

H .B. NO. 1085

A BILL FOR AN ACT

RELATING TO PLANNING.

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

1 SECTION 1. In August 2007, Hawaii accepted an invitation
2 by the United States Department of Housing and Urban Development
3 to join the National Call to Action for Affordable Housing
4 Through Regulatory Reform. The Call to Action presented an
5 opportunity for Hawaii to receive technical assistance from the
6 federal government and collaborate with other states, counties,
7 municipalities, and organizations to knock down the barriers
8 imposed by governments in hopes of building more affordable
9 housing. Governor Lingle convened a statewide task force
10 comprised of representatives from the counties, business, labor,
11 developers, architects, nonprofit providers of services, and the
12 State to carry out the mission of the Call to Action and
13 recommend solutions to address barriers to affordable housing.
14 Accordingly, the purpose of this Act is to implement the
15 legislative recommendations of the task force.

16 The Task Force identified a need to facilitate the
17 development of affordable housing by correcting inefficiencies
18 in the land classification process. This Act establishes a new

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1 process that improves the state land use commission's procedures
2 for county government petitions for boundary amendments that are
3 based on adopted county general and development plans. District
4 boundary amendments conducted under this process would be
5 conducted in a holistic, regional manner conducive to best
6 practices planning.

7 SECTION 2. Chapter 205, Hawaii Revised Statutes, is amended
8 by adding a new section to be appropriately designated and to
9 read as follows:

10 **"§205-A State and county-initiated district boundary**

11 **amendments.** (a) The office of planning or any county planning
12 department may apply to the commission for a regional change in
13 the boundary of a district provided that the following
14 requirements are met:

15 (1) The application covers a land area that is regional in
16 geographic coverage, involving multiple parcels of
17 land;

18 (2) The application conforms the land area to the land use
19 element of a county general or development plan that
20 has been approved by a county council pursuant to
21 section 226-D, provided that the application cover
22 only a portion of the land use changes identified in

1 the land use element of the county general plan or
2 development plan and may include only those lands
3 within a particular urban or rural expansion area
4 identified in the land use element of the county
5 general plan or development plan; and

6 (3) The application shall identify the land areas for
7 which land use district boundary amendments are being
8 sought and the rationale for the proposed land use
9 district boundary amendment.

10 (b) Section (a) shall apply only to applications submitted
11 by the state or any county planning agency for changes in
12 district boundaries of lands contained within an approved county
13 general or development plan. All other petitions for district
14 boundary amendments shall be subject to sections 205-3.5 and
15 205-4 as applicable.

16 (c) The land use commission shall conduct at least one
17 public hearing on the island or islands in which the lands are
18 situated within sixty days of the filing of the state or county
19 application. The commission shall provide timely notice in a
20 media of general circulation statewide which is printed or
21 communicated and issued at least twice weekly in the county
22 affected by the proposed action. The notice shall include:

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- 1 (1) A statement of the topic of the public hearing;
2 (2) A statement that a copy of the application will be
3 mailed to any interested person who requests a copy,
4 pays the required fees for the copy and the postage,
5 if any, together with a description of where and how
6 the requests may be made;
7 (3) A statement of when, where, and during what times the
8 application may be reviewed in person; and
9 (4) The date, time, and place where the public hearing
10 will be held and where interested persons may be heard
11 on the proposed application.

12 The notice shall be mailed to all persons who have made a
13 timely written request to the commission for advance notice of
14 its public hearing and to all persons with a property interest
15 in the lands identified in the application; provided that the
16 adoption or rejection to adopt an amendment in an application as
17 determined by the commission shall not be invalidated solely
18 because of the inadvertent failure to mail an advance notice of
19 a public hearing.

20 (d) If the State initiates an application for a boundary
21 amendment under this section, the State shall provide notice to
22 the affected county through its county planning agency at the

1 time of filing with the commission, and provide copies of such
2 application to the county planning department. The county
3 planning department shall provide written comments on the
4 county's position to the land use commission within forty-five
5 days of receipt of the state application. The planning
6 department shall include in its comments a description of
7 general agreements made between the State and the county over
8 implementation of the county general or development plan, any
9 disagreements between the State and the county that remain
10 unresolved, potential measures to resolve the disagreement, and
11 recommendations for proposed boundary amendments for lands
12 affected by any outstanding disagreement between the state and
13 the county.

