

JOSH GREEN, M.D.  
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621  
HONOLULU, HAWAII 96809

DAWN N.S. CHANG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
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FIRST DEPUTY  
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DEPUTY DIRECTOR - WATER  
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CONSERVATION AND RESOURCES  
ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Testimony of  
DAWN N.S. CHANG  
Chairperson

Before the Senate Committees on  
WATER AND LAND  
and  
HAWAIIAN AFFAIRS

Tuesday, January 31, 2022  
1:00PM

State Capitol, Conference Room 224 Via Videoconference

In consideration of  
SENATE BILL 766  
RELATING TO AFFORDABLE HOUSING

Senate Bill 766 proposes to amend Sections 6E-8 and 6E-42, Hawaii Revised Statutes, to require the Department of Land and Natural Resources (Department) to contract with third-party reviewers for affordable housing projects, if the Department is unable to complete its reviews in sixty days, provided that the consultant meets the Department's professional qualifications and experience, and will provide their recommendation to Department within 30-days. **The Department appreciates the intent of this measure and offers comments.**

The Department recognizes the need to support affordable housing units in Hawaii, and acknowledges that even though review of such projects is one of our highest priorities, reviews of such submissions are not always completed as promptly as project proponents might like or within the time period provided by the administrative rules. The Department acknowledges and appreciates the support of the Legislature by creating 14 new positions in the State Historic Preservation Division (SHPD) during the last session. The Department believes once filled these positions will provide the SHPD will the capacity to reduce the time it takes to complete Chapter 6E reviews of most projects, including affordable housing projects.

Senate Bill 766 Section 2(f) and Section 3(e) permit the Department 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 Department does not believe that this provision will expedite the review process as it my unintentionally add several steps to the procurement process of contracting with

third party consultants. These provisions would require the Department to: first have to determine that it cannot complete its review within 60-days; then determine if there is an appropriate party to receive the funds to, then enter into a contractual arrangement with the recipient compliant with state purchasing policies, the recipient entity will then have to find and enter into a contract with the third party consultant. For Section 2(f) it also appears that the recipient of the transfer funds may be the project proponent. In the Department's opinion this could, at a minimum, create the appearance of a conflict of interest. The Department recommends that Section 2(f) and Section 3(e) be deleted.

The Department appreciates that this measure appropriates a blank amount of funds for the purposes of the Act as it does not have funds to contract with third party consultants and this mandate is not included in the Department's budget. While we believe this authorization would facilitate timely review of affordable housing projects, funds would need to be appropriated or a mechanism where the project proponent would pay for the third-party consultant that is selected and approved by the Department. Furthermore, it is difficult to determine in advance the cost estimate for a third-party consultant contract, thus, the Department cannot advise the Committee on a meaningful estimate of the costs of such third-part contracts but is willing to pursue this approach.

Thank you for the opportunity to comment on this measure.

**LATE**

**NAIOP**

COMMERCIAL REAL ESTATE  
DEVELOPMENT ASSOCIATION

HAWAII CHAPTER

January 31, 2022

Senator Lorraine Inouye, Chair  
Senator Brandon Elefante, Vice Chair  
Committee on Water and Land

Senator Maile Shimbukuro  
Senator Kurt Fevella  
Committee on Hawaiian Affairs

RE: **SB 766 - Relating to Affordable Housing**  
**Hearing date: January 31, 2023 at 1:00PM**

Aloha Chair Inouye, Chair Shimbukuro and members of the committees,

Mahalo for the opportunity to submit testimony on behalf of NAIOP Hawaii in **SUPPORT** on SB 766. NAIOP Hawaii is the local chapter of the nation's leading organization for office, industrial, retail, residential and mixed-use real estate. NAIOP Hawaii has over 200 members in the State including local developers, owners, investors, asset managers, lenders and other professionals.

SB 766 is intended to promote more timely reviews of affordable housing projects by requiring the Department of Land and Natural Resources (DLNR) State Historic Preservation Division (SHPD) to contract its review of the proposed state projects and projects affecting historic properties which involve the development of affordable housing to third-party consultants if the department will not be able to complete its review within sixty days.

