

SB2427

Testimony

Measure Title: RELATING TO THE HISTORIC PLACES REVIEW BOARD.

Report Title: Historic Places Review Board; Site Visits

Description: Authorizes members of the historic places review board to visit sites without regard to open meetings requirements.

Companion: HB2147

Package: None

Current Referral: HEA/WLA, JDL

Introducer(s): KEITH-AGARAN, ENGLISH, GALUTERIA, Dela Cruz, Gabbard, Nishihara, Shimabukuro

DAVID Y. IGE
GOVERNOR OF
HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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FIRST DEPUTY

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DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
SUZANNE D. CASE
Chairperson

Before the Senate Committees on
HIGHER EDUCATION AND THE ARTS
and
WATER, LAND AND AGRICULTURE

Tuesday, February 16, 2016
1:15 PM
State Capitol, Conference Room 224

In consideration of
SENATE BILL 2427
RELATING TO THE HISTORIC PLACES REVIEW BOARD

Senate Bill 2427 proposes to waive the requirements of Sections 92-2.5 and 92-3, Hawaii Revised Statutes (HRS), allowing the Hawaii Historic Places Review Board (Board) to visit certain buildings and archaeological sites that have been nominated for inclusion in the Hawaii register of historic places and/or the national register of historic places and conduct business at those locations without providing for public presence or participation. **The Department of Land and Natural Resources (Department) strongly opposes this bill.**

Chapter 92, HRS, is Hawaii's "Sunshine Law." In Chapter 92, HRS, the Legislature established a policy that, with certain, very specific exceptions, public agency board and commission discussions, deliberations, and decision making must be conducted in public, as well as ensuring the public the opportunity to express its views during public agency decision making. Senate Bill 2427 runs counter to this clearly articulated statutory declaration of policy.

Section 92-2.5, HRS, establishes the types of permissible interaction between and among board members outside of meetings held in public. Senate Bill 2427 waives all of the requirements of Section 92-2.5, HRS, allowing the Board as a whole to meet at the location of a property nominated for the inclusion in the Hawaii or national registers of historic places and conduct business without making any provision for public participation when "Public knowledge of the location would be detrimental to the sites' preservation. Due to the sensitive nature of a number of these properties, compliance with certain provisions of Chapter 92, HRS, makes impossible or extremely difficult for the review board to visit the properties."

Section 92-2.5, HRS, already provides several ways in which members of the Board can view such properties in a manner consistent with Sunshine law. Furthermore, individual members or two members together can visit properties without violating Sunshine law provisions. Except for this later provision, in the last two years the Board has never availed itself of these permitted interactions.

Section 92-3, HRS, sets forth the requirements for both Open and Limited meetings. Section 92-3.1, HRS, provides for Limited meetings permitting the Board to meet at the location of nominated properties under certain specific circumstances. Limited meetings are another way in which the Board, in addition to the means set forth in Section 92-2.5, HRS, could visit a site, if it felt it essential to do so. As is the case with the permitted interactions set forth in Section 92-2.5, HRS, in the last two years the Board has never sought approval for a Limited meeting.

Section 92-3, HRS, sets forth the requirements for public meetings, specifically it requires boards and commissions to allow any interested person to present written data, arguments or views on any agenda item, as well as to present oral testimony at the Open meeting. Senate Bill 2427 would waive the requirement that the interested public have the opportunity to present its views on a matter before the Board, should the Board choose to meet "on site." Senate Bill 2427 waives this chapter effectively authorizing the Board to meet at the location of a nominated property, conduct business, including decision making without providing the public the opportunity to express its views at the meeting.

The intent of the Sunshine Law is to open up governmental processes to public scrutiny and participation by requiring boards and commissions to conduct their business as openly as possible. Compliance with Sunshine Law may sometimes be inconvenient, but the Department believes that the benefits of full compliance far outweighs any inconvenience. The Department and the Administration strongly supports Sunshine Law, and open and transparent government. Senate Bill 2427 runs counter to this policy and the Department strongly opposes it.



SB2427

RELATING TO THE HISTORIC PLACES REVIEW BOARD

Senate Committee on Higher Education and the Arts

Senate Committee on Water, Land, and Agriculture

February 16, 2016

1:15 p.m.

