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# A BILL FOR AN ACT

RELATING TO THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY.

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

1           SECTION 1. The legislature finds that the office of  
2 Hawaiian affairs was established under article XII, section 5,  
3 of the Hawaii State Constitution to "hold title to all the real  
4 and personal property now or hereafter set aside or conveyed to  
5 it which shall be held in trust for native Hawaiians and  
6 Hawaiians." The office of Hawaiian affairs' board of trustees  
7 is authorized by article XII, section 6, of the Hawaii State  
8 Constitution:

9           [T]o manage and administer the proceeds from the sale or  
10 other disposition of the lands . . . and income derived  
11 from whatever sources for native Hawaiians and Hawaiians,  
12 including all income and proceeds from that pro rata  
13 portion of the trust referred to in section 4 of this  
14 article [the public land trust] for native Hawaiians.  
15 The board of trustees is also authorized under article XII,  
16 section 6, "to exercise control over real and personal property



1 set aside by state, federal or private sources and transferred  
2 to the board for native Hawaiians and Hawaiians."

3 In section 1 of Act 15, Session Laws of Hawaii 2012  
4 (Act 15), the legislature found that a purpose of the Act was  
5 to:

6 [E]ffectively and responsibly fulfill the  
7 constitutional obligation to native Hawaiians under  
8 article XII, sections 4 and 6, of the State  
9 Constitution between November 7, 1978, up to and  
10 including June 30, 2012 . . . and providing additional  
11 resources to the office in the form of fee simple  
12 title to certain parcels of land.

13 In the same section of Act 15, the legislature declared that the  
14 "[c]onveyance of the fee simple interest to the lands . . . will  
15 allow the State to effectively and responsibly meet those  
16 constitutional obligations to native Hawaiians."

17 Further, section 2 of Act 15 stated:

18 [T]he fee simple interest to [nine] parcels of land  
19 [including parcels identified by tax map key (1) 2-1-58-129  
20 (Lot A), tax map key (1) 2-1-58-6 (Lot E), tax map key (1)  
21 2-1-60-26 (Lot F/G), tax map key (1) 2-1-15-61 (Lot I), and



1 tax map key (1) 2-1-15-51 (Lot L), was] conveyed to the  
2 Office of Hawaiian Affairs as grantee, as of July 1, 2012,  
3 as is where is.

4 In the same section of Act 15, however, the legislature  
5 specifically directed that:

6 The [nine parcels] are and shall remain (even after  
7 conveyance to the office) under the jurisdiction and  
8 authority of the Hawaii community development authority  
9 with respect to zoning, land use conditions[,] and all  
10 other matters over which the authority has jurisdiction and  
11 authority to act,  
12 and "shall be subject to all laws, except sections 206E-8,  
13 206E-10, 206E-34, Hawaii Revised Statutes, and as otherwise  
14 provided in this Act."

15 Particularly pertinent to the purpose of Act 15, in  
16 section 6, the legislature further declared that:

17 [T]he [p]roperties conveyed by this Act shall be deemed  
18 income and proceeds from the public land trust, as if the  
19 [p]roperties had been paid out of the income and proceeds  
20 from the public land trust pursuant to article XII,  
21 section 6 of the State Constitution.



1           Relying on its board of trustees' authority to "exercise  
2 control" over lands that the office of Hawaiian affairs holds in  
3 trust for native Hawaiians, and to "manage and administer" the  
4 income and proceeds from the public land trust lands it  
5 receives, the office of Hawaiian affairs has asked the  
6 legislature to enact this Act to allow the office of Hawaiian  
7 affairs to maximize the income or proceeds that five of the  
8 parcels of land conveyed by Act 15 could generate for the  
9 purposes of bettering the conditions of native Hawaiians, by  
10 allowing the parcels to be developed for residential use.

11           The legislature finds that the ongoing transformation of  
12 Kakaako into a place where the people of Honolulu can live,  
13 work, and play should increase the revenue generating potential  
14 of the land conveyed to the office of Hawaiian affairs by Act 15  
15 and concomitantly increase the number of programs and kinds of  
16 services for native Hawaiians consistent with the purposes for  
17 which the office of Hawaiian affairs was created. The  
18 legislature further finds that even more revenue could be  
19 generated to provide programs and services to better the  
20 conditions of native Hawaiians, if the office of Hawaiian



1 affairs were permitted to develop some or all of the parcels it  
2 received under Act 15 for residential use.

3       The legislature agrees that the residential development  
4 restriction to which all of the parcels transferred to the  
5 office of Hawaiian affairs by Act 15 were and continue to be  
6 subject should be lifted to the extent necessary to allow the  
7 office of Hawaiian affairs to realize the maximum income or  
8 proceeds that the parcels identified by tax map key (1)  
9 2-1-058-129 (Lot A), tax map key (1) 2-1-058-006 (Lot E), tax  
10 map key (1) 2-1-060-026 (Lot F/G), tax map key (1) 2-1-015-061  
11 (Lot I), and tax map key (1) 2-1-015-051 (Lot L) could generate  
12 if they were developed for residential use.

13       Finally, the legislature finds that inasmuch as this Act  
14 furthers one of the principal purposes for which the office of  
15 Hawaiian affairs was established as a state agency, its  
16 provisions should be deemed consistent with and not violative of  
17 article XI, section 5, of the Hawaii State Constitution.

