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# 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 cost and  
2 availability of housing in the State are significant challenges  
3 facing Hawaii residents. According to the department of  
4 business, economic development, and tourism's December 2019  
5 report titled *Hawaii Housing Demand: 2022-2030*, the department  
6 projects that an additional 36,155 residential housing units  
7 need to be developed between 2020 and 2030, not including units  
8 under construction or already in the permitting process, to  
9 provide housing for all of Hawaii's population. Although there  
10 is a severe need for development, considerations need to be made  
11 to preserve and protect the unique cultural history of the  
12 State.

13           The legislature also finds that under article IX, section  
14 7, of the Hawaii state constitution, the State recognizes the  
15 value of conserving and developing the historic and cultural  
16 property within the State for the public good, and the  
17 legislature has declared that it is in the public interest to



1 engage in a comprehensive program of historic preservation at  
2 all levels of government to promote the use and conservation of  
3 such property for the education, inspiration, pleasure, and  
4 enrichment of its citizens. Thus, the department of land and  
5 natural resources' state historic preservation division was  
6 established to preserve and protect historically significant  
7 districts, sites, objects, structures, and buildings integral to  
8 Hawaii's history. Under existing statutes, prior to issuing any  
9 permit or land use approval for any project that affects a  
10 historic property, state and local jurisdictions shall refer the  
11 matter to the state historic preservation division for review,  
12 comment, and for public projects, written concurrence, before  
13 proceeding.

14       However, the legislature finds that due to the current  
15 demand for the construction of affordable housing and other  
16 critical infrastructure, the state historic preservation  
17 division consistently receives more reports than they have time  
18 to review. According to a department of labor and natural  
19 resources report to the legislature in December 2021, "there are  
20 currently approximately 725 open unique projects..." under



1 state historic preservation division review, with an anticipated  
2 six-month to one year backlog.

3 The legislature further finds that the state historic  
4 preservation division's engagement of third party contractors  
5 could serve to help expedite the review process so that more  
6 affordable housing units can be produced in a timely manner.  
7 Delegating review responsibilities will reduce the state  
8 historic preservation division's intake load and allow the  
9 division to focus on core historical review priorities.

10 The purpose of this Act is to:

11 (1) Require the department of land and natural resources,  
12 through the state historic preservation division, to  
13 contract its review of proposed state projects and  
14 projects affecting historic properties to third party  
15 consultants if:

16 (A) The projects involve the development of  
17 affordable housing; and

18 (B) The department will not be able to complete its  
19 review within sixty days; and

20 (2) Appropriate funds that enable the state historic  
21 preservation division to provide for the recruitment



1           and retention of qualified archaeologists to expedite  
2           review of proposed state affordable housing projects  
3           and affordable housing projects affecting historic  
4           properties.

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

7           "**§6E-8 Review of effect of proposed state projects.** (a)

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

- 19           (1) The proposed project consists of corridors or large  
20           land areas;  
21           (2) Access to properties is restricted; or



1           (3) Circumstances dictate that construction be done in  
2                    stages,  
3 the department may give its written concurrence based on a  
4 phased review of the project; provided that there shall be a  
5 programmatic agreement between the department and the project  
6 applicant that identifies each phase and the estimated timelines  
7 for each phase.

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

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



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

6 (d) Whenever the proposed state project involves a  
7 development intended as affordable housing, as that term is  
8 defined under section 201H-57, the department shall retain a  
9 third party consultant to conduct the review described under  
10 subsection (a) if, after an initial evaluation, the department  
11 determines that:

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

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

18 (3) The contract with the third party consultant requires  
19 the third party consultant to provide a recommendation  
20 to the department within thirty days of the filing of  
21 the request with the department.



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

8        (f) The department may contract or sponsor with any  
9 county, housing authority, non-profit organization, or person,  
10 to meet the reasonable fee requirements of the third party  
11 consultant.

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

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

16        "**§6E-42 Review of proposed projects.** (a) Except as  
17 provided in section 6E-42.2, before any agency or officer of the  
18 State or its political subdivisions approves any project  
19 involving a permit, license, certificate, land use change,  
20 subdivision, or other entitlement for use [~~, which~~] that may  
21 affect historic property, aviation artifacts, or a burial site,



1 the agency or office shall advise the department and prior to  
2 any approval allow the department an opportunity for review and  
3 comment on the effect of the proposed project on historic  
4 properties, aviation artifacts, or burial sites, consistent with  
5 section 6E-43, including those listed in the Hawaii register of  
6 historic places. If:

7 (1) The proposed project consists of corridors or large  
8 land areas;

9 (2) Access to properties is restricted; or

10 (3) Circumstances dictate that construction be done in  
11 stages,

12 the department's review and comment may be based on a phased  
13 review of the project; provided that there shall be a  
14 programmatic agreement between the department and the project  
15 applicant that identifies each phase and the estimated timelines  
16 for each phase.

17 (b) The department shall inform the public of any project  
18 proposals submitted to it under this section that are not  
19 otherwise subject to the requirement of a public hearing or  
20 other public notification.





1        (c) Whenever the project involves a development intended  
2 as affordable housing, as that term is defined under section  
3 201H-57, the department shall retain a third party consultant to  
4 conduct the review and comment described under subsection (a)  
5 if, after an initial evaluation, the department determines that:

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

9        (2) The third party consultant has the qualifications and  
10 experience to conduct the review required by  
11 subsection (d); and

12        (3) The third party consultant will contract to provide a  
13 recommendation to the department within thirty days of  
14 being advised pursuant to subsection (a).

15        (d) Whenever the department retains any third party,  
16 including any architect, engineer, archaeologist, planner, or  
17 other, to review an application for a permit, license, or  
18 approval under subsection (c), the third party shall meet the  
19 educational and experiences standards as well as the  
20 qualifications for preservation professionals pursuant to rules  
21 adopted by the state historic preservation division.



1        (e) The department may contract or sponsor with any  
2 county, housing authority, non-profit organization, or person,  
3 to meet the reasonable fee requirements of the third party  
4 consultant.

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

7        SECTION 4. There is appropriated out of the general  
8 revenues of the State of Hawaii the sum of \$                    or so  
9 much thereof as may be necessary for fiscal year 2023-2024 and  
10 the same sum or so much thereof as may be necessary for fiscal  
11 year 2024-2025 for the state historic preservation division's  
12 recruitment and retention of qualified archaeologists.

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

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

18        SECTION 6. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

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1 SECTION 7. This Act shall take effect on July 1, 2023.

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INTRODUCED BY:

A handwritten signature in black ink, consisting of the letters 'D', 'K', and 'U' in a stylized, cursive font, written over a horizontal line.



# S.B. NO. 766

**Report Title:**

Department of Land and Natural Resources; State Historic Preservation Division; Affordable Housing; Third Party Consultants; Appropriation

**Description:**

Requires the Department of Land and Natural Resources State Historic Preservation Division to contract its review of proposed state projects, 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 sixty days. Establishes requirements for qualified third parties providing review services. Authorizes the Department of Land and Natural Resources to contract or sponsor with any county, housing authority, non-profit organization, or person, to meet the reasonable fee requirements of the third party consultant.

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

