
A BILL FOR AN ACT

RELATING TO LAND USE.

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

1 SECTION 1. The legislature enacted the state land use
2 commission law in 1961 due to the perception that inadequate
3 controls allowed many of Hawaii's limited and valuable lands to
4 be used for the short-term gain of a few, resulting in a long-
5 term loss to the growth and potential of Hawaii's economy.

6 The legislature finds that over the past half century,
7 various commissions and task forces have reviewed the state land
8 use commission chapter to ensure proper conservation, control,
9 and development of resources.

10 This Act revisits the findings of those commissions and
11 task forces and incorporates their recommendations in a manner
12 that promotes conservation, control, and development of
13 resources through a long-range and comprehensive planning
14 perspective.

15 The purpose of this Act is to provide guidance and
16 clarification to chapter 205, Hawaii Revised Statutes, to
17 resolve confusion, eliminate conflicts between sections,



1 establish clear jurisdictional lines between the counties and
2 State, and prevent disputes over permissible uses allowed by
3 special use permit in land use districts.

4 SECTION 2. Chapter 205, Hawaii Revised Statutes, is
5 amended by adding a new section to be appropriately designated
6 and to read as follows:

7 "§205- Regional district boundary amendments. (a) Any
8 county may petition the commission for regional district
9 boundary amendments to reclassify lands to conform to the long-
10 range, comprehensive general plan and development plans adopted
11 by the county.

12 (b) Prior to the final adoption of the district
13 boundaries, at least one public hearing shall be held in the
14 county in which the regional district boundary amendment is
15 being proposed.

16 (c) The commission shall prepare the district
17 classification maps prior to the first public hearing.

18 (d) Notice of each public hearing shall be provided
19 pursuant to sections 91-9 and 205-4.

20 (e) Interested individuals may appear at the public
21 hearing to be heard. Each individual shall be allowed at least



1 fifteen days following the final public hearing to file a
2 written protest, comments, or recommendations with the
3 commission.

4 (f) The district boundaries shall be adopted in final form
5 not less than forty-five days and not more than ninety days
6 after the final public hearing of the commission.

7 (g) The commission shall prepare copies of the
8 classification maps showing the district boundaries adopted in
9 final form and submit them to the county."

10 SECTION 3. Section 165-2, Hawaii Revised Statutes, is
11 amended by amending the definition of "farming operation" to
12 read as follows:

13 "Farming operation" means a commercial agricultural,
14 silvicultural, or aquacultural facility or pursuit conducted, in
15 whole or in part, including the care and production of livestock
16 and livestock products, poultry and poultry products, apiary
17 products, and plant and animal production for nonfood uses; the
18 planting, cultivating, harvesting, and processing of crops; and
19 the farming or ranching of any plant or animal species in a
20 controlled salt, brackish, or freshwater environment. "Farming
21 operation" includes but shall not be limited to:



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- 1 (1) Agricultural-based commercial operations as described
- 2 in section [~~205-2(d)(15)~~]; 205-2;
- 3 (2) Noises, odors, dust, and fumes emanating from a
- 4 commercial agricultural or an aquacultural facility or
- 5 pursuit;
- 6 (3) Operation of machinery and irrigation pumps;
- 7 (4) Ground and aerial seeding and spraying;
- 8 (5) The application of chemical fertilizers, conditioners,
- 9 insecticides, pesticides, and herbicides; and
- 10 (6) The employment and use of labor.

11 A farming operation that conducts processing operations or salt,
12 brackish, or freshwater aquaculture operations on land that is
13 zoned for industrial, commercial, or other nonagricultural use
14 shall not, by reason of that zoning, fall beyond the scope of
15 this definition; provided that those processing operations form
16 an integral part of operations that otherwise meet the
17 requirements of this definition."

18 SECTION 4. Section 201N-14, Hawaii Revised Statutes, is
19 amended by amending subsection (d) to read as follows:

20 "(d) The exemption from subdivision requirements
21 authorized by this section shall only apply to leases and



1 easements that meet the following requirements and shall be
2 subject to the following limitations:

3 (1) The lease or easement shall restrict the use of the
4 leased land or easement area to the development and
5 operation of a renewable energy project; provided
6 that, to comply with section 205-4.6, agricultural
7 uses and activities shall not be restricted on
8 agricultural land;

9 (2) The lease shall have an initial term of at least
10 twenty years;

11 (3) With respect to leases and easements on lands within
12 an agricultural state land use district, the exemption
13 from subdivision requirements provided by this section
14 shall be for:

15 (A) Solar energy facilities permitted under section
16 [~~205-2(d)(6)~~], 205-4.5(a), on land with soil
17 classified by the land study bureau's detailed
18 land classification as overall (master)
19 productivity rating class D or E;

20 (B) Wind energy facilities permitted under section
21 [~~205-2(d)(4) and (8)~~], 205-4.5(a), including the



- 1 appurtenances associated with the production and
2 transmission of wind-generated energy; and
3 (C) Any renewable energy facilities approved by the
4 land use commission or county planning commission
5 under chapter 205;
- 6 (4) With respect to leases and easements on lands within a
7 conservation state land use district, the exemption
8 from subdivision requirements provided by this section
9 shall be for:
- 10 (A) Wind energy facilities, including the
11 appurtenances associated with the production and
12 transmission of wind-generated energy; and
13 (B) Any renewable energy facilities permitted or
14 approved by the board of land and natural
15 resources under chapter 183C; and
- 16 (5) The county agency charged with administering
17 subdivisions in the county in which the renewable
18 energy project is to be situated or, if the land is in
19 a conservation state land use district, the department
20 of land and natural resources, shall approve the
21 exemption from subdivision requirements within ninety



1 days after the project's developer and the owner of
 2 the land on which the renewable energy project is to
 3 be situated have submitted the conceptual schematics
 4 or preliminary plans and specifications for the
 5 renewable energy project to the county agency or the
 6 department of land and natural resources, and have
 7 provided to such county agency or the department of
 8 land and natural resources, as applicable, a
 9 certification and agreement that all applicable and
 10 appropriate environmental reviews and permitting shall
 11 be completed prior to commencement of development of
 12 the renewable energy project. If, on the ninety-first
 13 day, an exemption has not been approved, it shall be
 14 deemed disapproved by the county agency or the
 15 department of land and natural resources, whichever is
 16 applicable."

