



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

ON THE FOLLOWING MEASURE:
S.B. NO. 2366, PROPOSED S.D. 1, RELATING TO COMMUNITY PLANNING.

BEFORE THE:

SENATE COMMITTEE ON WATER, LAND, AND HOUSING

DATE: Tuesday, February 14, 2012 **TIME:** 1:45 p.m.
LOCATION: State Capitol, Room 225
TESTIFIER(S): David M. Louie, Attorney General, or
Bryan C. Yee, Deputy Attorney General

LATE

Chair Dela Cruz and Members of the Committee:

The Department of the Attorney General (the "Department") offers the following comments on S.B. No. 2366, proposed S.D. 1.

The proposed S.D. 1 of S.B. No. 2366 proposes to change the name of the Hawaii Community Development Authority (HCDA) to the Hawaii Community Planning Authority (HCPA), and to increase HCPA's responsibilities to include planning districts. HCPA has the authority to supersede all inconsistent ordinances and rules relating to the use, zoning, planning, development, and construction of exceptional planning projects.

The planning districts are certain geographic regions near bus or rail transit stations, between the rail transit stations located nearest to the Honolulu International Airport, or main-street redevelopment projects designated by the HCPA. An exceptional planning project is a project located wholly within a planning district and determined by the county planning authority and county legislative body to be an exceptional planning project. The counties may establish minimum eligibility criteria, although the statute does not set forth any criteria by which the county is to determine whether a project is an exceptional planning project.

By determining that a project is an exceptional planning project, the county then transfers jurisdiction over the exceptional planning project to HCPA, which may then supersede the various county requirements, such as building codes and zoning requirements. HCPA may establish a transferable density rights system, and create business improvement districts and community facilities districts. Within the business improvement districts and community facilities districts, the authority may levy and assess an unspecified percentage of the general excise tax as a special assessment on the property to finance the maintenance and operation of the district and the improvements therein.

The Department recommends that the Legislature may either establish the criteria by which the counties are to determine whether a project is an exceptional planning project or specifically authorize the counties to do so. The proposed bill only authorizes the counties to

establish minimum eligibility criteria, but does not provide the authority for the county to exercise its discretion in granting or denying a project that may meet the minimum criteria.

On page 15, lines 13-18, the bill establishes planning districts that are comprised of areas that are within a one-half mile radius of county-designated rail transit stations and a one-quarter-mile of all county-designated bus transit centers. Because a radius may cut through existing lots and improvements and given that an exceptional planning project must be located wholly within a planning district, we recommend that the county be given the discretion to designate the planning districts surrounding the rail transit stations and bus transit centers with the understanding that the planning districts shall generally include the one-half mile and one-quarter-mile radius, respectively.

On pages 16, lines 17-20, we recommend that the forty-five-day period for the planning agency's approval begin from the date the application is deemed complete rather than the date the application is submitted. Similarly, on page 17, lines 2-5, we recommend that the forty-five-day period for the legislative body's approval begin from the date the planning agency forwards the application rather than the date the application was originally submitted.

On page 21, line 8, we recommend that the HCPA be given the discretion to amend the planning district or exceptional planning project "as it deems appropriate," rather than "as may be necessary." Similarly, on page 25, lines 1-4, page 27, line 22, and page 28, lines 1-3, we recommend that the HCPA be given the discretion to determine when the improvements have been fully executed within the business improvement district or community facilities district.

Finally, on page 21, lines 6-9, the bill also allows HCPA to amend the planning district or exceptional planning project approved by the county in accordance with chapter 91, Hawaii Revised Statutes (HRS). First, it is unclear whether the amendment is to occur by rule making or contested case hearing as both processes are contained in chapter 91. Second, by allowing HCPA to amend an exceptional planning project, the bill appears to allow HCPA to change or expand the use, scope, and size of the exceptional planning project in contravention of the decision by the county. Although not necessarily illegal, it is not clear if this is the legislative intent. Third, section 206E-5.6, HRS, currently requires HCPA to comply with specific notice and separate hearings requirements when rendering a decision regarding the acceptance of a developer's proposal to develop lands under the HCPA's control. It is not clear whether HCPA's amendment of an exceptional planning project or decision to accept an exceptional planning project as approved by the legislative body requires compliance with section 206E-5.6.

We respectfully submit these comments to the Committee for its information.

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
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LATE

To: The Honorable Donovan Dela Cruz, Chair,
and Members of the Senate Committee on Water, Land and Housing

Date: Tuesday, February 14, 2012
Time: 1:45 P.M.
Place: Conference Room 225, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. 2366 Proposed SD1 Relating to Community Planning

The Department of Taxation (Department) appreciates the intent of S.B. 2366, Proposed SD1 and provides the following comments for the Committee's information and consideration.

