

SB3069

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.



SB 3069
RELATING TO LAND USE ENFORCEMENT
Committee on Water, Land, & Housing
Committee on Public Safety, Government Operations, and Military Affairs and
Committee on Judiciary and Labor

February 15, 2012

10:50 a.m.

Room 016

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB 3069, which would allow citizens to bring suit against a person in violation of permissible land uses and clarifies the land use commission's (LUC) authority to enforce land use restrictions and conditions.

Like all other state agencies, the LUC has an affirmative duty to protect reasonable Native Hawaiian traditional and customary practices. Haw. Const. Art XII § 7. It is also subject to Article XI § 9 of the Hawai'i Constitution which provides that each person has the right to a clean and healthful environment. In instances where an approval for a land use district boundary amendment would affect or impair Native Hawaiian rights, the LUC is required to take feasible action to reasonably protect these rights. This is sometimes done by incorporating restrictions on use and/or placing conditions on its approval. SB 3069 would assist the LUC in enforcing its orders by clarifying that its conditions and restrictions are valid and enforceable.

SB 3069 would also allow individuals aggrieved by a violation of Chapter 205, Hawai'i Revised Statutes, to commence a civil suit for injunctive relief in circuit court. This is consistent with *County of Hawai'i vs. Ala Loop Homeowners*, in which the Hawai'i Supreme Court asserted that Article XI, section 9 of the Hawai'i Constitution created a private right of action to enforce chapter 205 and that the legislature had confirmed the existence of that right of action. SB 3069 would also further support Native Hawaiian traditional and customary rights by confirming the circuit court's jurisdiction and ability to impose civil penalties.

For the aforementioned reasons, OHA urges the Committee to **PASS** SB 3069. Thank you for the opportunity to provide testimony on this important measure.

NEIL ABERCROMBIE
Governor

BRIAN SCHATZ
Lieutenant Governor

RICHARD LIM
Director



ORLANDO "DAN" DAVIDSON
Executive Officer

LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

SB 3069 Statement of
ORLANDO "DAN" DAVIDSON
Executive Officer, State Land Use Commission
Department of Business, Economic Development, and Tourism
before the
**SENATE COMMITTEES ON
WATER, LAND AND HOUSING;
PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS;
AND
JUDICIARY AND LABOR**

Wednesday, February 15, 2012
10:50 AM
State Capitol, Conference Room 016

in consideration of
SB 3069
RELATING TO LAND USE ENFORCEMENT.

Chairs Dela Cruz, Espero, Hee, and Vice Chairs Solomon, Kidani, Shimabukuro and Members of the Senate Committees on: Water, Land and Housing; Public Safety, Government Operations, and Military Affairs; and, Judiciary and Labor.

The proposed bill would amend Chapter 205, Hawai'i Revised Statutes (HRS), to add a section providing for citizen lawsuits; a specific process and authority for the Land Use Commission to enforce restrictions and conditions relating to agricultural districts; power to delegate its enforcement powers; to levy and collect administrative fines for any violations of Chapter 205; and direction to adopt rules as necessary to carry out the purposes of this bill.

The Land Use Commission believes the issues the proposed bill is designed to address are important. However, the Commission has not had an opportunity to discuss and take a position on SB 3069. The Commission will be meeting in the near future to come up with a position and to provide input to the Senate. Speaking as the Executive Officer and staff to the Commission, I do have concerns relative to budget and staffing should the Commission be tasked with additional enforcement duties. However, these comments are my own and do not reflect a position of the LUC or of any of the individual commissioners.

Thank you for this opportunity to offer these comments.