

LINDA LINGLE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the House Committee on
WATER, LAND, AND OCEAN RESOURCES**

**Friday, March 20, 2009
10:00 PM
State Capitol, Conference Room 325**

**In consideration of
SENATE BILL 1672, SENATE DRAFT 1
RELATING TO HISTORIC STRUCTURES**

Senate Bill 1672, Senate Draft 1 proposes to limit the photo requirements of Act 228, Session Laws of Hawaii 2008 (Act 228), to buildings nominated for, or already on the State or National Registers of Historic Places. The bill would also do away with the requirement for archival photos, and allows photographs in any format. The Department of Land and Natural Resources (Department) notes that archival photographs for buildings nominated or on the Register are already submitted as part of the nomination, so additional photograph requirements for these buildings is unnecessary. The Department however, would recommend that this measure be amended to authorize the submission of photographs for alterations to buildings already on the Register.

The intent of Act 228 is to ensure that a quality record of historic buildings lives on even after the buildings are demolished. While the Department and its Historic Preservation Division acknowledges the benefit of creating an inventory of Hawaii's built environment, the Department is nonetheless concerned that this Act places a financial burden on owners of buildings over fifty years of age without considering the structure's condition or the type of work being done. In addition, while photographs are a valuable tool for the Historic Preservation Division when reviewing applications for eligibility for listing on the State or National Register, the Department certainly does not need photographs for all buildings over 50 years old nor is there the capacity to maintain an inventory of this overly-broad category of buildings.

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

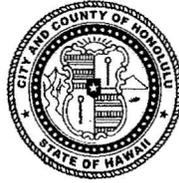
KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

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

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN
MAYOR



DAVID K. TANOUE
DIRECTOR
ROBERT M. SUMITOMO
DEPUTY DIRECTOR

March 20, 2009

The Honorable Ken Ito, Chair
and Members of the Committee on Water,
Land, & Ocean Resources
State House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Ito and Members:

**Subject: Senate Bill No. 1672, SDI
Relating to Historic Structures**

The Department of Planning and Permitting (DPP) **supports** Senate Bill No. 1672, SDI that allows required photographs submitted to the Department of Land and Natural Resources to be in any format, including electronic, when engaging in a demolition or major alteration of a building nominated for listing on the Hawaii or national register of historic places.

In fiscal year 2008, the DPP issued 1,019 building permits for alterations and repairs of single-family and two-family dwellings. Many of these permits involved dwellings that are 50 years old or older. For these types of dwellings, Act 228, in its present form, requires the property owners to submit photographs of their homes for simple additions/alterations. This places an undue burden on the owner as well as a time delay for obtaining the permit. In its present form, the proposed bill will alleviate this burden and will limit the requirement for photographs to buildings that are truly worthy of historic archival.

Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "David K. Tanoue".

David K. Tanoue, Director
Department of Planning and Permitting

DKT:jmf
sb1672sd1-act.doc

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

March 20, 2009

Representative Ken Ito, Chair
Committee on Water, Land and Ocean Resources
State Capitol, Room 325
415 South Beretania Street
Honolulu, Hawaii 96813

Representative Ito and Members of the Committee on Water, Land and Ocean Resources:

Subject: **Senate Bill No. 1672, SD1 Relating to Historic Structures**

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

The Senate amended this bill in committee by deleting its contents and replacing it with the following:

- Amends section 6E-8(a), Hawaii Revised Statutes, to delete the requirement that archival quality black and white photographs be submitted with a permit application;
- Amends section 6E-10(b), Hawaii Revised Statutes, to include, for purposes of the photograph requirements, any buildings over fifty years old that are nominated for listing or listed on the Hawaii or National Register of Historic Places;
- Requires the Department of Land and Natural Resources to certify receipt of the photographs submitted by an owner of a privately-owned structure within twenty days of the Department's receipt of the photographs;
- Amends section 46-3.5, Hawaii Revised Statutes, to include, for purposes of the photograph requirement, a building that is nominated for listing or listed on the Hawaii or National Register of Historic Places;
- Revises the definition of "photographs" to mean dated pictures, taken within one month of applying for any building permit; and
- Requires the Legislative Reference Bureau, the Office of Environmental Quality Control, and the University of Hawaii Environmental Center to assist the task force in inventorying structures previously recognized for their historic value through publically-reviewed environmental assessments or environmental impact statements.

The BIA of Hawaii is opposed to S.B. No. 1672, SD1 as proposed.

