

JAN 23 2015

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 the existing
2 Historic Preservation Act, HRS §6E et seq., in current form is
3 inconsistent with the spirit and intent of the law. As drafted
4 and enforced, the current language elicits confusion and
5 frustration to the public at large. Clarification is necessary
6 to ensure responsible enforcement of the goals of historic
7 preservation by state agencies. Revisions are needed to balance
8 interests in preservation of historical and culturally
9 significant findings against private landowner property rights.

10 Originally enacted as S.B. NO. 2909-76 in 1976, the
11 Historic Preservation Program was passed in response to "rapid
12 social and economic developments," which have greatly curtailed
13 over the last three decades.

14 In current times, the state has unique challenges that
15 threaten the sustainability of development and infrastructure
16 improvement. The Historic Preservation Program that was
17 initiated to preserve state assets may now threaten those very



1 same assets due to the prohibitive cost of restoration. Natural
2 disasters including, but not limited to hurricanes, tsunamis,
3 and destruction of property by active lava flows, necessitate
4 exemptions to the existing statutory scheme. When natural forces
5 destroy historic places and property, private landowners are
6 saddled with the extreme costs of restoration. Following a state
7 of emergency, the state shall provide funding for the
8 preservation of places, artifacts, or structures of particular
9 importance to the state. Where the state has no interest in the
10 preservation of a particular place or property, private
11 landowners have discretion to replace historic property with
12 modern infrastructure.

13 These updates to the Historic Preservation Act will reduce
14 confusion, streamline administrative procedures, and reduce the
15 high costs incurred when restoring historic property.

16 "§ SECTION 2. Chapter 6E-1, Hawaii Revised Statutes, is
17 amended to read as follows:

18 **"PART I. HISTORIC PRESERVATION PROGRAM**

19 **[\$6E-1] Declaration of intent.** The Constitution of the
20 State of Hawaii recognizes the value of conserving and
21 developing the historic and cultural property within the State



1 for the public good. The legislature declares that the historic
2 and cultural heritage of the State is among its important
3 assets. ~~[and that the rapid social and economic developments of~~
4 ~~contemporary society threaten to destroy the remaining vestiges~~
5 ~~of this heritage.]~~ The legislature further declares that it is
6 in the public interest to ~~[engage in a comprehensive program of~~
7 ~~historic preservation at all levels of government to]~~ promote
8 the use and conservation of such property for the education,
9 inspiration, pleasure, and enrichment of its citizens. The
10 legislature further declares that it shall be the public policy
11 of this State to ~~[provide leadership]~~ cooperate with private
12 landowners in preserving, restoring, and maintaining historic
13 and cultural property~~[, to ensure the administration of such~~
14 ~~historic and cultural property]~~ in a spirit of stewardship and
15 ~~trusteeship for future generations, and [to conduct activities,~~
16 ~~plans, and programs]~~ in a manner consistent with the
17 preservation and enhancement of historic and cultural property.

18 "

19 SECTION 3. Chapter 6E-2, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§6E-2 Definitions.** As used in this chapter:



1 "Aviation artifact" means airplanes, fallen aircraft, crash
2 sites, or any objects or materials associated with the history
3 of aerospace in Hawaii which are over fifty years old, or
4 determined to be of exceptional historic significance by the
5 department. This term includes but is not limited to actual
6 aircraft, aircraft parts, military equipment, books, documents,
7 and other aviation related items.

8 "Burial good" means any item [~~reasonably believed~~]
9 determined to have been intentionally placed with the human
10 skeletal remains of an individual or individuals at the time of
11 burial.

12 "Burial site" means any [~~specific unmarked~~] location where
13 prehistoric or historic human skeletal remains and their
14 associated burial goods are interred, [~~and its immediate~~
15 ~~surrounding archaeological context, deemed a unique class of~~
16 ~~historic property~~] and not otherwise included in section 6E-41.

17 "Department" means the department of land and natural
18 resources.

19 "Historic preservation" means the research, protection,
20 restoration, and rehabilitation [~~and interpretation~~] of
21 buildings, structures, objects, districts, areas, and sites,



1 including underwater sites and burial sites, significant to the
2 history, architecture, archaeology, or culture of this State,
3 its communities, or the nation.

4 "Historic property" means ~~any~~ a building, structure,
5 object, district, area, or site, including heiau, significant to
6 the history, architecture, archaeology, or culture of this
7 State, its communities, or the nation [~~and underwater site,~~
8 ~~which is~~] over fifty years old.