17 SECTION 5. Section 205-1, Hawaii Revised Statutes, is
 18 amended to read as follows:

19 "§205-1 Establishment of the commission[-]; duties. (a)

20 There shall be a state land use commission, hereinafter called
 21 the commission. The commission shall consist of nine members



1 who shall hold no other public office and shall be appointed in
2 the manner and serve for the term set forth in section 26-34.
3 One member shall be appointed from each of the counties and the
4 remainder shall be appointed at large; provided that one member
5 shall have substantial experience or expertise in traditional
6 Hawaiian land usage and knowledge of cultural land practices.
7 The commission shall elect its chairperson from one of its
8 members. The members shall receive no compensation for their
9 services on the commission, but shall be reimbursed for actual
10 expenses incurred in the performance of their duties. Six
11 affirmative votes shall be necessary for any boundary amendment.

12 (b) The commission shall be a part of the department of
13 business, economic development, and tourism for administration
14 purposes, as provided for in section 26-35.

15 (c) The commission may engage employees necessary to
16 perform its duties, including administrative personnel and an
17 executive officer. The executive officer shall be appointed by
18 the commission and the executive officer's position shall be
19 exempt from civil service.



1 (d) Departments of the state government shall make
2 available to the commission [such] data, facilities, and
3 personnel as are necessary for it to perform its duties.

4 (e) The commission may receive and utilize gifts and any
5 funds from the federal or other governmental agencies. [~~It~~
6 ~~shall adopt rules guiding its conduct, maintain a record of its~~
7 ~~activities and accomplishments, and make recommendations to the~~
8 ~~governor and to the legislature through the governor.~~]

9 (f) The commission shall:

10 (1) Adopt rules guiding its conduct;

11 (2) Maintain a record of its activities and
12 accomplishments;

13 (3) Make recommendations to the governor and to the
14 legislature through the governor;

15 (4) Group contiguous land areas suitable for inclusion in
16 one of the four major land use districts established in
17 section 205-2;

18 (5) Set standards for determining the boundaries of each
19 land use district pursuant to section 205-2;

20 (6) Redesignate parcels into another land use district
21 upon a demonstrated change of economic or social



1 conditions where the redesignation will provide
 2 greater benefits to the general public and the State
 3 of Hawaii; and

4 (7) Ensure that the designations conform to the state plan
 5 and the county general and development plans."

6 SECTION 6. Section 205-2, Hawaii Revised Statutes, is
 7 amended to read as follows:

8 "~~§~~205-2 Districting and classification of lands~~[-];~~
 9 criteria. (a) There shall be four major land use districts in
 10 which all lands in the State shall be placed: urban, rural,
 11 agricultural, and conservation. The [~~land-use~~] commission shall
 12 group contiguous land areas suitable for inclusion in one of
 13 these four major districts. [~~The commission shall set standards~~
 14 ~~for determining the boundaries of each district, provided that:~~

15 ~~(1)]~~ (b) In the establishment of the boundaries of urban
 16 districts [~~these~~], the commission shall include:

17 (1) Those lands that are now in urban use; and [a]

18 (2) A sufficient reserve area for foreseeable urban growth
 19 shall be included~~[-]~~.

20 ~~(2)]~~ (c) In the establishment of the boundaries [~~for~~] of
 21 rural districts, [~~areas~~] the commission shall include:



- 1 (1) Areas of land composed primarily of ranches and small
2 farms [~~mixed with very~~];
- 3 (2) Very low density residential lots, which may be shown
4 by a minimum density of not more than one house per
5 one-half acre and a minimum lot size of not less than
6 one-half acre shall be included, except as [herein]
7 provided[+] by county ordinance pursuant to section
8 46-4(c), in areas where "city-like" concentrations or
9 people, structures, streets, and urban level of
10 services are absent, and where small farms are
11 intermixed with low density residential lots except
12 that within a subdivision, as defined in section 484-
13 1, the commission for good cause may allow one lot of
14 less than one-half acre, but not less than 18,500
15 square feet, or an equivalent residential density,
16 within a rural subdivision and permit the construction
17 of one dwelling on the lot; provided that all other
18 dwellings in the subdivision shall have a minimum lot
19 size of one-half acre or 21,780 square feet;
- 20 (3) Golf courses, golf driving ranges, and golf-related
21 facilities;



- 1 (4) Public, quasi-public, and public utility facilities;
- 2 (5) Areas to preserve and maintain natural landscapes and
- 3 vistas, open space, and the rural character of the
- 4 area;
- 5 (6) Geothermal resources exploration and geothermal
- 6 resources development, as defined under section 182-1;
- 7 (7) Clusters of settlements or historic plantation camps
- 8 and communities that do not function as a suburb of a
- 9 major urban center; and
- 10 (8) Areas not suited to agricultural and ancillary
- 11 activities by reason of topography and other related
- 12 characteristics.

- 13 [~~3~~] (d) In the establishment of the boundaries of
- 14 agricultural districts [~~the greatest possible protection shall~~
- 15 ~~be given to those lands with a high capacity for intensive~~
- 16 ~~cultivation; and~~
- 17 ~~(4)]~~, the commission shall include lands:
- 18 (1) That are irrigated with the physical properties that
- 19 are capable of producing sustained high agricultural
- 20 yields when treated and managed according to modern
- 21 farming methods and technology with soil classified by



- 1 the land study bureau's detailed land classification
2 as overall (master) productivity rating class A or B,
3 including current or former sugarcane or pineapple
4 plantation lands;
- 5 (2) With soil classified by the land study bureau's
6 detailed land classification as overall (master)
7 productivity rating class C or D, which are currently
8 in production or that could be put into productive use
9 with the implementation of new agricultural
10 technologies or the development of irrigation water;
- 11 (3) That are currently in agricultural production or
12 ranching and classified as agricultural;
- 13 (4) That contribute to the State's economic base and
14 produce commodities for export and local consumption;
15 and
- 16 (5) That are important to agriculture because of a unique
17 quality or use.
- 18 Areas not suited to agricultural activities by reason of
19 topography or other characteristics may be included in
20 conservation districts.



