



HB245
RELATING TO HISTORIC PRESERVATION
Ke Kōmike Hale o ka Ho‘okolokolo a me ke Kuleana Hawai‘i

Pepeluali 10, 2021

2:00 p.m.

Lumi 325

The Office of Hawaiian Affairs (OHA) Beneficiary Advocacy and Empowerment Committee will recommend that the Board of Trustees **COMMENT** on HB245, which would amend the definition of “historic property” to require that any building, structure, object, district, area, or site, including heiau and underwater sites, in addition to being over fifty years old, must meet the criteria for being entered into the Hawai‘i Register of Historic Places (HRHP). While OHA appreciates the apparent desire to better manage the growing number of buildings over 50 years old that would currently be subject to historic preservation review, OHA notes that there is a vast distinction between historic buildings and Native Hawaiian cultural sites, and that a proposed amendment to the definition of historic property should take into account possible impacts to both site types; **accordingly, should the Committee choose to move this measure forward, OHA respectfully offers language to ensure that Native Hawaiian cultural sites remain appropriately protected under Hawai‘i Revised Statutes (HRS) Chapter 6E.**

To be eligible for the HRHP, historic properties must 1) possess integrity of location, design, setting, materials, workmanship, feeling, and association, and, 2) be considered significant per one of four criteria: a) associated with events that have made a significant contribution to broad patterns of our American or Hawaiian history, b) associated with the lives of persons significant in our past, c) embody distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic value, or d) has yielded, or may be likely to yield information in prehistory or history. These requirements are also included in SHPD rules to determine whether a historic property is “significant” and merits additional protection. However, there is no HRHP eligibility criteria that would recognize sites that may have “important value to the native Hawaiian people or to another ethnic group of the state due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral accounts--these associations being important to the group's history and cultural identity” – a criteria also included in these SHPD rules concerning “significance.”

By limiting the definition of “historic property” to only those sites that may be eligible for the HRHP, this measure may remove any and all historic property protection from Native Hawaiian cultural sites that SHPD’s rules themselves would consider so significant as to merit particularly heightened scrutiny and protection – including consultation with OHA and Native Hawaiians.

OHA acknowledges that as we move forward in time, the number of buildings eligible for consideration under HRS 6E review will keep increasing since any building over fifty years can be considered historic. In some instances, this has caused problems for homeowners and organizations that must comply with the HRS Chapter 6E historic preservation review process when permits are sought for various improvements. From an administrative standpoint, this can place a greater burden on the State Historic Preservation Division (SHPD) since the number of projects they review will likely increase. The current historic preservation review process can also make it difficult to demolish or repair dilapidated buildings that do not obviously meet the standards of historic integrity or significance criteria simply due to the fact that they are fifty years old. In that sense, OHA could see relief being granted to homeowners, organizations, and SHPD by adding additional qualifications, such as those described for the HRHP, for buildings to be considered subject to historic preservation review.

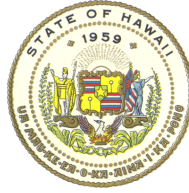
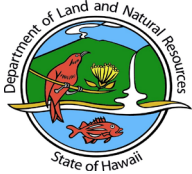
However, OHA does have concerns regarding the application of the HRHP significance criteria to Hawaiian cultural sites as a prerequisite to their being considered “historic property” eligible for the protections of historic preservation review and consultation. **Amending the definition of historic property to now require HRHP eligibility could disqualify many cultural sites from being considered historic properties, including sites long considered particularly “significant” under SHPD rules, and thereby limit or remove any opportunity for mitigation options and consultation requirements for these sites.** Notably, many Native Hawaiian cultural sites have intangible and spiritual aspects that are often difficult to evaluate by Western archaeologists, in contrast to historic buildings that are often solely evaluated on their physical characteristics. Furthermore, sometimes sites that would appear to be natural geological features to Western archaeologists are in fact considered vitally important to Native Hawaiians. Such sites must remain subject to the protections of Chapter 6E, including with respect to its consultation requirements, in order to properly identify and protect of such sites. Should the definition of a historic property be altered to require eligibility under HRHP, cultural sites with intangible or spiritual aspects could be disqualified from the HRS Chapter 6E review process, thus eliminating a critical nexus for consultation and mitigation consideration.

If the intent of the current amendment is to target historic buildings, then the proposed amendment to the definition of historic property should be tailored to target historic buildings only. Otherwise, the current draft of this measure may have unintended consequences for Native Hawaiian cultural sites currently considered and protected as historic properties. In order to prevent the potential irrevocable loss or destruction of the last remaining vestiges of our cultural and historical heritage, OHA respectfully offers the following language to replace that found on page 1, lines 6-7 of this bill, to read as follows:

“~~which~~ that is over fifty years old[-]; provided that buildings, inclusive of privately owned homes, must also meet the criteria for being entered into the Hawaii register of historic places.”

