

DAVID Y. IGE
GOVERNOR OF HAWAII



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

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
JUDICIARY**

**Friday, January 28, 2022
9:30AM
Via Videoconference**

**In consideration of
SENATE BILL 570
RELATING TO HISTORIC PRESERVATION**

Senate Bill 570 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...”

Senate Bill 570 amends 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 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. This amendment will allow state and county agencies, including agencies issuing permits, and the Department to focus efforts on places that are demonstrably historic rather than attempting to attend to all places that are 50-years old. The Department fully supports this measure.

Thank you for the opportunity to comment on this measure.

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



SIERRA CLUB OF HAWAI'I

SENATE COMMITTEE ON JUDICIARY

January 28, 2022 9:30 AM Via Videoconference

In **OPPOSITION** to **SB570**: Relating to Historic Preservation

Aloha Chair Rhoads, Vice Chair Keohokalole, and members of the Judiciary Committee,

On behalf of our 27,000 members and supporters, the Sierra Club of Hawai'i **OPPOSES SB570**, which may inadvertently disqualify significant historic cultural sites from being protected as "historic properties" under the state Historic Preservation Law. **The Sierra Club does offer an amendment below that will both facilitate the intended purpose of this measure, while maintaining needed protections for the last physical vestiges of our islands' cultural heritage.**

Our Historic Preservation Law recognizes that "the historic and cultural heritage of the State is among its important assets and that the rapid social and economic developments of contemporary society threaten to destroy the remaining vestiges of this heritage." Accordingly, the law provides for consultation, agency review, and other procedural and substantive protections for buildings, sites, and features considered "historic properties." These protections are particularly critical for historic Native Hawaiian cultural sites and features, which provide a physical connection to and reflection of our islands' cultural heritage, **and may also provide a physical and spiritual foundation for the restoration and perpetuation of Native Hawaiian traditional values, practices, and knowledge that enabled hundreds of thousands of people to live sustainably on our islands, for centuries before Westerners arrived on their shores.**

By restricting the definition of "historic properties" to only those properties eligible for inclusion in the Hawai'i Register of Historic Places, this measure may inadvertently remove protections for Hawaiian cultural sites and features appropriately considered "significant" and deserving of particular protection under existing historic preservation regulations. This may in turn result in the irreparable loss of sites and features that have been preserved for generations, forever cutting off present and future generations from the values, practices, and knowledge they currently embody. Should the Committee choose to move this measure forward, the Sierra Club accordingly urges the Committee to limit this new restriction only to buildings or other properties less than a century old, by amending the proposed amended 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] one hundred years old[-], or any building, structure, district, area,

or site that is over fifty years old and that meets the criteria for being entered into the Hawaii register of historic places.”

This language will accomplish the apparent intent of this measure to prevent relatively modern buildings and structures from being subject to historic preservation requirements simply due to their age alone, while ensuring that Native Hawaiian cultural sites and features continue to be protected from irreparable impacts or permanent loss. Accordingly, the Sierra Club respectfully urges the Committee to **HOLD** this measure, or to adopt the amendment proposed above.

Mahalo nui for the opportunity to testify.



SB570
RELATING TO HISTORIC PRESERVATION
Senate Committee on Judiciary

January 28, 2022

9:30 a.m.

Videoconference

The Administration of the Office of Hawaiian Affairs (OHA) will recommend that the Board of Trustees **COMMENT** on SB570, 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.

HISTORIC HAWAII FOUNDATION

TO: Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair
Committee on Judiciary (JDC)

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

Committee: Friday, January 28, 2022
9:30 a.m.
Via Video Conference

RE: SB570, Relating to Historic Preservation

On behalf of Historic Hawaii Foundation (HHF), I am writing in **support for the intent of SB570, with additional comments**. 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 50 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.

HHF notes that with such an addition, the reference to the property's age is no longer needed or relevant. Therefore, the definition could delete the reference to being 50 years old and simply read:

“Historic property means any building, structure, object, district, area, or site, including heiau and underwater site, that meets the criteria for being entered in the Hawai'i register of historic places.”

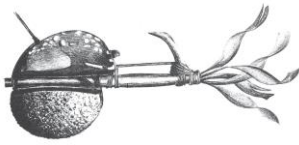
Although HHF supports the clarification in the definition of “historic property,” we also note that this amendment introduces a new requirement for the statewide preservation program: the task of determining whether or not a specific property meets the criteria based on more information than age of construction.

When making determinations regarding specific properties, preservation professionals with appropriate education and experience will need to apply the criteria for evaluating historic significance and integrity. Professional judgment is needed to understand and apply the criteria to different property types, including buildings, structures, objects, sites and districts, including those properties to which Native Hawaiians and other ethnic and cultural groups of the State attach religious and cultural significance.

By adding this additional layer of knowledge, skill and experience to the determining whether or not a property is “historic,” and not merely relying on age of construction, it will be more difficult for property owners, developers, permitting and planning agencies and the general public to know if a property will be subject to the State Historic Preservation Division's requirement to identify, evaluate and resolve potential effects that may be caused by a proposed project.

HHF believes that the revised definition would make the assessment and resolution of effects more efficient and effective, but will complicate the initial step of knowing whether the statute applies at all. We caution about unintended consequences that could be caused by a seemingly straightforward change.

Thank you for the opportunity to comment.



