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**A BILL FOR AN ACT**

RELATING TO THE REVIEW OF HISTORIC PRESERVATION PROJECTS.

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

1           SECTION 1. Section 6E-8, Hawaii Revised Statutes is  
2 amended by amending subsection (a) to read as follows:

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

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

1 concurrence or non-concurrence to the Hawaii historic places  
2 review board. An agency, officer, or other person who is  
3 dissatisfied with the decision of the review board may apply to  
4 the governor, [~~who may request the Hawaii advisory council on~~  
5 ~~historic preservation to report or~~] who may take action as the  
6 governor deems best in overruling or sustaining the department."

7 SECTION 2. Section 6E-42, Hawaii Revised Statutes, is  
8 amended by amending subsection (a) to read as follows:

9 "(a) Before any agency or officer of the State or its  
10 political subdivisions approves any project involving a permit,  
11 license, certificate, land use change, subdivision, or other  
12 entitlement for use, which may affect historic property,  
13 aviation artifacts, or a burial site, the agency or office shall  
14 advise the department and prior to any approval allow the  
15 department an opportunity for review and comment on the effect  
16 of the proposed project on historic properties, aviation  
17 artifacts, or burial sites, consistent with section 6E-43,  
18 including those listed in the Hawaii register of historic  
19 places. The department's review and comment may be based on a  
20 phased review of the project."

21 SECTION 3. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.

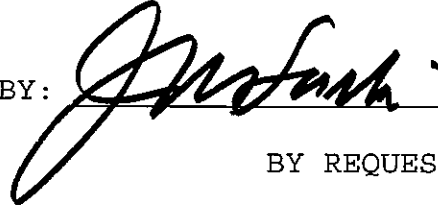
H.B. NO. 940

1 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:



4

BY REQUEST

JAN 22 2013

H.B. NO. 940

**Report Title:**

Historic Preservation Project Reviews

**Description:**

Authorizes the phased review of projects by the Department of Land and Natural Resources' State Historic Preservation Division to ensure consistency between state and federal law.

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

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO THE REVIEW OF HISTORIC PRESERVATION PROJECTS.

PURPOSE: To authorize the phased review of projects by the Department's State Historic Preservation Division (SHPD) to ensure consistency between state and federal law.

MEANS: Amend sections 6E-8(a) and 6E-42(a), Hawaii Revised Statutes.

JUSTIFICATION: The Hawaii Supreme Court (Court) ruled in *Kaleikini v. Yoshioka* that SHPD had violated its own rules in allowing construction of the Honolulu Rapid Transit Corridor to start before the completion of an archaeological inventory survey (AIS) for the entire project. SHPD had relied on federal law to justify acceptance of a phased AIS. The Court ruled that the application of federal law was invalid and that SHPD should have looked to the language describing a "project." Rail, as a single project must be evaluated for archaeology as a single project, and not in phases. In a footnote, the Court also suggested that SHPD could amend its rules so that state law would be consistent with federal law.

Although the subject project in *Kaleikini v. Yoshioka* is the City and County of Honolulu's rail project, the ruling is likely to have a far greater effect on highway projects which are often phased due to federal funding, timelines, and practical considerations such as the timing of condemnations. If all highway projects cannot be phased, it is possible that new highways cannot be built or old highways cannot be widened.

While SHPD will also amend its rules, seeking an amendment of the statutes would ensure that there is no confusion over the intent of the law regarding phased projects.

Impact on the public: There should be no effect on the general public. Not amending the law could affect the Hawaii Department of Transportation's (DOT) ability to do road projects, which could increase traffic congestion for the general public. Some Native Hawaiians may feel that allowing phasing affects their relationship with their kupuna.

Impact on the department and other agencies: As mentioned above, not amending current law could affect DOT's ability to do road projects. The Department of Hawaiian Home Lands and other agencies that phase projects over time may be affected. Projects that must condemn property may also be affected.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: LNR 802.

OTHER AFFECTED  
AGENCIES: Department of Transportation, Department of  
Hawaiian Home Lands.

EFFECTIVE DATE: Upon approval.