

JAN 22 2007

A BILL FOR AN ACT

RELATING TO LAND USE.

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

1 SECTION 1. The counties have general plans, and in some
2 cases, community development plans, and regional or district
3 development plans. These result from their long-range planning
4 efforts, and have been adopted after local community input. To
5 guide growth and development to areas designated by these county
6 planning documents, it is often necessary to redistrict land, to
7 encourage a more compact development pattern, and to discourage
8 sprawl and leap-frog development.

9 Under current law, however, all boundary amendments at the
10 land use commission go through the contested case hearing
11 process that allows intervention by third parties, formal
12 trial-type hearings, preparation of findings of fact,
13 conclusions of law, and decision and orders, and the possibility
14 of judicial appeal. As a result, the counties have rarely
15 initiated boundary amendments because they must go through the
16 same process as private applicants.

17 The purpose of this Act is to streamline the process used
18 by the land use commission when a county or the office of



1 planning petitions for boundary amendments that implement county
2 plans.

3 Pursuant to this Act, the land use commission may make a
4 decision on a petition through a quasi-legislative process,
5 similar to the process used by a county council in deciding a
6 rezoning application or a boundary amendment petition of less
7 than fifteen acres.

8 The commission would take public testimony, and the
9 commissioners would make a decision based on the record. As
10 with current law, the boundary amendment would need six
11 affirmative votes of the commission to pass. This procedure
12 would be limited to a comprehensive boundary review that the
13 counties or the office of planning could initiate only once
14 every five years to encourage a more comprehensive,
15 planning-driven and proactive approach.

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

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



1 petitions for changes in district boundaries of lands within
2 conservation districts, lands designated or sought to be
3 designated as important agricultural lands, and lands greater
4 than fifteen acres in the agricultural, rural, and urban
5 districts, except as provided in [~~section 201C-118.~~] sections
6 201H-38 and 205-18. The land use commission shall adopt rules
7 pursuant to chapter 91 to implement section [~~201C-118.~~] 201H-
8 38."

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

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



1 and undertake studies in making this review.] (a) Each county,
2 and the office of planning, may submit a petition containing
3 multiple proposed boundary amendments that shall be separately
4 listed within the petition. Each county is limited to one
5 petition for any island every five years, and the office of
6 planning is limited to one petition for any island every five
7 years. Each proposed boundary amendment must be consistent with
8 a land use map contained in the county general plan, community
9 development plan, regional development plan, or district
10 development plan, or other similar comprehensive plan, adopted
11 by ordinance.

12 (b) Upon proper filing of a petition, the commission
13 shall, within not less than thirty and not more than ninety
14 days, conduct a hearing or hearings on the appropriate island.
15 Chapter 92 shall apply to the proceedings, but the petition
16 shall not be subject to the contested case provisions contained
17 in sections 91-8, 91-9, 91-9.5, 91-10, 91-11, 91-12, 91-13, and
18 91-14. The commission shall decide the petition solely on
19 matters presented in the record and on testimony at the hearing.
20 Ex parte communications with the members of the commission on
21 the subject matter of the petition shall be prohibited.



1 (c) Anything to the contrary notwithstanding, notice of
2 the hearing or hearings shall be served on the office of
3 planning, the county planning commission and county planning
4 department of the county in which the land is located, and all
5 persons with a property interest in the land as recorded in the
6 county's real property tax records. In addition, notice of the
7 hearing shall be mailed to all persons who have made a timely
8 written request for advance notice of boundary amendment
9 proceedings, and public notice shall be given at least once in
10 the county in which the land sought to be reclassified is
11 situated as well as once statewide at least thirty days in
12 advance of the hearing or hearings. The notice shall indicate
13 the time and place that maps showing the proposed district
14 boundary may be inspected and the date, time, and place where
15 the hearing will be held.

16 (d) Anything to the contrary notwithstanding, prior to a
17 hearing on the petition, the commission and its staff may view
18 and inspect any land that is the subject of the application.

19 (e) The commission may take action separately on proposed
20 boundary amendments contained within the petition or act on the
21 petition as a whole. No boundary amendment shall be approved
22 unless the commission finds upon the clear preponderance of the



1 evidence that the proposed boundary amendment is reasonable, not
2 violative of section 205-2 and consistent with the policies and
3 criteria established pursuant to sections 205-16 and 205-17(1)
4 and (2). Six affirmative votes of the commission shall be
5 necessary to enact a boundary amendment under this section.

