

JAN 22 2021

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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, occupies an essential role in the  
3 protection and management of the State's historic places, burial  
4 sites, and aviation artifacts. Section 6E-42 requires agencies  
5 and officers of the State and its subdivisions, prior to project  
6 approval, to submit for review by the department of land and  
7 natural resources' state historic preservation division all  
8 projects that may affect historic properties. However, due to  
9 the current demand for construction of housing and critical  
10 infrastructure, the state historic preservation division has an  
11 unacceptably large backlog of projects needing review.

12           The purpose of this Act is to allow the state historic  
13 preservation division, in consultation with the office of  
14 Hawaiian affairs, to delegate to the impacted counties the  
15 responsibility for historic preservation project reviews;  
16 provided that certain requirements are met.



# S.B. NO. 510

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

3 "§6E-42 Review of proposed projects. (a) Except as  
4 provided in section 6E-42.2, before any agency or officer of the  
5 State or its political subdivisions approves any project  
6 involving a permit, license, certificate, land use change,  
7 subdivision, or other entitlement for use, which may affect  
8 historic property, aviation artifacts, or a burial site, the  
9 agency or office shall advise the department and prior to any  
10 approval allow the department an opportunity for review and  
11 comment on the effect of the proposed project on historic  
12 properties, aviation artifacts, or burial sites, consistent with  
13 section 6E-43, including those listed in the Hawaii register of  
14 historic places. If:

- 15 (1) The proposed project consists of corridors or large  
16 land areas;
- 17 (2) Access to properties is restricted; or
- 18 (3) Circumstances dictate that construction be done in  
19 stages,

20 the department's review and comment may be based on a phased  
21 review of the project; provided that there shall be a



1 programmatic agreement between the department and the project  
2 applicant that identifies each phase and the estimated timelines  
3 for each phase.

4 (b) The department shall inform the public of any project  
5 proposals submitted to it under this section that are not  
6 otherwise subject to the requirement of a public hearing or  
7 other public notification.

8 (c) The department may delegate responsibility for review  
9 of projects pursuant to this section, and pursuant to any  
10 administrative rules adopted thereunder, to the respective  
11 counties; provided that the department, in consultation with the  
12 office of Hawaiian affairs, has certified that the county has:

13 (1) Adopted an ordinance to govern the county's review  
14 process in accordance with the procedures set forth in  
15 this chapter and the department's applicable  
16 administrative rules;

17 (2) Hired qualified professional staff who meet standards  
18 established by the department to conduct the reviews;

19 (3) Established sufficient internal organizational  
20 controls to ensure that the qualified professional



1           staff can make independent determinations regarding  
2           the effects of projects on historic properties;

3           (4) Ensured that the qualified professional staff can  
4           function in a manner that does not create a conflict  
5           of interest or an appearance of a conflict of  
6           interest;

7           (5) Provided for appropriate public notification in a  
8           manner consistent with standards established by the  
9           department; and

10          (6) Entered into a written agreement with the department  
11          memorializing the scope of delegation to the county;  
12 provided further that the delegation of authority shall  
13 automatically be suspended or terminated if the county fails to  
14 retain its qualified professional staff or if it becomes  
15 apparent that the county does not have sufficient staffing  
16 capacity to complete the delegated reviews in a timely manner.

17          (d) The department shall not delegate reviews to the  
18 county for projects affecting properties listed in the Hawaii  
19 register of historic places or the national register of historic  
20 places.



1       (e) The department shall not delegate any of the  
2 responsibilities established by sections 6E-43, 6E-43.5 and  
3 6E-43.6 as it relates to burials, nor shall the authority of the  
4 island burial councils be diminished in any way.

5       (f) The department may establish a program to certify  
6 third-party individuals and organizations to review documents  
7 prior to submission of the documents to the department for  
8 review. A review by a third-party shall ensure that the  
9 information submitted is complete and complies with the  
10 department's documentation requirements, that any accompanying  
11 data and analysis supports recommendations made in the  
12 submission, and that the project reviewed complies with all of  
13 the requirements imposed by the department and this chapter.  
14 Third-party reviewers certified by the department shall satisfy  
15 the following requirements:

16       (1) Staff who conduct the reviews shall meet professional  
17 qualifications and standards established by the  
18 department;

19       (2) Individuals and organizations that apply for  
20 certification shall demonstrate that they have  
21 established sufficient internal organizational



1           controls to ensure that the qualified professional  
 2           staff can make independent determinations regarding  
 3           the effects of projects on the properties reviewed,  
 4           and can function in a manner that does not create a  
 5           conflict of interest or an appearance of a conflict of  
 6           interest; and

7           (3) Individuals or organizations certified to conduct  
 8           third-party document reviews shall be independent from  
 9           the project reviewed and shall not have participated,  
 10           directly or indirectly, in drafting or generating the  
 11           project documents reviewed.

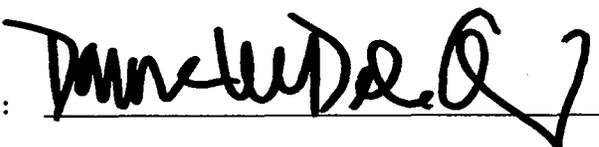
12           [+e+] (g) The department shall adopt rules in accordance  
 13 with chapter 91 to implement this section."

14           SECTION 3. This Act does not affect rights and duties that  
 15 matured, penalties that were incurred, and proceedings that were  
 16 begun before its effective date.

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 upon its approval.

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INTRODUCED BY: 



# S.B. NO. 510

**Report Title:**

DLNR; State Historic Preservation Division; Office of Hawaiian Affairs; Project Reviews

**Description:**

Authorizes the Department of Land and Natural Resources, in consultation with the Office of Hawaiian Affairs, to delegate to the impacted counties the responsibility for certain historic preservation project reviews, provided that certain requirements are met. Allows the Department of Land and Natural Resources to establish a program to certify third-party individuals and organizations to review documents for completeness and compliance prior to submission of those documents to the department, provided that certain requirements are met.

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

