
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. The counties have general plans, and in
5 some cases, community development plans, and regional or
6 district development plans. These result from their long-range
7 planning efforts and have been adopted after local community
8 input. To guide growth and development to areas designated by
9 these county planning documents, it is often necessary to
10 redistrict land, encourage a more compact development pattern,
11 and discourage sprawl and leap-frog development. Under current
12 law, however, all boundary amendments at the land use commission
13 go through a contested case hearing, which allows for
14 intervention by third parties, formal trial-type hearings,
15 preparation of findings of fact and conclusions of law, and the
16 possibility of judicial appeal. As a result, the counties have
17 rarely initiated boundary amendments because they must go
18 through the same process as private applicants. Under this Act,



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

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

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



1 districts, except as provided in [~~section~~] sections 201H-38 [~~-~~]
2 and 205-18. The land use commission shall adopt rules pursuant
3 to chapter 91 to implement section 201H-38."

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

6 "§205-18 Periodic review of districts. [~~The office of~~
7 ~~planning shall undertake a review of the classification and~~
8 ~~districting of all lands in the State, within five years from~~
9 ~~December 31, 1985, and every fifth year thereafter. The office,~~
10 ~~in its five year boundary review, shall focus its efforts on~~
11 ~~reviewing the Hawaii state plan, county general plans, and~~
12 ~~county development and community plans. Upon completion of the~~
13 ~~five year boundary review, the office shall submit a report of~~
14 ~~the findings to the commission. The office may initiate state~~
15 ~~land use boundary amendments which it deems appropriate to~~
16 ~~conform to these plans. The office may seek assistance of~~
17 ~~appropriate state and county agencies and may employ consultants~~
18 ~~and undertake studies in making this review.] (a) Each county,
19 and the office of planning, may submit an application containing
20 boundary amendments, which shall be separately listed within the
21 application. Each county, and the office of planning, shall be
22 limited to one application for any island every five years.~~



1 Each proposed boundary amendment shall be consistent with a land
2 use map contained in a general plan, community development plan,
3 regional development plan, or district development plan, or
4 other similar comprehensive plan, adopted by ordinance.

5 (b) Upon proper filing of an application, the commission,
6 after not less than thirty and not more than ninety days, shall
7 conduct a hearing or hearings on the affected island. Chapter
8 92 shall apply, but the petition shall not be a contested case
9 under chapter 91. Sections 91-9 through 91-14 shall not apply
10 to applications filed under this section. The commission and
11 its members shall decide the petition solely on matters
12 presented in the record and on testimony at the hearing and ex
13 parte contacts with the members of the commission on the subject
14 matter of the application shall be prohibited.

15 (c) Any other provision of law to the contrary
16 notwithstanding, notice of the hearing or hearings shall be
17 served on the office of planning, county planning commission,
18 planning department of the county in which the land is located,
19 and all persons with a property interest in the land as recorded
20 in the county's real property tax records. In addition, notice
21 of the hearing shall be mailed to all persons who have made a
22 timely written request for advance notice of boundary amendment



1 proceedings and public notice shall be given statewide, and in
2 the county in which the land sought to be redistricted is
3 located not less than thirty days in advance of the hearing or
4 hearings. The notice shall indicate the time and place that
5 maps showing the proposed district boundary may be inspected.

6 (d) Any other provisions of law notwithstanding, prior to
7 hearing of an application the commission and its staff may view
8 and inspect any lands that are the subject of the application.

9 (e) The commission may take action separately on areas
10 contained within the application or act on the application as a
11 whole. No boundary amendment shall be approved unless the
12 commission finds upon the clear preponderance of the evidence
13 that the proposed boundary amendment is reasonable, does not
14 violate section 205-2 and conforms to the policies and criteria
15 established pursuant to sections 205-16 and 205-17(1) and (2).
16 Six affirmative votes of the commission shall be necessary to
17 approve a boundary amendment under this section. Within one
18 hundred eighty days after the proper filing of an application,
19 the commission shall either approve or deny the application as a
20 whole or approve or deny, in part or whole, the individual
21 boundary amendments contained within the application. Any land
22 that is denied reclassification under this section may be the



1 subject of a petition brought under sections 205-3.1 or 205-4,
2 as applicable, within six months after the date of denial.

