

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
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**STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA**

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DAWN N.S. CHANG
CHAIRPERSON
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ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
DAWN N.S. CHANG
Chairperson**

**Before the Senate Committee on
JUDICIARY**

**Tuesday, March 21, 2023
9:40 AM**

State Capitol, Conference Room 016, Via Videoconference

**In consideration of
HOUSE BILL 201, HOUSE DRAFT 2, SENATE DRAFT 1
RELATING TO HISTORIC PRESERVATION**

House Bill 201, House Draft 2, Senate Draft 1 proposes to amend the definition of “historic property” in Section 6E-2, Hawaii Revised Statutes (HRS), by requiring that a property that is over fifty years old be eligible for inclusion in the Hawaii Register of Historic Places (Hawaii Register). **The Department of Land and Natural Resources (Department) supports this measure.**

The Department agrees that the current definition of historic property 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. The Department appreciates that the House Committee on Water & Land amended this measure to include the requirement that a property be both 50-years old and eligible for inclusion in the Hawaii Register. The Department believes that this is entirely appropriate and will allow for appropriate consideration of properties that are truly historic rather than simply old. The Department believes that defining historic property by age alone is the problem. Historical value is a reflection of age *and* association with events, people, architectural distinction, or valuable historic, scientific, or cultural information. House Bill 201, House Draft 2, Senate Draft 1 proposes to define historic property based on both age historical association.

The Department believes that even properties that are 100-years old or older should still have to qualify for inclusion in the Hawaii Register to be considered historic. Reliance on age alone to define historic without the additional requirement of historic association results in referral of projects to the Department’s State Historic Preservation Division (SHPD) for review that do not have the potential to affect properties of historic importance. SHPD should only be reviewing projects that have the potential to affect properties of historic importance. Not requiring historic association in how Hawai‘i defines what is historic could have unforeseen negative consequences as Hawai‘i grapples with many other

issues such as sea level rise, more frequent storm events and flooding, and the need for homeless, low-income and affordable housing. The Department appreciates the prior Committee's acceptance of the Department's suggested amendments and asks that the language be retained as is in this Senate Draft 1.

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

March 21, 2023

The Honorable Karl Rhoads, Chair

Senate Committee on Judiciary

State Capitol, Conference Room 016 & Videoconference

RE: House Bill 201, HD2, SD1, Relating to Historic Preservation

HEARING: Tuesday, March 21, 2023, at 9:40 a.m.

Aloha Chair Rhoads, Vice Chair Gabbard, 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** House Bill 201, HD2, SD1, which expands the definition of "historic property" for purposes of the Historic Preservation Program. Effective 6/30/3000.

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, 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 either properties that are over 50 years old that meet the criteria to be placed onto the Hawai'i Register of Historic Places or has important value to Native Hawaiians or other ethnic groups may help address these challenges.

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

HISTORIC HAWAII FOUNDATION

TO: Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair
Committee on Judiciary (JDC)

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

Committee: Tuesday, March 21, 2023
9:40 a.m.
Via Video Conference and Conference Room 016

RE: HB 201 HD2 SD1, Relating to Historic Preservation

On behalf of Historic Hawaii Foundation (HHF), I am writing in **support for to HB 201 as amended in version SD1**. The bill would amend Hawai'i Revised Statutes §6E-2 to revise the definition of "historic property" to include properties that are 50 years of age that also meet the criteria to be listed in the Hawai'i register of historic places or that have value to Native Hawaiians or other ethnic groups due to associations with cultural practices.

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

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Historic Hawai'i Foundation is a statewide nonprofit organization established in 1974 to encourage the preservation of historic buildings, sites, structures, objects and districts on all the islands of Hawai'i. As the 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, environmental sustainability and economic viability of the state.

State's definition of "historic property." HHF also agrees and supports the language that includes value to Native Hawaiians or other ethnic groups to attach value to traditional beliefs, cultural practices, and association with 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 simply 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.



