

**SB**

**954**

**EDT**

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 Senate Committee on  
ECONOMIC DEVELOPMENT AND TECHNOLOGY**

**Wednesday, February 4, 2009  
1:15 PM  
State Capitol, Conference Room 016**

**In consideration of  
SENATE BILL 954  
RELATING TO PHOTOGRAPHS OF HISTORIC BUILDINGS**

Senate Bill 954 proposes to change the requirement of archival photographs for permits allowing the demolition, construction, or other alteration of a historic building to photographs in any format, including electronic for buildings eligible for listing on the Hawaii or National Register of Historic Places. The Department of Land and Natural Resources (Department) is in **strong support** of this Administration measure.

Act 228, Session Laws of Hawaii (SLH) 2008, created photographic standards for the documentation of historic buildings that are to be altered, demolished or impacted, by requiring owners of historic buildings are required to submit archival-quality photographs to the Department prior to the issuance of a building-related permit. The provisions in this Act apply to all privately owned and public buildings that are at least fifty years old. While fifty years is usually the age at which a building may be considered as eligible for listing on the Hawaii or National Register of Historic Places, every building over fifty years of age is not eligible for listing on the State or National Register. A structure must possess historic integrity in terms of its setting, design, materials, workmanship, location, and association in order to be eligible for listing on the these registers.

The intent of Act 228, SLH 2008, 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. 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. In some cases, buildings over

**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

50 years old are not be eligible for listing on the state or national register, or may be deteriorated to such a degree that it may not warrant the expense of the archival-quality documentation or even a standard photograph for that matter.

This bill would remove the unnecessary and additional financial burden on the applicant since archival photographs are very costly. Further, this bill would remove the unnecessary burden on having to retain photographs of structures 50 years or older which have no historic integrity.



Legislative Testimony  
**SB 954, RELATING TO PHOTOGRAPHS OF HISTORIC BUILDINGS**  
Senate Committee on Economic Development and Technology and  
Agriculture

February 4, 2009  
Room: 016

1:15 p.m.

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The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB 954, which would provide technical corrections to the current law that requires landowners to submit archival quality black and white photographs for all historic buildings older than 50 years before the commencement of any proposed project.

OHA supports this bill, which would delete the requirement of submitting archival quality black and white photographs of historic building that are eligible to be or already on the Hawai'i or National Register of Historic Places. SB 954 would provide housekeeping measures to the inadvertently overbroad, existing statute (Act 228, Session Laws of Hawaii 2008) and release considerable burdens on the landowner to provide archival photos on all buildings that are eligible. Requirements to submit photographs of historic buildings to the State Historic Preservation Division (SHPD) would remain within the Act.

Amendments to Act 228 would provide opportunities for comment by the SHPD and would allow the landowner to proceed if the SHPD does not act with a 30-day review period.

OHA asks the Committee to PASS SB 954, taking the above remarks into account. Thank you for the opportunity to testify.

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

650 SOUTH KING STREET, 7<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
PHONE: (808) 768-8000 • FAX: (808) 768-6041  
DEPT. WEB SITE: [www.honolulu.dpp.org](http://www.honolulu.dpp.org) • CITY WEB SITE: [www.honolulu.gov](http://www.honolulu.gov)

MUFI HANNEMANN  
MAYOR



DAVID K. TANOUE  
ACTING DIRECTOR  
ROBERT M. SUMITOMO  
DEPUTY DIRECTOR

February 4, 2009

The Honorable Carol Fukunaga, Chair  
and Members of the Committee on Economic  
Development and Technology  
State Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Fukunaga and Members:

**Subject: Senate Bill No. 954  
Relating to Photographs  
of Historic Buildings**

The Department of Planning and Permitting (DPP) **opposes** Senate Bill No. 954 which requires the submittal of photographs to the Department of Land and Natural Resources prior to approval of demolition or alteration of buildings eligible for listing on the Hawaii or national register of historic places.

In Fiscal Year 2008, the City and County of Honolulu approved 13,221 additions, alterations and repairs with an accepted value of \$1,129,946,596. DPP believes the bill is too "all inclusive" and would place this year's legislative effort to improve and streamline Act 228 back to "square one." Please be advised that DPP does **support** Senate Bill 1672, relating to photographs of historic buildings, which offers a common sense approach in screening the number of construction projects eligible for DLNR review.