Mahalo for the opportunity to comment on this measure.

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
JUDICIARY & HAWAIIAN AFFAIRS**

**Wednesday, February 10, 2021
02:00PM**

State Capitol, Via Videoconference, Conference Room 325

**In consideration of
HOUSE BILL 245
RELATING TO HISTORIC PRESERVATION**

House Bill 245 proposes to amend the definition of “historic property” in Section 6E-2, Hawaii Revised Statutes (HRS), by adding the requirement that properties must be eligible for inclusion in the Hawaii Register of Historic Places. **The Department of Land and Natural Resources (Department) supports this measure.**

Chapter 6E, HRS, currently defines a historic property as “any building, structure, object, district, area, or site, including heiau and under water site, which is over fifty years old....” House Bill 245 proposes to amend this definition by requiring that the property also be eligible for inclusion in the Hawaii Register of Historic Places. To be eligible for inclusion in the Hawaii Register of Historic Places, a property must be at least 50-years old, and be “significant in the history, architecture, archaeology, or culture of this State, its communities, or the nation.” (Hawaii Administrative Rules 13-198-2).

The Department is aware of concern that this proposed amendment may inadvertently result in a reduction in the protection of places of concern to native Hawaiians in the project review processes established under Sections 6E-8 and 6E-42, HRS, because the Hawaii Administrative Rules includes a specific provision calling out places of concern to native Hawaiians and the rules governing the Hawaii Register of Historic Places (Hawaii Register) does not. The Department understands those concerns but believes that this concern is unfounded. The Department is and remains committed to the protection of such places and to ensuring that they receive meaningful consideration in the Sections 6E-8 and 6E-42, HRS, project review processes administered by the Department’s State Historic Preservation Division.

Furthermore, the Department believes that such places are eligible for inclusion in the Hawaii Register. Furthermore, the Hawaii Historic Places Review Board (Review Board), which has authority to list places in the Hawaii Register, recently listed Pu’u Kapolie in the Hawaii Register

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
ACTING 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

specifically due to its significance to native Hawaiians. The Review Board's action regarding Pu`u Kapolie makes it clear that such places are eligible for inclusion in the Hawaii Register.

The Department believes that addition of the requirement that a property be significant in Hawaii's history is reasonable and an important clarification that will make administration of the state's historic preservation program more rational and effective. The Department fully supports this measure.

Thank you for the opportunity to comment on this measure.



1003 Bishop St. Suite 1975
Honolulu, Hawaii 96813
(808) 942-7474

To: The Honorable Mark M. Nakashima, Chair;
The Honorable Scot Z. Matayoshi, Vice Chair

From: Lorraine Minatoishi Ph.D., AIA

Hearing: Senate Committee on Judiciary and Hawaiian Affairs in Room 325

Subject: **OPPOSE** HB245, Relating to Historic Preservation

Dear Chair Nakashima and Chair Matayoshi,

I strongly **OPPOSE** Bill HB245 Relating to Historic Preservation.

I am an architect and a member on the National AIA Historic Resources Committee and as an architect who deals with Historic Properties on a daily basis, I am very much aware of the importance of protections of our historic properties. By modifying the definition of *historic property*, the strength of the protection of our cultural and historic resources is weakened considerably. The addition of “*and meets the criteria for being entered into the Hawaii register of historic places*” seems innocuous; however, the addition of a single line will change how the planning department and state agencies will manage our historic structures.

At present, any commercial or public structure over 50 years old must be reviewed for eligibility and significance during the EIS or EA process based on 6E requirements or before obtaining a permit. This protects historic properties from those who want to demolish or significantly change their structures. Once this definition is modified, unless the structure has been previously identified as significant or eligible, in other words, on the historic register, the planning department or OEQC will have no way of making such determinations. And, due to their workload, their natural tendency would be to skip going through State Historic Preservation Division (SHPD) and the 6E process entirely if given the opportunity.

I believe the change in definition will have a significant effect on historic properties. The Department of Planning and Permitting staff do not have any knowledge of historic properties, nor should they be required to. The only thing they need to know is if it is 50 years old. If they also have to determine eligibility, then nothing but those properties already listed will be sent to SHPD. It will be quite sad for our state, which is known to be a strong advocate for cultural and historic properties. It is even written into our State Constitution! Please do not dilute or try to negate one of the best things about our state – which is our care for our historic sites, buildings, monuments, and structures.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lorraine', written in a cursive style.