**SENATE COMMITTEE ON JUDICIARY
State Capitol
415 South Beretania Street
9:40 AM**

MARCH 21, 2023

RE: HB 201 HD2 SD1 - RELATING TO HISTORIC PRESERVATION

Chair Rhoads, Vice Chair Gabbard, and members of the committee:

My name is Max Lindsey, 2023 Government Relations Committee Chair 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. Our members build the communities we all call home.

BIA-Hawaii is in support of HB 201, Relating to Historic Preservation. This bill expands the definition of "historic property" for purposes of the Historic Preservation Program by specifying it must meet the criteria to be placed on the register of historic places.

BIA-Hawaii is generally in support of any intent to streamline SHPD review. Many homes in Hawaii will soon be considered "historic properties" under the current definition, which defines historic property as "any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old". Expanding the definition to narrow the criteria would be helpful, but we support changing the definition to 100 years, as this would immediately lower the amount of construction projects that would be subject to SHPD analysis and approval.

The state of Hawaii is in a dire housing crisis. As the Legislature is aware, the cost of housing in Hawaii is extremely high, with Oahu's median price of homes being currently over \$1 million. Approximately 153,967 U.S. households are priced out of buying a home for every \$1000 increase in price, according to the National Association of Home Builders (NAHB).

We appreciate the opportunity to share our comments.



COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION
HAWAII CHAPTER

March 20, 2023

Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair
Committee on Judiciary

RE: **HB 201 HD1 SD1 - Relating to Historic Preservation**
Hearing date: March 21, 2023 at 9:40PM

Aloha Chair Rhoads, Vice Chair Gabbard and members of the committee,

Mahalo for the opportunity to submit testimony on behalf of NAIOP Hawaii with **COMMENTS** on HB 201 HD1 SD1. NAIOP Hawaii is the local chapter of the nation's leading organization for office, industrial, retail, residential and mixed-use real estate. NAIOP Hawaii has over 200 members in the State including local developers, owners, investors, asset managers, lenders and other professionals.

AS currently drafted, HB 201 amends the definition of "Historic Property" include additional "criteria to be placed onto the Hawaii register of historic places or has important value to Native Hawaiians or other ethnic groups of the State due to associations with cultural practices once carried out, or still being 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 most recent amendment to the bill removed the increase to 100 years as proposed in the original version of the bill.

NAIOP Hawaii appreciates the amendments made in an effort to narrow the definition of "historic property" to require criteria relating to historical registry or Native Hawaiian significance. However, we are concerned that this amendment would continue to cast too broad of a net and will effectively nullify the primary intent of the measure to resolve the current backlog of permit reviews. The proposed criteria are ambiguous and the measure fails to clarify who will be making the determination, effectively meaning that SHPD will continue to have to review all projects over 50 years old.

Removal of the 100-year requirement for the definition that was originally proposed for this legislation is particularly concerning due to the department's limited staffing resources on identifying and reviewing truly historic properties. The amendment may be contrary to the intent of the measure to promote more timely reviews of projects conducted the Department of Land and Natural Resources (DLNR) State Historic Preservation Division (SHPD).

Currently, the backlog of historic reviews is encumbering permits throughout the state. Reviews by SHPD are significantly slowing down the permitting process, adding costs and delays to a substantial number of projects across the State. Consequently,

Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair
Committee on Judiciary
March 20, 2023

much needed housing, economic development, and critical infrastructure projects often face significant delays in permit approvals and project implementation. These delays result in decreased economic and construction activity and delivery of housing units.

Ultimately, the issue at hand is that far too many projects are being sent to SHPD for review that don't qualify as historic under any reasonable interpretation associated with historic importance. Nearly half of Oahu's housing stock is 50 years old including projects built in the 60s and 70's which should not be deemed historic.

NAIOP understands the great importance that these reviews hold in preservation of Hawaii's historic sites, however, a balance needs to be found to: 1) reduce overwhelming volume of reviews placed on an understaffed department; and 2) allow SHPD staff to focus on the truly aged projects to determine if they are indeed historic. An increase to 100 years is the most cost-effective solution to reducing the volume of reviews while still preserving historic properties.

