

## ACT 205

A Bill for an Act Relating to Land Uses in the State of Hawaii.

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

SECTION 1. Experience and research to date on the application of the provisions of Act 187, Session Laws of Hawaii 1961, have demonstrated the need for clarifying the provisions of said Act 187 not only with reference to the division of authority between the land use commission and the counties, but also with respect to the hardship caused to land owners who wish to develop lands included in agricultural districts but where such lands are not at all suitable for agricultural uses. The purpose of this Act, therefore, is to clarify the provisions of Act 187, Session Laws of Hawaii 1961, in order to provide for a more effective administration and a more equitable application of the provisions of said Act 187.

SECTION 2. Chapter 98H, Revised Laws of Hawaii 1955 (1961 Supplement), relating to the state land use commission, is hereby amended to read:

### “CHAPTER 98H STATE LAND USE COMMISSION

“Section 98H-1. Establishment of the commission. The state land use commission, hereinafter called the 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 chairman of the board of land and natural resources and the director of the department of planning and economic development 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 economic development for administration purposes, as provided for 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 shall 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, accomplishments and recommendations to the governor and to the legislature through the governor.

**“Section 98H-2. Districting and classification of lands.** There shall be four major land use districts into which all lands in the State shall be placed: urban, rural, agricultural and conservation. The commission shall group contiguous land areas suitable for inclusion in one of these four major districts. The commission shall set standards for determining the boundaries of each district, provided that (a) 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; (b) 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; (c) 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 (d) in the establishment of the boundaries of conservation districts, the ‘forest and water reserve zones’ provided in section 19-70, are hereby re-named ‘conservation districts’ and, effective as of July 11, 1961, the boundaries of the forest and water reserve zones theretofore established pursuant to section 19-70, 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 master plan or 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 such 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; 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 areas: providing park lands, wilderness and beach reserves; conserving endemic plants, fish, and wildlife; preventing floods and soil erosion; forestry; and other related activities; and other permitted uses not detrimental to a multiple use conservation concept.

**"Section 98H-3. Adoption of district boundaries.** The commission shall prepare district classification maps not later than January 1, 1964 showing all the proposed boundaries of conservation, agriculture, rural and urban districts. 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 20 days prior to the hearing in a newspaper of general circulation within the county. Such notice shall indicate the time and place that 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 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 no sooner than May 1, 1964, nor later than July 1, 1964. The county concerned shall be furnished with copies of any written protest, comment or recommendation. The commission shall prepare and furnish each county with copies of classification maps for that county showing the district boundaries adopted in final form.

**"Section 98H-4. Amendments to district boundaries.** Any department or agency of the State or county, or any property owner or lessee may petition the commission for a change in the boundary of any

district, interim or permanent. Within 5 days of receipt the commission shall forward a copy of the petition to the planning commission of the county wherein the land is located. Within 90 days after receipt of the 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 agency for comments and recommendations in the same manner as any other request for a boundary change.

After 100 days but within 210 days of the original receipt of a petition the commission shall advertise a public hearing to be held on the appropriate island in accordance with the requirements of section 98H-3. 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. Within a period of not more than 90 days and 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 usable and adaptable for the use it is proposed to be classified, or (b) conditions and trends of development have so changed since the adoption of the present classification, that the proposed classification is reasonable.

**“Section 98H-5. Zoning.**

(a) Except as herein provided, the powers granted to counties under section 138-42 shall govern the zoning within the districts, other than in conservation districts. Conservation districts shall be governed by the department of land and natural resources pursuant to the provisions of section 19-70.

(b) Within agricultural districts, uses compatible to the activities described in sec. 98H-2 as determined by the commission shall be permitted. Other uses may be allowed by special permits issued pursuant to the provisions of this chapter. The county standards for agricultural subdivision existing as of May 1, 1963, shall constitute the minimum lot size of agricultural districts within the respective counties.

