
A BILL FOR AN ACT

RELATING TO PLANNING.

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

1 SECTION 1. The purpose of this Act is to facilitate the
2 development of workforce housing by correcting the
3 inefficiencies and application in the land classification
4 process. This Act clarifies the state standards for county land
5 use plans to ensure that issues of statewide concern are
6 incorporated in county plans and strengthens and coordinates
7 state and county land use planning and county and state
8 infrastructure improvements for planned growth, quality of life,
9 and environmental quality.

10 This Act establishes a new quasi-legislative process that
11 improves the state land use commission's procedures for county
12 government petitions for boundary amendments that are based on
13 adopted county comprehensive plans prepared pursuant to state
14 criteria. District boundary amendments conducted under this
15 process would be conducted in a holistic, regional manner
16 conducive to best practices planning.



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

4 **"§205-A State- and county-initiated district boundary**
5 **amendments.** (a) The State through the office of planning or
6 any county planning department may apply to the land use
7 commission for a change in the land use district boundary of a
8 land use district to conform to and implement the land use
9 element of a county comprehensive plan; provided that the plan
10 has been approved by the legislative body in accordance with
11 section 226-D. This section applies only to applications
12 submitted by the State or any county planning agency for changes
13 in district boundaries of lands contained within an approved
14 county comprehensive plan. All other petitions for district
15 boundary amendments shall be subject to sections 205-3.5 and
16 205-4 as applicable.

17 (b) The proposed district boundary amendments shall
18 conform to the land use element of the county comprehensive
19 plan. The application must be regional in geographic coverage
20 and involve multiple parcels. The application may include all
21 or a portion of the land use changes identified in the county
22 comprehensive plan. The application may include only those



1 lands included in a particular phase of urban or rural expansion
2 areas identified in the county plan.

3 (c) The application shall identify the land areas for
4 which land use district boundary amendments are being sought and
5 a brief rationale for the proposed land use district boundary
6 amendment.

7 (d) The land use commission shall conduct at least one
8 public hearing on the island or islands in which the lands are
9 situated within sixty days of acceptance of the State or county
10 application. The commission shall provide timely notice in a
11 media of general circulation statewide which is printed or
12 communicated and issued at least twice weekly in the county
13 affected by the proposed action. The notice shall include:

- 14 (1) A statement of the topic of the public hearing;
15 (2) A statement that a copy of the application will be
16 mailed to any interested person who requests a copy,
17 pays the required fees for the copy and the postage,
18 if any, together with a description of where and how
19 the requests may be made;
20 (3) A statement of when, where, and during what times the
21 application may be reviewed in person; and



1 (4) The date, time, and place where the public hearing
2 will be held and where interested persons may be heard
3 on the proposed application.

4 The notice shall be mailed to all persons who have made a
5 timely written request of the land use commission for advance
6 notice of its public hearings. The public hearing shall be
7 conducted in accordance with the provisions of chapter 92.

8 (e) In the event the State initiates an application for a
9 boundary amendment under this section, the State shall provide
10 notice to the affected county at the earliest opportunity, and
11 provide copies of the application to the county planning
12 department no later than the date of filing the first
13 application with the land use commission. The county planning
14 department shall provide written comments on the county's
15 position to the land use commission within forty-five days of
16 acceptance of the state application. The planning department
17 shall include in its report a description of general agreements
18 made between the State and the county over implementation of the
19 comprehensive plan, any disagreements between the State and the
20 county that remain unresolved, potential measures to resolve the
21 disagreement, and recommendations for proposed boundary
22 amendments for lands affected by any outstanding disagreement



1 between the State and the county. The office of planning and
2 the affected county planning department shall be parties in land
3 use commission hearings conducted pursuant to this section.

4 (f) In the event a county initiates an application for a
5 boundary amendment under this section, the county shall provide
6 notice to the state office of planning at the earliest
7 opportunity, and provide copies of the application to the office
8 of planning no later than the filing date of the first
9 application with the land use commission. The office of
10 planning shall provide written comments on the State's position
11 to the land use commission within forty-five days of acceptance
12 of the county application. The office of planning shall include
13 in its report a description of general agreements made between
14 the State and the county over implementation of the
15 comprehensive plan, any disagreements between the State and the
16 county that remain unresolved, potential measures to resolve the
17 disagreement, and recommendations for proposed boundary
18 amendments for lands affected by any outstanding disagreement
19 between the State and the county. The office of planning and
20 county planning department shall be parties in land use
21 commission hearings conducted pursuant to this section.



