

JAN 22 2021

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# A BILL FOR AN ACT

RELATING TO PUBLIC NOTICE.

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

1       SECTION 1. The legislature finds that recent community  
2 reactions to the Kahuku windmill project and the Thirty Meter  
3 Telescope have demonstrated that the permitting process lacks  
4 the requisite level of transparency and public notice to inform  
5 neighborhoods and cultural communities of proposed construction  
6 projects. The State has followed a stealth permitting strategy  
7 by not fully notifying the affected neighborhoods and cultural  
8 communities of the impacts that projects may have on health and  
9 safety, cultural practices, wildlife, the ecosystem, and the  
10 environment.

11       Accordingly, the purpose of this Act is to require the  
12 department of Hawaiian home lands, department of land and  
13 natural resources, and university of Hawaii to inform affected  
14 neighborhoods and cultural communities of proposed construction  
15 projects and to obtain community approval through a referendum.

16       SECTION 2. Hawaiian Homes Commission Act, 1920, as  
17 amended, is amended by adding a new section to read as follows:



1       "§       Land use, enhanced public notice requirements;

2 referendum. (a) Within thirty days of filing a permit  
3 application to construct any project that involves a change in  
4 land use by the commission, the commission shall provide public  
5 notice pursuant to subsection (d) and as otherwise required by  
6 law.

7       (b) Within four months of filing a permit application to  
8 construct any project that involves a change in land use by the  
9 commission, the commission shall conduct not less than three  
10 public meetings or hearings. Notice of the public meetings or  
11 hearings shall be made pursuant to subsection (d) and as  
12 otherwise required by law.

13       (c) Before proceeding with any project that involves a  
14 change in land use by the commission, the commission shall  
15 obtain approval of the project by the community through a  
16 referendum. Notice of the referendum shall be made pursuant to  
17 subsection (d) and as otherwise required by law. All adult  
18 residents of parcels within five miles of any portion of the  
19 proposed project shall be eligible to vote in the referendum.  
20 Any proposed project that does not receive approval by a  
21 majority of votes cast shall be denied; provided that any blank,



spoiled, and invalid ballots shall not be tallied as votes cast.  
The office of elections shall assist the commission in  
conducting the referendum and adopt rules pursuant to chapter  
91, Hawaii Revised Statutes, to effectuate the purposes of this  
subsection. The rules may authorize voting in the referendum to  
be conducted by mail. Costs associated with the referendum  
shall be borne by the commission.

(d) In addition to any other requirement by law or rule,  
public notice pursuant to subsections (a), (b), and (c) shall be  
provided as follows:

(1) By publication once a week for four successive weeks  
in a newspaper of general circulation serving the area  
described in subsection (d);

(2) By mailing the notice to each residence within five  
miles of the proposed project;

(3) By posting the notice in multiple publicly accessible  
areas of the property of the proposed project, if any;  
and

(4) By posting the notice in an easily accessible location  
of the commission's website."



SECTION 3. Chapter 171, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"§171- Land use, enhanced public notice requirements; referendum. (a) Within thirty days of filing a permit application to construct any project that involves a change in land use by the department, the department shall provide public notice pursuant to subsection (d) and as otherwise required by law.

(b) Within four months of filing a permit application to construct any project that involves a change in land use by the department, the department shall conduct not less than three public meetings or hearings. Notice of the public meetings or hearings shall be made pursuant to subsection (d) and as otherwise required by law.

(c) Before proceeding with any project that involves a change in land use by the department, the department shall obtain approval of the project by the community through a referendum. Notice of the referendum shall be made pursuant to subsection (d) and as otherwise required by law. All adult residents of parcels within five miles of any portion of the



1 proposed project shall be eligible to vote in the referendum.

2 Any proposed project that does not receive approval by a  
3 majority of votes cast shall be denied; provided that any blank,  
4 spoiled, and invalid ballots shall not be tallied as votes cast.

5 The office of elections shall assist the department in  
6 conducting the referendum and adopt rules pursuant to chapter 91  
7 to effectuate the purposes of this subsection. The rules may  
8 authorize the voting in the referendum to be conducted by mail.

