
A BILL FOR AN ACT

RELATING TO HISTORIC PRESERVATION.

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

1 SECTION 1. Chapter 6E, Hawaii Revised Statutes, is amended
2 by adding two new sections to be appropriately designated and to
3 read as follows:

4 "~~S6E-~~ Archaeological inventory surveys. (a)

5 Archaeological inventory surveys shall be required for all
6 projects:

7 (1) In sandy soil types where ground disturbance will
8 occur; and

9 (2) On parcels where significant historic sites, including
10 burials, have been previously identified on the same
11 parcel or an adjacent parcel.

12 (b) All proponents of projects other than those described
13 in subsection (a) shall complete:

14 (1) A literature review, including the full project area
15 and a minimum of a one-mile radius from the project
16 area; and



1 (2) A field inspection that covers one hundred per cent of
2 the project area.

3 If historic properties are identified, the project proponent
4 shall request a state inventory of historic places and complete
5 an archaeological inventory survey.

6 The archaeological inventory survey shall be submitted to
7 the department for review for ninety days, during which time the
8 department may request a full archaeological inventory survey.

9 If the department fails to request a full archaeological
10 inventory survey within ninety days, the report shall be
11 considered accepted, and no further work shall be required to
12 identify historic properties within a project area. A project
13 proponent or property owner shall complete any additional work
14 required pursuant to this chapter.

15 **\$6E- Archaeological permits.** (a) Archaeological
16 permits shall be issued at the discretion of the department.

17 (b) If a principal investigator fails to adhere to the
18 department's rules, the department may suspend or revoke
19 archaeological permits.

20 (c) Any principal investigator found to have violated any
21 provision of this chapter may be subject to fines and the loss



1 of the right to engage in the practice of archaeology for up to
2 five years."

3 SECTION 2. Section 6E-2, Hawaii Revised Statutes, is
4 amended by amending the definition of "historic property" to
5 read as follows:

6 ""Historic property" means any building, structure, object,
7 district, area, or site, including a heiau and underwater site,
8 that is over fifty years old and meets the criteria for being
9 entered into the Hawaii register of historic places~~[,]~~ or has
10 important value to Native Hawaiians or other ethnic groups of
11 the State due to associations with cultural practices once
12 carried out, or still being carried out, at the property or due
13 to associations with traditional beliefs, events, or oral
14 accounts that are important to the group's history, traditional
15 practices, and cultural identity."

16 SECTION 3. Section 6E-43.5, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§6E-43.5 Island burial councils; creation; appointment;**
19 **composition; duties.** (a) There shall be established within the
20 department [~~five~~] island burial councils~~[, one each]~~ for Hawai'i,
21 Maui/Lāna'i, Moloka'i, O'ahu, and Kaua'i/Ni'ihau, to implement

1 ~~section 6E-43. [Each council shall consist of nine members,~~
2 ~~except the Moloka'i council, which shall consist of five members.~~
3 ~~Each council shall consist of no more than three representatives~~
4 ~~of development and large landowner interests; provided that the~~
5 ~~Moloka'i council shall consist of no more than one representative~~
6 ~~of development and large landowner interests. The remaining~~
7 ~~council members shall represent the geographic regions~~
8 ~~identified in paragraphs (1) through (5). At all times, at~~
9 ~~least two of the regional representatives of each council shall~~
10 ~~have been appointed from a list of nominees submitted to the~~
11 ~~governor by the office of Hawaiian affairs, as provided under~~
12 ~~subsection (b). Each council shall include at least one~~
13 ~~representative for each geographic region identified as follows:~~

14 ~~(1) The Hawai'i council shall include the following~~
15 ~~geographic regions: Kohala, Kona, Ka'u, Puna, Hilo,~~
16 ~~and Hamakua;~~

17 ~~(2) The Maui/Lana'i council shall include the following~~
18 ~~geographic regions: Honua'ula, Lahaina, Wailuku,~~
19 ~~Makawao, Hana, and Lana'i;~~

