

# SB2366

Changes the Hawaii Community development authority to the Hawaii community planning authority. Creates a process for developers to apply for residential and commercial planning projects. Allocates general excise tax revenues collected within a planning district to be used by the authority to pay principal and interest on bonds associated with projects located in a planning district. Allows the authority to waive impact fees. Authorizes the authority to create business improvement districts and community facilities districts and assess a special assessment to fund the improvements within those districts. Authorizes the authority to act as a density rights bank and transfer a property's density rights to a receiving entity or from a sending authority to increase development in that area authorized by the authority. (SD1)



HAWAII COMMUNITY  
DEVELOPMENT AUTHORITY



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KALAELOA

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STATEMENT OF

ANTHONY J. H. CHING, EXECUTIVE DIRECTOR  
HAWAII COMMUNITY DEVELOPMENT AUTHORITY

BEFORE THE

SENATE COMMITTEE ON WATER, LAND, AND HOUSING

Tuesday, February 14, 2012

1:45 P.M.

State Capitol, Conference Room 225

in consideration of

**S. B. 2366, PROPOSED S. D. 1 – RELATING TO COMMUNITY  
PLANNING.**

**Purpose:** Changes the Hawaii Community Development Authority (“HCDA”) to the Hawaii Community Planning Authority. Allows the Authority to designate transit-oriented development (“TOD”) zones. Allows the Authority to waive impact fees. Creates a process for developers to apply for residential and commercial development projects in TOD zones.

**Position:** The HCDA takes no position on the proposal and offers the following comments.

In 1976, the Hawaii State Legislature determined that a new State authority for community development was needed to join the strengths of private enterprise and public sector. The Authority would conduct long-range planning, regulate zoning and development, and revitalize areas that the Legislature designated in need of redevelopment. Given this statutory mandate, the HCDA exercises much broader powers and mission than a planning authority in very specific communities identified by the Legislature.

The administration of TOD development along the rail transit alignment is currently within the purview of the City and County of Honolulu (“C&C Honolulu”). The county-wide planning and zoning jurisdiction of the C&C Honolulu facilitates their use of taxing (e.g., tax increment financing, special improvement districts, etc.), zoning (e.g., grant of height, increased density, density transfer, etc.), subdivision and building code to promote and execute TOD projects.

The C&C Honolulu also manages both the TheBus and the development of the Honolulu rail project. As TOD development is exemplified by a mixed-use residential or commercial area designed to maximize access to public transport and incorporates features to encourage transit ridership, given their broad powers and administration of the public transit programs, the C&C Honolulu is ideally positioned to promote, coordinate and administer TOD and public transit programs.

To enhance public dialogue on this very important topic, I provide the following comments on specific provisions of the proposal.

- The proposed section 46-B Planning Districts which identifies planning districts (areas within a one-half or quarter mile distance from rail or bus transit centers) or main-street development projects requires further clarification (or designation by Tax Map Key) to eliminate any confusion as to the scope of the Authority’s jurisdiction.
- The proposed section 46-F provides that the C&C Honolulu may establish county transit-oriented development programs. Further statutory clarification may be required to ensure appropriate distinction between the Authority’s planning districts and this county program.

- The proposal also establishes a transfer of density rights program within the HCDA. However, in order to realize the maximum benefits of such a program, greater flexibility in identifying both sending and receiving areas then is within the jurisdiction of the HCDA is required. The county-wide jurisdiction of the C&C Honolulu is ideal.
- The proposal also authorizes the creation of business improvement districts where the Authority is empowered to levy and assess an unspecified portion of the general excise tax (“GET”) to finance the maintenance and operation of this district. The Authority does not have the capacity to administer business improvement or GET programs.
- The proposal authorizes the creation of “community facilities districts to finance acquisition, planning, design, construction, installation, improvement, or rehabilitation of any real property or structure with a useful life.” The Authority does not have the capacity to administer what might be a county-wide facilities and rehabilitation program.