9 Costs associated with the referendum shall be borne by the  
10 department.

11 (d) In addition to any other requirement by law or rule,  
12 public notice pursuant to subsections (a), (b), and (c) shall be  
13 provided as follows:

14 (1) By publication once a week for four successive weeks  
15 in a newspaper of general circulation serving the area  
16 described in subsection (d);

17 (2) By mailing the notice to each residence within five  
18 miles of the proposed project;

19 (3) By posting the notice in multiple publicly accessible  
20 areas of the property of the proposed project, if any;  
21 and



1        (4) By posting the notice in an easily accessible location  
2        of the department's website."

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

5        "§205-4 Amendments to district boundaries involving land  
6        areas greater than fifteen acres. (a) Any department or agency  
7        of the State, any department or agency of the county in which  
8        the land is situated, or any person with a property interest in  
9        the land sought to be reclassified, may petition the land use  
10       commission for a change in the boundary of a district. This  
11       section applies to all petitions for changes in district  
12       boundaries of lands within conservation districts, lands  
13       designated or sought to be designated as important agricultural  
14       lands, and lands greater than fifteen acres in the agricultural,  
15       rural, and urban districts, except as provided in section  
16       201H-38. The land use commission shall adopt rules pursuant to  
17       chapter 91 to implement section 201H-38.

18       (b) Upon proper filing of a petition pursuant to  
19       subsection (a) the commission shall, within not less than sixty  
20       and not more than one hundred and eighty days, conduct a hearing



1 on the appropriate island in accordance with the provisions of  
2 sections 91-9, 91-10, 91-11, 91-12, and 91-13, as applicable.

3 (c) Any other provision of law to the contrary  
4 notwithstanding, notice of the hearing together with a copy of  
5 the petition shall be served on the county planning commission  
6 and the county planning department of the county in which the  
7 land is located and all persons with a property interest in the  
8 land as recorded in the county's real property tax records. In  
9 addition, notice of the hearing shall be mailed to all persons  
10 who have made a timely written request for advance notice of  
11 boundary amendment proceedings~~[, and public]~~ and each residence  
12 within five miles of the land sought to be reclassified. Public  
13 notice shall be given at least once in the county in which the  
14 land sought to be redistricted is situated as well as once  
15 statewide at least thirty days in advance of the hearing. The  
16 notice shall also be posted in multiple publicly accessible  
17 areas of the land sought to be reclassified, if any, and in an  
18 easily accessible location of the commission's website. The  
19 notice shall comply with section 91-9, shall indicate the time  
20 and place that maps showing the proposed district boundary may



1 be inspected, and further shall inform all interested persons of  
2 their rights under subsection (e).

3 (d) Any other provisions of law to the contrary  
4 notwithstanding, prior to hearing of a petition the commission  
5 and its staff may view and inspect any land which is the subject  
6 of the petition.

7 (e) Any other provisions of law to the contrary  
8 notwithstanding, agencies and persons may intervene in the  
9 proceedings in accordance with this subsection.

10 (1) The petitioner, the office of planning, and the county  
11 planning department shall in every case appear as  
12 parties and make recommendations relative to the  
13 proposed boundary change;

14 (2) All departments and agencies of the State and of the  
15 county in which the land is situated shall be admitted  
16 as parties upon timely application for intervention;

17 (3) All persons who have some property interest in the  
18 land, who lawfully reside on the land, or who  
19 otherwise can demonstrate that they will be so  
20 directly and immediately affected by the proposed  
21 change that their interest in the proceeding is





clearly distinguishable from that of the general public shall be admitted as parties upon timely application for intervention;

(4) All other persons may apply to the commission for leave to intervene as parties. Leave to intervene shall be freely granted; provided that the commission or its hearing officer, if one is appointed, may deny an application to intervene when in the commission's or hearing officer's sound discretion it appears that:

(A) The position of the applicant for intervention concerning the proposed change is substantially the same as the position of a party already admitted to the proceeding; and

(B) The admission of additional parties will render the proceedings inefficient and unmanageable.

A person whose application to intervene is denied may appeal the denial to the circuit court pursuant to section 91-14; and

(5) The commission, pursuant to chapter 91, shall adopt rules governing the intervention of agencies and



1 persons under this subsection. The rules shall  
2 without limitation establish:

3 (A) The information to be set forth in any  
4 application for intervention;

5 (B) The limits within which applications shall be  
6 filed; and

7 (C) Reasonable filing fees to accompany applications.