14 (e) If a county initiates an application for a boundary
15 amendment under this section, the county shall provide notice to
16 the state office of planning at the time of filing with the
17 commission, and provide copies of such application to the office
18 of planning. The office of planning shall provide written
19 comments and a position on the application to the commission
20 within forty-five days of receipt of the county application.
21 The office shall include in its report a description of general
22 agreements made between the State and the county over

1 implementation of the county general or development plan, any
2 disagreements between the state and the county that remain
3 unresolved, potential measures to resolve the disagreement, and
4 recommendations for proposed boundary amendments for lands
5 affected by any outstanding disagreement between the state and
6 the county.

7 (f) The commission shall act within one hundred eighty
8 days of receipt of a complete filing of an application to
9 approve, approve in part, or deny the application. Ex parte
10 communications with the commissioners shall be prohibited. Any
11 decision under this section shall require the affirmative vote
12 of a majority of the members to which the commission is
13 entitled. The commission shall not impose any conditions on any
14 land or any owner of property reclassified to a different state
15 land use classification under this application process.

16 (g) The commission shall base its decision on conformance
17 to the county general plans or development plans, consistency
18 with land use district standards under chapter 205, the land use
19 decision-making criteria of section 205-17, and the degree of
20 consensus reached between state and county agencies.

21 (h) The commission shall issue a written decision and
22 order, and shall provide copies to the state office of planning

1 and affected county planning department if the application or a
2 portion thereof is not approved. The written decision shall
3 identify the reasons for the land use commission's decision and
4 shall be announced at a public commission meeting.

5 (i) The zoning of the affected lands shall remain in full
6 force and effect until such time as the lands are rezoned by the
7 county.

8 (j) Notwithstanding any other law to the contrary, the
9 boundary amendment process conducted pursuant to this section
10 shall be exempt from chapter 343, except for boundary amendments
11 that reclassify land from the conservation district; provided
12 that any application for a proposed use on lands reclassified
13 pursuant to this section, which require subsequent discretionary
14 approval by a county or a state body shall be subject to chapter
15 343 in those subsequent processes where such proposed uses
16 require conformance to chapter 343.

17 (k) This section shall not apply to any application for a
18 district boundary amendment that does not meet the requirements
19 of subsection (a)."

20 SECTION 3. Section 46-4, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:

1 "(a) This section and any ordinances or rules and
2 regulations adopted in accordance with this section shall apply
3 to lands not contained within the forest reserve boundaries as
4 established on January 31, 1957, or as subsequently amended.

5 Zoning in all counties shall be accomplished within the
6 framework of a long-range, comprehensive general plan prepared
7 or being prepared to guide the overall future development of the
8 county. Zoning shall be one of the tools available to the
9 county to put the general plan into effect in an orderly manner.
10 Zoning in the counties of Hawaii, Maui, and Kauai means the
11 establishment of districts of such number, shape, and area, and
12 the adoption of regulations for each district to carry out the
13 purposes of chapters 205, 205A, and this section. In
14 establishing or regulating the districts, full consideration
15 shall be given to all available data as to soil classification
16 and physical use capabilities of the land so as to allow and
17 encourage the most beneficial use of the land consonant with
18 good zoning practices. The zoning power granted herein shall be
19 exercised by ordinance which may relate to:

20 (1) The areas within which agriculture, forestry,
21 industry, trade, and business may be conducted;

- 1 (2) The areas in which residential uses may be regulated
2 or prohibited;
- 3 (3) The areas bordering natural watercourses, channels,
4 and streams, in which trades or industries, filling or
5 dumping, erection of structures, and the location of
6 buildings may be prohibited or restricted;
- 7 (4) The areas in which particular uses may be subjected to
8 special restrictions;
- 9 (5) The location of buildings and structures designed for
10 specific uses and designation of uses for which
11 buildings and structures may not be used or altered;
- 12 (6) The location, height, bulk, number of stories, and
13 size of buildings and other structures;
- 14 (7) The location of roads, schools, and recreation areas;
- 15 (8) Building setback lines and future street lines;
- 16 (9) The density and distribution of population;
- 17 (10) The percentage of a lot that may be occupied, size of
18 yards, courts, and other open spaces;
- 19 (11) Minimum and maximum lot sizes; and
- 20 (12) Other regulations the board or city council find
21 necessary and proper to permit and encourage the

1 orderly development of land resources within their
2 jurisdictions.

