
A BILL FOR AN ACT

RELATING TO HISTORIC PRESERVATION.

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

1 SECTION 1. 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 that will affect a historic property on the Hawaii
7 register of historic places, the landowner shall notify the
8 department of the construction, alteration, disposition, or
9 improvement of any nature and allow the department the
10 opportunity to review the effect of the proposed construction,
11 alteration, disposition, or improvement of any nature on the
12 historic property. If:

13 (1) The proposed construction, alteration, disposition, or
14 improvement consists of corridors or large land areas;
15 (2) Access to the property or properties is restricted; or
16 (3) Circumstances dictate that construction, alteration,
17 disposition, routine maintenance, or improvement be



1 done in stages or repeatedly executed to ensure the
2 preservation of historic properties,
3 the department's review may be based on a phased review of the
4 project or long-term maintenance of the property; provided that
5 there shall be a programmatic agreement executed among the
6 department, the property owner, and any project proponent that
7 identifies each phase and the estimated timeline of each phase
8 or the long-term and repeated maintenance activities that are
9 required to preserve the historic property.

10 (b) The department shall provide written concurrence or
11 non-concurrence within ninety calendar days, or within thirty
12 calendar days if no historic properties are adversely affected
13 by the proposed construction, alteration, disposition, or
14 improvement, after the department has processed a complete
15 submittal filed by the property owner. The department shall
16 certify a complete submittal within five business days of its
17 filing. The proposed construction, alteration, disposition, or
18 improvement of any nature shall not be commenced, or in the
19 event it has already begun, continue, until the department has
20 given its [econcurrence or ninety days have elapsed. Within
21 ninety days after notification, the department shall:





1 disposition, or improvement is complete and accurate. If the
2 department:

3 (1) Determines the application is not a complete
4 submittal;
5 (2) Requires additional information or clarification
6 regarding the physical scope of work; or
7 (3) Requires an archaeological survey or reconnaissance
8 level survey for architectural resources,
9 the department shall notify the property owner and specify the
10 additional information needed to meet the requirements for a
11 complete submittal. The review period for the proposed project
12 shall be tolled until a complete submittal is made to the
13 department. Once the department has received a complete
14 submittal, the applicable review period shall restart.

15 (d) Once the department has provided written concurrence
16 or fails to timely provide non-concurrence on the project effect
17 determination and any necessary mitigation measures have been
18 identified and agreed upon for a proposed project, the property
19 owner may commence the project, and the project shall be exempt
20 from further review by the department unless there is a change
21 to the project's physical scope of work or project area or



1 unless additional historic properties, aviation artifacts, or
2 burial sites are identified within the project area; provided
3 that:

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



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

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

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



1 [+f] (h) The department may enter, solely in performance
2 of its official duties and only at reasonable times, upon
3 private lands for examination or survey thereof. Whenever any
4 member of the department duly authorized to conduct
5 investigations and surveys of 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 shall give written notice of the finding to the owner
9 or occupant of the property at least five days before entry. If
10 entry is refused, the member may make a complaint to the
11 district environmental court in the circuit in which the land is
12 located. The district environmental court may thereupon issue a
13 warrant, directed to any police officer of the circuit,
14 commanding the officer to take sufficient aid, and, being
15 accompanied by a member of the department, between the hours of
16 sunrise and sunset, allow the member of the department to
17 examine or survey the historic or cultural property."

18 SECTION 2. Section 6E-42, Hawaii Revised Statutes, is
19 amended to read as follows:

20 **"§6E-42 Review of proposed projects.** (a) Except as
21 provided in section 6E-42.2, before any agency or officer of the



1 State or its political subdivisions approves any project
2 involving a permit, license, certificate, land use change,
3 subdivision, or other entitlement for use that may affect
4 historic property, aviation artifacts, or a burial site, the
5 agency or officer shall advise the department and, before any
6 approval, allow the department an opportunity for review and
7 comment on the effect of the proposed project on historic
8 properties, aviation artifacts, or burial sites, consistent with
9 section 6E-43, including those listed in the Hawaii register of
10 historic places. If:

11 (1) The proposed project consists of corridors or large
12 land areas;
13 (2) Access to properties is restricted; or
14 (3) Circumstances dictate that construction be done in
15 stages,
16 the department's review and comment may be based on a phased
17 review of the project; provided that there shall be a
18 programmatic agreement between the department and the project
19 applicant that identifies each phase and the estimated timelines
20 for each phase.



1 (b) The department shall provide written concurrence or
2 non-concurrence within ninety calendar days after the filing of
3 a request with the department. If the department fails to
4 provide a written concurrence or non-concurrence with a project
5 effect determination within ninety calendar days of receiving a
6 true and complete submittal for a project, the lead agency may
7 assume the department's concurrence and the project may move to
8 the next step in the compliance process.

