

A Bill for an Act Relating to Historic Preservation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. **Purpose.** The purpose of this Act is to restate the law replaced by this Act and to amend the Hawaii Revised Statutes by restating the law in a new chapter.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER HISTORIC PRESERVATION

PART I. HISTORIC PRESERVATION PROGRAM

Sec. -1 Declaration of intent. The Constitution of the State of Hawaii recognizes the value of conserving and developing the historic and cultural property within the State for the public good. The legislature declares that the historic and cultural heritage of the State is among its important assets and that the rapid social and economic developments of contemporary society threaten to destroy the remaining vestiges of this heritage. The legislature further declares 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. The legislature further declares that it shall be the public policy of this State to provide leadership in preserving, restoring, and maintaining historic and cultural property, to ensure the administration of such historic and cultural property in a spirit of stewardship and trusteeship for future generations, and to conduct activities, plans, and programs in a manner consistent with the preservation and enhancement of historic and cultural property.

Sec. -2 Definitions. As used in this chapter:

- (1) “Department” means the department of land and natural resources.
- (2) “Historic property” means any building, structure, object, district, area, or site, including underwater site, that is significant in the history, architecture, archaeology, or culture of this State, its communities or the nation.
- (3) “Historic preservation” means the research, protection, restoration, rehabilitation, and interpretation of buildings, structures, objects,

districts, areas, and sites, including underwater sites, significant to the history, architecture, archaeology, or culture of this State, its communities, or the nation.

- (4) "Project" means any activity directly undertaken by the State or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the State or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the State or its political subdivisions.
- (5) "State historic preservation officer" means that officer appointed by the governor as provided in section -5.

Sec. -3 Historic preservation program. The department shall establish a comprehensive historic preservation program which shall include, but not be limited to the following:

- (1) Development of an on-going program of historical, architectural, and archaeological research and development, including surveys, excavations, scientific recording, interpretation, and publications on the State's historical and cultural resources.
- (2) Acquisition of historic or cultural properties, real or personal, in fee or in any lesser interest, by gift, purchase, condemnation, devise, or bequest; preservation, restoration, administration, or transference of such property; and the charging of reasonable admissions to such property.
- (3) Development of a statewide survey to identify and document historic property, including all those owned by the State and its political subdivisions.
- (4) Preparation of information for the Hawaii register of historic places and for listing on the national register of historic places.
- (5) Preparation, review, and revisions of a state historic preservation plan, including budget requirements and land use recommendations.
- (6) Application for and receipt of gifts, grants, technical assistance, and other funding from public and private sources for the purposes of this chapter.
- (7) Provision of technical and financial assistance to the political subdivisions of the State, public and private agencies involved in historic preservation activities.
- (8) Coordination of activities of the political subdivisions of the State in accordance with the state plan for historic preservation.
- (9) Stimulation of public interest in historic preservation, including the development and implementation of interpretive programs for historic properties listed on the Hawaii register of historic places.
- (10) Submittal of an annual report to the governor and the legislature detailing the accomplishments of the year and the recommendations for changes in the state plan or future programs relating to historic preservation.
- (11) Employment of sufficient professional and technical staff for the

purpose of this chapter without regard to chapters 76 and 77.

- (12) Promulgation of rules in accordance with chapter 91, necessary to carry out the purposes of this chapter.

Sec. -4 Administration. All state historic areas and buildings surplus to the operations of the department of accounting and general services shall be transferred by executive order to the department, except as provided in section -73. All state projects and programs relating to historic preservation shall come under the authority of the department.

Sec. -5 State historic preservation officer. The governor shall appoint a state historic preservation officer, and may appoint the officer without regard to chapters 76 and 77, who shall be responsible for the comprehensive historic preservation program and who shall be the state liaison officer for the conduct of relations with the federal government and the respective states with regard to matters of historic preservation. The state historic preservation officer shall be appointed on the basis of professional competence and experience in the field of historic preservation and shall be placed in the department for the purposes of the state program.

Sec. -6 Depositories for certain specimens and objects. The department shall serve as or shall determine the depository for all field notes, photographs, negatives, maps, artifacts, or other materials generated or recovered through historic preservation projects supported in whole or in part by the State or taking place on state lands.

