

JAN 17 2020

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# A BILL FOR AN ACT

RELATING TO HISTORIC PRESERVATION.

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

1           SECTION 1. The legislature finds that iwi kupuna and wahi  
2 kupuna are treasured among the Native Hawaiian community as  
3 fundamental parts of its history and identity. Native Hawaiian  
4 burial sites and historic properties are physical vestiges of  
5 Native Hawaiian heritage and their continuing presence is vital  
6 to the perpetuation of Native Hawaiian culture and the unique  
7 mana and character of Hawaii.

8           The legislature has acknowledged the deep significance of  
9 these irreplaceable historic resources and has developed prudent  
10 policies to protect iwi kupuna and historic properties from  
11 inadvertent destruction as a result of development. For  
12 example, state historic preservation laws specifically provide a  
13 process by which state and county approvals, including county  
14 grading- and construction-related permit applications, can be  
15 vetted for potential impacts to iwi kupuna and other  
16 archaeological sites and historic properties.



1           Unfortunately, these protections and procedures are  
2 undermined when landowners and developers fail to apply for  
3 required permits for grading- and construction-related work,  
4 thereby circumventing the historic preservation review process.  
5 Due to the lack of historic preservation review, it is often  
6 impossible to know whether or how many significant historic  
7 resources have been destroyed in such instances. Moreover, ex  
8 post facto enforcement of laws prohibiting the disturbance or  
9 destruction of iwi kupuna and historic sites can be difficult,  
10 if not impossible, due to the loss of evidence resulting from  
11 such unpermitted activity.

12           Accordingly, the purpose of this Act is to better protect  
13 burial sites and historic properties by facilitating stronger,  
14 more effective state enforcement of county permitting processes  
15 that involve historic preservation review and other historic  
16 preservation review requirements by:

17           (1) Requiring the department of land and natural resources  
18           to establish a citizen complaint intake process and to  
19           prepare informational materials, including a worksite  
20           poster, related to that process for dissemination to  
21           the public and posting at construction worksites;



- 1           (2) Clarifying that commencing or continuing any project  
2           or any phase of any phased project without written  
3           concurrence from the department of land and natural  
4           resources as required pursuant to section 6E-8, Hawaii  
5           Revised Statutes, shall be a violation of chapter 6E,  
6           Hawaii Revised Statutes;
- 7           (3) Authorizing the state historic preservation division  
8           of the department of land and natural resources to  
9           issue an order to stop work immediately where a  
10          violation has occurred, until certain conditions have  
11          been met;
- 12          (4) Providing that any violators shall be responsible for  
13          the costs of any site inspection and any recommended  
14          mitigation or restoration measures;
- 15          (5) Increasing the maximum civil and administrative fines  
16          for violations of historic preservation review  
17          requirements;
- 18          (6) Requiring the department to maintain and publish a  
19          list of persons and entities that violate chapter 6E,  
20          Hawaii Revised Statutes;



- 1           (7) Authorizing moneys in the historic preservation
- 2                   special fund to be expended for the costs of
- 3                   enforcement of chapter 6E; and
- 4           (8) Clarifying that commencing or continuing any project
- 5                   or any phase of any phased project without written
- 6                   concurrence from an agency or office that initiated
- 7                   the historic preservation review process with the
- 8                   department of land and natural resources as required
- 9                   pursuant to section 6E-42, Hawaii Revised Statutes,
- 10                  shall be a violation of chapter 6E, Hawaii Revised
- 11                  Statutes.

12           SECTION 2. Chapter 6E, Hawaii Revised Statutes, is amended  
13 by adding a new section to part I be appropriately designated  
14 and to read as follows:

15           "§6E-        Citizen complaint intake hotline. (a) The  
16 department shall establish an intake hotline by which citizens  
17 may confidentially report via telephone or electronic  
18 communication any alleged violation of this chapter.

19           (b) The department shall develop and distribute to the  
20 public any appropriate informational materials, including a  
21 worksite poster that explains:

1        (1) The statutory protections for burials, historic sites,  
2                    and archaeological resources; and

3        (2) Information on how complaints to the citizen complaint  
4                    intake hotline may be submitted.

5        (c) Beginning on July 1, 2021, a copy of the department's  
6        informational worksite poster developed pursuant to subsection  
7        (b) shall be prominently posted for viewing by construction  
8        personnel and the public at all worksites where ground  
9        disturbing construction activities are taking place."

10        SECTION 3. Section 6E-8, Hawaii Revised Statutes, is  
11        amended by amending subsection (a) to read as follows:

12        "(a) Before any agency or officer of the State or its  
13        political subdivisions commences any project which may affect  
14        historic property, aviation artifact, or a burial site, the  
15        agency or officer shall advise the department and allow the  
16        department an opportunity for review of the effect of the  
17        proposed project on historic properties, aviation artifacts, or  
18        burial sites, consistent with section 6E-43, especially those  
19        listed on the Hawaii register of historic places. The proposed  
20        project shall not be commenced, or if it has already begun, the  
21        proposed project shall not be continued, until the department



1 has given its written concurrence[-]; provided that commencing  
2 or continuing any project or any phase of any phased project  
3 without a written concurrence from the department as required in  
4 this subsection shall be a violation of this chapter. If:

- 5 (1) The proposed project consists of corridors or large  
6 land areas;
- 7 (2) Access to properties is restricted; or
- 8 (3) Circumstances dictate that construction be done in  
9 stages,

10 the department may give its written concurrence based on a  
11 phased review of the project; provided that there shall be a  
12 programmatic agreement between the department and the project  
13 applicant that identifies each phase and the estimated timelines  
14 for each phase.