8 (f) Together with other witnesses that the commission may  
9 desire to hear at the hearing, it shall allow a representative  
10 of a citizen or a community group to testify who indicates a  
11 desire to express the view of such citizen or community group  
12 concerning the proposed boundary change.

13 (g) If at any time prior to the hearing or at the hearing,  
14 a representative of a citizen or a community group, the  
15 petitioner, a party, or an intervenor requests the commission to  
16 obtain approval of the proposed boundary change by the  
17 community, the commission shall conduct a referendum. Notice of  
18 the referendum shall be mailed to any person, entity, or  
19 residence entitled to receive any notice pursuant to subsection  
20 (a) and shall be posted in the same manner as notices pursuant  
21 to subsection (a). All adult residents of parcels within five



1 miles of any portion of the land sought to be reclassified shall  
2 be eligible to vote in the referendum. Any proposed boundary  
3 change that does not receive approval by a majority of votes  
4 cast shall be denied; provided that any blank, spoiled, and  
5 invalid ballots shall not be tallied as votes cast. The office  
6 of elections shall assist the commission in conducting the  
7 referendum and adopt rules pursuant to chapter 91 to effectuate  
8 the purposes of this subsection. The rules may authorize voting  
9 in the referendum to be conducted by mail. Costs associated  
10 with the referendum shall be borne by the commission.

11        [~~(g)~~] (h) Within a period of not more than three hundred  
12 sixty-five days after the proper filing of a petition, unless  
13 otherwise ordered by a court, or unless a time extension, which  
14 shall not exceed ninety days, is established by a two-thirds  
15 vote of the members of the commission, the commission, by filing  
16 findings of fact and conclusions of law, shall act to approve  
17 the petition, deny the petition, or to modify the petition by  
18 imposing conditions necessary to uphold the intent and spirit of  
19 this chapter or the policies and criteria established pursuant  
20 to section 205-17 or to assure substantial compliance with  
21 representations made by the petitioner in seeking a boundary



1 change. The commission may provide by condition that absent  
2 substantial commencement of use of the land in accordance with  
3 such representations, the commission shall issue and serve upon  
4 the party bound by the condition an order to show cause why the  
5 property should not revert to its former land use classification  
6 or be changed to a more appropriate classification. Such  
7 conditions, if any, shall run with the land and be recorded in  
8 the bureau of conveyances.

9 ~~[(h)]~~ (i) No amendment of a land use district boundary  
10 shall be approved unless the commission finds upon the clear  
11 preponderance of the evidence that the proposed boundary is  
12 reasonable, not violative of section 205-2 and part III of this  
13 chapter, and consistent with the policies and criteria  
14 established pursuant to sections 205-16 and 205-17. Six  
15 affirmative votes of the commission shall be necessary for any  
16 boundary amendment under this section.

17 ~~[(i)]~~ (j) Parties to proceedings to amend land use  
18 district boundaries may obtain judicial review thereof in the  
19 manner set forth in section 91-14, provided that the court may  
20 also reverse or modify a finding of the commission if such



1 finding appears to be contrary to the clear preponderance of the  
2 evidence.

3       ~~[(j)]~~ (k) At the hearing, all parties may enter into  
4 appropriate stipulations as to findings of fact, conclusions of  
5 law, and conditions of reclassification concerning the proposed  
6 boundary change. The commission may but shall not be required  
7 to approve such stipulations based on the evidence adduced."

8       SECTION 5. Chapter 304A, Hawaii Revised Statutes, is  
9 amended by adding a new section to subpart D of part VI to be  
10 appropriately designated and to read as follows:

11       "§304A-       Land use, enhanced public notice requirements;  
12 referendum. (a) Within thirty days of filing a permit  
13 application to construct any project that involves a change in  
14 land use by the university or the construction of a new project,  
15 execution of a new lease, or the extension of an existing lease  
16 within the Mauna Kea science reserve, the university shall  
17 provide public notice pursuant to subsection (d) and as  
18 otherwise required by law.