9 "Human skeletal remains" means the body or [~~any~~] remaining
10 part of the body of a deceased human being.

11 "Mitigation plan" means a plan, approved by the department,
12 for the care and disposition of historic properties, aviation
13 artifacts, and burial sites or the contents thereof, that
14 includes monitoring, protection, restoration, and interpretation
15 plans.

16 "Person" means any individual, firm, corporation,
17 partnership, or association.

18 "Programmatic agreement" means a document that sets forth
19 the terms of a formal, legally binding agreement and establishes
20 a process for consultation, review, and compliance with federal
21 laws.



1 "Project" means any activity directly undertaken by the
2 State or its political subdivisions or supported in whole or in
3 part through appropriations, contracts, grants, subsidies,
4 loans, or other forms of funding assistance from the State or
5 its political subdivisions, or involving any lease, permit,
6 license or [~~certificate~~] land use change [~~or other entitlement~~
7 ~~for use~~] issued by the State or its political subdivisions.

8 "State historic preservation officer" means that officer
9 appointed by the governor as provided in section 6E-5.

10 "

11 SECTION 4. Chapter 6E-4, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[~~§6E-4~~] **Administration.** All state historic areas to the
14 operations of the department of accounting and general services
15 [~~shall~~] may be transferred by executive order to the department,
16 except as provided in section 6E-33. All state projects and
17 programs relating to historic preservation shall come under the
18 authority of the department.

19 "

20 SECTION 5. Chapter 6E-7, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§6E-7 State title to historic property. (a) All
2 historic property located on lands or under waters owned or
3 controlled by the State shall be the property of the State. The
4 control and management of the historic property shall be vested
5 in the department.

6 (b) The department may dispose of the historic property
7 subject to chapter 171 and subject further to those
8 reservations, restrictions, covenants, or conditions which
9 relate to the preservation of the historic property, such as
10 rights of access, public visitation, operation, maintenance,
11 restoration, and repair. The department shall determine the
12 conditions for any research affecting the historic property and
13 may issue permits for the research.

14 (c) The State shall hold known burial sites located on
15 lands or under waters owned or controlled by the State in trust
16 for preservation or proper disposition by the lineal [~~er~~
17 ~~cultural~~] descendants.

18 (d) The State shall not transfer any historic property or
19 aviation artifact under its jurisdiction without the concurrence
20 of the department, and shall not transfer any burial site under



1 its jurisdiction without consulting the appropriate island
2 burial council.

3 "

4 SECTION 6. Chapter 6E-8, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§6E-8 Review of effect of proposed state projects.** (a)

7 Before any agency or officer of the State or its political
8 subdivisions commences any project which may affect historic
9 property, aviation artifact, or a burial site, the agency or
10 officer shall advise the department and allow the department an
11 opportunity for review of the effect of the proposed project on
12 historic properties, aviation artifacts, or burial sites,
13 consistent with section 6E-43, especially those listed on the
14 Hawaii register of historic places. The proposed project shall
15 not be commenced, or if it has already begun, continued, until
16 the department has given its written concurrence. 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 may give its written concurrence based on a
2 phased 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 The department shall provide written concurrence or non-
7 concurrence within [~~ninety~~] thirty days after the filing of a
8 request with the department. The agency or officer seeking to
9 proceed with the project, or any person, may appeal the
10 department's concurrence or non-concurrence to the Hawaii
11 historic places review board. An agency, officer, or other
12 person who is dissatisfied with the decision of the review board
13 may apply to the governor, who may take action as the governor
14 deems best in overruling or sustaining the department.

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

19 (c) The State, its political subdivisions, agencies, and
20 officers shall report to the department the finding of any
21 historic property during any project and shall cooperate with



1 the department in the investigation, recording, preservation,
2 and salvage of the property.

3 (d) The department shall adopt rules in accordance with
4 chapter 91 to implement this section. "

5 SECTION 7. Chapter 6E-9, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "[§6E-9] **Investigation, recording, preservation, and**
8 **salvage; appropriations.** Whenever there is any project by any
9 government agency on lands which are owned or controlled by the
10 State or its political subdivisions and which have historic
11 property or value, one per cent of the appropriations for the
12 project or so much thereof as may be necessary, may be expended
13 for the investigation, recording, preservation, and salvage of
14 such historical property or value. Nothing in this section
15 shall be construed to limit the expenditure of more than one per
16 cent of the project appropriations for the purposes herein
17 stated should an additional amount be necessary and mutually
18 agreed to by the department and the government agency planning
19 the construction or improvement.
20 "