- 1 ~~(3) The Moloka'i council shall include the following~~
2 ~~geographic regions: West Moloka'i, Central Moloka'i,~~
3 ~~East Moloka'i, and Kalawao;~~
- 4 ~~(4) The O'ahu council shall include the following~~
5 ~~geographic regions: Wai'ānae, `Ewa, Kona, Ko'olaupoko,~~
6 ~~Ko'olauloa, and Waialua; and~~
- 7 ~~(5) The Kaua'i/Ni'ihau council shall include the following~~
8 ~~geographic regions: Waimea/Na Pali, Kōloa, Lihū'e,~~
9 ~~Kawaihau, Hanalei, and Ni'ihau.~~

10 ~~Regional representatives shall be selected from the Hawaiian~~
11 ~~community on the basis of the representatives' understanding of~~
12 ~~the culture, history, burial beliefs, customs, and practices of~~
13 ~~native Hawaiians in the region they each represent.]~~

14 (b) Appointment of members to the councils shall be made
15 by the governor, in accordance with section 26-34 [and
16 ~~subsection (a)], from lists for each council submitted by the~~
17 ~~[department and the] office of Hawaiian affairs. [Lists to fill~~
18 ~~vacancies on the councils shall be submitted as follows:~~

- 19 ~~(1) For vacancies attributable to the expiration of terms,~~
20 ~~the list shall be submitted on the first business day~~



1 ~~of December prior to the expiration of the terms,~~
2 ~~except as provided in subsection (c); and~~
3 ~~(2) For a vacancy that occurs during a council~~
4 ~~representative's term, the list shall be submitted~~
5 ~~within thirty business days after the vacancy occurs,~~
6 ~~except as provided in subsection (c).]~~

7 The office of Hawaiian affairs shall solicit nominees in
8 consultation with appropriate Hawaiian organizations. The
9 membership of each council shall include regional
10 representatives from the Hawaiian community on the basis of
11 their understanding of the culture, history, burial beliefs,
12 customs, and practices of Native Hawaiians.

13 The councils shall have:

- 14 (1) Not fewer than three and not more than seven members;
15 and
16 (2) A ratio of not more than 3:1 and not less than 2:1 in
17 favor of representatives from the Hawaiian community.

18 (c) ~~[The department may submit any list to fill a vacancy~~
19 ~~up to fifteen days after the office of Hawaiian affairs submits~~
20 ~~its list for the same vacancy; provided that the failure of the~~
21 ~~department to submit any list by any relevant deadline or~~



1 ~~fifteen days after the office of Hawaiian affairs submits its~~
2 ~~list, whichever occurs later, shall be construed as a waiver of~~
3 ~~the department's right to submit a list.~~

4 ~~(d)]~~ Notwithstanding section 26-34(b) or any other law to
5 the contrary, any council member whose term has expired may
6 continue in office as a holdover member until the member's
7 reappointment to a second term is confirmed or a successor is
8 nominated and appointed; provided that a holdover member shall
9 not hold office beyond the end of the fourth regular session of
10 the legislature following the expiration of the member's term of
11 office.

12 ~~[(e)]~~ (d) The department, in consultation with the
13 councils, office of Hawaiian affairs, representatives of
14 development and large ~~landowner~~ property owner interests, and
15 appropriate Hawaiian organizations [~~, such as Hui Malama I Na~~
16 ~~Kupuna O Hawai'i Nei~~], shall adopt rules pursuant to chapter 91
17 necessary to carry out the purposes of this section. The
18 council members shall serve without compensation~~[7]~~ but shall be
19 reimbursed for necessary expenses incurred during the
20 performance of their duties. The councils shall be a part of
21 the department for administrative purposes.



1 ~~[(f)]~~ (e) The councils shall hold meetings and acquire
 2 information as they deem necessary and shall communicate their
 3 findings and recommendations to the department. Notwithstanding
 4 section 92-3, whenever the location and description of burial
 5 sites are under consideration, the councils may hold closed
 6 meetings. A majority of all members appointed to which each
 7 council is entitled shall constitute a quorum to do business.
 8 Concurrence of a majority of the members present at a meeting
 9 shall be necessary to make any action of a council valid.