We respectfully request that Senate Bill No. 954 be filed. Thank you for the opportunity to testify.

Sincerely yours,

  
for David Tanoue, Acting Director  
Department of Planning and Permitting.

DKT: jmf  
sb954-act.doc

**Testimony before the Committee on Economic Development and Technology  
Senate, Regular Session of 2009**

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

**February 4, 2009**

**Senate Bill 954, Relating to Photographs of Historic Buildings**

Chair Fukunaga and Members of the Committee:

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 believe SB 1672 is the better vehicle to address concerns relating to Act 228. Therefore, we are opposed to Senate Bill 954 and recommend that it be held.

As background, HECO is 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.

While Senate Bill 954 is partly on the right path by attempting to limit the provision of photographs to only those properties eligible to be listed on a historic register, we believe that SB 1672 is a better vehicle for addressing Act 228. SB 1672 came out of the working group and is preferable because it better defines the universe of properties and alterations 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 EMAIL:** EDTtestimony@capitol.hawaii.gov

**To:** Senator Carol Fukunaga, Chair  
Senator Rosalyn H. Baker, Vice Chair  
Committee on Economic Development and Technology

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

**Committee Date:** Wednesday, February 4, 2009  
1:15 pm  
Conference Room 016

**Subject:** **SB954, Relating to Photographs of Historic Buildings**  
**SB787, Relating to Historic Preservation**

On behalf of Historic Hawai'i Foundation (HHF), I am writing with comments on two bills (SB954 and SB787) related to amending current law that requires owners of historic buildings to provide archival-quality black and white photographs of any building older than 50 years to the Department of Land and Natural Resources (DLNR) as a condition for permits allowing the demolition, construction, or other alteration of a historic building.

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.

The intent of the photo-documentation law is to build a photographic record of the built environment of Hawai'i, capturing images of the historic buildings prior to permitting construction or demolition activities that would alter or destroy them. However, the Act included overly broad language that does not differentiate those structures that meet the requirements of inclusion on the state register of historic places from those that do not. It also does not include definitions of the types of permits that represent substantial alteration, and it does not include standards and protocols for the types of the photographs that would meet the legislative intent.

Not all historic buildings have the level of significance that would necessitate preservation or restoration. In addition, many alteration and rehabilitation activities are benign or beneficial for the maintenance, repair and preservation of historic structures. For both ineligible buildings and insubstantial work, high quality photographs are unnecessary and present an undue burden to both applicants and government agencies.

For those structures which are historically significant and for which substantial alteration, addition or demolition is proposed, the public benefit is served by having a state depository of photographic documentation for future study, understanding the context of the site, historic analysis and a



complete architectural record. For projects of this kind, technical specifications based on nationally-accepted standards should be used to provide predictability and consistency.

The law as currently constituted has four areas that should be addressed:

1. The types of historic resources to which the requirement would apply;
2. The types of permits to which the requirement would apply;
3. The standards for the type, number, size, format and quality of required photographs; and
4. Explicit rule-making authority for the Department of Land and Natural Resources and the county governments that are Certified Local Governments under the National Historic Preservation Act.

Elements of SB954 and SB787 address some of these issues, but neither bill addresses all of the concerns. HHF recommends that a comprehensive bill be developed that provides for the following:

A. Definition of Applicability

1. Structures, at least 50 years old; and
2. Eligible for listing on the Hawai'i State Register of Historic Places, as determined by a person meeting professional qualifications listed in HAR 13-281, documented through:
  - a. State Historic Preservation Division (SHPD) determination in the course of reviewing a previous project or undertaking; or
  - b. SHPD determination in the course of reviewing permits per 6E-42 powers or National Historic Preservation Act (NHPA) powers; or
  - c. Hawai'i Historic Places Review Board determination of eligibility; or
  - d. Certified Local Government determination of eligibility.

B. Definition of types of permits that trigger the requirement:

1. Demolition; or
2. Changes to the exterior of the structure; or
3. Additions or new construction that affects the footprint, façade, massing or bulk of the structure.

