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# A BILL FOR AN ACT

RELATING TO HISTORIC PRESERVATION.

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

1           SECTION 1. The legislature finds that it is critically  
2 important to preserve Hawaii's cultural resources, including  
3 historic properties and burial sites, as integral elements of  
4 the State's heritage. The legislature also recognizes the  
5 pressing need to expedite housing development, particularly in  
6 transit-oriented development areas, to address the housing  
7 crisis and create more housing opportunities in close proximity  
8 to transportation.

9           Accordingly, the purpose of this Act is to:

- 10           (1) Further empower lead agencies, including county  
11                 agencies, to make determinations on the potential  
12                 effects of a project;
- 13           (2) Create a ninety-day limit, or thirty-calendar-day  
14                 limit if no historic properties are affected, for the  
15                 department of land and natural resources to concur or  
16                 not concur with project effect determinations;



1 (3) Ensure that projects with written concurrence are  
2 exempt from further review unless there is a  
3 significant change to the project or additional  
4 historic properties, aviation artifacts, or burial  
5 sites are identified within the project area; and

6 (4) Create a process for expediting the review of  
7 majority-residential mixed-use transit-oriented  
8 development or residential transit-oriented  
9 development on certain parcels and rights-of-way  
10 within county-designated transit-oriented development  
11 zones that have a low risk of affecting historically  
12 significant resources.

13 SECTION 2. Section 6E-2, Hawaii Revised Statutes, is  
14 amended by adding a new definition to be appropriately inserted  
15 and to read as follows:

16 "Physical scope of work" means the size, location, and  
17 depth of ground disturbance."

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

20 **"§6E-8 Review of effect of proposed state projects. (a)**

21 Before any agency or officer of the State or its political



1 subdivisions commences any project [~~which~~] that may affect  
2 historic property, an aviation artifact, or a burial site, the  
3 lead agency [~~or officer~~] shall [~~advise the department~~] render a  
4 determination on the potential effect of the project and allow  
5 the department an opportunity for review of the effect of the  
6 proposed project on historic properties, aviation artifacts, or  
7 burial sites, consistent with section 6E-43, especially those  
8 listed on the Hawaii register of historic places. The proposed  
9 project shall not be commenced, or if it has already begun,  
10 continued, until the department has [~~given its written~~  
11 ~~concurrence.~~] been afforded the opportunity to review the  
12 project in compliance with this subsection. If:

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

18 the department may give its written concurrence based on a  
19 phased review of the project; provided that there shall be [~~a~~]  
20 an executed programmatic agreement in place between the  
21 department and the project applicant that identifies each



1 construction phase and the estimated timelines for each  
2 phase[-], and any agreed upon mitigation measures.

3       **(b)** The department shall provide written concurrence or  
4 non-concurrence within ninety days, or within thirty calendar  
5 days if no historic properties are to be affected, after the  
6 filing of a request with the department. If the department  
7 fails to provide written concurrence or non-concurrence with a  
8 project effect determination within ninety days, or within  
9 thirty calendar days if no historic properties are to be  
10 affected, of receiving a true and complete submittal for a  
11 project, the lead agency may assume the department's concurrence  
12 and the project may move to the next step in the compliance  
13 process.

14       **(c)** The project applicant shall ensure that its  
15 application is complete and accurate. If the department:

16       **(1)** Determines that the submittal is not a complete  
17 submittal;

18       **(2)** Requires additional information or clarification  
19 regarding the physical scope of work; or



1       (3) Requires an archaeological inventory survey or  
2           reconnaissance level survey for architectural  
3           resources,  
4 the department shall notify the applicant and specify the  
5 information needed to meet the requirements for complete  
6 submittal. The review period for the project shall cease until  
7 a complete submittal is made to the department. Once the  
8 department has received a complete submittal, the applicable  
9 review period shall restart.