1 SECTION 8. Chapter 6E-10, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§6E-10 **Privately owned historic property.** (a) Before
4 any construction, alteration, disposition or improvement of any
5 nature, by, for, or permitted by a private landowner may be
6 commenced which will affect an historic property on the Hawaii
7 register of historic places, the landowner shall notify the
8 department of the construction, alteration, disposition, or
9 improvement of any nature and allow the department opportunity
10 for review of the effect of the proposed construction,
11 alteration, disposition, or improvement of any nature on the
12 historic property. The proposed construction, alteration,
13 disposition, or improvement of any nature shall not be
14 commenced, or in the event it has already begun, continue, until
15 the department shall have given its concurrence or ninety days
16 have elapsed. Within [~~ninety~~] thirty days after notification,
17 the department shall:

- 18 (1) Commence condemnation proceedings for the purchase of
19 the historic property if the department and property
20 owner do not agree upon an appropriate course of
21 action;



1 (2) Permit the owner to proceed with the owner's
2 construction, alteration, or improvement; or
3 (3) In coordination with the owner, undertake or permit
4 the investigation, recording, preservation, and
5 salvage of any historical information deemed necessary
6 to preserve Hawaiian history, by any qualified agency
7 for this purpose.
8 (b) Nothing in this section shall be construed to prevent
9 the ordinary maintenance or repair of any feature in or on an
10 historic property that does not involve a change in design,
11 material, or outer appearance or change in those characteristics
12 which qualified the historic property for entry onto the Hawaii
13 register of historic places.
14 (c) Any person, natural or corporate, who violates the
15 provisions of this section shall be fined not more than \$1,000,
16 and each day of continued violation shall constitute a distinct
17 and separate offense, not to exceed \$30,000 in aggregate, under
18 this section for which the offender may be punished.
19 (d) If funds for the acquisition of needed property are
20 not available, the governor may, upon the recommendation of the
21 department allocate from the contingency fund an amount

1 sufficient to acquire an option on the property or for the
2 immediate acquisition, preservation, restoration, or operation
3 of the property.

4 (e) The department may enter, solely in performance of its
5 official duties and only at reasonable times, upon private lands
6 for examination or survey thereof. Whenever any member of the
7 department duly authorized to conduct investigations and surveys
8 of an historic or cultural nature determines that entry onto
9 private lands for examination or survey of historic or cultural
10 finding is required, the department shall give written notice of
11 the finding to the owner or occupant of such property at least
12 five days prior to entry. If entry is refused, the member may
13 make a complaint to the district court in the circuit in which
14 such land is located. The district court may thereupon issue a
15 warrant, directed to any police officer of the circuit,
16 commanding the officer to take sufficient aid, and, being
17 accompanied by a member of the department, between the hours of
18 sunrise and sunset, allow the member of the department to
19 examine or survey the historic or cultural property.
20 "



1 SECTION 9. Chapter 6E-10.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[§6E-10.5] **Enforcement.** (a) If the board of land and
4 natural resources determines that any person has violated or is
5 violating this chapter, or any rule adopted pursuant to this
6 chapter, the board shall serve written notice by certified mail
7 or personal service upon the alleged violator or violators
8 specifying the alleged violation and may include with the
9 notice:

- 10 (1) An order specifying a reasonable time during which
11 that person shall be required to take such measures as
12 may be necessary to correct the violation and to give
13 periodic progress reports;
- 14 (2) An order imposing penalties provided in section 6E-
15 11.6; and
- 16 (3) An order that the alleged violator or violators appear
17 before the board for a hearing at a time and place
18 specified in the notice or to be set later and answer
19 the charges complained of.

20 (b) If the board determines that any person is continuing
21 to violate this chapter or any rule adopted pursuant to this



1 chapter after having been served notice of violation, the board
2 shall serve written notice by certified mail or personal service
3 upon the alleged violator or violators specifying the alleged
4 violation. With the notice, the board:

5 (1) Shall order the alleged violator or violators to
6 submit a written schedule within thirty days
7 specifying the measures to be taken and the time
8 within which the measures shall be taken to bring that
9 person into compliance with this chapter or any rule
10 adopted thereunder. The board shall accept or modify
11 the submitted schedule within sixty days of receipt of
12 the schedule. Any schedule not acted upon after sixty
13 days of receipt by the board shall be deemed accepted
14 by the board;

15 (2) Shall order the alleged violator or violators to cease
16 and desist from the activities that violate this
17 chapter or any rule adopted thereunder, if that person
18 does not submit a written schedule to the board within
19 thirty days. This order shall remain in effect until
20 the board accepts the written schedule;



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

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

7 (c) If the board determines that any person has violated
8 an accepted schedule or an order issued pursuant to this
9 section, the board shall impose penalties by sending a notice in
10 writing, either by certified mail or by personal service to that
11 person, describing such non-adherence or violation with
12 reasonable particularity.

