

JAN 25 2012

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# A BILL FOR AN ACT

RELATING TO LAND USE.

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

1           SECTION 1. The legislature finds that the land use  
2 commission, established under section 205-1, Hawaii Revised  
3 Statutes, is the state agency responsible for determining the  
4 boundaries of state land use districts and for reviewing  
5 petitions to amend land use district boundaries that involve  
6 certain lands. Section 205-17, Hawaii Revised Statutes,  
7 provides specific criteria for the land use commission to  
8 consider when reviewing petitions for the reclassification of  
9 land use district boundaries. The criteria include conformity  
10 to state and county plans and district standards; impacts of the  
11 proposed reclassification upon important natural systems or  
12 habitats; maintenance of valued cultural, historical, or natural  
13 resources; maintenance of natural and agricultural resources  
14 important to Hawaii's economy; commitment of state funds and  
15 resources; and opportunities for employment, economic  
16 development, and housing.

17           The legislature also finds that according to the United  
18 States Census Bureau, Hawaii's population was 1,360,301 in 2010,



1 which is 12.3 per cent higher than the census population in  
2 2000. Furthermore, the United States Census Bureau also  
3 indicates that Hawaii had the fifteenth highest population  
4 density in the nation in 2010 at 211.8 people per square mile.  
5 Hawaii's increasing population and population density continue  
6 to present challenges and produce cumulative effects in areas  
7 such as affordable housing, transportation and infrastructure,  
8 environmental impacts, availability of natural resources, and  
9 other issues.

10 The legislature also finds that in a recent circuit court  
11 case, the court decided against the land use commission's action  
12 to reclassify South Kohala lands, set for urbanization, to  
13 agricultural land. The circuit court ruled in favor of the  
14 developer stating that the land use commission "lost sight of  
15 its mission". Although the land use commission had given  
16 several concessions to the developers dating back to 1989, the  
17 circuit court suggested that since development was finally  
18 progressing it did not seem right to stop it. The circuit court  
19 further agreed that the developers had been unfairly targeted by  
20 commissioners, as the attorneys for the developers argued that  
21 housing requirements had been removed for at least seven other  
22 developments.



1           Furthermore, the legislature finds that another  
2 controversial situation between developers and the land use  
3 commission, regarding Ewa Beach properties, also leads to  
4 serious concerns as to whether the state and county have legal  
5 authority to enforce a developer's promises. Residents of Ewa  
6 Beach were led to believe that the developer, Haseko, would  
7 build a maritime community, among other amenities. However,  
8 after three decades of planning, Haseko announced that there  
9 would be no marina but instead a lagoon with no outlet to the  
10 ocean. Haseko reasoned that the change would better serve the  
11 community and company to realize the visions in a more timely  
12 and economically efficient way. As in the South Kohala matter,  
13 the land use commission was authorized to reclassify the land  
14 for agricultural use if it determined that the developer was not  
15 complying with conditions. However, under chapter 205, Hawaii  
16 Revised Statutes, only the counties have the authority to  
17 enforce land use commission classifications and use restrictions  
18 and conditions relating to agricultural districts.

19           The legislature further finds that a review of the existing  
20 criteria that the land use commission uses during its decision  
21 making process would help ensure that the commission considers  
22 not only the immediate impacts of reclassifications, but also



1 the cumulative and long-term impacts of its reclassification  
2 decisions. A review of the land use commission's process  
3 regarding enforcement and penalties will prevent future lawsuits  
4 by clarifying a developer's duties and responsibilities to the  
5 land use commission and the land use commission's authority over  
6 the developers.

7 The purpose of this Act is to create a task force to review  
8 the requirements under chapter 205, Hawaii Revised Statutes, and  
9 make recommendations to ensure that the land use commission:

10 (1) Considers the cumulative and long-term impacts of all  
11 pending and proposed development requests during its  
12 review of reclassification petitions; and

13 (2) Has the necessary authority to enforce the use of  
14 lands allowed within each respective land use district  
15 and penalize violators of allowed land uses or of the  
16 petition for boundary amendment process.

17 SECTION 2. (a) The office of planning shall convene a  
18 task force to review all requirements under chapter 205, Hawaii  
19 Revised Statutes, and make recommendations to ensure that the  
20 land use commission considers the cumulative and long-term  
21 impacts of all pending and proposed development requests during  
22 its review of reclassification petitions. The task force shall



1 also examine the process for hearing petitions for district  
2 boundary amendments and the land use commission's authority or  
3 lack of sufficient authority to enforce the uses allowed within  
4 each respective land use district and penalize violators of  
5 allowed uses or of the petition for boundary amendment process.

6 (b) The task force shall consist of six members as  
7 follows:

- 8 (1) The executive director of the land use commission, or  
9 the executive director's designee, as an ex-officio  
10 nonvoting member;
- 11 (2) One representative of the office of planning;
- 12 (3) One representative of the office of Hawaiian affairs;
- 13 (4) One representative of the department of land and  
14 natural resources;
- 15 (5) One representative of the department of agriculture;
- 16 and
- 17 (6) One representative of a non-profit environmental  
18 organization to be appointed by the governor.

19 (c) The task force shall submit a report of its findings  
20 and recommendations, including any proposed legislation, to the  
21 legislature no later than twenty days prior to the convening of  
22 the regular session of 2013. The legislative reference bureau



1 shall assist the task force in drafting its recommendations and  
2 any proposed legislation.

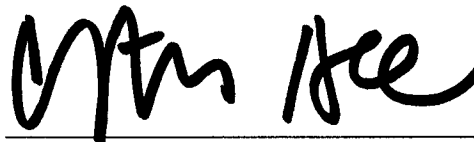
3 (d) The members of the task force shall serve without  
4 compensation, but shall be reimbursed for expenses, including  
5 travel expenses, necessary in the performance of their duties.

6 SECTION 3. The task force shall cease to exist after  
7 June 30, 2013.

8 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

  
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# S.B. NO. 3070

**Report Title:**

Land Use Commission; Task Force; Enforcement

**Description:**

Requires the office of planning to convene a task force to review all requirements under chapter 205, Hawaii Revised Statutes, and make recommendations to ensure that the land use commission considers the cumulative and long-term impacts of all pending and proposed development requests during its review of reclassification petitions and has sufficient authority to enforce the use of lands allowed in each district and to penalize violators. Requires the task force, with the assistance of the legislative reference bureau, to report its findings to the legislature.

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

