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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. Section 6E-2, Hawaii Revised Statutes, is  
2 amended by adding a new definition to be appropriately inserted  
3 and to read as follows:

4 "Pre-contact historic property" means any building,  
5 structure, object, district, area, or site, including but not  
6 limited to heiau, unu, ahu, ko'a fishing shrine, loko i'a  
7 fishpond, agricultural complex, habitation complex, salt pond  
8 complex, and holua slide, that existed prior to 1779."

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 ongoing program of historical,  
16 architectural, and archaeological research and  
17 development, including surveys, excavations,



- 1 scientific recording, interpretation, signage, and  
2 publications on the State's historical and cultural  
3 resources;
- 4 (2) Acquisition of historic or cultural properties, real  
5 or personal, in fee or in any lesser interest, by  
6 gift, purchase, condemnation, devise, bequest, land  
7 exchange, or other means; preservation, restoration,  
8 administration, or transference of the property; and  
9 the charging of reasonable admissions to that  
10 property;
- 11 (3) Development of a statewide survey and inventory to  
12 identify and document historic properties, aviation  
13 artifacts, and burial sites, including all those owned  
14 by the State and the counties;
- 15 (4) Preparation of information for the Hawaii register of  
16 historic places and listing on the national register  
17 of historic places;
- 18 (5) Preparation, review, and revisions of a state historic  
19 preservation plan, including budget requirements and  
20 land use recommendations;



- 1           (6) Application for and receipt of gifts, grants,  
2           technical assistance, and other funding from public  
3           and private sources for the purposes of this chapter;
- 4           (7) Provision of technical and financial assistance and  
5           consultation to the counties and public and private  
6           agencies involved in historic preservation activities;
- 7           (8) Development, publication, and distribution to the  
8           public of informational materials regarding statutory  
9           protections for burials, historic sites, and  
10           archaeological resources, including the process of  
11           project reviews established by this chapter;
- 12          [~~+8~~] (9) Coordination of activities of the counties in  
13           accordance with the state plan for historic  
14           preservation;
- 15          [~~+9~~] (10) Stimulation of public interest in historic  
16           preservation, including the development and  
17           implementation of interpretive programs for historic  
18           properties listed on or eligible for the Hawaii  
19           register of historic places;
- 20          [~~+10~~] (11) Coordination of the evaluation and management of  
21           burial sites as provided in section 6E-43;



- 1       ~~[(11)]~~ (12) Acquisition of burial sites in fee or in any  
2           lesser interest, by gift, purchase, condemnation,  
3           devise, bequest, land exchange, or other means, to be  
4           held in trust;
- 5       ~~[(12)]~~ (13) Submittal of an annual report to the governor  
6           and legislature detailing the accomplishments of the  
7           year, recommendations for changes in the state plan or  
8           future programs relating to historic preservation, and  
9           an accounting of all income, expenditures, and the  
10          fund balance of the Hawaii historic preservation  
11          special fund;
- 12       ~~[(13)]~~ (14) Regulation of archaeological activities  
13          throughout the State;
- 14       ~~[(14)]~~ (15) Employment of sufficient professional and  
15          technical staff for the purposes of this chapter which  
16          shall be in accordance with chapter 76;
- 17       ~~[(15)]~~ (16) The charging of fees to be determined by the  
18          department that are proportional to the nature and  
19          complexity of the projects or services provided, and  
20          adjusted from time to time to ensure that the  
21          proceeds, together with all other fines, income, and



1 penalties collected under this chapter, do not surpass  
2 the annual operating costs of the comprehensive  
3 historic preservation program;

4 [~~(16)~~] (17) Adoption of rules in accordance with chapter 91,  
5 necessary to carry out the purposes of this chapter;  
6 and

7 [~~(17)~~] (18) Development and adoption, in consultation with  
8 the office of Hawaiian affairs native historic  
9 preservation council, of rules governing permits for  
10 access by native Hawaiians and Hawaiians to cultural,  
11 historic, and pre-contact sites and monuments."

