

JAN 23 2020

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# A BILL FOR AN ACT

RELATING TO AFFORDABLE HOUSING.

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

1       SECTION 1. The legislature recognizes that Hawaii is  
2       experiencing a severe affordable housing crisis with a lack of  
3       affordable rental and for-sale units. Government must do all it  
4       can to support affordable housing. The legislature further  
5       finds that Hawaii must build at least twenty-two thousand  
6       affordable rental housing units by 2026.

7       According to the "Affordable Rental Housing Report and Ten-  
8       Year Plan", prepared by the department of business, economic  
9       development, and tourism (July 2018), housing demand is  
10      projected to reach 64,693 units by 2025, with nearly seventy per  
11      cent (43,828 units) needed for households earning eighty per  
12      cent or less of the area median income.

13      The purpose of this Act is to require the department of  
14      land and natural resources, through the state historic  
15      preservation division, to contract its review of proposed state  
16      projects, projects on privately owned historic property, and  
17      projects affecting historic properties to third-party



1 consultants if the projects involve the development of  
2 affordable housing and the department will not be able to  
3 complete its review within sixty days.

4 SECTION 2. Section 6E-8, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 **"§6E-8 Review of effect of proposed state projects. (a)**

7 Before any agency or officer of the State or its political  
8 subdivisions commences any project which may affect historic  
9 property, aviation artifact, or a burial site, the agency or  
10 officer shall advise the department and allow the department an  
11 opportunity for review of the effect of the proposed project on  
12 historic properties, aviation artifacts, or burial sites,  
13 consistent with section 6E-43, especially those listed on the  
14 Hawaii register of historic places. The proposed project shall  
15 not be commenced, or if it has already begun, continued, until  
16 the department has given its written concurrence. If:

17 (1) The proposed project consists of corridors or large  
18 land areas;

19 (2) Access to properties is restricted; or

20 (3) Circumstances dictate that construction be done in  
21 stages,



1 the department may give its written concurrence based on a  
2 phased review of the project; provided that there shall be a  
3 programmatic agreement between the department and the project  
4 applicant that identifies each phase and the estimated timelines  
5 for each phase.

6 The department shall provide written concurrence or non-  
7 concurrence within ninety days after the filing of a request  
8 with the department. The agency or officer seeking to proceed  
9 with the project, or any person, may appeal the department's  
10 concurrence or non-concurrence to the Hawaii historic places  
11 review board. An agency, officer, or other person who is  
12 dissatisfied with the decision of the review board may apply to  
13 the governor, who may take action as the governor deems best in  
14 overruling or sustaining the department.

15 (b) The department of Hawaiian home lands, prior to any  
16 proposed project relating to lands under its jurisdiction, shall  
17 consult with the department regarding the effect of the project  
18 upon historic property or a burial site.

19 (c) The State, its political subdivisions, agencies, and  
20 officers shall report to the department the finding of any  
21 historic property during any project and shall cooperate with



1 the department in the investigation, recording, preservation,  
2 and salvage of the property.

3 (d) Whenever the proposed state project involves the  
4 development of affordable housing, as that term is defined under  
5 section 201H-57, the department shall immediately retain a  
6 third-party consultant without regard to chapter 103D to conduct  
7 the review described under subsection (a) if, in its discretion,  
8 the department determines that:

9 (1) It will not be able to provide its written concurrence  
10 or non-concurrence within sixty days of the filing of  
11 the request with the department;

12 (2) The third-party consultant has the qualifications and  
13 experience to conduct the review; and

14 (3) The third-party consultant will be able to provide a  
15 recommendation to the department within thirty days of  
16 the filing of the request with the department.

17 ~~[(d)]~~ (e) The department shall adopt rules in accordance  
18 with chapter 91 to implement this section."

19 SECTION 3. Section 6E-10, Hawaii Revised Statutes, is  
20 amended to read as follows:



1        **"§6E-10 Privately owned historic property.** (a) Before  
2 any construction, alteration, disposition or improvement of any  
3 nature, by, for, or permitted by a private landowner may be  
4 commenced which will affect an historic property on the Hawaii  
5 register of historic places, the landowner shall notify the  
6 department of the construction, alteration, disposition, or  
7 improvement of any nature and allow the department opportunity  
8 for review of the effect of the proposed construction,  
9 alteration, disposition, or improvement of any nature on the  
10 historic property. The proposed construction, alteration,  
11 disposition, or improvement of any nature shall not be  
12 commenced, or in the event it has already begun, continue, until  
13 the department shall have given its concurrence or ninety days  
14 have elapsed. Within ninety days after notification, the  
15 department shall:

16        (1) Commence condemnation proceedings for the purchase of  
17 the historic property if the department and property  
18 owner do not agree upon an appropriate course of  
19 action;

20        (2) Permit the owner to proceed with the owner's  
21 construction, alteration, or improvement; or



1           (3) In coordination with the owner, undertake or permit  
2           the investigation, recording, preservation, and  
3           salvage of any historical information deemed necessary  
4           to preserve Hawaiian history, by any qualified agency  
5           for this purpose.

