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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. Section 6E-2, Hawaii Revised Statutes, is  
2 amended by amending the definition of "complete submittal" to  
3 read as follows:

4           ""Complete submittal" means a packet that includes:

- 5           (1) A submittal form;
- 6           (2) A permit set or sixty per cent-complete project  
7 drawing set;
- 8           (3) A site plan that identifies the project area and  
9 locations of ground disturbance;
- 10          (4) A written scope of work that identifies the length,  
11 width, and depth of ground disturbance and the  
12 narrative boundaries of the project area;
- 13          (5) Photographs of the property and at least one  
14 photograph of each elevation of existing buildings or  
15 structures on the property;



- 1 (6) A map indicating the boundaries of the project area  
2 that include any associated construction, ground  
3 disturbance, or setting and staging areas;
- 4 (7) For projects submitted under this section:
- 5 (A) A copy of previous archaeological, architectural,  
6 or cultural resource survey for the property; or
- 7 (B) A literature review and field inspection for  
8 archaeological resources or windshield survey for  
9 architectural resources for the tax map key or  
10 portion of the tax map key where the project area  
11 is located;
- 12 (8) For projects submitted under section 6E-42, a copy of  
13 the building permit application associated with the  
14 project; and
- 15 (9) For projects where historic properties are identified  
16 as having a high potential effect level under section  
17 [~~6E-42(f),~~] 6E-42(h), documentation of consultation  
18 with the office of Hawaiian affairs and any associated  
19 comments the applicant received from the office of  
20 Hawaiian affairs."



1 SECTION 2. 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  
18 done in stages or repeatedly executed to ensure the  
19 preservation of historic properties,

20 the department's review may be based on a phased review of the  
21 project or long-term maintenance of the property; provided that



1 there shall be a programmatic agreement executed among the  
2 department, the property owner, and any project proponent that  
3 identifies each phase and the estimated timeline of each phase  
4 or the long-term and repeated maintenance activities that are  
5 required to preserve the historic property.

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

18 ~~(1) Commence condemnation proceedings for the purchase of~~  
19 ~~the historic property if the department and property~~  
20 ~~owner do not agree upon an appropriate course of~~  
21 ~~action.~~



- 1       ~~(2) Permit the owner to proceed with the owner's~~  
2       ~~construction, alteration, or improvement; or~~
- 3       ~~(3) In coordination with the owner, undertake or permit~~  
4       ~~the investigation, recording, preservation, and~~  
5       ~~salvage of any historical information deemed necessary~~  
6       ~~to preserve Hawaiian history, by any qualified agency~~  
7       ~~for this purpose.~~

8       ~~(b)] written concurrence or non-concurrence. If the~~  
9       ~~department fails to provide written concurrence or non-~~  
10       ~~concurrence within ninety calendar days, or within thirty~~  
11       ~~calendar days if no historic properties are adversely affected~~  
12       ~~by the proposed project, after receiving and certifying a true~~  
13       ~~and complete submittal from the property owner, the property~~  
14       ~~owner may assume the department's concurrence for the proposed~~  
15       ~~project and may move to the next step in the compliance process.~~

16       ~~(c) The property owner shall ensure any application filed~~  
17       ~~by the property owner for the proposed construction, alteration,~~  
18       ~~disposition, or improvement is complete and accurate. If the~~  
19       ~~department:~~

20       ~~(1) Determines the application is not a complete~~  
21       ~~submittal;~~



1        (2) Requires additional information or clarification  
2        regarding the physical scope of work; or  
3        (3) Requires an archaeological survey or reconnaissance  
4        level survey for architectural resources,  
5        the department shall notify the property owner and specify the  
6        additional information needed to meet the requirements for a  
7        complete submittal. The review period for the proposed project  
8        shall be tolled until a complete submittal is made to the  
9        department. Once the department has received a complete  
10       submittal, the applicable review period shall restart.

11       (d) Once the department has provided written concurrence  
12       or fails to timely provide non-concurrence on the project effect  
13       determination and any necessary mitigation measures have been  
14       identified and agreed upon for a proposed project, the property  
15       owner may commence the project, and the project shall be exempt  
16       from further review by the department unless there is a change  
17       to the project's physical scope of work or project area or  
18       unless additional historic properties, aviation artifacts, or  
19       burial sites are identified within the project area; provided  
20       that:



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

17 (2) If a burial site is inadvertently discovered, the  
 18 property owner shall proceed pursuant to section 6E-43  
 19 or 6E-43.6, or both, as appropriate.

20 [~~e~~] (e) Nothing in this section shall be construed to  
 21 prevent the ordinary maintenance or repair of any feature in or



1 on a historic property that does not involve a change in design,  
2 material, or outer appearance or change in those characteristics  
3 that qualified the historic property for entry onto the Hawaii  
4 register of historic places.