3 (f) Any subsequent county rezoning of property that is the
4 subject of a boundary amendment under this section shall contain
5 conditions that address the statutory requirements under section
6 205-17(3). A county shall give the appropriate state agencies
7 the opportunity to comment upon any rezoning action. The
8 rezoning process shall incorporate the requirements for the
9 protection of historic sites and burials contained in sections
10 6E-42 and 6E-43 and any rules enacted thereunder, provided that
11 any applicable studies shall be done in the rezoning process and
12 not during the periodic boundary amendment process."

13 SECTION 4. Section 343-5, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§343-5 Applicability and requirements. (a) Except as
16 otherwise provided, an environmental assessment shall be
17 required for actions that:

18 (1) Propose the use of state or county lands or the use of
19 state or county funds, other than funds to be used for
20 feasibility or planning studies for possible future
21 programs or projects that the agency has not approved,
22 adopted, or funded, or funds to be used for the



1 acquisition of unimproved real property; provided that
2 the agency shall consider environmental factors and
3 available alternatives in its feasibility or planning
4 studies; provided further that an environmental
5 assessment for proposed uses under section 205-
6 2(d) (11) or 205-4.5(a) (13) shall only be required
7 pursuant to section 205-5(b);

8 (2) Propose any use within any land classified as a
9 conservation district by the state land use commission
10 under chapter 205;

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

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

17 (5) Propose any use within the Waikiki area of Oahu, the
18 boundaries of which are delineated in the land use
19 ordinance as amended, establishing the "Waikiki
20 Special District";

21 (6) Propose any amendments to existing county general
22 plans where the amendment would result in designations



1 other than agriculture, conservation, or preservation,
2 except actions proposing any new county general plan
3 or amendments to any existing county general plan
4 initiated by a county;

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

8 (8) Propose the construction of new or the expansion or
9 modification of existing helicopter facilities within
10 the State, that by way of their activities, may
11 affect:

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

14 (B) A shoreline area as defined in section 205A-41;
15 or

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



1 helicopter facility and is under consideration
2 for placement on the National Register or the
3 Hawaii Register of Historic Places; and

4 (9) Propose any:

5 (A) Wastewater treatment unit, except an individual
6 wastewater system or a wastewater treatment unit
7 serving fewer than fifty single-family dwellings
8 or the equivalent;

9 (B) Waste-to-energy facility;

10 (C) Landfill;

11 (D) Oil refinery; or

12 (E) Power-generating facility.

13 (b) Any state land use boundary amendment initiated by the
14 State or county under section 205-18 shall be exempt from this
15 chapter, except for amendments that reclassify land from the
16 conservation district.

17 ~~[(b)]~~ (c) Whenever an agency proposes an action in
18 subsection (a), other than feasibility or planning studies for
19 possible future programs or projects that the agency has not
20 approved, adopted, or funded, or other than the use of state or
21 county funds for the acquisition of unimproved real property
22 that is not a specific type of action declared exempt under



1 section 343-6, the agency shall prepare an environmental
2 assessment for such action at the earliest practicable time to
3 determine whether an environmental impact statement shall be
4 required.

5 (1) For environmental assessments for which a finding of
6 no significant impact is anticipated:

7 (A) A draft environmental assessment shall be made
8 available for public review and comment for a
9 period of thirty days;

10 (B) The office shall inform the public of the
11 availability of the draft environmental
12 assessment for public review and comment pursuant
13 to section 343-3;

14 (C) The agency shall respond in writing to comments
15 received during the review and prepare a final
16 environmental assessment to determine whether an
17 environmental impact statement shall be required;

18 (D) A statement shall be required if the agency finds
19 that the proposed action may have a significant
20 effect on the environment; and

21 (E) The agency shall file notice of such
22 determination with the office. When a conflict



1 of interest may exist because the proposing
2 agency and the agency making the determination
3 are the same, the office may review the agency's
4 determination, consult the agency, and advise the
5 agency of potential conflicts, to comply with
6 this section. The office shall publish the final
7 determination for the public's information
8 pursuant to section 343-3.

