
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 history by requiring
4 state and county agencies and officers to submit all projects
5 that may affect historic properties, aviation artifacts, and
6 burial sites to the state historic preservation division of the
7 department of land and natural resources for review before
8 approval.

9 The legislature further finds that permit applicants face
10 significant delays in obtaining county permits that require
11 review under section 6E-42, Hawaii Revised Statutes, because of
12 the department of land and natural resources' inability to
13 process the overwhelming volume of submittals for review.
14 Consequently, much needed housing, economic development, and
15 critical infrastructure projects often face significant delays
16 in permit approvals and project implementation. The legislature
17 finds that it must take immediate action to mitigate the



1 overwhelming volume of submittals and the impacts on permit
2 applicants through legislation.

3 The purpose of this Act is to promote more timely reviews
4 of projects by authorizing the department of land and natural
5 resources, through the state historic preservation division and
6 subject to approval from the appropriate island burial council,
7 to contract its review of proposed state projects, projects on
8 privately owned historic property, aviation artifacts, or burial
9 sites and projects affecting historic properties to third-party
10 consultants if the department will not be able to complete its
11 review within sixty days.

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

14 "**§6E-8 Review of effect of proposed state projects.** (a)
15 Before any agency or officer of the State or its political
16 subdivisions commences any project [~~which~~] that may affect
17 historic property, an aviation artifact, or a burial site, the
18 agency or officer shall advise the department and allow the
19 department an opportunity for review of the effect of the
20 proposed project on historic properties, aviation artifacts, or
21 burial sites, consistent with section 6E-43, especially those



1 listed on the Hawaii register of historic places. The proposed
2 project shall not be commenced, or if it has already begun,
3 continued, until the department has given its written
4 concurrence. If:

- 5 (1) The proposed project consists of corridors or large
6 land areas;
- 7 (2) Access to properties is restricted; or
- 8 (3) Circumstances dictate that construction be done in
9 stages,

10 the department may give its written concurrence based on a
11 phased review of the project; provided that there shall be a
12 programmatic agreement between the department and the project
13 applicant that identifies each phase and the estimated timelines
14 for each phase.

15 The department shall 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
19 concurrence or non-concurrence to the Hawaii historic places
20 review board. An agency, officer, or other person who is
21 dissatisfied with the decision of the review board may apply to



1 the governor, who may take action as the governor deems best in
2 overruling or sustaining the department.

3 (b) The department of Hawaiian home lands, [~~prior to~~]
4 before any proposed project relating to lands under its
5 jurisdiction, shall consult with the department regarding the
6 effect of the project upon historic property or a burial site.

7 (c) The State, its political subdivisions, agencies, and
8 officers shall report to the department the finding of any
9 historic property during any project and shall cooperate with
10 the department in the investigation, recording, preservation,
11 and salvage of the property.

12 (d) The department may retain a third-party consultant to
13 conduct the review described under subsection (a) if, after an
14 initial evaluation, the department determines that:

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

18 (2) The third-party consultant has the qualifications and
19 experience required pursuant to subsection (e) to
20 conduct the review; and



1 (3) The third-party consultant will contract to provide a
2 recommendation to the department within thirty days of
3 the filing of the request with the department.

4 (e) Whenever the department retains any third party
5 consultant, including an archaeologist, architect, engineer,
6 planner, or other person to review an application for a permit,
7 license, or approval under subsection (d), the third party
8 consultant shall meet the educational and experience standards
9 as well as the qualifications for preservation professionals
10 pursuant to rules adopted by the state historic preservation
11 division.

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

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

16 "**§6E-10 Privately owned historic property.** (a) Before
17 any construction, alteration, disposition or improvement of any
18 nature, by, for, or permitted by a private landowner may be
19 commenced ~~[which]~~ that will affect ~~[an]~~ a historic property on
20 the Hawaii register of historic places, the landowner shall
21 notify the department of the construction, alteration,



1 disposition, or improvement of any nature and allow the
2 department opportunity for review of the effect of the proposed
3 construction, alteration, disposition, or improvement of any
4 nature on the historic property. The proposed construction,
5 alteration, disposition, or improvement of any nature shall not
6 be commenced, or in the event it has already begun, continue,
7 until the department shall have given its concurrence or ninety
8 days have elapsed. Within ninety days after notification, the
9 department shall:

10 (1) Commence condemnation proceedings for the purchase of
11 the historic property if the department and property
12 owner do not agree upon an appropriate course of
13 action;

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

16 (3) In coordination with the owner, undertake or permit
17 the investigation, recording, preservation, and
18 salvage of any historical information deemed necessary
19 to preserve Hawaiian history, by any qualified agency
20 for this purpose.



