

JAN 21 2022

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 decimated Hawai'i's economy and
4 caused its gross domestic product to plummet. By some measures,
5 Hawai'i's economy was hit harder than any other state in the
6 nation.

7 The legislature also finds that this drastic decline in
8 economic activity disproportionately affected the State's most
9 vulnerable populations. The pandemic forced the shutdown of
10 many sectors of the State's economy, triggering mass layoffs and
11 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. Although the
14 State's economy has improved with the dissemination of COVID-19
15 vaccines, the State still has one of the highest unemployment
16 rates in the nation. It is estimated the State will continue to



1 feel the economic impacts of the pandemic for many years to
2 come.

3 The legislature further finds that, even before the
4 pandemic, renter households in the State already suffered from
5 deleteriously high housing cost burdens, and the economic
6 impacts of the COVID-19 pandemic significantly exacerbated this
7 situation. Data from the university of Hawai'i economic research
8 organization (UHERO) showed that in 2020, more than eleven
9 thousand Hawai'i tenants fell behind on their rent payments, and
10 forty per cent of rental tenants lost their jobs. Modeling from
11 UHERO shows that even in a best-case scenario, the number of
12 individuals facing homelessness will continue to rise in the
13 face of the pandemic. UHERO concluded that, from a policy
14 standpoint, "doing nothing is not a viable option."

15 Accordingly, the legislature finds that it must take
16 immediate action to mitigate the affordable housing crisis
17 through legislation.

18 The purpose of this Act is to require the department of
19 land and natural resources, through the state historic
20 preservation division and subject to approval from the
21 appropriate island burial council, to contract its review of



1 proposed state projects, projects on privately owned historic
2 property, and projects affecting historic properties to third
3 party consultants if the projects involve the development of
4 affordable housing, and the department will not be able to
5 complete its review within sixty days.

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

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

- 20 (1) The proposed project consists of corridors or large
21 land areas;



1 (2) Access to properties is restricted; or

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

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

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

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



S.B. NO. 2912

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

6 (d) Whenever the proposed state project involves a
7 development where at least eighty per cent of the units are
8 intended as affordable housing, as that term is defined under
9 section 201H-57, the department shall retain a third party
10 consultant to conduct the review described under subsection (a)
11 if, after an initial evaluation, the department determines that:

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

15 (2) The third party consultant has the qualifications and
16 experience to conduct the review pursuant to
17 subsection (e); and

18 (3) The third party consultant will contract to provide a
19 recommendation to the department within thirty days of
20 the filing of the request with the department.



1 The department shall obtain the approval of the appropriate
2 island burial council prior to contracting to retain the
3 services of the third party consultant.

4 (e) Whenever the department retains any third party,
5 including an architect, engineer, archaeologist, planner, or
6 other, to review an application for a permit, license, or
7 approval under subsection (d), the third party shall meet the
8 educational and experiences standards as well as the
9 qualifications for preservation professionals as determined by
10 the state historic preservation division rules.

11 ~~[(d)]~~ (f) The department shall adopt rules in accordance
12 with chapter 91 to implement this section."

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

15 **"§6E-10 Privately owned historic property.** (a) Before
16 any construction, alteration, disposition or improvement of any
17 nature, by, for, or permitted by a private landowner may be
18 commenced ~~[which]~~ that will affect an historic property on the
19 Hawaii register of historic places, the landowner shall notify
20 the department of the construction, alteration, disposition, or
21 improvement of any nature and allow the department opportunity



1 for review of the effect of the proposed construction,
2 alteration, disposition, or improvement of any nature on the
3 historic property. The proposed construction, alteration,
4 disposition, or improvement of any nature shall not be
5 commenced, or in the event it has already begun, continue, until
6 the department shall have given its concurrence or ninety days
7 have elapsed. Within ninety days after notification, the
8 department shall:

9 (1) Commence condemnation proceedings for the purchase of
10 the historic property if the department and property
11 owner do not agree upon an appropriate course of
12 action;

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

15 (3) In coordination with the owner, undertake or permit
16 the investigation, recording, preservation, and
17 salvage of any historical information deemed necessary
18 to preserve Hawaiian history, by any qualified agency
19 for this purpose.