Lorraine Minatoishi, Ph.D., AIA

HISTORIC HAWAII FOUNDATION

TO: Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair
Committee on Judiciary and Hawaiian Affairs (JHA)

FROM: Kiersten Faulkner, Executive Director
Historic Hawai'i Foundation

Committee: Wednesday, February 10, 2021
2:00 p.m.
Via Video Conference/Conference Room 325

RE: HB 245, Relating to Historic Preservation

On behalf of Historic Hawaii Foundation (HHF), I am writing in **support for the intent of HB 245, with additional recommendations.** The bill would amend Hawai'i Revised Statutes §6E-2 to revise the definition of "historic property" to include those properties that are 50 years of age and that meet the criteria for being entered into the Hawai'i register of historic places.

The Constitution of the State of Hawai'i recognizes the value of conserving and developing the historic and cultural property within the State for the public good, and the Legislature has declared that it is in the public interest to engage in a comprehensive program of historic preservation at all levels of government to promote the use and conservation of such property for the education, inspiration, pleasure and enrichment of its citizens.

In order to meet this mandate and to ensure that the historic and cultural resources of Hawai'i are treated appropriately, it is necessary to have a framework based on criteria and standards to define and differentiate which properties are subject to the state's historic preservation program.

Currently, HRS §6E-2 defines historic properties as any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old. This definition has the advantage of being simple to understand and simple to evaluate, as it relies on a single piece of data: age of construction.

However, that definition is also unnecessarily broad, and assumes that age is equivalent to historic importance. Within the discipline and practice of historic preservation, there are two additional criteria used to screen properties: *historic significance* and *integrity*. The criteria for being entered into the State of Hawai'i Register of Historic Places address these additional aspects and are appropriate to add to the State's definition of "historic property."

Historic Hawai'i Foundation supports amending HRS 6E-2 to include the requirement that properties meet the criteria for being entered into the state register of historic places.

However, it is also notable that in order for this definition to be useful as it applies to project reviews, it will be necessary for front-line workers in the County planning and permitting departments to have the ability to know which properties meet the criteria and which do not.

Currently, the City & County of Honolulu's Department of Planning and Permitting does not employ any historic preservation professionals, and the other Counties have only 1-3 staff members with experience in preservation planning, archaeology, architectural history and/or historic architecture. None of the Counties have staff dedicated to the issue of managing pre-contact Hawaiian burials and cultural sites.

Under the existing definition of historic property, the County staff rely on construction dates to flag a property for additional review by SHPD, which can then determine if the property is historically significant. Under the proposed language, that process will be less definitive.

Either the State and Counties will need to update the working inventory of historic and cultural sites on a routine and regular basis to affirmatively identify those properties that meet the criteria for listing on the State Register of Historic Places, or the Counties will need to invest in additional personnel and training for staff to make those determinations as projects are proposed. HHF recommends both options be pursued: a robust program for identification and survey, and qualified preservation professionals operating at both State and Local levels.

In order to make such a program viable, additional funds would need to be allocated to address this concern.

Thank you for the opportunity to comment.

KA LAHUI HAWAIIʻI

KOMIKE KALAIʻĀINA

BEFORE THE HOUSE JUDICIARY AND HAWAIIAN AFFAIRS COMMITTEE

February 10, 2021

HOUSE BILL 245
Relating to Historic Preservation

Aloha Chair Nakashima, Vice Chair Matayoshi and Members of the Committee,

Ka Lāhui Hawaiʻi Kōmike Kalaiʻāina submits the following written testimony in **STRONG OPPOSITION** to House Bill 245 which makes it mandatory for Native Hawaiian cultural sites to be registered with the Hawaiʻi Register of Historic Places (HRHP) before being defined as a "historic property".

If this measure passes Native Hawaiian cultural sites would not be afforded the protections of historic preservation review and consultation. Any non-binding verbal or written agreement by the Department of Land and Natural Resources (DLNR) that all Native Hawaiian cultural sites will be still be given historic preservation protections if this bill is passed is not enough. The DLNR has a checkered history with their treatment of Hawaiian cultural and historical sites. This measure endangers present known and unknown historical and cultural Hawaiian sites by making it more venerable to desecration by putting the burden of protection solely on the shoulders of the peaceful protectors and the Native Hawaiian community.

Me ka oiai'o,

M. Healani Sonoda-Pale
Public Affairs Officer, Ka Lāhui Hawaiʻi Kōmike Kalaiʻāina

We the undersigned are opposed to HB 344 aiming to remove the people's rights to contested case hearings (CCH).