SOCIETY FOR HAWAIIAN ARCHAEOLOGY

P.O. BOX 22458 HONOLULU, HAWAII 96823

TO: Senator Lorraine R. Inouye, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Committee on Water & Land (WTL)

FROM: Mara Mulrooney, Ph.D.
President, Society for Hawaiian Archaeology
membership@hawaiianarchaeology.org

HEARING: January 28, 2022, 9:30AM, Videoconference

SUBJECT: Testimony regarding SB 570, Relating to Historic Preservation

I am Mara Mulrooney, President of the Society for Hawaiian Archaeology (SHA). We have over 150 members including professional archaeologists and advocates of historic preservation. On behalf of SHA, **we oppose SB 570 as written.**

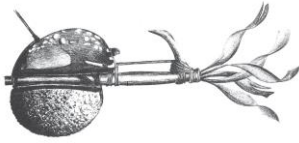
The intent of SB 570 is to ensure better protection of vulnerable historic properties, and to provide more accountability and transparency in historic preservation compliance, as managed by the State Historic Preservation Division (SHPD). If developed using appropriate language, SB 570 may provide a clearer framework outlining the regulations and standards that will categorize which properties meet the State's historic preservation program. Hawai'i State Legislature Chapter 6E Section 2 currently defines historic properties as "any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old." We hope that any change to the definition of historic properties would be done in a manner which would not potentially hinder any archaeological, architectural, and cultural sites from being identified, assessed for significance, and protected during the HRS 6E and HRS 343 review processes.

The Society for Hawaiian Archaeology would support amending HRS §6E-2 to clarify the definition of a historic property to include eligibility to the Hawaii Register of Historic Places (HRHP), but not as proposed in SB 570. Under the National Historic Preservation Act (NHPA), a historic property is defined (per 36 CFR 800.16) as a prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places (NRHP). However, the NRHP explicitly includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria as being eligible to the NRHP. The HRHP, however, specifically omits a similar and important significance criterion (HAR §13-275/278-6[b][5] "Criterion e") regarding historic properties that may "have an 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."

Throughout Title 13 of the Hawaii Administrative Rules, there are requirements specific to historic properties that are significant or potentially significant under Criterion e. Without an amendment to the HRHP criteria to include Criterion e and which maintains its additional protections in the HARs, these important requirements and protections would be lost. By simply redefining a historic property as needing

<https://hawaiianarchaeology.org/>

The Society for Hawaiian Archaeology is a registered tax-exempt organization established in 1980 to promote and stimulate interest and research in the archaeology of the Hawaiian Islands, encourage a more rational public appreciation of the aims and limitations of archaeological research, serve as a bond among those interested in Hawaiian archaeology, both professionals and non-professionals, and aid in directing their efforts into more scientific channels as well as encourage the publication of their results, advocate and assist in the conservation of archaeological data, discourage unethical commercialism in the archaeological field and work for its elimination.



SOCIETY FOR HAWAIIAN ARCHAEOLOGY

P.O. BOX 22458 HONOLULU, HAWAII 96823

to meet the Hawaii Register of Historic Places (HRHP) criteria in order to be considered a “historic property,” significant Native Hawaiian archaeological and cultural sites could be potentially harmed.

SHA is concerned regarding the wording used in SB 570, primarily the phrase “meets the criteria for being entered into the Hawaii Register of Historic Places.” This is ambiguous and may be open for interpretation as a historic property may be eligible for listing, but may not meet the criteria for being entered into the Hawaii Register of Historic Places due to other steps required per HAR §13-198 to be listed in the HRHP. We prefer any amendment to the definition of historic property be well defined using standard historic preservation language that is not open for interpretation by special interests. Similar to the NHPA definition of a historic property, we suggest that the phrase “... is listed on, or eligible for listing on, the Hawaii Register of Historic Places” be used instead.

Should SB 570 pass out of this committee, we request to be consulted as a stakeholder in future deliberations on an amended bill. Should you have any questions, please feel free to contact me at the above email.

Mahalo for the opportunity to comment.

<https://hawaiianarchaeology.org/>

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SB-570

Submitted on: 1/25/2022 3:45:20 PM

Testimony for JDC on 1/28/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Dara Carlin, M.A.	Individual	Support	No

Comments:

Stand in support.

SB-570

Submitted on: 1/26/2022 9:04:07 PM

Testimony for JDC on 1/28/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Kaira Resch	Individual	Oppose	No

Comments:

The new restriction on what may be considered a “historic property” could disqualify Native Hawaiian cultural sites from protections under our Historic Preservation Law, such as consultation, reporting, and historic preservation review requirements.

LATE

SB-570

Submitted on: 1/27/2022 8:56:01 PM

Testimony for JDC on 1/28/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
STEFANIE Y SAKAMOTO	Testifying for BIA Hawaii	Support	No

Comments:

BIA Hawaii is in support of this measure.

LATE

SB-570

Submitted on: 1/27/2022 9:30:36 PM

Testimony for JDC on 1/28/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lucienne de Naie	Individual	Oppose	No

Comments:

we need to strengthen protections for our historic sites, especially traditional Hawaiian sites. Too much of our history is "defined out of existence"

Mahalo for opposing this bill.

LATE

SB-570

Submitted on: 1/27/2022 11:20:24 PM

Testimony for JDC on 1/28/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Dave Mulnix	Testifying for Our Revolution Hawaii	Oppose	No

Comments:

Oppose because the new restriction on what may be considered a “historic property” could disqualify Native Hawaiian cultural sites from protections under our Historic Preservation Law, such as consultation, reporting, and historic preservation review requirements.