18       The purpose of this Act is to enhance the revenue  
19 generating capacity of five parcels of land that were  
20 transferred to the office of Hawaiian affairs by Act 15. To  
21 accomplish this purpose, this Act raises the building height



1 limit for two of the five parcels to four hundred feet and for  
2 the five parcels lifts the current restriction against  
3 residential development in Kakaako makai, to allow residential  
4 development by the office of Hawaiian affairs or by third  
5 parties to which the office of Hawaiian affairs conveys the  
6 parcels.

7 SECTION 2. Chapter 206E, Hawaii Revised Statutes, is  
8 amended by adding a new section to part II to be appropriately  
9 designated and to read as follows:

10 "§206E- Limited residential development in Kakaako;  
11 public hearing prerequisite; height limit; association fee;  
12 required disclosures and nuisance mitigation efforts. (a) The  
13 authority may approve any plan or proposal for any residential  
14 development in Kakaako on any parcels identified as tax map key  
15 (1) 2-1-058-129, tax map key (1) 2-1-058-006, tax map key  
16 (1) 2-1-060-026, tax map key (1) 2-1-015-061, and tax map key  
17 (1) 2-1-015-051; provided that the authorization for residential  
18 development pursuant to this section shall apply to each of  
19 these parcels regardless of if a parcel's tax map key number is  
20 amended; provided further that approval may be granted only



1 after the applicant seeking approval conducts a public hearing  
2 held in accordance with subsection (b).

3 (b) Prior to submission to the authority of any plan or  
4 proposal for any residential development pursuant to this  
5 section, the applicant seeking approval shall hold a public  
6 hearing that shall be exempt from chapter 91. Notice shall be  
7 published in accordance with section 1-28.5 at least thirty days  
8 prior to the hearing. The notice shall include:

- 9 (1) The date, time, and place of the hearing;  
10 (2) A statement of the topic of the hearing; and  
11 (3) A description of where, when, and how the residential  
12 development proposal may be viewed by the public.

13 All interested persons may submit data or opinions, orally or in  
14 writing, in conjunction with the hearing.

15 (c) Prior to submitting to the authority for approval any  
16 plan or proposal for residential development pursuant to this  
17 section, the applicant seeking approval shall fully address all  
18 written and oral submissions permitted pursuant to subsection  
19 (b) regarding the proposed residential development.

20 (d) Prior to the approval of any plan or proposal for  
21 residential development pursuant to this section:



1       (1) The authority shall hold a public hearing in  
2           accordance with subsection (b); and  
3       (2) The authority shall fully consider all written and  
4           oral submissions received at the public hearings held  
5           by the applicant and the authority.  
6       (e) Any other law to the contrary notwithstanding, the  
7       building height limit shall be four hundred feet for residential  
8       development pursuant to this section on the parcels identified  
9       by tax map key (1) 2-1-058-006 and tax map key (1) 2-1-015-061;  
10       provided that the building height limit for residential  
11       development pursuant to this section shall apply to each of  
12       these land areas even if that a parcel's tax map key number is  
13       amended.  
14       (f) The office of Hawaiian affairs and any developer shall  
15       provide advance written notice to potential lessees and  
16       residents of the possibility of noise, odor, and other  
17       aircraft-related nuisances before entering into any lease  
18       agreement. The office of Hawaiian affairs and any developer  
19       shall assess and propose mitigation efforts to address possible  
20       noise, odor, and other aircraft-related nuisances in any  
21       development plan or proposal."



1 SECTION 3. Section 206E-12, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§206E-12 Dedication for public facilities as condition to**  
4 **development.** (a) The authority shall establish rules requiring  
5 dedication for public facilities of land or facilities, or cash  
6 payments in lieu thereof, by developers as a condition of  
7 developing real property pursuant to the community development  
8 plan. Where state and county public facilities dedication laws,  
9 ordinances, or rules differ, the provision for greater  
10 dedication shall prevail.

11 (b) This section shall not apply to lands identified in  
12 section 206E- (a)."

13 SECTION 4. Section 206E-31.5, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 **"§206E-31.5 Prohibitions.** Anything contained in this  
16 chapter to the contrary notwithstanding, and except as provided  
17 in section 206E- (a), the authority is prohibited from:

18 (1) Selling or otherwise assigning the fee simple interest  
19 in any lands in the Kakaako community development  
20 district to which the authority in its corporate  
21 capacity holds title, except with respect to:



- 1 (A) Utility easements;
- 2 (B) Remnants as defined in section 171-52;
- 3 (C) Grants to any state or county department or
- 4 agency;
- 5 (D) Private entities for purposes of any easement,
- 6 roadway, or infrastructure improvements; or
- 7 (E) Reserved housing as defined in section 206E-101;
- 8 or
- 9 (2) Approving any plan or proposal for any residential
- 10 development in that portion of the Kakaako community
- 11 development district makai of Ala Moana boulevard and
- 12 between Kewalo Basin and the foreign trade zone."

13 SECTION 5. This Act does not affect rights and duties that  
14 matured, penalties that were incurred, and proceedings that were  
15 begun before its effective date.

16 SECTION 6. New statutory material is underscored.

17 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY:

Kurt Ferrelh



# S.B. NO. 211

**Report Title:**

Hawaii Community Development Authority; OHA; Residential Development; Kakaako Makai

**Description:**

Allows the raising of the building height limit for 2 of the 5 parcels owned by the Office of Hawaiian Affairs in the Kakaako Makai area to 400 feet. Lifts the current restriction against residential development on the 5 OHA-owned parcels in Kakaako Makai to allow residential development by OHA or by third parties to which OHA conveys the parcels. Requires OHA and any developer to provide written notice to any tenant or resident of potential aircraft related nuisances before entering into a lease, and to assess and propose mitigation efforts to address aircraft related nuisances in development plans and proposals.

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