Room 224

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB2427, which would release the Hawai'i Historic Places Review Board from the strictures of the permitted interactions and open meetings requirements of Chapter 92, Hawai'i Revised Statutes (HRS). **This bill would allow the Hawai'i Historic Places Review Board to more efficiently and sensitively carry out its site visit and evaluation duties.**

The Hawai'i Historic Places Review Board has manifold responsibilities, including visiting sites proposed for recognition in the Hawai'i Register of Historic Places, or nomination for the National Register of Historic Places. In this capacity, the Board sometimes considers sensitive Native Hawaiian archaeological and cultural sites such as burials, heiau, and historical site complexes. In reflection of the sensitive nature of such sites, and to prevent excessive traffic and possible looting, the Board already has processes in place to ensure that the sites' specific locations can be catalogued by the State Historic Preservation Division for protection from future development, but not divulged to the public. However, Chapter 92, HRS, prevents the Board from concealing the location of sensitive archaeological and cultural sites during their in-person site visits. **Releasing the Board from the open meeting requirements of Chapter 92 will therefore allow the Board to continue visiting these valuable and sensitive historic resources, without the risk of inappropriate and potentially harmful exposure to the general public.**

Therefore, OHA urges the Committees to **PASS** SB2427. Mahalo for the opportunity to testify on this important measure.

OFFICE OF INFORMATION PRACTICES

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EMAIL: oip@hawaii.gov

To: Senate Committees on Higher Education and the Arts
and on Water, Land, and Agriculture

From: Cheryl Kakazu Park, Director

Date: February 16, 2016, 1:15 p.m.
State Capitol, Conference Room

Re: Testimony on S.B. No. 2427
Relating to the Historic Places Review Board

Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) has both technical and substantive concerns regarding this bill, which is intended to allow members of the historic places review board to visit sites without following the Sunshine Law’s open meeting requirements.

As a substantive matter, OIP questions the need for this bill, given that the Sunshine Law, part I of Chapter 92, already allows boards to visit sites where public attendance would be impracticable through the limited meeting provision set out in section 92-3.1(a). **A board may already** determine through a 2/3 vote of its membership that it is necessary to meet at a location related to the board’s business at which public attendance is impracticable, and, with OIP’s concurrence, **hold a limited meeting not open to the public at that location. This provision would apply where a board was viewing the interiors of private homes or sensitive archaeological sites**, as the purpose clause says the Historic Places Review Board needs to do. **However, the board would still need**

to file a public notice of its meeting, and videotape the meeting unless the requirement was waived by OIP, whereas this bill would allow the board to hold meetings with no notice or oversight.

In addition to this substantive concern, OIP notes that the bill would cause technical problems in implementation because it purports to exempt the board from the Sunshine Law's general open meeting requirement and the permitted interactions that allow board members to discuss board issues outside a meeting in specified circumstances, but it confusingly leaves in place the law's other requirements. Thus, it would be unclear to what extent the board was subject to the Sunshine Law's requirements to give notice and keep minutes when doing such a site visit.

Because the Sunshine Law already allows a board to hold a limited meeting not open to the public in the circumstances described in the purpose clause of this bill, OIP believes this bill is unnecessary, and respectfully recommends that this Committee hold the bill.

Thank you for the opportunity to testify.

HISTORIC HAWAII FOUNDATION

TO: Senator Brian Taniguchi, Chair
Committee on Higher Education and the Arts

Senator Mike Gabbard, Chair
Senator Clarence K. Nishihara, Vice Chair
Committee on Water, Land and Agriculture

FROM: Kiersten Faulkner, Executive Director
Historic Hawaii Foundation

Committee: Tuesday, February 16, 2016
1:15 p.m.
Conference Room 224

RE: SB 2427, Relating to the Historic Places Review Board

On behalf of Historic Hawaii Foundation, I am writing in **opposition to SB 2427**. The bill would authorize the Historic Places Review Board to visit sites without regard to open meeting requirements, exempting the board from the provisions of the “Sunshine Law” enacted in HRS 92-2.5 and 92-3.

The Historic Places Review Board is tasked with listing properties on the Hawai‘i Register of Historic Places. The Review Board is subject to both the provisions of the Sunshine Law governing open meetings and records (HRS 92) and to its own administrative rules governing its procedures for notification, conduct of hearings and actions (HAR 13-197 and 198). This is entirely appropriate, as the preservation of the state’s historic and cultural resources is a public good that involves public awareness, participation and cooperation. Listing a property on the register of historic places establishes that the property contributes to the public benefit and is worthy of preservation.

