

JAN 25 2006

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# A BILL FOR AN ACT

RELATING TO LAND USE.

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

1           SECTION 1. The purpose of this Act is to streamline the  
2 process used by the land use commission when a county or the  
3 state office of planning petitions for boundary amendments that  
4 implement county plans.

5           The counties have general plans and, in some cases,  
6 community development plans, and regional or district  
7 development plans. These result from their long-range planning  
8 efforts and have been adopted after local community input. To  
9 guide growth and development to areas designated by these county  
10 planning documents, it is often necessary to redistrict land to  
11 encourage a more compact development pattern and to discourage  
12 sprawl and leap-frog development.

13           Under current law, however, all boundary amendments at the  
14 land use commission go through the "contested case" hearing  
15 format, which allows intervention by third parties, formal  
16 trial-type hearings, preparation of findings of fact and  
17 conclusions of law, and the possibility of judicial appeal. As  
18 a result, the counties have rarely initiated boundary amendments



1 because they must go through the same process as private  
2 applicants.

3 Under this Act, the land use commission would decide the  
4 application through a quasi-legislative process, similar to the  
5 process used by a county council in deciding a rezoning or a  
6 boundary amendment of less than fifteen acres. The commission  
7 would take public testimony and the commissioners would have to  
8 decide based on the record. As with current law, the boundary  
9 amendment would need six affirmative votes of the commission to  
10 pass. This procedure would be tied to a comprehensive boundary  
11 review that the counties or the office of planning could  
12 initiate only once every five years to encourage a more  
13 comprehensive, planning-driven, and proactive approach.

14 SECTION 2. Section 205-4, Hawaii Revised Statutes, is  
15 amended by amending subsection (a) to read as follows:

16 "(a) Any department or agency of the State, any department  
17 or agency of the county in which the land is situated, or any  
18 person with a property interest in the land sought to be  
19 reclassified, may petition the land use commission for a change  
20 in the boundary of a district. This section applies to all  
21 petitions for changes in district boundaries of lands within  
22 conservation districts, lands designated or sought to be



1 designated as important agricultural lands, and lands greater  
2 than fifteen acres in the agricultural, rural, and urban  
3 districts, except as provided in section 201G-118[-] and section  
4 205-18. The land use commission shall adopt rules pursuant to  
5 chapter 91 to implement section 201G-118."

6 SECTION 3. Section 205-18, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "**§205-18 Periodic review of districts.** [~~The office of~~  
9 ~~planning shall undertake a review of the classification and~~  
10 ~~districting of all lands in the State, within five years from~~  
11 ~~December 31, 1985, and every fifth year thereafter. The office,~~  
12 ~~in its five-year boundary review, shall focus its efforts on~~  
13 ~~reviewing the Hawaii state plan, county general plans, and~~  
14 ~~county development and community plans. Upon completion of the~~  
15 ~~five-year boundary review, the office shall submit a report of~~  
16 ~~the findings to the commission. The office may initiate state~~  
17 ~~land use boundary amendments which it deems appropriate to~~  
18 ~~conform to these plans. The office may seek assistance of~~  
19 ~~appropriate state and county agencies and may employ consultants~~  
20 ~~and undertake studies in making this review.] (a) Each county  
21 and the office of planning may submit an application containing  
22 boundary amendments that shall be separately listed within the~~



1 application. Each county may submit not more than one  
2 application for any island every five years, and the office of  
3 planning may submit not more than one application for any island  
4 every five years. Each proposed boundary amendment shall be  
5 consistent with a land use map contained in a general plan,  
6 community development plan, regional development plan, district  
7 development plan, or other similar comprehensive plan adopted by  
8 ordinance.

9 (b) Upon proper filing of an application, the commission,  
10 within not less than thirty and not more than ninety days, shall  
11 conduct a hearing or hearings on the affected island. Chapter  
12 92 shall apply, but the petition shall not be a "contested case"  
13 under chapter 91. Sections 91-9, 91-10, 91-11, 91-12, 91-13,  
14 and 91-14 shall not apply. The commission and its members shall  
15 decide the petition solely on matters presented in the record  
16 and on testimony at the hearing. Ex parte contacts with the  
17 members of the commission on the subject matter of the  
18 application shall be prohibited.

19 (c) Any other provision of law to the contrary  
20 notwithstanding, notice of the hearing or hearings shall be  
21 served on the office of planning, county planning commission,  
22 county planning department of the county in which the land is



1 located, and all persons with a property interest in the land as  
2 recorded in the county's real property tax records. In  
3 addition, notice of the hearing shall be mailed to all persons  
4 who have made a timely written request for advance notice of  
5 boundary amendment proceedings. Public notice shall be given at  
6 least once in the county in which the land sought to be  
7 redistricted is situated as well as once statewide at least  
8 thirty days in advance of the hearing or hearings. The notice  
9 shall indicate the time and place that maps showing the proposed  
10 district boundary may be inspected.