1 (g) The land use commission shall act within one hundred
2 eighty days of acceptance of a complete filing of an application
3 to approve, approve the application in part, or deny the
4 application. Ex parte communications with the commissioners
5 shall be prohibited. Any decision under this section shall
6 require the affirmative vote of a majority of the members to
7 which the commission is entitled. The commission shall not
8 impose any conditions on any land or any owner of property
9 reclassified to a different state land classification under this
10 application process. The proceedings of the land use commission
11 under this section shall be conducted in accordance with the
12 provisions of chapter 92.

13 (h) The land use commission shall base its decision on
14 conformance to the county comprehensive plan, consistency with
15 land use district standards under chapter 205, the land use
16 decision-making criteria of section 205-17, and the degree of
17 consensus reached between state and county agencies.

18 (i) The land use commission shall provide a written report
19 to the state office of planning and affected county planning
20 department if the application or a portion thereof is not
21 approved. The report shall identify the reasons for the land
22 use commission's decision.



1 (j) The land use commission shall provide notice to state
2 agencies and the county planning department of the changes to
3 land use district boundaries. The land use commission shall be
4 the sole authority responsible for boundary interpretations.

5 (k) A change in land use district classification of a
6 parcel or parcels resulting from a land use commission decision
7 pursuant to this section may be appealed to the circuit court of
8 the circuit in which the land in question is found. The
9 district boundaries and classification of parcels not subject to
10 an appeal shall remain in full force and effect. The appeal
11 shall be filed within thirty days of the date of the
12 commission's decision. The appeal shall be in accord with
13 chapter 91 and the Hawaii rules of civil procedure.

14 (l) The zoning of the affected lands shall remain in full
15 force and effect until such time as the lands are rezoned by the
16 county.

17 (m) All other individual project petitions not
18 incorporated in a county-initiated application for boundary
19 amendment under this section shall be subject to land use
20 commission procedures under sections 205-3.5 and 205-4.

21 (n) Notwithstanding any other law to the contrary, the
22 boundary amendment process conducted pursuant to this section



1 shall be exempt from chapter 343, except for boundary amendments
2 that reclassify land from the conservation district; provided
3 than any application for a proposed use on lands reclassified
4 pursuant to this section that require subsequent ministerial or
5 discretionary approval by a county or a state body shall be
6 subject to chapter 343 in those subsequent processes where the
7 proposed uses require conformance to chapter 343."

8 SECTION 3. Chapter 226, Hawaii Revised Statutes, is
9 amended by adding four new sections to be appropriately
10 designated and to read as follows:

11 "§226-A County comprehensive plan. (a) Each county shall
12 prepare, adopt, and comprehensively review at least every ten
13 years, and revise as necessary, an internally consistent, long-
14 range comprehensive plan or set of plans, hereinafter called the
15 "comprehensive plan," containing the elements in section 226-C.
16 The comprehensive plan shall establish a vision for the long-
17 range social, economic, and physical growth of the county or
18 portion thereof, and establish policies to guide the
19 development, adoption, and administration of land development
20 regulations and related ordinances, the scheduling and execution
21 of capital projects including workforce housing projects, and



1 other land development and community support functions of the
2 county to implement the comprehensive plan.

3 (b) The county planning department shall be responsible
4 for the preparation, administration, and review of the county
5 comprehensive plan and amendments to the comprehensive plan.

6 **§226-B County comprehensive plan; purpose.** The purpose of
7 the comprehensive plan is to direct the coordinated, efficient,
8 and orderly development of the county or portions thereof that
9 will, based on an analysis of present and future needs, best
10 promote the public health, safety, morals, and general welfare.