12 SECTION 3. Section 6E-5.5, Hawaii Revised Statutes, is  
13 amended by amending subsections (a) and (b) to read as follows:

14 "(a) There is created a review board, to be designated the  
15 Hawaii historic places review board, for the Hawaii register of  
16 historic places and the national register of historic places  
17 which shall meet the requirements of federal law. The board  
18 shall be placed within the department of land and natural  
19 resources for administrative purposes and shall consist of ten  
20 members to be appointed and removed by the governor as provided  
21 in section 26-34. The board shall include one professionally



1 qualified member of each of the following disciplines:  
2 archaeology, architecture, history, and sociology. In addition,  
3 there shall be [~~one person~~] two people knowledgeable in  
4 traditional Hawaiian society and culture.

5 (b) The review board shall:

- 6 (1) Order and enter historic properties into the Hawaii  
7 register of historic places on the basis of their  
8 value to Hawaii's heritage[+], including but not  
9 limited to native Hawaiian culture and history;
- 10 (2) Evaluate and, when appropriate, recommend the  
11 nomination of historic properties to the national  
12 register of historic places;
- 13 (3) Review the state survey of historic properties  
14 undertaken in accordance with this chapter;
- 15 (4) Review the content of the state historic preservation  
16 plan developed in accordance with this chapter;
- 17 (5) Elect a chairperson and a vice-chairperson and adopt  
18 such rules as are necessary for the purposes of this  
19 section;
- 20 (6) Maintain the Hawaii register of historic places,  
21 including all those listed on the national register of



1 historic places, and a program of notification and  
2 publication regarding properties on the registers; and  
3 (7) Develop policies on signage in historic districts."

4 SECTION 4. Section 6E-11, Hawaii Revised Statutes, is  
5 amended by amending subsection (f) to read as follows:

6 "(f) Any person who violates this section shall be fined  
7 not more than [~~\$10,000~~] \$20,000 for each separate violation. If  
8 the violator directly or indirectly causes the loss of, or  
9 damage to, any pre-contact historic property as determined by  
10 the department in consultation with the office of Hawaiian  
11 affairs, the violator shall be fined no more than \$30,000 for  
12 each separate violation. If the violator directly or indirectly  
13 has caused the loss of, or damage to, any historic property or  
14 burial site, the violator shall be fined an additional amount  
15 determined by the environmental court or an administrative  
16 adjudicative authority to be equivalent to the value of the lost  
17 or damaged historic property or burial site. Each day of  
18 continued violation of this provision shall constitute a  
19 distinct and separate violation for which the violator may be  
20 punished. Any landowner or developer responsible for any  
21 project where violations are found to have occurred shall



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

10 SECTION 5. Section 6E-11.5, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "**§6E-11.5 Civil penalties.** Except as provided in section  
13 6E-11, any person who violates this chapter, or any rule adopted  
14 pursuant to this chapter shall be fined not less than \$500 nor  
15 more than [~~\$10,000~~] \$20,000 for each separate violation. If the  
16 violator directly or indirectly causes the loss of, or damage  
17 to, any pre-contact historic property as determined by the  
18 department in consultation with the office of Hawaiian affairs,  
19 the violator shall be fined no more than \$30,000 for each  
20 separate violation. Each day of each violation constitutes a  
21 separate violation."



1 SECTION 6. Section 6E-12, Hawaii Revised Statutes, is  
2 amended by amending subsection (d) to read as follows:

3 "(d) Any person violating this section shall be fined no  
4 more than [~~\$10,000.~~] \$25,000. Each historic object or part of a  
5 prehistoric or historic human skeleton or associated burial good  
6 offered for sale or trade or removed from the jurisdiction in  
7 violation of this section shall constitute a distinct and  
8 separate offense for which the offender may be punished."

9 SECTION 7. This Act does not affect rights and duties that  
10 matured, penalties that were incurred, and proceedings that were  
11 begun before its effective date.

12 SECTION 8. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 9. This Act shall take effect upon its approval.

15

INTRODUCED BY:



JAN 27 2021



# H.B. NO. 1358

**Report Title:**

Historic Preservation Program; Pre-contact Historic Property; Duties; Hawaii Historic Places Review Board; Penalties

**Description:**

Defines "pre-contact historic property". Clarifies that the historic preservation program includes providing consultation to counties and public and private agencies involved in historic preservation and the development, publication, and distribution of materials about protections for burials, historic sites, and archaeological resources. Amends the composition and duties of the Hawaii historic places review board. Increases civil and administrative fines for certain violations of historic and preservation requirements and makes violators liable for costs associated with mitigation or restoration measures.

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