9 The draft and final statements, if required, shall be
10 prepared by the agency and submitted to the office. The draft
11 statement shall be made available for public review and comment
12 through the office for a period of forty-five days. The office
13 shall inform the public of the availability of the draft
14 statement for public review and comment pursuant to section 343-
15 3. The agency shall respond in writing to comments received
16 during the review and prepare a final statement.

17 The office, when requested by the agency, may make a
18 recommendation as to the acceptability of the final statement.

19 (2) The final authority to accept a final statement shall
20 rest with:

21 (A) The governor, or the governor's authorized
22 representative, whenever an action proposes the



1 use of state lands or the use of state funds, or
2 whenever a state agency proposes an action within
3 the categories in subsection (a); or

4 (B) The mayor, or the mayor's authorized
5 representative, of the respective county whenever
6 an action proposes only the use of county lands
7 or county funds.

8 Acceptance of a required final statement shall be a
9 condition precedent to implementation of the proposed action.
10 Upon acceptance or nonacceptance of the final statement, the
11 governor or mayor, or the governor's or mayor's authorized
12 representative, shall file notice of such determination with the
13 office. The office, in turn, shall publish the determination of
14 acceptance or nonacceptance pursuant to section 343-3.

15 [~~e~~] (d) Whenever an applicant proposes an action
16 specified by subsection (a) that requires approval of an agency
17 and that is not a specific type of action declared exempt under
18 section 343-6, the agency initially receiving and agreeing to
19 process the request for approval shall prepare an environmental
20 assessment of the proposed action at the earliest practicable
21 time to determine whether an environmental impact statement
22 shall be required; provided that, for an action that proposes



1 the establishment of a renewable energy facility, a draft
2 environmental impact statement shall be prepared at the earliest
3 practicable time. The final approving agency for the request
4 for approval is not required to be the accepting authority.

5 For environmental assessments for which a finding of no
6 significant impact is anticipated:

- 7 (1) A draft environmental assessment shall be made
8 available for public review and comment for a period
9 of thirty days;
- 10 (2) The office shall inform the public of the availability
11 of the draft environmental assessment for public
12 review and comment pursuant to section 343-3; and
- 13 (3) The applicant shall respond in writing to comments
14 received during the review, and the agency shall
15 prepare a final environmental assessment to determine
16 whether an environmental impact statement shall be
17 required. A statement shall be required if the agency
18 finds that the proposed action may have a significant
19 effect on the environment. The agency shall file
20 notice of the agency's determination with the office,
21 which, in turn, shall publish the agency's



1 determination for the public's information pursuant to
2 section 343-3.

3 The draft and final statements, if required, shall be
4 prepared by the applicant, who shall file these statements with
5 the office.

6 The draft statement shall be made available for public
7 review and comment through the office for a period of forty-five
8 days. The office shall inform the public of the availability of
9 the draft statement for public review and comment pursuant to
10 section 343-3.

11 The applicant shall respond in writing to comments received
12 during the review and prepare a final statement. The office,
13 when requested by the applicant or agency, may make a
14 recommendation as to the acceptability of the final statement.

15 The authority to accept a final statement shall rest with
16 the agency initially receiving and agreeing to process the
17 request for approval. The final decision-making body or
18 approving agency for the request for approval is not required to
19 be the accepting authority. The planning department for the
20 county in which the proposed action will occur shall be a
21 permissible accepting authority for the final statement.



