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STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
KA 'OIHANA KUMUWAIWAI 'ĀINA

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FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Testimony of  
DAWN N.S. CHANG  
Chairperson

Before the Senate Committee on  
WATER AND LAND

Friday, February 10, 2023  
2:05PM

State Capitol, Conference Room 229 Via Videoconference

In consideration of  
SENATE BILL 68  
RELATING TO HISTORIC PRESERVATION

Senate Bill 68 proposes to amend the definition of “historic property” in Section 6E-2, Hawaii Revised Statutes (HRS), by adding the requirement that a property be both “50-years old” and eligible for inclusion in the Hawai‘i Register of Historic Places (Hawai‘i Register). **The Department of Land and Natural Resources (Department) supports this measure.**

The Department thanks the introducers and this committee for recognizing the issues that arise with a definition of historic property that relies solely on age, and agrees that the current definition which relies entirely on age alone to define what is or is not historic is flawed. In prior sessions, the Department has supported measures to amend the definition. Other measures have proposed increasing the current 50-years standard to 100-years, which would exclude, for example, places associated with people of historic significance in the last century, and places associated with historical events such as World War II and Statehood. The Department believes that defining historic property by age alone is the problem, and appreciates this measure’s recognition that historical value is not a reflection of age alone but a reflection of age *and* association with events, people, architectural distinction, or valuable historic, scientific, or cultural information.

The Department notes that there is strong feeling among some Native Hawaiians that the criteria inclusion in the Hawai‘i Register do not apply to some of the places of most concern to them.

Accordingly, the Department recommends that Section 6E-2, HRS be amended as follows:

“Historic property” any building, structure, district area or site, including heiau or underwater site [~~which~~] that is over fifty years old[-] and meets the criteria to be placed into the Hawaii register of historic places or have important value to Native Hawaiians or other 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 that are important to the group’s history, traditional practices, and cultural identity.

(The Department’s proposed amending language italicized.)

Mahalo for the opportunity to provide testimony in support of this measure.



**SB68**  
**RELATING TO HISTORIC PRESERVATION**  
**Senate Committee on Water & Land**

February 10, 2023

2:05 PM

Room 229

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The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on SB68, 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, unlike the HRHP eligibility criteria, the rules recognize a fifth type of significance, Criteria E, for 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”.

**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 Criteria E sites (Native Hawaiian cultural sites) that SHPD’s rules themselves already**



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**RELATING TO HISTORIC PRESERVATION**  
**Senate Committee on Water & Land**

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**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.**

Prior versions of this bill has been pushed for the passed few legislative sessions, with the same arguments coming forward from OHA and others regarding the possible omission of Native Hawaiian sites significant under Criteria E. While suggestions have been made to include explicit language to address this concern, the current SHPD Administrator has previously disregarded these concerns. Thus, repeatedly this bill has been rejected and not able to become law.

As has been provided in past legislative sessions and 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 of this bill to read as follows:



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"~~[which]~~ that is over fifty years old~~[-]~~ and meets the criteria for being entered into the Hawaii register of historic places~~[-]~~ but not excluding sites significant under State of Hawai'i significance Criteria E."

OHA appreciates the opportunity to provide its support with amendments on SB68 and asks that this Committee take OHA's recommendations into consideration. Mahalo nui loa.

**LATE**

**SB-68**

Submitted on: 2/9/2023 2:58:13 PM

Testimony for WTL on 2/10/2023 2:05:00 PM


<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Nani Medeiros	Testifying for Office of the Governor, Chief Housing Officer, State of Hawaii	Support	Written Testimony Only

Comments:

In support, mahalo.



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February 10, 2023

**The Honorable Lorraine R. Inouye, Chair**

Senate Committee on Water and Land  
State Capitol, Conference Room 229 & Videoconference

**RE: Senate Bill 68, Relating to Historic Preservation**

**HEARING: Friday, February 10, 2023, at 2:05 p.m.**

Aloha Chair Inouye, Vice Chair Elefante, and Members of the Committee:

My name is Lyndsey Garcia, Director of Advocacy, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i and its over 11,000 members. HAR **supports** Senate Bill 68, which amends the definition of "historic property" to require that the property meets the criteria for inclusion in the Hawaii Register of Historic Places.

Currently, Hawai'i Revised Statutes Chapter 6E, 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. With the current definition, the number of homes and buildings that qualify has continued to increase. This can be challenging for homeowners that must comply with the historic preservation review process for permits, even when their properties have no historical significance. For example, some homes in Mililani were built in 1968, and homes there can be over 55 years old.

Furthermore, current law can also be challenging for the State Historic Preservation Division, as they will have to review properties simply because the property is over 50 years old, even without historical significance. As such, amending the definition of a historic property to properties that meet the criteria for inclusion in the Hawai'i Register of Historic Places may help address these challenges.

For the foregoing reasons, Hawai'i REALTORS® supports this measure. Mahalo for the opportunity to testify.