Currently, we are in a housing crisis and need to develop additional units. SB 766 seeks to address the significant delays that permit applicants face in obtaining county permits that require review under section 6E-42, Hawaii Revised Statutes. The backlog of historic reviews is encumbering permits throughout the state. Consequently, much needed housing, economic development, and critical infrastructure projects often face significant delays in permit approvals and project implementation. NAIOP understands the great importance that these reviews hold in preservation of Hawaii's historic and cultural sites, however, a balance needs to be found to increase efficiency while maintaining the quality of reviews.

Accordingly, we strongly support the utilization of qualified third-party consultants to review expedite the review of affordable housing projects. SHPD is facing challenges in completing the overwhelming number of reviews due to capacity issues. Allowing third party consultants to conduct reviews will hopefully reduce the current caseload while

Senator Lorraine Inouye, Chair  
Senator Brandon Elefante, Vice Chair  
Committee on Water and Land  
January 31, 2023  
Page 2

expediting future reviews that allow for the development of much needed housing and critical infrastructure.

On balance, the language of SB 766 further requires third party consultants to meet qualifications for preservation professionals pursuant to rules adopted by SHPD. This ensures that reviews will be conducted by qualified consultants to meet the high standards of review. NAIOP Hawaii supports this provision of the measure which seeks to balance the interests of all stakeholders by expediting quality reviews.

NAIOP greatly supports the intent of the measure to identify a solution to the significant backlog of much needed projects awaiting SHPD review. NAIOP Hawaii all measures which seek to resolve this issue including SB 820 and 309 as well. Ultimately, SB 766 addresses a critical issue in the development of more affordable housing for Hawaii residents. NAIOP appreciates the Legislature's commitment to collaborating on this issue and look forward to working together.

Mahalo for your consideration,

A handwritten signature in black ink, appearing to read "Camp", with a stylized flourish at the end.

Jennifer Camp, President  
NAIOP Hawaii

JOSH GREEN, M.D.  
GOVERNOR



DENISE ISERI-MATSUBARA  
EXECUTIVE DIRECTOR

**STATE OF HAWAII**  
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM  
**HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION**  
677 QUEEN STREET, SUITE 300  
HONOLULU, HAWAII 96813  
PHONE: (808) 587-0620  
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IN REPLY PLEASE REFER TO:  
23:PECB/xxx

Statement of  
**DENISE ISERI-MATSUBARA**  
Hawaii Housing Finance and Development Corporation  
Before the

**SENATE COMMITTEE ON WATER AND LAND  
AND  
SENATE COMMITTEE ON HAWAIIAN AFFAIRS**  
January 31, 2023 at 1:00 p.m.  
State Capitol, Room 224

In consideration of  
**S.B. 766**  
**RELATING TO AFFORDABLE HOUSING.**

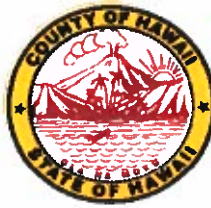
HHFDC ***supports*** S.B. 766, which requires the State Historic Preservation Division (SHPD) to contract its review of proposed State projects and projects affecting historic properties to third-party consultants if the projects involve the development of affordable housing and SHPD, after an initial evaluation, determines it will not be able to complete its review within 60 days, among other things.

HHFDC supports efforts to streamline what has historically been a bottleneck in the development process and has slowed affordable housing projects, including those using the provisions of Hawaii Revised Statutes Chapter 201H to expedite development.

SHPD's engagement of third-party contractors would help to expedite the review process so that more affordable housing units can be produced in a timely manner.

Thank you for the opportunity to provide testimony.

**Mitchell D. Roth**  
*Mayor*



**Lee E. Lord**  
*Managing Director*

**Robert H. Command**  
*Deputy Managing Director*

**County of Hawai'i**  
**Office of the Mayor**

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**TESTIMONY IN SUPPORT OF SENATE BILL 766**  
**A BILL FOR AN ACT RELATING TO AFFORDABLE HOUSING**

**COMMITTEE ON LAND AND WATER**

Chair, Sen. Lorraine R. Inouye  
Vice-Chair, Sen. Brandon J.C. Elefante

**COMMITTEE ON HAWAIIAN AFFAIRS**

Chair, Sen. Maile S.L. Shimabukuro  
Vice Chair, Sen. Kurt Fevella

Hearing Date: Tuesday, January 31, 2023, at 1:00 p.m.  
Time/Place of Hearing: Via Video Conference / Conference Room 224

Aloha Honorable Chairs Inouye and Shimabukuro, Honorable Vice Chairs Elefante and Fevella, and members of the Committee on Land and Water and the Committee on Hawaiian Affairs.

