
A BILL FOR AN ACT

RELATING TO HOUSING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

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

3 1. By adding a new definition to be appropriately inserted
4 and to read:

5 ""Affordable housing" has the same meaning as in section
6 201H-57(b)."

7 2. By amending the definition of "historic property" to
8 read:

9 ""Historic property" means any building, structure, object,
10 district, area, or site, including heiau and underwater site[7
11 which is] that is over fifty years old[-] and meets the criteria
12 to be placed onto the Hawaii register of historic places or has
13 important value to Native Hawaiians or other ethnic groups of
14 the State due to associations with cultural practices once
15 carried out, or still being carried out, at the property or due
16 to associations with traditional beliefs, events, or oral



1 accounts that are important to the group's history, traditional
2 practices, and cultural identity.

3 This shall not apply to affordable housing projects, unless
4 the building, structure, object, district area, or site,
5 including heiau and underwater site, are over one hundred years
6 old."

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

9 **"§6E-8 Review of effect of proposed state projects. (a)**

10 Before any agency or officer of the State or its political
11 subdivisions commences any project [~~which~~] that may affect
12 historic property, aviation artifact, or a burial site, the
13 agency or officer shall advise the department and allow the
14 department an opportunity for review of the effect of the
15 proposed project on historic properties, aviation artifacts, or
16 burial sites, consistent with section 6E-43, especially those
17 listed on the Hawaii register of historic places. The proposed
18 project shall not be commenced, or if it has already begun,
19 continued, until the department has given its written
20 concurrence. 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 may give its written concurrence based on a
7 phased review of the project; provided that there shall be a
8 programmatic agreement between the department and the project
9 applicant that identifies each phase and the estimated timelines
10 for each phase.

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

20 (b) The department of Hawaiian home lands, prior to any
21 proposed project relating to lands under its jurisdiction, shall



1 consult with the department regarding the effect of the project
2 upon historic property or a burial site.

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

8 (d) The department may retain a third-party consultant to
9 conduct the review described under subsection (a) if:

10 (1) The proposed project is being undertaken to provide
11 affordable housing;

12 (2) After an initial evaluation, the department determines
13 that:

14 (A) It is not able to provide its written concurrence
15 or non-concurrence within sixty days of the
16 filing of the request with the department;

17 (B) The third-party consultant has the qualifications
18 and experience required pursuant to subsection
19 (e) to conduct the review; and

20 (C) The third-party consultant will be required by
21 contract to provide a recommendation to the



1 department within thirty days of the filing of
2 the request with the department; and

3 (3) The project proponent provides to the department the
4 funds to pay for the contract with the third-party
5 consultant. The department shall deposit the fees
6 paid into the Hawaii historic preservation special
7 fund and expend monies from the special fund to pay
8 for the contract with the third-party consultant.

9 The department shall obtain the approval of the appropriate
10 island burial council and aha moku council prior to retaining
11 the services of the third-party consultant.

12 (e) Whenever the department retains any third party,
13 including an architect, engineer, archaeologist, planner, or
14 other person to review an application for a permit, license, or
15 approval under subsection (d), the third party shall meet the
16 educational and experience standards and the qualifications for
17 preservation professionals established pursuant to rules adopted
18 by the state historic preservation division.

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



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

3 "**§6E-10 Privately owned historic property.** (a) Before
4 any construction, alteration, disposition, or improvement of any
5 nature, by, for, or permitted by a private landowner may be
6 commenced [~~which~~] that will affect [~~an~~] a historic property on
7 the Hawaii register of historic places, the landowner shall
8 notify the department of the construction, alteration,
9 disposition, or improvement of any nature and allow the
10 department opportunity for review of the effect of the proposed
11 construction, alteration, disposition, or improvement of any
12 nature on the historic property. The proposed construction,
13 alteration, disposition, or improvement of any nature shall not
14 be commenced, or in the event it has already begun, continue,
15 until the department shall have given its concurrence or ninety
16 days have elapsed. Within ninety days after notification, the
17 department shall:

- 18 (1) Commence condemnation proceedings for the purchase of
- 19 the historic property if the department and property
- 20 owner do not agree upon an appropriate course of
- 21 action;



1 (2) Permit the owner to proceed with the owner's
2 construction, alteration, or improvement; or
3 (3) In coordination with the owner, undertake or permit
4 the investigation, recording, preservation, and
5 salvage of any historical information deemed necessary
6 to preserve Hawaiian history, by any qualified agency
7 for this purpose.

