

JAN 22 2021

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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 finds that the State faces an  
2           unprecedented economic crisis due to the coronavirus disease  
3           2019 (COVID-19) pandemic, which has decimated Hawaii's economy  
4           and caused its gross domestic product to plummet. By some  
5           measures, Hawaii's economy has been hit harder than any other  
6           state in the nation.

7           The legislature also finds that this drastic decline in  
8           economic activity has disproportionately affected the State's  
9           most vulnerable populations. The pandemic forced the shutdown  
10          of many sectors of the State's economy, triggering mass layoffs  
11          and furloughs and causing the State's seasonally adjusted  
12          unemployment to surge from 2.4 per cent in March 2020 to a  
13          historical high of 22.3 per cent in April 2020. Despite efforts  
14          to reopen the economy, Hawaii still had the second-highest  
15          unemployment rate in the nation as of November 2020. With the  
16          COVID-19 pandemic continuing to rage throughout the world, most  
17          countries experiencing recession, and visitor arrivals to the



1 State not expected to recover to pre-pandemic levels until at  
2 least 2024, the State will continue to feel the economic impacts  
3 of the pandemic for many years to come.

4 The legislature further finds that, even before the  
5 pandemic, renter households in the State already suffered from  
6 deleteriously high housing cost burdens, and that the economic  
7 impacts of the COVID-19 pandemic significantly exacerbated this  
8 situation. Recent data from the university of Hawaii economic  
9 research organization (UHERO) showed that more than eleven  
10 thousand Hawaii tenants have fallen behind on their rent  
11 payments and that forty per cent of rental tenants have lost  
12 their jobs. Modeling from UHERO indicates that up to seventeen  
13 thousand households may face an unsustainable change in their  
14 housing cost burden by the second quarter of 2021, even as the  
15 State's economy slowly recovers. Even in a best-case scenario,  
16 the number of individuals facing homelessness will continue to  
17 rise in the face of the pandemic. UHERO concluded that, from a  
18 policy standpoint, "doing nothing is not a viable option."

19 Accordingly, the legislature finds that it must take  
20 immediate action to mitigate the affordable housing crisis  
21 through legislation.



1           The purpose of this Act is to require the department of  
2 land and natural resources, through the state historic  
3 preservation division, to contract its review of proposed state  
4 projects, projects on privately owned historic property, and  
5 projects affecting historic properties to third-party  
6 consultants if the projects involve the development of  
7 affordable housing and the department will not be able to  
8 complete its review within sixty days.

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

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



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

3           (2) Access to properties is restricted; or

4           (3) Circumstances dictate that construction be done in  
5                   stages,

6 the department may give its written concurrence based on a  
7 phased review of the project; provided that there shall be a  
8 programmatic agreement between the department and the project  
9 applicant that identifies each phase and the estimated timelines  
10 for each phase.

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

20           (b) The department of Hawaiian home lands, prior to any  
21 proposed project relating to lands under its jurisdiction, shall



1 consult with the department regarding the effect of the project  
2 upon historic property or a burial site.

3 (c) The State, its political subdivisions, agencies, and  
4 officers shall report to the department the finding of any  
5 historic property during any project and shall cooperate with  
6 the department in the investigation, recording, preservation,  
7 and salvage of the property.

8 (d) Whenever the proposed state project involves a  
9 development where at least eighty per cent of the units are  
10 intended as affordable housing, as that term is defined under  
11 section 201H-57, the department shall immediately retain a  
12 third-party consultant without regard to chapter 103D to conduct  
13 the review described under subsection (a) if, after an initial  
14 evaluation, the department determines that:

- 15 (1) It will not be able to provide its written concurrence  
16 or non-concurrence within sixty days of the filing of  
17 the request with the department;  
18 (2) The third-party consultant has the qualifications and  
19 experience to conduct the review; and



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

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

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

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

1 have elapsed. Within ninety days after notification, the  
2 department shall:

