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# A BILL FOR AN ACT

RELATING TO AFFORDABLE HOUSING.

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

1           SECTION 1. The legislature recognizes that Hawaii is  
2 experiencing a severe affordable housing crisis with a lack of  
3 affordable rental and for-sale units. Government must do all it  
4 can to support affordable housing. The legislature further  
5 finds that Hawaii must build at least twenty-two thousand  
6 affordable rental housing units by 2026.

7           According to the "Affordable Rental Housing Report and Ten-  
8 Year Plan", prepared by the department of business, economic  
9 development, and tourism (July 2018), housing demand is  
10 projected to reach 64,693 units by 2025, with nearly seventy per  
11 cent (43,828 units) needed for households earning eighty per  
12 cent or less of the area median income.

13           The purpose of this Act is to require the department of  
14 land and natural resources, through the state historic  
15 preservation division, to contract its review of proposed state  
16 projects, projects on privately owned historic property, and  
17 projects affecting historic properties to third-party



1 consultants if the projects involve developments where at least  
2 eighty per cent of the units are intended as affordable housing  
3 and the department will not be able to complete its review  
4 within sixty days.

5 SECTION 2. Section 6E-8, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "§6E-8 Review of effect of proposed state projects. (a)

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

18 (1) The proposed project consists of corridors or large  
19 land areas;

20 (2) Access to properties is restricted; or



1           (3) Circumstances dictate that construction be done in  
2                    stages,  
3 the department may give its written concurrence based on a  
4 phased review of the project; provided that there shall be a  
5 programmatic agreement between the department and the project  
6 applicant that identifies each phase and the estimated timelines  
7 for each phase.

8           The department shall provide written concurrence or non-  
9 concurrence within ninety days after the filing of a request  
10 with the department. The agency or officer seeking to proceed  
11 with the project, or any person, may appeal the department's  
12 concurrence or non-concurrence to the Hawaii historic places  
13 review board. An agency, officer, or other person who is  
14 dissatisfied with the decision of the review board may apply to  
15 the governor, who may take action as the governor deems best in  
16 overruling or sustaining the department.

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



1 (c) The State, its political subdivisions, agencies, and  
2 officers shall report to the department the finding of any  
3 historic property during any project and shall cooperate with  
4 the department in the investigation, recording, preservation,  
5 and salvage of the property.

6 (d) Whenever the proposed state project involves a  
7 development where at least eighty per cent of the units are  
8 intended as affordable housing, as that term is defined under  
9 section 201H-57, the department shall immediately retain a  
10 third-party consultant without regard to chapter 103D to conduct  
11 the review described under subsection (a) if, after an initial  
12 evaluation, the department determines that:

13 (1) It will not be able to provide its written concurrence  
14 or non-concurrence within sixty days of the filing of  
15 the request with the department;

16 (2) The third-party consultant has the qualifications and  
17 experience to conduct the review; and

18 (3) The third-party consultant will be able to provide a  
19 recommendation to the department within thirty days of  
20 the filing of the request with the department.



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

3        SECTION 3. Section 6E-10, Hawaii Revised Statutes, is  
4 amended to read as follows:

5        "**§6E-10 Privately owned historic property.** (a) Before  
6 any construction, alteration, disposition or improvement of any  
7 nature, by, for, or permitted by a private landowner may be  
8 commenced which will affect an historic property on the Hawaii  
9 register of historic places, the landowner shall notify the  
10 department of the construction, alteration, disposition, or  
11 improvement of any nature and allow the department opportunity  
12 for review of the effect of the proposed construction,  
13 alteration, disposition, or improvement of any nature on the  
14 historic property. The proposed construction, alteration,  
15 disposition, or improvement of any nature shall not be  
16 commenced, or in the event it has already begun, continue, until  
17 the department shall have given its concurrence or ninety days  
18 have elapsed. Within ninety days after notification, the  
19 department shall:

20        (1) Commence condemnation proceedings for the purchase of  
21        the historic property if the department and property



1 owner do not agree upon an appropriate course of  
2 action;

3 (2) Permit the owner to proceed with the owner's  
4 construction, alteration, or improvement; or

5 (3) In coordination with the owner, undertake or permit  
6 the investigation, recording, preservation, and  
7 salvage of any historical information deemed necessary  
8 to preserve Hawaiian history, by any qualified agency  
9 for this purpose.

