
A BILL FOR AN ACT

RELATING TO HISTORIC PRESERVATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 6E-1, Hawaii Revised Statutes, is
2 amended to read as follows:
3 " ~~[+]~~ **§6E-1** ~~[+]~~ **Declaration of intent.** The Constitution of
4 the State of Hawaii recognizes the value of conserving and
5 developing the historic and cultural property within the State
6 for the public good. The legislature declares that the historic
7 and cultural heritage of the State is among its important assets
8 and that the rapid social and economic developments of
9 contemporary society threaten to destroy the remaining vestiges
10 of this heritage. The legislature further declares that it is
11 in the public interest to engage in a comprehensive program of
12 historic preservation at all levels of government to promote the
13 use and conservation of such property for the education,
14 inspiration, pleasure, and enrichment of its citizens. The
15 legislature further declares that it shall be the public policy
16 of this State to provide leadership in preserving, restoring,
17 and maintaining historic and cultural property, to ensure the
18 administration of such historic and cultural property in a



1 spirit of stewardship and trusteeship for future generations,
2 and to conduct activities, plans, and programs in a manner
3 consistent with the preservation and enhancement of historic and
4 cultural property. The legislature further declares that native
5 Hawaiian traditional prehistoric burials, buildings, structures,
6 objects, and sites are an important part of this State's public
7 trust and, as such, enjoy the protection of law to ensure their
8 proper disposition and freedom from unnecessary disturbance."

9 SECTION 2. Section 6E-3, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§6E-3 Historic preservation program.** There is
12 established within the department a division to administer a
13 comprehensive historic preservation program, which shall include
14 but not be limited to the following:

15 (1) Development of an on-going program of historical,
16 architectural, and archaeological research and
17 development, including surveys, excavations,
18 scientific recording, interpretation, and publications
19 on the State's historical and cultural resources;

20 (2) Acquisition of historic or cultural properties, real
21 or personal, in fee or in any lesser interest, by
22 gift, purchase, condemnation, devise, bequest, land



1 exchange, or other means; preservation, restoration,
2 administration, or transference of the property; and
3 the charging of reasonable admissions to that
4 property;

5 (3) Development of a statewide survey and inventory to
6 identify and document historic properties, aviation
7 artifacts, and burial sites, including all those owned
8 by the State and the counties;

9 (4) Preparation of information for the Hawaii register of
10 historic places and listing on the national register
11 of historic places;

12 (5) Preparation, review, and revisions of a state historic
13 preservation plan, including budget requirements and
14 land use recommendations;

15 (6) Application for and receipt of gifts, grants,
16 technical assistance, and other funding from public
17 and private sources for the purposes of this chapter;

18 (7) Provision of technical and financial assistance to the
19 counties and public and private agencies involved in
20 historic preservation activities;



- 1 (8) Coordination of activities of the counties in
2 accordance with the state plan for historic
3 preservation;
- 4 (9) Stimulation of public interest in historic
5 preservation, including the development and
6 implementation of interpretive programs for historic
7 properties listed on or eligible for the Hawaii
8 register of historic places;
- 9 (10) Coordination of the evaluation and management of
10 burial sites as provided in section 6E-43;
- 11 (11) Acquisition of burial sites in fee or in any lesser
12 interest, by gift, purchase, condemnation, devise,
13 bequest, land exchange, or other means, to be held in
14 the public trust[+] of the State;
- 15 (12) Submittal of an annual report to the governor and
16 legislature detailing the accomplishments of the year,
17 recommendations for changes in the state plan or
18 future programs relating to historic preservation, and
19 an accounting of all income, expenditures, and the
20 fund balance of the Hawaii historic preservation
21 special fund;



- 1 (13) Regulation of archaeological activities throughout the
- 2 State;
- 3 (14) Employment of sufficient professional and technical
- 4 staff for the purposes of this chapter which may be in
- 5 accordance with chapter 76;
- 6 (15) The charging of fees to at least partially defray the
- 7 costs of administering sections 6E-3(13), 6E-8, and
- 8 6E-42 of this chapter;
- 9 (16) Adoption of rules in accordance with chapter 91,
- 10 necessary to carry out the purposes of this chapter;
- 11 and
- 12 (17) Development and adoption, in consultation with the
- 13 office of Hawaiian affairs native historic
- 14 preservation council, of rules governing permits for
- 15 access by native Hawaiians and Hawaiians to cultural,
- 16 historic, and pre-contact sites and monuments."

17 SECTION 3. Section 6E-4, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "[-]§6E-4[-] **Administration.** All state historic areas and
20 buildings surplus to the operations of the department of
21 accounting and general services shall be transferred by
22 executive order to the department[-] and held in trust, except



1 as provided in section 6E-33. All state projects and programs
2 relating to historic preservation shall come under the authority
3 of the department."

