

JAN 20 2023

A BILL FOR AN ACT

RELATING TO HISTORIC PRESERVATION.

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 permit applicants face
9 significant delays in obtaining certain county permits due to
10 the department's inability to process an overwhelming volume of
11 submittals. Consequently, much needed housing, economic
12 development, and critical infrastructure projects often face
13 significant permit approval and implementation delays.
14 Immediate legislative action is necessary to mitigate the
15 overwhelming volume of submittals and the consequent impacts on
16 permit applicants.



1 The purpose of this Act is to promote more timely project
2 reviews by requiring the department of land and natural
3 resources, through the state historic preservation division and
4 subject to approval from the appropriate island burial council,
5 to contract the review of proposed state projects, projects on
6 privately owned historic properties, and projects affecting
7 historic properties to third-party consultants if the department
8 will not be able to complete the 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~~] that may affect
14 historic property, aviation artifact, or a burial site, the
15 agency or officer shall advise the department and allow the
16 department an opportunity for review of the effect of the
17 proposed project on historic properties, aviation artifacts, or
18 burial sites, consistent with section 6E-43, especially those
19 listed on the Hawaii register of historic places. The proposed
20 project shall not be commenced, or if it has already begun,



1 continued, until the department has given its written
2 concurrence. If:

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

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

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



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

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

10 (d) The department shall retain a third-party consultant
11 to conduct the review described in subsection (a) if, after an
12 initial evaluation, the department determines that:

13 (1) The department will not be able to provide its written
14 concurrence or non-concurrence within sixty days of
15 the request being filed with the department;

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

19 (3) The third-party consultant contract requires the
20 third-party consultant to provide a recommendation to



1 the department within thirty days of the request being
2 filed with the department.

3 The department shall obtain the approval of the appropriate
4 island burial council prior to contracting to retain the
5 services of the third-party consultant.

6 (e) Whenever the department retains any third party,
7 including an architect, engineer, archaeologist, planner, or
8 other, to review an application for a permit, license, or
9 approval in accordance with subsection (d), the third party
10 shall meet the educational and experience standards and
11 qualifications for preservation professionals established by the
12 department.

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

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

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



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

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

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

17 (3) In coordination with the owner, undertake or permit
18 the investigation, recording, preservation, and
19 salvage of any historical information deemed necessary
20 to preserve Hawaiian history, by any qualified agency
21 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 historic property that does not involve a change in design,
4 material, or outer appearance or change in those
5 characteristics, which qualified the historic property for entry
6 onto the Hawaii register of historic places.

7 (c) Any person, natural or corporate, who violates the
8 provisions of this section shall be fined not more than \$1,000,
9 and each day of continued violation shall constitute a distinct
10 and separate offense under this section for which the offender
11 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 shall retain a third-party consultant
19 to conduct the review described in subsection (a) if, after an
20 initial evaluation, the department determines that:



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

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

7 (3) The third-party consultant contract requires the
8 third-party consultant to provide a recommendation to
9 the department within thirty days of the landowner's
10 notification.

11 The department shall obtain the approval of the appropriate
12 island burial council prior to contracting to retain the
13 services of the third-party consultant.

14 (f) Whenever the department retains any third party,
15 including an architect, engineer, archaeologist, planner, or
16 other, to review an application for a permit, license, or
17 approval in accordance with subsection (e), the third party
18 shall meet the educational and experience standards and
19 qualifications for preservation professionals established by the
20 department.



1 [~~e~~] (g) The department or third-party consultant may
2 enter, solely in performance of [~~its~~] the department's official
3 duties and only at reasonable times, upon private lands for
4 examination or survey thereof. Whenever any member of the
5 department or the third-party consultant duly authorized to
6 conduct investigations and surveys of an historic or cultural
7 nature determines that entry onto private lands for examination
8 or survey of historic or cultural finding is required, the
9 department or third-party consultant shall give written notice
10 of the finding to the owner or occupant of [~~such~~] the property
11 at least five days prior to entry. If entry is refused, the
12 member or third-party consultant may make a complaint to the
13 district environmental court in the circuit in which [~~such~~] the
14 land is located. The district environmental court may thereupon
15 issue a warrant, directed to any police officer of the circuit,
16 commanding the officer to take sufficient aid, and, being
17 accompanied by a member of the department [~~]~~ or the third-party
18 consultant, between the hours of sunrise and sunset, allow the
19 member of the department or the third-party consultant to
20 examine 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~~] that may
8 affect historic property, aviation artifacts, or a burial site,
9 the agency or office shall advise the department and prior to
10 any 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) The department shall retain a third-party consultant
9 to conduct the review and comment described in subsection (a)
10 if, after an initial evaluation, the department determines that:

11 (1) The department will not be able to provide its review
12 and comment within sixty days of being advised
13 pursuant to subsection (a);

14 (2) The third-party consultant has the qualifications and
15 experience to conduct the review and comment pursuant
16 to subsection (d); and

17 (3) The third-party consultant contract requires the
18 third-party consultant to provide a recommendation to
19 the department within thirty days of being advised
20 pursuant to subsection (a).



1 The department shall obtain the approval of the appropriate
2 island burial council prior to contracting to retain the
3 services of the third-party consultant.

4 (d) 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 in accordance with subsection (c), the third party
8 shall meet the educational and experience standards and
9 qualifications for preservation professionals established by the
10 department.

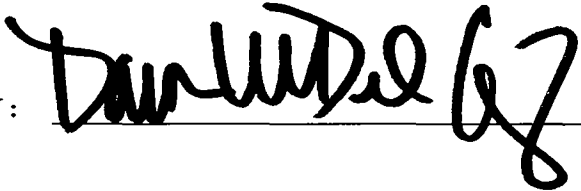
11 [~~e~~] (e) The department shall adopt rules in accordance
12 with chapter 91 to implement this section."

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.

19

INTRODUCED BY: 



S.B. NO. 820

Report Title:

Historic Properties; Reviews; Third-Party Consultants;
Department of Land and Natural Resources

Description:

Requires the Department of Land and Natural Resources to contract reviews of certain proposed projects that may affect historic properties, aviation artifacts, or burial sites to third-party consultants if the department will not be able to complete the review within sixty days.

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