To advance the promotion and development of TOD districts and to promote public use of the various transit programs as this comprehensive proposal seeks to do, it may be more efficient for these same powers and authorities to be bestowed FIRST upon the C&C Honolulu. While the HCDA is in the process of finalizing its own TOD overlay and rules, we are willing to redouble and coordinate our efforts with the C&C Honolulu to promote TOD development within the community development districts established by the Legislature. If for any reason (within a timeframe established by the Legislature) that these efforts are deemed to be

insufficient, consideration of a proposal such as S. B. 2366, or other mechanism might be in order.

However, it is my belief that the ability to levy and utilize GET revenues should remain appropriately within the purview of the Departments of Taxation and Budget & Finance to ensure that State taxation and economic policies and objectives are maintained.

Thank you for the opportunity to comment on this very important topic.

WRITTEN ONLY

TESTIMONY BY KALBERT K. YOUNG  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE SENATE COMMITTEE ON WATER, LAND AND HOUSING  
ON  
SENATE BILL NO. 2366, PROPOSED S.D. 1

February 14, 2012

RELATING TO COMMUNITY PLANNING

Senate Bill No. 2366, Proposed S.D. 1, changes the Hawaii Community Development Authority (HCDA) to the Hawaii Community Planning Authority (Authority); creates a process for developers to apply for residential and commercial planning projects; allocates general excise tax revenues collected within a Planning District to pay debt service on bonds; authorizes the Authority to create Business Improvement Districts and Community Facilities Districts; and authorizes the Authority to act as a density rights bank and to transfer a property's density rights to another property. The Department of Budget and Finance defers to the HCDA regarding the planning aspects of the bill.

However, the department has serious concerns with the amendments to authorize the Authority to levy and assess a general excise tax as a special assessment, and to set aside a percentage of these general excise taxes (page 31, line 6 and page 33, line 4) to pay for capital improvement projects which are funded with revenue bonds. HCDA currently imposes impact fees and has other sources of revenues to pay for such capital improvements. It is unclear why revenue bond funded capital improvements should be paid, in part, by assessing and earmarking general excise taxes and this component may require additional legal framework to comply with current tax policy and debt authority requirements.

The current method may represent a more fair mechanism of tying debt repayment to actual financed-facilities by having property owners who benefit from zoning changes and planning district infrastructure improvements pay for such improvements. While the concept is a novel and intriguing means to increase financing opportunities for development, additional components may be necessary for the Legislature to consider. Please be sure that the overall repayment structure and debt authority that would be granted is consistent with legislative sentiment for tax policies. Further, the general excise tax approach would appear to be unnecessarily complicated to administer. Finally, as a matter of general policy, the department does not support dedication of general fund revenue sources and such policy would be an inconsistent use of general funds in the current budget and fiscal process.

# TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Disposition for planning districts

BILL NUMBER: SB 2366, Proposed SD-1

INTRODUCED BY: Senate Committee on Water, Land and Housing

BRIEF SUMMARY: Amends HRS chapter 206E to rename the Hawaii Community Development Authority (HCDA) as the Hawaii Community Planning Authority.

Adds a new section to HRS chapter 206E to allow the HCDA to enter into cooperative agreements to provide for the development of planning districts.

Adds a new section to HRS chapter 206E to allow the HCDA to authorize the creation of business improvement districts to provide and finance supplemental maintenance and security services and improvements to restore or promote business activity in the business improvement district. Permits the HCDA to levy and assess \_\_\_\_% of the general excise tax as a special assessment on property located within the business improvement district to finance the maintenance and operation of the business improvement district and improvements; provided that when all improvements have been fully executed within the business improvement district or the district ceases to exist, the special assessment shall no longer be assessed.

