
A BILL FOR AN ACT

RELATING TO LAND USE.

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

1 SECTION 1. The legislature finds that each county has a
2 general development plan and in some cases, community, regional,
3 or district development plans. These plans are the result of
4 long-range planning efforts adopted after input from the
5 affected communities. To guide sensible growth and development
6 of the areas designated in county planning documents, it is
7 often necessary to redistrict land to encourage compact
8 development patterns and to discourage urban sprawl and leap-
9 frog development.

10 Under current law, however, all boundary amendments at the
11 land use commission go through the "contested case" hearing
12 format, which allows intervention by third parties, formal
13 trial-type hearings, preparation of findings of fact and
14 conclusions of law, and the possibility of judicial appeal.
15 Further, this process has encouraged extended discussions on
16 detailed project elements, rather than the policy question of
17 broad land use and growth direction. As a result, not only is
18 the process lengthy and costly, the counties have rarely



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

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

14 The state office of planning can still perform five-year
15 reviews, but as an option, rather than a mandate, in light of
16 past performance of this provision.

17 The purpose of this Act is to streamline the process used
18 by the land use commission when a county petitions for boundary
19 amendments that implement county plans.

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



1 "(a) Any department or agency of the State, any department
2 or agency of the county in which the land is situated, or any
3 person with a property interest in the land sought to be
4 reclassified, may petition the land use commission for a change
5 in the boundary of a district. This section applies to all
6 petitions for changes in district boundaries of lands within
7 conservation districts, lands designated or sought to be
8 designated as important agricultural lands, and lands greater
9 than fifteen acres in the agricultural, rural, and urban
10 districts, except as provided in section 201H-38[-] and 205-18.
11 The land use commission shall adopt rules pursuant to chapter 91
12 to implement section 201H-38."

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

15 "§205-18 Periodic review of districts. (a) The office of
16 planning [~~shall~~] may undertake a review of the classification
17 and districting of all lands in the State, within five years
18 from December 31, 1985, and every fifth year thereafter. The
19 office, in its five-year boundary review, shall focus its
20 efforts on reviewing the Hawaii state plan, county general
21 plans, and county development and community plans. Upon
22 completion of the five- year boundary review, the office shall



1 submit a report of the findings to the commission. The office
2 may initiate state land use boundary amendments ~~[which]~~ that it
3 deems appropriate to conform to these plans. The office may
4 seek assistance of appropriate state and county agencies and may
5 employ consultants and undertake studies in making this review.

6 (b) Each county may submit an application to the
7 commission containing boundary amendments that shall be
8 separately listed within the application. Each county may
9 submit not more than one application for any island every five
10 years. Each proposed boundary amendment shall be consistent
11 with a land use map contained in a general plan; community,
12 regional, or district development plan; or any other similar
13 comprehensive plan adopted by county ordinance.

14 (c) After thirty days upon proper filing of an
15 application, the commission shall conduct a hearing on the
16 affected island; provided that the commission conducts the
17 hearing within ninety days of filing. The petition shall not be
18 considered a contested case under chapter 91. The commission
19 shall decide the petition upon the facts presented in the record
20 and testimony at the hearing. Ex parte contacts with the
21 commission shall be prohibited.



1 (d) Any other law to the contrary notwithstanding, a
2 public notice of hearing shall be served on the office of
3 planning, the county planning commission, and the county
4 planning department of the county in which the land is located,
5 and all persons with a property interest in the land as recorded
6 in the county's real estate property tax records. 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. Public notice shall be provided at least once in
10 the county in which the land sought to be redistricted is
11 located and statewide at least thirty days in advance of the
12 hearing. The notice shall indicate the time and place for
13 inspecting the application and maps showing the proposed
14 district boundary amendments.

15 (e) Prior to a hearing on an application, the commission
16 may inspect any land that is contained in the petition for
17 reclassification.

18 (f) The commission may take action on the application as a
19 whole or on areas contained within the application. No boundary
20 amendment shall be approved unless the commission finds, by a
21 preponderance of the evidence, that the proposed boundary
22 amendment is:



- 1 (1) Reasonable;
- 2 (2) Does not violate section 205-2; and
- 3 (3) Consistent with the criteria established in section
- 4 205-16 and section 205-17(1) and (2).

