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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 Act 85, Session Laws  
2 of Hawaii 2013 (Act 85), amended state law to authorize the  
3 state historic preservation division of the department of land  
4 and natural resources to conduct phased reviews of projects to  
5 be consistent with federal law. Act 85 was enacted in response  
6 to *Kaleikini v. Yoshioka*, 128 Haw. 53 (2012), in which the  
7 Hawaii Supreme Court held the state historic preservation  
8 division, acting on behalf of the department of land and natural  
9 resources, erroneously used federal regulations regarding phased  
10 reviews to support its decision to conduct phased reviews in  
11 Hawaii and violated administrative rules when the division  
12 allowed the Honolulu rapid transit corridor project to commence  
13 prior to the completion of a full archaeological inventory  
14 survey.

15           The legislature further finds that Act 85 specifies only  
16 one portion of the complex federal regulatory scheme providing  
17 for phased reviews and fails to import the applicable federal  
18 regulatory scheme in its entirety. Thus, Act 85 fails to make



1 state law consistent with federal law. Instead, Act 85  
2 increases confusion and uncertainty relating to the requirements  
3 and procedures of the historic preservation review process,  
4 which threatens Hawaii's significant and irreplaceable historic  
5 resources.

6 Furthermore, the legislature finds that phased reviews can  
7 be more appropriately addressed in the administrative rulemaking  
8 process rather than under statute. The administrative  
9 rulemaking process can provide a better opportunity for  
10 discussion and stakeholder input regarding phased reviews in  
11 order to develop appropriate rules, procedures, and criteria  
12 regarding various types of projects, and properly reflect the  
13 entire federal regulatory scheme.

14 The purpose of this Act is to repeal the authorization of  
15 phased reviews of projects by the department of land and natural  
16 resources' state historic preservation division under certain  
17 conditions.

18 SECTION 2. Section 6E-2, Hawaii Revised Statutes, is  
19 amended by deleting the definition of "programmatic agreement".

20 [~~"Programmatic agreement" means a document that sets forth~~  
21 ~~the terms of a formal, legally binding agreement and establishes~~



1 ~~a process for consultation, review, and compliance with federal~~  
2 ~~laws."~~]

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

5 **"§6E-8 Review of effect of proposed state projects. (a)**

6 Before any agency or officer of the State or its political  
7 subdivisions commences any project which may affect historic  
8 property, aviation artifact, or a burial site, the agency or  
9 officer shall advise the department and allow the department an  
10 opportunity for review of the effect of the proposed project on  
11 historic properties, aviation artifacts, or burial sites,  
12 consistent with section 6E-43, especially those listed on the  
13 Hawaii register of historic places. The proposed project shall  
14 not be commenced, or if it has already begun, continued, until  
15 the department has given its written concurrence. [~~If~~

16 ~~(1) The proposed project consists of corridors or large~~  
17 ~~land areas;~~

18 ~~(2) Access to properties is restricted; or~~

19 ~~(3) Circumstances dictate that construction be done in~~  
20 ~~stages,~~

21 ~~the department may give its written concurrence based on a~~  
22 ~~phased 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       The department shall provide written concurrence or non-  
5 concurrence within ninety days after the filing of a request  
6 with the department. The agency or officer seeking to proceed  
7 with the project, or any person, may appeal the department's  
8 concurrence or non-concurrence to the Hawaii historic places  
9 review board. An agency, officer, or other person who is  
10 dissatisfied with the decision of the review board may apply to  
11 the governor, who may take action as the governor deems best in  
12 overruling or sustaining the department.

13       (b) The department of Hawaiian home lands, prior to any  
14 proposed project relating to lands under its jurisdiction, shall  
15 consult with the department regarding the effect of the project  
16 upon historic property or a burial site.

17       (c) The State, its political subdivisions, agencies, and  
18 officers shall report to the department the finding of any  
19 historic property during any project and shall cooperate with  
20 the department in the investigation, recording, preservation,  
21 and salvage of the property.



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

3           SECTION 4. Section 6E-42, Hawaii Revised Statutes, is  
4 amended to read as follows:

5           "**§6E-42 Review of proposed projects.** (a) Before any  
6 agency or officer of the State or its political subdivisions  
7 approves any project involving a permit, license, certificate,  
8 land use change, subdivision, or other entitlement for use,  
9 which may affect historic property, aviation artifacts, or a  
10 burial site, the agency or office shall advise the department  
11 and prior to any approval allow the department an opportunity  
12 for review and comment on the effect of the proposed project on  
13 historic properties, aviation artifacts, or burial sites,  
14 consistent with section 6E-43, including those listed in the  
15 Hawaii register of historic places. ~~[If+~~

16           ~~(1) The proposed project consists of corridors or large~~  
17           ~~land areas,~~

18           ~~(2) Access to properties is restricted, or~~

19           ~~(3) Circumstances dictate that construction be done in~~  
20           ~~stages,~~

21 ~~the department's review and comment may be based on a phased~~  
22 ~~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 (b) The department shall inform the public of any project  
5 proposals submitted to it under this section that are not  
6 otherwise subject to the requirement of a public hearing or  
7 other public notification.

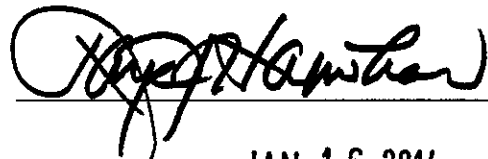
8 ~~[(c) The department shall adopt rules in accordance with~~  
9 ~~chapter 91 to implement this section.]"~~

10 SECTION 5. Statutory material to be repealed is bracketed  
11 and stricken.

12 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:



JAN 16 2014



**Report Title:**

Historic Preservation; Phased Reviews

**Description:**

Repeals the authorization of phased reviews of projects by the department of land and natural resources' state historic preservation division under certain conditions.

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