6 (f) Within three hundred sixty-five days after the proper
7 filing of a petition, the commission shall either approve or
8 deny the petition as a whole, approve the petition subject to
9 conditions, in whole or in part, or deny the petition, in whole
10 or in part. Any land that is denied reclassification under this
11 section may be the subject of a petition under sections 205-3.1
12 or 205-4, as applicable, after six months from the date of
13 denial.

14 (g) Any subsequent county rezoning of property that is the
15 subject of a boundary amendment under this section shall contain
16 conditions that address the concerns of section 205-17(3). The
17 counties shall give the appropriate state agencies the
18 opportunity to comment upon any such rezoning action. The
19 rezoning process shall incorporate the requirements for the
20 protection of historic sites and burials contained in
21 sections 6E-42 and 6E-43, and any rules adopted thereunder,
22 provided that any applicable studies shall be done in the



1 rezoning process, and not during the periodic boundary amendment
2 process."

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

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

- 7 (1) Propose the use of state or county lands or the use of
8 state or county funds, other than funds to be used for
9 feasibility or planning studies for possible future
10 programs or projects that the agency has not approved,
11 adopted, or funded, or funds to be used for the
12 acquisition of unimproved real property; provided that
13 the agency shall consider environmental factors and
14 available alternatives in its feasibility or planning
15 studies; provided further that an environmental
16 assessment for proposed uses under section 205-2(d)(9)
17 or [+]205-4.5(a)(13)[+] shall only be required
18 pursuant to section 205-5(b); provided further that an
19 environmental assessment shall not be required for any
20 county or office of planning petition filed pursuant
21 to section 205-18, except for a petition that proposes
22 any reclassification of land classified as a



1 conservation district by the state land use commission
2 under chapter 205;

3 (2) Propose any use within any land classified as a
4 conservation district by the state land use commission
5 under chapter 205;

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

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

12 (5) Propose any use within the Waikiki area of Oahu, the
13 boundaries of which are delineated in the land use
14 ordinance as amended, establishing the "Waikiki
15 Special District";

16 (6) Propose any amendments to existing county general
17 plans where the amendment would result in designations
18 other than agriculture, conservation, or preservation,
19 except actions proposing any new county general plan
20 or amendments to any existing county general plan
21 initiated by a county;



1 (7) Propose any reclassification of any land classified as
2 a conservation district by the state land use
3 commission under chapter 205;

4 (8) Propose the construction of new or the expansion or
5 modification of existing helicopter facilities within
6 the State, that by way of their activities, may
7 affect:

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

10 (B) A shoreline area as defined in section 205A-41;
11 or

12 (C) Any historic site as designated in the National
13 Register or Hawaii Register, as provided for in
14 the Historic Preservation Act of 1966, Public Law
15 89-665, or chapter 6E; or until the statewide
16 historic places inventory is completed, any
17 historic site that is found by a field
18 reconnaissance of the area affected by the
19 helicopter facility and is under consideration
20 for placement on the National Register or the
21 Hawaii Register of Historic Places; and

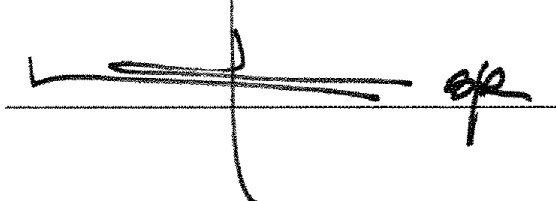
22 (9) Propose any:



- 1 (A) Wastewater treatment unit, except an individual
- 2 wastewater system or a wastewater treatment unit
- 3 serving fewer than fifty single-family dwellings
- 4 or the equivalent;
- 5 (B) Waste-to-energy facility;
- 6 (C) Landfill;
- 7 (D) Oil refinery; or
- 8 (E) Power-generating facility."

9 SECTION 5. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

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

12
INTRODUCED BY: 



Report Title:

Land Use; County Petitions

Description:

Allows counties and office of planning to file a single petition every 5 years containing multiple proposed boundary amendments that shall not be subject to the requirements of a contested case pursuant to the Administrative Procedure Act.