Adds a new section to HRS chapter 206E to authorize the HCDA to authorize the creation of community facilities districts to finance the acquisition, planning, design, construction, installation, improvement, or rehabilitation of any real property or structure with a useful life. Special improvements may be physically located within or outside a district and may benefit land within or outside the district and may include: (1) streets, roads, highways, bikeways, pedestrian malls, sidewalks, or alleyways, including grading, paving, or otherwise improving the foregoing; (2) public parking facilities; (3) lighting systems, including traffic signals, for any public right-of-way; (4) local parks, recreation, child care, parkway, and open-space facilities; (5) libraries, museums, and other cultural facilities; (6) the undergrounding of utilities; (7) water systems; (8) police, criminal justice, fire suppression, and paramedic facilities; (9) wastewater, storm drainage, sewage removal or treatment, solid waste disposal, and recycling or resource recovery systems or facilities; (10) transit or transportation systems; (11) telecommunications systems; and (12) any other facilities which the HCDA is authorized by law to contribute revenue to or construct, own, maintain, or operate.

Permits the authority to levy and assess \_\_\_\_% of the general excise tax as a special assessment on property located within the community facilities district to finance the maintenance and operation of the community facilities district and improvements within the community facilities district; provided that when all improvements have been fully executed within the community facilities district or the district ceases to exist, the special assessment shall no longer be assessed.

Amends HRS section 206E-157 to establish a separate subaccount for each planning district designated by the HCDA. General excise tax revenues allocated to the HCDA shall be deposited into the separate subaccount established for the planning district where the revenue was collected and applied solely for the payment of principal and interest on bonds associated with projects located in that planning district.



SB 2366, Proposed SD-1

Amends HRS section 237-31 to provide that \_\_\_\_% of all general excise tax revenues shall be deposited into the separate subaccount established for that planning district under HRS section 206E-157.

Makes conforming amendments to HRS section 206E-154.

EFFECTIVE DATE: Upon approval

STAFF COMMENTS: The proposed measure would permit the HCDA to establish planning districts and provide that general excise tax revenue collected within a planning district shall be used to pay principal and interest on projects located in a planning district. It is believed that this is what the measure attempts to accomplish; however, because it is so poorly drafted, it is unclear what the bill intends to accomplish. For example, the bill would grant HCDA the ability to levy and assess a blank percentage of the general excise tax. It would seem that provision would authorize the Authority to impose an additional rate of the general excise which on the other hand it would appear that the Authority would be able to take a percentage of the general excise tax receipts generated by activity in the districts and use it to pay off infrastructure related costs. The amendment to HRS section 237-31 makes it clear that it is from a percentage of the general excise tax collections from within the planning district that is to be used for the infrastructure related activities.

The measure would also authorize the HCDA to create: (1) business improvement districts; and (2) community facilities districts, and allow the HCDA to levy and assess \_\_\_\_% of the general excise tax as a special assessment on property located within the business improvement district or within a community facilities district for the maintenance, operation, and improvement of each business improvement district and community facilities district.

This measure also proposes that general excise tax revenue attributable to a planning district shall be used for the payment of principal and interest on revenue bonds associated with the projects located in that planning district. If this measure is adopted, it would designate a portion of general excise tax revenues for the stated purposes and would result in a reduction of available general excise tax revenues for other programs and services. It should be remembered that with any revenue earmarking methodology, it is questionable whether the amounts earmarked will be sufficient to fund the stated purpose. If they are not sufficient, there is no doubt that the amount of diverted revenues will be increased to generate additional revenues for the stated program in subsequent years.

Further, this “automatic funding” mechanism would occur without legislative intervention or possibly examination. It should be noted that subjecting funding requests to the legislative appropriation process insures that lawmakers are held accountable for the amount of public dollars spent and for what they are spent. To merely allow an automatic funding source with no legislative oversight insures culpability and abuse. Not only is there potential for abuse, but by carving out the collections of the general excise tax generated in the district, it absolves those taxpayers from paying for public services provided through the general fund such as education, welfare, public safety, etc. There are also other parts of the state which need similar infrastructure development and support, yet they are not granted a similar earmarking of resources for those needs.

While it appears that the intent of this measure is to designate a portion of general excise tax revenue to fund improvements within a planning district, such funding should be through the appropriation process rather than the “designation” proposed by this measure.