This bill is a bold attempt by lawmakers to remove the people of Hawai'i's ability to challenge critical land use and or water use and other government agencies' decisions that negatively impact them and/or the general public. It is an attempt by lawmakers to remove critical due process rights afforded to Native Hawaiians and the general public. This law presents more constitutional rights challenges than it solves. For example, CCH are for the protection of the citizens of Hawai'i and providing the people a way to challenge agency actions that negatively impact them.

The CCH process is the only Peoples process for any and all government agencies actions that exists.

It is a Peoples process because it a quasi-judicial process that allows regular people to contest, present evidence and to cross examine agencies' witnesses and/or to build the record of impacts to them as interested parties and to inform government agencies about decisions that may be adverse to Native Hawaiians and the General public.

Without a CCH process there is no way for decisions makers to understand the full impacts of their decision and/or for decisions makers to actually make an informed decision based on the facts of the impacts for any and all government decision and/or actions.

CCH are considered a Peoples process also because no one needs to be a lawyer or to hire a lawyer to participate in an administrative Contested Case Hearing. Pushing the executive branch process into the courts violates the constitutional requirement of Separation of Powers.

Therefore, Contested Case Hearings should not be construed as a threat to the system. To the contrary, they are meant to help the administration make informed decisions and to understand how their decisions may affect the greater public.

Without Contested Case Hearings, no decision could actually be challenged or go through judicial review because there would be no record to review or to appeal out of an administrative hearing.

Most, if not all, seminal land use cases began with a Contested Case Hearing (i.e. PASH, Kapa'akai etc) and were originally brought by regular citizens whose Rights and Interest in the land/water were being threatened. Many CCH have found their way all the way into the highest court of the land-the Supreme Court Of Hawai'i.

With no Contested Case Hearings there is no due process, no record to appeal into a court of law thus making this proposed law unconstitutional on its face. We do not consent to the passage of this law and we are adamantly opposed to HB 344.

MAUNA KEA MOKU NUI

'AELIKE/CONSENSUS BUILDING 'OHANA

HB-245

Submitted on: 2/8/2021 6:25:27 PM

Testimony for JHA on 2/10/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carol Marie Lee	Individual	Oppose	No

Comments:

Aloha Chair Nakashima, Vice-Chair Matayoshi, and members,

Mahalo for the opportunity to submit testimony in **opposition** of this measure.

I firmly believe by amending Section 2 of any statute gives way for unintended consequences affecting the part of the community for which the statute was originally written. It is suspect as to where the push for this change is coming from, please consider the fallout of this change.

May I make a recommendation, apply the change solely to "buildings and structures including those privately owned" or deferring this measure and advise Department to do it through Administrative Rule making if they desire this change be made.

Mahalo for your consideration.

Me ka maluhia,

Ka`onohipi Lee

~ Malama na mea huluhulu kupuna ~

HB-245

Submitted on: 2/10/2021 12:13:40 PM

Testimony for JHA on 2/10/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Rhonda	Individual	Oppose	No

Comments:

I oppose HB245

HB-245

Submitted on: 2/10/2021 12:16:27 PM

Testimony for JHA on 2/10/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Noelani Ahia	Individual	Oppose	No

Comments:

I strongly oppose this bill.

HB-245

Submitted on: 2/10/2021 12:17:33 PM

Testimony for JHA on 2/10/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ivy Iaea-McIntosh	Individual	Oppose	No

Comments:

I oppose!

HB-245

Submitted on: 2/10/2021 12:20:56 PM

Testimony for JHA on 2/10/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl B.	Individual	Oppose	No

Comments:

OPPOSE

This makes it harder for all of us to provide protections for historic Hawaiian sites.

HB-245

Submitted on: 2/10/2021 12:22:39 PM

Testimony for JHA on 2/10/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
maxine kahaulelio	Individual	Oppose	No

Comments:

I oppose

HB-245

Submitted on: 2/10/2021 12:38:13 PM

Testimony for JHA on 2/10/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
carol lee kamekona	Individual	Oppose	No

Comments:

I oppose the passage of this Bill as it puts the qualifications of defining "historic property" into the hands of a State Agency which may not necessarily have the intentions of the indigenous peoples of this 'aina first and foremost. In my opinion, the inclusion of "must meet the criteria for being entered into the Hawaii Register of Historic Places" does not give voice to generational mo'olelo nor Cultural practitioners, lineal and Cultural descendants. Therefore, I am opposed to this Bill.

HB-245

Submitted on: 2/10/2021 12:57:21 PM

Testimony for JHA on 2/10/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
MaryAnn Omerod	Individual	Oppose	No

Comments:

I Strongly Oppose amending the definition of "historic property" under the Historic Preservation Law.