11 The comprehensive plan shall:

12 (1) Provide a unified physical design for the county;

13 (2) Encourage a pattern of compact development to be
14 guided into urban or rural centers;

15 (3) Identify the need for transportation and community
16 facilities and services, and promote the timely
17 provision of those facilities and services in order to
18 support existing and planned development;

19 (4) Accommodate growth in areas where infrastructure
20 capacity is available and direct growth to areas where
21 infrastructure capacity is available or committed to
22 be available in the future;



- 1 (5) Support mixed use development that permits the co-
2 location of residential, office, commercial, and
3 ancillary uses;
- 4 (6) Promote a range of housing options and encourage the
5 maximum possible accommodation of quality affordable
6 or workforce housing;
- 7 (7) Promote the development of new employment
8 opportunities in existing communities with
9 transportation services or areas planned for growth;
- 10 (8) Promote agricultural activities and protect important
11 agricultural land from encroachment from urban or non-
12 farm uses;
- 13 (9) Protect historic, archaeological, cultural, and
14 conservation resources significant to the community
15 and the State;
- 16 (10) Protect life and property from the effects of natural
17 hazards, including but not limited to flooding, winds,
18 wildfire, unstable lands, volcanic hazards, and
19 tsunami inundation; and
- 20 (11) Promote design principles that enhance the character
21 and attractiveness of communities and their environs
22 and conserve resource use.



1 §226-C County comprehensive plan elements. (a) The
2 county comprehensive plan shall include elements that specify
3 goals, objectives, policies, development standards, and
4 implementation strategies for each subject element, either as
5 parts within the comprehensive plan or separate documents that
6 are prepared and adopted as the comprehensive plan. The
7 required elements shall include:

8 (1) A land use element that provides a general pattern for
9 the location, distribution, and characteristics of
10 current and future land uses, including urban centers
11 and planned urban centers, rural centers and areas,
12 and agricultural lands;

13 (2) A transportation element;

14 (3) A community facilities and infrastructure element;

15 (4) An affordable housing element;

16 (5) A natural hazards mitigation element;

17 (6) An implementation program element that identifies
18 specific actions required to implement the
19 comprehensive plan; and

20 (7) Conceptual land use maps showing:

21 (A) Existing and future land use patterns and planned
22 development for the comprehensive plan area, in



1 terms of the location, character, and intensity
2 of existing and planned land uses and growth
3 boundaries;

4 (B) The timing and sequencing of planned land uses
5 and development in areas where growth is to
6 occur; and

7 (C) The general location of sites and corridors for
8 major public infrastructure systems and
9 facilities, and the sequencing of improvement
10 programs to provide the level of infrastructure
11 and services planned for designated areas.

12 (b) A comprehensive plan may include additional elements
13 relating to the physical development of the county, including
14 economic development, critical and sensitive areas, agricultural
15 lands, or rural areas.

16 (c) In order to provide consistency within the
17 comprehensive plan all required and optional elements included
18 in a comprehensive plan shall be based on the same economic,
19 demographic, and related assumptions, data, and projections
20 developed by or for the county.

21 §226-D County comprehensive plan; formulation, adoption,
22 and review. (a) The comprehensive plan may be organized as a



1 single plan and land use policy map for the entire land area
2 within the jurisdiction of the county, or as a set of plans and
3 land use policy maps for regions consisting of portions of the
4 land area within the county jurisdiction; provided that if the
5 plan is comprised of a set of plans, the cumulative effects of
6 planned regional growth patterns and the effects of these growth
7 patterns on other regions within the island or county shall be
8 identified within each plan.

9 (b) The county plans shall specify a planning horizon;
10 provided that the planning horizon may be no more than twenty
11 years and the same planning horizon shall be used for all
12 underlying studies, analyses, and elements of the plan. The
13 counties, at its discretion, may develop plans for a longer
14 period of time.

15 (c) The comprehensive plan and its elements shall be
16 coordinated with state programs and projects within the affected
17 area and shall take into account state interests and objectives
18 identified for the plan area or plan elements. Each county
19 shall provide procedures for the solicitation of issues and
20 concerns of state agencies and consultation with state agencies
21 in the plan preparation and adoption process.



1 (d) The county council may adopt the comprehensive plan as
2 a whole by a single ordinance or may, by successive ordinances,
3 adopt successive elements of the comprehensive plan, and any
4 other amendment thereto.

