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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. 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 historic preservation review process to ensure that potential  
9 impacts are carefully identified and assessed, and to provide  
10 lineal and cultural descendants with meaningful opportunities to  
11 guide the treatment of iwi kupuna through the island burial  
12 councils.

13           Accordingly, the purpose of this Act is to reaffirm the  
14 State's commitment to safeguard iwi kupuna and other cultural  
15 and historic resources and to restore the integrity of the  
16 State's historic preservation program by clarifying and



1 expanding the types of proposed projects for privately-owned  
2 residential properties that are subject to historic review.

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

5 "~~§6E-42.2 Excluded activities for privately-owned [single-~~  
6 ~~family detached dwelling units and townhouses, residential~~  
7 ~~projects, and nominally sensitive areas.] residential~~  
8 properties. (a) An application for a proposed project on [~~an~~  
9 ~~existing]~~ a privately-owned [single-family detached dwelling  
10 unit or townhouse] residential property shall be subject to the  
11 requirements of section 6E-42 only if [~~the single-family~~  
12 ~~detached dwelling unit or townhouse]~~ the proposed project  
13 involves the modification of a residential structure that is  
14 over fifty years old and [is:] one or more of the following  
15 applies:

- 16 (1) [~~Listed]~~ The proposed project is listed on the Hawaii  
17 or national register of historic places, or both;
- 18 (2) [~~Nominated]~~ The proposed project is nominated for  
19 inclusion on the Hawaii or national register of  
20 historic places, or both; or



1           (3) ~~[Located]~~ The proposed project is located in a  
2                           nationally, state-, or locally designated historic  
3                           district[-];

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

6                    (A) Occurs on land containing sandy soils, lava  
7                           tubes, karst features, or caves; and

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                                   or

13                           (ii) A historic property previously determined to  
14                                   have an important value to native Hawaiians  
15                                   or to another ethnic group of the State due  
16                                   to associations with cultural practices once  
17                                   carried out, or still carried out, at the  
18                                   property or due to associations with  
19                                   traditional beliefs, events, or oral  
20                                   accounts important to native Hawaiians or



1                    another ethnic group connected to the  
2                    State's history and cultural identity; or

3        (5) The proposed project contains five or more dwelling  
4                    units, and ground-disturbing activity is deeper than  
5                    the depth of the deepest existing foundation on the  
6                    parcel.

7        ~~[(b) An application for a proposed project on an existing~~  
8        ~~residential property shall be subject to the requirements of~~  
9        ~~section 6E-42 only if the existing residential property is over~~  
10       ~~fifty years old and is registered on the Hawaii register of~~  
11       ~~historic places.~~

12        ~~(e)]~~ (b) An application for a proposed project in a  
13        nominally sensitive area shall not be subject to the  
14        requirements of section 6E-42.

15        ~~(d)]~~ (c) For the purposes of this section:

16        "Dwelling unit" means a building or portion thereof  
17        designed or used exclusively for residential occupancy and  
18        having all necessary facilities for permanent residency such as  
19        living, sleeping, cooking, eating, and sanitation.

20        ~~["Nominally sensitive area" means a project area that is~~  
21        ~~known to include a low density of historic, cultural, or~~



1 ~~archaeological resources, or where the project area has been~~  
2 ~~substantially disturbed by previous excavation or other ground-~~  
3 ~~disturbing work and no significant historic properties have been~~  
4 ~~previously identified.]~~

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

11 "Karst" means a landform characterized by subsurface  
12 cavities, voids, or solution features formed by the dissolution  
13 of soluble rock, including caves, sinkholes, and underground  
14 drainage features.

15 "Nominally sensitive area" means a project area that is  
16 known to include a low density of historic, cultural, or  
17 archaeological resources, or where the project area has been  
18 substantially disturbed by previous excavation or other ground-  
19 disturbing work and no significant historic properties have been  
20 previously identified, or as otherwise defined by the



1 department, in coordination with the counties, through rules  
2 adopted pursuant to chapter 91.

3 "Sandy soil" means soil classified by the United States  
4 Department of Agriculture Natural Resources Conservation Service  
5 as sand, loamy sand, sandy loam, or fine sandy loam, including  
6 Jaucas sands, beaches sand, and other coastal or aeolian sand  
7 deposits.

8 [~~"Single-family detached dwelling unit" means an~~  
9 ~~individual, freestanding, unattached dwelling unit, typically~~  
10 ~~built on a lot larger than the structure itself, resulting in an~~  
11 ~~area surrounding the dwelling.]~~

12 "Topsoil" means the uppermost naturally occurring soil  
13 layer characterized by organic material and biological activity,  
14 typically extending to a depth of approximately twelve inches  
15 below the ground surface, or to the depth of the naturally  
16 occurring organic horizon, whichever is less.

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

18 SECTION 3. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.



**1** SECTION 4. This Act shall take effect on July 1, 3000.



**Report Title:**

Office of Hawaiian Affairs Package; Historic Preservation  
Review; Exclusions

**Description:**

Clarifies and expands the types of proposed projects for  
privately-owned residential properties that are subject to  
historic review. Effective 7/1/3000. (HD1)

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