10 ~~[(g)]~~ (f) Department records relating to the location and
 11 description of historic sites, including burial sites, if deemed
 12 sensitive by a council or the ~~[Hawaii]~~ Hawaii historic places
 13 review board, shall be confidential. Records shall be made
 14 available across the department and to the office of Hawaiian
 15 affairs.

16 ~~[(h)]~~ (g) The councils shall:
 17 (1) Determine the preservation or relocation of previously
 18 identified native Hawaiian burial sites;
 19 (2) Assist the department in the inventory and
 20 identification of native Hawaiian burial sites;



1 (3) Make recommendations regarding appropriate management,
2 treatment, and protection of native Hawaiian burial
3 sites, and on any other matters relating to native
4 Hawaiian burial sites[+], taking into consideration
5 the input of lineal and cultural descendants, with
6 greater deference being afforded to lineal descendants
7 and claimants who are most closely associated with the
8 relevant burial site;

9 (4) Elect a chairperson for a four-year term who shall
10 serve for not more than two consecutive terms; and

11 (5) Maintain a list of appropriate Hawaiian organizations,
12 agencies, and offices to notify regarding the
13 discovery of remains.

14 (h) A council shall have ninety days to make a
15 determination as to the preservation or relocation of previously
16 identified native Hawaiian burial sites from the date on which a
17 completed burial treatment plan is submitted to the council for
18 determination. If the council fails to make a determination
19 within ninety days, the office of Hawaiian affairs shall have
20 thirty days to make a determination. If the office of Hawaiian
21 affairs fails to make a determination within thirty days, the

1 recommended determination in the burial treatment plan shall be
2 considered accepted, and the burial treatment plan may proceed
3 to department review and acceptance.

4 (i) A council shall have forty-five days to take action on
5 a request for lineal or cultural descendants from the date of
6 submittal of a complete application to the department. If the
7 council fails to take action within forty-five days, the office
8 of Hawaiian affairs shall have thirty days to make a
9 determination. If the office of Hawaiian affairs fails to make
10 a determination within thirty days, the request to be recognized
11 shall be considered approved."

12 SECTION 4. Section 6E-43.6, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§6E-43.6 Inadvertent discovery of burial sites.** (a) In
15 the event human skeletal remains are inadvertently discovered,
16 any activity in the immediate area that could damage the remains
17 or the potential historic site shall cease until the
18 requirements of subsections (b) to (d) have been met.

19 (b) The discovery shall be reported as soon as possible to
20 the department, the appropriate medical examiner or coroner, and
21 the appropriate police department. As soon as practicable, the



1 department shall notify the appropriate council and the office
2 of Hawaiian affairs. The office of Hawaiian affairs shall be
3 responsible for notifying recognized descendants of the
4 discovery from a current list that shall be provided by the
5 department.

6 The office of Hawaiian affairs shall notify known
7 descendants in the moku or district of the finding within forty-
8 eight hours of the department's determination. The notification
9 shall also be posted on the office of Hawaiian affairs' public
10 website.

11 Any recognized lineal or cultural descendant may contest
12 the department's determination in writing to the island burial
13 council of jurisdiction within fourteen days, after which the
14 council may take jurisdiction over the discovery, at its
15 discretion, within fourteen days of the written request by the
16 descendant. Absent a contest from a recognized lineal or
17 cultural descendant, the office of Hawaiian affairs may contest
18 the department's determination in writing to the island burial
19 council of jurisdiction within fourteen days.