5 (e) Each county shall establish procedures for periodic
6 review as well as the comprehensive review and revision of the
7 comprehensive plan; provided that the comprehensive review shall
8 be conducted at least once every ten years. Any amendment to
9 the comprehensive plan or any part thereof resulting from the
10 review and revision processes shall be subject to the provisions
11 of this section and sections 226-A, 226-B, and 226-C.

12 (f) County development rules shall be consistent with the
13 objectives and policies of the comprehensive plan. County land
14 use and development approvals shall be consistent with land use
15 designations and sequencing of development in the plan."

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

18 "(a) This section and any ordinance, rule, or regulation
19 adopted in accordance with this section shall apply to lands not
20 contained within the [~~forest reserve boundaries as established~~
21 ~~on January 31, 1957, or as subsequently amended.~~] conservation
22 district.



1 Zoning in all counties shall be [~~accomplished within the~~
2 ~~framework of~~] consistent with and shall implement a long-
3 range[~~r~~] comprehensive [~~general~~] plan as defined in section 226-
4 2 prepared or being prepared to guide the overall future
5 development of the county. Zoning shall be one of the tools
6 available to the county to put the [~~general~~] comprehensive plan
7 into effect in an orderly manner. Zoning [~~in the counties of~~
8 ~~Hawaii, Maui, and Kauai~~] means the establishment of districts of
9 such number, shape, and area, and the adoption of regulations
10 for each district to carry out the purposes of chapters 205,
11 205A, and 226 and this section. In establishing or regulating
12 the districts, full consideration shall be given to all
13 available data as to soil classification and physical use
14 capabilities of the land to allow and encourage the most
15 beneficial use of the land consonant with good zoning practices.
16 The zoning power granted herein shall be exercised by ordinance
17 [~~which~~] that may relate to:

- 18 (1) The areas within which agriculture, forestry,
19 industry, trade, and business may be conducted;
- 20 (2) The areas in which residential uses may be regulated
21 or prohibited;



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



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

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

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

17 The powers granted herein shall be liberally construed in
18 favor of the county exercising them, and in [~~such~~] a manner as
19 to promote the orderly development of each county or city and
20 county in accordance with a long-range, comprehensive [~~general~~]
21 plan to ensure the greatest benefit for the State as a whole.
22 This section shall not be construed to limit or repeal any



1 powers of any county to achieve these ends through zoning and
2 building regulations, except insofar as [~~forest and water~~
3 ~~reserve zones are~~] the conservation district is concerned and as
4 provided in subsections (c) and (d).

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



1 SECTION 5. Section 226-2, Hawaii Revised Statutes, is
2 amended by adding a new definition to be appropriately inserted
3 and to read as follows:

4 ""County comprehensive plan" means the county general plan
5 or the county general plan and the set of development or
6 community plans for regions within a county that when taken as a
7 whole implement the goals, objectives, and policies of the
8 county general plan, as further defined by county charter or
9 ordinance and adopted by the legislative body of each county."

10 SECTION 6. Section 226-52, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) The statewide planning system shall consist of the
13 following policies, plans, and programs:

14 (1) The overall theme, goals, objectives, and policies
15 established in this chapter that shall provide the
16 broad guidelines for the State;

17 (2) The priority guidelines established in this chapter
18 that shall provide guidelines for decisionmaking by
19 the State and the counties for the immediate future
20 and set priorities for the allocation of resources.

21 The formulation and revision of state functional plans
22 shall be in conformance with the priority guidelines;



- 1 (3) State functional plans that shall be prepared to
2 address, but not be limited to~~[7]~~ the areas of
3 agriculture, conservation lands, education, energy,
4 higher education, health, historic preservation,
5 housing, recreation, tourism, and transportation. The
6 preparing agency for each state functional plan shall
7 also consider applicable federal laws, policies, or
8 programs that impact upon the functional plan area.
9 State functional plans shall define, implement, and be
10 in conformance with the overall theme, goals,
11 objectives, policies, and priority guidelines
12 contained within this chapter. County general plans
13 and development plans shall be taken into
14 consideration in the formulation and revision of state
15 functional plans;
- 16 (4) County ~~[general]~~ comprehensive plans that have been
17 formulated and adopted by the county in accordance
18 with the standards for plan content and process
19 contained in section 226-C. County comprehensive
20 plans shall indicate desired population and physical
21 development patterns for each county and regions
22 within each county. In addition, county ~~[general]~~