13 (d) Any order issued pursuant to this chapter shall become
14 final, unless the person or persons named therein requests in
15 writing, not later than [~~twenty~~] thirty days after notice of
16 violation and order is served, a hearing before the board. Upon
17 request for a hearing, the board shall require that the alleged
18 violator or violators appear before the board for a hearing to
19 answer the charges issued, at a time and place specified in the
20 notice or otherwise set by the board.



1 Any penalty imposed pursuant to this chapter shall become
2 due and payable [~~twenty~~] thirty days after the notice of penalty
3 is served, unless the person or persons named therein requests
4 in writing a hearing before the board. Whenever a hearing is
5 requested on any penalty imposed pursuant to this chapter, the
6 penalty shall become due and payable only upon completion of all
7 review proceedings and the issuance of a final order confirming
8 the penalty in whole or in part.

9 (e) Any hearing conducted pursuant to this section shall
10 be conducted as a contested case under chapter 91. If, after a
11 hearing held pursuant to this section, the board finds that a
12 violation or violations has occurred, the board shall:

- 13 (1) Affirm or modify any penalties imposed;
- 14 (2) Modify or affirm the order previously issued; or
- 15 (3) Issue an appropriate order or orders for the
16 prevention, abatement, or control of the violation or
17 for the taking of such other corrective action as may
18 be appropriate.

19 Any order issued after a hearing may prescribe timetables for
20 necessary action in preventing, abating, or controlling the
21 violation. If, after a hearing on an order or penalty contained



1 in a notice, the board finds that no violation has occurred or
2 is occurring, the board shall rescind the order or penalty.

3 (f) If the amount of any penalty is not paid to the
4 department within thirty days after it becomes due and payable,
5 the board may institute a civil action in the name of the State
6 to collect the administrative penalty, which shall be a
7 government realization. In any proceeding to collect the
8 administrative penalty imposed, the board need only show that:

- 9 (1) Notice was given;
- 10 (2) A hearing was held, or the time granted for requesting
11 a hearing has run without such a request;
- 12 (3) The administrative penalty was imposed; and
- 13 (4) The penalty remains unpaid.

14 (g) In connection with any hearing held pursuant to this
15 section, the board may subpoena the attendance of witnesses and
16 the production of evidence on behalf of all parties.

17 "

18 SECTION 10. Chapter 6E-11, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§6E-11 Civil and administrative violations.** (a) It
21 shall be a civil and administrative violation for any person to



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

12 (b) It shall be a civil and administrative violation for
13 any person to knowingly take, appropriate, excavate, injure,
14 destroy, or alter any burial site, or the contents thereof,
15 located on private lands or lands owned or controlled by the
16 State or any of its political subdivisions, except as permitted
17 by the department, to knowingly fail to re-inter human remains
18 discovered on the lands in a reasonable period of time as
19 determined by the department, or to knowingly violate the
20 conditions set forth in an approved mitigation plan that
21 includes monitoring and preservation plans.



1 (c) It shall be a civil and administrative violation for
2 any person to take, appropriate, excavate, injure, destroy, or
3 alter any historic property or burial site during the course of
4 land development or land alteration activities to which section
5 6E-42 applies, without obtaining the required approval.

6 (d) It shall be a civil and administrative violation for
7 any person who inadvertently discovers a burial site to fail to
8 stop work in the immediate area and report the discovery, as
9 required by section 6E-43.6.

10 (e) It shall be a civil and administrative violation for
11 any person to knowingly glue together any human skeletal
12 remains, label any human skeletal remains with any type of
13 marking pen, or conduct any tests that destroy human skeletal
14 remains, as defined in section 6E-2, except as permitted by the
15 department.

16 (f) Any person who violates this section shall be fined
17 not more than \$10,000 for each separate violation. If the
18 violator directly or indirectly has caused the loss of, or
19 damage to, any historic property or burial site, the violator
20 shall be fined an additional amount determined by the court or
21 an administrative adjudicative authority to be equivalent to the



1 value of the lost or damaged historic property or burial site.
2 Each day of continued violation of this provision shall
3 constitute a distinct and separate violation for which the
4 violator may be punished. Equipment used by a violator for the
5 taking, appropriation, excavation, injury, destruction, or
6 alteration of any historic property or burial site, [~~or for the~~
7 ~~transportation of the violator to or from the historic property~~
8 ~~or burial site,~~] shall be subject to seizure and disposition by
9 the State [~~without compensation to its owner or owners~~].