5 ~~[(d)]~~ (f) Any person, natural or corporate, who violates  
6 the provisions of this section shall be fined not more than  
7 \$1,000, and each day of continued violation shall constitute a  
8 distinct and separate offense under this section for which the  
9 offender may be punished.

10 ~~[(e)]~~ (g) If funds for the acquisition of needed property  
11 are not available, the governor may, upon the recommendation of  
12 the department, allocate from the contingency fund an amount  
13 sufficient to acquire an option on the property or for the  
14 immediate acquisition, preservation, restoration, or operation  
15 of the property.

16 ~~[(f)]~~ (h) The department may enter, solely in performance  
17 of its official duties and only at reasonable times, upon  
18 private lands for examination or survey thereof. Whenever any  
19 member of the department duly authorized to conduct  
20 investigations and surveys of a historic or cultural nature  
21 determines that entry onto private lands for examination or



1 survey of historic or cultural finding is required, the  
 2 department shall give written notice of the finding to the owner  
 3 or occupant of the property at least five days before entry. If  
 4 entry is refused, the member may make a complaint to the  
 5 district environmental court in the circuit in which the land is  
 6 located. The district environmental court may thereupon issue a  
 7 warrant, directed to any police officer of the circuit,  
 8 commanding the officer to take sufficient aid, and, being  
 9 accompanied by a member of the department, between the hours of  
 10 sunrise and sunset, allow the member of the department to  
 11 examine or survey the historic or cultural property."

12 SECTION 3. Section 6E-42, Hawaii Revised Statutes, is  
 13 amended to read as follows:

14 "**§6E-42 Review of proposed projects.** (a) Except as  
 15 provided in section 6E-42.2, before any agency or officer of the  
 16 State or its political subdivisions approves any project  
 17 involving a permit, license, certificate, land use change,  
 18 subdivision, or other entitlement for use that may affect  
 19 historic property, aviation artifacts, or a burial site, the  
 20 agency or officer shall advise the department and, before any  
 21 approval, allow the department an opportunity for review and



1 comment on the effect of the proposed project on historic  
2 properties, aviation artifacts, or burial sites, consistent with  
3 section 6E-43, including those listed in the Hawaii register of  
4 historic places. If:

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

7 (2) Access to properties is restricted; or

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

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

15 (b) The department shall provide written concurrence or  
16 non-concurrence within ninety calendar days, or within thirty  
17 calendar days if no historic properties are adversely affected  
18 by the proposed project, after the filing of a request with the  
19 department. If the department fails to provide a written  
20 concurrence or non-concurrence with a project effect  
21 determination within ninety calendar days, or within thirty



1 calendar days if no historic properties are adversely affected  
2 by the proposed project, of receiving a true and complete  
3 submittal for a project, the lead agency may assume the  
4 department's concurrence and the project may move to the next  
5 step in the compliance process.

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

8 (1) Determines the application is not a complete  
9 submittal;

10 (2) Requires additional information or clarification  
11 regarding the physical scope of work; or

12 (3) Requires an archaeological survey or reconnaissance  
13 level survey for architectural resources,

14 the department shall notify the applicant and specify the  
15 additional information needed to meet the requirements for a  
16 complete submittal. The review period for the proposed project  
17 shall be tolled until a complete submittal is made to the  
18 department. Once the department has received a complete  
19 submittal, the applicable review period shall restart.

20 [~~(b)~~] (d) Once the department has provided written  
21 concurrence or fails to timely provide non-concurrence on the



1 project effect determination and any necessary mitigation  
2 measures have been identified and agreed upon for a proposed  
3 project, the appropriate agency or officer of the State or any  
4 of its political subdivisions 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 appropriate agency  
14 or officer of the State or any of its political  
15 subdivisions shall notify the department within forty-  
16 eight hours of the discovery. The notification shall  
17 include a description of the historic property or  
18 aviation artifact and propose actions to avoid,  
19 minimize, or mitigate adverse effects. The department  
20 shall respond within five business days of the  
21 notification with an assessment of the historic



1 property or aviation artifact and shall provide  
2 concurrence or non-concurrence with the actions  
3 proposed to avoid, minimize, or mitigate adverse  
4 effects. The appropriate agency or officer of the  
5 State or any of its political subdivisions shall  
6 provide the department with a report of the agreed  
7 upon actions when they are completed; and

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

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

16 [~~(d)~~] (f) Whenever the project involves the development  
17 of residential units or mixed-use development, as long as a  
18 majority of the mixed-use development is residential, and after  
19 an initial 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 [~~(e)~~] (g) to  
6 conduct the review; and
- 7 (3) The contract with the third-party consultant:
- 8 (A) Requires the third-party consultant to provide a  
9 recommendation to the department within thirty  
10 days of the date that the consultant is retained  
11 to conduct the review and comment; and
- 12 (B) Allows the department to reserve the right to  
13 determine whether use of a third-party consultant  
14 was appropriate and terminate the contract if the  
15 third-party consultant:
- 16 (i) Has evidenced insufficient compliance with  
17 the state historic preservation laws and  
18 rules; or
- 19 (ii) Has not completed assigned historic  
20 preservation reviews accurately,



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

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

12 (1) Meet the educational and experience standards as well  
13 as the qualifications for preservation professionals  
14 pursuant to rules adopted by the state historic  
15 preservation division;

16 (2) Follow state ethics rules; and

17 (3) Not review any project that the third-party consultant  
18 or the consultant's employer has previously worked on.

