
A BILL FOR AN ACT

RELATING TO HISTORIC PRESERVATION.

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

1 SECTION 1. The legislature finds that section 6E-42,
2 Hawaii Revised Statutes, plays an essential role in the
3 protection and management of the State's historic places, burial
4 sites, and aviation artifacts by requiring agencies and offices
5 of the State and its subdivisions to submit for review all
6 projects that may affect historic properties to the state
7 historic preservation division in the department of land and
8 natural resources before approval.

9 Due to the lack of capacity in the state historic
10 preservation division, there is an unacceptable backlog of
11 projects needing review, which results in costly delays to
12 affordable housing and other important construction projects.

13 In order to increase this capacity, the purpose of this Act
14 is to allow the department of land and natural resources' state
15 historic preservation division to delegate the responsibility of
16 historic preservation project reviews to the respective
17 counties.



1 SECTION 2. Section 6E-42, Hawaii Revised Statutes, is
2 amended to read as follows:

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

15 (1) The proposed project consists of corridors or large
16 land areas;

17 (2) Access to properties is restricted; or

18 (3) Circumstances dictate that construction be done in
19 stages,

20 the department's review and comment may be based on a phased
21 review of the project; provided that there shall be a



1 programmatic agreement between the department and the project
2 applicant that identifies each phase and the estimated timelines
3 for each phase.

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

8 (c) The department may delegate responsibility for review
9 of projects pursuant to this section, and pursuant to any
10 administrative rules adopted thereunder, to the respective
11 counties; provided that the department, in consultation with the
12 office of Hawaiian affairs, has certified that the county has:

13 (1) Adopted an ordinance to govern the county's review
14 process that is consistent with the requirements of
15 this section and with any administrative rules adopted
16 pursuant to this section;

17 (2) Hired qualified professional staff who meet standards
18 established by the department to conduct the reviews;

19 (3) Established sufficient internal organizational
20 controls to ensure that the qualified professional



1 staff can make independent determinations regarding
2 the effects of projects on historic properties;
3 (4) Ensured that the qualified professional staff can
4 function in a manner that does not create a conflict
5 of interest or the appearance of a conflict of
6 interest;
7 (5) Provided for appropriate public notification in a
8 manner consistent with standards established by the
9 department; and
10 (6) Entered into a written agreement, in consultation with
11 the office of Hawaiian affairs, with the department
12 memorializing the scope of delegation to the county;
13 provided further that the delegation of authority shall
14 automatically be suspended or terminated if the county fails to
15 retain its qualified professional staff or if it becomes
16 apparent that the county does not have sufficient staffing
17 capacity to complete the delegated reviews in a timely manner.
18 (d) The department shall not delegate reviews or comments
19 to the county for projects affecting properties listed in the
20 Hawaii register of historic places or the national register of
21 historic places, and shall not delegate any of the



1 responsibilities established by sections 6E-43, 6E-43.5,
2 and 6E-43.6 as it related to burial, nor shall the authority of
3 the island burial councils be diminished in any way.

4 (e) All reviews or comments by the department or county
5 under subsections (a) or (c) shall be made in writing and
6 promptly transmitted to the agency or officer of the State that
7 has project approval authority and shall not be later amended,
8 expanded, or revoked unless there is an authorized physical
9 change to the site that would render those reviews or comments
10 invalid.

11 (f) The department may establish a program to certify
12 third-party individuals and organizations to review documents
13 before submission of the documents to the department for review.
14 Certification of third-party individuals and organizations shall
15 be done in consultation with the office of Hawaiian affairs. A
16 review by a third party shall ensure that the information
17 submitted is complete and complies with the department's
18 documentation requirements, that any accompanying data and
19 analysis supports recommendations made in the submission, and
20 that the project reviewed complies with all of the requirements
21 imposed by the department and this chapter. Third-party



1 reviewers certified by the department shall satisfy the
2 following requirements:

3 (1) Staff who conduct the reviews shall meet professional
4 qualifications and standards established by the
5 department;

6 (2) Individuals and organizations that apply for
7 certification shall demonstrate that they have
8 established sufficient internal organizational
9 controls to ensure the qualified professional staff
10 can make independent determinations regarding the
11 effects of projects on historic properties and can
12 function in a manner that does not create a conflict
13 of interest or the appearance of a conflict of
14 interest; and

15 (3) Individuals or organizations certified to conduct
16 third-party document reviews that precede the
17 department's review shall be independent from the
18 individual or organization that drafted or generated
19 the documents.

20 ~~[(e)]~~ (g) The [department] board of land and natural
21 resources shall adopt [~~rules in accordance with chapter 91~~]



1 written policies at a public meeting to implement this section.
2 Adoption of these written policies shall be exempt from the
3 requirements of chapter 91."

4 SECTION 3. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect on January 1, 2050.



H.B. NO. 821 H.D. 2

Report Title:

State Historic Preservation Division; Project Reviews; Counties

Description:

Authorizes the state historic preservation division, in consultation with the office of Hawaiian affairs, to delegate the responsibility of historic preservation project reviews to the impacted county and establish a program for third-party individuals and organizations to conduct document reviews on proposed projects. Effective 1/1/2050. (HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

