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# A BILL FOR AN ACT

RELATING TO THE KAKAAKO COMMUNITY DEVELOPMENT DISTRICT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that predictability in  
2 the development approval process would encourage the most  
3 efficient use of resources at the lowest financial cost to the  
4 public. This predictability is especially important in view of  
5 the substantial investment required for any development project  
6 and the more conservative lending and investment practices  
7 resulting from the recent economic crisis.

8           Public benefits derived from the implementation of master  
9 plans in the Kakaako community development district include  
10 expanded open space and recreational opportunities for Hawaii's  
11 residents, newly constructed market and reserved housing, major  
12 private sector investments to stimulate economic growth, and on-  
13 and off-site infrastructure and other improvements that support  
14 the broader community. Master plans are intended to create  
15 well-designed communities that improve the urban environment.  
16 These benefits may not be realized unless development rights for  
17 a specific period are clearly vested and investments are made to  
18 develop and complete the proposed projects.



1           Development agreements are a mechanism to strengthen the  
2 implementation of an approved master plan. These agreements  
3 encourage private and public participation in the implementation  
4 of the master plan, reduce the economic cost of development, and  
5 allow for the orderly construction of recreational and other  
6 publicly available facilities through the vesting of rights to  
7 develop the balance of the projects. Development agreements  
8 provide assurances to the applicant for a particular development  
9 project in the master plan area that, upon approval of the  
10 master plan, the applicant may proceed with the project in  
11 accordance with all applicable statutes, ordinances,  
12 resolutions, rules, and policies then in existence and that the  
13 project will not be unduly restricted or prohibited by the State  
14 or county's subsequent enactment or adoption of laws,  
15 ordinances, resolutions, rules, or policies.

16           The Hawaii community development authority laws, codified  
17 as chapter 206E, Hawaii Revised Statutes, and the plans and  
18 rules adopted pursuant thereto provide for the vesting of  
19 certain development rights upon approval by the Hawaii community  
20 development authority of, among other matters, master plans and  
21 development agreements in connection with an approved master  
22 plan. To achieve the goals and public benefits from each



1 approved master plan, owners, developers, and their lenders and  
2 investors need a predictable and stable framework that assures  
3 these parties that they can develop and complete their proposed  
4 projects pursuant to the terms of an approved development  
5 agreement.

6 SECTION 2. Chapter 206E, part II, Hawaii Revised Statutes,  
7 is amended by adding a new subpart to be appropriately  
8 designated and to read as follows:

9 " . **Development Agreements**

10 **§206E-A Definitions.** As used in this subpart:

11 "Person" means an individual, group, partnership, firm,  
12 association, corporation, trust, government agency, government  
13 official, administrative body, tribunal, or any other form of  
14 business or legal entity.

15 "Principal" means a developer who has entered into a  
16 development agreement pursuant to the procedures specified in  
17 this subpart, including any successor in interest.

18 **§206E-B Authorization to negotiate development agreements;**

19 **final approval.** (a) The executive director of the authority  
20 may enter into direct negotiations for a development agreement  
21 with any person having an interest in real property located in



1 the Kakaako community development district, for the development  
2 of the property in accordance with this section; provided that:

3 (1) Any development agreement entered pursuant to this  
4 subpart shall be consistent with the terms and  
5 conditions of the applicable master plan;

6 (2) The development agreement shall not exceed the term of  
7 the applicable master plan, unless an extension is  
8 granted by the authority; and

9 (3) The executive director shall conduct a periodic  
10 review, as determined by the development agreement, to  
11 ensure compliance with the terms and conditions of the  
12 development agreement.

13 (b) Any development agreement negotiated by the executive  
14 director shall be subject to final approval by the authority.  
15 The authority may modify the development agreement as it deems  
16 necessary.

17 **§206E-C Public hearings.** Notwithstanding any other law to  
18 the contrary, the authority shall conduct at least one public  
19 hearing on any request for approval of a development agreement,  
20 as required under section 206E-B(b). The authority may hold the  
21 public hearing in conjunction with any applicable master plan  
22 public hearing held prior to the approval of the master plan.



1           **§206E-D Periodic review; termination of the development**

2 **agreement.** (a) If, as a result of a periodic review pursuant  
3 to the terms of the development agreement, the executive  
4 director finds that the principal is in material breach of the  
5 terms or conditions of the development agreement, then the  
6 executive director, with the approval of the authority, shall  
7 serve notice upon the principal in writing within thirty days of  
8 the authority's approval. The notice shall describe with  
9 reasonable particularity the nature of the material breach and  
10 any evidence supporting the executive director's finding. The  
11 principal shall have a minimum of ninety days to cure the  
12 material breach. If the authority deems it necessary, the  
13 principal may be granted a longer period of time to cure the  
14 material breach.