9 (c) The project applicant shall ensure that its
10 application is complete and accurate. If the department:
11 (1) Determines the application is not a complete
12 submittal;
13 (2) Requires additional information or clarification
14 regarding the physical scope of work; or
15 (3) Requires an archaeological survey or reconnaissance
16 level survey for architectural resources,
17 the department shall notify the applicant and specify the
18 additional information needed to meet the requirements for a
19 complete submittal. The review period for the proposed project
20 shall be tolled until a complete submittal is made to the



1 department. Once the department has received a complete
2 submittal, the applicable review period shall restart.

3 [-(b)] (d) Once the department has provided written
4 concurrence or fails to timely provide non-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 [+] (e) The department shall inform the public of any
17 project proposals submitted to the department under this section
18 that are not otherwise subject to the requirement of a public
19 hearing or other public notification.

20 [+(d)] (f) Whenever the project involves the development
21 of residential units or mixed-use development, as long as a



1 majority of the mixed-use development is residential, and after
2 an initial evaluation, the department determines that:

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

6 (2) The third-party consultant has the qualifications and
7 experience required by subsection ~~(e)~~ (g) to
8 conduct the review; and

9 (3) The contract with the third-party consultant:

10 (A) Requires the third-party consultant to provide a
11 recommendation to the department within thirty
12 days of the date that the consultant is retained
13 to conduct the review and comment; and

14 (B) Allows the department to reserve the right to
15 determine whether use of a third-party consultant
16 was appropriate and terminate the contract if the
17 third-party consultant:

18 (i) Has evidenced insufficient compliance with
19 the state historic preservation laws and
20 rules; or



1 (ii) Has not completed assigned historic
2 preservation reviews accurately,
3 then the department may retain a third-party consultant to
4 conduct the review and comment described under subsection (a) no
5 later than sixty days after being advised pursuant to subsection
6 (a); provided that this subsection shall not apply to projects
7 that trigger section 106 of the National Historic Preservation
8 Act of 1966, as amended.

9 [+(e)] (g) Whenever the department retains any third-
10 party consultant, including any architect, engineer,
11 archaeologist, planner, or other professional, to review an
12 application for a permit, license, or approval under subsection
13 [+(d)], (f), the third-party consultant shall:

14 (1) Meet the educational and experience standards as well
15 as the qualifications for preservation professionals
16 pursuant to rules adopted by the state historic
17 preservation division;
18 (2) Follow state ethics rules; and
19 (3) Not review any project that the third-party consultant
20 or the consultant's employer has previously worked on.



1 ~~[+{(f)}]~~ (h) The project proponent shall pay the reasonable
2 fee requirements of the third-party consultant; provided that
3 the project proponent may contract with or sponsor any county,
4 housing authority, non-profit organization, or person to meet
5 the fee requirements.

6 ~~[+{(g)}]~~ (i) Counties deriving and expending revenues on
7 mass transit stations pursuant to section 46-16.8 may request
8 programmatic review by the department for a majority-residential
9 mixed-use transit-oriented development or residential transit-
10 oriented development where a permit, license, certificate, land
11 use change, subdivision, or other entitlement may be required.

12 ~~[+{(h)}]~~ (j) No later than January 1, ~~[2026,~~ 2028, the
13 counties and the Hawaii community development authority shall
14 work with the department to identify and submit to the
15 department specific parcels and rights-of-way in proximity to
16 mass transit stations where a majority-residential mixed-use
17 transit-oriented development, a residential transit-oriented
18 development, or infrastructure is specifically consistent with a
19 comprehensive general plan adopted pursuant to section 46-4;
20 provided that the counties and Hawaii community development
21 authority shall:



- 1 (1) First consult with the department and agree through
- 2 memorandum on the mass transit stations, and specific
- 3 transit-oriented development parcels and rights-of-
- 4 way, scoping the potential area for initiating
- 5 programmatic review; and
- 6 (2) Then solicit requests and consent from non-county
- 7 landowners to have their parcels and rights-of-way
- 8 within the scoped area of the memorandum initiating
- 9 programmatic review to proceed with the programmatic
- 10 review process.

11 ~~[(i)]~~ (k) The department shall review all parcels and
12 rights-of-way submitted by the counties and the Hawaii community
13 development authority pursuant to the scoping memorandum and
14 classify each parcel and right-of-way, within six months of
15 submittal, according to the risk that a majority-residential
16 mixed-use transit-oriented development or residential transit-
17 oriented development may pose to historic properties. The
18 classification shall be categorized into three categories, in
19 order of potential effect level from high to low, in the
20 categories of architecture, archaeology, and history and
21 culture; provided that:



1 (1) All county and non-county and Hawaii community
2 development authority parcels and [+]rights-of-way[+] for programmatic review shall include the county's or
3 the Hawaii community development authority's assessment of whether development on each parcel or
4 right-of-way may affect historic property, aviation artifacts, or a burial site; and
5
6 (2) The assessment is based on:
7
8 (A) The Hawaii or national register of historic places;
9
10 (B) The age of above-surface structures;
11
12 (C) Any existing archaeological inventory surveys previously accepted by the department;
13
14 (D) Any burial treatment plans accepted by the department;
15
16 (E) The type of substrate known to typically contain burials;
17
18 (F) Consultation with the:
19 (i) Relevant island burial council; and
20 (ii) Office of Hawaiian affairs; and
21 (G) Any other literary review relevant to the area.



