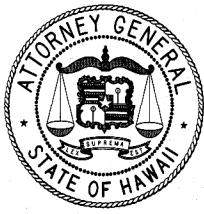


**SB 3059**



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-EIGHTH LEGISLATURE, 2016**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 3059, RELATING TO INDIGENOUS ARCHITECTURE.

**BEFORE THE:**

SENATE COMMITTEE ON HAWAIIAN AFFAIRS

**DATE:** Wednesday, February 10, 2016      **TIME:** 1:15 p.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
Craig Y. Iha, Deputy Attorney General

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Chair Shimabukuro and Members of the Committee:

The Department of the Attorney General offers comments on this bill.

The stated purpose of this bill is to allow state and county agencies to permit the building of “indigenous architecture” on public and private lands under certain conditions.

This bill is unclear with respect to its key provisions; in particular:

- While the bill makes reference to section 46-1.55, Hawaii Revised Statutes, it does not define “indigenous architecture.”
- The bill requires supervision by “persons with expertise in indigenous architecture and construction,” but does not set forth the nature or level of expertise required.
- The bill does not provide any minimum standards for the protection of public health or safety.
- The broad exemptions in section 2(b) could be interpreted to exempt indigenous architecture from health and safety, environmental, consumer protection, and other safeguards designed to protect the public.
- It appears that the exemptions set forth in section 2(b) are intended to apply only to indigenous architecture constructed in areas designated under section 2(a), but the text of the bill is unclear.

We recommend the Committee consider defining or clarifying the provisions identified above. Our department is available to assist with any amendments to the bill, if any, that this Committee may require.

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



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

KEKOA KALUHIWA  
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.  
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

**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 Committee on  
HAWAIIAN AFFAIRS**

**Wednesday, February 10, 2016  
1:15 P.M.  
State Capitol, Conference Room 016**

**In consideration of  
SENATE BILL 3059  
RELATING TO INDIGENOUS ARCHITECTURE**

Senate Bill 3059 proposes to allow state and county agencies to permit the building of indigenous architecture, under certain conditions, on public and private lands and exempts indigenous architecture from all laws provided that indigenous architecture shall be constructed under the supervision of persons with expertise in indigenous architecture and construction. **The Department of Land and Natural Resources (Department) agrees that affordable housing and homelessness are significant problems, but the Department opposes this bill as written because the scope is too broad.**

Senate Bill 3059, as written, would allow for the development of indigenous architecture on private and public land, including conservation district land, under the supervision of persons with expertise in indigenous architecture and construction. Because indigenous architecture is not defined, we are concerned if any kind of development could be permitted anywhere.

The Board of Land and Natural Resources (Board) is responsible for the stewardship of the State's natural and cultural resources, as well as management of public lands. Effective stewardship and management is accomplished through a suite of statutes, rules, constitutional mandates, and broad public participation which this bill endeavors to bypass.

If it is the intent of the Legislature to move this measure forward, the Department respectfully request that no laws pertaining to the Department or Board with respect to its management functions be suspended by this measure.

Thank you for this for the opportunity to provide testimony.

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
PHONE: (808) 768-8000 • FAX: (808) 768-6041  
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KIRK CALDWELL  
MAYOR



GEORGE I. ATTA, FAICP  
DIRECTOR  
ARTHUR D. CHALLACOMBE  
DEPUTY DIRECTOR

February 10, 2016

The Honorable Maile S. L. Shimabukuro, Chair  
and Members of the Committee on Hawaiian Affairs  
Hawaii State Senate  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Shimabukuro and Members:

Subject: Senate Bill No. 3059  
Relating to Indigenous Architecture

The Department of Planning and Permitting (DPP) **opposes** Senate Bill No. 3059, which would allow any State or county agency the authority to designate public or private lands for the construction of buildings reflecting indigenous architecture. The measure also exempts such buildings from compliance with State and county laws relating to their siting, construction, necessary support infrastructure, and sale.

Our primary objection lies with the lack of clarity reflected in the proposal. Specifically:

- There is no definition of "indigenous architecture." It appears that the intent is to limit its application to housing forms, but, broadly speaking, architecture applies to the forms of all buildings.
- It is unclear how Section 2(a) and Section 2(b) of the Bill are related. Does Section 2(b) apply only to sites designated by government under Section 2(a)? Or are they unrelated, i.e., indigenous architecture can be built anywhere?
- The Bill proposes that these buildings be exempt from laws governing the "sale of homes." If the building is not used for housing, how would this provision apply? If the building is used for housing, would it be exempt from all requirements governing real estate transactions, including the requirement for "full disclosure?" If the buildings are exempt from subdivision ordinances, on what basis can the land be sold?

The Honorable Maile S. L. Shimabukuro, Chair  
and Members of the Committee on Hawaiian Affairs  
Hawaii State Senate  
Hawaii State Capitol  
Re: Senate Bill No. 3059  
February 10, 2016  
Page 2

- The Bill does not expand on the persons who must supervise construction. Is the intent that they be self-certified? Can the State and counties impose requirements that they accept responsibility for the constructed buildings?