C. Photographic Standards

Establish standards for the submitted photographs as those that meet the National Park Service standards for National Register of Historic Places, including high resolution digital images.

HHF supports the intent of the bills, but recommends that these technical corrections be addressed to avoid additional unintended consequences and inadequate implementation. In addition, HHF recommends that the scope of the revisions be focused on the section of HRS 6E that is related to the photo-documentation provision only, without introducing additional incompatible directives related to other sections of the process. In particular, HHF is concerned that SB787 proposes new timeframes from the department's review (30 days) that are inconsistent with other sections of the code that provide deadlines for acting (90 days). HHF recommends that the rule-making processes of DLNR or Counties designated as Certified Local Governments be used to address the submittal requirements, timelines, review and comment procedures, storage and research protocols or other administrative functions to implement this program.



February 4, 2009

Senator Carol Fukunaga, Chair  
Committee on Economic Development and Technology:  
Conference Room 016  
State Capitol  
415 South Beretania Street

Senator Fukunaga:

Subject: **Senate Bills No. 954 and 787 Relating to Photographs of Historic Buildings and Historic Preservation**

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 Chamber of Commerce of Hawaii opposes both S.B. No. 954 and 787 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.

At this point the legislature keeps trying 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 cannot support either bill and strongly recommends repeal of Act 228.

Thank you for the opportunity to provide comments.



February 4, 2009

Senator Carol Fukunaga, Chair  
Committee on Economic Development and Technology:  
Conference Room 016  
State Capitol  
415 South Beretania Street

Senator Fukunaga:

Subject: **Senate Bills No. 954 and 787 Relating to Photographs of Historic Buildings and Historic Preservation**

My name is Dean Uchida, Vice 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 HDC opposes both S.B. No. 954 and 787 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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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 cannot support either bill and strongly recommends repeal of Act 228.

Thank you for the opportunity to provide comments.

February 3, 2009

**The Honorable Carol Fukunaga, Chair**

Senate Committee on Economic Development & Technology  
State Capitol, Room 016  
Honolulu, Hawaii 96813

**RE: S.B. 954 Relating to Historic Structures**

**HEARING DATE:** Thursday, February 4, 2009 at 1:15 p.m.

Dear Chair Fukunaga and Member of the Committee on Economic Development and Technology:

On behalf of our 9,600 members in Hawai'i, the Hawai'i Association of REALTORS® (HAR) **supports the intent** of S.B. 954, which amends Act 228, Session Laws of Hawai'i 2008, by allowing photographs to be in any format and applying to buildings eligible for listing on the Hawaii or National Register of Historic Places.

Act 228 was originally intended to preserve bona-fide historic buildings. HAR believes that S.B. 954 does not go far enough to alleviate the burden placed on homeowners who may be requesting a permit to do basic renovations to their 50 year old property. Specifically, S.B. 54 as drafted is overbroad because it applies to all alterations, regardless of the size or scope of such alterations.

Senator Carol Fukunaga and Representative Ken Ito have conferred with various stakeholders to address the unintended consequences of Act 228. S.B. 1672 is the result of those efforts, and HAR feels that bill is a better approach.

HAR looks forward to participating in continued dialogue with stakeholders and legislators, and urges the passage of S.B. 1672 as a better choice to clarify the true intent of Act 228.

Mahalo for the opportunity to testify.

# AIA Hawaii State Council

A Chapter of The American Institute of Architects



February 2, 2009

Honorable Carol Fukunaga, Chair  
Senate Committee on Economic Development and Technology

RE: Senate Bill 954  
Relating to Photographs of Historic Buildings

Dear Chair Fukunaga and Members of the Committee:

The AIA Hawaii State Council can support this bill only if changes are made to the language. This bill shares the same problem with all the other bills attempting to revise Act 228. The bill as currently written refers to buildings that are "eligible for listing on the Hawaii or National Registers of Historic Places". Since the County Building Departments do not have the time or expertise to make those determinations, the only criteria they will have is whether the building is listed as over 50 years old – and the State Historic Preservation Division (SHPD) will then have to do permit reviews for all buildings and structures over 50 years old. SHPD will have to make the eligibility determination, which they cannot legitimately do working only with photographs. This just recreates the current situation under a different guise.