1 (e) In the establishment of the boundaries of conservation
2 districts, the commission shall include lands where the greatest
3 possible protection shall be given to valuable natural resources
4 including:

- 5 (1) Watersheds and water sources;
6 (2) Indigenous or endemic plants, fish and wildlife
7 including those that are threatened or endangered;
8 (3) Park lands, wilderness, and beach reserves;
9 (4) Shoreline and coastal resources;
10 (5) Native forests and other forested areas;
11 (6) Wetlands, natural streams, and lakes;
12 (7) Scenic, historic, archaeological, and cultural areas;
13 and
14 (8) Recreational resources and areas highly susceptible to
15 erosion, landslides, flooding, volcanic hazards, and
16 other conditions that may threaten lives or property.

17 The "forest and water reserve zones" provided in Act 234,
18 section 2, Session Laws of Hawaii 1957, are renamed
19 "conservation districts" and, effective as of July 11, 1961, the
20 boundaries of the forest and water reserve zones theretofore
21 established pursuant to Act 234, section 2, Session Laws of



1 Hawaii 1957, shall constitute the boundaries of the conservation
2 districts; provided that thereafter the power to determine the
3 boundaries of the conservation districts shall be in the
4 commission. Areas not suited to agricultural activities by
5 reason of topography or other characteristics may be included in
6 conservation districts.

7 (f) In establishing the boundaries of the districts in each
8 county, the commission shall give consideration to the master
9 plan or general plan of the county.

10 ~~[(b) Urban districts shall include activities or uses as~~
11 ~~provided by ordinances or regulations of the county within which~~
12 ~~the urban district is situated.~~

13 ~~In addition, urban districts shall include geothermal~~
14 ~~resources exploration and geothermal resources development, as~~
15 ~~defined under section 182-1, as permissible uses.~~

16 ~~(c) Rural districts shall include activities or uses as~~
17 ~~characterized by low density residential lots of not more than~~
18 ~~one dwelling house per one half acre, except as provided by~~
19 ~~county ordinance pursuant to section 46-4(c), in areas where~~
20 ~~"city-like" concentration of people, structures, streets, and~~
21 ~~urban level of services are absent, and where small farms are~~



1 ~~intermixed with low density residential lots except that within~~
2 ~~a subdivision, as defined in section 484 1, the commission for~~
3 ~~good cause may allow one lot of less than one half acre, but not~~
4 ~~less than eighteen thousand five hundred square feet, or an~~
5 ~~equivalent residential density, within a rural subdivision and~~
6 ~~permit the construction of one dwelling on such lot, provided~~
7 ~~that all other dwellings in the subdivision shall have a minimum~~
8 ~~lot size of one half acre or 21,780 square feet. Such petition~~
9 ~~for variance may be processed under the special permit~~
10 ~~procedure. These districts may include contiguous areas which~~
11 ~~are not suited to low density residential lots or small farms by~~
12 ~~reason of topography, soils, and other related characteristics.~~
13 ~~Rural districts shall also include golf courses, golf driving~~
14 ~~ranges, and golf related facilities.~~

15 ~~In addition to the uses listed in this subsection, rural~~
16 ~~districts shall include geothermal resources exploration and~~
17 ~~geothermal resources development, as defined under section~~
18 ~~182 1, as permissible uses.~~

19 ~~(d) Agricultural districts shall include:~~



- 1 ~~(1) Activities or uses as characterized by the cultivation~~
2 ~~of crops, crops for bioenergy, orchards, forage, and~~
3 ~~forestry;~~
- 4 ~~(2) Farming activities or uses related to animal husbandry~~
5 ~~and game and fish propagation;~~
- 6 ~~(3) Aquaculture, which means the production of aquatic~~
7 ~~plant and animal life within ponds and other bodies of~~
8 ~~water;~~
- 9 ~~(4) Wind generated energy production for public, private,~~
10 ~~and commercial use;~~
- 11 ~~(5) Biofuel production, as described in section~~
12 ~~205-4.5(a)(16), for public, private, and commercial~~
13 ~~use;~~
- 14 ~~(6) Solar energy facilities; provided that:~~
- 15 ~~(A) This paragraph shall apply only to land with soil~~
16 ~~classified by the land study bureau's detailed~~
17 ~~land classification as overall (master)~~
18 ~~productivity rating class B, C, D, or E; and~~
- 19 ~~(B) Solar energy facilities placed within land with~~
20 ~~soil classified as overall productivity rating~~
21 ~~class B or C shall not occupy more than ten per~~



1 ~~cent of the acreage of the parcel, or twenty~~
2 ~~acres of land, whichever is lesser, unless a~~
3 ~~special use permit is granted pursuant to section~~
4 ~~205-6;~~

5 ~~(7) Bona fide agricultural services and uses that support~~
6 ~~the agricultural activities of the fee or leasehold~~
7 ~~owner of the property and accessory to any of the~~
8 ~~above activities, regardless of whether conducted on~~
9 ~~the same premises as the agricultural activities to~~
10 ~~which they are accessory, including farm dwellings as~~
11 ~~defined in section 205-4.5(a)(4), employee housing,~~
12 ~~farm buildings, mills, storage facilities, processing~~
13 ~~facilities, photovoltaic, biogas, and other small~~
14 ~~scale renewable energy systems producing energy solely~~
15 ~~for use in the agricultural activities of the fee or~~
16 ~~leasehold owner of the property, agricultural energy~~
17 ~~facilities as defined in section 205-4.5(a)(17),~~
18 ~~hydroelectric facilities in accordance with section~~
19 ~~205-4.5(a)(23), vehicle and equipment storage areas,~~
20 ~~and plantation community subdivisions as defined in~~
21 ~~section 205-4.5(a)(12);~~



- 1 ~~(8) Wind machines and wind farms;~~
- 2 ~~(9) Small scale meteorological, air quality, noise, and~~
- 3 ~~other scientific and environmental data collection and~~
- 4 ~~monitoring facilities occupying less than one half~~
- 5 ~~acre of land; provided that these facilities shall not~~
- 6 ~~be used as or equipped for use as living quarters or~~
- 7 ~~dwellings;~~
- 8 ~~(10) Agricultural parks;~~
- 9 ~~(11) Agricultural tourism conducted on a working farm, or a~~
- 10 ~~farming operation as defined in section 165-2, for the~~
- 11 ~~enjoyment, education, or involvement of visitors;~~
- 12 ~~provided that the agricultural tourism activity is~~
- 13 ~~accessory and secondary to the principal agricultural~~
- 14 ~~use and does not interfere with surrounding farm~~
- 15 ~~operations; and provided further that this paragraph~~
- 16 ~~shall apply only to a county that has adopted~~
- 17 ~~ordinances regulating agricultural tourism under~~
- 18 ~~section 205-5;~~
- 19 ~~(12) Agricultural tourism activities, including overnight~~
- 20 ~~accommodations of twenty one days or less, for any one~~
- 21 ~~stay within a county; provided that this paragraph~~