Secondarily, we are concerned with liability, long-term economic impacts, and public health and safety. Specifically:

- The counties issue building permits which, in part, ensure that there is adequate infrastructure and construction quality that meet minimum standards of public health and safety. Without a building review and permit, this assurance is absent.
- If buildings of indigenous architecture are exempt from building codes, this would mean they are exempt from obtaining a building permit and need not submit plans to the county. These plans are used by the Honolulu Fire Department to help respond to fires.
- The Bill would void compliance with the State environmental and coastal zone laws, Chapters 343 and 205A, HRS. This raises concerns over whether issues of environmental concern are being met.
- The waiver of all land development laws would leave the City and State vulnerable to federal violations under such programs as Flood Hazard Districts, Coastal Zone Management and Clean Water Act. Compliance with these requirements is heavily dependent on county-based reviews and permits, which appear to be waived for these projects.
- Given the exemption from all laws related to land development, how would the counties be able to take action against an abandoned building, or one that threatens public health and safety?


Lastly, the Bill is unnecessary in that counties are already allowed to adopt provisions in building codes to address indigenous architecture. The City has had such provision beginning in the 1970s, and more comprehensively in 2012.

We share the appreciation for indigenous architecture, as evidenced by our existing ordinance. We also are vitally committed to addressing the homes and affordable housing crises. We remain open to innovative measures to address these crises, as reflected in our recently adopted accessory dwelling unit option, and continuing development of a transit-oriented development program. The affordable housing option already offered under 201E, HRS, should be considered for indigenous architecture as it allows for innovation, without sacrificing public health and safety. In short, we remain skeptical that a particular type of architecture with across-the-board exemptions will significantly address the crises, and in fact, as reflected in Senate Bill No. 3059, may create dire impacts.

The Honorable Maile S. L. Shimabukuro, Chair  
and Members of the Committee on Hawaiian Affairs  
Hawaii State Senate  
Hawaii State Capitol  
Re: Senate Bill No. 3059  
February 10, 2016  
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Consequently, we ask that this measure be filed. Thank you for the opportunity to share our concerns.

Very truly yours,

A handwritten signature in black ink that reads "George I. Atta". The signature is written in a cursive style with a large initial "G".

George I. Atta, FAICP  
Director

DAVID Y. IGE  
Governor

SHAN S. TSUTSUI  
Lt. Governor



SCOTT E. ENRIGHT  
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER  
Deputy to the Chairperson

State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
1428 South King Street  
Honolulu, Hawaii 96814-2512  
Phone: (808) 973-9600 FAX: (808) 973-9613

**TESTIMONY OF SCOTT E. ENRIGHT  
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE SENATE COMMITTEE ON HAWAIIAN AFFAIRS**

February 10, 2016  
1:15 P.M.  
CONFERENCE ROOM 016

**SENATE BILL NO. 3059  
RELATING TO INDIGENOUS HAWAIIAN ARCHITECTURE**

Chairperson Shimabukuro and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 3059 that would allow any state or county agency to designate and determine what public and private lands may be used for the construction of indigenous architecture for the homeless and other residents. The Department of Agriculture agrees there is a need for more housing options but respectfully opposes this measure in its current form.

The Department of Agriculture would support the construction and habitation of structures that qualify as indigenous architecture within areas that already allow residential dwellings to be constructed. The Department does not support exempting residential dwellings that happen to qualify as indigenous architecture "...from all land use statutes, ordinances, charter provisions, and rules and regulation of any governmental agency or public utility relating to planning, zoning..." (page 2, lines 3-7). As written, this language undermines the important planning and regulatory protections that State law offers to agricultural lands and agricultural activities.

Thank you for the opportunity to submit our testimony.



**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [HWNTestimony](#)  
**Cc:** [blawaiianlvr@icloud.com](mailto:blawaiianlvr@icloud.com)  
**Subject:** Submitted testimony for SB3059 on Feb 10, 2016 13:15PM  
**Date:** Wednesday, February 03, 2016 10:42:28 PM

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**SB3059**

Submitted on: 2/3/2016

Testimony for HWN on Feb 10, 2016 13:15PM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
De MONT R. D. CONNER	Ho'omana Pono, LLC.	Support	Yes

Comments: We FULLY SUPPORT this bill. As Kanaka Maoli, we were quite alright with our cultural Hale designs. It is time we put an end to forcing Kanaka Maoli to assimilate into Western Culture, which includes our living conditions.

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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**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [HWNTestimony](#)  
**Cc:** [weygan@hawaii.edu](mailto:weygan@hawaii.edu)  
**Subject:** Submitted testimony for SB3059 on Feb 10, 2016 13:15PM  
**Date:** Tuesday, February 09, 2016 7:56:18 AM

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**SB3059**

Submitted on: 2/9/2016

Testimony for HWN on Feb 10, 2016 13:15PM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Carolyn Weygan-Hildebrand	Individual	Comments Only	No

Comments: This is to support this bill for it is in the right direction. Providing an opportunity to revisit indigenous architecture is not only an appropriate approach to human settlement, it is also providing opportunity for innovation in an era where we need to be revisiting sustainable living.

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