

ACT 145

H.B. NO. 674

A Bill for an Act Relating to Forest and Water Reserve Zones.

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

SECTION 1. The legislature finds that it is desirable to continue to give notice by mail in addition to notice by publication to all landowners who will be affected by an application for boundary changes in forest and water reserve zones. However the legislature finds that with regard to the proposed revision of Regulation Number 4 as herein more particularly described, because said comprehensive revision affects all property owners within the conservation district the notice requirement of mailing is an onerous burden and the legislature finds that for the proposed revision of Regulation Number 4 the public notice requirement is satisfied by publication alone.

It is the purpose of this Act to limit this exemption from the requirement of mailing notice to the proposed revision of Regulation Number 4 but to have the mailing requirement continue to apply in all other instances.

SECTION 2. Section 183-41, Hawaii Revised Statutes, is amended to read:

"Sec. 183-41 Forest and water reserve zones. (a) There are hereby established forest and water reserve zones in each of the counties. These zones shall initially encompass all of those areas in the various counties, either government or privately owned, contained within the forest reserve boundaries

as established on January 21, 1957. No use, except a nonconforming use as defined in subsection (b), shall be made of such areas unless such use is in accord with a zoning regulation adopted pursuant to subsection (c)(3) or unless such use is allowed under a temporary variance granted by the department of land and natural resources; provided, that any owner of land within the forest reserve boundaries who shall desire to establish a use or uses for his land, or a greater or different use or uses, if his land is classed as nonconforming shall make application in accordance with subsection (d), and if within one hundred eighty days after receipt of the application the department shall fail to give notice, hold a hearing, and render a decision consistent with the standards set forth in subsection (c)(1) the owner may automatically put his land to the use or uses requested in his application.

(b) Neither this part nor any regulation enacted under this part shall prohibit the continuance of the lawful use of any building, premises or land for any trade, industrial, residential, or other purposes for which the building, premises or land is used on July 1, 1957, or at the time any regulation adopted under authority of this part takes effect. All such existing uses shall be nonconforming uses. Any parcel of land of not more than ten acres in area contained within the boundaries of the forest reserve which, as of January 31, 1957, was subject to real property taxes and upon which the taxes were being paid, and which was held and intended for residential or farming use, whether actually put to such use or not, shall also be considered as nonconforming and capable of such use.

(c) To effectuate the provisions of this section, the department of land and natural resources shall have the following powers and duties, in addition to all other powers and duties:

- (1) General powers. The department shall, after notice and hearing as herein provided, review and redefine the boundaries of forest and water reserve zones as established by or under the authority of this part. The department may allow temporary variances from zoned use where good cause is shown and where the proposed variance is for a use determined by the department to be in accordance with good conservation practices. The department may establish subzones within the forest and water reserve zones, which subzones shall be restricted to certain uses. In establishing permitted uses in the subzones, the department shall give full consideration to all available data as to soil classification and physical use capabilities of the land so as to allow and encourage the highest economic use thereof consonant with requirements for the conservation and maintenance of the purity of the water supplies arising in or running or percolating through the land. The department shall also give full consideration to the preservation of open spaces or areas, as defined in section 201-2(7), so as to maintain, improve, protect, limit the future use of, or otherwise conserve open spaces and areas for public use and enjoyment. Provided, the board shall hold a public hearing in every case involving the proposed use of land in a conservation zone for commercial purposes, at which hearing interested persons shall be afforded a reasonable opportunity to be heard. Notice of the time and place of the hearing shall be published in accord-

ance with the public notice requirements of subsection (d). As used herein, the term "commercial purposes" shall not include the use of land for utility purposes.

- (2) Review of zones established by this part. The department, as soon as feasible after July 1, 1957, shall undertake to review the boundaries of all forest and water reserve zones within each county with the view of making necessary corrections and establishing subzones within the zones, and fixing permissible uses therein. The department shall, after review, prepare a proposed set of regulations, complete with necessary maps, establishing zone and subzone boundaries, and designating permitted uses therein. These proposed regulations and necessary maps shall be made available for inspection by interested members of the public. After notice and hearings as provided in subsection (d), the department may adopt such regulations as proposed or as amended. When adopted and after promulgated as required by law, the regulations shall have the force and effect of law.
- (3) Scope of zoning regulations. The department shall, after notice and hearing as provided herein, adopt such regulations governing the use of land within the boundaries of the forest and water reserve zones as will not be detrimental to the conservation of necessary forest growth and the conservation and development of water resources adequate for present and future needs and the conservation and preservation of open space areas for public use and enjoyment.

The department by means of the regulations may establish subzones within any forest and water reserve zone and specify the land uses permitted therein which may include, but are not limited to, farming, flower gardening, operation of nurseries or orchards, growth of commercial timber, grazing, recreational or hunting pursuits, or residential use. The regulations may also control the extent, manner, and times of the permitted uses, and may specifically prohibit unlimited cutting of forest growth, soil mining, or other activities detrimental to good conservation practices.

The term "land", whenever used herein, shall mean and include any estate or interest therein, and the term "owner of land" or "landowner", including any reference thereto, shall mean an owner of land, or of any estate or interest therein.

(d) Notice, hearings. Whenever any landowner or government agency whose property will be directly affected makes an application to change the boundaries or permitted uses of any subzone, or to establish a subzone with certain permitted uses, or where the department proposes to make the change or changes itself, the change or changes shall be put in the form of a proposed regulation by the applicant and the department shall then give notice by publication at least once in a newspaper of general circulation in the State and in the county in which the property is located and by mail to all landowners whose property is directly affected by any proposed change. The notice shall be given not less than twenty days prior to the date set for hearing, and shall state the time and place of the hearing and the changes proposed. Any proposed regulation and

the necessary maps shall be made available for inspection by interested members of the public. The hearing shall be a full hearing before the board, shall be held in the county in which the land is located, and may not be delegated to an agent or representative of the board as may otherwise be provided by law. For the purpose of its public hearing or hearings, the department shall have power to summon witnesses, administer oaths, and require the giving of testimony.

(e) Enforcement. The department shall prescribe such administrative procedures and provide such personnel as it may deem necessary for the enforcement of this section, and any zoning regulation enacted in accordance therewith. Such regulations may be enforced by court order at the suit of the department or of the owner or owners of real estate directly affected by the regulation. Any person violating this section or any regulation adopted in accordance with this section shall be fined no more than \$500."

SECTION 3. Notwithstanding any of the provisions of subsection 2(d) section 183-41, Hawaii Revised Statutes, to the contrary the requirement of notice by mail under said subsection 2(d) shall not apply to the first proposed amendment, after the effective date of this Act, of that certain regulation entitled "REGULATION NO. 4, A REGULATION OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII, PROVIDING FOR LAND USE REGULATIONS WITHIN CONSERVATION DISTRICTS PURSUANT TO SECTION 19-70, REVISED LAWS OF HAWAII 1955, AS AMENDED, PROVIDING FOR ZONES, SUBZONES, PERMITTED USES, APPEALS, ENFORCEMENT AND PENALTY" adopted by the Board of Land and Natural Resources on September 18, 1964, provided that all other requirements of said subsection 2(d) shall apply thereto.

SECTION 4. 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 5. This Act shall take effect upon its approval.

.(Approved June 1, 1977.)

*Edited accordingly.