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# A BILL FOR AN ACT

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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, 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 political subdivisions to submit for review  
6       all projects that may affect historic properties to the state  
7       historic preservation division of the department of land and  
8       natural resources before approval.

9       The department of land and natural resources notes that in  
10      every other state in the union, many of these reviews would be  
11      subject to review at the county or municipal level--only Hawaii  
12      requires reviews and evaluations at the state level. The  
13      department of land and natural resources believes that it is  
14      reasonable and appropriate to authorize the counties to assume  
15      responsibilities for such reviews.

16      In order to improve protection of Hawaii's historic  
17      properties by ensuring more decisions are made at the regional



1 level, and promote more timely reviews, the purpose of this Act  
2 is to assign the responsibility for certain historic  
3 preservation project reviews under section 6E-42, Hawaii Revised  
4 Statutes, to the respective counties.

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

7 **"§6E-42 Review of proposed projects.** (a) Except as  
8 provided in section 6E-42.2, before any agency or officer of the  
9 State or its political subdivisions approves any project  
10 involving a permit, license, certificate, land use change,  
11 subdivision, or other entitlement for use~~[, which]~~ that may  
12 affect historic property, aviation artifacts, or a burial site,  
13 the agency or office shall advise the department or the  
14 designated county preservation officer and ~~[prior to]~~ before any  
15 approval allow the department or designated county preservation  
16 officer an opportunity for review and comment on the effect of  
17 the proposed project on historic properties, aviation artifacts,  
18 or burial sites, consistent with section 6E-43, including those  
19 listed in the Hawaii register of historic places~~[.]~~ or national  
20 register of historic places, or located in a designated historic  
21 district. 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 or designated county preservation officer's  
7 review and comment may be based on a phased review of the  
8 project; provided that there shall be a programmatic agreement  
9 between the department and the project applicant that identifies  
10 each phase and the estimated timelines for each phase.

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

16 (c) No later than January 2, 2023, responsibility for  
17 review of projects pursuant to this section shall be the  
18 responsibility of the respective counties and shall be subject  
19 to any rules adopted pursuant to this section; provided that the  
20 department certifies in writing that the county has:



- 1        (1) Adopted an ordinance to govern the county's review  
2        process and the process is consistent with the  
3        requirements of this section and any rules adopted  
4        pursuant to this section;
- 5        (2) Designated a county preservation officer who meets the  
6        professional qualification standards established by  
7        the department;
- 8        (3) Hired qualified professional staff who meet standards  
9        established by the department to conduct the reviews;
- 10       (4) Established sufficient internal organizational  
11       controls to ensure that the qualified professional  
12       staff can make independent determinations regarding  
13       the effects of projects on historic properties;
- 14       (5) Ensured that the qualified professional staff can  
15       function in a manner that does not create a conflict  
16       of interest or the appearance of a conflict of  
17       interest;
- 18       (6) Provided for appropriate public notification in a  
19       manner consistent with standards established by the  
20       department;



- 1        (7) Ensured that copies of all reports, maps, and  
2        documents, including those reflecting the county  
3        preservation officer's comments, recommendations, and  
4        decisions, are provided to the department to be  
5        incorporated into the historic preservation digital  
6        document management system and library; and
- 7        (8) Entered into a written agreement with the department  
8        in which the department certifies that the county has  
9        met the requirements of this section and is assuming  
10       responsibility for review of projects under section  
11       6E-42; provided further that the delegation of  
12       authority shall automatically be suspended or  
13       terminated if the county is unable to retain  
14       sufficient qualified professional staff or if it  
15       becomes apparent that the county does not have  
16       sufficient staffing capacity to complete the delegated  
17       reviews in a timely manner.
- 18       (d) The department shall retain authority for review under  
19       this section for projects:



1       (1) Affecting properties listed or nominated for inclusion  
2           in the Hawaii register of historic places or the  
3           national register of historic places; or

4       (2) Occurring within or affecting a designated historic  
5           district.

6       (e) The department may establish a program to certify  
7       third-party individuals and organizations to review documents  
8       before submission of the documents to the department or  
9       designated county preservation officer for review.

10       Certification of third-party individuals and organizations shall  
11       be done in consultation with the office of Hawaiian affairs. A  
12       review by a third party shall ensure that the information  
13       submitted is complete and complies with the department's  
14       documentation requirements, that any accompanying data and  
15       analysis support recommendations made in the submission, and  
16       that the project reviewed complies with all of the requirements  
17       imposed by the department and this chapter. Third-party  
18       reviewers certified by the department shall satisfy the  
19       following requirements:



- 1        (1) Individuals who conduct the reviews shall meet  
2        professional qualifications and standards established  
3        by the department;
- 4        (2) Individuals and organizations that apply for  
5        certification shall demonstrate that they have  
6        established sufficient internal organizational  
7        controls to ensure that the qualified professional  
8        staff can make independent determinations regarding  
9        the effects of projects on historic properties and can  
10       function in a manner that does not create a conflict  
11       of interest or the appearance of a conflict of  
12       interest; and
- 13       (3) Individuals or organizations certified to conduct  
14       third-party document reviews that precede the  
15       department's or designated county preservation  
16       officer's review shall be independent from the  
17       individual or organization that drafted or generated  
18       the documents.

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



1       SECTION 3. There is appropriated out of the general  
2 revenues of the State of Hawaii the sum of \$                   or so  
3 much thereof as may be necessary for fiscal year 2022-2023, to  
4 be allocated to the counties by the department of land and  
5 natural resources in order to provide financial assistance in  
6 conjunction with article VIII, section 5, of the state  
7 constitution and with assigning the responsibility for certain  
8 historic preservation project reviews under section 6E-42,  
9 Hawaii Revised Statutes, to the respective counties; provided  
10 that the department of land and natural resources may retain up  
11 to ten per cent of the amount appropriated to cover  
12 administrative expenses incurred while carrying out the purposes  
13 of this Act.

14       The sum appropriated shall be expended by the state  
15 historic preservation division of the department of land and  
16 natural resources.

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 on July 1, 2050;  
20 provided that section 3 of this Act shall take effect on July 1,  
21 2022.





**Report Title:**

Historic Preservation Review; Counties; Appropriation

**Description:**

Transfers authority for certain reviews of projects in conjunction with section 6E-42, Hawaii Revised Statutes, from the department of land and natural resources to the counties. Provides financial assistance to the counties to conduct the reviews. Effective 7/1/2050. (HD1)

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