19       (b) Within four months of filing a permit application to  
20 construct any project that involves a change in land use by the  
21 university or the construction of a new project, execution of a



1 new lease, or the extension of an existing lease within the  
2 Mauna Kea science reserve, the university shall conduct not less  
3 than three public meetings or hearings. Notice of the public  
4 meetings or hearings shall be made pursuant to subsection (d)  
5 and as otherwise required by law.

6 (c) Before proceeding with any project that involves a  
7 change in land use by the university or the construction of a  
8 new project, execution of a new lease, or the extension of an  
9 existing lease within the Mauna Kea science reserve, the  
10 university shall obtain approval of the project by the community  
11 through a referendum. Notice of the referendum shall be made  
12 pursuant to subsection (d) and as otherwise required by law.

13 All adult residents of parcels within five miles of any portion  
14 of the proposed project shall be eligible to vote in the  
15 referendum. For referendums concerning the Mauna Kea science  
16 reserve, all adult residents of the county in which the Mauna  
17 Kea science reserve is located shall be eligible to vote in the  
18 referendum. Any proposed project that does not receive approval  
19 by a majority of votes cast shall be denied; provided that any  
20 blank, spoiled, and invalid ballots shall not be tallied as  
21 votes cast. The office of elections shall assist the university



1 in conducting the referendum and adopt rules pursuant to chapter  
2 91 to effectuate the purposes of this subsection. The rules may  
3 authorize voting in the referendum to be conducted by mail.  
4 Costs associated with the referendum shall be borne by the  
5 university.

6 (d) In addition to any other requirement by law or rule,  
7 public notice pursuant to subsections (a), (b), and (c) shall be  
8 provided as follows:

9 (1) By publication once a week for four successive weeks  
10 in a newspaper of general circulation serving the area  
11 described in subsection (d);

12 (2) By mailing the notice to each residence within five  
13 miles of the proposed project; provided that for  
14 referendums concerning the Mauna Kea science reserve,  
15 this paragraph shall not apply;

16 (3) By posting the notice in multiple publicly accessible  
17 areas of the property of the proposed project, if any;  
18 and

19 (4) By posting the notice in an easily accessible location  
20 of the university's website."



1       SECTION 6. There is appropriated out of the general  
2 revenues of the State of Hawaii the sum of \$           or so much  
3 thereof as may be necessary for fiscal year 2021-2022 and the  
4 same sum or so much thereof as may be necessary for fiscal year  
5 2022-2023 for the enhanced public notice requirements under this  
6 Act.

7       The sums appropriated shall be expended by the department  
8 of Hawaiian home lands for the purposes of this Act.

9       SECTION 7. There is appropriated out of the general  
10 revenues of the State of Hawaii the sum of \$           or so much  
11 thereof as may be necessary for fiscal year 2021-2022 and the  
12 same sum or so much thereof as may be necessary for fiscal year  
13 2022-2023 for the enhanced public notice requirements under this  
14 Act.

15       The sums appropriated shall be expended by the department  
16 of land and natural resources for the purposes of this Act.

17       SECTION 8. There is appropriated out of the general  
18 revenues of the State of Hawaii the sum of \$           or so much  
19 thereof as may be necessary for fiscal year 2021-2022 and the  
20 same sum or so much thereof as may be necessary for fiscal year





2022-2023 for the enhanced public notice requirements under this Act.

The sums appropriated shall be expended by the land use commission for the purposes of this Act.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ or so much thereof as may be necessary for fiscal year 2021-2022 and the same sum or so much thereof as may be necessary for fiscal year 2022-2023 for the enhanced public notice requirements under this Act.

The sums appropriated shall be expended by the university of Hawaii for the purposes of this Act.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect on July 1, 2021.

INTRODUCED BY:

Kurt Favelle



**Report Title:**

DHHL; DLNR; UH; Public Notice; Land Use; Appropriation

**Description:**

Establishes enhanced public notice requirements for change in land use by the department of Hawaiian home lands, department of land and natural resources, or the university of Hawaii and boundary changes by the land use commission. Requires approval of the project by the community through a referendum of nearby adult residents except for projects within the Mauna Kea science reserve, which require a referendum by all adult residents of the county in which the Mauna Kea science reserve is located. Appropriates funds.

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