The process by which a property is designated on the historic register includes:

- The Review Board receives a nomination that describes the property’s location, historic significance and character-defining features. The nomination forms include specific sections to describe the property’s association with historic people, events, design or engineering, and/or archaeology. The nominations also include maps, plans, photographs and research citations.
- The Review Board’s evaluation of each nomination is a public process. The board meets at set times with notice to the nominator, the property owner, individuals and organizations who have asked to be notified, and the general public. The meetings include opportunities for a staff report and evaluation about the nomination, a presentation by the nominator, comments from the property owner and adjacent owners, comments from those with an interest in the preservation of properties and sites that are significant in Hawai‘i’s history, and comments from the public.
- The Board’s deliberation on each nomination is public, as is its determinations on findings on whether or not the property meets the criteria that qualifies it to be entered on the historic register. The list of historic properties entered onto the historic register is also a public record.

Historic Hawai'i Foundation is a frequent and regular attendee at the Review Board meetings. HHF often provides written or verbal comments for the Board's consideration about nominated properties and has a strong interest in having the opportunity to continue to be informed and involved in the work of the Historic Places Review Board.

If the Review Board were to be excused from holding its meetings in public, it would then be severely limiting its opportunities to gather information from the public and take the public views into consideration. It would provide unequal treatment between stakeholders, potentially excluding owners, nominators, preservation organizations and community members from observing, understanding and participating in the process. Even if the decisions are made in later public meetings, the deliberations and rationale for any findings would take place in secret.

While we understand the enhanced benefit that comes with site visits to see historic properties firsthand, the Review Board can already conduct site visits under HRS 92-3.1 governing Limited Meetings. The existing provision in the open meetings statute provides that, "if a board determines that it is necessary to conduct an on-site inspection of a location that is related to the board's business at which public attendance is not practicable...the board may hold a limited meeting at that location that shall not be open to the public...." (HRS 92-3.1). The conditions and provisions governing the limited meeting are enumerated.

We believe that the existing provision for limited meetings is adequate to allow the Review Board flexibility to conduct site visits when needed without eliminating the rights of the public to observe and participate in the process.

Therefore, Historic Hawai'i Foundation opposes SB2427 and respectfully asks that it be held in committee.

From: mailinglist@capitol.hawaii.gov
To: [HEA Testimony](#)
Cc: rkailianu57@gmail.com
Subject: *Submitted testimony for SB2427 on Feb 16, 2016 13:15PM*
Date: Tuesday, February 09, 2016 10:50:38 AM

SB2427

Submitted on: 2/9/2016

Testimony for HEA/WLA on Feb 16, 2016 13:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Ho`omana Pono, LLC	Oppose	Yes

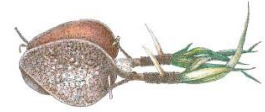
Comments:

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CULTURAL SURVEYS HAWAI'I

ARCHAEOLOGICAL, CULTURAL, AND HISTORICAL DOCUMENTATION SERVICES - SINCE 1982



12 February 2016

To: Joint Senate Committees on Higher Education and the Arts / Water, Land, and Agriculture

From: Matt McDermott, Project Manager, Cultural Surveys Hawai'i, Inc. and Hawai'i Historic Places Review Board (HHPRB) Member (Archaeologist)

Subject: Testimony in Support of SB2427

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Hilo, Hawai'i
Kona, Hawai'i
Lāwai, Kaua'i

Aloha Joint Committee Senators:

Please except this brief statement of strong support for SB2427 on behalf of Cultural Surveys Hawai'i, Inc. (CSH) and myself. My employer, Dr. Hallett H. Hammatt (president and founder of CSH), was an HHPRB member for eight years in the 1980s. During his long term of service, the HHPRB regularly made site visits to the historic properties under their consideration for the State and National Registers of Historic Places. Dr. Hammatt describes these field trips as invaluable to the completion of the HHPRB's mission. As a currently serving member of the HHPRB, I experience the restrictions of Sunshine Law compliance on board member site visits to historic properties as a sever limitation to the HHPRB effectiveness. SB2427's partial exemption from Sunshine Law compliance for historic property site visits will remove these restrictions. SB2427 will greatly simplify board members' necessary efforts to inspect and evaluate the historic properties under their consideration. Please feel free to contact me with any questions. Thank you for your consideration.