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

16 (c) Any person, natural or corporate, who violates the  
17 provisions of this section shall be fined not more than \$1,000,  
18 and each day of continued violation shall constitute a distinct  
19 and separate offense under this section for which the offender  
20 may be punished.



1 (d) If funds for the acquisition of needed property are  
2 not available, the governor may, upon the recommendation of the  
3 department allocate from the contingency fund an amount  
4 sufficient to acquire an option on the property or for the  
5 immediate acquisition, preservation, restoration, or operation  
6 of the property.

7 (e) Whenever the construction, alteration, disposition, or  
8 improvement relates to a development where at least eighty per  
9 cent of the units are intended as affordable housing, as that  
10 term is defined under section 201H-57, the department shall  
11 immediately retain a third-party consultant without regard to  
12 chapter 103D to conduct the review described under subsection  
13 (a) if, after an initial evaluation, the department determines  
14 that:

15 (1) It will not be able to provide its written concurrence  
16 or non-concurrence within sixty days of the  
17 landowner's notification;  
18 (2) The third-party consultant has the qualifications and  
19 experience to conduct the review; and



1       (3) The third-party consultant will be able to provide a  
2           recommendation to the department within thirty days of  
3           the landowner's notification.

4       ~~[(e)]~~ (f) The department or the third-party consultant, as  
5       applicable, may enter, solely in performance of [its] the  
6       department's official duties and only at reasonable times, upon  
7       private lands for examination or survey thereof. Whenever any  
8       member of the department or the department's third-party  
9       consultant, as applicable, duly authorized to conduct  
10       investigations and surveys of an historic or cultural nature  
11       determines that entry onto private lands for examination or  
12       survey of historic or cultural finding is required, the  
13       department or the department's third-party consultant, as  
14       applicable, shall give written notice of the finding to the  
15       owner or occupant of such property at least five days prior to  
16       entry. If entry is refused, the member or the department's  
17       third-party consultant, as applicable, may make a complaint to  
18       the district environmental court in the circuit in which such  
19       land is located. The district environmental court may thereupon  
20       issue a warrant, directed to any police officer of the circuit,  
21       commanding the officer to take sufficient aid, and, being





1 accompanied by a member of the department [7] or the department's  
2 third-party consultant, as applicable, between the hours of  
3 sunrise and sunset, allow the member of the department or the  
4 department's third-party consultant, as applicable, to examine  
5 or survey the historic or cultural property."

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

8 "§6E-42 Review of proposed projects. (a) Except as  
9 provided in section 6E-42.2, before any agency or officer of the  
10 State or its political subdivisions approves any project  
11 involving a permit, license, certificate, land use change,  
12 subdivision, or other entitlement for use, which may affect  
13 historic property, aviation artifacts, or a burial site, the  
14 agency or office shall advise the department and prior to any  
15 approval allow the department an opportunity for review and  
16 comment on the effect of the proposed project on historic  
17 properties, aviation artifacts, or burial sites, consistent with  
18 section 6E-43, including those listed in the Hawaii register of  
19 historic places. If:

20 (1) The proposed project consists of corridors or large  
21 land areas;



1           (2) Access to properties is restricted; or  
 2           (3) Circumstances dictate that construction be done in  
 3           stages,  
 4 the department's review and comment may be based on a phased  
 5 review of the project; provided that there shall be a  
 6 programmatic agreement between the department and the project  
 7 applicant that identifies each phase and the estimated timelines  
 8 for each phase.

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

13           (c) Whenever the project involves a development where at  
 14 least eighty per cent of the units are intended as affordable  
 15 housing, as that term is defined under section 201H-57, the  
 16 department shall immediately retain a third-party consultant  
 17 without regard to chapter 103D to conduct the review and comment  
 18 described under subsection (a) if, after an initial evaluation,  
 19 the department determines that:

20           (1) It will not be able to provide its review and comment  
 21           within sixty days of the advising;



1        (2) The third-party consultant has the qualifications and  
2                    experience to conduct the review and comment; and

3        (3) The third-party consultant will be able to provide a  
4                    recommendation to the department within thirty days of  
5                    the advising.

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

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

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

13        SECTION 7. This Act shall take effect on July 1, 2050.



**Report Title:**

State Historic Preservation Division; Affordable Housing

**Description:**

Requires the State Historic Preservation Division to contract its review of proposed state projects, projects on privately owned historic property, and projects affecting historic properties to third-party consultants if the projects involve the development of affordable housing and the division, after an initial evaluation, determines it will not be able to complete its review within 60 days. Effective 7/1/2050. (HD1)

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