3 The council of any county shall prescribe rules,
4 regulations, and administrative procedures and provide personnel
5 it finds necessary to enforce this section and any ordinance
6 enacted in accordance with this section. The ordinances may be
7 enforced by appropriate fines and penalties, civil or criminal,
8 or by court order at the suit of the county or the owner or
9 owners of real estate directly affected by the ordinances.

10 Any civil fine or penalty provided by ordinance under this
11 section may be imposed by the district court, or by the zoning
12 agency after an opportunity for a hearing pursuant to chapter
13 91. The proceeding shall not be a prerequisite for any
14 injunctive relief ordered by the circuit court.

15 Nothing in this section shall invalidate any zoning
16 ordinance or regulation adopted by any county or other agency of
17 government pursuant to the statutes in effect prior to July 1,
18 1957.

19 The powers granted herein shall be liberally construed in
20 favor of the county exercising them, and in such a manner as to
21 promote the orderly development of each county or city and
22 county in accordance with a long-range, comprehensive general

1 plan to ensure the greatest benefit for the State as a whole.
2 This section shall not be construed to limit or repeal any
3 powers of any county to achieve these ends through zoning and
4 building regulations, except insofar as forest and water reserve
5 zones are concerned and as provided in subsections (c) and (d).

6 Neither this section nor any ordinance enacted pursuant to
7 this section shall prohibit the continued lawful use of any
8 building or premises for any trade, industrial, residential,
9 agricultural, or other purpose for which the building or
10 premises is used at the time this section or the ordinance takes
11 effect; provided that a zoning ordinance may provide for
12 elimination of nonconforming uses as the uses are discontinued,
13 or for the amortization or phasing out of nonconforming uses or
14 signs over a reasonable period of time in commercial,
15 industrial, resort, and apartment zoned areas only. In no event
16 shall such amortization or phasing out of nonconforming uses
17 apply to any existing building or premises used for residential
18 (single-family or duplex) or agricultural uses. Nothing in this
19 section shall affect or impair the powers and duties of the
20 director of transportation as set forth in chapter 262."

21 SECTION 4. Section 226-58, Hawaii Revised Statutes, is
22 amended by adding a new subsection to read as follows:

1 **"§226-58 County general plans.** (a) The county general
2 plans and development plans shall be formulated with input from
3 the state and county agencies as well as the general public.

4 County general plans or development plans shall indicate
5 desired population and physical development patterns for each
6 county and regions within each county. In addition, county
7 general plans or development plans shall address the unique
8 problems and needs of each county and regions within each
9 county. The county general plans or development plans shall
10 further define applicable provisions of this chapter; provided
11 that any amendment to the county general plan of each county
12 shall not be contrary to the county charter. The formulation,
13 amendment, and implementation of county general plans or
14 development plans shall take into consideration statewide
15 objectives, policies, and programs stipulated in state
16 functional plans approved in consonance with this chapter.

17 (b) County general plans shall be formulated on the basis
18 of sound rationale, data, analyses, and input from state and
19 county agencies and the general public, and contain objectives
20 and policies as required by the charter of each county. Further,
21 the county general plans should:

1 (1) Contain objectives to be achieved and policies to be
2 pursued with respect to population density, land use,
3 transportation system location, public and community
4 facility locations, water and sewage system locations,
5 visitor destinations, urban design, and all other
6 matters necessary for the coordinated development of
7 the county and regions within the county; and

8 (2) Contain implementation priorities and actions to carry
9 out policies to include but not be limited to land use
10 maps, programs, projects, regulatory measures,
11 standards and principles, and interagency coordination
12 provisions.