The proposed legislation is required to address the “unintended consequences” resulting from the passage of Act 228 last year. We understand that the intent of Act 228 was rather simple in that it attempted to require archival photographs for permits allowing the demolition, construction, or other alteration of a historic building. The intent was to obtain photographs of buildings eligible for listing on the Hawaii or National Register of Historic Places. When it became law last year, the implementation resulted in confusion and delays because in its attempt to focus on only those building eligible for listing on the State or National Register, the Act caught ALL buildings 50 years old or older. For many areas on Oahu, this included large tract subdivisions constructed in 1959 such as Hawaii Kai, Halawa, Aiea, Pearl City and Waipahu.

Since last session, there have been attempts to address the problem by clarifying the language in Act 228. The legislature attempted to address the problem by “fixing” the language. The current versions propose language that will limit the application. However, the underlying problem is the inability to simply identify which buildings should be required to provide photographic documentation prior to any work being done. The language still provides for someone (not sure who) to decide if the structure is significant or not.

At this point, we respectfully suggest a total repeal of Act 228 be considered with some type of working group to develop legislation that makes sense. The existing situation is unacceptable in that it creates more uncertainty in the permitting process.

We strongly recommend repeal of Act 228 and prefer the language contained in the House version of the bill H.B. No. 520.

Thank you for the opportunity to provide comments.



Chief Executive Officer
BIA-Hawaii

**Committee on Water, Land and Ocean Resources
State Capitol, Room 325
415 South Beretania Street
Honolulu, Hawaii 96813
March 20, 2009 at 1:30 p.m.**

Subject: Senate Bill No. 1672, SD1 Relating to Historic Structures

Chair Ito, Vice Chair Har and members of the committee:

My name is Jim Tollefson, President of the Chamber of Commerce of Hawaii. The Chamber of Commerce of Hawaii works on behalf of its members and the entire business community to:

- Improve the state's economic climate
- Help businesses thrive

The Senate amended this bill in committee by deleting its contents and replacing it with the following:

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- Revises the definition of "photographs" to mean dated pictures, taken within one month of applying for any building permit; and
- Requires the Legislative Reference Bureau, the Office of Environmental Quality Control, and the University of Hawaii Environmental Center to assist the task force in

inventorying structures previously recognized for their historic value through publically-reviewed environmental assessments or environmental impact statements.

The Chamber of Commerce of Hawaii is opposed to S.B. No. 1672, SD1 as proposed.

The proposed legislation is required to address the “unintended consequences” resulting from the passage of Act 228 last year. We understand that the intent of Act 228 was rather simple in that it attempted to require archival photographs for permits allowing the demolition, construction, or other alteration of a historic building. The intent was to obtain photographs of buildings eligible for listing on the Hawaii or National Register of Historic Places. When it became law last year, the implementation resulted in confusion and delays because in its attempt to focus on only those building eligible for listing on the State or National Register, the Act caught ALL buildings 50 years old or older. For many areas on Oahu, this included large tract subdivisions constructed in 1959 such as Hawaii Kai, Halawa, Aiea, Pearl City and Waipahu.

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Thank you for the opportunity to provide comments.

**Testimony before the Committee on Water, Land & Ocean Resources
House of Representatives, Regular Session of 2009**

**by Philip Hauret
Senior Land Agent, Land & Rights of Way Department
Hawaiian Electric Company, Inc.**

March 20, 2009

Senate Bill 1672 SD1, Relating to Historic Structures

Chair Ito, Vice Chair Har and Members of the Committees:

My name is Phil Hauret and I am testifying on behalf of the Hawaiian Electric Company (HECO) and its subsidiaries, Hawaii Electric Light Company and Maui Electric Company.

We support SB 1672 SD1, which has been drafted to address the concerns relating to Act 228, passed in the 2008 session.

As background, HECO was the only private party to express concerns last year about Act 228, which this bill attempts to amend. HECO owns and continues to operate a number of older buildings that were either affected by Act 228, or will soon be. We have also participated in the working group that was formed late last year to address the negative and unintended consequences of Act 228.

Of the bills that have been introduced this year to address the pitfalls of Act 228, we believe that SB 1672 SD1 is the best vehicle for correcting them. SB 1672 came out of the working group and attempts to improve upon Act 228, without repealing it entirely. It more narrowly defines the universe of properties and construction activities that trigger the submittal of photographs, establishes broader standards for the photographs themselves, and launches a process whereby a listing of truly historic properties, whether on an existing register or not, is identified going forward.

Thank you for the opportunity to testify.

HISTORIC HAWAII FOUNDATION

VIA WEB: www.capitol.hawaii.gov/emailtestimony

To: Representative Ken Ito, Chair
Representative Sharon E. Har, Vice Chair
Committee on Water, Land and Ocean Resources

From: Kiersten Faulkner *Kiersten Faulkner*
Executive Director, Historic Hawaii Foundation

Committee Date: Friday, March 20, 2009
10:00 a.m.
Conference Room 325

Subject: **SB1672 SD1, Relating to Historic Structures**

On behalf of Historic Hawai'i Foundation (HHF), I am writing with comments and recommendations on SB1672 SD1, related to amending current law that requires the State Historic Preservation Division (SHPD) to receive photographs of historic properties prior to permitting their demolition or alteration.