Sincerely,
Cultural Surveys Hawaii, Inc.,

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Projects Manager
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Senate Committee on Higher Education and the Arts
Honorable Brian T. Taniguchi, Chair

Senate Committee on Water, Land, and Agriculture
Honorable Mike Gabbard, Chair
Honorable Clarence K. Nishihara, Vice Chair

**RE: Testimony Commenting on S.B. 2427,
Relating to the Historic Places Review Board**
Hearing: February 16, 2016 at 1:15 p.m.

Dear Chairs and Members of the Committees:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote government transparency. Thank you for the opportunity to submit testimony on S.B. 2427. The Law Center appreciates the intent of this measure and **provides comments** to preserve that intent consistent with the purpose of the Sunshine Law.

The Law Center respectfully suggests amending the proposed HRS § 6E-5.5(e) to read:

(e) The members of the review board may conduct an on-site inspection of historic places, pursuant to section 92-3.1, without disclosing the location of the site, when necessary for the site's preservation.

HRS § 92-3.1 provides Sunshine boards the authority to conduct "limited meetings" that include "on-site inspection . . . [when] public attendance is not practicable." Even though public attendance is not practicable, the board normally still must disclose the location of the site visit. As noted in the preamble to S.B. 2427, the location of certain historic places may be confidential to ensure the site's preservation. Thus, in those instances, it is necessary to provide in HRS § 6E-5.5 that the location may remain confidential. The proposal above achieves the stated goals of S.B. 2427.

The current language of S.B. 2427 is more troubling. By exempting all site visits of the Hawai'i Historic Places Review Board from HRS §§ 92-2.5 and 92-3, the bill is overbroad and would strip critical protections provided to the public by the Sunshine Law. At a minimum, any site visit exemption for the Board should be limited to the issues identified in the bill's preamble concerning confidential site locations; a publicly known site should be identified in the ordinary course under the limited meetings provision.

Moreover, without HRS § 92-3, the public will not be entitled to submit written testimony in connection with the site visit (*e.g.*, questions or factors for the Board to consider in conducting the site visit). And without HRS § 92-2.5, the Board may argue that it is authorized to conduct not only a site visit, but hold deliberations and take final action without any public participation.

The site visits for the Hawai'i Historic Places Review Board fit squarely within the existing authority for on-site inspections under the Sunshine limited meetings provision – with further protections (as suggested above) specific to the Board's special circumstances.

Thank you again for the opportunity to testify.

February 16, 2016

**To: The Senate Committees on
HIGHER EDUCATION AND THE ARTS and
WATER, LAND AND AGRICULTURE**

From: Don Hibbard

Subject: SB 2427: RELATING TO THE HISTORIC PLACES REVIEW BOARD

I support Senate Bill 2427. This bill proposes to allow the Hawaii Historic Places Review Board to visit historic properties without regard to the requirements of Sections 92-2.5 and 92-3, Hawaii Revised Statutes. The bill will authorize the ten member, professional board to visit as a group sensitive sites, such as those associated with the native Hawaiian culture and private residences, without noticing or inviting the public to participate.

The Hawaii Historic Places Review Board is called upon to render decisions as to whether a property is to be placed in the Hawaii Register of Historic Places. The Board may also be called upon to advise the State Historic Preservation Officer on matters pertaining to issues involving historic properties. In the past, the board would visit the sites on which they were deliberating; however, stricter interpretations of the law now prohibit their making such visits without complying with Chapter 92.

Because of the sensitive and private nature of many of the historic properties which come before the review board's purview, a need for confidentiality frequently exists, as it is often not in the best interests of the property to have their location and contents known, nevertheless accessible, to the general public. While alternatives are provided by law to exclude the public from board site visits, the implementation of such alternatives is cumbersome and not practical, especially for a volunteer board which only meets four times a year.

The Historic Places Review Board, recognizing the need for confidentiality and privacy, no longer makes site visits as a group. In doing so, the members are in a position where they need to make decisions with limited information and with no way of verifying the accuracy of that information. They are deprived of the ability to comprehend a property as a whole and are unable to gain a true perspective and understanding of the property's character. The members are placed in a position of making decisions in less than ideal conditions.