It is recommended that the bill be rewritten to clarify that it applies to those properties previously declared eligible for listing on the Registers as a result of previous Environmental Assessments, Environmental Impact Statements or other public actions.

Further, the word "construction" should be deleted from page 3, line 6 unless it is changed to read "construction within a historic district". New, stand-alone construction is not relevant to the intent of this bill unless it is new construction in a historic district.

Last, if this bill goes forward, we recommend that page 4, lines 1 to 4 be rewritten for clarity, as follows. "Photographs" means dated pictures taken within one

month of applying for any building permit covered by this Act. The photographs can be submitted in any clearly visible format, including electronic formats.”

Thank you

A handwritten signature in black ink, appearing to read "Glenn Mason", with a long horizontal flourish extending to the right.

Glenn Mason, AIA

cc. John Fullmer, President, AIA Hawaii State Council  
Paul Louie, AIA  
Dan Chun, FAIA

TO: Senator Carol Fukunaga, Chair  
Senate Committee on Economic Development & Technology

FROM: Sara L. Collins, Ph.D., Legislative Committee Chair  
Society for Hawaiian Archaeology  
Telephone: 808-348-2937  
Email: [scollins@lava.net](mailto:scollins@lava.net)

HEARING: February 4, 2008, 1:15 pm, Senate Conference Room 016

SUBJECT: Comments on SB 954 (Relating to Photographs of Historic Buildings) and  
SB 787 (Relating to Historic Preservation)

I am Dr. Sara Collins, Chair of the Legislative Committee of the Society for Hawaiian Archaeology (SHA). We have over 200 members that include professional archaeologists and advocates of historic preservation in general. On behalf of SHA, I am providing comments on SBs 954 and 787, both of which propose amendments to Chapters 6E and 46, HRS. During the 2008 Legislature, Act 228 was passed in order to ensure adequate review by the State Historic Preservation Division (SHPD) of any repairs, alterations, or demolitions proposed for publicly and privately owned buildings and structures that are historic in age. A key element of SHPD review was the submission of archival quality black and white photographs of historic structures. Implementation of the 2008 changes to Chapters 6E and 46, HRS became very difficult for the owners of buildings, who experienced excessive delays in the permitting of lawful activities, and difficult for SHPD, who lacked sufficient resources to conduct timely reviews of submitted materials.

By our count alone, at least 11 bills (three in the Senate and eight in the House) have been introduced this session in order to remedy the various shortcomings of Act 228. We have not yet reviewed all submitted bills and are still evaluating the various proposed amendments. Consequently, we cannot recommend one or more over the others at this time. We do, though, have some general concerns and comments regarding the subject bills that may also apply to the remaining nine bills:

- We don't believe that it is useful or practical to stipulate percentages (e.g., 5% alteration of a structure is a threshold for SHPD review), as proposed in SB 787. Most importantly, it is quite possible for significant historic characteristics to be present in less than 5% of a building's area.
- We believe that the stipulations regarding the architectural details required to be shown in the black-and-white photographs are best left to administrative rules or even SHPD policy statements. It may be best for the statute only to require initial photographs – in a variety of formats – in order for SHPD to conduct an initial evaluation.
- We do endorse the need for time limits of review since the Department of Planning & Permitting (DPP) ordinarily processes permits for single-family and two-family dwellings that qualify for its automatic approval process within one to two working days. We are concerned, though, that inadequate staffing at SHPD may allow automatic approvals of actions with potential to harm historic resources because there aren't sufficiently qualified personnel to conduct timely reviews.

- We question the need for having a qualified historic preservation professional carry out an assessment of eligibility at the beginning of the process. Perhaps a landowner could first submit non-archival photographs to SHPD in digital or other formats, and then, upon review of the photographs, SHPD could in turn require further assessment and documentation, if warranted.

Thank you for the opportunity to testify on the important issues raised by SBs 954 and 787. We look forward to working with the committee on these and other measures intended to improve the historic preservation review process. Should you have any questions, please feel free to contact me at the above telephone number and email address.

Sara L. Collins, Ph.D.  
Chair, Legislative Committee  
Society for Hawaiian Archaeology