

ACT 160

S.B. NO. 1263

A Bill for an Act Relating to Historic Preservation.

Be It Enacted by the Legislature of the State of Hawaii:

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

Accordingly, the purpose of this Act is to:

- (1) Further empower lead agencies, including county agencies, to make determinations on the potential effects of a project;
- (2) Create a ninety-day limit, or thirty-calendar-day limit if no historic properties are affected, for the department of land and natural resources to concur or not concur with project effect determinations;
- (3) Ensure that projects with written concurrence are exempt from further review unless there is a significant change to the project or additional historic properties, aviation artifacts, or burial sites are identified within the project area; and

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

SECTION 2. Section 6E-2, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

“Complete submittal” means a packet that includes:

- (1) A submittal form;
- (2) A permit set or sixty per cent-complete project drawing set;
- (3) A site plan that identifies the project area and locations of ground disturbance;
- (4) A written scope of work that identifies the length, width, and depth of ground disturbance and the narrative boundaries of the project area;
- (5) Photographs of the property and at least one photograph of each elevation of existing buildings or structures on the property;
- (6) A map indicating the boundaries of the project area that include any associated construction, ground disturbance, or setting and staging areas;
- (7) For projects submitted under this section:
 - (A) A copy of previous archaeological, architectural, or cultural resource survey for the property; or
 - (B) A literature review and field inspection for archaeological resources or windshield survey for architectural resources for the tax map key or portion of the tax map key where the project area is located;
- (8) For projects submitted under section 6E-42, a copy of the building permit application associated with the project; and
- (9) For projects where historic properties are identified as having a high potential effect level under section 6E-42(f), documentation of consultation with the office of Hawaiian affairs and any associated comments the applicant received from the office of Hawaiian affairs.

“Physical scope of work” means the size, location, and depth of ground disturbance.”

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

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

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

the department may give its written concurrence based on a phased review of the project; provided that there shall be [a] an executed programmatic agreement in place between the department and the project applicant that identifies each construction phase and the estimated timelines for each phase[-], and any agreed upon mitigation measures.

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

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

- (1) Determines that the submittal is not a complete submittal;
- (2) Requires additional information or clarification regarding the physical scope of work; or
- (3) Requires an archaeological inventory survey or reconnaissance level survey for architectural resources.

the department shall notify the applicant and specify the information needed to meet the requirements for complete submittal. The review period for the project shall cease until a complete submittal is made to the department. Once the department has received a complete submittal, the applicable review period shall restart.

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

(e) Once the department has provided written concurrence on the project effect determination and any necessary mitigation measures have been identified and agreed upon for a proposed project, the appropriate agency or officer of the State or any of its political subdivisions may commence the project, and the project shall be exempt from further review by the department unless there is a change to the project's physical scope of work or project area or unless additional historic properties, aviation artifacts, or burial sites are identified within the project area; provided that:

- (1) If there is a change in the project's physical scope of work or project area or if additional historic properties or aviation artifacts are identified within the project area post-review, the appropriate agency or officer of the State or its political subdivisions shall notify the department within forty-eight hours of the discovery. The notification shall include a description of the historic property or aviation artifact and propose actions to avoid, minimize, or mitigate adverse effects. The department shall respond within five business days of the notification with an assessment of the historic property or aviation artifact and shall provide concurrence or non-concurrence with the actions proposed to avoid, minimize, or mitigate adverse effects. The appropriate agency or officer of the State or its political subdivisions shall provide the department with a report of the agreed upon actions when they are completed; and

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

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

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

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

(i) For the purposes of this section, “lead agency” means the entity with the designated responsibility for compliance with this section. The lead agency shall be decided by the agencies involved; provided that priority shall be given to the agency with the greater degree of involvement with the project.”

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

“§6E-10 Privately owned historic property. (a) Before any construction, alteration, disposition, or improvement of any nature, by, for, or permitted by a private landowner may be commenced ~~[which]~~ that will affect ~~[an]~~ a historic property on the Hawaii register of historic places, the landowner shall notify the department of the construction, alteration, disposition, or improvement of any nature and allow the department the opportunity [for] to review [of] the effect of the proposed construction, alteration, disposition, or improvement of any nature on the historic property. The proposed construction, alteration, disposition, or improvement of any nature shall not be commenced, or in the event it has already begun, continue, until the department ~~[shall have]~~ has given its concurrence or ninety days have elapsed. Within ninety days after notification, the department shall:

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

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

- (1) If there is a change in the project’s physical scope of work or project area or if additional historic properties or aviation artifacts are identified within the project area post-review, the property owner shall notify the department within forty-eight hours of the discovery. The notification shall include a description of the historic property or aviation artifact and propose actions to avoid, minimize, or mitigate adverse effects. The department shall respond

within five business days of the notification with an assessment of the historic property or aviation artifact and shall provide concurrence or non-concurrence with the actions proposed to avoid, minimize, or mitigate adverse effects. The property owner shall provide the department with a report of the agreed upon actions when they are completed; and

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

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

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

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

~~[(e)]~~ (f) The department may enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. Whenever any member of the department duly authorized to conduct investigations and surveys of ~~[an]~~ a historic or cultural nature determines that entry onto private lands for examination or survey of historic or cultural finding is required, the department shall give written notice of the finding to the owner or occupant of ~~[such]~~ the property at least five days ~~[prior to]~~ before entry. If entry is refused, the member may make a complaint to the district environmental court in the circuit in which ~~[such]~~ the land is located. The district environmental court may thereupon issue a warrant, directed to any police officer of the circuit, commanding the officer to take sufficient aid, and, being accompanied by a member of the department, between the hours of sunrise and sunset, allow the member of the department to examine or survey the historic or cultural property.”

