

JAN 26 2022

A BILL FOR AN ACT

RELATING TO HISTORIC PRESERVATION REVIEWS.

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

1 SECTION 1. The legislature finds that section 6E-42,
2 Hawaii Revised Statutes, plays an essential role in the
3 protection and management of the State's historic places, burial
4 sites, and aviation artifacts by requiring agencies and offices
5 of the State and its subdivisions to submit for review all
6 projects that may affect historic properties to the state
7 historic preservation division of the department of land and
8 natural resources before approval.

9 The department of land and natural resources notes that in
10 every other state in the union, many of these reviews would be
11 subject to review at the county or municipal level--only Hawaii
12 requires reviews and evaluations at the state level. The
13 department of land and natural resources believes that it is
14 reasonable and appropriate to authorize the counties to assume
15 responsibilities for such reviews.

16 In order to improve protection of Hawaii's historic
17 properties by ensuring more decisions are made at the regional
18 level, and promote more timely reviews, the purpose of this Act

S.B. NO. 3135

1 is to assign the responsibility for certain historic
2 preservation project reviews under section 6E-42, Hawaii Revised
3 Statutes, to the respective counties.

4 SECTION 2. Section 6E-42, Hawaii Revised Statutes, is
5 amended to read as follows:

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

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

S.B. NO. 3135

(2) Access to properties is restricted; or

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

the department's or designated county preservation officer'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 or designated county preservation officer 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) No later than January 2, 2023, responsibility for review of projects pursuant to this section shall be the responsibility of the respective counties, and pursuant to any administrative rules adopted thereunder; provided that the department certifies in writing that the county has:

(1) Adopted an ordinance to govern the county's review process that is consistent with the requirements of this section and with any administrative rules adopted pursuant to this section;

S.B. NO. 3135

- (2) Designated a county preservation officer who meets the professional qualification standards established by the department;
- (3) Hired qualified professional staff who meet standards established by the department to conduct the reviews;
- (4) Established sufficient internal organizational controls to ensure that the qualified professional staff can make independent determinations regarding the effects of projects on historic properties;
- (5) Ensured that the qualified professional staff can function in a manner that does not create a conflict of interest or the appearance of a conflict of interest;
- (6) Provided for appropriate public notification in a manner consistent with standards established by the department;
- (7) Ensured that copies of all reports, maps, and documents, including those reflecting the county preservation official's comments, recommendations, and decisions, are provided to the department to be incorporated into the historic preservation digital document management system and library; and

S.B. NO. 3135

1 (8) Entered into a written agreement with the department
2 in which the department certifies that the county has
3 met the requirements of this section and is assuming
4 responsibility for review of projects under section
5 6E-42; provided further that the delegation of
6 authority shall automatically be suspended or
7 terminated if the county is unable to retain
8 sufficient qualified professional staff or if it
9 becomes apparent that the county does not have
10 sufficient staffing capacity to complete the delegated
11 reviews in a timely manner.

12 (d) The department shall retain authority for review under
13 this section for projects affecting properties listed or
14 nominated for inclusion in the Hawaii register of historic
15 places or the national register of historic places.

16 (e) The department may establish a program to certify
17 third-party individuals and organizations to review documents
18 before submission of the documents to the department or
19 designated county preservation officer for review.

20 Certification of third-party individuals and organizations shall
21 be done in consultation with the office of Hawaiian affairs. A
22 review by a third party shall ensure that the information

S.B. NO. 3135

1 submitted is complete and complies with the department
2 documentation requirements, that any accompanying data and
3 analysis supports recommendations made in the submission, and
4 that the project reviewed complies with all of the requirements
5 imposed by the department and this chapter. Third-party
6 reviewers certified by the department shall satisfy the
7 following requirements:

8 (1) Staff who conduct the reviews shall meet professional
9 qualifications and standards established by the
10 department;

11 (2) Individuals and organizations that apply for
12 certification shall demonstrate that they have
13 established sufficient internal organizational
14 controls to ensure the qualified professional staff
15 can make independent determinations regarding the
16 effects of projects on historic properties and can
17 function in a manner that does not create a conflict
18 of interest or the appearance of a conflict of
19 interest; and

20 (3) Individuals or organizations certified to conduct
21 third-party document reviews that precede the
22 department's or designated county preservation

S.B. NO. 3135

1 officer's review shall be independent from the
2 individual or organization that drafted or generated
3 the documents.

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

6 SECTION 3. There is appropriated out of the general
7 revenues of the State of Hawaii the sum of \$750,000 or so much
8 thereof as may be necessary for fiscal year 2022-2023, to be
9 allocated to the counties by the department of land and natural
10 resources, in order to provide financial assistance in
11 conjunction with article VIII, section 5, of the state
12 constitution and with assigning the responsibility for certain
13 historic preservation project reviews under section 6E-42,
14 Hawaii Revised Statutes, to the respective counties, provided
15 that the department of land and natural resources may retain up
16 to ten per cent of the amount appropriated to cover
17 administrative expenses incurred while carrying out the purposes
18 of this Act.

19 The sum appropriated shall be expended by the state
20 historic preservation division of the department of land and
21 natural resources.

S.B. NO. 3135

1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect upon its approval.

4

5

INTRODUCED BY: 

6

BY REQUEST

S.B. NO. 3135

Report Title:

Historic Preservation Review; Counties

Description:

Transfers authority for certain reviews of projects in conjunction with section 6E-42, Hawaii Revised Statutes, from the Department of Land and Natural Resources to the Counties. Provides financial assistance to the Counties to hire qualified staff to conduct the reviews.

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 HISTORIC PRESERVATION REVIEWS.

PURPOSE: To transfer authority for certain reviews of projects in conjunction with section 6E-42, Hawaii Revised Statutes (HRS), from the Department to the Counties; and to provide financial assistance to the Counties to hire qualified staff to conduct the reviews.

MEANS: Amend section 6E-42, HRS.

JUSTIFICATION: Section 6E-42, HRS, plays an essential role in the protection and management of the State's historic places, burial sites, and aviation artifacts by requiring agencies and offices of the State and its subdivisions to submit for review all projects that may affect historic properties to the State Historic Preservation Division of the Department before approval is given.

The Department notes that in every other state in the union, many of these reviews would be subject to review at the county or municipal level--only Hawaii requires reviews and evaluations at the state level. The Department believes that it is reasonable and appropriate to authorize the Counties to assume responsibilities for such reviews.

In order to improve protection of Hawaii's historic properties by ensuring more decisions are made at the regional level, and promote more timely reviews, this bill would assign the responsibility for certain historic preservation project reviews under section 6E-42, HRS, to the respective counties, which would also bring Hawaii in line with reviews and evaluations done by the other forty-nine states.

Impact on the public: Permit applicants face significant delays in obtaining county permits that require section 6E-42, HRS, review because of the Department's inability to process 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. This situation will become increasingly pressing with the availability of federal infrastructure funding.

Impact on the Department and other agencies: The Department's section 6E-42, HRS, review case load would be significantly reduced, allowing for more time to address state and county projects requiring review under section 6E-8, HRS, and federal reviews under 36 C.F.R. part 800.

As the Department recognizes that the transfer of authority for certain reviews of projects in conjunction with section 6E-42, HRS, will compound the workload for the Counties, the bill provides financial assistance in conjunction with article VIII, section 5, of the State Constitution, to the Counties to hire qualified professional staff to conduct the reviews.

GENERAL FUND: \$750,000 for fiscal year 2022-2023.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 802.

OTHER AFFECTED
AGENCIES: Counties.

EFFECTIVE DATE: Upon approval.