8 (b) Nothing in this section shall be construed to prevent
9 the ordinary maintenance or repair of any feature in or on an
10 historic property that does not involve a change in design,
11 material, or outer appearance or change in those characteristics
12 [~~which~~] that qualified the historic property for entry onto the
13 Hawaii register of historic places.

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

19 (d) If funds for the acquisition of needed property are
20 not available, the governor may, upon the recommendation of the
21 department, allocate from the contingency fund an amount



1 sufficient to acquire an option on the property or for the
2 immediate acquisition, preservation, restoration, or operation
3 of the property.

4 (e) The department may retain a third-party consultant to
5 conduct the review described under subsection (a) if:

6 (1) The construction, alteration, disposition, or
7 improvement is being undertaken to provide affordable
8 housing;

9 (2) After an initial evaluation, the department determines
10 that:

11 (A) It is not able to provide its written concurrence
12 or non-concurrence within sixty days of the
13 landowner's notification of construction,
14 alteration, disposition, or improvement;

15 (B) The third-party consultant has the qualifications
16 and experience required pursuant to subsection
17 (f) to conduct the review; and

18 (C) The third-party consultant will be required by
19 contract to provide a recommendation to the
20 department within thirty days of the landowner's



1 notification of construction, alteration,
 2 disposition, or improvement; and
 3 (3) The project proponent provides to the department the
 4 funds to pay for the contract with the third-party
 5 consultant. The department shall deposit the fees
 6 paid into the Hawaii historic preservation special
 7 fund and expend monies from the special fund to pay
 8 for the contract with the third-party consultant.

9 The department shall obtain the approval of the appropriate
 10 island burial council and aha moku council prior to retaining
 11 the services of the third-party consultant.

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

20 [~~e~~] (g) The department or third-party consultant, as
 21 applicable, may enter, solely in performance of [~~its~~] the

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



1 SECTION 4. 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~~] that may
8 affect historic property, aviation artifacts, or a burial site,
9 the agency or office shall advise the department, and prior to
10 any 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 retain a third-party consultant to
9 conduct the review described under subsection (a) if:

10 (1) The project is being undertaken to provide affordable
11 housing;

12 (2) After an initial evaluation, the department determines
13 that:

14 (A) It is not able to provide its written concurrence
15 or non-concurrence within sixty days of being
16 advised of the project pursuant to subsection
17 (a);

18 (B) The third-party consultant has the qualifications
19 and experience required pursuant to subsection
20 (d) to conduct the review; and



1 (C) The third-party consultant will be required by
2 contract to provide a recommendation to the
3 department within thirty days of being advised of
4 the project pursuant to subsection (a); and

5 (3) The project proponent provides to the department the
6 funds to pay for the contract with the third-party
7 consultant. The department shall deposit the fees
8 paid into the Hawaii historic preservation special
9 fund and expend monies from the special fund to pay
10 for the contract with the third-party consultant.

11 The department shall obtain the approval of the appropriate
12 island burial council and aha moku council prior to retaining
13 the services of the third-party consultant.

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



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

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

6 SECTION 6. Statutory material to be repealed is bracketed
7 and stricken. New material is underscored.

8 SECTION 7. This Act shall take effect on June 30, 3000,
9 and shall be repealed on July 1, 2028, and sections 6E-8, 6E-10,
10 and 6E-42, Hawaii Revised Statutes, shall be reenacted in the
11 form in which they read on the day before the effective date of
12 this Act.



Report Title:

Historic Preservation; Historic Property; State Historic Preservation Division; Third-party Review; Affordable Housing

Description:

Adds a definition for "affordable housing" and amends the definition of "historic property" used in the State's historic preservation program. Allows the State Historic Preservation Division to contract its historic reviews to third-party consultants under certain conditions, including that the project is being undertaken to provide affordable housing and the project proponent pays for the department to contract the consultant. Sunsets 7/1/2028. Effective 6/30/3000. (HD2)

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