# SIERRA CLUB OF HAWAI'I

## SENATE COMMITTEE ON WATER AND LAND

February 10, 2022      2:05 PM      Conference Room 229

**In OPPOSITION to SB68:** Relating to Historic Preservation

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Aloha Chair Inouye, Vice Chair Elefante, and Members of the Water and Land Committee,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i **OPPOSES SB68**, 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 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.

# HISTORIC HAWAII FOUNDATION

**TO:** Senator Lorraine R. Inouye, Chair  
Senator Brandon J.C. Elefante, Vice Chair  
Committee on Water and Land (WTL)

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

**Committee:** Friday, February 10, 2023  
2:05 p.m.  
Via Video Conference and Conference Room 229

**RE: SB68, Relating to Historic Preservation**

On behalf of Historic Hawaii Foundation (HHF), I am writing in **support for the intent of SB68, with additional comments and 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 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, but is also concerned that some cultural sites or features may have been significantly altered over time, thus affecting their historic integrity. HHF feels that these sites should not be excluded and may need explicit inclusion in the definition.

**HHF recommends that the bill be amended to expand the new definition to include:**

“Historic property” means any building, structure, object, district, area, or site, including heiau and underwater site, ~~which~~ that is over fifty years old, and meets the criteria to be placed into the Hawaii register of historic places **[or have important value to Native Hawaiians or other 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 that are important to the group’s history, traditional practices, and cultural identity].”**

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.

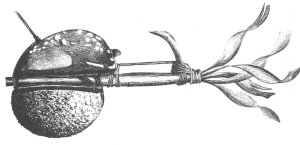
When making determinations regarding specific properties, preservation professionals with appropriate education and experience will need to apply the criteria for evaluating historic significance and integrity. Professional judgment is needed to understand and apply the criteria to different property 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.

**HHF recommends that the department promulgate administrative rules to address the issue of who will make the determinations, based on established criteria and standards, subject to qualified personnel concurrence and at what stage of the process.**

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 Brandon Elefante, Vice Chair  
Committee on Water & Land (WTL)

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

HEARING: February 10, 2023 2:05PM, CR 229 & Videoconference

SUBJECT: Testimony in **opposition** of SB 68, 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** and offer comments on SB 68.

The intent of SB 68 amends the definition of "historic property" to require that the property meets the criteria for inclusion in the Hawai'i Register of Historic Places (HRHP). Hawai'i Revised Statutes Chapter 6E Section 2 Historic Preservation, defines "'Historic property' as any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old."

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 meets the NRHP eligibility criteria. The HRHP 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 to meet the 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 phrase "meets the criteria for being entered into the Hawaii Register of Historic Places." A historic property may be eligible for listing, but may not meet the criteria for being entered into the HRHP due to other steps required per HAR §13-198. We prefer any amendment to the definition of historic property using the standard historic preservation language "... is listed on, or eligible for listing on, the Hawaii Register of Historic Places" that is not open for interpretation.

Should SB 68 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 contact me at the above email.

Mahalo for your consideration of our testimony.

<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.

**SB-68**

Submitted on: 2/8/2023 7:27:48 AM

Testimony for WTL on 2/10/2023 2:05:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Sheena Lopes	Individual	Oppose	Written Testimony Only

Comments:

Creating more barriers for the preservation of cultural and historic properties that only benefit the developers are NOT pono. Simple criteria cannot and should not denote what is historic or not. It seems as if State of Hawai'i is not valuing things that the general public value. The government should not be working with the developers and in this case that is exactly what it looks like.

**SB-68**

Submitted on: 2/8/2023 12:33:28 PM

Testimony for WTL on 2/10/2023 2:05:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Sara Collins	Individual	Oppose	Written Testimony Only

Comments:

I oppose the subject bill for the following reasons because:

- the proposed amendments to Chapter 6E-2, HRS will not result in greater protection for historic sites and may in fact jeopardize more of them;
- the increased risk to historic sites will reduce efficiency in regulatory reviews and also lengthen the time needed to complete permitting requirements due to controversy over the status of historic sites within a project area.

I therefore respectfully ask that the Committee HOLD SB 68 and not pass it further.

Mahalo for considering my comments.

**SB-68**

Submitted on: 2/9/2023 9:58:51 AM

Testimony for WTL on 2/10/2023 2:05:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Jennifer Mather	Individual	Comments	Written Testimony Only

Comments:

Aloha e Chair Tam, Vice Chair Martinez, and Honorable Committee Members,

My name is Jen Mather and I am a resident of Maui. I appreciate the intent of this measure, however, I find the Bishop Museum, designated as the State of Hawaii Museum of Natural and Cultural History, non-accessible to those of us on the other islands. Also, the measure states that the public has access, however, that access is not free, is not whole. Certain mo‘olelo that were gifted to the museum via recordings and videos by our kūpuna are considered "owned" by the museum and therefore not available to families of those kūpuna. If the families of the voices held within the museum are not allowed free and ready access to those treasures, the Bishop Museum should not be funded through public means. It should be considered a private institution and should be funded through private means.

Mahalo for your consideration.

Jen Mather