

JAN 24 2024

A BILL FOR AN ACT

RELATING TO REGULATION OF ARCHAEOLOGICAL ACTIVITIES.

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

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

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

16 (b) It shall be a civil and administrative violation for
17 any person to knowingly take, appropriate, excavate, injure,
18 destroy, or alter any burial site, or the contents thereof,

S.B. NO. 3154

1 located on private lands or lands owned or controlled by the
2 State or any of its political subdivisions, except as permitted
3 by the department, to knowingly fail to re-inter human remains
4 discovered on the lands in a reasonable period of time as
5 determined by the department, or to knowingly violate the
6 conditions set forth in an approved mitigation plan that
7 includes monitoring and preservation plans.

8 (c) It shall be a civil and administrative violation for
9 any person to take, appropriate, excavate, injure, destroy, or
10 alter any historic property or burial site during the course of
11 land development or land alteration activities to which section
12 6E-42 applies, without obtaining the required approval.

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

17 (e) It shall be a civil and administrative violation for
18 any person to:

19 (1) Fail to comply with agreed upon archaeological
20 mitigation commitments;

21 (2) Fail to conduct an archaeological inventory survey as

S.B. NO. 3154

1 specified in an archaeological inventory survey plan
2 or an archaeological monitoring plan approved by the
3 department;

4 (3) Alter an approved archaeological inventory survey
5 plan or archaeological monitoring plan without prior
6 written approval of the department;

7 (4) Carry out project development activities within a
8 preservation area or burial preserve approved by the
9 department without prior written approval of the
10 department, including project equipment transiting
11 through, within or across a preservation area or
12 burial preserve; or

13 (5) Fail to complete and submit required reports.

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

20 [~~f~~] (g) Any person who violates this section shall be
21 fined not more than \$20,000 for each separate violation. If the
22 violator directly or indirectly has caused the loss of, or

S.B. NO. 3154

1 damage to, any historic property or burial site, the violator
2 shall be fined an additional amount determined by the
3 environmental court or an administrative adjudicative authority
4 to be equivalent to the value of the lost or damaged historic
5 property or burial site. Each day of continued violation of
6 this provision shall constitute a distinct and separate
7 violation for which the violator may be punished. Any landowner
8 or developer responsible for any project where violations are
9 found to have occurred shall execute any mitigation and
10 preservation measures ordered by the department and shall be
11 jointly and severally liable for any costs of mitigation and
12 preservation. Equipment used by a violator for the taking,
13 appropriation, excavation, injury, destruction, or alteration of
14 any historic property or burial site, or for the transportation
15 of the violator to or from the historic property or burial site,
16 shall be subject to seizure and disposition by the State without
17 compensation to its owner or owners.

18 ~~(g)~~ (h) Any person who knowingly violates this chapter
19 with respect to burial sites shall also be prohibited from
20 participating in the construction of any state or county funded
21 project for ten years.

S.B. NO. 3154

1 [~~(h)~~] (i) Nothing in this section shall apply to land
2 altering activities relating to family burial plots under
3 section 441-5.5.

4 [~~(i)~~] (j) The civil and administrative penalties imposed
5 pursuant to this chapter shall be in addition to the criminal
6 penalties provided by this chapter and any other penalties that
7 may be imposed pursuant to law."

8 SECTION 2. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act shall take effect upon its approval.

14

15

INTRODUCED BY:



16

BY REQUEST

S.B. NO. 3154

Report Title:

Archaeological Activities; Penalties

Description:

Clarifies that failure to comply with approved mitigation commitments, conduct an archaeological inventory survey, or comply with other administrative requirements pertaining to archaeology approved by the Department of Land and Natural Resources shall result in civil and administrative violations.

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

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO REGULATION OF ARCHAEOLOGICAL ACTIVITIES.

PURPOSE: To clarify that failure to comply with approved mitigation commitments, conduct an archaeological inventory survey, or comply with other administrative requirements pertaining to archaeology approved by the Department shall result in civil and administrative violations.

MEANS: Amend section 6E-11, Hawaii Revised Statutes (HRS).

JUSTIFICATION: The Department's State Historic Preservation Division (Division) regulates archaeological activities, by reviewing permits issued by state and county agencies, and reaching agreement on a verity of plans and administrative conditions to protect and manage historic properties, archaeological sites, and burials sites. Presently, the Division can only assess penalties when the Division can demonstrate a physical damage to historic properties or burial sites.

The Division notes it is very difficult to determine if historic properties or burial sites are affected, damaged, or destroyed if administrative provisions are not complied with. The statute however does not clearly provide a penalty when there is failure to comply with approved mitigation commitments, conduct an archaeological inventory survey, or comply with other administrative requirements pertaining to archaeology approved by the Department.

This bill would provide the Division with more flexibility and options to regulate archaeological activities in the State by clarifying the Division's authority to enforce administrative provisions of chapter

6E, HRS, and associated administrative rules pertaining to archaeology that are or appear to be purely administrative in nature.

Impact on the public: The bill would help to enhance protection of the State's historic properties and burial sites.

Impact on the department and other agencies: This bill would provide the Division with more flexibility in regulating archaeological activities in the State and protecting historic properties and burial sites.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 802.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.