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## A BILL FOR AN ACT

RELATING TO COUNTIES.

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

1           SECTION 1. The legislature finds that zoning has  
2 traditionally been a function delegated by the State to the  
3 counties pursuant to section 46-4, Hawaii Revised Statutes.  
4 Counties are thereby authorized to establish zoning  
5 classifications and provide for allowable uses and structures  
6 within those classifications.

7           The legislature further finds that, while some short-term  
8 rentals are permitted by zoning and others are granted permits  
9 to operate, still other short-term rentals are allowed to  
10 operate by virtue of their status as legal, nonconforming uses  
11 that have been grandfathered in. The legislature also finds  
12 that the zoning authority granted to counties to promote their  
13 orderly development would be enhanced by explicitly providing  
14 that a county may choose to phase out permitted, nonconforming,  
15 or otherwise allowed short-term rental operations in any zoning  
16 classification over time, where the county determines these  
17 operations are inappropriate.



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1           The purpose of this Act is to make explicit the counties'  
2 authority to enact ordinances allowing for the amortization or  
3 phasing out of permitted, nonconforming, or otherwise allowed  
4 short-term rentals in any zoning classification.

5           SECTION 2. Section 46-4, Hawaii Revised Statutes, is  
6 amended by amending subsection (a) to read as follows:

7           "(a) This section and any ordinance, rule, or regulation  
8 adopted in accordance with this section shall apply to lands not  
9 contained within the forest reserve boundaries as established on  
10 January 31, 1957, or as subsequently amended.

11           Zoning in all counties shall be accomplished within the  
12 framework of a long-range, comprehensive general plan prepared  
13 or being prepared to guide the overall future development of the  
14 county. Zoning shall be one of the tools available to the  
15 county to put the general plan into effect in an orderly manner.  
16 Zoning in the counties of Hawaii, Maui, and Kauai means the  
17 establishment of districts of such number, shape, and area, and  
18 the adoption of regulations for each district to carry out the  
19 purposes of this section. In establishing or regulating the  
20 districts, full consideration shall be given to all available  
21 data as to soil classification and physical use capabilities of



1 the land to allow and encourage the most beneficial use of the  
2 land consonant with good zoning practices. The zoning power  
3 granted herein shall be exercised by ordinance which may relate  
4 to:

- 5 (1) The areas within which agriculture, forestry,  
6 industry, trade, and business may be conducted;
- 7 (2) The areas in which residential uses may be regulated  
8 or prohibited;
- 9 (3) The areas bordering natural watercourses, channels,  
10 and streams, in which trades or industries, filling or  
11 dumping, erection of structures, and the location of  
12 buildings may be prohibited or restricted;
- 13 (4) The areas in which particular uses may be subjected to  
14 special restrictions;
- 15 (5) The location of buildings and structures designed for  
16 specific uses and designation of uses for which  
17 buildings and structures may not be used or altered;
- 18 (6) The location, height, bulk, number of stories, and  
19 size of buildings and other structures;
- 20 (7) The location of roads, schools, and recreation areas;
- 21 (8) Building setback lines and future street lines;



- 1           (9) The density and distribution of population;
- 2           (10) The percentage of a lot that may be occupied, size of
- 3                 yards, courts, and other open spaces;
- 4           (11) Minimum and maximum lot sizes; and
- 5           (12) Other regulations the boards or city council find
- 6                 necessary and proper to permit and encourage the
- 7                 orderly development of land resources within their
- 8                 jurisdictions.

9           The council of any county shall prescribe rules,

10 regulations, and administrative procedures and provide personnel

11 it finds necessary to enforce this section and any ordinance

12 enacted in accordance with this section. The ordinances may be

13 enforced by appropriate fines and penalties, civil or criminal,

14 or by court order at the suit of the county or the owner or

15 owners of real estate directly affected by the ordinances.

16           Any civil fine or penalty provided by ordinance under this

17 section may be imposed by the district court, or by the zoning

18 agency after an opportunity for a hearing pursuant to chapter

19 91. The proceeding shall not be a prerequisite for any

20 injunctive relief ordered by the circuit court.



1           Nothing in this section shall invalidate any zoning  
2 ordinance or regulation adopted by any county or other agency of  
3 government pursuant to the statutes in effect [~~prior to~~] before  
4 July 1, 1957.

5           The powers granted herein shall be liberally construed in  
6 favor of the county exercising them, and in such a manner as to  
7 promote the orderly development of each county or city and  
8 county in accordance with a long-range, comprehensive general  
9 plan to ensure the greatest benefit for the State as a whole.  
10 This section shall not be construed to limit or repeal any  
11 powers of any county to achieve these ends through zoning and  
12 building regulations, except insofar as forest and water reserve  
13 zones are concerned and as provided in subsections (c) and (d).

14           Neither this section nor any ordinance enacted pursuant to  
15 this section shall prohibit the continued lawful use of any  
16 building or premises for any trade, industrial, residential,  
17 agricultural, or other purpose for which the building or  
18 premises is used at the time this section or the ordinance takes  
19 effect; provided that a zoning ordinance may provide for  
20 elimination of nonconforming uses as the uses are discontinued,  
21 or for the amortization or phasing out of nonconforming uses or



1 signs over a reasonable period of time in commercial,  
2 industrial, resort, and apartment zoned areas only[-]; provided  
3 further that a zoning ordinance may provide for the amortization  
4 or phasing out of permitted, nonconforming, or otherwise allowed  
5 short-term rentals over a reasonable period of time in an area  
6 of any zoning classification. In no event shall such  
7 amortization or phasing out of nonconforming uses apply to any  
8 existing building or premises used for residential (single-  
9 family or duplex) or agricultural uses[-] other than permitted,  
10 nonconforming, or otherwise allowed short-term rentals as  
11 provided in this subsection.

12 Nothing in this section shall affect or impair the powers  
13 and duties of the director of transportation as set forth in  
14 chapter 262.

15 For purposes of this subsection, "short-term rental" means  
16 the payment for use, or swapping, bartering, or exchange, of a  
17 residential dwelling, or portion thereof, for a stay of less  
18 than one hundred eighty days, or a lesser maximum duration as  
19 determined by a county, by someone other than the owner, and  
20 includes transient vacation rentals as defined in section  
21 514E-1."



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1           SECTION 3. If any provision of this Act, or the  
2 application thereof to any person or circumstance, is held  
3 invalid, the invalidity does not affect other provisions or  
4 applications of the Act that can be given effect without the  
5 invalid provision or application, and to this end the provisions  
6 of this Act are severable.

7           SECTION 4. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9           SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: *Nadine K. Nelson*

JAN 20 2021



# H.B. NO. 76

**Report Title:**

Short-term Rentals; Nonconforming Use; Amortization; Counties

**Description:**

Makes explicit the counties' authority to enact ordinances to amortize or phase out permitted, nonconforming, or otherwise allowed short-term rentals in any zoning classification. Includes swapping, bartering, or exchange of a residential dwelling, or portion thereof, in definition of "short-term rental" for this purpose.

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