(c) Unless authorized by special permit issued pursuant to the provisions of this chapter, only the following uses shall be permitted within rural districts:

- (1) Low density residential uses;
- (2) Agricultural uses; and
- (3) Public, quasi-public and public utility facilities. In addition, the minimum lot size for any low density residential use shall be one-half acre and there shall be but one dwelling house per one-half acre.

**“Section 98H-6. Special permit.** The county planning commission and the zoning board of appeals of the city and county of Honolulu may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified. Any person who desires to use his land within an agricultural or rural district other than for an agricultural or rural use, as the case may be, may petition

the planning commission of the county within which his land is located or the zoning board of appeals in the case of the city and county of Honolulu for permission to use his land in the manner desired.

The planning commission, or the zoning board of appeals as the case may be, shall conduct a hearing within a period of not less than 30 nor more than 120 days from the receipt of the petition. The planning commission or the zoning board of appeals shall notify the land use commission and such persons and agencies that may have an interest in the subject matter of the time and place of the hearing.

The planning commission or zoning board of appeals 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. The planning commission or the zoning board of appeals shall act on such petition not earlier than 15 days after the public hearing. A decision in favor of the applicant shall require a majority vote of the total membership of the planning commission or of the zoning board of appeals, which shall be subject to the approval of the commission. A copy of the decision together with the findings shall be transmitted to the commission within 10 days after the decision is rendered. Within 45 days after receipt of the county agency's decision, the commission shall act to approve or deny. A denial either by the county agency or by the commission, as the case may be, of the desired use shall be appealable 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.

**“Section 98H-7. Adoption of regulations.** The commission shall by January 1, 1964, prepare proposed regulations relating to matters within its jurisdiction. At least one public hearing shall be held in each county in the manner provided in section 98H-3 of this chapter prior to the final adoption of its regulations. The final regulations for the State shall be adopted within a period of not more than 90 and not less than 45 days from the time of the final hearing in the State provided that its regulations shall be adopted not later than July 1, 1964.

**“Section 98H-8. Nonconforming uses.** The lawful use of land or buildings existing on the date of establishment of any interim agricultural district and rural district in final form may be continued although such use, including lot size, does not conform to the provisions of this chapter; provided that no nonconforming building shall be replaced, reconstructed or enlarged or changed to another nonconforming use and no nonconforming use of land shall be expanded or changed to another nonconforming use. In addition, if any nonconforming use of land or building is discontinued or held in abeyance for a period of one year, the further continuation of such use shall be prohibited.

**“Section 98H-9. Amendments to regulations.** By the same methods set forth in section 98H-4, a petition may be submitted to change, or the commission may initiate a change in its regulations. 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.

**“Section 98H-10. Use of field officers.** Notwithstanding the provisions of section 98H-4 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.

**“Section 98H-11. Periodic review of districts.** 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.

**“Section 98H-12. Enforcement.** The appropriate county officer or agency charged with the administration of county zoning laws shall enforce within each county the use classification districts adopted by the commission and shall report to the commission all violations thereof.

**“Section 98H-13. 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.

**“Section 98H-14. Adjustments of assessing practices.** Upon the adoption of district boundaries, certified copies of the classification maps showing the district boundaries 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.

**“Section 98H-15. Conflict.** Except as specifically provided by this chapter and the regulations adopted thereto, neither the authority for the administration of the provisions of section 19-70 nor the authority vested in the counties under the provisions of section 138-42 shall be affected.”

SECTION 3. Chapter 128-9.2 (a) is amended by adding the words “a rural district” between the words “agricultural district” and “and/or a conservation district”.

SECTION 4. All district boundaries, interim and permanent, and all actions of the commission heretofore established or taken pursuant to the provisions of Act 187, Session Laws of Hawaii 1961, are hereby continued in full force and effect; provided that within such districts

so established except conservation districts, the zoning regulations of the county shall apply.

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

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

(Approved June 17, 1963.) **H.B. 1016.**

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