- 3 (1) Commence condemnation proceedings for the purchase of  
4 the historic property if the department and property  
5 owner do not agree upon an appropriate course of  
6 action;
  - 7 (2) Permit the owner to proceed with the owner's  
8 construction, alteration, or improvement; or
  - 9 (3) In coordination with the owner, undertake or permit  
10 the investigation, recording, preservation, and  
11 salvage of any historical information deemed necessary  
12 to preserve Hawaiian history, by any qualified agency  
13 for this purpose.
- 14 (b) Nothing in this section shall be construed to prevent  
15 the ordinary maintenance or repair of any feature in or on an  
16 historic property that does not involve a change in design,  
17 material, or outer appearance or change in those characteristics  
18 which qualified the historic property for entry onto the Hawaii  
19 register of historic places.
- 20 (c) Any person, natural or corporate, who violates the  
21 provisions of this section shall be fined not more than \$1,000,



1 and each day of continued violation shall constitute a distinct  
2 and separate offense under this section for which the offender  
3 may be punished.

4 (d) If funds for the acquisition of needed property are  
5 not available, the governor may, upon the recommendation of the  
6 department allocate from the contingency fund an amount  
7 sufficient to acquire an option on the property or for the  
8 immediate acquisition, preservation, restoration, or operation  
9 of the property.

10 (e) Whenever the construction, alteration, disposition, or  
11 improvement relates to a development where at least eighty per  
12 cent of the units are intended as affordable housing, as that  
13 term is defined under section 201H-57, the department shall  
14 immediately retain a third-party consultant without regard to  
15 chapter 103D to conduct the review described under subsection  
16 (a) if, after an initial evaluation, the department determines  
17 that:

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



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

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

6        [~~e~~] (f) The department or the third-party consultant, as  
7        applicable, may enter, solely in performance of [its] the  
8        department's official duties and only at reasonable times, upon  
9        private lands for examination or survey thereof. Whenever any  
10       member of the department or the department's third-party  
11       consultant, as applicable, duly authorized to conduct  
12       investigations and surveys of an historic or cultural nature  
13       determines that entry onto private lands for examination or  
14       survey of historic or cultural finding is required, the  
15       department or the department's third-party consultant, as  
16       applicable, shall give written notice of the finding to the  
17       owner or occupant of such property at least five days prior to  
18       entry. If entry is refused, the member or the department's  
19       third-party consultant, as applicable, may make a complaint to  
20       the district environmental court in the circuit in which such  
21       land is located. The district environmental court may thereupon



1 issue a warrant, directed to any police officer of the circuit,  
2 commanding the officer to take sufficient aid, and, being  
3 accompanied by a member of the department [7] or the department's  
4 third-party consultant, as applicable, between the hours of  
5 sunrise and sunset, allow the member of the department or the  
6 department's third-party consultant, as applicable, to examine  
7 or survey the historic or cultural property."

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

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



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

3           (2) Access to properties is restricted; or

4           (3) Circumstances dictate that construction be done in  
5           stages,

6 the department's review and comment may be based on a phased  
7 review of the project; provided that there shall be a  
8 programmatic agreement between the department and the project  
9 applicant that identifies each phase and the estimated timelines  
10 for each phase.

11           (b) The department shall inform the public of any project  
12 proposals submitted to it under this section that are not  
13 otherwise subject to the requirement of a public hearing or  
14 other public notification.

15           (c) Whenever the project involves a development where at  
16 least eighty per cent of the units are intended as affordable  
17 housing, as that term is defined under section 201H-57, the  
18 department shall immediately retain a third-party consultant  
19 without regard to chapter 103D to conduct the review and comment  
20 described under subsection (a) if, after an initial evaluation,  
21 the department determines that:



- 1        (1) It will not be able to provide its review and comment
- 2                within sixty days of the advising;
- 3        (2) The third-party consultant has the qualifications and
- 4                experience to conduct the review and comment; and
- 5        (3) The third-party consultant will be able to provide a
- 6                recommendation to the department within thirty days of
- 7                the advising.

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

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

13        SECTION 6. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

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

16

INTRODUCED BY:



# S.B. NO. 869

**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, after an initial evaluation, determines it will not be able to complete its review within 60 days.

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