20 (c) After notification of the discovery of multiple
21 skeletons, the following shall be done within two working days,



1 if on Oahu, and three working days, if in other council
2 jurisdictions:

- 3 (1) A representative of the medical examiner or coroner's
4 office and a qualified archaeologist shall examine the
5 remains to determine jurisdiction. If the remains are
6 the responsibility of the medical examiner or coroner,
7 the department's involvement shall end. If the
8 remains are historic or prehistoric burials, then the
9 remainder of this section shall apply;
- 10 (2) The department shall gather sufficient information,
11 including oral tradition, to document the nature of
12 the burial context and determine appropriate treatment
13 of the remains. Members of the appropriate council
14 shall be allowed to oversee the on-site examination
15 and, if warranted, removal; and
- 16 (3) If removal of the remains is warranted, based on
17 criteria developed by the department, in consultation
18 with the councils, office of Hawaiian affairs,
19 representatives of development and large property
20 owner interests, and appropriate Hawaiian
21 organizations [~~such as Hui Malama I Na Kupuna~~]

1 ~~Hawai'i Nei,~~] through rules adopted pursuant to chapter
2 91, the removal of the remains shall be overseen by a
3 qualified archaeologist and a mitigation plan shall be
4 prepared by the department or with the concurrence of
5 the department.

6 (d) In cases involving the discovery of a single skeleton,
7 the requirements of subsection (c) shall be fulfilled in one
8 working day if on Oahu, and two working days if in other council
9 jurisdictions.

10 (e) ~~[The]~~ A mitigation plan, including an appropriate
11 burial site component of a preservation plan or burial site
12 component of an archaeological data recovery plan, shall be
13 developed by ~~[or with the concurrence of]~~ the project proponent
14 and shall be submitted to the department pursuant to subsection
15 (c) (3) for review and approval within thirty days and shall be
16 carried out in accordance with the following:

17 (1) In discoveries related to development where land
18 alteration project activities exist, the landowner,
19 permittee, or developer shall be responsible for the
20 execution of the mitigation plan including relocation
21 of remains. Justifiable delays resulting from the



1 discovery of burials shall not count against any
2 contractor's completion date agreement;
3 (2) Project activities shall not resume [~~once necessary~~
4 ~~archaeological excavations provided in the mitigation~~
5 ~~plan have been completed~~] until the department has
6 provided written approval for the project activities
7 to resume. Failure to comply with this section shall
8 constitute a violation of section 6E-11;

9 (3) In nonproject contexts, the department shall be
10 responsible for the execution of the mitigation plan
11 and the relocation of remains; and

12 (4) The department shall verify the successful execution
13 of the mitigation plan.

14 (f) In cases where remains are archaeologically removed,
15 the department shall determine the place of relocation, after
16 consultation with the appropriate council, affected property
17 owners, representatives of the relevant ethnic group, and any
18 identified lineal descendants, as appropriate. Relocation shall
19 conform with requirements imposed by the department of health,
20 and may be accompanied by traditional ceremonies, as determined
21 by the lineal descendants, or, if no lineal descendants are

1 identified, the appropriate council or representatives of the
2 relevant ethnic group that the department deems appropriate.
3 Specific or special reinterment requests from lineal or cultural
4 descendants may be accommodated; provided that the additional
5 expenses incurred are paid by the affected descendants.

6 (g) ~~[If human skeletal remains are discovered in the~~
7 ~~course of land development or land alteration activities to~~
8 ~~which section 6E-42 applies, and for which the required approval~~
9 ~~was not obtained, all activity in the immediate area that could~~
10 ~~damage the remains or the potential historic site shall cease,~~
11 ~~and treatment of the remains shall be allowed only in compliance~~
12 ~~with section 6E-43.] If the council fails to take jurisdiction
13 within fourteen days, the determination of the department shall
14 stand. If the council takes jurisdiction over the discovery,
15 the council shall have an additional fourteen days to render a
16 decision to uphold or overturn the department determination. If
17 the councils fail to take action within this fourteen-day
18 period, the decision of the department shall stand."~~

19 SECTION 5. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun before its effective date.

1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect on July 1, 2050.



Report Title:

Historic Preservation; Surveys; Archaeological Permits; Practice of Archaeology; SHPD Review; Historic Property; Burials; Island Burial Councils

Description:

Establishes conditions under which archaeological inventory surveys and reconnaissance surveys are required. Establishes conditions under which archaeological permits may be issued and revoked and the practice of archaeology may be temporarily revoked. Modifies the composition and operations of island burial councils. Modifies procedures upon the inadvertent discovery of burial sites. Effective 7/1/2050. (SD1)

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