Any specimen and object of natural and of botanical, ethnological, architectural, historical, or archaeological value or interest, and any book, treatise, or pamphlet relating thereto in the possession of the University of Hawaii, or any other state agency or its political subdivisions, if and when the same is no longer needed for scientific investigation, for study, or for any other purpose, may, at the request of the Bishop Museum or other qualified museums in this State, be transferred and delivered by and with the consent of such department, bureau, or board having possession thereof, to the Bishop Museum or other qualified museum, or exchanged with such museum, and whereupon, the title shall become vested in such museum and shall be held by them; provided, that the specimens and objects so transferred are made available at all reasonable times by the museum for study and examination by the officials of the university of such department, bureau, or board and to qualified scholars.

Sec. -7 State title to historic property on state lands. The State reserves to itself the exclusive right and privilege of ownership and control over historic property located on lands or under waters owned or controlled by the State. Standards of control over all historic property located on lands owned by the State shall be vested in the department and the department may issue permits for activities relating to the historic property, and may establish restrictions and covenants controlling permitted activities for the purposes of historic preservation.

The State shall not transfer any historic property under its jurisdiction without the concurrence of the department. The State shall retain the rights to, and control over, all historic property located on lands leased to others. In all

cases where property is leased or conveyed, it shall be subjected by covenant or otherwise to such rights of access, public visitation, and other conditions or restrictions of operation, maintenance, restoration, and repair as the department may prescribe to accomplish the purposes of historic preservation.

Sec. -8 Review of effect of proposed state projects. (a) Before any agency or officer of the State or its political subdivisions commences any project which may affect historic property, the agency or officer shall advise the department and allow the department an opportunity for review of the effect of the proposed project on historic properties, especially those listed on the Hawaii register of historic places. The proposed project shall not be commenced; or, in the event it has already begun, continued, until the department shall have given its written concurrence.

If the concurrence of the department is not obtained within ninety days after the filing of a request with the department, the agency or officer seeking to proceed with such project may apply to the governor who may request the Hawaii advisory council on historic preservation to report or who may take such action as he deems best in overruling or sustaining the department.

(b) The department of Hawaiian home lands prior to any project relating to lands under its jurisdiction, shall consult with the department regarding the effect of any proposed project upon historic property.

(c) The State, its political subdivisions, agencies, and officers shall report to the department the finding of any historic property during any project and shall cooperate with the department in the investigation, recording, preservation, and salvage of such property.

Sec. -9 Investigation, recording, preservation, and salvage; appropriations. Whenever there is any project by any government agency on lands which are owned or controlled by the State or its political subdivisions and which have historic property or value, one per cent of the appropriations for the project or so much thereof as may be necessary, shall be expended for the investigation, recording, preservation, and salvage of such historical property or value. Nothing in this section shall be construed to limit the expenditure of more than one per cent of the project appropriations for the purposes herein stated should an additional amount be necessary and mutually agreed to by the department and the government agency planning the construction or improvement.

Sec. -10 Privately owned historic property. (a) Before any construction, alteration, disposition or improvement of any nature, by, for, or permitted by a private landowner may be commenced which will affect an historic property on the Hawaii register of historic places, the landowner shall notify the department of the construction, alteration, disposition, or improvement of any nature and allow the department opportunity for review of the effect of the proposed construction, alteration, disposition, or improvement of any nature on the historic property. The proposed construction, alteration, disposition, or improvement of any nature shall not be commenced, or in the event it has already begun, continue, until the department shall have given its concurrence or ninety days have elapsed. Within ninety days after notification, the department shall

either commence condemnation proceedings for the purchase of the historic property, permit the owner to proceed with his construction, alteration, or improvement, or undertake or permit the investigation, recording, preservation, and salvage of any historical information deemed necessary to preserve Hawaiian history, by any qualified agency for this purpose.

(b) Nothing in this section shall be construed to prevent the ordinary maintenance or repair of any feature in or on an historic property that does not involve a change in design, material, or outer appearance or change in those characteristics which qualified the historic property for entry onto the Hawaii register of historic places.

(c) Any person, natural or corporate, who violates the provisions of this section shall be fined not more than \$1,000, and each day of continued violation shall constitute a distinct and separate offense under this section for which the offender may be punished.

