

JAN 17 2014

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# A BILL FOR AN ACT

RELATING TO COUNTY ZONING.

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

1           SECTION 1. The Hawaii intermediate court of appeals held  
2 in pertinent part in the case of *Pavsek v. Sandvold* (127 H. 390,  
3 2012) that section 46-4(a), Hawaii Revised Statutes, relating to  
4 county zoning, creates a private right of action in favor of a  
5 real estate owner directly affected by an alleged zoning  
6 violation.

7           The legislature finds that counties may not be able to take  
8 action to investigate and enforce every operation which violates  
9 county zoning ordinances. The lack of enforcement of zoning  
10 laws imposes a burden on neighboring property owners which is an  
11 unfair imposition on their quality of life and possibly even  
12 upon their health and safety.

13           The purpose of this Act is to allow aggrieved property  
14 owners to file suit directly in circuit court to enforce zoning  
15 violations on neighboring properties that directly affect them.

16           SECTION 2. Section 46-4, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:



1           "(a) This section and any ordinance, rule, or regulation  
2 adopted in accordance with this section shall apply to lands not  
3 contained within the forest reserve boundaries as established on  
4 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 this section. In establishing or regulating the  
14 districts, full consideration shall be given to all available  
15 data as to soil classification and physical use capabilities of  
16 the land to allow and encourage the most beneficial use of the  
17 land consonant with good zoning practices. The zoning power  
18 granted herein shall be exercised by ordinance which may relate  
19 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 boards 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          A property owner shall have a private right of action and  
16 may file suit directly in circuit court to enforce zoning  
17 violations on neighboring properties that directly affect them.

18          Nothing in this section shall invalidate any zoning  
19 ordinance or regulation adopted by any county or other agency of  
20 government pursuant to the statutes in effect prior to July 1,  
21 1957.



1           The powers granted herein shall be liberally construed in  
2 favor of the county exercising them, and in such a manner as to  
3 promote the orderly development of each county or city and  
4 county in accordance with a long-range, comprehensive general  
5 plan to ensure the greatest benefit for the State as a whole.  
6 This section shall not be construed to limit or repeal any  
7 powers of any county to achieve these ends through zoning and  
8 building regulations, except insofar as forest and water reserve  
9 zones are concerned and as provided in subsections (c) and (d).

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



1 section shall affect or impair the powers and duties of the  
2 director of transportation as set forth in chapter 262."

3 SECTION 3. This Act does not affect rights and duties hat  
4 matured, penalties that were incurred, and proceedings that were  
5 begun before its effective date.

6 SECTION 4. New statutory material is underscored.

7 SECTION 5. This Act shall take effect on July 1, 2014.

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INTRODUCED BY:

Michelle ...



# S.B. NO. 2270

**Report Title:**

County Zoning Enforcement

**Description:**

Confers upon a property owner a private right of action and allows the property owner to file suit directly in circuit court to enforce zoning violations on neighboring properties that directly affect them.

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

