

ACT 187

A Bill for an Act Relating to the Zoning Powers of the State and the Assessment of Real Property Based Upon Zones Established by the State and Making an Appropriation Therefor.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. Findings and declaration of purpose. Inadequate controls have caused many of Hawaii's limited and valuable lands to be used for purposes that may have a short-term gain to a few but result in a long-term loss to the income and growth potential of our economy. Inadequate basis for assessing lands according to their value in those uses that can best serve both the well-being of the owner and the well-being of the public have resulted in inequities in the tax burden, contributing to the forcing of land resources into uses that do not best serve the welfare of the State. Scattered subdivisions with expensive, yet reduced, public services; the shifting of prime agricultural lands into nonrevenue producing residential uses when other lands are available that could serve adequately the urban needs; failure to utilize fully multiple-purpose lands; these are evidences of the need for public concern and action.

Therefore, the Legislature finds that in order to preserve, protect and encourage the development of the lands in the State for those uses to which they are best suited for the public welfare and to create a complementary assessment basis according to the contribution of the lands in those uses to which they are best suited, the power to zone should be exercised by the State and the methods of real property assessment should encourage rather than penalize those who would development* these uses.

SECTION 2. Exercise of the zoning powers of the State. The Revised Laws of Hawaii 1955, as amended, is hereby further amended by adding a new chapter to be appropriately numbered and to read as follows:

"CHAPTER

STATE LAND USE COMMISSION

Sec. 1. **Definitions.** When used in this chapter:

(a) 'Agriculture' means the raising of livestock or the growing of crops, flowers, foliage, or other products.

(b) 'Commission' means the State land use commission established by this chapter.

(c) 'Conservation' means: protecting watersheds and water supplied; preserving scenic areas; providing parkland, wilderness and beach reserves; conserving endemic plants, fish, and wildlife; preventing floods and soil erosion; forestry; and other related activities.

(d) 'District' means an area of land zoned by the commission for urban, agricultural or conservation use as provided in this Act.

(e) 'Planning commission' means the planning commission of each county.

(f) 'Urban' means areas characterized by "city-like" concentrations of people, structures, streets and other related land uses.

* So in original

Sec. 2. Establishment of the commission. The State land use commission is hereby created. The commission shall consist of seven members who shall hold no other public office and shall be appointed in the manner, and serve for the term, set forth in section 14A-3. One member shall be appointed from each of the senatorial districts and one shall be appointed at large. The director of the department which is responsible for the administering the provisions of Act 234, SLH1957 and the director of the department of planning and research shall serve as ex officio voting members. The commission shall elect its chairman from one of its appointed members. The members shall receive no compensation for their services on the commission, but shall be reimbursed for actual expenses incurred in the performance of their duties.

The commission shall be a part of the department of planning and research for administration purposes as set forth in section 14A-4.

The commission may engage employees necessary to perform its duties, including administrative personnel and one or more field officers. One field officer may be named as the executive officer of the commission. Field officers shall be persons qualified in land use analysis. Departments of the State government shall make available to the commission such data, facilities and personnel as are necessary for it to perform its technical duties. The commission may receive and utilize gifts and any funds from the federal or other governmental agencies. It shall adopt rules guiding its conduct, maintain a record of its activities and submit an annual report of its activities, accomplishments and recommendation to the governor and to the legislature through the governor.

Sec. 3. Classification and districting of lands. There shall be three major classes of uses to which all lands in the State shall be put: urban, agriculture and conservation. The commission shall group contiguous land areas suitable for one of these three major uses into a district and designate it as an urban district, agricultural district or conservation district, as the case may be. The commission shall set standards for determining the boundaries of each class of district; provided, that in the establishment of boundaries of urban districts those lands that are now in urban use and a sufficient reserve area for foreseeable urban growth shall be included; in establishment of the boundaries for agriculture districts the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation; and in the establishment of the boundaries of conservation districts, the 'forest and water reserve zones' provided in Act 234, SLH 1957, are hereby re-named 'conservation districts' and, upon the effective date of this chapter, the boundaries of the forest and water reserve zones theretofore established pursuant to Act 234, SLH 1957, shall constitute the boundaries of the conservation districts, provided, that thereafter the power to determine the boundaries of the conservation districts shall be in the commission.

