
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. Section 6E-42 requires agencies
5 and officers of the State and its subdivisions, prior to project
6 approval, to submit for review by the department of land and
7 natural resources' state historic preservation division all
8 projects that may affect historic properties. However, due to
9 the current demand for construction of housing and critical
10 infrastructure, the state historic preservation division has an
11 unacceptably large backlog of projects needing review.

12 The purpose of this Act is to allow the state historic
13 preservation division to delegate to the impacted counties the
14 responsibility for historic preservation project reviews,
15 provided that certain requirements are met.

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



1 "§6E-42 Review of proposed projects. (a) Except as
2 provided in section 6E-42.2, before any agency or officer of the
3 State or its political subdivisions approves any project
4 involving a permit, license, certificate, land use change,
5 subdivision, or other entitlement for use, which may affect
6 historic property, aviation artifacts, or a burial site, the
7 agency or office shall advise the department and prior to any
8 approval allow the department an opportunity for review and
9 comment on the effect of the proposed project on historic
10 properties, aviation artifacts, or burial sites, consistent with
11 section 6E-43, including those listed in the Hawaii register of
12 historic places. If:

13 (1) The proposed project consists of corridors or large
14 land areas;

15 (2) Access to properties is restricted; or

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

18 the department's review and comment may be based on a phased
19 review of the project; provided that there shall be a
20 programmatic agreement between the department and the project



1 applicant that identifies each phase and the estimated timelines
2 for each phase.

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

7 (c) The department may delegate responsibility for review
8 of projects pursuant to this section, and pursuant to any
9 administrative rules adopted thereunder, to the respective
10 counties, provided that the department, in consultation with the
11 office of Hawaiian affairs, has certified that the county has:

12 (1) Adopted an ordinance to govern the county's review
13 process in accordance with the procedures set forth in
14 this chapter and the department's applicable
15 administrative rules;

16 (2) Hired qualified professional staff who meet standards
17 established by the department to conduct the reviews;

18 (3) Established sufficient internal organizational
19 controls to ensure that the qualified professional
20 staff can make independent determinations regarding
21 the effects of projects on historic properties;



1 (4) Ensured that the qualified professional staff can
2 function in a manner that does not create a conflict
3 of interest or an appearance of a conflict of
4 interest;

5 (5) Provided for appropriate public notification in a
6 manner consistent with standards established by the
7 department; and

8 (6) Entered into a written agreement with the department
9 memorializing the scope of delegation to the county;
10 provided that the delegation of authority shall automatically be
11 suspended or terminated if the county fails to retain its
12 qualified professional staff or if it becomes apparent that the
13 county does not have sufficient staffing capacity to complete
14 the delegated reviews in a timely manner.

15 (d) The department shall not delegate reviews to the
16 county for projects affecting properties listed in the Hawaii
17 register of historic places or the national register of historic
18 places.

19 (e) The department shall not delegate any of the
20 responsibilities established by sections 6E-43, 6E-43.5 and 6E-



1 43.6 as it relates to burials; nor shall the authority of the
2 burial councils be diminished in any way.

3 (f) The department may establish a program to certify
4 third-party individuals and organizations authorized to review
5 documents prior to submission of the documents to the department
6 for review. A review by a third party shall ensure that the
7 information submitted is complete and complies with the
8 department's documentation requirements, that any accompanying
9 data and analysis supports recommendations made in the
10 submission, and that the project reviewed complies with all of
11 the requirements imposed by the department and this chapter.
12 The department shall certify third-party reviews who satisfy the
13 following requirements:

14 (1) Staff who conduct the reviews shall meet professional
15 qualifications and standards established by the
16 department;

17 (2) Individuals and organizations that apply for
18 certification shall demonstrate that they have
19 established sufficient internal organizational
20 controls to ensure that the qualified professional
21 staff can make independent determinations regarding



1 the effects of projects on the properties reviewed,
2 and can function in a manner that does not create a
3 conflict of interest or an appearance of a conflict of
4 interest; and

5 (3) Individuals or organizations certified to conduct
6 third-party document reviews shall be independent from
7 the project reviewed, and shall not have participated,
8 directly or indirectly, in drafting or generating the
9 project documents reviewed.

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

12 SECTION 3. This Act does not affect rights and duties that
13 matured, penalties that were incurred, and proceedings that were
14 begun before its effective date.

15 SECTION 4. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

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



Report Title:

DLNR; State Historic Preservation Division; Office of Hawaiian Affairs; Project Reviews

Description:

Allows the Office of Hawaiian Affairs consultation with State Historic Preservation Division to delegate to the impacted counties the responsibility for historic preservation project reviews, provided that certain requirements are met. (SD1)

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