

JAN 25 2012

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# A BILL FOR AN ACT

RELATING TO LAND USE ENFORCEMENT.

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

1           SECTION 1. Chapter 205, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§205-    Citizen suits. (a) Any individual or party  
5 aggrieved by a violation of this chapter, or any rule adopted  
6 pursuant to this chapter, shall have a private right of action  
7 and may commence a civil suit for injunctive relief in the  
8 circuit court. The prevailing party shall also be entitled to  
9 recover the prevailing party's costs together with reasonable  
10 attorneys' fees.

11           (b) The circuit courts shall have jurisdiction to enforce  
12 this chapter and to impose any civil penalty provided for a  
13 violation pursuant to section 205-13.

14           (c) In any suit brought pursuant to this section where the  
15 State is not a party, the office of the attorney general, at the  
16 request of the commission, may intervene on behalf of the  
17 commission as a matter of right.



1        (d) The injunctive relief provided by this section shall  
2 not restrict any right that any person or class of persons may  
3 have under any other law, including common law, to seek  
4 enforcement of any standard or limitation or to seek any other  
5 relief, including relief against any instrumentality or agency  
6 of the State."

7        SECTION 2. Section 205-12, Hawaii Revised Statutes, is  
8 amended to read as follows:

9        "**§205-12 Enforcement.** [~~The appropriate officer or agency~~  
10 ~~charged with the administration of county zoning laws shall]~~ (a)  
11 For the purposes of enforcement of this chapter only, the land  
12 use commission shall have the power, authority, and discretion  
13 to:

14        (1) Take any action necessary to enforce within each  
15        county the use classification districts adopted and  
16        the restriction on use and the condition relating to  
17        agricultural districts [~~under section 205-4.5 and~~  
18        ~~shall report to the commission all violations.]~~  
19        pursuant to this chapter; and

20        (2) Amend or nullify the commission's original decision to  
21 approve, deny, or modify a petition.



1           (b) If the land use commission has reasonable cause to  
2 believe or determines that any person has violated or is  
3 violating this chapter, or any rule adopted pursuant to this  
4 chapter, the commission may:

5           (1) Issue a written notice by certified mail or personal  
6 service specifying the alleged violation and the  
7 commission's decision to investigate the allegation;

8           (2) Hold hearings;

9           (3) Enter orders; and

10          (4) Take action that it deems appropriate.

11          (c) If the land use commission determines an investigation  
12 is warranted, it may:

13          (1) Enter, solely for the performance of its official  
14 duties and only at reasonable times, upon private or  
15 public lands for examination. Whenever any member of  
16 the commission or its designee duly authorized to  
17 conduct investigations determines that entry onto  
18 private or public lands for examination is required,  
19 the commission shall give written notice to the owner  
20 or occupant of such property at least five days prior  
21 to the entry;



1        (2) Conduct public hearings, in which the alleged violator  
2                    shall appear before the commission at a time and place  
3                    specified in the notice or to be set later and answer  
4                    the charges complained of;

5        (3) Publish its findings and recommendations as they are  
6                    formulated relative to the violation; and

7        (4) Give notice of any order relating to a particular  
8                    violation under this chapter and imposing penalties  
9                    pursuant to section 205-13 by issuing a written notice  
10                   by certified mail or personal service.

11        (d) The commission may contract for or delegate to an  
12                   appropriate organization the performance of the actions set  
13                   forth in subsection (c).

14        (e) The commission shall adopt reasonable rules pursuant  
15                   to chapter 91 necessary to carry out the purposes of this  
16                   section. These rules shall have the force and effect of law.

17        (f) The land use commission may designate any appropriate  
18                   enforcement officer or agency charged with administration of  
19                   county zoning laws within each county to act on behalf of the  
20                   land use commission in any enforcement proceeding and to report  
21                   to the commission all violations."



1 SECTION 3. Section 205-13, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§205-13 **Penalty for violation.** (a) Any person who  
4 violates any provision under section 205-4.5, or any regulation  
5 established relating thereto, shall be fined not more than  
6 \$5,000, and any person who violates any other provision of this  
7 chapter, or any regulation established relating thereto, shall  
8 be fined not more than \$1,000.

9 If any person cited for a violation under this chapter  
10 fails to remove such violation within six months of such  
11 citation and the violation continues to exist, such person shall  
12 be subject to a citation for a new and separate violation.  
13 There shall be a fine of not more than \$5,000 for any additional  
14 violation.

15 Prior to the issuance of any citation for a violation, the  
16 appropriate enforcement officer or agency shall notify the  
17 violator and the mortgagee, if any, of such violation, and the  
18 violator or the mortgagee, if any, shall have not more than  
19 sixty days to cure the violation before citation for a violation  
20 is issued.

21 (b) Except as otherwise provided by law, the commission or  
22 its authorized representative by proper delegation, with respect



1 to a violation of this chapter or any rule adopted or permit  
2 issued in accordance with this chapter, may:

3 (1) Set, pursuant to subsection (c), charge, and collect  
4 administrative fines or bring legal action to recover  
5 administrative fees and costs, as documented by  
6 receipts or affidavit, including attorneys' fees and  
7 costs; or

8 (2) Bring legal action to recover administrative fines,  
9 fees, and costs, including attorneys' fees and costs  
10 and payment for damages or for the cost to correct  
11 damages, resulting from violation of this chapter or  
12 any rule adopted or permit issued in accordance with  
13 this chapter.

14 (c) Administrative fines shall be as follows:

15 (1) For a first violation, a fine of not more than \$1,000  
16 for each separate offense;

17 (2) For a second violation within six months of a previous  
18 violation, a fine of not more than \$3,000; and

19 (3) For a third or subsequent violation within five years  
20 of the last violation, the individual shall be subject  
21 to a citation for a new and separate violation and a  
22 fine of not more than \$5,000.



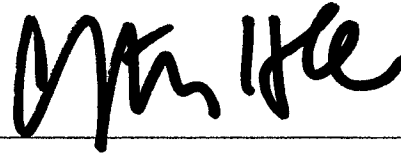
1        (d) Any administrative fines collected under this section  
2 by the commission shall be deposited in the general fund of the  
3 State."

4        SECTION 4. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6        SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_



# S.B. NO. 3069

**Report Title:**

Land Use Commission; Restriction on Use; Condition; Enforcement

**Description:**

Allows citizens to bring suit against a person or party in violation of land uses permissible in the use classification districts established by the land use commission. Establishes authority and discretion for the land use commission to enforce the use classification districts adopted and the restrictions and conditions on land use under chapter 205, Hawaii Revised Statutes. Allows land use commission to designate an enforcement officer or agency to act on its behalf in enforcement proceedings. Establishes administrative fines for violations.

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