6           (b) Nothing in this section shall be construed to prevent  
7           the ordinary maintenance or repair of any feature in or on an  
8           historic property that does not involve a change in design,  
9           material, or outer appearance or change in those characteristics  
10          which qualified the historic property for entry onto the Hawaii  
11          register of historic places.

12          (c) Any person, natural or corporate, who violates the  
13          provisions of this section shall be fined not more than \$1,000,  
14          and each day of continued violation shall constitute a distinct  
15          and separate offense under this section for which the offender  
16          may be punished.

17          (d) If funds for the acquisition of needed property are  
18          not available, the governor may, upon the recommendation of the  
19          department allocate from the contingency fund an amount  
20          sufficient to acquire an option on the property or for the



1 immediate acquisition, preservation, restoration, or operation  
2 of the property.

3 (e) Whenever the construction, alteration, disposition, or  
4 improvement relates to the development of affordable housing, as  
5 that term is defined under section 201H-57, the department shall  
6 immediately retain a third-party consultant without regard to  
7 chapter 103D to conduct the review described under subsection  
8 (a) if, in its discretion, the department determines that:

9 (1) It will not be able to provide its written concurrence  
10 or non-concurrence within sixty days of the  
11 landowner's notification;

12 (2) The third-party consultant has the qualifications and  
13 experience to conduct the review; and

14 (3) The third-party consultant will be able to provide a  
15 recommendation to the department within thirty days of  
16 the landowner's notification.

17 ~~[(e)]~~ (f) The department or the third-party consultant, as  
18 applicable, may enter, solely in performance of [its] the  
19 department's official duties and only at reasonable times, upon  
20 private lands for examination or survey thereof. Whenever any  
21 member of the department or the department's third-party



1 consultant, as applicable, duly authorized to conduct  
2 investigations and surveys of an historic or cultural nature  
3 determines that entry onto private lands for examination or  
4 survey of historic or cultural finding is required, the  
5 department or the department's third-party consultant, as  
6 applicable, shall give written notice of the finding to the  
7 owner or occupant of such property at least five days prior to  
8 entry. If entry is refused, the member or the department's  
9 third-party consultant, as applicable, may make a complaint to  
10 the district environmental court in the circuit in which such  
11 land is located. The district environmental court may thereupon  
12 issue a warrant, directed to any police officer of the circuit,  
13 commanding the officer to take sufficient aid, and, being  
14 accompanied by a member of the department[7] or the department's  
15 third-party consultant, as applicable, between the hours of  
16 sunrise and sunset, allow the member of the department or the  
17 department's third-party consultant, as applicable, to examine  
18 or survey the historic or cultural property."

19 SECTION 4. Section 6E-42, Hawaii Revised Statutes, is  
20 amended to read as follows:





1       "**§6E-42 Review of proposed projects.** (a) Except as  
2 provided in section 6E-42.2, before any agency or officer of the  
3 State or its political subdivisions approves any project  
4 involving a permit, license, certificate, land use change,  
5 subdivision, or other entitlement for use, which may affect  
6 historic property, aviation artifacts, or a burial site, the  
7 agency or office shall advise the department and prior to any  
8 approval allow the department an opportunity for review and  
9 comment on the effect of the proposed project on historic  
10 properties, aviation artifacts, or burial sites, consistent with  
11 section 6E-43, including those listed in the Hawaii register of  
12 historic places. If:

13       (1) The proposed project consists of corridors or large  
14       land areas;

15       (2) Access to properties is restricted; or

16       (3) Circumstances dictate that construction be done in  
17       stages,

18 the department's review and comment may be based on a phased  
19 review of the project; provided that there shall be a  
20 programmatic agreement between the department and the project



1 applicant that identifies each phase and the estimated timelines  
2 for each phase.

3 (b) The department shall inform the public of any project  
4 proposals submitted to it under this section that are not  
5 otherwise subject to the requirement of a public hearing or  
6 other public notification.

7 (c) Whenever the project involves the development of  
8 affordable housing, as that term is defined under section  
9 201H-57, the department shall immediately retain a third-party  
10 consultant without regard to chapter 103D to conduct the review  
11 and comment described under subsection (a) if, in its  
12 discretion, the department determines that:

13 (1) It will not be able to provide its review and comment  
14 within sixty days of the advising;

15 (2) The third-party consultant has the qualifications and  
16 experience to conduct the review and comment; and

17 (3) The third-party consultant will be able to provide a  
18 recommendation to the department within thirty days of  
19 the advising.

20 [~~e~~] (d) The department shall adopt rules in accordance  
21 with chapter 91 to implement this section."



# S.B. NO. 2798

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

4       SECTION 6. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

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

7

INTRODUCED BY:

4. Calam English



# S.B. NO. 2798

**Report Title:**

State Historic Preservation Division; Affordable Housing

**Description:**

Requires the State Historic Preservation Division to contract its review of proposed state projects, projects on privately owned historic property, and projects affecting historic properties to third-party consultants if the projects involve the development of affordable housing and the division will not be able to complete its review within 60 days.

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