Since 1974, Historic Hawai'i Foundation has been a statewide leader for historic preservation. HHF works to preserve Hawai'i's unique architectural and cultural heritage and believes that historic preservation is an important element in the present and future quality of life, economic viability and environmental sustainability of the state.

This measure is meant to address the worst excesses of Act 228 by changing the scope of the law's applicability.

This bill focuses on three issues: the types of permits that trigger the photo requirement; the types of buildings that trigger the requirement; and the types of photographs required.

HHF agrees that these are the critical issues that require technical corrections; however, we disagree with some of the amendments being proposed, as they do not, in fact, solve the issues and would create new problems.

1. **Types of Permits:** The bill proposes that photo-documentation is required only in cases of demolition. HHF agrees that this is the most serious adverse affect to historic structures and that the law should capture demolition permits. While we would also like the law to apply to major alternations, we understand the difficulty in defining that term. As a stop-gap measure, **HHF supports limiting the law's applicability only to demolition.**
2. **Type of Buildings:** This area is the bill's most serious oversight. The bill proposes to limit photographs only to buildings either nominated to or designated on the State or National Register of Historic Places. However, since photographs are a requirement of nominating buildings to the historic register, SHPD already has photos of those buildings. Additional



photography is unnecessary. But SHPD does not generally have photos of buildings that are over 50 years old that have not yet been evaluated for historic significance; these are the buildings that need to be documented prior to demolition. Further, if a building that is already listed on the historic register is demolished, a more extensive level of documentation (following the Historic American Building Survey standards) is required. By limiting the photography requirement to photos of any sort, this introduces a contradiction. It would create greater confusion and conflict by implying that these photos alone are adequate mitigation for destroying a historic building. Therefore, HHF feels that this provision should be changed back to **applying to buildings 50 years or older**. This provides a bright line of applicability that requires a single piece of data (age of construction) and no additional professional analysis as to eligibility for historic designation.

3. Types of Photographs: The bill changes the requirement from archival quality black and white photographs to dated photographs of any type, including digital. HHF feels that this type of photography may be sufficient for buildings that are not previously identified as either on the historic registers or eligible for the historic registers, but is completely inadequate for designated historic structures. Therefore, it is related to the issue of types of buildings (see above). **If it applies to non-designated structures over 50 years old, any type of photography is sufficient. If it applies only to structures already designated, then the requirement for HABS documentation should not be undermined or contradicted.**

Therefore, HHF recommends that SB1672 SD1 be amended to remove the limited applicability to buildings already designated on the state or national registers of historic places and return to the applicability to all structures 50 years or older.

Coupled with the limitation to demolition permits and the ability to submit photos of any kind, including digital, this would address the most significant concerns with Act 228 without introducing additional problems.



March 20, 2009

Representative Ken Ito, Chair
Committee on Water, Land and Ocean Resources
State Capitol, Room 325
415 South Beretania Street
Honolulu, Hawaii 96813

Representative Ito:

Subject: **Senate Bill No. 1672, SD1 Relating to Historic Structures**

My name is Shane Peters, President of the Hawaii Developers' Council (HDC). We represent over 200 members and associates in development-related industries. The mission of Hawaii Developers' Council (HDC) is to educate developers and the public regarding land, construction and development issues through public forums, seminars and publications.

It is also the goal of HDC to promote high ethics and community responsibility in real estate development and related trades and professions.

The Senate amended this bill in committee by deleting its contents and replacing it with the following:

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- Amends section 6E-10(b), Hawaii Revised Statutes, to include, for purposes of the photograph requirements, any buildings over fifty years old that are nominated for listing or listed on the Hawaii or National Register of Historic Places;
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- Revises the definition of "photographs" to mean dated pictures, taken within one month of applying for any building permit; and

- Requires the Legislative Reference Bureau, the Office of Environmental Quality Control, and the University of Hawaii Environmental Center to assist the task force in inventorying structures previously recognized for their historic value through publically-reviewed environmental assessments or environmental impact statements.

The HDC is opposed to S.B. No. 1672, SD1 as proposed.

The proposed legislation is required to address the “unintended consequences” resulting from the passage of Act 228 last year. We understand that the intent of Act 228 was rather simple in that it attempted to require archival photographs for permits allowing the demolition, construction, or other alteration of a historic building. The intent was to obtain photographs of buildings eligible for listing on the Hawaii or National Register of Historic Places. When it became law last year, the implementation resulted in confusion and delays because in its attempt to focus on only those building eligible for listing on the State or National Register, the Act caught ALL buildings 50 years old or older. For many areas on Oahu, this included large tract subdivisions constructed in 1959 such as Hawaii Kai, Halawa, Aiea, Pearl City and Waipahu.

