

A Bill for an Act Relating to Historic Preservation Reviews.

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

SECTION 1. The legislature finds that historic preservation review requirements play an essential role in the protection and management of the State's historic places, burial sites, and aviation artifacts by requiring state agencies and offices to submit all projects that may affect historic properties to the state historic preservation division of the department of land and natural resources for review before approval.

The legislature further finds that regulatory costs are a major contributor to the high cost of housing in Hawaii, despite the State facing an unprecedented housing crisis. According to a 2024 report released by the university of Hawaii economic research organization, the median sale price of a new two-bedroom condominium in Hawaii was about \$670,000, more than double the national average price, and regulatory costs comprise \$387,000. Permit applicants face significant delays in obtaining county permits that require historic preservation review because of the overwhelming volume of submittals for review. Consequently, much needed housing, economic development, and critical infrastructure projects often face significant delays in permit approvals and project implementation.

The legislature additionally finds that due to the current demand for the construction of housing and other critical infrastructure, the state historic preservation division consistently receives more reports than they have time to review. According to the department of land and natural resources report to the legislature in October 2022, project reviews in the state historic preservation division's archaeology branch face "a 6-month to 1-year backlog as the volume of permit and project submissions have risen . . .".

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

Therefore, legislature believes that it must take immediate action to mitigate the overwhelming volume of submissions to the state historic preservation division and the impacts on permit applicants.

Accordingly, the purpose of this Act is to authorize the department of land and natural resources, through the state historic preservation division, to contract its review of proposed state projects and projects affecting historic properties to third-party consultants, under certain conditions.

SECTION 2. 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, aviation artifact, or a burial site, the agency or officer shall advise the department 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. 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 programmatic agreement between the department and the project applicant that identifies each phase and the estimated timelines for each phase.

The department shall provide written concurrence or non-concurrence within ninety days after the filing of a request with the department. The agency or officer seeking to proceed with the project, or any person, may appeal the department's concurrence or non-concurrence 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.

(b) The department of Hawaiian home lands, ~~[prior to]~~ before commencing 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.

(c) The State, 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) Whenever a proposed state project involves the development of residential units or mixed-use development, as long as a majority of the mixed-use development is residential, and after an initial evaluation, the department determines that:

- (1) The department will not be able to provide its written concurrence or non-concurrence within sixty days of the filing of the request with the department;
- (2) The third-party consultant has the qualifications and experience pursuant to subsection (e) to conduct the review; and
- (3) The contract with the third-party consultant:
 - (A) Requires the third-party consultant to provide a recommendation to the department within thirty days of the date that the consultant is retained to conduct the review and comment; and
 - (B) Allows the department to reserve the right to determine whether use of a third-party consultant was appropriate and terminate the contract if the third-party consultant:
 - (i) Has evidenced insufficient compliance with the state historic preservation laws and rules; or
 - (ii) Has not completed assigned historic preservation reviews accurately,

then the department may retain a third-party consultant to conduct the review described under subsection (a) no later than sixty days after the filing of a request with the department; provided that this subsection shall not apply to projects that trigger section 106 of the National Historic Preservation Act of 1966, as amended.

(e) Whenever the department retains any third-party consultant, including an architect, engineer, archaeologist, planner, or other professional, to review an application for a permit, license, or approval pursuant to subsection (d), the third-party consultant shall:

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

(f) The project proponent shall pay the reasonable fee requirements of the third-party consultant; provided that the project proponent may contract with or sponsor any county, housing authority, non-profit organization, or person to meet the fee requirements.

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

SECTION 3. 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] that may affect historic property, aviation artifacts, or a burial site, the agency or office 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 department and the project applicant that identifies each phase and the estimated timelines for each phase.

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

(c) Whenever the project involves the development of residential units or mixed-use development, as long as a majority of the mixed-use development is residential, and after an initial evaluation, the department determines that:

- (1) The department will not be able to provide its review and comment within sixty days of being advised pursuant to subsection (a);
- (2) The third-party consultant has the qualifications and experience required by subsection (d) to conduct the review; and
- (3) The contract with the third-party consultant:

- (A) Requires the third-party consultant to provide a recommendation to the department within thirty days of the date that the consultant is retained to conduct the review and comment; and
- (B) Allows the department to reserve the right to determine whether use of a third-party consultant was appropriate and terminate the contract if the third-party consultant:

- (i) Has evidenced insufficient compliance with the state historic preservation laws and rules; or
- (ii) Has not completed assigned historic preservation reviews accurately.

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

(d) Whenever the department retains any third-party consultant, including any architect, engineer, archaeologist, planner, or other professional, to review an application for a permit, license, or approval under subsection (c), the third-party consultant shall:

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

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

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

SECTION 4. The department of land and natural resources shall publish on its website proposed rules implementing sections 2 and 3 of this Act within one year from the effective date of this Act. Thereafter, the department of land and natural resources, within one year, shall present its proposed final rules to the board of land and natural resources.

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2025; provided that:

- (1) Sections 2 and 3 of this Act shall take effect on July 1, 2026; and
- (2) This Act shall be repealed on June 30, 2030, and sections 6E-8 and 6E-42, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day prior to the effective date of this Act.

(Approved July 8, 2025.)