

## ACT 193

H.B. NO. 1870

A Bill for an Act Relating to the Land Use Commission.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1. Findings and purpose.** The legislature finds that although the purposes of Hawaii's land use law remain as valid today as they were at the time of its enactment in 1961, the procedures through which these purposes must be realized have proved inadequate and unworkable. Under existing procedures the land use commission has been unable to reconcile in an orderly and rational manner the increasingly hostile and conflicting points of view which surround land use decisions. This Act sets forth reforms intended to insure the effective application for an established land use policy through an adversary process in which all interests will have the opportunity to compete in an open and orderly manner. The commission is constituted as a quasi-judicial body and mandated to make impartial decisions based on proven facts and established policies.

**SECTION 2.** Section 205-1, Hawaii Revised Statutes, is amended to read:

**"Sec. 205-1 Establishment of the commission.** There shall be a state land use commission, hereinafter called the commission. The commission shall consist of nine members who shall hold no other public office and shall be appointed in the manner and serve for the term set forth in section 26-34. One member shall be appointed from each of the counties and the remainder shall be appointed at large. The commission shall elect its chairman from one of its 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. Six affirmative votes shall be necessary for any boundary amendment.

The commission shall be a part of the department of planning and economic development for administration purposes, as provided for in section 26-35.

The commission may engage employees necessary to perform its duties, including administrative personnel and an executive officer. Departments of the state government shall make available to the commission such data, facilities, and personnel as are necessary for it to perform its duties. The commis-

sion may receive and utilize gifts from the federal or other governmental agencies. It shall adopt rules guiding its conduct, maintain a record of its activities, accomplishments, and make recommendations to the governor and to the legislature through the governor."

SECTION 3. Section 205-2, Hawaii Revised Statutes, is amended to read:

**"Sec. 205-2 Districting and classification of lands.** There shall be four major land use districts in which all lands in the State shall be placed: urban, rural, agricultural, and conservation. The land use commission shall group contiguous land areas suitable for inclusion in one of these four major districts.

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 the establishment of boundaries for rural districts, areas of land composed primarily of small farms mixed with very low density residential lots, which may be shown by a minimum density of not more than one house per one-half acre and a minimum lot size of not less than one-half acre shall be included;

In the establishment of the boundaries of agricultural 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 section 183-41 are renamed "conservation districts" and, effective as of July 11, 1961, the boundaries of the forest and water reserve zones theretofore established pursuant to section 183-41, 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.

In establishing the boundaries of the districts in each county, the commission shall give consideration to the general plan of the county.

Urban districts shall include activities or uses as provided by ordinances or regulations of the county within which the urban district is situated.

Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre in areas where "city-like" concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with the low density residential lots. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics.

Agricultural districts shall include activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry; farming activities or uses related to animal husbandry, and game and fish propagation; services and uses accessory to the above activities including but not limited to living quarters or dwellings, mills, storage facilities, processing facilities, and roadside stands for the sale of products grown on the premises; agricultural parks and open area recreational facilities.

These districts may include areas which are not used for, or which are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.

Conservation districts shall include areas necessary for protecting watersheds and water sources; preserving scenic and historic areas; providing park lands, wilderness, and beach; conserving endemic plants, fish, and wildlife; preventing floods and soil erosion; forestry; open space areas whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding communities, or would maintain or enhance the conservation of natural or scenic resources; areas of value for recreational purposes; and other related activities; and other permitted uses not detrimental to a multiple use conservation concept."

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

**"Sec. 205-3 Retention of district boundaries.** Land use district boundaries existing as of the effective date of this Act, shall continue in full force and effect subject to amendment as provided in this chapter or order of a court of competent jurisdiction based upon any litigation filed prior to July 1, 1975 or filed within thirty days after service of a certified copy of any final decision and order made as part of the commission's 1974 periodic boundary review, whichever occurs later."

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

**"Sec. 205-4 Amendments to district boundaries.**

(a) Any department or agency of the State including the land use commission, any department or agency of the county in which the land is situated, or any person with a property interest in the land sought to be reclassified, may petition the land use commission for a change in the boundary of a district.

(b) Upon proper filing of a petition pursuant to subsection (a) above, the commission shall, within not less than sixty and not more than one hundred and twenty days, conduct a hearing on the appropriate island in accordance with the provisions of sections 91-9, 91-10, 91-11, 91-12, and 91-13, Hawaii Revised Statutes, as applicable.

(c) Any other provision of law to the contrary notwithstanding, notice of the hearing together with a copy of the petition shall be served on the county planning commission and the county planning department and all persons with a property interest in the land recorded at the department of taxation. In addition, such notice shall be mailed to all persons who have made a timely written request for advance notice of boundary amendment proceedings, and shall be published at least once in a newspaper in the county in which the land sought to be redistricted is situated as well as once in a newspaper of general circulation in the State at least thirty days in advance of the hearing. The notice shall comply with the provisions of section 91-9, shall indicate the time and place that maps showing the proposed district boundary may be inspected, and further shall inform all interested persons of their rights under subsection (d) of this section.

