic preservation. HHF's 850 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.

The natural, historic, and cultural resources of Hawai'i are a great legacy and irreplaceable treasures. HHF strongly supports measures that lead to preserving and enhancing these resources. The State Historic Preservation Division (SHPD) of the Department of Land and Natural Resources (DLNR) is mandated by Hawaii Revised Statute §6E "to provide leadership in preserving, restoring, and maintaining historic and cultural property..." The statute and its implementing rules are designed to provide a mechanism by which historic properties are identified, any effects from proposed projects are disclosed, and efforts may be made to avoid, minimize or mitigate those adverse effects.

Unfortunately, there are instances in which the statute and rules are evaded or violated. Some cases may be inadvertent due to staff shortages or human error, while other violations may be deliberate and premeditated. In cases where the State—for whatever reason—chooses not to enforce its laws and fulfill its public duties, it falls to private parties to seek protection for historic and cultural resources and redress for any injury inflicted on them.

The appropriate method to address these violations and injuries is through the courts. Although it is the role of the judiciary to serve as a check and balance to the executive and legislative branches of government, it is

less accessible to citizens. To bring a claim, restraining order or petition for injunctive relief can be very costly. Attorney's fees and litigation costs serve as a barrier to access the courts, and so become a hindrance in seeking justice.

SB 3097 addresses this issue by providing a mechanism by which successful plaintiffs may recover fees and costs when a private party seeks to ensure that historic preservation laws are followed. We believe that this will allow for greater accountability for the State to adhere to the historic preservation laws, procedures and standards, and to support the role of private people and organizations who watchdog the state and intervene on behalf of the public interest if necessary.

Therefore, Historic Hawai'i Foundation supports SB3097 and urges its approval.

Thank you for the opportunity to comment.