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# A BILL FOR AN ACT

RELATING TO AFFORDABLE HOUSING.

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

1           SECTION 1. The legislature finds that the cost and  
2 availability of housing in the State are significant challenges  
3 facing Hawai'i residents. According to the department of  
4 business, economic development, and tourism's December 2019  
5 report titled *Hawaii Housing Demand: 2022-2030*, the department  
6 projects that an additional 36,155 residential housing units  
7 need to be developed between 2020 and 2030, not including units  
8 under construction or already in the permitting process, to  
9 provide housing for all of the State's population. Although  
10 there is a severe need for development, considerations need to  
11 be made to preserve and protect the unique cultural history of  
12 the State.

13           The legislature also finds that under article IX,  
14 section 7, of the Hawaii State Constitution, the State  
15 recognizes the value of conserving and developing the historic  
16 and cultural property within the State for the public good, and  
17 the legislature has declared that it is in the public interest



1 to engage in a comprehensive program of historic preservation at  
2 all levels of government to promote the use and conservation of  
3 historic and cultural property for the education, inspiration,  
4 pleasure, and enrichment of its citizens. Thus, the state  
5 historic preservation division of the department of land and  
6 natural resources was established to preserve and protect  
7 historically significant districts, sites, objects, structures,  
8 and buildings integral to the State's history. Under existing  
9 law, before issuing any permit or land use approval for any  
10 project that affects a historic property, state and local  
11 jurisdictions must refer the matter to the state historic  
12 preservation division for review and comment, and for public  
13 projects, written concurrence is required before proceeding.

14 However, the legislature finds that due to the current  
15 demand for the construction of affordable housing and other  
16 critical infrastructure, the state historic preservation  
17 division consistently receives more reports than they have time  
18 to review. According to a department of land and natural  
19 resources report to the legislature in October 2022, project  
20 reviews in the state historic preservation division's



1 archaeology branch face "a 6-month to 1-year backlog as the  
2 volume of permit and project submissions have risen . . ."

3 The legislature further finds that allowing the state  
4 historic preservation division to engage with third-party  
5 consultants could help expedite the review process so that more  
6 affordable housing units can be produced in a timely manner.  
7 Delegating review responsibilities will reduce the state  
8 historic preservation division's intake load and allow the  
9 division to focus on core historical review priorities.

10 Accordingly, the purpose of this Act is to:

11 (1) Require the department of land and natural resources,  
12 through the state historic preservation division, to  
13 contract its review of proposed state projects and  
14 projects affecting historic properties if the proposed  
15 project involves a development intended to be  
16 affordable housing, to third-party consultants, under  
17 certain conditions; and

18 (2) Appropriate funds to the state historic preservation  
19 division for the recruitment and retention of  
20 qualified third-party consultants to expedite review  
21 of proposed state affordable housing projects and



1           affordable housing projects affecting historic  
2           properties.

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

5           "**§6E-8 Review of effect of proposed state projects.** (a)

6 Before any agency or officer of the State or its political  
7 subdivisions commences any project [~~which~~] that may affect  
8 historic property, aviation artifact, or a burial site, the  
9 agency or officer shall advise the department and allow the  
10 department an opportunity for review of the effect of the  
11 proposed project on historic properties, aviation artifacts, or  
12 burial sites, consistent with section 6E-43, especially those  
13 listed on the Hawaii register of historic places. The proposed  
14 project shall not be commenced, or if it has already begun,  
15 continued, until the department has given its written  
16 concurrence. If:

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



1 the department may give its written concurrence based on a  
2 phased review of the project; provided that there shall be a  
3 programmatic agreement between the department and the project  
4 applicant that identifies each phase and the estimated timelines  
5 for each phase.

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

15 (b) The department of Hawaiian home lands, [~~prior to~~]  
16 before commencing any proposed project relating to lands under  
17 its jurisdiction, shall consult with the department regarding  
18 the effect of the project upon historic property or a burial  
19 site.

20 (c) The State, its political subdivisions, agencies, and  
21 officers shall report to the department the finding of any



1 historic property during any project and shall cooperate with  
2 the department in the investigation, recording, preservation,  
3 and salvage of the property.

4 (d) Whenever a project proponent submits an application  
5 requesting a third-party consultant for a state project that  
6 involves the development of residential units intended as  
7 affordable housing, as defined under section 201H-57, and after  
8 an initial evaluation the department determines that:

9 (1) The department will not be able to provide its written  
10 concurrence or non-concurrence within sixty days of  
11 receiving a completed application, as determined by  
12 the department;

13 (2) The third-party consultant has the qualifications and  
14 experience pursuant to subsection (e) to conduct the  
15 review;

16 (3) The contract with the third-party consultant requires  
17 the third-party consultant to provide a recommendation  
18 to the department within thirty days of the date that  
19 the consultant is retained to conduct the review and  
20 comment; and



1       (4) There is a qualified third-party consultant available  
2           to conduct the review,  
3 then the department shall retain a third-party consultant to  
4 conduct the review described under subsection (a) no later than  
5 sixty days after receiving a completed application, as  
6 determined by the department; provided that this subsection  
7 shall not apply to projects that utilize federal funds.