1 Acceptance of a required final statement shall be a
2 condition precedent to approval of the request and commencement
3 of the proposed action. Upon acceptance or nonacceptance of the
4 final statement, the agency shall file notice of such
5 determination with the office. The office, in turn, shall
6 publish the determination of acceptance or nonacceptance of the
7 final statement pursuant to section 343-3.

8 The agency receiving the request, within thirty days of
9 receipt of the final statement, shall notify the applicant and
10 the office of the acceptance or nonacceptance of the final
11 statement. The final statement shall be deemed to be accepted
12 if the agency fails to accept or not accept the final statement
13 within thirty days after receipt of the final statement;
14 provided that the thirty-day period may be extended at the
15 request of the applicant for a period not to exceed fifteen
16 days.

17 In any acceptance or nonacceptance, the agency shall
18 provide the applicant with the specific findings and reasons for
19 its determination. An applicant, within sixty days after
20 nonacceptance of a final statement by an agency, may appeal the
21 nonacceptance to the environmental council, which, within thirty
22 days of receipt of the appeal, shall notify the applicant of the



1 council's determination. In any affirmation or reversal of an
2 appealed nonacceptance, the council shall provide the applicant
3 and agency with specific findings and reasons for its
4 determination. The agency shall abide by the council's
5 decision.

6 ~~[(d)]~~ (e) Whenever an applicant requests approval for a
7 proposed action and there is a question as to which of two or
8 more state or county agencies with jurisdiction has the
9 responsibility of preparing the environmental assessment, the
10 office, after consultation with and assistance from the affected
11 state or county agencies, shall determine which agency shall
12 prepare the assessment.

13 ~~[(e)]~~ (f) In preparing an environmental assessment, an
14 agency may consider and, where applicable and appropriate,
15 incorporate by reference, in whole or in part, previous
16 determinations of whether a statement is required and previously
17 accepted statements. The council, by rule, shall establish
18 criteria and procedures for the use of previous determinations
19 and statements.

20 ~~[(f)]~~ (g) Whenever an action is subject to both the
21 National Environmental Policy Act of 1969 (Public Law 91-190)
22 and the requirements of this chapter, the office and agencies



1 shall cooperate with federal agencies to the fullest extent
 2 possible to reduce duplication between federal and state
 3 requirements. Such cooperation, to the fullest extent possible,
 4 shall include joint environmental impact statements with
 5 concurrent public review and processing at both levels of
 6 government. Where federal law has environmental impact
 7 statement requirements in addition to but not in conflict with
 8 this chapter, the office and agencies shall cooperate in
 9 fulfilling these requirements so that one document shall comply
 10 with all applicable laws.

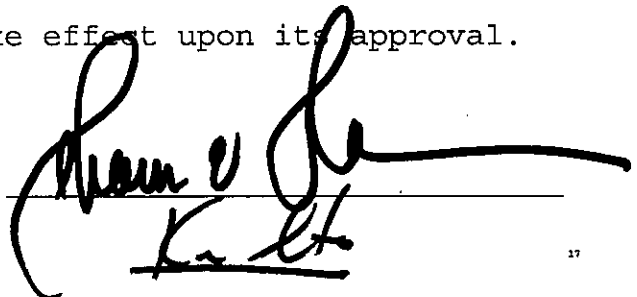
11 ~~[(g)]~~ (h) A statement that is accepted with respect to a
 12 particular action shall satisfy the requirements of this
 13 chapter, and no other statement for the proposed action shall be
 14 required."

15 SECTION 5. This Act does not affect rights and duties that
 16 matured, penalties that were incurred, and proceedings that were
 17 begun before its effective date.

18 SECTION 6. Statutory material to be repealed is bracketed
 19 and stricken. New statutory material is underscored.

20 SECTION 7. This Act shall take effect upon its approval.
 21

INTRODUCED BY:




Report Title:

Land Use Commission; Boundary Amendments.

Description:

Amends the process for 5-year district boundary reviews that are initiated by a county or by the state office of planning and which are consistent with adopted county general plans or community development plans. Exempts process from environmental review law.

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