On behalf of the County of Hawai'i, I am expressing our support for SB 766 which 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, determines and establishes requirements for qualified third parties providing these services and authorizes the Department of Land and Natural Resources to contract or sponsor with certain entities to meet the reasonable fee requirements of the third party consultant.

Many delays in the permitting process occur in this area. We recognize the important work being done by the State Historic Preservation Division; however, we believe SB 766 will provide greater predictability in addressing historical preservation and environmental concerns, while allowing the Division's work to continue. This step will also create quality jobs and open the field for additional cultural and environmental professions within the State.

The County of Hawai'i supports the passage of SB 766. Thank you for the opportunity to testify on this matter.

Mahalo,

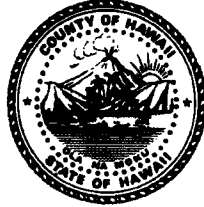
Mitchell D. Roth  
Mayor  
County of Hawai'i

**LATE**

**Mitchell D. Roth**  
*Mayor*

**Lee E. Lord**  
*Managing Director*

**Robert H. Command**  
*Deputy Managing Director*



**Susan K. Kunz**  
*Housing Administrator*

**Harry M. Yada**  
*Assistant Housing Administrator*

**County of Hawai'i**  
**Office of Housing and Community Development**

1990 Kino'ole Street, Suite 102 • Hilo, Hawai'i 96720 • (808) 961-8379 • Fax (808) 961-8685  
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**TESTIMONY IN SUPPORT OF SENATE BILL 766**  
**A BILL FOR AN ACT RELATING TO AFFORDABLE HOUSING**  
**COMMITTEE ON LAND AND WATER**

**Chair, Sen. Lorraine R. Inouye**  
**Vice-Chair, Sen. Brandon J.C. Elefante**  
**COMMITTEE ON HAWAIIAN AFFAIRS**  
**Chair, Sen. Maile S.L. Shimabukuro**  
**Vice Chair, Sen. Kurt Fevella**

**Hearing Date: Tuesday, January 31, 2023, at 1 :00 p.m.**

**Time/Place of Hearing: Via Video Conference/ Conference Room 224**

Aloha Honorable Chairs Inouye and Shimabukuro, Honorable Vice Chairs Elefante and Fevella, and Members of the Committee on Land and Water and the Committee on Hawaiian Affairs.

On behalf of the Office of Housing and County Development of the County of Hawai'i, I am expressing our support for SB 766 which 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 determines it will not be able to complete its review in sixty days. This measure establishes requirements for qualified third parties providing these services and authorizes the Department of Land and Natural Resources to contract or sponsor with certain entities to meet the reasonable fee requirements of the third party consultant.

Section 106 of the National Historic Preservation Act requires Federal Agencies to take into account the effects of their undertakings on historic properties, this includes affordable housing developments receiving federal funds. Delays in the 106 review process can jeopardize an affordable development project's funding and overall cost.

SB 766 provides greater predictability in the timeliness of the Division's response to addressing important historical preservation and environmental impacts of affordable housing developments.

Thank you for the opportunity to provide testimony in support of SB 766.

Mahalo,

  
Susan K. Kunz  
Housing Administrator



# HISTORIC HAWAII FOUNDATION

**TO:** Senator Lorraine R. Inouye, Chair  
Senator Brandon J.C. Elefante, Vice Chair  
Committee on Water & Land (WTL)

Senator Maile S.L. Shimabukuro, Chair  
Senator Kurt Fevella, Vice Chair  
Committee on Hawaiian Affairs (HWN)

**FROM:** Kiersten Faulkner, Executive Director  
Historic Hawai'i Foundation

**Committee:** Tuesday, January 31, 2023  
1:00 p.m.  
Via Video Conference and Conference Room 224

**RE: SB 766, Relating to Affordable Housing**

On behalf of Historic Hawai'i Foundation (HHF), I am writing **with comments and concerns about SB 766**. The bill 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. The measure provides for promulgating rules to establish requirements for qualified third parties providing review services and 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 intent of the bill is to expedite the review process so that more affordable housing units can be produced in a timely manner by delegating review responsibilities to reduce the division's intake load and allow SHPD to focus on core historical review priorities.