19 ~~[(f)]~~ (h) The project proponent shall pay the reasonable  
20 fee requirements of the third-party consultant; provided that  
21 the project proponent may contract with or sponsor any county,



1 housing authority, non-profit organization, or person to meet  
2 the fee requirements.

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

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

- 19 (1) First consult with the department and agree through  
20 memorandum on the mass transit stations, and specific  
21 transit-oriented development parcels and rights-of-



1 way, scoping the potential area for initiating  
2 programmatic review; and  
3 (2) Then solicit requests and consent from non-county  
4 landowners to have their parcels and rights-of-way  
5 within the scoped area of the memorandum initiating  
6 programmatic review to proceed with the programmatic  
7 review process.

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

19 (1) All county and non-county and Hawaii community  
20 development authority parcels and ~~[(i)]~~rights-of-way~~[(i)]~~  
21 for programmatic review shall include the county's or



1 the Hawaii community development authority's  
2 assessment of whether development on each parcel or  
3 right-of-way may affect historic property, aviation  
4 artifacts, or a burial site; and

5 (2) The assessment is based on:

6 (A) The Hawaii or national register of historic  
7 places;

8 (B) The age of above-surface structures;

9 (C) Any existing archaeological inventory surveys  
10 previously accepted by the department;

11 (D) Any burial treatment plans accepted by the  
12 department;

13 (E) The type of substrate known to typically contain  
14 burials;

15 (F) Consultation with the:

16 (i) Relevant island burial council; and

17 (ii) Office of Hawaiian affairs; and

18 (G) Any other literary review relevant to the area.

19 [~~+(j)+~~] (1) The department shall work with the county that  
20 made the submittal and the Hawaii community development  
21 authority to develop and agree on permitting memoranda within



1 three months of classification regarding development best  
2 practices, including continued identification, addressing levels  
3 of risk for the lower two effect levels in each of the  
4 categories, including but not limited to creating photo  
5 inventories, conducting an archaeological field survey,  
6 archaeological excavation, or onsite archaeological monitoring,  
7 and the presence of onsite archaeological monitoring, and  
8 consider these best practices as standardized for activities  
9 conducted under this section.

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

15 [~~(k)~~] (m) Parcels and rights-of-way identified by the  
16 department where all categories are rated in the lower two  
17 effect levels shall be considered to comply with [~~subsections~~]  
18 subsection (a) or [~~(b)~~] (d) or section 6E-8 regarding state or  
19 county lands or projects, and any subsequent permit, license,  
20 certificate, land use change, subdivision, or other entitlement  
21 for use shall not require referral to or written concurrence



1 from the department on project effect determination and  
2 mitigation measures; provided that:

3 (1) The project is or includes infrastructure to support  
4 the development of:

5 (A) A majority-residential mixed-use transit-oriented  
6 development; or

7 (B) A residential transit-oriented development;

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

10 (3) Development activities have commenced consistent with  
11 best practices to address the applicable level of  
12 risk.

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

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

18 [~~+(n)+~~] (p) The Hawaii housing finance and development  
19 corporation may submit to the department any additional parcels  
20 or rights-of-way for programmatic review if the counties do not  
21 provide a submittal pursuant to subsection [~~+(h)+~~] (j);



1 provided that the same analysis shall be conducted pursuant to  
2 subsection [~~(i)~~] (k), and the department shall classify the  
3 submittal within six months of receipt.

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

14 (1) The project is or includes infrastructure to support  
15 the development of:

16 (A) A majority-residential mixed-use transit-oriented  
17 development; or

18 (B) A residential transit-oriented development;

19 (2) The project has reached substantial construction by  
20 June 30, 2036;



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

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

6 [~~(p)~~] (r) The department shall adopt rules in accordance  
7 with chapter 91 to implement this section.

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

13 SECTION 4. This Act does not affect rights and duties that  
14 matured, penalties that were incurred, and proceedings that were  
15 begun before its effective date.

16 SECTION 5. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 6. This Act shall take effect on July 1, 3000,  
19 after the amendments made to section 6E-42, Hawaii Revised  
20 Statutes, by Act 306, Session Laws of Hawaii 2025, take effect;  
21 provided that the amendments made to section 6E-42, Hawaii



1 Revised Statutes, by section 2 of this Act shall not be repealed  
2 when that section is reenacted on June 30, 2030, pursuant to  
3 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 move to the next step in the compliance process. 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.*