13 (c) County general plans and development plans shall
14 include recommendations to amend district boundaries of lands.
15 Recommendations for district boundary amendments that are part
16 of an approved county general plan or development plan shall be
17 used by the counties to initiate and submit an application to
18 the land use commission for changes in district boundaries of
19 lands, pursuant to chapter 205A."

20 SECTION 6. Statutory material to be repealed is bracketed.
21 New statutory material is underscored.

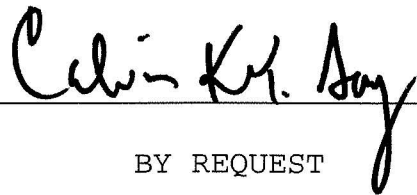
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1 SECTION 7. In codifying the new sections added to chapter
2 205 and 226, Hawaii Revised Statutes, the revisor of statutes
3 shall substitute appropriate part numbers and section numbers
4 for the letters used in the new sections designated in this Act.

5 SECTION 8. This Act shall take effect upon its approval.

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INTRODUCED BY:


BY REQUEST

JAN 26 2009

Report Title:

Land Use; District Boundary Amendment Process

Description:

Establishes a new process that simplifies the State Land Use Commission's procedures for county government petitions for boundary amendments. District boundary amendments conducted under this process would be quasi-legislative rather than quasi-judicial in nature; allowing for expeditious approval of urban and rural classified lands that could be set-aside for affordable housing.

JUSTIFICATION SHEET

DEPARTMENT: Office of the Governor

TITLE: A BILL FOR AN ACT RELATING TO PLANNING.

PURPOSE: The purpose of this bill is to facilitate the development of affordable housing by correcting inefficiencies in the land classification process. It provides an efficient process before the land use commission by which the counties or the office of planning may request consistency between the state and county land use designation to assist in the implementation of approved county general plans and development plans. The intent is to ensure coordination with state and county planning agencies which share responsibility for serving the State's growth needs and improve the congruence of state land use district boundaries with the adopted county land use plans to promote effective implementation of these plans.

MEANS: Add one new section to chapter 205 and one new subsection to chapter 226-58. Amend sections 46-4(a) and 226-52(a), Hawaii Revised Statutes.

JUSTIFICATION: County general and development plans direct land use and zoning at the local level. Since these plans play an important role in guiding affordable housing developments, and related growth, county plans contain key plan elements that address issues of statewide concern. These plans reflect that counties are now fully capable of developing and guiding growth and preservation within their respective jurisdictions. It is important that county plans are coordinated with State agency programs and efforts, particularly where the State has responsibility for infrastructure, facilities, services, or natural resource

management needed to achieve the desired land use pattern in county plans.

County general and development plans have been prepared with extensive community input and have been prepared at the level closest to those affected. The proposed legislation would allow a land use commission review for petitions for boundary amendments based on county plans. These plan-based petitions would not be development project specific but would cover larger regional or island-wide areas, acknowledging the need for a holistic approach to local planning.

Under the proposed legislation, plan-based petitions would be subject to quasi-legislative rather than quasi-judicial review by the state land use commission. This will streamline the review process for these plan-based petitions. Different procedures are warranted since the petitions will be based on county plans which have undergone considerable community review, multiple public hearings, acknowledge and reflect housing needs and have received county council and mayor approval. Furthermore, the quasi-legislative process will remain a public process with public hearings and opportunities for public testimony. In addition, state and county governments will have agreed on the areas to be reclassified under the plan-based petitions.

Impact on the public: Increased coordination of state and county agency plans would be addressed and help facilitate the development of affordable housing. The plan-based process may also provide greater predictability to the public and development community about where growth is to occur.

Impact on the department and other agencies: The state land use commission and its staff would be required to work under a new procedure, but the process reduces the

number of individual petitions the commission must consider. The workload of the Office of Planning will also decline.

GENERAL FUND:

None.

OTHER FUNDS:

None.

PPBS PROGRAM
DESIGNATION:

BED-144 and BED-103.

OTHER AFFECTED
AGENCIES:

Office of Planning, Land Use Commission, County Planning Departments, and other state agencies.

EFFECTIVE DATE:

Upon approval.