Digested 2/13/12



IN REPLY REFER TO:  
CMS-AP00-00135

HONOLULU AUTHORITY for RAPID TRANSPORTATION

Kenneth Toru Hamayasu, P.E.  
INTERIM EXECUTIVE DIRECTOR AND CEO

February 13, 2012

VIA Email: [WLHtestimony@Capitol.hawaii.gov](mailto:WLHtestimony@Capitol.hawaii.gov)

The Honorable Donovan M. Dela Cruz, Chair  
The Honorable Malama Solomon, Vice Chair  
and Members of the Committee on Water, Land, and Housing  
State Senate  
Hawaii State Capitol  
Honolulu, Hawaii 96813

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Dear Chair Dela Cruz, Vice Chair Solomon, and Senators:

Subject: SB 2366 Relating to Community Planning  
SB 2927 Relating to Community Planning  
Committee on Water, Land, and Housing  
Tuesday, February 14, 2012, at 1:45PM

The Honolulu Authority for Rapid Transportation supports the intent of SB2366 and SB2927, which would, among other things, create a process for developers to apply for residential and commercial exceptional planning projects. However, we defer to the Department of Planning and Permitting for modifications to the proposed bills and for further clarification.

We thank you for this opportunity to submit written testimony.

Sincerely,

Kenneth Toru Hamayasu  
Interim Executive Director and CEO

cc: HART Board

**Bernard P. Carvalho, Jr.**  
Mayor



**Michael A. Dahilig**  
Director of Planning

**Gary K. Heu**  
Managing Director

**Dee M. Crowell**  
Deputy Director of Planning

**PLANNING DEPARTMENT**  
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**COUNTY OF KAUAI TESTIMONY IN LIMITED SUPPORT  
RELATING TO SENATE BILLS 2366 and 2927 RELATING TO TRANSIT ORIENTED  
DEVELOPMENT PLANNING DISTRICTS AND THE CREATION OF THE HAWAII  
COMMUNITY PLANNING AUTHORITY**

Before the Senate Committee on Water, Land and Ocean Resources  
Tuesday, February 14, 2012  
1:45 pm Conference Room 225

By Michael A. Dahilig  
Director of Planning, County of Kaua'i

Honorable Chair Dela Cruz, and Honorable Members:

The County of Kauai supports the intent of Senate Bills 2366 and 2927 relating to Transit Oriented Development (TOD) Planning Districts and the creation of the Hawaii Community Planning Authority (HCPA).

We concur with the legislation's purpose to shift planning focus toward multi-modal transportation alternatives. Although Kauai is the smallest county, we do have a robust public bus transportation system that development could be retooled around to further more focused development. We also concur that the planning process does need to be streamlined in order to rapidly facilitate TOD projects. However, our department does have some concerns relating to the overlapping authority of the HCPA, and would still want to preserve some degree of home-rule zoning authority over these districts.

As written, HCPA authority would wholly supersede that of the counties, and the only avenue for county involvement would be the designation of a rail or bus facility. We believe the County does need to be more engaged as the project matures from concept to reality. For example, counties should be able to clearly delineate the actual planning district radius as a fixed distance which may not be applicable in all situations. Also, form and character remains a top concern and developers should be required to obtain

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approval from the county planning agency for streetscape and design guideline compliance before construction can commence. HCPA should also be required to meet

local utility requirements as a consequence of development, including upgrading of water, sewer and road infrastructure as prescribed by the appropriate government or quasi-public agency.

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Density remains a particularly touchy issue on the island in light of Agricultural subdivisions that have carved the land to create gentlemen estates. Currently, the counties maintain much of the authority over density, and much of our zoning regime is structured over this issue which counties have residual jurisdiction after Chapter 205 application. At a minimum, any density transfers should have the concurrence of the county planning agency, or a Chapter 46 mandate requiring the counties to develop a density transfer program by legislation.

