

## ACT 230

S.B. NO. 149

A Bill for an Act Relating to Land Use.

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

SECTION 1. Chapter 205, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

**“§205-17 Land use commission decision-making criteria.** In its review of any petition for reclassification of district boundaries pursuant to this chapter, the commission shall specifically consider the following:

- (1) The extent to which the proposed reclassification conforms to the applicable goals, objectives, and policies of the Hawaii state plan and relates to the applicable priority guidelines of the Hawaii state plan and the adopted functional plans;
- (2) The extent to which the proposed reclassification conforms to the applicable district standards; and
- (3) The impact of the proposed reclassification on the following areas of state concern:
  - (A) Preservation or maintenance of important natural systems or habitats;
  - (B) Maintenance of valued cultural, historical, or natural resources;
  - (C) Maintenance of other natural resources relevant to Hawaii's economy, including, but not limited to, agricultural resources;
  - (D) Commitment of state funds and resources;
  - (E) Provision for employment opportunities and economic development; and
  - (F) Provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups.”

SECTION 2. Chapter 205, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

**“§205-18 Periodic review of districts.** The department of planning and economic development shall undertake a review of the classification and districting of all lands in the state, within five years from December 31, 1985, and every fifth year thereafter. The department, in its five-year boundary review, shall focus its efforts on reviewing the Hawaii state plan, county general plans, and county development and community plans. Upon completion of the five-year boundary review, the department shall submit a report of the findings to the commission. The department may initiate state land use boundary amendments which it deems appropriate to conform to these plans. The department may seek assistance of appropriate state and county agencies and may employ consultants and undertake studies in making this review.”

SECTION 3. Chapter 205, Hawaii Revised Statutes, is amended to add a new section to read as follows:

**"§205-3.1 Amendments to district boundaries.** (a) District boundary amendments involving land areas greater than fifteen acres shall be processed by the land use commission pursuant to section 205-4.

(b) Any department or agency of the state, and department or agency of the county in which the land is situated, or any person with a property interest in the land sought to be reclassified may petition the appropriate county land use decision-making authority of the county in which the land is situated for a change in the boundary of a district involving lands less than fifteen acres presently in the agricultural, rural, and urban districts.

(c) District boundary amendments involving land areas of fifteen acres or less, except in conservation districts, shall be determined by the appropriate county land use decision-making authority for said district and shall not require consideration by the land use commission pursuant to section 205-4. District boundary amendments involving land areas of fifteen acres or less in conservation districts shall be processed by the land use commission pursuant to section 205-4. The appropriate county land use decision-making authority may consolidate proceedings to amend state land use district boundaries pursuant to this subsection, with county proceedings to amend the general plan, development plan, zoning of the affected land or such other proceedings. Appropriate ordinances and rules to allow consolidation of such proceedings may be developed by the county land use decision-making authority.

(d) The county land use decision-making authority shall serve a copy of the application for a district boundary amendment to the land use commission and the department of planning and economic development and shall notify the commission and the department of the time and place of the hearing and the proposed amendments scheduled to be heard at the hearing. A change in the state land use district boundaries pursuant to this subsection shall become effective on the day designated by the county land use decision-making authority in its decision. Within sixty days of the effective date of any decision to amend state land use district boundaries by the county land use decision-making authority, the decision and the description and map of the affected property shall be transmitted to the land use commission and the department of planning and economic development by the county planning director."