Zoning powers now granted to counties under section 138-42 shall govern the zoning within the districts, with the exception that areas may not be zoned for urban uses except in those districts that are designated as urban by the commission. Zoning powers within conservation districts shall be exercised by the department to which is assigned the responsibility of administering the provisions of Act 234, SLH 1957.

Sec. 4. Adoption of district boundaries. The commission shall prepare use classification maps not later than 18 months from the effective date of

this chapter showing the proposed boundaries of districts for conservation, agricultural and urban uses. At least one public hearing shall be held in each county prior to the final adoption of the district boundaries for that county. Notice of the time and place of such hearing shall be published in the same manner as notices required for public hearings by the planning commission of the appropriate county. If there is no planning commission, then the notice shall be published at least 15 days prior to the hearing in a newspaper of general circulation within the county. Such notice shall indicate the time and place the maps showing the proposed district boundaries within the county may be inspected prior to the hearing.

At the hearing, interested owners, lessees, officials, agencies and individuals may appear and be heard. They shall further be allowed at least 15 days following the final public hearing held in the county to file with the commission a written protest or other comments or recommendations. The planning commission of the county concerned shall be furnished with copies of any written protest, comment or recommendation. The district boundaries within a county shall be adopted in final form within a period of not more than 90 days and not less than 45 days from the time of the last hearing in the county, provided that district boundaries for all counties shall be adopted in final form not later than 24 months from the effective date of this chapter. The commission shall prepare and furnish each county with copies of classification maps for that county showing the district boundaries adopted in final form.

Sec. 5. Temporary district boundaries. Prior to the final adoption of district boundaries as provided in section 4 of this chapter, the commission shall adopt and enforce the interim regulations as provided in section 9 for temporary districts whose boundaries shall be determined and shown on interim use classification maps. These temporary districts shall be determined so far as practicable and reasonable to maintain existing uses and only permit changes in use that are already in progress until the district boundaries are adopted in final form. Such temporary district boundaries shall be established and mapped as soon as possible, but only after public hearings as provided in section 4, but in any case, these temporary district boundaries shall be adopted not later than nine months after the effective date of the chapter.

Sec. 6. Amendments to district boundaries. Any department or agency of the State or county, or any property owner or lessee through the county planning commission may petition the commission for a change in the boundary of any district. Within 120 days after receipt of such petition, the county planning commission shall forward the petition, together with its comments and recommendations, to the commission. The commission may also initiate changes in a district boundary which shall be submitted to the appropriate county planning commission for comments and recommendations in the same manner as any other request for a boundary change.

Within 120 days after the receipt of the petition and recommendations from the county, the commission shall advertise a public hearing to be held on the appropriate island in accordance with the requirements of section 4. Within not less than 45 days after such hearing the commission shall act upon the petition for change. The commission may approve the change with six affirmative votes. No change shall be approved unless the petitioner has submitted proof that the area is needed for a use other than that for which the district in which it is situated is classified and either of the following requirements has been fulfilled:

(a) The petitioner has submitted proof that the land is not usable or adaptable

for the use in which it is classified, or (b) Conditions and trends of development have so changed since the adoption of the present classification, that the present classification is unreasonable.

Sec. 7. Special permits. The commission may permit, by regulation, certain unusual and reasonable uses other than those for which the district is classified. If any person desires to use his land in a certain specified manner, but is denied such use because (a) His land is situated in a district which prohibits such use or the regulations adopted by the commission do not permit the desired use, or (b) Either the county planning commission or the department to which is assigned the responsibility of administering the provisions of Act 234, SLH 1957, rules that the use for which the district in which his land is situated is classified or the regulations adopted by the commission do not permit such desired use, he may petition the commission for permission to use his land in the manner desired. The commission shall conduct a hearing in the county in which the petitioner's land is situated, within a period of not less than 30 nor more than 120 days from the receipt of the petition. The commission shall notify such persons and agencies that may have an interest in the subject matter of the time and place of the hearing.