10 (g) Any person who knowingly violates this chapter with
11 respect to burial sites shall also be prohibited from
12 participating in the construction of any state or county funded
13 project for ten years, subject to the discretion of the
14 director.

15 (h) Nothing in this section shall apply to land altering
16 activities relating to family burial plots under section 441-
17 5.5.

18 (i) The civil and administrative penalties imposed
19 pursuant to this chapter shall be in addition to the criminal
20 penalties provided by this chapter and any other penalties that
21 may be imposed pursuant to law.



1 SECTION 11. Chapter 6E-13, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§6E-13 Injunctive relief.** (a) In addition to, and
4 without limiting the other powers of the attorney general and
5 without altering or waiving any criminal penalty, civil, or
6 administrative provisions of this chapter, the attorney general
7 shall have the power to bring an action in the name of the State
8 in any court of competent jurisdiction for restraining orders
9 and injunctive relief to restrain and enjoin violations or
10 threatened violations of this chapter.

11 (b) Any person may maintain an action in the trial court
12 having jurisdiction where the alleged violation occurred or is
13 likely to occur for restraining orders or injunctive relief
14 against the State, its political subdivisions, or any person
15 upon a showing of irreparable injury, feasibility of
16 enforcement, and likelihood of success on the merits, for the
17 protection of a historic property or a burial site and the
18 public trust therein from unauthorized or improper demolition,
19 alteration, or transfer of the property or burial site. "
20 "



1 SECTION 12. Chapter 6e-15, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§6E-15 Regulations, special conditions or restrictions.**

4 In addition to any power or authority of a political subdivision
5 to regulate by planning or zoning laws and regulations or by
6 local laws and regulations, the governing body of any political
7 subdivision may provide by regulations, special conditions, or
8 restrictions for the protection, enhancement, preservation, and
9 use of historic properties or burial sites. These regulations,
10 special conditions, and restrictions may include appropriate and
11 reasonable control of the use [~~or appearance~~] of [~~adjacent or~~
12 ~~associated private property within the public view, or both,~~]
13 historic easements, preventing deterioration by wilful neglect,
14 permitting the modification of local health and building code
15 provisions[~~, and transferring development rights~~].

16 "

17 SECTION 13. Chapter 6e-16, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§6E-16 Hawaii historic preservation special fund. (a)**

20 There is established a Hawaii historic preservation special fund
21 into which shall be deposited the following moneys:



- 1 (1) Appropriations by the legislature to the special fund;
- 2 (2) Gifts, donations, and grants from public agencies and
- 3 private persons;
- 4 (3) All proceeds collected by the department derived from
- 5 historic preserve user fees, historic preserve leases
- 6 or concession fees, fees charged to carry out the
- 7 purposes of this chapter, or the sale of goods; and
- 8 (4) Civil, criminal, and administrative penalties, fines,
- 9 and other charges collected under this chapter or any
- 10 rule adopted pursuant to this chapter.

11 All interest earned or accrued on moneys deposited in the fund
12 shall become part of the fund. The fund shall be administered
13 by the department; provided that the department may contract
14 with a public or private agency to provide the day-to-day
15 management of the fund.

16 (b) Subject to legislative authorization, the department
17 may expend moneys from the fund:

- 18 (1) For permanent and temporary staff positions;
- 19 (2) ~~[To replenish goods;~~
- 20 ~~(3)]~~To produce public information materials;



1 (3) [~~4~~] To provide financial assistance to public
 2 agencies and private agencies in accordance with
 3 chapter 42F involved in historic preservation
 4 activities other than those covered by section 6E-9;
 5 and

6 (4) [~~5~~] To cover administrative and operational costs of
 7 the historic preservation program.

8 (c) The department shall adopt rules in accordance with
 9 chapter 91 for the purposes of this section. "

10 SECTION 14. Statutory material to be repealed is bracketed
 11 and stricken. New statutory material is underscored.

12 SECTION 15. This Act shall take effect upon its approval.

13
 14

INTRODUCED BY:

Anthony Dan
Spencer J. Jonye
Onuhile Sedani

Will Eze

S.B. NO. 956

Report Title:

Historic Preservation

Description:

Streamlines the Historic Preservation Act to increase efficiency, reduce confusion, and adhere to the spirit of the law.

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