5 Boundary amendments shall be approved upon six affirmative
6 votes by the commission. Within one hundred-eighty days after
7 the filing of the application, the commission shall approve or
8 deny, in whole or in part, the individual boundary amendments
9 contained within the application. A denial of any part of the
10 application may be the subject of a petition under sections 205-
11 3.1 or 205-4, as applicable, six months after the denial.

12 (g) Any subsequent county rezoning of property that is the
13 subject of a boundary amendment under this section shall contain
14 conditions that address the concerns in section 205-17(3). The
15 counties shall provide the appropriate state agencies the
16 opportunity to comment on any rezoning action. The rezoning
17 process shall incorporate the requirements for protection of
18 historic sites and burials pursuant to sections 6E-42 and 6E-43
19 and any rule adopted thereunder; provided that any applicable
20 studies of historic sites and burials shall be conducted during
21 the rezoning process and not during the periodic boundary
22 amendment process."



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

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

- 5 (1) Propose the use of state or county lands or the use of
6 state or county funds, other than funds to be used for
7 feasibility or planning studies for possible future
8 programs or projects that the agency has not approved,
9 adopted, or funded, or funds to be used for the
10 acquisition of unimproved real property; provided that
11 the agency shall consider environmental factors and
12 available alternatives in its feasibility or planning
13 studies; provided further that an environmental
14 assessment for proposed uses under section 205-
15 2(d)(11) or 205-4.5(a)(13) shall only be required
16 pursuant to section 205-5(b);
- 17 (2) Propose any use within any land classified as a
18 conservation district by the state land use commission
19 under chapter 205;
- 20 (3) Propose any use within a shoreline area as defined in
21 section 205A-41;



- 1 (4) Propose any use within any historic site as designated
2 in the National Register or Hawaii Register, as
3 provided for in the Historic Preservation Act of 1966,
4 Public Law 89-665, or chapter 6E;
- 5 (5) Propose any use within the Waikiki area of Oahu, the
6 boundaries of which are delineated in the land use
7 ordinance as amended, establishing the "Waikiki
8 Special District";
- 9 (6) Propose any amendments to existing county general
10 plans where the amendment would result in designations
11 other than agriculture, conservation, or preservation,
12 except actions proposing any new county general plan
13 or amendments to any existing county general plan
14 initiated by a county;
- 15 (7) Propose any reclassification of any land classified as
16 a conservation district by the state land use
17 commission under chapter 205;
- 18 (8) Propose the construction of new or the expansion or
19 modification of existing helicopter facilities within
20 the State, that by way of their activities, may
21 affect:



- 1 (A) Any land classified as a conservation district by
- 2 the state land use commission under chapter 205;
- 3 (B) A shoreline area as defined in section 205A-41;
- 4 or
- 5 (C) Any historic site as designated in the National
- 6 Register or Hawaii Register, as provided for in
- 7 the Historic Preservation Act of 1966, Public Law
- 8 89-665, or chapter 6E; or until the statewide
- 9 historic places inventory is completed, any
- 10 historic site that is found by a field
- 11 reconnaissance of the area affected by the
- 12 helicopter facility and is under consideration
- 13 for placement on the National Register or the
- 14 Hawaii Register of Historic Places; and
- 15 (9) Propose any:
 - 16 (A) Wastewater treatment unit, except an individual
 - 17 wastewater system or a wastewater treatment unit
 - 18 serving fewer than fifty single-family dwellings
 - 19 or the equivalent;
 - 20 (B) Waste-to-energy facility;
 - 21 (C) Landfill;
 - 22 (D) Oil refinery; or



1 (E) Power-generating facility[-];
 2 provided that any state land use boundary amendment initiated by
 3 the State or counties under section 205-18 shall be exempt from
 4 this chapter except for any amendments that reclassify land from
 5 the conservation district."

6 SECTION 5. Statutory material to be repealed is bracketed
 7 and stricken. New statutory material is underscored.

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

9

INTRODUCED BY:

Calvin K. By

BY REQUEST

JAN 21 2010



Report Title:

Land Use; Counties; Boundary Amendments

Description:

Streamlines the boundary amendment process for petitions submitted by the counties which are consistent with adopted county plans.

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

