

JAN 19 2023

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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 the State's  
2 construction permitting process should be more transparent. In  
3 some cases, affected neighborhoods and communities have not been  
4 adequately informed about a project's impacts on health and  
5 safety, cultural practices, wildlife, the ecosystem, or the  
6 environment. The protests that occurred in response to the  
7 Kahuku windmill project, Thirty Meter Telescope, and other  
8 construction projects demonstrated the consequences of foregoing  
9 community involvement and input.

10           Accordingly, the purpose of this Act is to encourage  
11 transparency by requiring the department of Hawaiian home lands,  
12 department of land and natural resources, and university of  
13 Hawaii to inform and obtain the approval of affected  
14 neighborhoods and cultural communities before proceeding with  
15 certain construction projects.

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) For each project involving a change in land  
3 use by the commission, the commission shall:

4       (1) Within thirty days of filing a permit application,  
5       provide public notice pursuant to subsection (b) and  
6       as otherwise required by law;

7       (2) Within four months of filing a permit application,  
8       conduct no fewer than three public meetings or  
9       hearings. Notice of the public meetings or hearings  
10       shall be made pursuant to subsection (b) and as  
11       otherwise required by law; and

12       (3) Before proceeding with the project, obtain the  
13       community's approval of the project through a  
14       referendum. Notice of the referendum shall be made  
15       pursuant to subsection (b) and as otherwise required  
16       by law. All adult residents of parcels within five  
17       miles of any portion of the proposed project shall be  
18       eligible to vote on the referendum. Any proposed  
19       project that does not receive approval by a majority  
20       of the votes cast shall be denied; provided that any  
21       blank, spoiled, or invalid ballot shall not be tallied



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1           as a vote cast. The office of elections shall assist  
2           the commission in conducting the referendum and may  
3           adopt rules pursuant to chapter 91, Hawaii Revised  
4           Statutes, to effectuate the purposes of this section.  
5           The rules may authorize referendum voting to be  
6           conducted by mail. All costs associated with the  
7           referendum shall be borne by the commission.

8           (b) In addition to any other requirements provided by law  
9           or rule, public notice for purposes of subsection (a) shall be  
10          provided by:

- 11           (1) Publishing once a week for four successive weeks in a  
12           newspaper of general circulation serving areas within  
13           five miles of the proposed project;
- 14           (2) Mailing notice to each residence within five miles of  
15           the proposed project;
- 16           (3) Posting notice in multiple publicly accessible  
17           locations at the proposed project site, if any; and
- 18           (4) Posting notice on an easily accessible page of the  
19           commission's website."



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

4 "§171- Land use; enhanced public notice requirements;  
5 referendum. (a) For each project involving a change in land  
6 use by the department, the department shall:

7 (1) Within thirty days of filing a permit application,  
8 provide public notice pursuant to subsection (b) and  
9 as otherwise required by law;

10 (2) Within four months of filing a permit application,  
11 conduct no fewer than three public meetings or  
12 hearings. Notice of the public meetings or hearings  
13 shall be made pursuant to subsection (b) and as  
14 otherwise required by law; and

15 (3) Before proceeding with the project, obtain the  
16 community's approval of the project through a  
17 referendum. Notice of the referendum shall be made  
18 pursuant to subsection (b) and as otherwise required  
19 by law. All adult residents of parcels within five  
20 miles of any portion of the proposed project shall be  
21 eligible to vote on the referendum. Any proposed



1           project that does not receive approval by a majority  
2           of the votes cast shall be denied; provided that any  
3           blank, spoiled, or invalid ballot shall not be tallied  
4           as a vote cast. The office of elections shall assist  
5           the department in conducting the referendum and may  
6           adopt rules pursuant to chapter 91 to effectuate the  
7           purposes of this section. The rules may authorize  
8           referendum voting to be conducted by mail. All costs  
9           associated with the referendum shall be borne by the  
10           department.

11           (b) In addition to any other requirements provided by law  
12           or rule, public notice for purposes of subsection (a) shall be  
13           provided by:

- 14           (1) Publishing once a week for four successive weeks in a  
15           newspaper of general circulation serving areas within  
16           five miles of the proposed project;  
17           (2) Mailing notice to each residence within five miles of  
18           the proposed project;  
19           (3) Posting notice in multiple publicly accessible  
20           locations at the proposed project site, if any; and



1        (4) Posting notice on an easily accessible page of the  
2                    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.  
16 Notice shall also be posted in multiple publicly accessible  
17 locations on the land sought to be reclassified, if any, and on  
18 an easily accessible page 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 sustainable  
11 development, and the county planning department shall  
12 in every case appear as parties and make  
13 recommendations relative to the proposed boundary  
14 change;

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

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





1 change that their interest in the proceeding is  
2 clearly distinguishable from that of the general  
3 public shall be admitted as parties upon timely  
4 application for intervention;

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

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

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

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

20 (5) The commission, pursuant to chapter 91, shall adopt  
21 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~~] the citizen or community  
12 group concerning the proposed boundary change.