1 ~~shall apply only to a county that includes at least~~
 2 ~~three islands and has adopted ordinances regulating~~
 3 ~~agricultural tourism activities pursuant to section~~
 4 ~~205-5, provided further that the agricultural tourism~~
 5 ~~activities coexist with a bona fide agricultural~~
 6 ~~activity. For the purposes of this paragraph, "bona~~
 7 ~~fide agricultural activity" means a farming operation~~
 8 ~~as defined in section 165-2;~~

9 ~~(13) Open area recreational facilities;~~

10 ~~(14) Geothermal resources exploration and geothermal~~
 11 ~~resources development, as defined under section 182-1;~~
 12 ~~and~~

13 ~~(15) Agricultural based commercial operations, including:~~

14 ~~(A) A roadside stand that is not an enclosed~~
 15 ~~structure, owned and operated by a producer for~~
 16 ~~the display and sale of agricultural products~~
 17 ~~grown in Hawaii and value added products that~~
 18 ~~were produced using agricultural products grown~~
 19 ~~in Hawaii;~~

20 ~~(B) Retail activities in an enclosed structure owned~~
 21 ~~and operated by a producer for the display and~~



1 ~~sale of agricultural products grown in Hawaii,~~
2 ~~value added products that were produced using~~
3 ~~agricultural products grown in Hawaii, logo items~~
4 ~~related to the producer's agricultural~~
5 ~~operations, and other food items, and~~
6 ~~(C) A retail food establishment owned and operated by~~
7 ~~a producer and permitted under title 11, chapter~~
8 ~~12 of the rules of the department of health that~~
9 ~~prepares and serves food at retail using products~~
10 ~~grown in Hawaii and value added products that~~
11 ~~were produced using agricultural products grown~~
12 ~~in Hawaii.~~

13 ~~The owner of an agricultural based commercial~~
14 ~~operation shall certify, upon request of an officer or~~
15 ~~agent charged with enforcement of this chapter under~~
16 ~~section 205-12, that the agricultural products~~
17 ~~displayed or sold by the operation meet the~~
18 ~~requirements of this paragraph.~~

19 ~~Agricultural districts shall not include golf courses and golf~~
20 ~~driving ranges, except as provided in section 205-4.5(d).~~

21 ~~Agricultural districts include areas that are not used for, or~~



1 that are not suited to, agricultural and ancillary activities by
2 reason of topography, soils, and other related characteristics.

3 ~~(e) Conservation districts shall include areas necessary
4 for protecting watersheds and water sources; preserving scenic
5 and historic areas; providing park lands, wilderness, and beach
6 reserves; conserving indigenous or endemic plants, fish, and
7 wildlife, including those which are threatened or endangered;
8 preventing floods and soil erosion; forestry; open space areas
9 whose existing openness, natural condition, or present state of
10 use, if retained, would enhance the present or potential value
11 of abutting or surrounding communities, or would maintain or
12 enhance the conservation of natural or scenic resources; areas
13 of value for recreational purposes; other related activities;
14 and other permitted uses not detrimental to a multiple use
15 conservation concept. Conservation districts shall also include
16 areas for geothermal resources exploration and geothermal
17 resources development, as defined under section 182-1.~~"

18 SECTION 7. Section 205-3.1, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§205-3.1 Amendments to district boundaries[-] involving
21 land areas less than fifteen acres. [~~(a) District boundary~~



1 ~~amendments involving lands in the conservation district, land~~
2 ~~areas greater than fifteen acres, or lands delineated as~~
3 ~~important agricultural lands shall be processed by the land use~~
4 ~~commission pursuant to section 205-4.~~

5 ~~(b)~~ (a) Any department or agency of the State, and
6 department or agency of the county in which the land is
7 situated, or any person with a property interest in the land
8 sought to be reclassified may petition the appropriate county
9 land use decision-making authority of the county in which the
10 land is situated for a change in the boundary of a district
11 involving lands less than fifteen acres presently in the rural
12 and urban districts and lands less than fifteen acres in the
13 agricultural district that are not designated as important
14 agricultural lands.

15 ~~(e)~~ (b) District boundary amendments involving land
16 areas of fifteen acres or less, except as provided in subsection
17 ~~(b)~~, (a), shall be determined by the appropriate county land
18 use decision-making authority for the district and shall not
19 require consideration by the ~~land use~~ commission ~~pursuant to~~
20 ~~section 205-4~~; provided that ~~such~~ the boundary amendments and
21 approved uses are consistent with this chapter~~.—The~~



1 ~~appropriate county land use decision making authority may~~
2 ~~consolidate proceedings to amend state land use district~~
3 ~~boundaries pursuant to this subsection, with] and are the result~~
4 ~~of county proceedings to amend the comprehensive general plan[7]~~
5 ~~or development plan[, zoning of the affected land, or such other~~
6 ~~proceedings].~~ Appropriate ordinances and rules to allow
7 consolidation of [~~such~~] proceedings may be developed by the
8 county land use decision-making authority.

9 ~~(d)~~ (c) The county land use decision-making authority
10 shall serve a copy of the application for a district boundary
11 amendment pursuant to subsection (a) to the [~~land use~~]
12 commission and the department of business, economic development,
13 and tourism and shall notify the commission and the department
14 of the time and place of the hearing and the proposed amendments
15 scheduled to be heard at the hearing. A change in the state
16 land use district boundaries pursuant to [~~this~~] subsection (a)
17 shall become effective [~~on the day designated by the county land~~
18 ~~use decision making authority in its decision. Within] no later~~
19 than sixty days [~~of the effective date of any] after the~~
20 decision to amend the state land use district boundaries by the
21 county land use decision-making authority[7]; provided that the



1 decision and the description and map of the affected property
2 shall be transmitted to the [~~land-use~~] commission and the
3 department of business, economic development, and tourism by the
4 county planning director."

