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

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

15 In order to improve protection of Hawaii's historic
16 properties by ensuring more decisions are made at the regional
17 level, and promote more timely reviews, the purpose of this Act



1 is to assign to the respective counties the responsibility for
2 certain historic preservation project reviews under section
3 6E-42, Hawaii Revised Statutes.

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

6 "**§6E-42 Review of proposed projects.** (a) Except as
7 provided in section 6E-42.2, before any agency or officer of the
8 State or its political subdivisions approves any project
9 involving a permit, license, certificate, land use change,
10 subdivision, or other entitlement for use[~~, which~~] that may
11 affect historic property, aviation artifacts, or a burial site,
12 the agency or office shall advise the department or the
13 designated county preservation officer and [~~prior to~~] before any
14 approval allow the department or designated county preservation
15 officer an opportunity for review and comment on the effect of
16 the proposed project on historic properties, aviation artifacts,
17 or burial sites, consistent with section 6E-43, including those
18 listed in the Hawaii register of historic places[~~-~~] or national
19 register of historic places, or located in a designated historic
20 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, review of projects
17 pursuant to this section shall be the responsibility of the
18 respective counties, and pursuant to any administrative rules
19 adopted thereunder; provided that the department certifies in
20 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 individuals and organizations to review documents before
5 submission of the documents to the department or designated
6 county preservation officer for review to ensure consistency.
7 Certification of individuals and organizations shall be done in
8 consultation with the office of Hawaiian affairs. Individuals
9 and organizations that apply for certification shall demonstrate
10 that they have established sufficient internal organizational
11 controls to ensure the qualified professional staff can make
12 independent determinations regarding the effects of projects on
13 historic properties and can function in a manner that does not
14 create a conflict of interest or the appearance of a conflict of
15 interest. Each individual or organization certified by the
16 department shall be known as a third-party reviewer.

17 A review by a third-party reviewer shall ensure that the
18 information submitted is complete and complies with the
19 department documentation requirements, that any accompanying
20 data and analysis supports recommendations made in the



1 submission, and that the project reviewed complies with all of
2 the requirements imposed by the department and this chapter.

3 Third-party reviewers shall:

4 (1) Meet professional qualifications and standards
5 established by the department; and

6 (2) Be independent from the individual or organization
7 that drafted or generated the documents.

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

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



1 The sum appropriated shall be expended by the state
2 historic preservation division of the department of land and
3 natural resources.

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

6 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, HRS, from the Department of Land and Natural Resources to the Counties. Defines the role of third-party reviewers for DLNR. Provides financial assistance to the counties to hire qualified staff to conduct the reviews. Effective 7/1/2050. (SD2)

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