4 SECTION 4. Section 6E-5, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[+]§6E-5[+] **State historic preservation officer.** (a)

7 The governor shall appoint a state historic preservation
8 officer, and may appoint the officer without regard to chapter
9 76, who shall be responsible for the comprehensive historic
10 preservation program and who shall be the state liaison officer
11 for the conduct of relations with the federal government and the
12 respective states with regard to matters of historic
13 preservation.

14 (b) The state historic preservation officer shall ~~be~~
15 ~~appointed on the basis of professional competence and experience~~
16 ~~in the field of historic preservation and have]:~~

17 (1) Be a qualified historic preservation professional in
18 architecture, architectural history, archaeology,
19 history, or a closely related field who meets the
20 standards developed by the Secretary of the Interior;
21 and



1 (2) Have professional experience working in historic
2 preservation in Hawaii.

3 (c) The state historic preservation officer shall be
4 placed in the department for the purposes of the state program."

5 SECTION 5. Section 6E-7, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) All historic property located on lands or under
8 waters owned or controlled by the State shall be [~~the property~~
9 ~~e]~~ a part of the public trust res of the State. The control
10 and management of the historic property shall be vested in the
11 department."

12 SECTION 6. Section 6E-8, Hawaii Revised Statutes, is
13 amended by amending subsections (a) and (b) to read as follows:

14 "(a) Before any agency or officer of the State or its
15 political subdivisions commences any project [~~which~~] that may
16 affect historic property, aviation artifact, [~~e]~~ a burial site,
17 or the public trust therein, the agency or officer shall advise
18 the department and allow the department an opportunity for
19 review of the effect of the proposed project on historic
20 properties, aviation artifacts, [~~e]~~ burial sites, or the public
21 trust therein, consistent with section 6E-43, especially those
22 listed on the Hawaii register of historic places. The proposed



1 project shall not be commenced, or in the event it has already
2 begun, continued, until the department shall have given its
3 written concurrence.

4 The department is to provide written concurrence or non-
5 concurrence within ninety days after the filing of a request
6 with the department. The agency or officer seeking to proceed
7 with the project, or any person, may appeal the department's
8 concurrence or non-concurrence to the Hawaii historic places
9 review board. An agency, officer, or other person who is
10 dissatisfied with the decision of the review board may apply to
11 the governor who may request the Hawaii advisory council on
12 historic preservation to report or who may take action as the
13 governor deems best in overruling or sustaining the department.

14 (b) The department of Hawaiian home lands, prior to any
15 proposed project relating to lands under its jurisdiction, shall
16 consult with the department regarding the effect of the project
17 upon historic property or a burial site[-] or the public trust
18 therein."

19 SECTION 7. Section 6E-11, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) It shall be a civil and administrative violation for
22 any person to take, appropriate, excavate, injure, destroy, or



1 alter any historic property or aviation artifact located upon
2 the private lands of any owner thereof without the owner's
3 written permission and department approval being first obtained.
4 It shall be a civil and administrative violation for any person
5 to take, appropriate, excavate, injure, destroy, or alter any
6 historic property or aviation artifact located upon lands owned
7 or controlled by the State or any of its political subdivisions,
8 except as permitted by the department, or to knowingly violate
9 the conditions set forth in an approved mitigation plan that
10 includes monitoring and preservation plans."

11 SECTION 8. Section 6E-42, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) Before any agency or officer of the State or its
14 political subdivisions approves any project involving a permit,
15 license, certificate, land use change, subdivision, or other
16 entitlement for use, [~~which may affect historic property,~~
17 ~~aviation artifacts, or a burial site,~~] the agency or office
18 shall advise the department and [~~prior to any approval allow the~~
19 ~~department an opportunity for review and comment on the effect~~
20 ~~of the proposed project on historic properties, aviation~~
21 ~~artifacts, or burial sites, consistent with section 6E-43,~~
22 ~~including those listed in the Hawaii register of historic~~



1 ~~places.]~~ the department shall determine whether the project
2 adversely affects historic properties, aviation artifacts, or
3 burial sites. No project may be approved unless the department
4 determines that the project will not adversely affect historic
5 properties, aviation artifacts, or burial sites. If the
6 department determines that a project will not adversely affect
7 any historic properties only if certain conditions are met,
8 those conditions shall be conditions of approval for the project
9 to proceed."

10 SECTION 9. Section 6E-43, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) All burial sites are significant and shall be
13 preserved in place until compliance with this section is met,
14 except as provided in section 6E-43.6. The appropriate island
15 burial council shall determine in a written decision whether
16 preservation in place or relocation of previously identified
17 native Hawaiian burial sites is warranted, following criteria
18 which shall include recognition that burial sites of high
19 preservation value, such as areas with a concentration of
20 skeletal remains, or prehistoric or historic burials associated
21 with important individuals and events, or areas that are within
22 a context of historic properties, or have known lineal



1 descendants, shall receive greater consideration for
2 preservation in place. The criteria shall be developed by the
3 department in consultation with the councils, office of Hawaiian
4 affairs, representatives of development and large property owner
5 interests, and appropriate Hawaiian organizations, such as Hui
6 Malama I Na Kupuna O Hawai'i Nei, through rules adopted pursuant
7 to chapter 91. A council's determination shall be rendered
8 within forty-five days of referral by the department unless
9 otherwise extended by agreement between the landowner and the
10 department."