10       (d) The agency or officer seeking to proceed with the  
11 project, or any person, may appeal the department's concurrence  
12 or non-concurrence, or failure to provide written concurrence or  
13 non-concurrence within the applicable review period, to the  
14 Hawaii historic places review board. An agency, officer, or  
15 other person who is dissatisfied with the decision of the review  
16 board may apply to the governor, who may take action as the  
17 governor deems best in overruling or sustaining the department.

18       (e) Once the department has provided written concurrence  
19 on the project effect determination and any necessary mitigation  
20 measures have been identified and agreed upon for a proposed  
21 project, the appropriate agency or officer of the State or any



1 of its political subdivisions may commence the project, and the  
2 project shall be exempt from further review by the department  
3 unless there is a change to the project's physical scope of work  
4 or project area or unless additional historic properties,  
5 aviation artifacts, or burial sites are identified within the  
6 project area; provided that:

7     (1) If there is a change in the project's physical scope  
8     of work or project area or if additional historic  
9     properties or aviation artifacts are identified within  
10    the project area post-review, the appropriate agency  
11    or officer of the State or its political subdivisions  
12    shall notify the department within forty-eight hours  
13    of the discovery. The notification shall include a  
14    description of the historic property or aviation  
15    artifact and propose actions to avoid, minimize, or  
16    mitigate adverse effects. The department shall  
17    respond within five business days of the notification  
18    with an assessment of the historic property or  
19    aviation artifact and shall provide concurrence or  
20    non-concurrence with the actions proposed to avoid,  
21    minimize, or mitigate adverse effects. The



1           appropriate agency or officer of the State or its  
2           political subdivisions shall provide the department  
3           with a report of the agreed upon actions when they are  
4           completed; and

5           (2) If a burial site is inadvertently discovered, the lead  
6           agency shall proceed pursuant to section 6E-43 or 6E-  
7           43.6, or both, as appropriate.

8           ~~[(b)]~~ (f) The department of Hawaiian home lands, ~~[prior~~  
9           ~~to]~~ before any proposed project relating to lands under its  
10          jurisdiction, shall consult with the department regarding the  
11          effect of the project upon historic property or a burial site.

12          ~~[(e)]~~ (g) The State~~[-]~~ and its political subdivisions,  
13          agencies, and officers shall report to the department the  
14          finding of any historic property during any project and shall  
15          cooperate with the department in the investigation, recording,  
16          preservation, and salvage of the property.

17          ~~[(d)]~~ (h) The department shall adopt rules in accordance  
18          with chapter 91 to implement this section.

19          (i) For purposes of this section:

20          "Complete submittal" means a packet that includes:

21          (1) A submittal form;



- 1        (2) A permit set or sixty per cent-complete project
- 2                drawing set;
- 3        (3) A site plan that identifies the project area and
- 4                locations of ground disturbance;
- 5        (4) A written scope of work that identifies the length,
- 6                width, and depth of ground disturbance and the
- 7                narrative boundaries of the project area;
- 8        (5) Photographs of the property and at least one
- 9                photograph of each elevation of existing buildings or
- 10               structures on the property;
- 11        (6) A map indicating the boundaries of the project area
- 12               that include any associated construction, ground
- 13               disturbance, or setting and staging areas;
- 14        (7) For projects submitted under this section:
- 15               (A) A copy of previous archaeological, architectural,
- 16               or cultural resource survey for the property; or
- 17               (B) A literature review and field inspection for
- 18               archaeological resources or windshield survey for
- 19               architectural resources for the tax map key or
- 20               portion of the tax map key where the project area
- 21               is located;



1       (8) For projects submitted under section 6E-42, a copy of  
2       the building permit application associated with the  
3       project; and

4       (9) For projects where historic properties are identified  
5       as having a high effect level under section 6E-42(e),  
6       documentation of consultation with the office of  
7       Hawaiian affairs and any associated comments the  
8       applicant received from the office of Hawaiian  
9       affairs.