The commission shall consider any unusual condition or use that could not reasonably have been anticipated when the district boundaries and regulations were adopted or amended, and may, under such protective restrictions as may be deemed necessary, permit such desired use, but only when such use would promote the effectiveness and objectives of this chapter. A decision in favor of the petitioner shall require five affirmative votes. Appeals from any final order of the commission may be made to the circuit court of the circuit in which the land is situated, and shall be made pursuant to the Hawaii Rules of Civil Procedure.

Sec. 8. Adoption of land use regulations. The commission shall, within 18 months from the effective date of this chapter, prepare proposed regulations prescribing the appropriate uses for the land in the various classes of districts. At least one public hearing shall be held in each county in the manner provided in section 4 of this chapter prior to the final adoption of the regulations. The final regulations for the State shall be adopted within a period of not more than 90 days and not less than 45 days from the time of the final hearing in the State, provided that the regulations shall be adopted in final form not later than 24 months from the effective date of this chapter.

No regulation adopted by the commission shall deprive any owner or lessee of real property of its use or maintenance for the purpose or purposes to which it is then lawfully devoted, except that regulations may be adopted for the elimination of non-conforming uses upon a change in ownership, lessee or land use.

Sec. 9. Interim regulations. Prior to the adoption of the regulations in their final form as provided in section 8, the commission shall adopt and enforce temporary regulations. Such temporary regulations shall be related to, and shall be designed to maintain the existing condition, in so far as practicable and reasonable until the adoption of regulations in their final form. Such interim regulations shall apply to those interim use districts zoned in the manner provided in section 5. Such temporary regulations shall be adopted as rapidly as possible, but only after public hearings as provided in section 4 of this chapter, but in any case the temporary regulations shall be adopted not later than nine months from the effective date of this chapter.

Sec. 10. **Amendments to regulations.** By the same methods set forth in section 6, a petition may be submitted to change, or the commission may initiate a change in the regulations on land use. No such changes shall, however, be made, unless a hearing or hearings are held in each of the counties. Within not less than 45 and not more than 90 days after the last of such hearings, the commission shall act to approve or deny the requested change in regulations. Such petition for a change shall be based upon proof submitted that conditions exist that were not present when the regulation was adopted or that the regulation does not serve the purposes of this chapter.

Sec. 11. **Use of field officers.** Notwithstanding the provisions of sections 6 and 7 requiring a hearing by the full commission if any application requiring a hearing is received which the commission in the course of its regular meetings shall not be able to hear for more than 60 days, it may authorize a field officer to conduct such a hearing and make a recommendation, provided all other necessary rules for hearings are adhered to. The recommendations of the field officer shall be submitted to the commission at its next meeting, and any recommendation, or rulings by the commission as a result of this recommendation, shall be subject to a review of the full commission at the next hearing date scheduled for the county in which the land concerned is located, if either the commission or the applicant notified the other party at least 20 days prior to this date.

Sec. 12. **Periodic review of district and regulations.** Irrespective of changes and adjustments that it may have made, the commission shall make a comprehensive review of the classification and districting of all lands and of the regulations at the end of each five years following the adoption thereof. The assistance of appropriate State and County departments shall be secured in making this review and public hearings shall be held in each county in accordance with the requirements set forth for the adoption in final form of district boundaries and regulations under this chapter.

Sec. 13. **Enforcement.** The county planning commission shall enforce within its county the use classification districts and regulations adopted by the commission and shall report to the commission all violations thereof.

