

JAN 18 2023

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 the State plays an
2 essential role in the protection and management of the State's
3 historic places, burial sites, and aviation artifacts by
4 requiring state agencies, officers, and subdivisions to submit
5 all projects that may affect historic properties to the
6 department of land and natural resources for review before
7 approval.

8 The legislature further finds that Hawaii is the only state
9 that requires reviews and evaluations at the state, rather than
10 the county or municipal, level. Accordingly, it is reasonable
11 and appropriate to authorize the counties to assume
12 responsibilities for certain reviews.

13 The purpose of this Act is to assign the responsibility for
14 certain historic preservation project reviews to the counties to
15 allow for more regional decisions, promote more timely reviews,
16 and improve protection of Hawaii's historic properties.



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

3 "§6E-42 Review of proposed projects. (a) Except as
4 provided in section 6E-42.2, before any agency or officer of the
5 State or its political subdivisions approves any project
6 involving a permit, license, certificate, land use change,
7 subdivision, or other entitlement for use [~~, which~~] that may
8 affect historic property, aviation artifacts, or a burial site,
9 the agency or office shall advise the department or designated
10 county preservation officer and [~~prior to any approval~~] allow
11 the department or officer [~~an opportunity for~~] to review and
12 comment on the effect of the proposed project on historic
13 properties, aviation artifacts, or burial sites, consistent with
14 section 6E-43, including those listed in the Hawaii register of
15 historic places [~~-~~] or national register of historic places or
16 located in a designated historic district. If:

- 17 (1) The proposed project consists of corridors or large
18 land areas;
- 19 (2) Access to properties is restricted; or
- 20 (3) Circumstances dictate that construction be done in
21 stages,



1 the department's or designated county preservation officer's
2 review and comment may be based on a phased review of the
3 project; provided that there shall be a programmatic agreement
4 between the department or designated county preservation officer
5 and the project applicant that identifies each phase and the
6 estimated timelines for each phase.

7 (b) The department or designated county preservation
8 officer shall inform the public of any project proposals
9 submitted to [~~it~~] the department or officer under this section
10 that are not otherwise subject to the requirement of a public
11 hearing or other public notification.

12 (c) No later than January 2, 2024, review of projects
13 pursuant to this section shall be the responsibility of the
14 respective counties and pursuant to any administrative rules
15 adopted thereunder; provided that the department certifies in
16 writing that the county has:

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



S.B. NO. 76

- 1 (2) Designated a county preservation officer who meets the
2 professional qualification standards established by
3 the department;
- 4 (3) Hired qualified professional staff who meet standards
5 established by the department to conduct the reviews;
- 6 (4) Established sufficient internal organizational
7 controls to ensure that the qualified professional
8 staff can make independent determinations regarding
9 the effects of projects on historic properties;
- 10 (5) Ensured that the qualified professional staff can
11 function in a manner that does not create a conflict
12 of interest nor the appearance of a conflict of
13 interest;
- 14 (6) Provided for appropriate public notification in a
15 manner consistent with standards established by the
16 department;
- 17 (7) Ensured that copies of all reports, maps, and
18 documents, including those reflecting the designated
19 county preservation official's comments,
20 recommendations, and decisions, are provided to the
21 department to be incorporated into the historic



1 preservation digital document management system and
2 library; and

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

14 (d) The department shall retain authority for review under
15 this section for projects affecting properties listed or
16 nominated for inclusion in the Hawaii register of historic
17 places or national register of historic places or occurring
18 within or affecting a designated historic district.

19 (e) The department may establish a program to certify
20 individuals and organizations to review documents prior to
21 submission to the department or designated county preservation



1 officer for review to ensure consistency of practice.
2 Certification of individuals and organizations shall be done in
3 consultation with the office of Hawaiian affairs. Individuals
4 and organizations that apply for certification shall demonstrate
5 that they have established sufficient internal organizational
6 controls to ensure that the qualified professional staff can
7 make independent determinations regarding the effects of
8 projects on historic properties and can function in a manner
9 that does not create a conflict of interest nor the appearance
10 of a conflict of interest. Each individual or organization
11 certified by the department shall be known as a third-party
12 reviewer.

13 A review by a third-party reviewer shall ensure that the
14 information submitted is complete and complies with the
15 department's documentation requirements, any accompanying data
16 and analysis supports recommendations made in the submission,
17 and the project reviewed complies with all requirements imposed
18 by the department and this chapter.

19 Third-party reviewers shall:

20 (1) Meet professional qualifications and standards
21 established by the department; and



1 (2) Be independent from the individual or organization
2 that drafted or generated the documents.

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

5 SECTION 3. There is appropriated out of the general
6 revenues of the State of Hawaii the sum of \$ or so
7 much thereof as may be necessary for fiscal year 2023-2024 and
8 the same sum or so much thereof as may be necessary for fiscal
9 year 2024-2025 for the department of land and natural resources
10 to allocate, pursuant to article VIII, section 5, of the Hawaii
11 State Constitution, to the counties for the review of certain
12 historic preservation projects; provided that the department of
13 land and natural resources may retain up to ten per cent of the
14 amount appropriated to cover administrative expenses incurred
15 while carrying out the purposes of this Act.

16 The sums appropriated shall be expended by the state
17 historic preservation division of the department of land and
18 natural resources for the purposes of this Act.

19 SECTION 4. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 5. This Act shall take effect on July 1, 2023.



S.B. NO. 76

1

INTRODUCED BY: *Amye R. Hodge*



S.B. NO. 76

Report Title:

Historic Preservation Reviews; Counties; State Historic Preservation Division; Department of Land and Natural Resources; Appropriation

Description:

Transfers authority for certain project reviews from the Department of Land and Natural Resources to the Counties. Authorizes the Department of Land and Natural Resources to certify third-party reviewers and defines the role of third-party reviewers. Appropriates moneys to the Department of Land and Natural Resources to allocate to the Counties.

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