State law (HRS §6E-8), currently requires that prior to any state, county or public project commencing, that the proposed project shall be referred to SHPD for its review of the proposed project's potential effect on historic properties, aviation artifacts, or burial sites, especially those listed on the state register of historic places. The proposed project shall not commence until the department gives its written concurrence. SHPD review and comment is also required for privately-owned projects (see §6E-10, §6E-42 and §6E-43).

SHPD's review of proposed projects is an important safeguard to ensure that historic properties and cultural resources are identified and appropriate treatment measures are in place during planning and design work, which also then limits surprises or delays during construction.



## SUMMARY OF HHF CONCERNS and RECOMMENDATIONS

The bill does not demonstrate how the proposed third-party consultant would achieve either the aims of appropriate treatment and preservation of Hawaii's historic and cultural resources, nor how the third-party consultant would achieve the aims of providing additional affordable housing.

In addition to issues of effectiveness, HHF is also concerned with several practical issues, including: professional qualifications that would be required; selection and contracting procedures; how conflicts of interest would be addressed; how the third-party consultant decisions would be reviewed and incorporated into the administrative record; what resources the Division would need to manage the third-party consultants and review processes; and how the decisions reached by the third-party reviewers would be institutionalized, communicated and tracked.

Rather than introduce an entirely new bureaucracy to the process, Historic Hawai'i Foundation recommends that SHPD be provided with the resources for personnel, technology, equipment and training to do the job for which it has been entrusted. If the Division is fully staffed and supported, the issues of timeliness and quality of reviews would be addressed at the source, and the proposed work-around is moot. A fully-staffed, trained and supported program within SHPD could be tasked with Affordable Housing programs rather than have those submittals be co-mingled with all other types of projects. That would allow an in-house qualified team to provide the focused attention and efficiency that is desired, without the need for a parallel and redundant process.

### ISSUE #1: Qualifications of Third-Party Consultants

Although the reliance on third-party reviewers could be a viable approach for matters such as building or zoning codes, most architects and engineers do not possess the specialized technical training to allow them to make determinations of effect on historic properties and provide meaningful review comments to ensure appropriate treatment of historic properties. We are concerned with the issue of ensuring that the reviewers have knowledge, understanding and expertise in native Hawaiian cultural resources or values, especially if the third-party consultants are selected from out-of-state.

HHF appreciates that the measure makes reference to education and experience standards and qualifications for preservation professionals as determined by SHPD rules. HHF recommends that the administrative rules also include a quality control and audit procedure that ensures the appropriateness and quality of the reviews, data tracking, implementation of review comments, and reporting.

We recommend that the bill include a deadline by which DLNR is to develop the draft rules for public input and comment, as well as a deadline for the final version of the rules be presented to the Board of Land and Natural Resources for action.

### ISSUE #2: Integration with Federal Historic Preservation Reviews

The review and compliance process currently outlined in State statute and rules is substantially parallel to a similar process in Federal regulations, which provides for the identification, review and agreement on treatment of historic properties in cases where federal funding, land, permits or other approvals apply. However, there are key differences that need to be accommodated.

In the case of affordable housing projects, federal funds are frequently used for land acquisition and/or project financing. In those cases, Section 106 of the National Historic Preservation Act applies. The Code of Federal Regulations (36 CFR Part 800) governs issues related to historic preservation and includes specific roles and responsibilities for the State Historic Preservation Officer (SHPO). While the technical reviews may be delegated to qualified preservation professionals in the fields of architecture, architectural history or archaeology, the SHPO is ultimately responsible for the authorization and approval of the Section 106 process and resolution of potential effects on historic properties.

In the cases where federal funds, lands, permitting, licenses or approvals are required, the proposed use of third-party consultants would result in a double review process: one by the third-party reviewer for purposes of HRS §6E and one by the SHPD personnel for compliance with 36 CFR 800.

There are key differences between State and Federal historic preservation regulations, including:

- Federal law requires the agency or department to consult with other parties, including preservation organizations; other individuals or organizations with an interest in the historic resource or the proposed project; and Native Hawaiian Organizations that attach religious or cultural significance to the historic property. Hawai'i Administrative Rules include only a limited duty to consult with other interested parties. Third-party consultants would be ill-equipped to manage or participate in the consultation process and could not represent the SHPD views.
- Federal law requires that review of projects include not only direct effects within the footprint of the project, but also indirect and cumulative effects, in which the entirety of the effect is identified and evaluated, and appropriate measures are taken. State law is primarily concerned only with direct effects and seldom looks beyond the immediate consequences to a larger picture. Third-party consultants would be ill-equipped to understand the cumulative effects or how to address them.
- Another significant difference between State and Federal regulations as they apply to historic resources is that State law is explicitly concerned with protection of Native Hawaiian burials and cultural resources, whereas Federal law is much less direct. Early identification of other types of historic properties—buildings, structures, archaeological sites—is relatively simple in that they can almost always be seen. However, subsurface or submerged historic properties are usually not previously identified. Third-party consultants would likely be unaware of unseen historic properties or have information on how to identify and resolve effects to them.

