

STAND. COM. REP. NO. 14

Honolulu, Hawaii

FEB 03 2023

RE: S.B. No. 766  
S.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Thirty-Second State Legislature  
Regular Session of 2023  
State of Hawaii

Sir:

Your Committees on Hawaiian Affairs and Water and Land, to which was referred S.B. No. 766 entitled:

"A BILL FOR AN ACT RELATING TO AFFORDABLE HOUSING,"

beg leave to report as follows:

The purpose and intent of this measure is to:

- (1) Require 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, if the Division, after an initial evaluation, determines it will not be able to complete its review within sixty days;
- (2) Establish requirements for qualified third parties providing review services; and
- (3) Authorize the Department of Land and Natural Resources to contract with or sponsor any county, housing authority, non-profit organization, or person, to meet the reasonable fee requirements of the third party consultant.



Your Committees received testimony in support of this measure from the Hawaii Housing Finance and Development Corporation, Office of the Mayor of the County of Hawai'i, Office of Housing and Community Development of the County of Hawai'i, NAIOP Hawaii CRE Industry Pac, Building Industry Association of Hawaii, and one individual. Your Committees received comments on this measure from the Department of Land and Natural Resources and Historic Hawai'i Foundation.

Your Committees find that under existing law, prior to the issuance of any permit or land use approval for any project that affects a historic property, state and local jurisdictions must refer the matter to the State Historic Preservation Division for review and comment, and for public projects, written concurrence is required before proceeding. However, your Committees also find that due to the current demand for the construction of affordable housing and other critical infrastructure, the State Historic Preservation Division consistently receives more reports than they have time to review, resulting in significant backlogs. Therefore, this measure helps to expedite the review process by allowing the State Historic Preservation Division to engage with third party contractors for reviews. This measure will thus enable more timely reviews and allow the State Historic Preservation Division to focus on other core priorities.

Your Committees have heard the testimony of the Department of Land and Natural Resources and Historic Hawai'i Foundation expressing concerns that a review of proposed projects by a third party could bypass important safeguards that ensure historical properties and cultural resources are identified and appropriate treatment measures are in place during planning and design work. While third party contractors may be knowledgeable on matters such as building or zoning codes, most architects and engineers do not possess specialized training to determine effects on historic properties. The Department of Land and Natural Resources also testified that third party contracting may not necessarily lead to an expedited review process, but could unintentionally add several steps due to the contracting process.

Therefore, your Committees find that this issue raises concerns that merit further consideration and requests that your Committees on Judiciary and Ways and Means further examine those issues and concerns raised by the testifiers on this measure.



Your Committees have amended this measure by:

- (1) Requiring the project proponent to pay for the reasonable fee requirements of the third party consultant;
- (2) Requiring the Department of Land and Natural Resources to publish a draft of its proposed rules on its website to allow the State Historic Preservation Division to contract with third party consultants within one year of this measure's effective date, and thereafter, require the Department to present within one year its proposed final rules to the Board of Land and Natural Resources;
- (3) Making the measure's amendments to the Hawaii Revised Statutes allowing the State Historic Preservation Division to contract with third party consultants effective on July 1, 2025; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the records of votes of the members of your Committees on Hawaiian Affairs and Water and Land that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 766, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 766, S.D. 1; and be referred to your Committees on Judiciary and Ways and Means.

Respectfully submitted on  
behalf of the members of the  
Committees on Hawaiian Affairs  
and Water and Land,

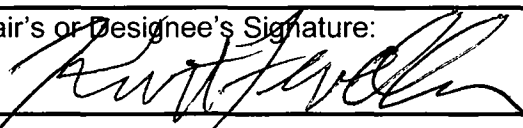
  
LORRAINE R. INOUE, Chair

  
MAILE S.L. SHIMABUKURO, Chair



The Senate  
 Thirty-Second Legislature  
 State of Hawai'i

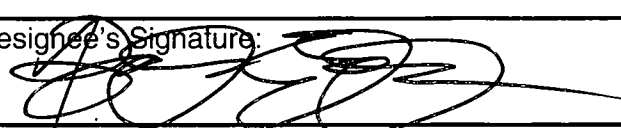
**Record of Votes**  
**Committee on Hawaiian Affairs**  
**HWN**

Bill / Resolution No.:* <b>SB 766</b>	Committee Referral: <b>HWN/WTL, JDC/WAM</b>	Date: <b>01-31-2023</b>		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
SHIMABUKURO, Maile S.L. (C)	X			
FEVELLA, Kurt (VC)	X			
IHARA, Jr., Les				X
KEOHOKALOLE, Jarrett	X			
RICHARDS, III, Herbert M. "Tim"	X			
<b>TOTAL</b>	<b>4</b>	<b>-</b>	<b>-</b>	<b>1</b>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
<b>Distribution:</b> Original     Yellow     Pink     Goldenrod File with Committee Report     Clerk's Office     Drafting Agency     Committee File Copy				

\*Only one measure per Record of Votes

The Senate  
 Thirty-Second Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Water and Land**  
**WTL**

Bill / Resolution No.:* <b>SB 766</b>	Committee Referral: <b>HWN/WTL, JDC/WAM</b>	Date: <b>01/31/23</b>		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
INOUYE, Lorraine R. (C)	✓			
ELEFANTE, Brandon J.C. (VC)	✓			
CHANG, Stanley				✓
MCKELVEY, Angus L.K.	✓			
FEVELLA, Kurt	✓			
<b>TOTAL</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>1</b>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
<b>Distribution:</b> Original     Yellow     Pink     Goldenrod File with Committee Report     Clerk's Office     Drafting Agency     Committee File Copy				

\*Only one measure per Record of Votes