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

9           The legislature further finds that permit applicants face  
10 significant delays in obtaining county permits that require  
11 review under section 6E-42, Hawaii Revised Statutes, because of  
12 the department of land and natural resources' inability to  
13 process the overwhelming volume of submittals for review.  
14 Consequently, much needed housing, economic development, and  
15 critical infrastructure projects often face significant delays  
16 in permit approvals and project implementation. The legislature  
17 finds that it must take immediate action to mitigate the



1 overwhelming volume of submittals and the impacts on permit  
2 applicants through legislation.

3       The purpose of this Act is to promote more timely reviews  
4 of projects by requiring the department of land and natural  
5 resources, through the state historic preservation division and  
6 subject to approval from the appropriate island burial council,  
7 to contract its review of proposed state projects, projects on  
8 privately owned historic property, and projects affecting  
9 historic properties to third-party consultants if the department  
10 will not be able to complete its review within sixty days.

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

13       "**§6E-8 Review of effect of proposed state projects.** (a)  
14 Before any agency or officer of the State or its political  
15 subdivisions commences any project [~~which~~] that may affect  
16 historic property, aviation artifact, or a burial site, the  
17 agency or officer shall advise the department and allow the  
18 department an opportunity for review of the effect of the  
19 proposed project on historic properties, aviation artifacts, or  
20 burial sites, consistent with section 6E-43, especially those  
21 listed on the Hawaii register of historic places. The proposed



1 project shall not be commenced, or if it has already begun,  
2 continued, until the department has given its written  
3 concurrence. If:

4 (1) The proposed project consists of corridors or large  
5 land areas;

6 (2) Access to properties is restricted; or

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

9 the department may give its written concurrence based on a  
10 phased review of the project; provided that there shall be a  
11 programmatic agreement between the department and the project  
12 applicant that identifies each phase and the estimated timelines  
13 for each phase.

14 The department shall provide written concurrence or non-  
15 concurrence within ninety days after the filing of a request  
16 with the department. The agency or officer seeking to proceed  
17 with the project, or any person, may appeal the department's  
18 concurrence or non-concurrence to the Hawaii historic places  
19 review board. An agency, officer, or other person who is  
20 dissatisfied with the decision of the review board may apply to



1 the governor, who may take action as the governor deems best in  
2 overruling or sustaining the department.

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

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

12 (d) The department shall retain a third-party consultant  
13 to conduct the review described under subsection (a) if, after  
14 an initial evaluation, the department determines that:

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

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



1       (3) The third-party consultant will contract to provide a  
2           recommendation to the department within thirty days of  
3           the filing of the request with the department.

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

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

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

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

18       "**§6E-10 Privately owned historic property.** (a) Before  
19 any construction, alteration, disposition or improvement of any  
20 nature, by, for, or permitted by a private landowner may be  
21 commenced ~~[which]~~ that will affect an historic property on the



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

- 12 (1) Commence condemnation proceedings for the purchase of  
13 the historic property if the department and property  
14 owner do not agree upon an appropriate course of  
15 action;
- 16 (2) Permit the owner to proceed with the owner's  
17 construction, alteration, or improvement; or
- 18 (3) In coordination with the owner, undertake or permit  
19 the investigation, recording, preservation, and  
20 salvage of any historical information deemed necessary



1           to preserve Hawaiian history, by any qualified agency  
2           for this purpose.

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

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

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



1       (e) The department shall retain a third-party consultant  
2 to conduct the review described under subsection (a) if, after  
3 an initial evaluation, the department determines that:

4       (1) It will not be able to provide its written concurrence  
5 or non-concurrence within sixty days of the  
6 landowner's notification of construction, alteration,  
7 disposition, or improvement;

8       (2) The third-party consultant has the qualifications and  
9 experience required pursuant to subsection (f) to  
10 conduct the review; and

11       (3) The third-party consultant will contract to provide a  
12 recommendation to the department within thirty days of  
13 the landowner's notification of construction,  
14 alteration, disposition, or improvement.

15 The department shall obtain the approval of the appropriate  
16 island burial council prior to contracting to retain the  
17 services of the third-party consultant.

18       (f) Whenever the department retains any third party,  
19 including an architect, engineer, archaeologist, planner, or  
20 other person, to review an application for a permit, license, or  
21 approval under subsection (e), the third party shall meet the



1 educational and experience standards as well as the  
2 qualifications for preservation professionals pursuant to rules  
3 adopted by the state historic preservation division.

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



1 accompanied by a member of the department[7] or the department's  
2 third-party consultant, as applicable, between the hours of  
3 sunrise and sunset, allow the member of the department or the  
4 department's third-party consultant, as applicable, to examine  
5 or survey the historic or cultural property."

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

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

13           (c) The department shall retain a third-party consultant  
14 to conduct the review and comment described under subsection (a)  
15 if, after an 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 of the project  
18 pursuant to subsection (a);

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



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

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

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

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

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

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



# H.B. NO. 202

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

2

INTRODUCED BY:

*Lindelchigne*

JAN 18 2023



# H.B. NO. 262

**Report Title:**

Historic Preservation Reviews; Third Parties

**Description:**

Requires the department of land and natural resources, through the state historic preservation division and subject to approval from the appropriate island burial council, 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 department will not be able to complete its review within sixty days.

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