SHPD professional staff are versed in these and other differences and are able to ensure that review and compliance procedures address them. If a double-review with third-party consultants were introduced, the review processes would be segregated, adding conflict, confusion and contradiction.

Besides being inefficient and ineffective, the use of third-party consultants has the potential to remove an important safety net for the preservation and protection of the historic and cultural resources of Hawai'i and would introduce more uncertainty in the development process.

For these reasons, **Historic Hawai'i Foundation respectfully asks the committee to hold the bill and not pass it on further.** Thank you for the opportunity to comment.

**SB-766**

Submitted on: 1/30/2023 8:19:38 AM

Testimony for HWN on 1/31/2023 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Jessica Kuzmier	Individual	Support	Written Testimony Only

Comments:

I am writing in support of this bill because the need for affordable housing is very great and a third party could help expedite the process, as long as the party is attuned to cultural needs and that of sustainable living, both to allow for self-sufficiency and achieving net carbon neutrality, as well as consideration for water and land safety.

I do hope that much of the housing can be standing buildings that can be retrofitted in green sustainable means, which would be compatible with Hawaiian culture.

Mahalo for your time.

**LATE**



**SENATE COMMITTEES ON HAWAIIAN AFFAIRS, AND WATER & LAND  
State Capitol  
415 South Beretania Street  
1:00 PM**

January 31, 2023

RE: SB 766 - RELATING TO AFFORDABLE HOUSING

Chairs Inouye & Shimabukuro, Vice Chairs Elefante & Fevella, and members of the committees:

My name is Max Lindsey, 2023 Government Relations Committee Chair of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities we all call home.

**BIA-Hawaii is in support of SB 766, Relating to Affordable Housing.** This bill would 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 the division, after an initial evaluation, determines it will not be able to complete its review within sixty days.

BIA-Hawaii is generally in support of the intent to streamline SHPD review. Allowing SHPD to outsource projects to third-party reviewers would help reduce their current backlog.

The state of Hawaii is in a dire housing crisis. As the Legislature is aware, the cost of housing in Hawaii is extremely high, with Oahu's median price of homes being currently over \$1 million. Approximately 153,967 U.S. households are priced out of buying a home for every \$1000 increase in price, according to the National Association of Home Builders (NAHB). We are in support of legislation that would allow for the building of much-needed housing at every price point in Hawaii.

We appreciate the opportunity to express our support for SB 766.

**LATE**



**MAUI**  
CHAMBER OF COMMERCE  
VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEES ON  
WATER AND LAND and HAWAIIAN AFFAIRS  
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 224  
TUESDAY, JANUARY 31, 2023 AT 1:00 P.M.**

To The Honorable Senator Lorraine R. Inouye, Chair  
The Honorable Brandon J.C. Elefante, Vice Chair  
Members of the Committee on Water and Land  
To The Honorable Senator Maile S.L. Shimabukuro, Chair  
The Honorable Senator Kurt Fevella, Vice Chair  
Members of the Committee on Hawaiian Affairs

**SUPPORT FOR SB766 RELATING TO RELATING TO AFFORDABLE HOUSING**

The Maui Chamber of Commerce would like testify in **support for SB766** which requires the Department of Land and Natural Resources State Historic Preservation Division (SHPD) 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. And the bill establishes requirements for qualified third parties providing review services and 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 Chamber has repeatedly seen housing projects – especially affordable housing projects – delayed significantly at the offices of SHPD. There is a large number of projects – big and small – being processed at all of the SHPD offices. They are overwhelmed with projects and have a limited staff. To allow qualified third parties to assist with the workload would speed up the permit reviews that are bottlenecked at SHPD, which would help affordable housing projects get through the process much faster thus lowering the expenses for the housing.

For these reasons, we **support SB766**.

Sincerely,

Pamela Tumpap  
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.