
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 authorizing 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 may retain a third-party consultant to
13 conduct the review described under subsection (a) if, after an
14 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 may retain a third-party consultant to
2 conduct the review described under subsection (a) if, after an
3 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 of the department or the
17 department's third-party consultant, as applicable, may make a
18 complaint to the district environmental court in the circuit in
19 which such land is located. The district environmental court
20 may thereupon issue a warrant, directed to any police officer of
21 the circuit, commanding the officer to take sufficient aid, and,



1 being accompanied by a member of the department~~[7]~~ or the
 2 department's third-party consultant, as applicable, between the
 3 hours of sunrise and sunset, allow the member of the department
 4 or the department's third-party consultant, as applicable, to
 5 examine 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~~[7, 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 may retain a third-party consultant to

14 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. There is appropriated out of the general
18 revenues of the State of Hawaii the sum of \$ or so
19 much thereof as may be necessary for fiscal year 2023-2024 and
20 the same sum or so much thereof as may be necessary for fiscal
21 year 2024-2025 for the state historic preservation division of



1 the department of land and natural resources to retain third-
2 party consultants to conduct reviews pursuant to this Act.

3 The sums appropriated shall be expended by the department
4 of land and natural resources for the purposes of this Act.

5 SECTION 6. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 7. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 8. This Act shall take effect on June 30, 3000.



Report Title:

Historic Preservation Reviews; Third Parties; Appropriation

Description:

Authorizes 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. Appropriates funds. Effective 6/30/3000. (HD1)

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