8       (e) Whenever the department retains any third-party  
9 consultant, including an architect, engineer, archaeologist,  
10 planner, or other professional, to review an application for a  
11 permit, license, or approval pursuant to subsection (d), the  
12 third-party consultant shall meet the educational and experience  
13 standards as well as the qualifications for preservation  
14 professionals pursuant to rules adopted by the state historic  
15 preservation division. No third-party consultant shall be  
16 retained to review an application for a project the third-party  
17 consultant, or their employer, has previously been involved with  
18 in any capacity. The department may terminate a third-party  
19 consultant contract if the third-party consultant has not:

20       (1) Complied with historic preservation laws or rules; or





1 consistent with section 6E-43, including those listed in the  
2 Hawaii register of historic places. If:

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

5 (2) Access to properties is restricted; or

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

8 the department's review and comment may be based on a phased  
9 review of the project; provided that there shall be a  
10 programmatic agreement between the department and the project  
11 applicant that identifies each phase and the estimated timelines  
12 for each phase.

13 (b) The department shall inform the public of any project  
14 proposals submitted to it under this section that are not  
15 otherwise subject to the requirement of a public hearing or  
16 other public notification.

17 (c) Whenever a project proponent submits an application  
18 requesting a third-party consultant for a project that involves  
19 the development of residential units intended as affordable  
20 housing, as defined under section 201H-57, and after an initial  
21 evaluation the department determines that:



1       (1) The department will not be able to provide its review  
2       and comment within sixty days of being advised  
3       pursuant to subsection (a);

4       (2) The third-party consultant has the qualifications and  
5       experience required by subsection (d) to conduct the  
6       review;

7       (3) The contract with the third-party consultant requires  
8       the third-party consultant to provide a recommendation  
9       to the department within thirty days of the date that  
10       the consultant is retained to conduct the review and  
11       comment; and

12       (4) There is a qualified third-party consultant available  
13       to conduct the review,

14 then the department shall retain a third-party consultant to  
15 conduct the review and comment described under subsection (a) no  
16 later than sixty days after being advised pursuant to subsection  
17 (a); provided that this subsection shall not apply to projects  
18 that utilize federal funds.

19       (d) Whenever the department retains any third-party  
20 consultant, including an architect, engineer, archaeologist,  
21 planner, or other professional, to review an application for a



1 permit, license, or approval pursuant to subsection (c), the  
2 third-party consultant shall meet the educational and experience  
3 standards as well as the qualifications for preservation  
4 professionals pursuant to rules adopted by the state historic  
5 preservation division. No third-party consultant shall be  
6 retained to review an application for a project the third-party  
7 consultant, or their employer, has previously been involved with  
8 in any capacity. The department may terminate a third-party  
9 consultant contract if the third-party consultant has not:

10 (1) Complied with historic preservation laws or rules; or

11 (2) Completed assigned historic preservation reviews  
12 accurately.

13 (e) The project proponent shall pay the full costs of the  
14 third-party consultant; provided that the project proponent may  
15 contract with or sponsor any county, housing authority, non-  
16 profit organization, or person, to meet the fee requirements.

17 [+e)] (f) The department shall adopt rules in accordance  
18 with chapter 91 to implement this section."

19 SECTION 4. The department of land and natural resources  
20 shall publish on its website proposed rules implementing  
21 sections 2 and 3 of this Act within one year from the effective



1 date of this Act. Thereafter, the department of land and  
2 natural resources, within one year, shall present its proposed  
3 final rules to the board of land and natural resources.

4 SECTION 5. There is appropriated out of the general  
5 revenues of the State of Hawaii the sum of \$                    or so  
6 much thereof as may be necessary for fiscal year 2025-2026 and  
7 the same sum or so much thereof as may be necessary for fiscal  
8 year 2026-2027 for the state historic preservation division's  
9 recruitment and retention of qualified third-party consultants.

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

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

15 SECTION 7. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 8. This Act shall take effect on July 1, 3000;  
18 provided that:

19 (1) Sections 2 and 3 of this Act shall take effect on July  
20 1, 2027; and



1           (2) On July 1, 2032, sections 2 and 3 of this Act shall be  
2           repealed and sections 6E-8 and 6E-42, Hawaii Revised  
3           Statutes, shall be reenacted in the form in which they  
4           read on June 30, 2027.



**Report Title:**

DLNR; SHPD; Review and Comment; Affordable Housing; Third-Party Consultants; Rules; Appropriation

**Description:**

Beginning 7/1/2027, requires the State Historic Preservation Division of the Department of Land and Natural Resources to contract its review of proposed state projects and projects affecting historic properties to third-party consultants under certain circumstances. Requires the Department of Land and Natural Resources to publish a draft of its proposed rules and later present its proposed final rules to the Board of Land and Natural Resources. Appropriates funds. Sunsets 7/1/2032. Effective 7/1/3000. (HD2)

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