5 SECTION 8. Section 205-4.5, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) Within the agricultural district, all lands with soil
8 classified by the land study bureau's detailed land
9 classification as overall (master) productivity rating class A
10 or B and for solar energy facilities, class B or C, shall be
11 restricted to the following permitted uses:

12 (1) Cultivation of crops, including crops for bioenergy,
13 flowers, vegetables, foliage, fruits, forage, and
14 timber;

15 (2) Game and fish propagation;

16 (3) Raising of livestock, including poultry, bees, fish,
17 or other animal or aquatic life that are propagated
18 for economic or personal use;

19 (4) Farm dwellings, employee housing, farm buildings, or
20 activities or uses related to farming and animal
21 husbandry. "Farm dwelling", as used in this



1 paragraph, means a single-family dwelling located on
2 and used in connection with a farm, including clusters
3 of single-family farm dwellings permitted within
4 agricultural parks developed by the State, or where
5 agricultural activity provides income to the family
6 occupying the dwelling;

7 (5) Public institutions and buildings that are necessary
8 for agricultural practices;

9 (6) Public and private open area types of recreational
10 uses, including day camps, picnic grounds, parks, and
11 riding stables, but not including dragstrips,
12 airports, drive-in theaters, golf courses, golf
13 driving ranges, country clubs, and overnight camps;

14 (7) Public, private, and quasi-public utility lines and
15 roadways, transformer stations, communications
16 equipment buildings, solid waste transfer stations,
17 major water storage tanks, and appurtenant small
18 buildings such as booster pumping stations, but not
19 including offices or yards for equipment, material,
20 vehicle storage, repair or maintenance, treatment



1 plants, corporation yards, or other similar
2 structures;

3 (8) Retention, restoration, rehabilitation, or improvement
4 of buildings or sites of historic or scenic interest;

5 (9) Agricultural-based commercial operations [~~as described~~
6 ~~in section 205-2(d)(15)+~~], including:

7 (A) A roadside stand that is not an enclosed
8 structure, owned and operated by a producer for
9 the display and sale of agricultural products
10 grown in Hawaii and value-added products that
11 were produced using agricultural products grown
12 in Hawaii;

13 (B) Retail activities in an enclosed structure owned
14 and operated by a producer for the display and
15 sale of agricultural products grown in Hawaii,
16 value-added products that were produced using
17 agricultural products grown in Hawaii, logo items
18 related to the producer's agricultural
19 operations, and other food items; and

20 (C) A retail food establishment owned and operated by
21 a producer and permitted under title 11, chapter



1 12 of the rules of the department of health that
2 prepares and serves food at retail using products
3 grown in Hawaii and value-added products that
4 were produced using agricultural products grown
5 in Hawaii;

6 provided that the owner of an agricultural-based
7 commercial operation shall certify, upon request of an
8 officer or agent charged with enforcement of this
9 chapter under section 205-12, that the agricultural
10 products displayed or sold by the operation meet the
11 requirements of this paragraph;

12 (10) ~~[Buildings and uses, including]~~ Bona fide agricultural
13 services and uses that support the agricultural
14 activities of the fee or leasehold owner of the
15 property and accessory to the activities in this
16 section, including employee housing, farm buildings,
17 mills, storage, and processing facilities, maintenance
18 facilities, photovoltaic, biogas, and other small-
19 scale renewable energy systems producing energy solely
20 for use in the agricultural activities of the fee or
21 leasehold owner of the property, and vehicle and



1 equipment storage areas that are normally considered
2 directly accessory to the above-mentioned uses [~~and~~
3 ~~are permitted under section 205-2(d)~~];

4 (11) Agricultural parks;

5 (12) Plantation community subdivisions, which as used in
6 this chapter means an established subdivision or
7 cluster of employee housing, community buildings, and
8 agricultural support buildings on land currently or
9 formerly owned, leased, or operated by a sugar or
10 pineapple plantation; provided that the existing
11 structures may be used or rehabilitated for use, and
12 new employee housing and agricultural support
13 buildings may be allowed on land within the
14 subdivision as follows:

15 (A) The employee housing is occupied by employees or
16 former employees of the plantation who have a
17 property interest in the land;

18 (B) The employee housing units not owned by their
19 occupants shall be rented or leased at affordable
20 rates for agricultural workers; or



- 1 (C) The agricultural support buildings shall be
2 rented or leased to agricultural business
3 operators or agricultural support services;
- 4 (13) Agricultural tourism conducted on a working farm, or a
5 farming operation as defined in section 165-2, for the
6 enjoyment, education, or involvement of visitors;
7 provided that the agricultural tourism activity is
8 accessory and secondary to the principal agricultural
9 use and does not interfere with surrounding farm
10 operations; and provided further that this paragraph
11 shall apply only to a county that has adopted
12 ordinances regulating agricultural tourism under
13 section 205-5;
- 14 (14) Agricultural tourism activities, including overnight
15 accommodations of twenty-one days or less, for any one
16 stay within a county; provided that this paragraph
17 shall apply only to a county that includes at least
18 three islands and has adopted ordinances regulating
19 agricultural tourism activities pursuant to section
20 205-5; provided further that the agricultural tourism
21 activities coexist with a bona fide agricultural



1 activity. For the purposes of this paragraph, "bona
2 fide agricultural activity" means a farming operation
3 as defined in section 165-2;

4 (15) Wind energy facilities, including the appurtenances
5 associated with the production and transmission of
6 wind generated energy; provided that the wind energy
7 facilities and appurtenances are compatible with
8 agriculture uses and cause minimal adverse impact on
9 agricultural land;

10 (16) Biofuel processing facilities, including the
11 appurtenances associated with the production and
12 refining of biofuels that is normally considered
13 directly accessory and secondary to the growing of the
14 energy feedstock; provided that biofuel processing
15 facilities and appurtenances do not adversely impact
16 agricultural land and other agricultural uses in the
17 vicinity.

18 For the purposes of this paragraph:

19 "Appurtenances" means operational infrastructure
20 of the appropriate type and scale for economic
21 commercial storage and distribution, and other similar



1 handling of feedstock, fuels, and other products of
2 biofuel processing facilities.