10       "Lead agency" means the entity with the designated  
11 responsibility for compliance with this section. The lead  
12 agency shall be decided by the agencies involved; provided that  
13 priority shall be given to the agency with the greater degree of  
14 involvement with the project."

15       SECTION 4. Section 6E-10, Hawaii Revised Statutes, is  
16 amended to read as follows:

17       "**§6E-10 Privately owned historic property.** (a) Before  
18 any construction, alteration, disposition, or improvement of any  
19 nature[7] by, for, or permitted by a private landowner may be  
20 commenced [~~which~~] that will affect [~~an~~] a historic property on  
21 the Hawaii register of historic places, the landowner shall



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

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



1        (b) Once the department has provided written concurrence  
2 on the project effect determination and any necessary mitigation  
3 measures have been identified and agreed upon for a proposed  
4 project, the property owner may commence the project, and the  
5 project shall be exempt from further review by the department  
6 unless there is a change to the project's physical scope of work  
7 or project area or unless additional historic properties,  
8 aviation artifacts, or burial sites are identified within the  
9 project area; provided that:

10        (1) If there is a change in the project's physical scope  
11 of work or project area or if additional historic  
12 properties or aviation artifacts are identified within  
13 the project area post-review, the property owner shall  
14 notify the department within forty-eight hours of the  
15 discovery. The notification shall include a  
16 description of the historic property or aviation  
17 artifact and propose actions to avoid, minimize, or  
18 mitigate adverse effects. The department shall  
19 respond within five business days of the notification  
20 with an assessment of the historic property or  
21 aviation artifact and shall provide concurrence or



1           non-concurrence with the actions proposed to avoid,  
2           minimize, or mitigate adverse effects. The property  
3           owner shall provide the department with a report of  
4           the agreed upon actions when they are completed; and  
5           (2) If a burial site is inadvertently discovered, the  
6           property owner shall proceed pursuant to section 6E-43  
7           or 6E-43.6, or both, as appropriate.

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

14           ~~(e)~~ (d) Any person, natural or corporate, who violates  
15 the provisions of this section shall be fined ~~not~~ no more than  
16 \$1,000, and each day of continued violation shall constitute a  
17 distinct and separate offense under this section for which the  
18 offender may be punished.

19           ~~(d)~~ (e) If funds for the acquisition of needed property  
20 are not available, the governor may, upon the recommendation of  
21 the 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)~~] (f) The department may enter, solely in performance  
5 of its official duties and only at reasonable times, upon  
6 private lands for examination or survey thereof. Whenever any  
7 member of the department duly authorized to conduct  
8 investigations and surveys of [~~an~~] a historic or cultural nature  
9 determines that entry onto private lands for examination or  
10 survey of historic or cultural finding is required, the  
11 department shall give written notice of the finding to the owner  
12 or occupant of such property at least five days [~~prior to~~]  
13 before entry. If entry is refused, the member may make a  
14 complaint to the district environmental court in the circuit in  
15 which [~~such~~] the land is located. The district environmental  
16 court may thereupon issue a warrant, directed to any police  
17 officer of the circuit, commanding the officer to take  
18 sufficient aid, and, being accompanied by a member of the  
19 department, between the hours of sunrise and sunset, allow the  
20 member of the department to examine or survey the historic or  
21 cultural property."