1 comprehensive plans [~~or development plans~~] shall
2 address the unique problems and needs of each county
3 and regions within each county. County [~~general~~]
4 comprehensive plans [~~or development plans~~] shall
5 further define the overall theme, goals, objectives,
6 policies, and priority guidelines contained within
7 this chapter. State functional plans and state
8 programs shall be taken into consideration in amending
9 the county [~~general~~] comprehensive plans; and
10 (5) State programs that shall include but not be limited
11 to programs involving coordination and review;
12 research and support; design, construction, and
13 maintenance; services; and regulatory powers. State
14 programs that exercise coordination and review
15 functions shall include but not be limited to the
16 state clearinghouse process, the capital improvements
17 program, and the coastal zone management program.
18 State programs that exercise regulatory powers in
19 resource allocation shall include but not be limited
20 to the land use and management programs administered
21 by the land use commission and the board of land and
22 natural resources. State programs shall further



1 define, implement, and be in conformance with the
2 overall theme, goals, objectives, and policies, and
3 shall utilize as guidelines the priority guidelines
4 contained within this chapter, and the state
5 functional plans approved pursuant to this chapter."

6 SECTION 7. Section 226-58, Hawaii Revised Statutes, is
7 repealed.

8 ~~["§226-58 County general plans. (a) The county general~~
9 ~~plans and development plans shall be formulated with input from~~
10 ~~the state and county agencies as well as the general public.~~

11 ~~County general plans or development plans shall indicate~~
12 ~~desired population and physical development patterns for each~~
13 ~~county and regions within each county. In addition, county~~
14 ~~general plans or development plans shall address the unique~~
15 ~~problems and needs of each county and regions within each~~
16 ~~county. The county general plans or development plans shall~~
17 ~~further define applicable provisions of this chapter; provided~~
18 ~~that any amendment to the county general plan of each county~~
19 ~~shall not be contrary to the county charter. The formulation,~~
20 ~~amendment, and implementation of county general plans or~~
21 ~~development plans shall take into consideration statewide~~



1 ~~objectives, policies, and programs stipulated in state~~
2 ~~functional plans approved in consonance with this chapter.~~

3 ~~(b) County general plans shall be formulated on the basis~~
4 ~~of sound rationale, data, analyses, and input from state and~~
5 ~~county agencies and the general public, and contain objectives~~
6 ~~and policies as required by the charter of each county.~~

7 ~~Further, the county general plans should:~~

8 ~~(1) Contain objectives to be achieved and policies to be~~
9 ~~pursued with respect to population density, land use,~~
10 ~~transportation system location, public and community~~
11 ~~facility locations, water and sewage system locations,~~
12 ~~visitor destinations, urban design, and all other~~
13 ~~matters necessary for the coordinated development of~~
14 ~~the county and regions within the county; and~~

15 ~~(2) Contain implementation priorities and actions to carry~~
16 ~~out policies to include but not be limited to land use~~
17 ~~maps, programs, projects, regulatory measures,~~
18 ~~standards and principles, and interagency coordination~~
19 ~~provisions."]~~

20 SECTION 8. Chapters 205, 205A, 226, and 343, Hawaii
21 Revised Statutes, are amended by substituting the words "county
22 comprehensive plan", or like term, wherever the words "county



1 general plan", "county development plan", or "county community
2 plan", or like term, appears, as the context requires.

3 SECTION 9. In codifying the new sections added to chapters
4 205 and 226, Hawaii Revised Statutes, the revisor of statutes
5 shall substitute appropriate section numbers for the letters
6 used in the new sections designated in this Act.

7 SECTION 10. Statutory material to be repealed is
8 bracketed. New statutory material is underscored.

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

10

INTRODUCED BY:

Richard F. Crouse
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JAN 23 2009

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12



Report Title:

Land Use Commission; County Plans

Description:

Establishes a new quasi-legislative process that simplifies the State Land Use Commission's procedures for county government petitions for boundary amendments that are based on adopted county comprehensive plans prepared pursuant to state criteria. Establishes county comprehensive plans.