3 "Biofuel processing facility" means a facility
4 that produces liquid or gaseous fuels from organic
5 sources such as biomass crops, agricultural residues,
6 and oil crops, including palm, canola, soybean, and
7 waste cooking oils; grease; food wastes; and animal
8 residues and wastes that can be used to generate
9 energy;

10 (17) Agricultural-energy facilities, including
11 appurtenances necessary for an agricultural-energy
12 enterprise; provided that the primary activity of the
13 agricultural-energy enterprise is agricultural
14 activity. To be considered the primary activity of an
15 agricultural-energy enterprise, the total acreage
16 devoted to agricultural activity shall be not less
17 than ninety per cent of the total acreage of the
18 agricultural-energy enterprise. The agricultural-
19 energy facility shall be limited to lands owned,
20 leased, licensed, or operated by the entity conducting
21 the agricultural activity.



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As used in this paragraph:

"Agricultural activity" means any activity described in paragraphs (1) to (3) of this subsection.

"Agricultural-energy enterprise" means an enterprise that integrally incorporates an agricultural activity with an agricultural-energy facility.

"Agricultural-energy facility" means a facility that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State.

"Appurtenances" means operational infrastructure of the appropriate type and scale for the economic commercial generation, storage, distribution, and other similar handling of energy, including equipment, feedstock, fuels, and other products of agricultural-energy facilities;

(18) Construction and operation of wireless communication antennas; provided that, for the purposes of this



1 paragraph, "wireless communication antenna" means
2 communications equipment that is either freestanding
3 or placed upon or attached to an already existing
4 structure and that transmits and receives
5 electromagnetic radio signals used in the provision of
6 all types of wireless communications services;
7 provided further that nothing in this paragraph shall
8 be construed to permit the construction of any new
9 structure that is not deemed a permitted use under
10 this subsection;

11 (19) Agricultural education programs conducted on a farming
12 operation as defined in section 165-2, for the
13 education and participation of the general public;
14 provided that the agricultural education programs are
15 accessory and secondary to the principal agricultural
16 use of the parcels or lots on which the agricultural
17 education programs are to occur and do not interfere
18 with surrounding farm operations. For the purposes of
19 this section, "agricultural education programs" means
20 activities or events designed to promote knowledge and
21 understanding of agricultural activities and practices



1 conducted on a farming operation as defined in section
2 165-2;

3 (20) Solar energy facilities that do not occupy more than
4 ten per cent of the acreage of the parcel, or twenty
5 acres of land, whichever is lesser or for which a
6 special use permit is granted pursuant to section 205-
7 6; provided that this use shall not be permitted on
8 lands with soil classified by the land study bureau's
9 detailed land classification as overall (master)
10 productivity rating class A unless the solar energy
11 facilities are:

12 (A) Located on a paved or unpaved road in existence
13 as of December 31, 2013, and the parcel of land
14 upon which the paved or unpaved road is located
15 has a valid county agriculture tax dedication
16 status or a valid agricultural conservation
17 easement;

18 (B) Placed in a manner that still allows vehicular
19 traffic to use the road; and

20 (C) Granted a special use permit by the commission
21 pursuant to section 205-6;



- 1 (21) Solar energy facilities on lands with soil classified
2 by the land study bureau's detailed land
3 classification as overall (master) productivity rating
4 B or C for which a special use permit is granted
5 pursuant to section 205-6; provided that:
- 6 (A) The area occupied by the solar energy facilities
7 is also made available for compatible
8 agricultural activities at a lease rate that is
9 at least fifty per cent below the fair market
10 rent for comparable properties;
- 11 (B) Proof of financial security to decommission the
12 facility is provided to the satisfaction of the
13 appropriate county planning commission prior to
14 date of commencement of commercial generation;
15 and
- 16 (C) Solar energy facilities shall be decommissioned
17 at the owner's expense according to the following
18 requirements:
- 19 (i) Removal of all equipment related to the
20 solar energy facility within twelve months



1 of the conclusion of operation or useful
2 life; and
3 (ii) Restoration of the disturbed earth to
4 substantially the same physical condition as
5 existed prior to the development of the
6 solar energy facility.

7 For the purposes of this paragraph, "agricultural
8 activities" means the activities described in
9 paragraphs (1) to (3);

10 (22) Geothermal resources exploration and geothermal
11 resources development, as defined under section 182-1;
12 [~~or~~]

13 (23) Hydroelectric facilities, including the appurtenances
14 associated with the production and transmission of
15 hydroelectric energy[~~, subject to section 205-2~~];
16 provided that the hydroelectric facilities and their
17 appurtenances:

18 (A) Have a hydroelectric generating capacity of not
19 more than five hundred kilowatts;

20 (B) Comply with the state water code, chapter 174C;



1 (C) Are accessory to agricultural activities on
2 agricultural land for agricultural use only; and
3 (D) Do not adversely impact or impede the use of
4 agricultural land or the availability of surface
5 or ground water for all uses on all parcels that
6 are served by the ground water sources or streams
7 for which hydroelectric facilities are
8 considered[-] or

9 (24) Small-scale meteorological, air quality, noise, and
10 other scientific and environmental data collection and
11 monitoring facilities occupying less than one-half
12 acre of land; provided that these facilities shall not
13 be used as or equipped for use as living quarters or
14 dwellings."

15 SECTION 9. Section 205-4.6, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) Agricultural uses and activities as defined in
18 [~~sections 205-2(d) and~~] section 205-4.5(a) on lands classified
19 as agricultural shall not be restricted by any private agreement
20 contained in any:



1 (1) Deed, agreement of sale, or other conveyance of land
2 recorded in the bureau of conveyances after July 8,
3 2003, that subject [~~such~~] agricultural lands to any
4 servitude, including but not limited to covenants,
5 easements, or equitable and reciprocal negative
6 servitudes; and

7 (2) Condominium declaration, map, bylaws, and other
8 documents executed and submitted in accordance with
9 chapter 514A or 514B.

10 Any [~~such~~] private restriction limiting or prohibiting
11 agricultural use or activity shall be voidable, subject to
12 special restrictions enacted by the county ordinance pursuant to
13 section 46-4; except that restrictions taken to protect
14 environmental or cultural resources, agricultural leases,
15 utility easements, and access easements shall not be subject to
16 this section."