1 SECTION 5. 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~~] officer shall advise the department and  
10 [~~prior to~~], before any approval, allow the department an  
11 opportunity for review and comment on the effect of the proposed  
12 project on historic properties, aviation artifacts, or burial  
13 sites, consistent with section 6E-43, including those listed in  
14 the Hawaii register of 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 Once the department has provided written concurrence on the  
5 project effect determination and any necessary mitigation  
6 measures have been identified and agreed upon for a proposed  
7 project, the appropriate agency or officer of the State or any  
8 of its political subdivisions may commence the project, and the  
9 project shall be exempt from further review by the department  
10 unless there is a change to the project's physical scope of work  
11 or project area or unless additional historic properties,  
12 aviation artifacts, or burial sites are identified within the  
13 project area; provided that:

14 (1) If there is a change in the project's physical scope  
15 of work or project area or if additional historic  
16 properties or aviation artifacts are identified within  
17 the project area post-review, the appropriate agency  
18 or officer of the State or any of its political  
19 subdivisions shall notify the department within forty-  
20 eight hours of the discovery. The notification shall  
21 include a description of the historic property or



1           aviation artifact and propose actions to avoid,  
2           minimize, or mitigate adverse effects. The department  
3           shall respond within five business days of the  
4           notification with an assessment of the historic  
5           property or aviation artifact and shall provide  
6           concurrence or non-concurrence with the actions  
7           proposed to avoid, minimize, or mitigate adverse  
8           effects. The appropriate agency or officer of the  
9           State or any of its political subdivisions shall  
10          provide the department with a report of the agreed  
11          upon actions when they are completed; and

12          (2) If a burial site is inadvertently discovered, the  
13               appropriate agency or officer of the State or any of  
14               its political subdivisions shall proceed pursuant to  
15               section 6E-43 or 6E-43.6, or both, as appropriate.

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

20          (c) Counties deriving and expending revenues on mass  
21 transit stations pursuant to section 46-16.8 may request



1 programmatic review by the department for a majority-residential  
2 mixed-use transit-oriented development or residential transit-  
3 oriented development where a permit, license, certificate, land  
4 use change, subdivision, or other entitlement may be required.

5 (d) No later than January 1, 2026, the counties and the  
6 Hawaii community development authority shall work with the  
7 department to identify and provide to the department specific  
8 parcels and rights-of-way in proximity to mass transit stations  
9 where a majority-residential mixed-use transit-oriented  
10 development, a residential transit-oriented development, or  
11 infrastructure is specifically consistent with a comprehensive  
12 general plan adopted pursuant to section 46-4; provided that the  
13 counties and Hawaii community development authority shall:

14 (1) First consult with the department and agree through  
15 memorandum on the mass transit stations, and specific  
16 transit-oriented development parcels and rights-of-  
17 way, scoping the potential area for initiating  
18 programmatic review; and

19 (2) Then solicit requests and consent from non-county  
20 landowners to have their parcels and rights-of-way  
21 within the scoped area of the memorandum initiating



1           programmatic review to proceed with the programmatic  
2           review process.

3           (e) The department shall review all parcels and rights-of-  
4           way submitted by the counties and the Hawaii community  
5           development authority pursuant to the scoping memorandum and  
6           classify each parcel and right-of-way, within six months of  
7           submittal, according to the risk that a majority-residential  
8           mixed-use transit-oriented development or residential transit-  
9           oriented development may pose to historic properties. The  
10           classification shall be categorized into three categories, in  
11           order of potential effect level from high to low, in the  
12           categories of architecture, archaeology, and history and  
13           culture; provided that:

14           (1) All county and non-county and Hawaii community  
15           development authority parcels and rights-of way for  
16           programmatic review shall include the county's or the  
17           Hawaii community development authority's assessment of  
18           whether development on each parcel or right-of-way may  
19           affect historic property, aviation artifacts, or a  
20           burial site; and

21           (2) This assessment is based on:

- 1           (A) The Hawaii or national register of historic
- 2           places;
- 3           (B) The age of above-surface structures;
- 4           (C) Any existing archaeological inventory surveys
- 5           previously accepted by the department;
- 6           (D) Any burial treatment plans accepted by the
- 7           department;
- 8           (E) The type of substrate known to typically contain
- 9           burials;
- 10          (F) Consultation with the:
  - 11           (i) Relevant island burial council; and
  - 12           (ii) Office of Hawaiian affairs; and
- 13          (G) Any other literary review relevant to the area.
- 14          (f) The department shall work with the county that made
- 15          the submittal and the Hawaii community development authority to
- 16          develop and agree on permitting memoranda within three months of
- 17          classification regarding development best practices, including
- 18          continued identification, addressing levels of risk for the
- 19          lower two effect levels in each of the categories, including but
- 20          not limited to creating photo inventories, conducting an
- 21          archaeological field survey, archaeological excavation, or