(d) If funds for the acquisition of needed property are not available, the governor may, upon the recommendation of the department allocate from the contingency fund an amount sufficient to acquire an option on the property or for the immediate acquisition, preservation, restoration, or operation of the property.

(e) The department may enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. Whenever any member of the department duly authorized to conduct investigations and surveys of an historic or cultural nature determines that entry onto private lands for examination or survey of historic or cultural finding is required, the department shall give written notice of the finding to the owner or occupant of such property at least five days prior to entry. If entry is refused, the member may make a complaint to the district court in the circuit in which such land is located. The district court may thereupon issue a warrant, directed to any police officer of the circuit, commanding him to take sufficient aid, and, being accompanied by a member of the department, between the hours of sunrise and sunset, allow the member of the department to examine or survey the historic or cultural property.

Sec. -11 Penalties. It shall be unlawful for any person, natural or corporate, to take, appropriate, excavate, injure, destroy, or alter any historic property located upon the private lands of any owner thereof without his written permission being first obtained. It shall be unlawful for any person, natural or corporate, to take, appropriate, excavate, injure, destroy, or alter any historic property located upon lands owned or controlled by the State or any of its political subdivisions except as permitted by the department.

And person who violates this section shall be fined not more than \$1,000, for each separate offense. If the violator directly or indirectly has caused the loss of, or damage to , historic property, the violator shall be fined an additional amount determined by the court to be equivalent to the value of the lost or damaged historic property. Each day of continued violation of this provision shall constitute a distinct and separate offense for which the offender may be punished. Equipment used by a violator for the taking, appropriation, excavation, injury, destruction, or alteration of historic property, or for the

transportation of the violator to or from the historic property, shall be subject to seizure and disposition by the State without compensation to its owner or owners.

Sec. -12 Reproductions, forgeries, and illegal sales. It shall be unlawful to reproduce, retouch, rework, or forge any historic object and to represent it or offer it for trade or sale as an original and genuine object. It shall be unlawful for any person to offer for sale or exchange any historic object with the knowledge that it has been collected or excavated in violation of any of the terms of this chapter. Any person violating this section shall be fined no more than \$1,000. Each object offered for sale or trade in violation of this section shall constitute a distinct and separate offense for which the offender may be punished.

Sec. -13 Enforcement. (a) In addition to, and without limiting the other powers of the attorney general and without altering or waiving any criminal penalty provisions of this chapter, the attorney general shall have the power to bring an action in the name of the State in any court of competent jurisdiction for restraining orders and injunctive relief to restrain and enjoin violations or threatened violations of this chapter.

(b) Any person may maintain an action in the trial court having jurisdiction where the alleged violation occurred or is likely to occur for restraining orders or injunctive relief against the State, its political subdivisions, or any person upon a showing of irreparable injury, for the protection of a historic property and the public trust therein from unauthorized or improper demolition, alteration, or transfer of such property.

Sec. -14 Preservation activities by political subdivisions. The political subdivisions of this State may engage in a comprehensive program of historic preservation, to promote the use and conservation of historic properties for the education, pleasure, and enrichment of the citizens of this State. The governing body of any political subdivision may establish an historic preservation commission to preserve, promote, and develop the historical resources of the political subdivision.

Sec. -15 Regulations, special conditions or restrictions. In addition to any power or authority of a political subdivision to regulate by planning or zoning laws and regulations or by local laws and regulations, the governing body of any political subdivision may provide by regulations, special conditions, or restrictions for the protection, enhancement, preservation, and use of historic properties. Such regulations, special conditions, and restrictions may include appropriate and reasonable control of the use or appearance of adjacent or associated private property within the public view, or both, historic easements, preventing deterioration by wilful neglect, permitting the modification of local health and building code provisions and transferring development rights.

PART II. MONUMENTS AND MEMORIALS

Sec. -31 Monuments; reservation of land; relinquishment of private claims. Upon the recommendation of the department, the governor may declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands

owned or controlled by the State to be state monuments and may reserve as a part thereof parcels of land the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected. When such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the State, and the governor may accept the relinquishment of such tracts in behalf of the State.