17 SECTION 10. Section 205-5, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§205-5 Zoning. (a) Except as [~~herein~~] provided[~~7~~] in
20 this chapter, the powers granted to counties under section 46-4
21 shall govern the zoning within the urban, rural, and



1 agricultural districts [~~, other than in conservation districts~~].

2 Conservation districts shall be governed by the department of
3 land and natural resources pursuant to chapter 183C.

4 (b) Within agricultural districts, uses [~~compatible to~~
5 ~~the~~] and activities described in section [~~205-2~~] 205-4.5 as
6 determined by the commission shall be permitted; provided that
7 accessory agricultural uses and services described in [~~sections~~
8 ~~205-2 and~~] section 205-4.5 may be further defined by each county
9 by zoning ordinance. Each county shall adopt ordinances setting
10 forth procedures and requirements, including provisions for
11 enforcement, penalties, and administrative oversight, for the
12 review and permitting of agricultural tourism uses and
13 activities as an accessory use on a working farm, or farming
14 operation as defined in section 165-2. Ordinances shall include
15 but not be limited to:

16 (1) Requirements for access to a farm, including road
17 width, road surface, and parking;

18 (2) Requirements and restrictions for accessory facilities
19 connected with the farming operation, including gift
20 shops and restaurants;



1 (3) Activities that may be offered by the farming
2 operation for visitors;

3 (4) Days and hours of operation; and

4 (5) Automatic termination of the accessory use upon the
5 cessation of the farming operation.

6 Each county may require an environmental assessment under
7 chapter 343 as a condition to any agricultural tourism use and
8 activity. Other uses may be allowed by special permits issued
9 pursuant to this chapter. The minimum lot size in agricultural
10 districts shall be determined by each county by zoning
11 ordinance, subdivision ordinance, or other lawful means;
12 provided that the minimum lot size for any agricultural use
13 shall not be less than one acre, except as provided herein. If
14 the county finds that unreasonable economic hardship to the
15 owner or lessee of land cannot otherwise be prevented or where
16 land utilization is improved, the county may allow lot sizes of
17 less than the minimum lot size as specified by law for lots
18 created by a consolidation of existing lots within an
19 agricultural district and the resubdivision thereof; provided
20 that the consolidation and resubdivision do not result in an
21 increase in the number of lots over the number existing prior to



1 consolidation; and provided further that in no event shall a lot
2 [whieh] that is equal to or exceeds the minimum lot size of one
3 acre be less than that minimum after the consolidation and
4 resubdivision action. The county may also allow lot sizes of
5 less than the minimum lot size as specified by law for lots
6 created or used for plantation community subdivisions as defined
7 in section 205-4.5(a)(12), for public, private, and quasi-public
8 utility purposes, and for lots resulting from the subdivision of
9 abandoned roadways and railroad easements.

10 (c) Unless authorized by special permit issued pursuant to
11 this chapter, only the [~~following~~] uses compatible with the
12 activities described in section 205-2(c), as approved by the
13 commission, shall be permitted within rural districts[+]

- 14 ~~(1) Low density residential uses;~~
15 ~~(2) Agricultural uses;~~
16 ~~(3) Golf courses, golf driving ranges, and golf-related~~
17 ~~facilities;~~
18 ~~(4) Public, quasi-public, and public utility facilities;~~
19 ~~and~~
20 ~~(5) Geothermal resources exploration and geothermal~~
21 ~~resources development, as defined under section 182-1.~~



1 ~~In addition, the minimum lot size for any low density~~
2 ~~residential use shall be one half acre and there shall be but~~
3 ~~one dwelling house per one half acre, except as provided for in~~
4 ~~section 205-2]."~~

5 SECTION 11. Section 205-6, Hawaii Revised Statutes, is
6 amended follows:

7 1. By amending subsection (a) to read:

8 "(a) Subject to this section, the county planning
9 commission may permit certain unusual and reasonable uses within
10 agricultural and rural districts other than those for which the
11 district is classified. Any person who desires to use the
12 person's land within an agricultural or rural district other
13 than for an agricultural or rural use, as the case may be, [may]
14 shall petition the planning commission of the county within
15 which the person's land is located for permission to use the
16 person's land in the manner desired. The petition shall
17 include:

18 (1) The name and address of the petitioner and a
19 description of the petitioner's interest in the
20 property;



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- 1 (2) The address, the tax map key number, and a description
2 of the property along with a map of the property; and
3 (3) Any other supporting information and exhibits that the
4 county planning commission shall require.

5 Each county may establish the appropriate fee for
6 processing the special permit petition. Copies of the special
7 permit petition shall be forwarded to the [~~land-use~~]
8 commission[~~7~~]. The commission may forward the petition to the
9 office of planning[~~7~~] and the department of agriculture for
10 their review and comment."

11 2. By amending subsections (e) and (f) to read:

12 "(e) A copy of the petition and decision, together with
13 the complete record of the proceeding before the county planning
14 commission on all special permit requests involving a land area
15 greater than fifteen acres or for lands designated as important
16 agricultural lands, shall be transmitted to the [~~land-use~~]
17 commission within sixty days after the decision is rendered.

18 Within forty-five days after receipt of the complete record
19 from the county planning commission, the [~~land-use~~] commission
20 shall act to approve, approve with modification, or deny the
21 petition. A denial either by the county planning commission or



1 by the [~~land-use~~] commission, or a modification by the [~~land~~
2 ~~use~~] commission, as the case may be, of the desired use shall be
3 appealable to the circuit court of the circuit in which the land
4 is situated and shall be made pursuant to the Hawaii rules of
5 civil procedure.

6 (f) Land uses substantially involving or supporting
7 educational ecotourism, related to the preservation of native
8 Hawaiian endangered, threatened, proposed, and candidate
9 species, that are allowed in an approved habitat conservation
10 plan under section 195D-21 or safe harbor agreement under
11 section 195D-22, which are not identified as permissible uses
12 within the agricultural district under [~~sections 205-2 and~~
13 section 205-4.5, may be permitted in the agricultural district
14 by special permit under this section, on lands with soils
15 classified by the land study bureau's detailed land
16 classification as overall (master) productivity rating class C,
17 D, E, or U."