1 onsite archaeological monitoring, and the presence of onsite  
2 archaeological monitoring, and consider these best practices as  
3 standardized for activities conducted under this section.

4 A county and the Hawaii community development authority  
5 shall incorporate by reference these best practices as  
6 conditions of approval for any project involving a permit,  
7 license, certificate, land use change, subdivision, or other  
8 entitlement for use.

9 (g) Parcels and rights-of-way identified by the department  
10 where all categories are rated in the lower two effect levels  
11 shall be considered to comply with subsection (a) or section 6E-  
12 8 regarding state or county lands or projects, and any  
13 subsequent permit, license, certificate, land use change,  
14 subdivision, or other entitlement for use shall not require  
15 referral to or written concurrence from the department on  
16 project effect determination and mitigation measures; provided  
17 that:

18 (1) The project is or includes infrastructure to support  
19 the development of:

20 (A) A majority-residential mixed-use transit-oriented  
21 development; or



1           (B) A residential transit-oriented development;

2           (2) The project has reached substantial construction by  
3           June 30, 2036; and

4           (3) Development activities have commenced consistent with  
5           best practices to address the applicable level of  
6           risk.

7           (h) Any parcels or rights-of-way characterized as highest  
8           risk shall require referral to the department pursuant to  
9           subsection (a).

10           (i) Section 6E-43.6 shall apply in the event of an  
11           inadvertent discovery of a burial site.

12           (j) The Hawaii housing finance and development corporation  
13           may submit to the department any additional parcels or rights-  
14           of-way for programmatic review if the counties do not provide a  
15           submittal pursuant to subsection (d); provided that the same  
16           analysis shall be conducted pursuant to subsection (e), and the  
17           department shall classify the submittal within six months of  
18           receipt.

19           (k) The Hawaii community development authority may submit  
20           parcels or rights-of-way within its jurisdiction to the  
21           department for review, and any parcels or rights-of-way



1 identified by the department for which all categories are rated  
2 in the lower two effect levels shall be considered to comply  
3 with subsection (a) or section 6E-8 regarding state or county  
4 lands or projects, and any subsequent permit, license,  
5 certificate, land use change, subdivision, or other entitlement  
6 for use shall not require referral to the department; provided  
7 that:

8 (1) The project is or includes infrastructure to support  
9 the development of:

10 (A) A majority-residential mixed-use transit-oriented  
11 development; or

12 (B) A residential transit-oriented development;

13 (2) The project has reached substantial construction by  
14 June 30, 2036;

15 (3) Development activities have commenced consistent with  
16 best practices to address the applicable level of  
17 risk; and

18 (4) The department shall classify the submittal within six  
19 months of receipt.

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



1        (m) For purposes of this section, "majority-residential  
2 mixed-use transit-oriented development" means a mixed-use  
3 transit-oriented development project where the majority of the  
4 project is residential and may include off-site infrastructure."

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 July 1, 3000.



**Report Title:**

Historic Preservation; Transient-oriented Development; SHPD  
Review; Historic Property; DLNR; HCDA; HHFDC

**Description:**

Amends the procedures and required information for the Department of Land and Natural Resources historic preservation review of proposed state projects, privately owned historic property, and other proposed projects that require entitlement for use. Establishes procedures for the review of transit-oriented development identified by the counties and Hawaii Community Development Authority, or Hawaii Housing Finance and Development Corporation. Effective 7/1/3000. (HD3)

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

