
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 finds that the State faces an
2 unprecedented economic crisis due to the coronavirus disease
3 2019 (COVID-19) pandemic, which has decimated Hawaii's economy
4 and caused its gross domestic product to plummet. By some
5 measures, Hawaii's economy has been hit harder than any other
6 state in the nation.

7 The legislature also finds that this drastic decline in
8 economic activity has disproportionately affected the State's
9 most vulnerable populations. The pandemic forced the shutdown
10 of many sectors of the State's economy, triggering mass layoffs
11 and furloughs and causing the State's seasonally adjusted
12 unemployment to surge from 2.4 per cent in March 2020 to a
13 historical high of 22.3 per cent in April 2020. Despite efforts
14 to reopen the economy, Hawaii still had the second-highest
15 unemployment rate in the nation as of November 2020. With the
16 COVID-19 pandemic continuing to rage throughout the world, most
17 countries experiencing recession, and visitor arrivals to the



1 State not expected to recover to pre-pandemic levels until at
2 least 2024, the State will continue to feel the economic impacts
3 of the pandemic for many years to come.

4 The legislature further finds that, even before the
5 pandemic, renter households in the State already suffered from
6 deleteriously high housing cost burdens, and that the economic
7 impacts of the COVID-19 pandemic significantly exacerbated this
8 situation. Recent data from the university of Hawaii economic
9 research organization (UHERO) showed that more than eleven
10 thousand Hawaii tenants have fallen behind on their rent
11 payments and that forty per cent of rental tenants have lost
12 their jobs. Modeling from UHERO indicates that up to seventeen
13 thousand households may face an unsustainable change in their
14 housing cost burden by the second quarter of 2021, even as the
15 State's economy slowly recovers. Even in a best-case scenario,
16 the number of individuals facing homelessness will continue to
17 rise in the face of the pandemic. UHERO concluded that, from a
18 policy standpoint, "doing nothing is not a viable option."

19 Accordingly, the legislature finds that it must take
20 immediate action to mitigate the affordable housing crisis
21 through legislation.



1 The purpose of this Act is to require the department of
2 land and natural resources, through the state historic
3 preservation division, to contract its review of proposed state
4 projects, projects on privately owned historic property, and
5 projects affecting historic properties to third party
6 consultants if the projects involve the development of
7 affordable housing and the department will not be able to
8 complete its review within sixty days.

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

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



1 (1) The proposed project consists of corridors or large
2 land areas;
3 (2) Access to properties is restricted; or
4 (3) Circumstances dictate that construction be done in
5 stages,
6 the department may give its written concurrence based on a
7 phased review of the project; provided that there shall be a
8 programmatic agreement between the department and the project
9 applicant that identifies each phase and the estimated timelines
10 for each phase.

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

20 (b) The department of Hawaiian home lands, prior to any
21 proposed project relating to lands under its jurisdiction, shall



1 consult with the department regarding the effect of the project
2 upon historic property or a burial site.

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

8 (d) Whenever the proposed state project involves a
9 development where at least eighty per cent of the units are
10 intended as affordable housing, as that term is defined under
11 section 201H-57, the department shall immediately retain a third
12 party consultant to conduct the review described under
13 subsection (a) if, after an initial evaluation, the department
14 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 to conduct the review pursuant to
20 subsection (e); and



1 (3) The third party consultant will be able 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 including an architect, engineer, archaeologist, planner, or
6 other, to review an application for a permit, license, or
7 approval under subsection (d), the third party shall meet the
8 educational and experiences standards, as well as the
9 qualifications for preservation professionals as determined by
10 the state historic preservation division rules.

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

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

15 "**§6E-10 Privately owned historic property.** (a) Before
16 any construction, alteration, disposition or improvement of any
17 nature, by, for, or permitted by a private landowner may be
18 commenced, which will affect an historic property on the Hawaii
19 register of historic places, the landowner shall notify the
20 department of the construction, alteration, disposition, or
21 improvement of any nature and allow the department opportunity



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

- 9 (1) Commence condemnation proceedings for the purchase of
10 the historic property if the department and property
11 owner do not agree upon an appropriate course of
12 action;
- 13 (2) Permit the owner to proceed with the owner's
14 construction, alteration, or improvement; or
- 15 (3) In coordination with the owner, undertake or permit
16 the investigation, recording, preservation, and
17 salvage of any historical information deemed necessary
18 to preserve Hawaiian history, by any qualified agency
19 for this purpose.
- 20 (b) Nothing in this section shall be construed to prevent
21 the ordinary maintenance or repair of any feature in or on an



1 historic property that does not involve a change in design,
2 material, or outer appearance or change in those characteristics
3 which qualified the historic property for entry onto the Hawaii
4 register of historic places.

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

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

16 (e) Whenever the construction, alteration, disposition, or
17 improvement relates to a development where at least eighty per
18 cent of the units are intended as affordable housing, as that
19 term is defined under section 201H-57, the department shall
20 immediately retain a third party consultant to conduct the



1 review described under subsection (a) if, after an initial
2 evaluation, the department determines that:

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

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

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

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

19 ~~[(e)]~~ (g) The department or the third party consultant, as
20 applicable, may enter, solely in performance of [its] the
21 department's official duties and only at reasonable times, upon



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



1 SECTION 4. 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 may affect
8 historic property, aviation artifacts, or a burial site, the
9 agency or office shall advise the department and prior to any
10 approval allow the department an opportunity for review and
11 comment on the effect of the proposed project on historic
12 properties, aviation artifacts, or burial sites, consistent with
13 section 6E-43, including those listed in the Hawaii register of
14 historic places. If:

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

20 the department's review and comment may be based on a phased
21 review of the project; provided that there shall be a



1 programmatic agreement between the department and the project
2 applicant that identifies each phase and the estimated timelines
3 for each phase.

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

8 (c) Whenever the project involves a development where at
9 least eighty per cent of the units are intended as affordable
10 housing, as that term is defined under section 201H-57, the
11 department shall immediately retain a third party consultant to
12 conduct the review and comment described under subsection (a)
13 if, after an initial evaluation, the department determines that:

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

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



1 (3) The third party consultant will be able to provide a
2 recommendation to the department within thirty days of
3 being advised pursuant to subsection (a).

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

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

13 SECTION 5. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun before its effective date.

16 SECTION 6. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 7. This Act shall take effect upon its approval.



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. Establishes requirements for qualified third parties providing review services. (SD1)

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