S.B. 2366, Proposed SD1, changes the Hawaii Community Development Authority to a Hawaii community planning authority. The purpose of the measure is to create a process to develop residential and commercial on land adjacent to public transportation facilities. The authority would be funded by general fund appropriation, including a percentage of general excise tax (GET) revenues realized from a planning district.

Currently, taxpayers report their income and taxes based on taxation district in which the income had been generated. Taxation districts are determined by statute and mirror the four county jurisdictions. The Department maintains mailing addresses for taxpayers and reports collections in this manner, but does not maintain information related to the physical location of a taxpayer's business.

As written, the language in the bill would need to be clarified. To determine whether "general excise tax revenues realized" intends to include only revenue sourced to a specific property within a planning district, or if it is meant to include all GET income (whatever the source) realized by a business physically located within a planning district. Some taxpayers may operate and remit taxes for several companies, all of which share the same physical address for GET reporting purposes, even if none of the income is sourced to that physical address.

In order to administer the allocation of GET under this bill, the Department would need to make changes to its forms and instructions. These changes will require an extension of the effective date.

Thank you for the opportunity to provide comments.

February 14, 2012

LATE

The Honorable Senator Donovan M. Dela Cruz, Chair
Committee on Water, Land and Housing
Hawai'i State Capitol
Honolulu, HI 96813

RE: Late Testimony strongly opposing SB2366 SD1 relating to Community Planning

Chair Dela Cruz and Members of the Committees:

Thank you for this opportunity to present testimony in strong opposition to SB2366.

The Outdoor Circle believes that granting the Hawaii Community Development Authority the broad powers proposed in this legislation at this time is ill-advised and irresponsible—if it ever is the right thing to do. And it certainly will not be the right thing to do unless and until the details of the far-reaching and complex legislation have been broadly reviewed and vetted by an array of community members and stakeholders of all types. This scrutiny has not yet occurred.

Instead the Senate Draft 1 which radically changed the original legislation was posted very late Friday afternoon, February 10, which means most people who would be or already are concerned about the proposal have not had nearly enough time to consider its implications and formulate thoughtful testimony for the this committee.

This legislation proposes fundamental, radical changes in the HCDA, the work it does and how it goes about it. These changes are designed to lead to decisions that will impact the quality of life and environment of O'ahu for generations to come.

Let's take a very long, hard look at all of the implications of this legislation and whether the sketchy track record of HCDA over the past couple of decades warrants giving it so much power over the future of Honolulu.

Please hold this legislation.

Mahalo.

Bob Loy
Director of Environmental Programming

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

LATE

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.



Sierra Club Hawai'i Chapter

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LATE

SENATE COMMITTEE ON WATER, LAND, AND HOUSING

February 14, 2012, 1:45 Pm

(Testimony is 2 pages long)

TESTIMONY IN OPPOSITION TO SB 2366 (SD1)

Aloha Chair Dela Cruz and Committee Members -

The Sierra Club, Hawai'i Chapter, with 10,000 dues-paying members and supporters, *opposes* SB 2366 (SD1). While we support the intent of sparking urban growth, this bill eliminates too many concepts of good planning. SB 2366 requires all areas near a rail transit station or bus transit station to be *per se* designated as planning districts and, within these planning districts, allows a developer to submit an "exceptional" commercial or residential projects for approval within a forty-five day period. All planning districts are also required to be reclassified into the urban district.

The Sierra Club strongly supports urban in-fill projects. But we need smart planning, not an "allow everything" mentality. Smart growth is about preventing development pressures that consume open space and agricultural land, threaten scenic, historic and cultural areas, undermine the natural environment, promote long-term housing affordability and stability and opportunities for community investments. This bill fails to fully consider these principles.

First, the bill *requires* all counties to establish urban districts without regard to any long-term planning the county may have already accomplished. To this end, the measure automatically defines the planning districts as the areas surrounding rail transit station and bus transit centers. The definition of a bus transit center is undefined. Taken to extreme, this bill creates urban areas in areas that should remain agriculture. For example, on O'ahu, there are bus transit centers in Kailua, Waimanalo, and Wahiawa. Are those the locations we wish to direct intensive growth?

Second, the bill requires action by the planning agency and legislative body to disapprove a developer's application within forty-five days. Massive developments sometimes require additional discussion. This short of a time frame -- even assuming legislative bodies meet frequently enough to meet this schedule -- only harms the public and creates bad projects that fail to adequately analyze traffic impacts, infrastructure needs, or community input.

Third, this bill violates the constitution by attempting to restrict any lawsuit against the county for improperly approving a proposed project in contravention of the law. Hawai'i Supreme Court decisions have already determined that residents have a constitutional protected right to a clean environment, which includes land use regulatory laws.

In short, this bill is motivated by a good intent -- to direct growth to the urban core -- but misses the mark completely. It should be held and reevaluated.

Mahalo for the opportunity to submit testimony.