Sec. 14. **Penalty for violation.** Any person who violates any provision of this chapter, or any regulation established pursuant to this chapter, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

Sec. 15. **Adjustments of assessing practices.** Upon the adoption of district boundaries and regulations, certified copies of the use classification maps showing the district boundaries and the regulations shall be filed with the department of taxation. Thereafter the department of taxation shall, when making assessments of property within a district, give consideration to the use or uses that may be made thereof as well as the uses to which it is then devoted.

Sec. 16. **Conflict.** Except as specifically provided by this chapter and the regulations adopted thereto, neither the authority for the administration of the provisions of Act 234, SLH 1957 as it has been assigned by Act 1, ISS 1959, as it may be amended, nor the authority vested in the county planning commissions under the provisions of section 138-42 shall be affected."

SECTION 3. Chapter 128, Revised Laws of Hawaii 1955, as amended, is hereby further amended by adding a new section to be appropriately numbered and to read as follows:

“Sec. . Dedicated lands. (a) A special dedicated land reserve is established to enable the owner of any parcel of land within an agricultural district and/or a conservation district to dedicate his land for a specific ranching or other agricultural use and to have his land assessed at its value in such use.

(b) If any owner desires to use his land for a specific ranching or other agricultural use and to have his land assessed at its value in this use, he shall so petition the director of taxation and declare in his petition that his land can best be used for the purpose for which he requests permission to dedicate his land and that if his petition is approved he will use his land for this purpose.

Upon receipt of any such petition, the director of taxation shall request the land study bureau to make a finding of fact as to whether the land in the petitioned area is reasonably well suited for the intended use. The finding of the land study bureau shall include and be based upon the productivity ratings of the land in those uses for which it is best suited, a study of the ownership, size of operating unit and present use of surrounding similar lands and other criteria as may be appropriate.

The director of taxation shall also request the director of planning and research to make a finding of fact as to whether the intended use is in conflict with the over-all development plan of the State.

If both findings are favorable to the owner, the director of taxation shall approve the petition and declare that the owner's land is dedicated land.

(c) The approval by the director of taxation of the petition to dedicate shall constitute a forfeiture on the part of the owner of any right to change the use of his land for a minimum period of ten years, automatically renewable indefinitely, subject to cancellation by either the owner or the director of taxation upon five years notice at any time after the end of the fifth year. In case of a change in major land use classification by a State agency, such that the owner's land is placed within an urban district, the dedication may be cancelled within sixty days of the change, without the five years notice, by mutual agreement of the owner and the director of taxation.

(d) Failure of the owner to observe the restrictions on the use of his land shall cancel the special tax assessment privilege retroactive to the date of the petition, and all differences in the amount of taxes that were paid and those that would have been due from assessment in the higher use shall be payable with a five per cent per annum penalty from the respective dates that these payments would have been due. Failure to observe the restrictions on the use means failure for a period of over one calendar year to use the land in that manner requested in the petition or the overt act of changing the use for any period. Nothing in this paragraph shall preclude the State from pursuing any other remedy to enforce the covenant on the use of the land.

(e) The director of taxation shall prescribe the form of the petition. The petition shall be filed with the director of taxation by September 1 of any calendar year and shall be approved or disapproved by December 15. If approved, the assessment based upon the use requested in the dedication shall be effective on January 1, next.

(f) The owner may appeal any disapproved petition as in the case of an appeal from an assessment.

(g) The term 'owner' as used in this section includes lessees of real property whose lease term extends at least ten years from the date of the petition.”

SECTION 4. Appropriation. There is hereby appropriated out of the general fund of the State of Hawaii the sum of \$50,000, or so much thereof

as may be necessary, to the State land use commission for the expense of establishing, operating and administering the functions of the commission for the period beginning July 1, 1961, and ending June 30, 1962.

SECTION 5. If any section or part of this Act is invalid for any reason, such invalidity shall not affect the validity of the remaining sections and parts of this Act.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 11, 1961.) **H.B. 1279.**