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

(1) The petitioner, the department of planning and economic development and the county planning department shall in every case appear as parties and make recommendations relative to the proposed boundary change.

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

(3) All persons who have some property interest in the land, who lawfully reside on the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed 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: (1) 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 (2) the admission of additional parties will render the proceedings inefficient and unmanageable. A person whose application to intervene is denied may appeal such denial to the circuit court pursuant to section 91-14.

(5) The commission shall pursuant to chapter 91 adopt rules governing the intervention of agencies and persons under this subsection. Such rules shall without limitation establish: (a) the information to be set forth in any application for intervention; (b) time limits within which such applications shall be filed; and (c) reasonable filing fees to accompany such applications.

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

(f) Within a period of not more than ninety and not less than forty-five days after the close of the hearing, unless otherwise ordered by a court, the commission shall, by filing findings of fact and conclusions of law, act to approve the petition, deny the petition, or to modify the petition by imposing conditions necessary to uphold the intent and spirit of this chapter or the policies and criteria established pursuant to section 205- or to assure substantial compliance with representations made by the petitioner in seeking a boundary change. Such conditions, if any, shall run with the land and be recorded in the bureau of conveyances.

(g) No amendment of a land use district boundary shall be approved un-

less the commission finds upon the clear preponderance of the evidence that the proposed boundary is reasonable, not violative of section 205-2 and consistent with the interim policies and criteria established pursuant to section 205- , or any state plan enacted by the legislature which plan shall supersede any interim guidance policies.

(h) Parties to proceedings to amend land use district boundaries may obtain judicial review thereof in the manner set forth in section 91-14, Hawaii Revised Statutes, provided that the court may also reverse or modify a finding of the commission if such finding appears to be contrary to the clear preponderance of evidence.”

SECTION 6. Section 205-7, Hawaii Revised Statutes, is amended to read:

“**Sec. 205-7 Adoption, amendment or repeal of rules.** The land use commission shall adopt, amend or repeal rules relating to matters within its jurisdiction in the manner prescribed in chapter 91.

SECTION 7. Section 205-9, Hawaii Revised Statutes, is repealed.

SECTION 8. Section 205-10, Hawaii Revised Statutes, is repealed.

SECTION 9. Section 205-11, Hawaii Revised Statutes, is repealed.

SECTION 10. Chapter 205, Hawaii Revised Statutes, is amended by adding thereto a new section to be appropriately designated and to read:

“**Sec. 205- Adoption of interim statewide land use guidance policy.** The legislature hereby adopts the following as interim statewide land use guidance policy set forth in this section. Except when the land use commission finds that an injustice or inequity will result, the commission shall observe and comply with these interim statewide land use guidance policies during the period commencing from the effective date of this Act until the effective date of the enactment of the state plan. The state plan shall be a long-range, comprehensive plan and policies which shall serve as a guide for the future long-range development of the State in accordance with chapter , Hawaii Revised Statutes.

### INTERIM STATEWIDE LAND USE GUIDANCE POLICY

The interim policies are:

(1) Land use amendments shall be approved only as reasonably necessary to accommodate growth and development, provided there are no significant adverse effects upon agricultural, natural, environmental, recreational, scenic, historic, or other resources of the area.

(2) Lands to be reclassified as an urban district shall have adequate public services and facilities or as can be so provided at reasonable costs to the petitioner.

(3) Maximum use shall be made of existing services and facilities, and scattered urban development shall be avoided.

(4) Urban districts shall be contiguous to an existing urban district or shall constitute all or a part of a self-contained urban center.

(5) Preference shall be given to amendment petitions which will provide permanent employment, or needed housing accessible to existing or proposed employment centers, or assist in providing a balanced housing supply for all economic and social groups.

(6) In establishing the boundaries of the districts in each county, the commission shall give consideration to the general plan of the county.

(7) Insofar as practicable conservation lands shall not be reclassified as urban lands.

(8) The commission is encouraged to reclassify urban lands which are incompatible with the interim statewide land use guidance policy or are not developed in a timely manner.”

SECTION 11. Chapter 205, Hawaii Revised Statutes, is amended by adding thereto a new section to be appropriately designated and to read:

“**Sec. 205- Legal effect of interim statewide land use guidance policy.** The interim statewide land use guidance policy set forth in section 205- shall remain in full force and effect during the period from the effective date of this Act until the effective date of the enactment of the state plan.”

SECTION 12. Chapter 205, Hawaii Revised Statutes, is amended by adding thereto a new section to be appropriately designated and to read:

“**Sec. 205- Compliance with state plan.** Upon enactment of the State plan, no amendment to any land use district boundary nor any other action by the land use commission shall be adopted unless such amendment or other action conforms to the state plan.”

SECTION 13. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.\*

SECTION 14. This Act shall take effect upon its approval.

(Approved June 2, 1975.)

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\*Edited accordingly.