

JAN 23 2026

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 protection of
2 iwi kupuna (ancestral remains) and cultural and historic
3 resources is a matter of utmost importance. The Hawaii State
4 Constitution requires the State to safeguard iwi kupuna as part
5 of its public trust obligations and to protect the exercise of
6 Native Hawaiian traditional and customary practices. These
7 constitutional obligations have long been implemented under the
8 review process established in chapter 6E, Hawaii Revised
9 Statutes, to ensure that potential impacts are carefully
10 identified and assessed, and to provide lineal and cultural
11 descendants with meaningful opportunities to guide the treatment
12 of iwi kupuna through the island burial councils.

13 The legislature further finds that recent statutory changes
14 introduced new exemptions to the historic preservation review
15 process that significantly weaken its protective framework.
16 Allowing certain types of projects to avoid review significantly
17 heightens the risk of inadvertent discovery, disturbance, and



1 destruction of iwi kupuna, especially if the projects involve
2 ground-disturbing activities in culturally sensitive areas.
3 Similarly, the arbitrary creation of land sensitivity categories
4 in statute without prior proper surveys has the effect of
5 excluding from review large areas that are likely to contain iwi
6 kupuna or other cultural and historic sites. Designation of
7 land sensitivity areas should only be implemented by historic
8 preservation professionals.

9 The legislature further finds that increases in inadvertent
10 discoveries of iwi kupuna will diminish the decision-making role
11 of the island burial councils, thereby curtailing the voices of
12 descendants in matters directly affecting their kupuna. This
13 skirting of consultation and oversight undermines constitutional
14 protections for Native Hawaiian traditional and customary
15 practices and the public trust in preserving Hawaii's cultural
16 resources.

17 Accordingly, the purpose of this Act is to reaffirm the
18 State's commitment to safeguard iwi kupuna and other cultural
19 and historic resources and to restore the integrity of the
20 State's historic preservation program by:



(1) Clarifying that a residential project involving ground disturbance in high-risk areas remains subject to review; and

(2) Removing the historic review exemption for lands presumed nominally sensitive.

SECTION 2. Section 6E-42.2, Hawaii Revised Statutes, is amended to read as follows:

"§6E-42.2 Excluded activities for existing privately-owned ~~[single-family detached dwelling units and townhouses, residential projects, and nominally sensitive areas.]~~ low-unit residential properties. (a) An application for a proposed project on an existing privately-owned ~~[single-family detached dwelling unit or townhouse]~~ low-unit residential property shall be subject to the requirements of section 6E-42 only if ~~[the single-family detached dwelling unit or townhouse is over fifty years old and is:]~~ one or more of the following applies:

(1) The proposed project involves the modification of an existing residential structure that is more than fifty years old and is:

~~[(1)]~~ (A) Listed on the Hawaii or national register of historic places, or both;



1 ~~[(+2)]~~ (B) Nominated for inclusion on the Hawaii or national
2 register of historic places, or both; or

3 ~~[(+3)]~~ (C) Located in a historic district[.]; or

4 (2) The proposed project involves ground-disturbing
5 activity and:

6 (A) Occurs on, or adjacent to, land containing sandy
7 soils; or

8 (B) The ground-disturbing activity exceeds the
9 excavation of topsoil and occurs on, or adjacent
10 to, land that contains:

11 (i) Previously identified burials or cemeteries;

12 (ii) Lava tubes, karst features, or caves; or

13 (iii) A historic property previously determined to
14 be significant under criterion "e" of either
15 section 13-284-6(b) (5) or 13-275-6(b) (5),
16 Hawaii Administrative Rules.

17 ~~[(b)] An application for a proposed project on an existing~~
18 ~~residential property shall be subject to the requirements of~~
19 ~~section 6E-42 only if the existing residential property is over~~
20 ~~fifty years old and is registered on the Hawaii register of~~
21 ~~historic places.~~



1 ~~(c) An application for a proposed project in a nominally~~
2 ~~sensitive area shall not be subject to the requirements of~~
3 ~~section 6E-42.~~

4 ~~(d)]~~ (b) For the purposes of this section:

5 "Dwelling unit" means a building or portion thereof
6 designed or used exclusively for residential occupancy and
7 having all necessary facilities for permanent residency such as
8 living, sleeping, cooking, eating, and sanitation.

9 ~~["Nominally sensitive area" means a project area that is~~
10 ~~known to include a low density of historic, cultural, or~~
11 ~~archaeological resources, or where the project area has been~~
12 ~~substantially disturbed by previous excavation or other ground-~~
13 ~~disturbing work and no significant historic properties have been~~
14 ~~previously identified.]~~

15 "Existing privately-owned low-unit residential property"
16 means a property that has previously been zoned residential and
17 maintains previously constructed residential structures
18 consisting of one or more single-family detached dwelling units,
19 townhouses, accessory dwelling units, or multi-family dwellings;
20 provided that the property contains no more than four dwelling
21 units in total.



1 "Ground-disturbing activity" means any activity that
2 disturbs, penetrates, displaces, or excavates soil or subsurface
3 materials, including grading, trenching, digging, augering,
4 drilling, post-hole installation, foundation work, utility
5 installation, excavation, or landscaping activities that disturb
6 the ground surface.

7 "Karst" means a landform characterized by subsurface
8 cavities, voids, or solution features formed by the dissolution
9 of soluble rock, including caves, sinkholes, and underground
10 drainage features.

11 "Sandy soil" means soil classified by the United States
12 Department of Agriculture Natural Resources Conservation Service
13 as sand, loamy sand, sandy loam, or fine sandy loam, including
14 Jaucas sands, beaches sand, and other coastal or aeolian sand
15 deposits.

16 "Single-family detached dwelling unit" means an individual,
17 freestanding, unattached dwelling unit, typically built on a lot
18 larger than the structure itself, resulting in an area
19 surrounding the dwelling.

20 "Topsoil" means the uppermost naturally occurring soil
21 layer characterized by organic material and biological activity,



1 typically extending to a depth of approximately twelve inches
2 below the ground surface, or to the depth of the naturally
3 occurring organic horizon, whichever is less.

4 "Townhouse" has the same meaning as in section 502C-1."

5 SECTION 3. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

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

8
INTRODUCED BY:

By Request



S.B. NO. 2536

Report Title:

Office of Hawaiian Affairs Package; Historic Preservation;
Exclusions

Description:

Clarifies that residential projects involving ground disturbance in high-risk areas remains subject to review under the State Historic Preservation Program. Removes the historic review exemption for lands presumed nominally sensitive.

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

