
A BILL FOR AN ACT

RELATING TO HISTORIC PRESERVATION REVIEWS.

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, occupies an essential role in the
3 protection and management of the State's historic places, burial
4 sites, and aviation artifacts. Section 6E-42 requires agencies
5 and officers of the State and its subdivisions, prior to project
6 approval, to submit all projects that may affect historic
7 properties to the department of land and natural resources'
8 state historic preservation division for review. However, due
9 to the current demand for the construction of housing and
10 critical infrastructure, the state historic preservation
11 division has an unacceptably large backlog of projects needing
12 review.

13 The purpose of this Act is to allow the state historic
14 preservation division, in consultation with the office of
15 Hawaiian affairs, to delegate to the impacted counties the
16 responsibility for historic preservation project reviews;
17 provided that certain requirements are met.



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 may affect
8 historic property, aviation artifacts, or a burial site, the
9 agency or office shall advise the department and prior to any
10 approval allow the department an opportunity for review and
11 comment on the effect of the proposed project on historic
12 properties, aviation artifacts, or burial sites, consistent with
13 section 6E-43, including those listed in the Hawaii register of
14 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 in accordance with the procedures set forth in
15 this chapter and the department's applicable
16 administrative rules;

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

20 (3) Established sufficient internal organizational
21 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 an 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 with the department
11 memorializing the scope of delegation to the county;
12 provided further that the delegation of authority shall
13 automatically be suspended or terminated if the county fails to
14 retain its qualified professional staff or if it becomes
15 apparent that the county does not have sufficient staffing
16 capacity to complete the delegated reviews in a timely manner.
17 (d) The department shall not delegate reviews to the
18 county for projects affecting properties listed in the Hawaii
19 register of historic places or the national register of historic
20 places.



1 (e) The department shall not delegate any responsibility
2 established by sections 6E-43, 6E-43.5 and 6E-43.6 as it relates
3 to burials, nor shall the authority of the island burial
4 councils be diminished in any way.

5 (f) The department may establish a program to certify
6 third-party individuals and organizations to review documents
7 prior to submission of the documents to the department for
8 review. A review by a third-party shall ensure that the
9 information submitted is complete and complies with the
10 department's documentation requirements, that any accompanying
11 data and analysis supports the recommendations made in the
12 submission, and that the project reviewed complies with all of
13 the requirements imposed by the department and this chapter.
14 Third-party reviewers certified by the department shall satisfy
15 the following requirements:

16 (1) Staff who conduct the reviews shall meet professional
17 qualifications and standards established by the
18 department;

19 (2) Individuals and organizations that apply for
20 certification shall demonstrate that they have
21 established sufficient internal organizational



1 controls to ensure that the qualified professional
2 staff can make independent determinations regarding
3 the effects of projects on the properties reviewed and
4 can function in a manner that does not create a
5 conflict of interest or an appearance of a conflict of
6 interest; and

7 (3) Individuals or organizations certified to conduct
8 third-party document reviews shall be independent from
9 the project reviewed and shall not have participated,
10 directly or indirectly, in drafting or generating the
11 project documents reviewed.

12 [~~(e)~~] (g) The department shall adopt rules in accordance
13 with chapter 91 to implement this section."

14 SECTION 3. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 4. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 5. This Act shall take effect upon its approval.



Report Title:

DLNR; State Historic Preservation Division; Office of Hawaiian Affairs; Project Reviews

Description:

Authorizes the Department of Land and Natural Resources, in consultation with the Office of Hawaiian Affairs, to delegate to the impacted counties the responsibility for certain historic preservation project reviews, provided that certain requirements are met. Allows the Department of Land and Natural Resources to establish a program to certify third-party individuals and organizations to review documents for completeness and compliance prior to submission of those documents to the Department; provided that certain requirements are met. (SD1)

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