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

**"§205-4 Amendments to district boundaries[.] involving land areas greater than fifteen acres.** (a) Any department or agency of the State, [including the land use commission,] any department or agency of the county in which the land is situated, or any person with a property interest in the land sought to be reclassified, may petition the land use commission for a change in the boundary of a district. **This section is applicable to all petitions for changes in district boundaries of lands within conservation districts and all petitions for changes in district boundaries involving lands greater than fifteen acres in the agricultural, rural, and urban districts.**

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

(c) Any other provisions of law to the contrary notwithstanding, notice of the hearing together with a copy of the petition shall be served on the county planning commission and the county planning department of the county in which the land is located and all persons with a property interest in the land

[recorded at the department of taxation.] as recorded in the county's real property tax records. In addition, [such] notice of the hearing shall be mailed to all persons who have made a timely written request for advance notice of boundary amendment proceedings, and shall be published at least once in a newspaper in the county in which the land sought to be redistricted is situated as well as once in a newspaper of general circulation in the State at least thirty days in advance of the hearing. The notice shall comply with the provisions of section 91-9, shall indicate the time and place that maps showing the proposed district boundary may be inspected, and further shall inform all interested persons of their rights under subsection [ ](e)[ ] of this section.

(d) Any other provisions of law to the contrary notwithstanding, prior to hearing of a petition the commission and its staff may view and inspect any land which is the subject of the petition.

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

- (1) The petitioner, the department of planning and economic development and the county planning department shall in every case appear as parties and make recommendations relative to the proposed boundary change.
- (2) All departments and agencies of the State and of the county in which the land is situated shall be admitted as parties upon timely application for intervention.
- (3) All persons who have some property interest in the land, who lawfully reside on the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application for intervention.
- (4) All other persons may apply to the commission for leave to intervene as parties. Leave to intervene shall be freely granted, provided that the commission or its hearing officer if one is appointed may deny an application to intervene when in the commission's or hearing officer's sound discretion it appears that: (A) the position of the applicant for intervention concerning the proposed change is substantially the same as the position of a party already admitted to the proceeding; and (B) the admission of additional parties will render the proceedings inefficient and unmanageable. A person whose application to intervene is denied may appeal such denial to the circuit court pursuant to section 91-14.
- (5) The commission shall pursuant to chapter 91 adopt rules governing the intervention of agencies and persons under this subsection. Such rules shall without limitation establish: (A) the information to be set forth in any application for intervention; (B) time limits within which such applications shall be filed; and (C) reasonable filing fees to accompany such applications.

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

(g) Within a period of not more than [one hundred and eighty and not less than forty-five] one hundred twenty days after the close of the hearing,

unless otherwise ordered by a court, the commission shall, by filing findings of fact and conclusions of law, act to approve the petition, deny the petition, or to modify the petition by imposing conditions necessary to uphold the intent and spirit of this chapter or the policies and criteria established pursuant to section [205-16.1] 205-17 or to assure substantial compliance with representations made by the petitioner in seeking a boundary change. Such conditions, if any, shall run with the land and be recorded in the bureau of conveyances.

(h) No amendment of a land use district boundary shall be approved unless the commission finds upon the clear preponderance of the evidence that the proposed boundary is reasonable, not violative of section 205-2 and consistent with the [interim] policies and criteria established pursuant to [section 205-16.1,] sections 205-16 and 205-17 [or any state plan enacted by the legislature which plan shall supersede any interim guidance policies]. Six affirmative votes of the commission shall be necessary for any boundary amendment under this section.

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

(j) At the hearing, all parties may enter into appropriate stipulations as to findings of fact, conclusions of law, and conditions of reclassification concerning the proposed boundary change. The commission may but shall not be required to approve such stipulations based on the evidence adduced."

SECTION 5. Section 205-16, Hawaii Revised Statutes, is amended to read as follows:

**"[ ]§205-16[ ] Compliance with the Hawaii state plan.** [Upon enactment of the state plan, no] No amendment to any land use district boundary nor any other action by the land use commission shall be adopted unless such amendment or other action conforms to the Hawaii state plan."

SECTION 6. Section 205-16.1, Hawaii Revised Statutes, is repealed.

SECTION 7. Section 205-16.2, Hawaii Revised Statutes, is repealed.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 9. This Act shall take effect ninety days after its approval.

(Approved June 5, 1985.)

**Note**

1. Edited pursuant to HRS §23G-16.5.