11 (d) Any other provisions of law notwithstanding, prior to  
12 the hearing of an application, the commission and its staff may  
13 view and inspect any land that is the subject of the  
14 application.

15 (e) The commission may take action separately on areas  
16 contained within the application or act on the application as a  
17 whole. No boundary amendment shall be approved unless the  
18 commission finds by a preponderance of the evidence that the  
19 proposed boundary amendment is reasonable, not violative of  
20 section 205-2, and consistent with the policies and criteria  
21 established pursuant to section 205-16 and section 205-17(1) and  
22 (2). Six affirmative votes of the commission shall be necessary



1 to enact a boundary amendment under this section. Within three  
2 hundred sixty-five days after the filing of an application, the  
3 commission shall either approve or deny the application as a  
4 whole or approve or deny, in part or whole, the individual  
5 boundary amendments contained within the application. Any land  
6 that is denied reclassification under this section may be the  
7 subject of a petition under section 205-3.1 or section 205-4, as  
8 applicable, six months after the date of denial.

9 (f) Any subsequent county rezoning of property that is the  
10 subject of a boundary amendment under this section shall contain  
11 conditions that address the concerns listed in section  
12 205-17(3). The counties shall give the appropriate state  
13 agencies the opportunity to comment upon any such rezoning  
14 action. The rezoning process shall incorporate the requirements  
15 for the protection of historic sites and burials contained in  
16 sections 6E-42 and 6E-43 and any rules enacted thereunder;  
17 provided that any applicable studies shall be done in the  
18 rezoning process and not during the periodic boundary amendment  
19 process."

20 SECTION 4. Section 343-5, Hawaii Revised Statutes, is  
21 amended by amending subsection (a) to read as follows:



1           "(a) Except as otherwise provided, an environmental  
2 assessment shall be required for actions that:

3           (1) Propose the use of state or county lands or the use of  
4 state or county funds, other than funds to be used for  
5 feasibility or planning studies for possible future  
6 programs or projects that the agency has not approved,  
7 adopted, or funded, or funds to be used for the  
8 acquisition of unimproved real property; provided that  
9 the agency shall consider environmental factors and  
10 available alternatives in its feasibility or planning  
11 studies;

12           (2) Propose any use within any land classified as a  
13 conservation district by the state land use commission  
14 under chapter 205;

15           (3) Propose any use within a shoreline area as defined in  
16 section 205A-41;

17           (4) Propose any use within any historic site as designated  
18 in the National Register or Hawaii Register, as  
19 provided for in the Historic Preservation Act of 1966,  
20 Public Law 89-665, or chapter 6E;

21           (5) Propose any use within the Waikiki area of Oahu, the  
22 boundaries of which are delineated in the land use



1 ordinance as amended, establishing the "Waikiki  
2 Special District";

3 (6) Propose any amendments to existing county general  
4 plans where the amendment would result in designations  
5 other than agriculture, conservation, or preservation,  
6 except actions proposing any new county general plan  
7 or amendments to any existing county general plan  
8 initiated by a county;

9 (7) Propose any reclassification of any land classified as  
10 a conservation district by the state land use  
11 commission under chapter 205;

12 (8) Propose the construction of new or the expansion or  
13 modification of existing helicopter facilities within  
14 the State, that by way of their activities, may  
15 affect:

16 (A) Any land classified as a conservation district by  
17 the state land use commission under chapter 205;

18 (B) A shoreline area as defined in section 205A-41;  
19 or

20 (C) Any historic site as designated in the National  
21 Register or Hawaii Register, as provided for in  
22 the Historic Preservation Act of 1966, Public Law





1           89-665, or chapter 6E; or until the statewide  
 2           historic places inventory is completed, any  
 3           historic site that is found by a field  
 4           reconnaissance of the area affected by the  
 5           helicopter facility and is under consideration  
 6           for placement on the National Register or the  
 7           Hawaii Register of Historic Places; and

8           (9) Propose any:

9           (A) Wastewater treatment unit, except an individual  
 10          wastewater system or a wastewater treatment unit  
 11          serving fewer than fifty single-family dwellings  
 12          or the equivalent;

13          (B) Waste-to-energy facility;

14          (C) Landfill;

15          (D) Oil refinery; or

16          (E) Power-generating facility~~(-)~~;

17          provided that any state land use boundary amendment initiated by  
 18          the State or county under section 205-18 shall be exempt from  
 19          this chapter, except for amendments that reclassify land from  
 20          the conservation district."

21          SECTION 5. Statutory material to be repealed is bracketed  
 22          and stricken. New statutory material is underscored.



1 SECTION 6. This Act shall take effect upon its approval.

2

INTRODUCED BY:

By Request



SB 2398

**Report Title:**

Land Use; Boundary Amendments

**Description:**

Streamlines the boundary amendment process for petitions filed by a county or the state office of planning.