Since last session, there have been attempts to address the problem by clarifying the language in Act 228. The legislature attempted to address the problem by “fixing” the language. The current versions propose language that will limit the application. However, the underlying problem is the inability to simply identify which buildings should be required to provide photographic documentation prior to any work being done. The language still provides for someone (not sure who) to decide if the structure is significant or not.

At this point, we respectfully suggest a total repeal of Act 228 be considered with some type of working group to develop legislation that makes sense. The existing situation is unacceptable in that it creates more uncertainty in the permitting process.

We strongly recommend repeal of Act 228 and prefer the language contained in the House version of the bill H.B. No. 520.

Thank you for the opportunity to provide comments.



**Hawai'i
Association of
REALTORS®**
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March 19, 2009

The Honorable Ken Ito, Chair
House Committee on Water, Land and Ocean Resources
Hawaii State Capitol, Room 420

RE: S.B. 1672, S.D. 1 Relating to Historic Structures

HEARING DATE: Friday, March 20, 2009 at 10:00 a.m.

Aloha Chair Ito, Chair Morita and Members of the Joint Committee:

I am Myoung Oh, Government Affairs Director of the Hawai'i Association of REALTORS® ("HAR"), here to testify on behalf of HAR and our 9,600 members in Hawai'i. HAR strongly supports S.B. 1672, S.D. 1 which amends Act 228, Session Laws of Hawai'i 2008. Specifically, this measure 1) allows photographs for building demolition permits to be in any format, and 2) clarifies that this requirement applies to buildings nominated for listing or currently listed on the Hawaii or National Register of Historic Places.

Act 228, Session Laws of Hawai'i 2008, was intended to preserve bona-fide historic buildings, but unfortunately, resulted in unintended consequences by requiring that all structures 50 years or older submit archival quality photographs to the State Historic Preservation Division, prior to the issuance of a permit.

S.B. 1672, S.D.1 is the direct result of the supportive efforts of Representative Ken Ito and Senator Carol Fukunaga, and the input of various stakeholders. HAR notes that the parties are bill continuing work on the bill, and it is still a work in progress.

HAR believes this measure in its present draft addresses the true intent of Act 228 and is greatly needed to alleviate the burdens placed on homeowners who have been subject to the delays caused by the Act.

HAR looks forward to working with our state lawmakers in building better communities by supporting quality growth, seeking sustainable economies and housing opportunities, embracing the cultural and environmental qualities we cherish, and protecting the rights of property owners.

Mahalo for the opportunity to testify.

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Honolulu, HI 96819
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Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

March 18, 2009

TO: THE HONORABLE REPRESENTATIVE KEN ITO, CHAIR AND MEMBERS
OF THE COMMITTEE ON WATER, LAND AND OCEAN RESOURCES

THE HONORABLE REPRESENTATIVE HERMINA M. MORITA, CHAIR
AND MEMBERS OF ENERGY & ENVIRONMENTAL PROTECTION

SUBJECT: S.B.1672, SD1, RELATING TO HISTORIC STRUCTURES

NOTICE OF HEARING

DATE: Friday, March 20, 2009

TIME: 10:00 a.m.

PLACE: Conference Room 325

Dear Chairs Ito and Morita and Members of the Committee:

The General Contractors Association (GCA), an organization comprised of over five hundred and sixty (560) general contractors, subcontractors, and construction related firms, **strongly supports** the passage of S. B. 1672, SD1, Relating to Historic Structures.

While Act 228, SLH, 2008, was laudatory in concept, to preserve a pictorial record of significant historic buildings that were proposed for demolition, it had the unintended consequences of adding substantial cost and time to the demolition of buildings that were not of significant historic value but fifty years or older. The amendment proposed in S. B. 1672, SD1 would correct the oversight to require archival quality photographs of structures that have historic significance and are nominated for or listed on the state or federal historic registers.

The GCA **strongly supports** the amendments proposed in S. B. 1672, SD1 and recommends its passage.

Thank you for the opportunity to provide our views on this issue.

Rep Har, Rep Ito, committee members

SB 1672 SDI Mar 20, Room 325

My name is Scotty Anderson, and I am involved in the building industry. While my first choice is to see a repeal of Act 228, SB 1672 SD1 is a good second choice. The unintended consequences caused by Act 228 need to be addressed, corrected and or changed. The spirit is great, the result is awful.

Thank you for your consideration

Scotty Anderson
2435 Aha Aina Place
Honolulu, Hi 96821
737-7317, cell 306-5697