11 SECTION 10. Section 6E-43.6, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§6E-43.6 Inadvertent discovery of burial sites.** (a) In
14 the event human skeletal remains are inadvertently discovered,
15 any activity in the immediate area that could damage the remains
16 or the potential historic site shall cease until the
17 requirements of subsections (b) to (d) have been met.

18 (b) The discovery shall be reported as soon as possible to
19 the department, the appropriate medical examiner or coroner, and
20 the appropriate police department. As soon as practicable, the
21 department shall notify the appropriate council and the office
22 of Hawaiian affairs.



1 (c) After notification of the discovery of multiple
2 skeletons, the following shall be done [~~within two working days,~~
3 ~~if on Oahu, and three working days, if in other council~~
4 ~~jurisdictions~~]:

5 (1) A representative of the medical examiner or coroner's
6 office and a qualified archaeologist shall examine the
7 remains to determine jurisdiction. If the remains are
8 the responsibility of the medical examiner or coroner,
9 the department's involvement shall end. If the
10 remains are historic or prehistoric burials, then the
11 remainder of this section shall apply;

12 (2) The department, within one week of notification of the
13 discovery, shall gather sufficient information,
14 including oral tradition, to document the nature of
15 the burial context and determine in writing
16 appropriate treatment of the remains. Members of the
17 appropriate council shall be allowed to oversee the
18 on-site examination and, if warranted, removal; and

19 (3) If removal of the remains is warranted, based on
20 criteria developed by the department, in consultation
21 with the councils, office of Hawaiian affairs,
22 representatives of development and large property



1 owner interests, and appropriate Hawaiian
2 organizations, such as Hui Malama I Na Kupuna O
3 Hawai`i Nei, through rules adopted pursuant to chapter
4 91, the removal of the remains shall be overseen by a
5 qualified archaeologist and a mitigation plan shall be
6 prepared by the department or with the concurrence of
7 the department~~[-]~~, which shall require the landowner
8 or developer to commit to a date and place certain for
9 reinterment, and cover the costs of reinterment.

10 ~~[(d) In cases involving the discovery of a single~~
11 ~~skeleton, the requirements of subsection (c) shall be fulfilled~~
12 ~~in one working day if on Oahu, and two working days if in other~~
13 ~~council jurisdictions.~~

14 ~~(e)]~~ (d) The mitigation plan developed by or with the
15 concurrence of the department pursuant to subsection (c)(3)
16 shall be carried out in accordance with the following:

- 17 (1) In discoveries related to development where land
18 alteration project activities exist, the landowner,
19 permittee, or developer shall be responsible for the
20 execution of the mitigation plan including relocation
21 of remains. Justifiable delays resulting from the



1 discovery of burials shall not count against any
2 contractor's completion date agreement;

3 (2) Project activities shall resume once necessary
4 archaeological excavations provided in the mitigation
5 plan have been completed;

6 (3) In nonproject contexts, the department shall be
7 responsible for the execution of the mitigation plan
8 and the relocation of remains; and

9 (4) The department shall verify the successful execution
10 of the mitigation plan.

11 [~~(f)~~] (e) In cases where remains are archaeologically
12 removed, the department shall determine the place of relocation,
13 after consultation with the appropriate council, affected
14 property owners, representatives of the relevant ethnic group,
15 and any identified lineal descendants, as appropriate.

16 Relocation shall conform with requirements imposed by the
17 department of health, and may be accompanied by traditional
18 ceremonies, as determined by the lineal descendants, or, if no
19 lineal descendants are identified, the appropriate council or
20 representatives of the relevant ethnic group that the department
21 deems appropriate. Specific or special reinterment requests
22 from lineal or cultural descendants may be accommodated provided



1 that the additional expenses incurred are paid by the affected
2 descendants.

3 [~~g~~] (f) If human skeletal remains are discovered in the
4 course of land development or land alteration activities to
5 which section 6E-42 applies, and for which the required approval
6 was not obtained, all activity in the immediate area that could
7 damage the remains or the potential historic site shall cease,
8 and treatment of the remains shall be allowed only in compliance
9 with section 6E-43."

10 SECTION 11. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 12. This Act shall take effect upon its approval.

13

INTRODUCED BY:

Mel Carnel

Tony V
AM

Karen Curran

Al. De
Mauf B. Lee

Paul
Syle B. Berg

Thomas
Ray J. Hatcher

Cindy Evans

Tom Brown

Handwritten signature



Report Title:

Historic Preservation

Description:

Adds to the State's public trust native Hawaiian traditional prehistoric burials, buildings, structures, objects, and sites.