15           (b) If the principal fails to cure the material breach  
16 within the time period allotted pursuant to subsection (a), the  
17 authority may terminate or modify the development agreement as  
18 it deems necessary; provided that the principal has had adequate  
19 opportunity to either refute the finding of material breach or  
20 to consent to any amendment to the development agreement to  
21 address the concerns of the authority with regard to the finding  
22 of material breach.



1           **§206E-E Specific provisions of development agreements.**

2       (a) For the purposes of this subpart, any development agreement  
3 entered into by a principal or the authority shall include:

4           (1) A description of the land subject to the development  
5 agreement;

6           (2) Specifications regarding the use of the land, the  
7 density or intensity of use, the maximum height and  
8 size of any proposed buildings, and any reserved  
9 housing requirements; and

10          (3) Any public dedication requirements and public  
11 dedication credits, consistent with the applicable  
12 master plan.

13       (b) The development agreement may include commencement and  
14 completion dates; provided that any dates included may be  
15 extended upon the mutual agreement of the authority, the  
16 executive director, and the principal upon a showing of good  
17 cause.

18       (c) The development agreement may incorporate by reference  
19 the terms and conditions of the applicable master plan.

20       (d) In addition to the authority and principal, any state,  
21 county, or federal agency may be a party to a development  
22 agreement; provided that the development agreement identifies



1 which government agency shall be responsible for administration  
2 of the agreement. No state, county, or federal agency shall be  
3 bound by the terms and conditions of the development agreement  
4 unless and until that agency has become a party to the  
5 development agreement by duly executing the agreement. The  
6 authority shall not bind any other state agency by executing the  
7 development agreement.

8 **§206E-F Amendment or cancellation of the development**  
9 **agreement.** A development agreement may be amended or cancelled,  
10 in whole or in part, by mutual agreement of all parties or their  
11 successors in interest; provided that if the authority  
12 determines that a proposed amendment would substantially alter  
13 the original development agreement, the authority shall hold a  
14 public hearing, in accordance with section 206E-C, prior to its  
15 approval.

16 **§206E-G Enforceability; applicable laws.** (a) Unless the  
17 development agreement is terminated pursuant to section 206E-D,  
18 or cancelled pursuant to section 206E-F, the agreement shall be  
19 enforceable by any principal, including the executive director,  
20 and the authority.

21 (b) Any relevant state law, county ordinance, resolution,  
22 rule, or policy regarding zoning or development issues that are



1 specifically set out and agreed to in the development agreement,  
2 as provided in section 206E-E, shall remain in full force and  
3 effect throughout the term of the development agreement;  
4 provided, however, that a development agreement shall not  
5 prevent any government body from:

6 (1) Requiring the developer to comply with laws,  
7 ordinances, resolutions, rules, and policies of  
8 general applicability enacted subsequent to the date  
9 of the development agreement if the laws, ordinances,  
10 resolutions, rules, or policies could have been  
11 lawfully applied to the property which is the subject  
12 of the development agreement at the time of execution  
13 of the agreement; or

14 (2) Requiring the developer to comply with laws,  
15 ordinances, resolutions, rules, and policies that  
16 specifically impair the development agreement if the  
17 government body finds it necessary to impose  
18 reasonable conditions on the development agreement or  
19 the subject property in a manner appropriate to  
20 achieving a significant and legitimate public purpose.

21 (c) The principal of any development agreement in effect  
22 on July 1, 2010, may request that the authority approve





1 modifications to the existing agreement to conform to this  
2 subpart.

3       **§206E-H Recordation.** The executive director, on behalf of  
4 the authority, shall record a copy of the development agreement  
5 or any amendment made pursuant to section 206E-F, with the  
6 bureau of conveyances or in the office of the assistant  
7 registrar of the land court, as applicable, within twenty days  
8 after the authority approves the development agreement or any  
9 amendment thereto. The development agreement shall be binding  
10 upon all principals, including the authority, and any benefits  
11 shall inure to all principals, including the authority."

12       SECTION 3. Chapter 206E, part II, Hawaii Revised Statutes,  
13 is amended by designating sections 206E-31 to 206E-35 as subpart  
14 A, entitled "General Provisions".

15       SECTION 4. 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 5. In codifying this Act, the revisor of statutes  
19 shall substitute appropriate section numbers for the section  
20 designations used in section 2 of this Act.

21       SECTION 6. This Act shall take effect on July 1, 2050.

22



**Report Title:**

Hawaii Community Development Authority; Kakaako Community Development District; Development Agreements

**Description:**

Establishes a process for the Hawaii community development authority to enter into development agreements for lands within the Kakaako community development district. Effective July 1, 2050. (SD1)

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