SECTION 5. Section 6E-42, Hawaii Revised Statutes, is amended to read as follows:

“§6E-42 Review of proposed projects. (a) Except as provided in section 6E-42.2, before any agency or officer of the State or its political subdivisions approves any project involving a permit, license, certificate, land use change, subdivision, or other entitlement for use, which may affect historic property, aviation artifacts, or a burial site, the agency or ~~[office]~~ officer shall advise the department and ~~[prior to]~~ before any approval, allow the department an opportunity for review and comment on the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43, including those listed in the Hawaii register of historic places. If:

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

the department’s review and comment may be based on a phased review of the project; provided that there shall be a programmatic agreement between the de-

partment and the project applicant that identifies each phase and the estimated timelines for each phase.

(b) Once the department has provided written concurrence on the project effect determination and any necessary mitigation measures have been identified and agreed upon for a proposed project, the appropriate agency or officer of the State or any of its political subdivisions may commence the project, and the project shall be exempt from further review by the department unless there is a change to the project's physical scope of work or project area or unless additional historic properties, aviation artifacts, or burial sites are identified within the project area; provided that:

- (1) If there is a change in the project's physical scope of work or project area or if additional historic properties or aviation artifacts are identified within the project area post-review, the appropriate agency or officer of the State or any of its political subdivisions shall notify the department within forty-eight hours of the discovery. The notification shall include a description of the historic property or aviation artifact and propose actions to avoid, minimize, or mitigate adverse effects. The department shall respond within five business days of the notification with an assessment of the historic property or aviation artifact and shall provide concurrence or non-concurrence with the actions proposed to avoid, minimize, or mitigate adverse effects. The appropriate agency or officer of the State or any of its political subdivisions shall provide the department with a report of the agreed upon actions when they are completed; and
- (2) If a burial site is inadvertently discovered, the appropriate agency or officer of the State or any of its political subdivisions shall proceed pursuant to section 6E-43 or 6E-43.6, or both, as appropriate.

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

(d) Counties deriving and expending revenues on mass transit stations pursuant to section 46-16.8 may request programmatic review by the department for a majority-residential mixed-use transit-oriented development or residential transit-oriented development where a permit, license, certificate, land use change, subdivision, or other entitlement may be required.

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

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

(f) The department shall review all parcels and rights-of-way submitted by the counties and the Hawaii community development authority pursuant to the scoping memorandum and classify each parcel and right-of-way, within six months of submittal, according to the risk that a majority-residential mixed-use

transit-oriented development or residential transit-oriented development may pose to historic properties. The classification shall be categorized into three categories, in order of potential effect level from high to low, in the categories of architecture, archaeology, and history and culture; provided that:

- (1) All county and non-county and Hawaii community development authority parcels and rights-of way¹ for programmatic review shall include the county's or the Hawaii community development authority's assessment of whether development on each parcel or right-of-way may affect historic property, aviation artifacts, or a burial site; and
- (2) The assessment is based on:
 - (A) The Hawaii or national register of historic places;
 - (B) The age of above-surface structures;
 - (C) Any existing archaeological inventory surveys previously accepted by the department;
 - (D) Any burial treatment plans accepted by the department;
 - (E) The type of substrate known to typically contain burials;
 - (F) Consultation with the:
 - (i) Relevant island burial council; and
 - (ii) Office of Hawaiian affairs; and
 - (G) Any other literary review relevant to the area.

(g) The department shall work with the county that made the submittal and the Hawaii community development authority to develop and agree on permitting memoranda within three months of classification regarding development best practices, including continued identification, addressing levels of risk for the lower two effect levels in each of the categories, including but not limited to creating photo inventories, conducting an archaeological field survey, archaeological excavation, or onsite archaeological monitoring, and the presence of onsite archaeological monitoring, and consider these best practices as standardized for activities conducted under this section.

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

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

- (1) The project is or includes infrastructure to support the development of:
 - (A) A majority-residential mixed-use transit-oriented development;
 - or
 - (B) A residential transit-oriented development;
- (2) The project has reached substantial construction by June 30, 2036; and
- (3) Development activities have commenced consistent with best practices to address the applicable level of risk.
 - (i) Any parcels or rights-of-way characterized as highest risk shall require referral to the department pursuant to subsection (a).
 - (j) Section 6E-43.6 shall apply in the event of an inadvertent discovery of a burial site.

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

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

- (1) The project is or includes infrastructure to support the development of:
 - (A) A majority-residential mixed-use transit-oriented development;
 - or
 - (B) A residential transit-oriented development;
- (2) The project has reached substantial construction by June 30, 2036;
- (3) Development activities have commenced consistent with best practices to address the applicable level of risk; and
- (4) The department shall classify the submittal within six months of receipt.

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

(n) For the purposes of this section, “majority-residential mixed-use transit-oriented development” means a mixed-use transit-oriented development project where the majority of the project is residential and may include off-site infrastructure.”

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

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

SECTION 8. This Act shall take effect on July 1, 2025.

(Approved June 3, 2025.)

Note

1. So in original.