



### OHA-3

#### Preventing Historic Preservation Review Evasion

**This bill establishes and enhances enforcement mechanisms to meaningfully deter violations of state historic preservation laws and better protect culturally invaluable historic sites and burials.**

#### **WHAT IS THE HAWAI‘I HISTORIC PRESERVATION LAW?**

The Hawai‘i Historic Preservation law, codified in HRS Chapter 6E, was enacted to ensure that historic sites and archaeological resources are given appropriate consideration when they may be impacted by development activities. The State Historic Preservation Division (SHPD) was established to administer the law and “provide leadership in preserving, restoring, and maintaining historic and cultural property” for future generations.

#### **WHAT IS THE HAWAI‘I HISTORIC REVIEW PROCESS?**

The historic preservation review process identifies significant historic resources, including iwi kūpuna and burial sites, so that plans for their protection may be established **prior** to the commencement of ground-disturbing work or construction activity. In particular, it provides a process by which certain county permit applications (e.g. grading, construction permits) can be vetted for potential impacts to iwi kūpuna and other archaeological and historical sites. When potential impacts to iwi or sites are found, an Archaeological Inventory Survey (AIS) can provide additional and critical information about the historic resources, sites, and iwi, and help developers, decision makers (including the appropriate island burial council), and the community make well-informed decisions about preservation and protection measures.

**Unfortunately, the historic preservation review process has been undermined by weak enforcement provisions.** One issue of great concern is SHPD’s inability to investigate or take enforcement action against potential impacts to iwi kūpuna or historic sites from unpermitted grading or construction activities. Since such activities are not accompanied by a county permit application, they do not undergo the historic preservation review process, which might otherwise protect iwi or historic sites through appropriate assessment, consultation, and planning.

Moreover, in such instances, SHPD is often unable to take enforcement action for the destruction of iwi or historic sites, due to the loss of necessary evidence. The lack of enforcement and penalties for unpermitted work can even create a financial incentive for some landowners and contractors to evade the historic preservation process and “build first, ask permission later.”

#### **HOW WILL OHA-3 PREVENT HISTORIC PRESERVATION REVIEW EVASION?**

The survival of the few remaining Native Hawaiian historic resources, historic sites, and burials relies on a robust and well-enforced historic preservation review process. This measure will reinforce the historic review process and encourage compliance with existing historic preservation laws by:



- Establishing, as a standalone violation, any unpermitted or unauthorized activities that would have triggered state historic preservation review;
- Allowing SHPD to issue stop work orders or stop the issuance of development-related permits for any parcel where unpermitted activities have occurred, unless and until a site inspection is conducted to identify any evidence of potential impacts to iwi kūpuna or historic sites, as well as mitigation measures to address such impacts;
- Holding landowners and contractors responsible for all assessment and mitigation costs;
- Requiring the establishment of a citizen complaint hotline and process;
- Requiring the posting of notice at worksites regarding iwi kūpuna and historic preservation laws, and informing workers and the public of the citizen complaint process;
- Requiring SHPD to maintain and publish a list of violators to inform other state agencies of whom they are restricted from contracting with;
- Increasing the maximum fines for violations for the first time in over 15 years, from \$10,000 to \$25,000 per violation; and
- Amending the historic preservation special fund, which collects historic preservation fines and fees, to explicitly allow fund monies to be dedicated toward enforcement-related activities.