The purpose of the site visits is to provide the review board members with an opportunity to experience the property first hand. They are there to perceive and respond to the site. When they later attend their meeting, which is held in accordance with Chapter 92, each member publically recounts their impressions/experience of the property and the board then moves into deliberation and decision making. Their audience is almost exclusively people with a direct, vested interest in the property or its nomination.

From: mailinglist@capitol.hawaii.gov
To: [HEA Testimony](#)
Cc: casengeorge@aol.com
Subject: Submitted testimony for SB2427 on Feb 16, 2016 13:15PM
Date: Monday, February 15, 2016 2:33:26 AM

SB2427

Submitted on: 2/15/2016

Testimony for HEA/WLA on Feb 16, 2016 13:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
George Casen	Individual	Support	Yes

Comments: Dear Senators Taniguchi and Gabbard, Committee Members: Thank you for giving me the opportunity to testify on this measure. My testimony is submitted as an individual and not in an official capacity as a member of the Hawaii Historic Places Review Board (the Board). The changes to the Sunshine Law that this measure establishes will assist members of the Board to more effectively assess the qualities of historic properties brought before them for inclusion in the Hawaii Register of Historic Places. It will also help in the determination of whether to recommend properties for the National Register of Historic Places.

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Nancy Lyman Peacock, AIA
P. O. Box 3896
Honolulu, Hawaii 96812-3896

February 14, 2016

Chair Brian T. Taniguchi,
Senate Committee on Higher
Education and the Arts
Chair Mike Gabbard, Senate
Committee on Water,
Land and Agriculture
Committee Members

Subject: SB 2427 Relating to the Historic Places Review Board

I am a licensed architect and am serving my third four-year term on HPRB. My service, to date, encompasses 10 years over a 20 year period.

Mahalo for hearing Senate Bill 2427 to allow the State's Historic Places Review Board (HPRB) to visit historic properties and cultural sites without the requirements of HRS 92-2.5 and 92-3.

Senate Bill 2427 will allow the ten members HPRB to visit as a group sites proposed for State historic place designation, without noticing or inviting the public. These visits include native Hawaiian cultural sites and homes and structures proposed for historic place designation and placement on the State registry of historic places.

HPRB makes decisions regarding the merits of whether a property is to be placed on the Hawaii Register of Historic Places. The site visit of a site is an important part of the decision making process, as it allows the professional Board members to ascertain firsthand the merits of adding a site or property to the State historic registry.

Previously allowed site visits made the decision making effective, by allowing individual Board members who visited the site to offer their first-hand impressions of the merits of adding a site to the registry.

During site visits, confidentiality is necessary as many of the sites are private homes or culturally sensitive sites. During the site visit, there is no discussion of the site's merits. Decisions are not made during the site visit, and are only made during the HPRB meeting held in accordance with HRS 92.

Without the site visits, the Board is faced with making decisions based solely on the applicants submittal and the HPRB's staff recommendation. We are familiar with the adage "a picture is worth 1,000 words." In this case, a site visit is worth 10,000 words in facilitating a deeper understanding of the merits of a proposal related to cultural and historic designation.

Mahalo a nui loa,

Nancy Peacock, AIA

Nancy Peacock, AIA

From: mailinglist@capitol.hawaii.gov
To: [HEA Testimony](#)
Cc: rwaylands808@aol.com
Subject: Submitted testimony for SB2427 on Feb 16, 2016 13:15PM
Date: Saturday, February 13, 2016 4:37:42 PM

SB2427

Submitted on: 2/13/2016

Testimony for HEA/WLA on Feb 16, 2016 13:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
ross stephenson	Individual	Comments Only	No

Comments: Aloha, I am requesting that the Legislature amend the Sunshine Law to allow members of the Hawaii Historic Places Review Board to conduct site visits as a group without entailing procedures for a separate meeting. The Board has successfully undertaken site visits for many years. These visits are critical in determining the historical integrity of sites and buildings, something that is very difficult (if not impossible) to determine solely from photographs. For this reason I support SB 2427. Mahalo nui loa, Ross W. Stephenson, PhD Historian

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