Sec. -32 Diamond Head State Monument. There shall be a Diamond Head State Monument as an historical site on Oahu to be administered by the department of land and natural resources and to consist of such lands as the department considers essential to the unimpaired preservation of the visual and historic aspects of Diamond Head and such state lands as may be best used for recreational purposes and to increase public access and enjoyment of the Monument. All state lands within and adjacent to the Monument shall be returned to the department for inclusion within the Monument, except for land upon which is situated a structure in active use for the purposes originally disposed of. The Na Laau Hawaii arboretum and parcels A, B, C and D as described in Executive Order No. 2000 dated April 9, 1962, establishing Diamond Head State Monument, shall be included within the boundaries of Diamond Head State Monument.

Sec. -33 Captain Cook Memorial Fund. All moneys in the Captain Cook memorial fund or which may be paid into the same from the proceeds of sales or which may be received by way of gift or otherwise for any of the purposes provided by this section, the acceptance of such gifts and the receipt of such funds being authorized, shall be expendable by the comptroller from time to time for any of the purposes provided by this section, and any original historical documents or other articles, or copies, facsimiles, or replicas thereof, so collected, and copies of publications made under this section shall be deposited in the archives of Hawaii to constitute a collection to be known as the "Captain Cook Memorial Collection."

The comptroller may purchase or otherwise acquire original books, mementos, pamphlets, documents, or other articles of historical value relating to the life of Captain James Cook, or connected with the history, discovery, and exploration of the Hawaiian Islands, or copies, facsimiles, or replicas thereof of other data relating thereto, and prepare and publish in his discretion books, documents, pamphlets, or other publications relating thereto.

The comptroller may distribute free copies of such publications to libraries, museums, and other places of references open to the public in the United States or in other countries, not to exceed, however, one-third of the number of copies of each published. The remaining copies may be sold at such reasonable prices as may be fixed by the comptroller, the proceeds of such sales to be paid into the trust fund.

Sec. -34 Capitol site. The portion of the "Honolulu Civic Center" adopted by the Honolulu city planning commission on February 23, 1945, as the master plan for the city and county of Honolulu after a public hearing on

February 1, 1945, for the executive-legislative center, specifically that area of Honolulu bounded by Richards, Beretania, Punchbowl, and Hotel streets, for which lands have been acquired and preliminary plans have been designed pursuant to Act 401, Session Laws of Hawaii 1949, is designated as the capitol site for the State.

Sec. -35 Iolani Palace. The official designation of the palace of the former monarchs of Hawaii shall be Iolani Palace.

Sec. -36 Sand Island. The island on the southwest side of Honolulu harbor, Oahu, 21 degrees 18 minutes 30 seconds north, 157 degrees 53 minutes 00 seconds west, city and county of Honolulu, proclaimed Anuenue (also known as Rainbow Island) by memorandum 1969-4 of the governor shall be named Sand Island. The name Sand Island shall be used on all official state maps, documents, and correspondence.

Sec. -37 National statutory hall; Father Damien. The State of Hawaii exercises its prerogative pursuant to section 2 of "An Act making appropriation for sundry Civil Expenses of the Government for the Year ending the Thirtieth of June eighteen hundred and sixty-five and for other Purposes" (Act of July 2, 1864 of the Thirty-Eighth Congress, Section 1814 of the Revised Statutes) and designates the Reverend Joseph Damien deVeuster, SS. CC., as a citizen of Hawaii worthy of commemoration in the national statutory hall.

Sec. -38 National statutory hall; King Kamehameha I. King Kamehameha I is selected as one of the two illustrious, deceased persons whose statue shall be furnished by the State of Hawaii for placement in the national statutory hall in the national capitol pursuant to Title 40 USC 187.

Sec. -39 Jurisdiction over World War II memorial. The jurisdiction and control of the World War II memorial, located in the front of the state office building in Honolulu, is vested in the state department of accounting and general services."

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 4. Chapter 6, Hawaii Revised Statutes, is repealed except for the subparts entitled Hawaii Foundation for History and the Humanities (sections 6-16 and 6-16.1 to 16.8) and Pacific War Memorial Commission (sections 6-26 to 6-30).

SECTION 5. This Act shall take effect upon its approval.

(Approved May 13, 1976.)