The legislation could also adjust the Chapter 46 amendments to encourage the Counties to develop their own TOD programs. For example the County could also benefit from some of the other tools meant to incentivize the TOD process planning and development, and we would also suggest clear authority to waive LUC, HEPA and CZMA requirements in situations where the TOD could be implemented without assistance from HCPA.

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Thank you for the opportunity to present this testimony.

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**Testimony to the Senate Committee on Water, Land and Housing  
February 14, 2012  
1:45 p.m.  
State Capitol - Conference Room 225**

**RE: SENATE BILL NO. 2366 RELATING TO COMMUNITY PLANNING**

Chair Dela Cruz, Vice Chair Solomon, and members of the committees:

The Chamber of Commerce of Hawaii is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber respectfully provides the following testimony on S.B. 2366. The bill proposes to change the Hawaii Community Development Authority (HCDA) to the Hawaii community planning authority. It will create a process for developers to apply for residential and commercial planning projects; allocate general excise tax revenues collected within a planning district to be used by the authority to pay principal and interest on bonds associated with projects located in a planning district; allow the authority to waive impact fees; authorize the authority to create business improvement districts and community facilities districts and assess a special assessment to fund the improvements within those districts; and, authorize the authority to act as a density rights bank and transfer a property's density rights to a receiving entity or from a sending authority to increase development in that area authorized by the authority.

Currently, HCDA as a state agency is responsible for community development districts that are designated by the legislature if the legislature determines that there is need for re-planning, renewal, or redevelopment of an area.

The bill amends Chapter 206E to allow the new State Hawaii Community Planning Authority (HCPA) jurisdiction over Community Development Districts and Planning Districts. Planning Districts are defined in Chapter 46-B as:

1. An area within a one-half-mile radius from all county-designated rail transit stations;
2. An area within a one-quarter-mile radius from all county-designated bus transit centers;
3. The area between the two county-designated rail transit stations located nearest to the Honolulu International Airport; or

4. A main-street redevelopment project suitable for development by community financed projects or business improvement districts, as designated by the Hawaii community planning authority subject to the approval of the legislature.

While we strongly support the need for improvements in coordination of land use planning among the different levels of government, we believe that there needs to be clearly defined roles and responsibilities for all of the agencies involved in this type of initiative.

For example, we understand that currently, at the City and County of Honolulu, we have the Department of Planning and Permitting (DPP) and the recently created Honolulu Authority for Rapid Transportation (HART) who are responsible for land use planning and zoning, and developments associated with Transit Oriented Developments respectively. At the State level, HCDA controlled areas operate outside of the County jurisdiction for areas designed by the legislature as "Community Development Districts" such as (Kakaako and Kalaeloa).

Unless the roles and responsibilities for these agencies are clearly spelled out in this bill, it would appear that designation of these Planning Districts would create confusion from overlapping jurisdictions.

Thank you for this opportunity to express our views.



February 13, 2012

Senator Donovan M. Dela Cruz, Chair  
Senator Malama Solomon, Vice Chair  
Senate Committee on Water, Land, and Housing

**Comments regarding SB 2366, Relating to Community Planning** (Authorizes the PLDC to designate development districts; allocates a percentage of GET to be used for bonds associated with development districts)

**Tuesday, February 14, 2012, 1:45 p.m., in CR 225**

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF appreciates the opportunity to provide our **comments** and support of the intent of this measure.

**SB 2366.** This bill authorizes the Public Land Development Corporation ("PLDC") to designate development districts; and allocates a percentage of general excise tax revenues ("GET") collected in a development district to be used by the PLDC to pay principal and interest on bonds associated with projects located in the development district.

**LURF's Position.** LURF supports the intent of the measure, as it includes a number of issues which could support the success of the PLDC and principles of responsible planning and development, including, but not limited to the following:

- The designation of development districts by the PLDC;
- Creation of community-financed projects within the development districts; and
- Authorizing the PLDC to use of a percentage of the GET generated in a development district to pay principal and interest on bonds associated with the projects within that development district.

Notwithstanding our support for the intent of this measure, however, we would recommend that PLDC, the various state and county agencies, and private stakeholders continue to work together with the PLDC to come to a consensus regarding this bill.

