

ACT 265

S.B. NO. 743

A Bill for an Act Relating to Historic Preservation.

*Be It Enacted by the Legislature of the State of Hawaii:*

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

**“§6E- Cemeteries; removal or redesignation.** (a) Any person removing or redesignating any cemetery shall comply with the following requirements:

- (1) Publish a notice in a newspaper of general circulation in the State, requesting persons having information concerning the cemetery or persons buried in it to report that information to the department;
  - (2) Photograph the cemetery generally, and take separate photographs of all headstones located in the cemetery;
  - (3) Turn over to the department all photographs and any other relevant historical records; and
  - (4) Move all headstones to the place of reinterment.
- (b) The requirements of subsection (a) shall be in addition to any requirements imposed by the department of health.

**§6E- Review of proposed projects.** Before any agency or officer of the State, or its political subdivisions, approves any project involving a permit, license, certificate, land use change, subdivision or other entitlement for use, which may affect historic property, the agency or office shall advise the department and allow the department an opportunity for review and comment on the effect of the proposed project on historic properties, including those listed in the Hawaii register of historic places.

**§6E- Prehistoric and historic burial sites.** (a) At any site, other than a known, maintained, actively used cemetery where human skeletal remains are discovered, the remains shall not be moved without the department's approval, and any activity in the immediate area which could damage the remains or the potential historic site shall cease until the requirements of subsections (b) to (d) have been met.

(b) The finding shall be reported as soon as possible to the department, the medical examiner or coroner, and the appropriate police department.

(c) After notification of the discovery of multiple skeletons, the following shall be done within two working days, if on Oahu, and three working days, if on other islands:

- (1) A representative of the medical examiner or coroner's office and a qualified archaeologist shall examine the remains to determine jurisdiction. If the remains are the responsibility of the medical examiner or coroner, the department's involvement will end. If the remains are significant historic or prehistoric burials, the remainder of this section shall apply;
- (2) The department shall gather sufficient archaeological information to evaluate the significance of the remains;
- (3) If the remains are significant, based on criteria established for the Hawaii register of historic places, the department shall prepare a mitigation plan. If this plan calls for data recovery, and the removal of the burials is warranted, then archaeological analysis must occur, along with appropriate study of the remains by a qualified physical anthropologist. If lineal descendants can be identified by the department, and if they oppose the physical anthropological study, then it shall not occur; and
- (4) The department shall notify the office of Hawaiian affairs if it is likely that the remains are those of native Hawaiians.

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

(e) The mitigation plan developed by the department pursuant to subsection (c)(3) shall be carried out in accordance with the following:

- (1) In discoveries related to development where land alteration project activities exist, the landowner, permittee, or developer shall be responsible for the execution of the mitigation plan and the disposition of remains. Delays shall not count against any contractor's completion date agreement;
- (2) Project activities shall resume once necessary archaeological excavations of the mitigation plan have been completed;
- (3) In non-project contexts, the department shall be responsible for the execution of the mitigation plan and the disposition of remains; and
- (4) The department shall verify the successful execution of the mitigation plan.

(f) In cases where remains are archaeologically removed, the department shall determine the final disposition, after consultation with representatives of the relevant ethnic group and any identified lineal descendants.

- (1) Options shall include:
  - (A) Reburial on the site;
  - (B) Reburial off the site; or
  - (C) Curation in a depository.
- (2) Disposition shall conform with requirements imposed by the department of health.
- (3) Disposition may be accompanied by traditional ceremonies, as determined by representatives of the relevant ethnic group whom the department deems appropriate.
- (4) Special disposition requests from lineal descendants may be accommodated provided that the additional expenses incurred are paid by the affected lineal descendants."

SECTION 2. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 3. New statutory material is underscored.<sup>1</sup>

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

(Approved June 13, 1988.)

**Note**

1. Edited pursuant to HRS §23G-16.5.