20 (b) Nothing in this section shall be construed to prevent
21 the ordinary maintenance or repair of any feature in or on an



1 historic property that does not involve a change in design,
2 material, or outer appearance or change in those
3 characteristics, which qualified the historic property for entry
4 onto the Hawaii register of historic places.

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

10 (d) If funds for the acquisition of needed property are
11 not available, the governor may, upon the recommendation of the
12 department allocate from the contingency fund an amount
13 sufficient to acquire an option on the property or for the
14 immediate acquisition, preservation, restoration, or operation
15 of the property.

16 (e) Whenever the construction, alteration, disposition, or
17 improvement relates to a development where at least eighty per
18 cent of the units are intended as affordable housing, as that
19 term is defined under section 201H-57, the department shall
20 retain a third party consultant to conduct the review described



1 under subsection (a) if, after an initial evaluation, the
2 department determines that:

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

6 (2) The third party consultant has the qualifications and
7 experience to conduct the review pursuant to
8 subsection (f); and

9 (3) The third party consultant will contract to provide a
10 recommendation to the department within thirty days of
11 the landowner's notification.

12 The department shall obtain the approval of the appropriate
13 island burial council prior to contracting to retain the
14 services of the third party consultant.

15 (f) Whenever the department retains any third party,
16 including an architect, engineer, archaeologist, planner, or
17 other, to review an application for a permit, license, or
18 approval under subsection (e), the third party shall meet the
19 educational and experiences standards as well as the
20 qualifications for preservation professionals pursuant to rules
21 adopted by the state historic preservation division.



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



1 department's third party consultant, as applicable, to examine
2 or survey the historic or cultural property."

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

5 "§6E-42 Review of proposed projects. (a) Except as
6 provided in section 6E-42.2, before any agency or officer of the
7 State or its political subdivisions approves any project
8 involving a permit, license, certificate, land use change,
9 subdivision, or other entitlement for use[,—which] that may
10 affect historic property, aviation artifacts, or a burial site,
11 the agency or office shall advise the department and prior to
12 any approval allow the department an opportunity for review and
13 comment on the effect of the proposed project on historic
14 properties, aviation artifacts, or burial sites, consistent with
15 section 6E-43, including those listed in the Hawaii register of
16 historic places. 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's review and comment may be based on a phased
2 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 (b) The department shall inform the public of any project
7 proposals submitted to it under this section that are not
8 otherwise subject to the requirement of a public hearing or
9 other public notification.

10 (c) Whenever the project involves a development where at
11 least eighty per cent of the units are intended as affordable
12 housing, as that term is defined under section 201H-57, the
13 department shall retain a third party consultant to conduct the
14 review and comment described under subsection (a) if, after an
15 initial evaluation, the department determines that:

16 (1) It will not be able to provide its review and comment
17 within sixty days of being advised pursuant to
18 subsection (a);

19 (2) The third party consultant has the qualifications and
20 experience to conduct the review required by
21 subsection (d); and



1 (3) The third party consultant will contract to provide a
2 recommendation to the department within thirty days of
3 being advised pursuant to subsection (a).

4 The department shall obtain the approval of the appropriate
5 island burial council prior to contracting to retain the
6 services of the third party consultant.

7 (d) Whenever the department retains any third party,
8 including any architect, engineer, archaeologist, planner, or
9 other, to review an application for a permit, license, or
10 approval under subsection (c), the third party shall meet the
11 educational and experiences standards as well as the
12 qualifications for preservation professionals pursuant to rules
13 adopted by the state historic preservation division.

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

16 SECTION 5. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun before its effective date.

19 SECTION 6. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21



S.B. NO. 2912

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

2

INTRODUCED BY:

A handwritten signature in black ink, appearing to read "D. K. K.", is written over a horizontal line.

S.B. NO. 2912

Report Title:

Affordable Housing; State Historic Preservation Division; Island Burial Council

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. Requires the pre-approval of the appropriate island burial council before contracting with the third party consultant. Establishes requirements for qualified third parties providing review services.

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