1 ~~[+{(j)})]~~ (l) The department shall work with the county that
2 made the submittal and the Hawaii community development
3 authority to develop and agree on permitting memoranda within
4 three months of classification regarding development best
5 practices, including continued identification, addressing levels
6 of risk for the lower two effect levels in each of the
7 categories, including but not limited to creating photo
8 inventories, conducting an archaeological field survey,
9 archaeological excavation, or onsite archaeological monitoring,
10 and the presence of onsite archaeological monitoring, and
11 consider these best practices as standardized for activities
12 conducted under this section.

13 A county and the Hawaii community development authority
14 shall incorporate by reference these best practices as
15 conditions of approval for any project involving a permit,
16 license, certificate, land use change, subdivision, or other
17 entitlement for use.

18 ~~[+{(k)})]~~ (m) Parcels and rights-of-way identified by the
19 department where all categories are rated in the lower two
20 effect levels shall be considered to comply with ~~[subsections]~~
21 subsection (a) or ~~[+{(b)})]~~ (d) or section 6E-8 regarding state or



1 county lands or projects, and any subsequent permit, license,
2 certificate, land use change, subdivision, or other entitlement
3 for use shall not require referral to or written concurrence
4 from the department on project effect determination and
5 mitigation measures; provided that:

6 (1) The project is or includes infrastructure to support
7 the development of:

8 (A) A majority-residential mixed-use transit-oriented
9 development; or

10 (B) A residential transit-oriented development;

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

13 (3) Development activities have commenced consistent with
14 best practices to address the applicable level of
15 risk.

16 ~~[+ (l)]~~ (n) Any parcels or rights-of-way characterized as
17 highest risk shall require referral to the department pursuant
18 to subsection (a).

19 ~~[+ (m)]~~ (o) Section 6E-43.6 shall apply in the event of an
20 inadvertent discovery of a burial site.



1 ~~[(n)]~~ (p) The Hawaii housing finance and development
2 corporation may submit to the department any additional parcels
3 or rights-of-way for programmatic review if the counties do not
4 provide a submittal pursuant to subsection ~~[(h)]~~ (j);
5 provided that the same analysis shall be conducted pursuant to
6 subsection ~~[(i)]~~ (k), and the department shall classify the
7 submittal within six months of receipt.

8 ~~[(o)]~~ (q) The Hawaii community development authority may
9 submit parcels or rights-of-way within its jurisdiction to the
10 department for review, and any parcels or rights-of-way
11 identified by the department for which all categories are rated
12 in the lower two effect levels shall be considered to comply
13 with ~~subsections~~ subsection (a) or ~~[(b)]~~ (d) or section 6E-8
14 regarding state or county lands or projects, and any subsequent
15 permit, license, certificate, land use change, subdivision, or
16 other entitlement for use shall not require referral to the
17 department; provided 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



9 ~~[+{p}]~~ (r) The department shall adopt rules in accordance
10 with chapter 91 to implement this section.

11 [+(q)] (s) For the purposes of this section, "majority-
12 residential mixed-use transit-oriented development" means a
13 mixed-use transit-oriented development project where the
14 majority of the project is residential and may include off-site
15 infrastructure."

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

19 SECTION 4. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



1 SECTION 5. This Act shall take effect on July 1, 3000,
2 after the amendments made to section 6E-42, Hawaii Revised
3 Statutes, by Act 306, Session Laws of Hawaii 2025, take effect;
4 provided that the amendments made to section 6E-42, Hawaii
5 Revised Statutes, by section 2 of this Act shall not be repealed
6 when that section is reenacted on June 30, 2030, pursuant to
7 section 7 of Act 306, Session Laws of Hawaii 2025.



Report Title:

Historic Preservation; State Historic Preservation Division Review; Historic Properties; Private Properties; Project Review; Review Period

Description:

Authorizes SHPD to conduct a phased review of a proposed project on private property under certain circumstances. Amends the process and deadlines by which SHPD must provide written concurrence or non-concurrence for proposed projects on private property or certain projects that require state or county approval for entitlement for use, after which concurrence may be assumed and the project may proceed. Effective 7/1/3000. (HD1)

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