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



1 the land sought to be reclassified shall be eligible to vote on  
2 the referendum. Any proposed boundary change that does not  
3 receive approval by a majority of votes cast shall be denied;  
4 provided that any blank, spoiled, or invalid ballot shall not be  
5 tallied as a vote cast. The office of elections shall assist  
6 the commission in conducting the referendum and may adopt roles  
7 pursuant to chapter 91 to effectuate the purposes of this  
8 section. The rules may authorize referendum voting to be  
9 conducted by mail. All costs associated with the referendum  
10 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 part VI, subpart D, to be  
10 appropriately designated and to read as follows:

11       "§304A-       Land use; enhanced public notice requirements;  
12 referendum.   (a) For each project involving a change in land  
13 use by the university or the construction of a new project,  
14 execution of a new lease, or extension of an existing lease  
15 within the Mauna Kea science reserve, the university shall:  
16       (1) Within thirty days of filing a permit application,  
17       provide public notice pursuant to subsection (b) and  
18       as otherwise required by law;  
19       (2) Within four months of filing a permit application,  
20       conduct no fewer than three public meetings or  
21       hearings. Notice of the public meetings or hearings



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1           shall be made pursuant to subsection (b) and as  
2           otherwise required by law; and  
3       (3) Before proceeding with the project, obtain the  
4           community's approval of the project through a  
5           referendum. Notice of the referendum shall be made  
6           pursuant to subsection (b) and as otherwise required  
7           by law. All adult residents of parcels within five  
8           miles of any portion of the proposed project shall be  
9           eligible to vote on the referendum. For referendums  
10           concerning the Mauna Kea science reserve, all adult  
11           residents of the county in which the Mauna Kea science  
12           reserve is located shall be eligible to vote on the  
13           referendum. Any proposed project that does not  
14           receive approval by a majority of the votes cast shall  
15           be denied; provided that any blank, spoiled, or  
16           invalid ballot shall not be tallied as a vote cast.  
17           The office of elections shall assist the university in  
18           conducting the referendum and may adopt rules pursuant  
19           to chapter 91, Hawaii Revised Statutes, to effectuate  
20           the purposes of this section. The rules may authorize  
21           referendum voting to be conducted by mail. All costs



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1           associated with the referendum shall be borne by the  
2           university.

3           (b) In addition to any other requirements provided by law  
4 or rule, public notice for purposes of subsection (a) shall be  
5 provided by:

6           (1) Publishing once a week for four successive weeks in a  
7           newspaper of general circulation serving areas within  
8           five miles of the proposed project;

9           (2) Mailing notice to each residence within five miles of  
10           the proposed project; provided that this paragraph  
11           shall not apply to referendums concerning the Mauna  
12           Kea science reserve;

13           (3) Posting notice in multiple publicly accessible  
14           locations at the proposed project site, if any; and

15           (4) Posting notice on an easily accessible page of the  
16           university's website."

17           SECTION 6. 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 2023-2024 and the  
20 same sum or so much thereof as may be necessary for fiscal year



1 2024-2025 for complying with the enhanced public notice  
2 requirements established by this Act.

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

5 SECTION 7. There is appropriated out of the general  
6 revenues of the State of Hawaii the sum of \$ or so much  
7 thereof as may be necessary for fiscal year 2023-2024 and the  
8 same sum or so much thereof as may be necessary for fiscal year  
9 2024-2025 for complying with the enhanced public notice  
10 requirements established by this Act.

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

13 SECTION 8. There is appropriated out of the general  
14 revenues of the State of Hawaii the sum of \$ or so much  
15 thereof as may be necessary for fiscal year 2023-2024 and the  
16 same sum or so much thereof as may be necessary for fiscal year  
17 2024-2025 for complying with the enhanced public notice  
18 requirements established by this Act.

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





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1 SECTION 9. 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 2023-2024 and the  
4 same sum or so much thereof as may be necessary for fiscal year  
5 2024-2025 for complying with the enhanced public notice  
6 requirements established by this Act.

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

9 SECTION 10. This Act does not affect rights and duties  
10 that matured, penalties that were incurred, and proceedings that  
11 were begun before its effective date.

12 SECTION 11. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 12. This Act shall take effect on July 1, 2023.

15

INTRODUCED BY: Kurt Ferrel



# S.B. NO. 265

**Report Title:**

LUC; DHHL; DLNR; UH; Public Notice; Land Use; Appropriations

**Description:**

Establishes enhanced public notice requirements for changes 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 moneys.

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