18 SECTION 12. Section 205-18, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§205-18 **Periodic review of districts.** The [~~office of~~
21 ~~planning~~] commission shall undertake a review of the



1 classification and districting of all lands in the State, within
2 five years from December 31, [~~1985,~~] 2016 and every fifth year
3 thereafter. The [~~office,~~] commission in its five-year boundary
4 review, shall focus its efforts on reviewing the Hawaii state
5 plan, county general plans, and county development and community
6 plans. Upon completion of the five-year boundary review, [~~the~~
7 ~~office shall submit a report of the findings to~~] the
8 commission[~~.—The office~~] may initiate state land use boundary
9 amendments [~~which~~] that it deems appropriate to conform to these
10 plans. The [~~office~~] commission may seek assistance of
11 appropriate state and county agencies and may employ consultants
12 and undertake studies in making this review."

13 SECTION 13. Section 343-5, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) Except as otherwise provided, an environmental
16 assessment shall be required for actions that:

17 (1) Propose the use of state or county lands or the use of
18 state or county funds, other than funds to be used for
19 feasibility or planning studies for possible future
20 programs or projects that the agency has not approved,
21 adopted, or funded, or funds to be used for the



- 1 acquisition of unimproved real property; provided that
2 the agency shall consider environmental factors and
3 available alternatives in its feasibility or planning
4 studies; provided further that an environmental
5 assessment for proposed uses under section [205-
6 ~~2(d)(11) or~~] 205-4.5(a)(13) shall only be required
7 pursuant to section 205-5(b);
- 8 (2) Propose any use within any land classified as a
9 conservation district by the state land use commission
10 under chapter 205;
- 11 (3) Propose any use within a shoreline area as defined in
12 section 205A-41;
- 13 (4) Propose any use within any historic site as designated
14 in the National Register or Hawaii Register, as
15 provided for in the Historic Preservation Act of 1966,
16 Public Law 89-665, or chapter 6E;
- 17 (5) Propose any use within the Waikiki area of Oahu, the
18 boundaries of which are delineated in the land use
19 ordinance as amended, establishing the "Waikiki
20 Special District";



- 1 (6) Propose any amendments to existing county general
2 plans where the amendment would result in designations
3 other than agriculture, conservation, or preservation,
4 except actions proposing any new county general plan
5 or amendments to any existing county general plan
6 initiated by a county;
- 7 (7) Propose any reclassification of any land classified as
8 a conservation district by the state land use
9 commission under chapter 205;
- 10 (8) Propose the construction of new or the expansion or
11 modification of existing helicopter facilities within
12 the State, that by way of their activities, may
13 affect:
 - 14 (A) Any land classified as a conservation district by
15 the state land use commission under chapter 205;
 - 16 (B) A shoreline area as defined in section 205A-41;
17 or
 - 18 (C) Any historic site as designated in the National
19 Register or Hawaii Register, as provided for in
20 the Historic Preservation Act of 1966, Public Law
21 89-665, or chapter 6E; or until the statewide



1 historic places inventory is completed, any
 2 historic site that is found by a field
 3 reconnaissance of the area affected by the
 4 helicopter facility and is under consideration
 5 for placement on the National Register or the
 6 Hawaii Register of Historic Places; and

- 7 (9) Propose any:
- 8 (A) Wastewater treatment unit, except an individual
 - 9 wastewater system or a wastewater treatment unit
 - 10 serving fewer than fifty single-family dwellings
 - 11 or the equivalent;
 - 12 (B) Waste-to-energy facility;
 - 13 (C) Landfill;
 - 14 (D) Oil refinery; or
 - 15 (E) Power-generating facility."

16 SECTION 14. Section 205-14, Hawaii Revised Statutes, is
 17 repealed.

18 [~~§205-14 Adjustments of assessing practices. Upon the~~
 19 ~~adoption of district boundaries, certified copies of the~~
 20 ~~classification maps showing the district boundaries shall be~~
 21 ~~filed with the department of taxation. Thereafter, the~~



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1 ~~department of taxation shall, when making assessments of~~
 2 ~~property within a district, give consideration to the use or~~
 3 ~~uses that may be made thereof as well as the uses to which it is~~
 4 ~~then devoted."]~~

5 SECTION 15. Statutory material to be repealed is bracketed
 6 and stricken. New statutory material is underscored.

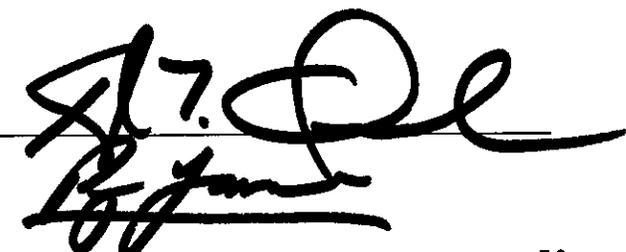
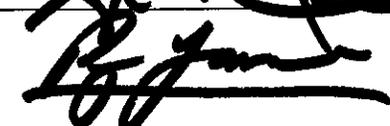
7 SECTION 16. This Act shall take effect upon its approval;
 8 provided that:

9 (1) The amendments made to section 201N-14(d), Hawaii
 10 Revised Statutes, by section 4 of this Act shall be
 11 repealed on the same date as section 2 of Act 173,
 12 Session Laws of Hawaii 2009, pursuant to section 7 of
 13 Act 173, Session Laws of Hawaii 2009, as amended by
 14 section 4 of Act 201, Session Laws of Hawaii 2011; and

15 (2) The amendments made to section 205-4.5(a), Hawaii
 16 Revised Statutes, by section 8 of this Act shall not
 17 be repealed when section 205-4.5, Hawaii Revised
 18 Statutes, is reenacted on June 30, 2019, pursuant to
 19 Act 52, Session Laws of Hawaii 2014.

20

INTRODUCED BY:




JAN 27 2016

H.B. NO. 2617

Report Title:

State Land Use Commission; Zoning; Boundary Amendments

Description:

Authorizes the counties to petition LUC to reclassify lands. Requires LUC to group contiguous lands, set land boundary standards, ensure land use descriptions conform to the state plan and county plans. Establishes criteria and guidelines for districting and classification of urban, rural, agricultural, and conservation districts. Clarifies jurisdiction of the counties for amendments to district boundaries for lands 15 acres and less. Establishes requirements for special use permit applications. Requires LUC to conduct the five year regional boundary change review. Repeals section relating to real property tax assessment where the State administered the property tax.

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

