



# University of Hawai'i at Mānoa

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## SB 558 RELATING TO LAND USE

Senate Committee on Water, Land, and Hawaiian Affairs

Public Hearing, February 5, 1999  
1:30 p.m., Room 225, State Capitol

By  
John Harrison, Environmental Center

HB 558 would amend Chapter 205, HRS, to allow the LUC to impose conditions on reclassified lands and to provide for citizen enforcement of the state's land use law.

Our comments on this measure are compiled from voluntarily submitted opinions of the listed academic sources, and as such, do not constitute an institutional position of the University of Hawaii.

### Citizen Enforcement

The recourse of citizen enforcement applied to government management responsibilities is justifiable in face of a lack of willingness or capability of the state to enforce its own statutes. Thus, where management responsibilities are politically charged, or in the event that staff or budget constraints impose limits on state enforcement action, providing citizens the right to act as private attorneys general has been found an effective mechanism to force compliance.

Chapter 205, HRS, the state's land use chapter, historically has been the focus of substantial controversy, in that it serves as a nexus of public and private interests which frequently compete. Enforcement of the provisions of the chapter presently is delegated to "[t]he appropriate officer or agency charged with the administration of county zoning laws", *i.e.*, placed within county jurisdiction. In a situation in which the county's interests and those of the state are divergent, which has been known to occur in the context of land use issues, enforcement problems are likely. These are precisely the conditions most readily addressed through a process of citizen enforcement.

While this proposed measure will undoubtedly elicit strong objections on a variety of grounds, it should be noted that:

1. This is an appropriate oversight role for citizens for reasons noted, and
2. The measure includes specific provisions for rapid, non-judicial dispute resolution.

3. Existing judicial review pursuant to Chapter 91, HRS seems more applicable to LUC proceedings rather than to violations of use restrictions or conditions adopted pursuant to the chapter.

For these reasons, we strongly support the intent of the proposed creation of a system of citizen enforcement in this arena.

#### **Penalties**

Federal and state regulatory agencies have learned through experience that in numerous instances, one time penalties of modest amount are accepted as the cost of doing business by persons who either disregard the intent of regulation or who hold that the regulation is unjustified. Thus, it is common practice in environmental fines and penalties to designate each day of non-compliance as a separate violation. Application of this process to the state land use law seems appropriate.

#### **Imposition of Conditions by the LUC**

In the course of its deliberations and decision making, the Land Use Commission has historically imposed conditions regarding permitted uses, restrictions, and protection of public trust and other natural resources. As an agent of the State, the LUC appropriately has a responsibility to protect public interests. Hence, codification of this responsibility is appropriate.