TO: Senator Jill N. Tokuda, Chair
Senator Ronald D. Couchi, Vice Chair
Committee on Ways & Means

FROM: Kiersten Faulkner, Executive Director
Historic Hawaii Foundation

Committee: Tuesday, April 7, 2015
1:35 p.m.
Conference Room 211

RE: HB 830, HD1, SD1, Relating to Residential Property

On behalf of Historic Hawaii Foundation (HHF), I am writing in strong opposition to HB 830, HD1, SD1. The bill would amend Hawai‘i Revised Statutes §6E create an exemption from historic preservation review affecting privately-owned single-family detached dwelling units that are not designated on or nominated for the state or national registers of historic places, or located in a historic district.

The State’s historic preservation program is designed to provide 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.

The proposed exemption would treat one property type—single family detached dwelling units—differently than all other property types, which is arbitrary and capricious. It would remove fair access to the state’s preservation program and its protection for historic properties based on factors unrelated to the inherent characteristics or merit of the historic property, thus unfairly excluding home owners from equal treatment under the law. Excluding residential structures from the preservation program will inevitably lead to harm and destruction of these historic resources.

Currently, the marker of 50 years of age provides a bright line for all property types, and further evaluation of a property’s significance, historic integrity and other elements of eligibility for the register of historic places occurs through the process outlined in Hawai‘i Administrative Rules. Properties that have the inherent characteristics that comprise historic significance are provided with the opportunity to participate in the historic preservation program, leading to greater understanding, appreciation and protection for the architectural, social, economic, and cultural heritage of Hawai‘i.

Historic Hawai‘i Foundation believes that excluding residential property from the definition of historic property is unnecessarily broad and harmful. Therefore, HHF opposes the bill and respectfully asks that it be held in committee without further action.

Proposed Amendments
Historic Hawai‘i Foundation feels that there are more appropriate mechanisms to ensure the protection of historic properties through focusing the department’s review and comment process on those projects which
have the potential to inflict harm on historic resources. HHF recommends that HB830, HD1, SD1 be amended to an SD2 that would include a mechanism to remove minor project types from the department’s review. Draft language is included below for your consideration:

6E-42 Review of proposed projects. (a) Except as provided in section 6E-42.5, before any agency or officer of the State or its political subdivisions approves any project involving a permit, license, certificate, land use change, subdivision, or other entitlement for use, which may affect historic property, aviation artifacts, or a burial site, the agency or office shall advise the department and prior to any approval allow the department an opportunity for review and comment on the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43, including those listed in the Hawaii register of historic places.

6E-42.5 Excluded activities for privately-owned, single-family detached dwelling units.

a) The department shall develop and annually publish a list of excluded activities to include categories of construction, alteration, disposition, improvement, repair or ordinary maintenance activities to privately-owned single-family detached dwelling units that do not represent a change in design, material, outer appearance or other characteristics which might otherwise qualify such structures for the Hawaii register of historic places.

b) Applications for proposed projects:
   i. On privately-owned single-family detached dwelling units that are not designated on or nominated for the Hawaii or National registers of historic places or located in a historic district; and
   ii. Solely involving activities on the list of excluded activities maintained by the department pursuant to subsection (a); shall be exempt from the requirements of section 6E-42.

c) The list of excluded activities maintained by the department under subsection (a) shall be provided to officers and agencies of the State and any of its political subdivisions responsible for the implementation of section 6E-42 on an annual basis.

d) The list required under subsection (a) shall be effective for a period of one year from final publication, notwithstanding chapter 91, provided that any proposed list shall be published on the website of the office of the lieutenant governor for a period of not less than thirty days, and that public notice of any such proposed list shall be mailed to all persons who have made a timely written request of the agency for advance notice of its list publication. All interested persons shall be given an opportunity to submit data, views, or arguments regarding the list, orally or in writing. The agency shall fully consider all written and oral submissions respecting the proposed list.

e) For the purposes of this section, “dwelling” means a building or portion thereof designed or used exclusively for residential occupancy and having all necessary facilities for permanent residency such as living, sleeping, cooking, eating and sanitation. A single-family detached dwelling is an individual, freestanding, unattached dwelling unit, typically built on a lot larger than the structure itself, resulting in an area surrounding the dwelling.
Conclusion
Since 1974, Historic Hawai‘i Foundation has been a statewide leader for historic preservation. Historic Hawai‘i Foundation’s members and numerous additional supporters work to preserve Hawaii’s unique architectural and cultural heritage and believe that historic preservation is an important element in the present and future quality of life, economic viability and environmental sustainability of the state.

Therefore, Historic Hawai‘i Foundation opposes HB 830, HD1, SD1 and respectfully asks the committee either to amend the bill as described above, or to hold the bill in committee.

We look forward to continuing to work with the legislature to address these concerns and issues. Thank you for the opportunity to comment.