Thank you for the opportunity to present testimony regarding this matter.



**Testimony to the Senate Committee on Water, Land and Housing**

February 14, 2012

1:45 p.m.

State Capitol - Conference Room 225

**RE: SENATE BILL NO. 2366 RELATING TO COMMUNITY PLANNING**

Chair Dela Cruz, Vice Chair Solomon, and members of the committees:

I am Gladys Quinto-Marrone 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.

BIA-HAWAII respectfully provides the following testimony on S.B. 2366. The bill proposes to change the Hawaii Community Development Authority (HCDA) to the Hawaii community planning authority. It will create a process for developers to apply for residential and commercial planning projects; allocate general excise tax revenues collected within a planning district to be used by the authority to pay principal and interest on bonds associated with projects located in a planning district; allow the authority to waive impact fees; authorize the authority to create business improvement districts and community facilities districts and assess a special assessment to fund the improvements within those districts; and, authorize the authority to act as a density rights bank and transfer a property's density rights to a receiving entity or from a sending authority to increase development in that area authorized by the authority.

Currently, HCDA as a state agency is responsible for is responsible for community development district that are designated by the legislature if the legislature determines that there is need for re-planning, renewal, or redevelopment of an area.

The bill amends Chapter 206E to allow the new State Hawaii Community Planning Authority (HCPA) jurisdiction over Community Development Districts and Planning Districts. Planning Districts are defined in Chapter 46-B as:

1. An area within a one-half-mile radius from all county-designated rail transit stations;
2. An area within a one-quarter-mile radius from all county-designated bus transit centers;
3. The area between the two county-designated rail transit stations located nearest to the Honolulu International Airport; or
4. A main-street redevelopment project suitable for development by community financed projects or business improvement districts, as designated by the Hawaii community planning authority subject to the approval of the legislature.



While we strongly support the need for improvements in coordination of land use planning among the different levels of government, we believe that there needs to be clearly defined roles and responsibilities for all of the agencies involved in this type of initiative.

For example, we understand that currently, at the City and County of Honolulu, we have the Department of Planning and Permitting (DPP) and the recently created Honolulu Authority for Rapid Transportation (HART) who are responsible for land use planning and zoning, and developments associated with Transit Oriented Developments respectively. At the State level, HCDA controlled areas operate outside of the County jurisdiction for areas designed by the legislature as "Community Development Districts" such as (Kakaako and Kalaeloa).

Unless the roles and responsibilities for these agencies are clearly spelled out in this bill, it would appear that designation of these Planning Districts would create confusion from overlapping jurisdictions.

Thank you for this opportunity to express our views.

Testimony of Maurice Morita  
Assistant Director  
Hawaii LECET  
1617 Palama Street  
Honolulu, HI 96817

SENATE COMMITTEE ON WATER, LAND, & HOUSING  
Tuesday, February 14, 2012  
1:45 p.m., Conference Room 225

**SB 2366 - RELATING TO COMMUNITY PLANNING**

Aloha Chair Dela Cruz, Vice Chair Solomon, and Members of the Committee:

My name is Maurice Morita and I am the assistant director of Hawaii LECET (Laborers-Employers Cooperation and Education Trust). Hawaii LECET is a partnership between the Hawaii Laborers' Union, Local 368 and our union contractors.

The Hawaii LECET **“supports”** SB 2366 which changes the Hawaii Community Development Authority to the Hawaii Community Planning Authority. It creates a process for developers to apply for residential and commercial planning projects. It will allocate general excise tax revenues collected within a planning district to be used by the authority to pay principal and interest on bonds associated with projects located in a planning district. It allows the authority to waive impact fees. It authorizes the authority to create business improvement districts and community facilities districts and assess a special assessment to fund the improvements within those districts. It authorizes the authority to act as a density rights bank and transfer a property's density rights to a receiving entity or from a sending authority to increase development in that area authorized by the authority.

Thank you for the opportunity to submit this testimony.