15 The department shall provide written concurrence or non-  
16 concurrence within ninety days after the filing of a request  
17 with the department. The agency or officer seeking to proceed  
18 with the project, or any person, may appeal the department's  
19 concurrence or non-concurrence to the Hawaii historic places  
20 review board. An agency, officer, or other person who is  
21 dissatisfied with the decision of the review board may apply to



1 the governor, who may take action as the governor deems best in  
2 overruling or sustaining the department."

3 SECTION 4. Section 6E-10.5, Hawaii Revised Statutes, is  
4 amended by amending subsections (a) and (b) to read as follows:

5 "(a) If the board of land and natural resources determines  
6 that any person has violated or is violating this chapter, or  
7 any rule adopted pursuant to this chapter, the board shall serve  
8 written notice by certified mail or personal service upon the  
9 alleged violator or violators specifying the alleged violation  
10 and may include with the notice:

11 (1) An order to stop all work in the parcel containing the  
12 site of the violation;

13 [+1+] (2) An order specifying a reasonable time during  
14 which that person shall be required to take [~~such~~] any  
15 measures [~~as~~] that may be necessary to correct the  
16 violation and to give periodic progress reports;

17 [+2+] (3) An order imposing any administrative penalties  
18 provided in section 6E-11.6; [~~and~~] or

19 [+3+] (4) An order that requires that the alleged violator  
20 or violators appear before the board for a hearing at



1 a time and place specified in the notice or to be set  
2 later and answer the charges complained of.

3 (b) If the board determines that any person is continuing  
4 to violate this chapter or any rule adopted pursuant to this  
5 chapter after having been served notice of violation, the board  
6 shall serve written notice by certified mail or personal service  
7 upon the alleged violator or violators specifying the alleged  
8 violation. With the notice, the board:

9 (1) Shall order the alleged violator or violators to:

10 (A) Cease and desist from the activities that violate  
11 this chapter or any rule adopted pursuant to this  
12 chapter; and

13 (B) Stop work in any parcel or parcels where  
14 unauthorized or unapproved work has commenced or  
15 continued, until the board accepts the written  
16 schedule required by this subsection;

17 [~~1~~] (2) Shall order the alleged violator or violators to  
18 submit a written schedule within thirty days  
19 specifying the measures to be taken and the time  
20 within which the measures shall be taken to bring that  
21 person into compliance with this chapter or any rule





1           adopted thereunder[-]; provided that for violations  
2           involving the commencement or continuation of work  
3           without a written concurrence from the department as  
4           required by section 6E-8(a) or an approval from an  
5           agency or office that initiated the historic  
6           preservation review process as required by section  
7           6E-42(a), the written schedule shall include findings  
8           and a timeline of mitigation or restoration measures  
9           for any impacted or potentially impacted burial site  
10           or historic property as recommended by department  
11           staff or an archaeologist approved by the department  
12           who has conducted an inspection of the site; provided  
13           further that any violator shall be responsible for all  
14           costs of any site inspection. The board shall accept  
15           or modify the submitted schedule within sixty days of  
16           receipt of the schedule. Any schedule not acted upon  
17           after sixty days of receipt by the board shall be  
18           deemed accepted by the board;

19           ~~[(2) Shall order the alleged violator or violators to cease~~  
20           ~~and desist from the activities that violate this~~  
21           ~~chapter or any rule adopted thereunder, if that person~~



1           ~~does not submit a written schedule to the board within~~  
2           ~~thirty days. This order shall remain in effect until~~  
3           ~~the board accepts the written schedule;]~~

4           (3) May impose penalties as provided in section 6E-11.6;  
5           and

6           (4) May order the alleged violator or violators to appear  
7           before the board for a hearing to answer the charges  
8           issued, at a time and place specified in the notice or  
9           otherwise set by the board."

10          SECTION 5. Section 6E-11, Hawaii Revised Statutes, is  
11          amended by amending subsections (f) and (g) to read as follows:

12          "(f) Any person who violates this section shall be fined  
13          not more than [~~\$10,000~~] \$25,000 for each separate violation. If  
14          the violator directly or indirectly has caused the loss of, or  
15          damage to, any historic property or burial site, the violator  
16          shall be fined an additional amount determined by the  
17          environmental court or an administrative adjudicative authority  
18          to be equivalent to the value of the lost or damaged historic  
19          property or burial site. Each day of continued violation of  
20          this provision shall constitute a distinct and separate  
21          violation for which the violator may be punished. Any land



1 owner or developer responsible for any project where violations  
2 are found to have occurred shall execute any mitigation and  
3 preservation measures ordered by the department and shall be  
4 jointly and severally liable for any costs of mitigation and  
5 preservation. Equipment used by a violator for the taking,  
6 appropriation, excavation, injury, destruction, or alteration of  
7 any historic property or burial site, or for the transportation  
8 of the violator to or from the historic property or burial site,  
9 shall be subject to seizure and disposition by the State without  
10 compensation to its owner or owners.