1 (b) Nothing in this section shall be construed to prevent
2 the ordinary maintenance or repair of any feature in or on [~~an~~]
3 a historic property that does not involve a change in design,
4 material, or outer appearance or change in those characteristics
5 [~~which~~] that qualified the historic property for entry onto the
6 Hawaii register of historic places.

7 (c) Any person, natural or corporate, who violates the
8 provisions of this section shall be fined [~~not~~] no more than
9 \$1,000, and each day of continued violation shall constitute a
10 distinct and separate offense under this section for which the
11 offender may be punished.

12 (d) If funds for the acquisition of needed property are
13 not available, the governor may, upon the recommendation of the
14 department, allocate from the contingency fund an amount
15 sufficient to acquire an option on the property or for the
16 immediate acquisition, preservation, restoration, or operation
17 of the property.

18 (e) The department may retain a third-party consultant to
19 conduct the review described under subsection (a) if, after an
20 initial evaluation, the department determines that:



1 (1) It will not be able to provide its written concurrence
2 or non-concurrence within sixty days of the
3 landowner's notification of construction, alteration,
4 disposition, or improvement;

5 (2) The third-party consultant has the qualifications and
6 experience required pursuant to subsection (f) to
7 conduct the review; and

8 (3) The third-party consultant will contract to provide a
9 recommendation to the department within thirty days of
10 the landowner's notification of construction,
11 alteration, disposition, or improvement.

12 (f) Whenever the department retains any third party
13 consultant, including an archaeologist, architect, engineer,
14 planner, or other person, to review an application for a permit,
15 license, or approval under subsection (e), the third party
16 consultant shall meet the educational and experience standards
17 as well as the qualifications for preservation professionals
18 pursuant to rules adopted by the state historic preservation
19 division.

20 ~~[(e)]~~ (g) The department or the third-party consultant, as
21 applicable, may enter, solely in performance of ~~[its]~~ the



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



1 consultant, as applicable, to examine or survey the historic or
2 cultural property."

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

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

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

10 (c) The department may retain a third-party consultant to
11 conduct the review and comment described under subsection (a)
12 if, after an initial evaluation, the department determines that:

13 (1) It will not be able to provide its review and comment
14 within sixty days of being advised of the project
15 pursuant to subsection (a);

16 (2) The third-party consultant has the qualifications and
17 experience required pursuant to subsection (d) to
18 conduct the review; and

19 (3) The third-party consultant will contract to provide a
20 recommendation to the department within thirty days of



1 being advised of the project pursuant to subsection
2 (a).

3 (d) Whenever the department retains any third party
4 consultant, including any archaeologist, architect, engineer,
5 planner, or other person, to review an application for a permit,
6 license, or approval under subsection (c), the third party
7 consultant shall meet the educational and experience standards
8 as well as the qualifications for preservation professionals
9 pursuant to rules adopted by the state historic preservation
10 division.

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

13 SECTION 5. There is appropriated out of the general
14 revenues of the State of Hawaii the sum of \$ or so
15 much thereof as may be necessary for fiscal year 2023-2024 and
16 the same sum or so much thereof as may be necessary for fiscal
17 year 2024-2025 for the state historic preservation division of
18 the department of land and natural resources to retain third-
19 party consultants to conduct reviews pursuant to this Act.

20 The sums appropriated shall be expended by the department
21 of land and natural resources for the purposes of this Act.



1 SECTION 6. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 7. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 8. This Act shall take effect on June 30, 3000.



H.B. NO. 202 H.D. 2

Report Title:

Historic Preservation Reviews; Third Parties; Appropriation

Description:

Authorizes the department of land and natural resources, through 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 department will not be able to complete its review within sixty days. Appropriates funds. Effective 6/30/3000. (HD2)

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