Accordingly, NAIOP Hawaii respectfully recommends the committee revert back to the original language of HB 201 amending the definition from 50 year to 100 years. Alternatively, if the committee is concerned about preserving specific types of historical properties, such as pre-WWII buildings, we would recommend inclusion of a specific date, such as September 2, 1945 (the end of World War II), be set for the definition of "historic property." Such an amendment would be unambiguous, clear and prevent a future backlog of permit reviews similar to what we are experiencing. This would address DLNR's concerns noted in their testimony while preserving the intent of the bill. NAIOP Hawaii looks forward to working together with stakeholders to find the right language to balance the concerns being addressed in this bill. Further, the inclusion of language to clarifying who will make the determination and a timeframe for the review is recommended to insure the process is efficient. Such language may ease concerns regarding further delay in the permit review process.

NAIOP appreciates the amendment to slightly narrow the scope of SHPD review to identify a solution to the significant backlog of much needed projects awaiting review. **NAIOP Hawaii is concerned that the current version of the measure would potentially increase the review times of permit reviews and nullify the intent of the measure.** Ultimately, HB 201 addresses a critical issue in the development of more affordable housing and critical infrastructure for Hawaii residents. NAIOP appreciates the Legislature's commitment to collaborating on this issue and look forward to working together.

Mahalo for your consideration,



Jennifer Camp, President
NAIOP Hawaii

HB-201-SD-1

Submitted on: 3/19/2023 5:28:50 PM

Testimony for JDC on 3/21/2023 9:40:00 AM

Submitted By	Organization	Testifier Position	Testify
Carolyn Weygan-Hildebrand	Individual	Oppose	Written Testimony Only

Comments:

Greetings!

I oppose as currently crafted to encourage the development of policy tools for justice and inclusivity in historic preservation.

In a previous hearing and an earlier version of this bill, the Historic Hawaii Foundation provided a list of properties of historical significance that could be impacted if the 100-year-old criteria were imposed. The list brought attention to possible structures historically significant to waves of immigrants, whether they came because of the plantation economy or as war refugees, and others. The list included the State Historic District of Ewa Plantation Town, where I live. The current version seeks to be comprehensive by providing two options of either (a) 100 years or (b) 50 years and additional qualifying criteria. As others have already explained, the ambiguous qualifying criteria for properties that are less than 100 years old can backfire.

This measure must acknowledge this ambiguity and allow for more policy tools to evolve. Many significant sites may not be as intact as other historically insignificant but well-maintained 50-year-old structures. That's because decades without recognition or preservation may have left many of these resources in altered conditions, disrepair, lacking architectural integrity, or even literally buried. What must be recognized is that those that have been marginalized in history and the teaching of history can be marginalized further by current processes of determining historical significance. There needs to be more support for communities and groups who have been historically marginalized in historic preservation processes.

Mahalo.



MAUI

CHAMBER OF COMMERCE

VOICE OF BUSINESS

HEARING BEFORE THE SENATE COMMITTEE ON
JUDICIARY
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 016
TUESDAY, MARCH 21, 2023 AT 9:40 A.M.

To The Honorable Senator Karl Rhoads, Chair
The Honorable Senator Mike Gabbard, Vice Chair
Members of the committee on Judiciary

SUPPORT HB201 HD2 SD1 RELATING TO HISTORIC PRESERVATION

The Maui Chamber of Commerce **SUPPORTS HB201 HD2 SD1** which expands the definition of "historic property" for purposes of the historic preservation program.

Buildings that are 50 years old were built in 1973. The Chamber agrees that "historic" buildings are those that were built at least 50 years ago and meet the criteria to be placed onto the Hawaii register of historic places or has important value to Native Hawaiians or other ethnic groups of the State due to associations with cultural practices once carried out, or still being 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. While we understand there may be exceptions to this, depending on the property, we feel those should be handled on an individual basis. We believe this bill may help decrease the number of reviews at SHPD and expedite the process for those that need it.

We appreciate that the definition of "historic property" has been amended to mean certain structures or sites that are over 50 years old and meet certain criteria.

For these reasons, we **support HB201 HD2 SD1**.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.