

STAND. COM. REP. NO.

2699

Honolulu, Hawaii

FEB 28 2014

RE: S.B. No. 3122
S.D. 2

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 3122, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO HAWAII COMMUNITY DEVELOPMENT
AUTHORITY,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Authorize residential development on certain specified parcels of land owned by the Office of Hawaiian Affairs in Kakaako;
- (2) Require applicants for residential development to hold a public hearing regarding a plan or proposal for residential development in Kakaako and consider all written and oral submissions from the hearing prior to submitting the plan or proposal to the Hawaii Community Development Authority for approval;
- (3) Require the Hawaii Community Development Authority to hold a public hearing and fully consider all written and oral submissions received at the hearings held by the applicant and the Authority prior to approving any plan or proposal for residential development;
- (4) Establish a Kakaako makai association fee and Kakaako makai special account to fund various public services and projects in Kakaako; and



- (5) Exempt the Office of Hawaiian Affairs from section 206E-12, Hawaii Revised Statutes, regarding the dedication of public facilities by developers as a condition of development in Kakaako.

Your Committee received testimony in support of this measure from the Office of Hawaiian Affairs, Pana'ewa Hawaiian Homelands Community Association, Hawaiian Affairs Caucus, Native Hawaiian Chamber of Commerce, Iron Workers Stabilization Fund, Aha Moku Advisory Committee, Pearl Harbor Hawaiian Civic Club, Ko'olaupoko Hawaiian Civic Club, Association of Hawaiian Civic Clubs, and sixteen individuals. Your Committee received testimony in opposition to this measure from the Friends of Kewalos, Kaka'ako United, Hawaii's Thousand Friends, and eighty-one individuals. Your Committee received comments on this measure from the Department of the Attorney General and one individual.

Your Committee finds that in Act 15, Session Laws of Hawaii 2012 (Act 15), conferred to the Office of Hawaiian Affairs parcels of land in Kakaako to settle certain claims against the State. According to the Office of Hawaiian Affairs, the parcels of land located in Kakaako Makai were appraised at \$200,000,000. However, existing law prohibits residential development in the Kakaako Makai area. This law was enacted by the Legislature in 2006 in response to community concerns regarding preserving open space. The Office of Hawaiian Affairs testified that it cannot achieve its goals with these current land use restrictions. As a result, this measure exempts the Office of Hawaiian Affairs from the residential development restrictions on certain parcels located in Kakaako Makai in order for the Office of Hawaiian Affairs to realize the full value of these lands.

Your Committee notes the concerns raised in written testimony submitted by the Department of the Attorney General to your Committee and when previously heard by your Committees on Hawaiian Affairs and Economic Development, Government Operations and Housing that this measure raises constitutional concerns regarding special legislation. The Department of the Attorney General recommended that to minimize a constitutional challenge, the language in this measure should specify the parcels of lands as described under Act 15 for the Office of Hawaiian Affairs to use to fulfill its responsibilities under article XII, section 6, of the Hawaii State Constitution and chapter 10, Hawaii Revised Statutes, to better the conditions of native Hawaiians.



Furthermore, the Office of Hawaiian Affairs testified that as a state agency, this measure falls under the exception provided under article XI, section 5, of the Hawaii State Constitution because Act 15 transferred lands to and for the use by the Office of Hawaiian Affairs.

Your Committee has amended this measure by:

- (1) Adopting the language suggested by the Office of Hawaiian Affairs to:
 - (A) Add a purpose section to clarify that the Office of Hawaiian Affairs is a state agency with constitutional and statutory mandates, refers to Act 15, and provides a history of the settlement and conveyance of lands;
 - (B) Identify certain parcels of lands in Kakaako for residential development in the same manner as these parcels are identified under Act 15; and
 - (C) Establish a building height limitation for residential development at four hundred feet on parcels identified by tax map key 2-1-15-61 and Lot 1 of File Plan 2471 filed at the Bureau of Conveyances on February 23, 2010;
- (2) Inserting an effective date of July 1, 2050, to encourage further discussion; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3122, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 3122, S.D. 2.



Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



