

ACT 113

H.B. NO. 3794

A Bill for an Act Relating to Historic Preservation.

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

SECTION 1. Section 6E-2, Hawaii Revised Statutes, is amended by amending the definition of “Burial site” to read as follows:

““Burial site” means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods are interred, and

its immediate surrounding archaeological context, deemed a unique class of historic property and not otherwise included in section 6E-41."

SECTION 2. Section 6E-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Before any construction, alteration, disposition or improvement of any nature, by, for, or permitted by a private landowner may be commenced which will affect an historic property on the Hawaii register of historic places, the landowner shall notify the department of the construction, alteration, disposition, or improvement of any nature and allow the department opportunity for review of the effect of the proposed construction, alteration, disposition, or improvement of any nature on the historic property. The proposed construction, alteration, disposition, or improvement of any nature shall not be commenced, or in the event it has already begun, continue, until the department shall have given its concurrence or ninety days have elapsed. Within ninety days after notification, the department shall [either commence]:

- (1) Commence condemnation proceedings for the purchase of the historic property[, permit] if the department and property owner do not agree upon an appropriate course of action;
- (2) Permit the owner to proceed with the owner's construction, alteration, or improvement[, or undertake]; or
- (3) In coordination with the owner, undertake or permit the investigation, recording, preservation, and salvage of any historical information deemed necessary to preserve Hawaiian history, by any qualified agency for this purpose."

SECTION 3. Section 6E-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) It shall be unlawful for any person, natural or corporate, to knowingly take, appropriate, excavate, injure, destroy, or alter any burial site or the contents thereof, located on private lands or lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department. Violators of this subsection are also subject to prosecution pursuant to section 711-1107, the penalties for which shall be imposed in addition to, and not in lieu of, any penalties imposed under this section."

SECTION 4. Section 6E-43, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) All burial sites are significant and shall be preserved in place until compliance with this section is met, except as provided in section 6E-43.6. The appropriate island burial council shall determine whether preservation in place or relocation of previously identified native Hawaiian burial sites is warranted, following criteria which shall include recognition that burial sites of high preservation value, such as areas with a concentration of skeletal remains, or prehistoric or historic burials associated with important individuals and events, or areas that are within a context of historic properties, or have known lineal descendants, shall receive greater consideration for preservation in place. The criteria shall be developed by the department in consultation with the councils, office of Hawaiian affairs, representatives of development and large property owner interests, and appropriate Hawaiian organizations, such as Hui Malama I Na Kupuna O Hawai'i

Nei, through rules adopted pursuant to chapter 91. A council's determination shall be rendered within [thirty] forty-five days of referral by the department[.] unless otherwise extended by agreement between the landowner and the department."

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

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved May 27, 1992.)