11 (g) Any person who [~~knowingly~~] violates this chapter with  
12 respect to burial sites shall also be prohibited from  
13 participating in the construction of any state or county funded  
14 project for ten years. The department shall maintain a list of  
15 persons and entities that have violated the provisions of this  
16 chapter regarding burial sites during the preceding ten years;  
17 provided that this list shall include the date and location of  
18 each violation. The department shall make this list available  
19 to the public and transmit this list annually to each county  
20 department of public works and each department of the State."



1 SECTION 6. Section 6E-11.5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "~~§6E-11.5~~ **Civil penalties.** Except as provided in section  
4 6E-11, any person who violates this chapter, or any rule adopted  
5 pursuant to this chapter shall be fined not less than \$500 nor  
6 more than [~~\$10,000~~] \$25,000 for each separate violation. Each  
7 day of each violation constitutes a separate violation."

8 SECTION 7. Section 6E-16, Hawaii Revised Statutes, is  
9 amended by amending subsection (b) to read as follows:

10 "(b) Subject to legislative authorization, the department  
11 may expend moneys from the fund[+] to:

12 (1) [~~For~~] Finance permanent and temporary staff positions;

13 (2) [~~To replenish~~] Replenish goods;

14 (3) [~~To produce~~] Produce public information materials;

15 (4) [~~To provide~~] Provide financial assistance to public

16 agencies and private agencies in accordance with

17 chapter 42F involved in historic preservation

18 activities other than those covered by section 6E-9;

19 [~~and~~]

20 (5) [~~To cover~~] Cover administrative and operational costs

21 of the historic preservation program[-]; and



1       (6) Cover administrative and operational costs incurred  
2       for enforcement of this chapter."

3       SECTION 8. Section 6E-42, Hawaii Revised Statutes, is  
4 amended to read as follows:

5       "**§6E-42 Review of proposed projects.** (a) Except as  
6 provided in section 6E-42.2, before any agency or officer of the  
7 State or its political subdivisions approves any project  
8 involving a permit, license, certificate, land use change,  
9 subdivision, or other entitlement for use, which may affect  
10 historic property, aviation artifacts, or a burial site, the  
11 agency or office shall advise the department and prior to any  
12 approval allow the department an opportunity for review and  
13 comment on the effect of the proposed project on historic  
14 properties, aviation artifacts, or burial sites, consistent with  
15 section 6E-43, including those listed in the Hawaii register of  
16 historic places. If:

- 17       (1) The proposed project consists of corridors or large  
18       land areas;
- 19       (2) Access to properties is restricted; or
- 20       (3) Circumstances dictate that construction be done in  
21       stages,



1 the department's review and comment may be based on a phased  
2 review of the project; provided that there shall be a  
3 programmatic agreement between the department and the project  
4 applicant that identifies each phase and the estimated timelines  
5 for each phase.

6 (b) The department shall inform the public of any project  
7 proposals submitted to it under this section that are not  
8 otherwise subject to the requirement of a public hearing or  
9 other public notification.

10 (c) Commencing or continuing any project or any phase of  
11 any phased project without first obtaining an approval from an  
12 agency or office that initiated the historic preservation review  
13 process with the department pursuant to subsection (a) shall be  
14 a violation of this chapter.

15 [~~(e)~~] (d) The department shall adopt rules in accordance  
16 with chapter 91 to implement this section."

17 SECTION 9. This Act does not affect rights and duties that  
18 matured, penalties that were incurred, and proceedings that were  
19 begun before its effective date.

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





# S.B. NO. 2194

**Report Title:**

Office of Hawaiian Affairs (OHA) Package; DLNR; Historic Preservation; Iwi Kupuna; Construction Worksites; Protection

**Description:**

Requires the Department of Land and Natural Resources to establish a citizen complaint intake process and prepare related informational material for dissemination and posting. Clarifies that failure to comply with certain advisement or approval processes shall constitute a violation of chapter 6E, Hawaii Revised Statutes. Authorizes the State Historic Preservation Division to issue an order to stop work immediately in the event of a failure to comply with certain advisement or approval processes. Makes any violator responsible for the costs of any site inspection and any recommended mitigation or restoration measures. Increases the maximum civil and administrative fines for violations of historic preservation review requirements. Requires the Department of Land and Natural Resources to maintain and publish a list of certain violators. Authorizes the expenditure of moneys in the historic preservation special fund for certain costs relating to the enforcement of chapter 6E, Hawaii Revised Statutes.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

