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# 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, 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 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 pursuant to any  
19 administrative rules adopted thereunder; 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 that is consistent with the requirements of  
3                    this section and with any administrative 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 official'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 affecting properties listed or  
20      nominated for inclusion in the Hawaii register of historic



1 places or the national register of historic places or occurring  
2 within or affecting a designated historic district.

3 (e) The department may establish a program to certify  
4 third-party individuals and organizations to review documents  
5 before submission of the documents to the department or  
6 designated county preservation officer for review to ensure  
7 consistency. Third-party reviewers shall be utilized to address  
8 backlogs within the department and may be released once the  
9 volume of permits reaches a manageable level for the existing  
10 department staff to review. Certification of third-party  
11 individuals and organizations shall be done in consultation with  
12 the office of Hawaiian affairs.

13 A review by a third party shall ensure that the information  
14 submitted is complete and complies with the department  
15 documentation requirements, that any accompanying data and  
16 analysis supports recommendations made in the submission, and  
17 that the project reviewed complies with all of the requirements  
18 imposed by the department and this chapter.

19 Third-party reviewers certified by the department shall  
20 satisfy the following requirements:



1       (1) Staff who conduct the reviews shall meet professional  
2           qualifications and standards established by the  
3           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 the qualified professional staff  
8           can make independent determinations regarding the  
9           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.



**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. Defines the role of third-party reviewers for the Department of Land and Natural Resources. Provides financial assistance to the counties to hire qualified staff to conduct the reviews. Takes effect 7/1/2050. (SD1)

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

