

ACT 59

S.B. NO. 2735

A Bill for an Act Relating to the Conservation District.

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

SECTION 1. Section 183-41, Hawaii Revised Statutes, is amended to read as follows:

“§183-41 [Forest and water reserve zones.] Conservation districts. (a) [There are hereby established forest and water reserve zones in each of the coun-

ties. 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.] There are established conservation districts which shall consist of lands which were in the forest and water reserve zones on January 21, 1957, and those lands added to the conservation district by the land use commission pursuant to chapter 205 or by law. Zoning of lands in the conservation district shall be under the jurisdiction of the department and the provisions of this section unless the land is reclassified out of the conservation district by the land use commission or by law. No use, except a nonconforming use as defined in subsection (b), shall be made of [such] these areas unless [such] the use is in accord with a zoning [regulation] rule adopted pursuant to subsection (c)(3), or unless [such] the 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] conservation district who shall desire to establish a use or uses for the owner's land, or a greater or different use or uses, if the owner's 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 the owner's land to the use or uses requested in the owner's application. When an environmental impact statement is required pursuant to chapter 343, or when a contested case hearing is requested pursuant to chapter 91, the one hundred eighty days may be extended to an additional ninety days at the request of the applicant. Any request for additional extensions [in either case] shall be subject to the approval of the board.

(b) Neither this part nor any [regulation enacted] rule adopted under this part shall prohibit the continuance of the lawful use of any building, premises, or land for any trade, industrial, residential, or other purpose for which the building, premises, or land [is] was used on July 1, 1957, or at the time any [regulation] rule 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.] Any land identified as a kuleana may be put to those uses which were historically, customarily, and actually found on that particular lot including, if applicable, the construction of a single family residence. Any structures may be subject to conditions to ensure that they are consistent with the surrounding environment.

(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[, in this section, shall review and redefine the boundaries [of forest and water reserve zones] within the conservation district 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] shall establish subzones within the [forest and water reserve zones,] conservation district, 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] relating 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 201-21(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,]; provided that 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 accordance with the public notice requirements of subsection (d). As used [herein,] in this paragraph, 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 regulation 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.] (2) The department [shall], after notice and hearing as provided [herein,] in this section, shall adopt [such regulations] rules governing the use of land within the boundaries of the [forest and water reserve zones] conservation district 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] rules, may establish subzones within any [forest and water reserve zone] conservation district 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] rules may 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] As used in this section, "land" includes any estate or interest therein[, and the]. The term "owner of land" or "landowner",

including any reference thereto, [shall mean] means 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] rule 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] rule and the necessary maps shall be made available for inspection by interested members of the public. The hearing shall be held in the county in which the land is located and may be delegated to an agent or representative of the board as may otherwise be provided by law and in accordance with rules adopted by the board. 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] deems necessary for the enforcement of this section, and any zoning [regulation enacted] rule adopted in accordance therewith. [Such regulations] These rules 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.] rules. Any person violating this section or any [regulation] rule adopted in accordance with this section shall be fined no more than \$500 in addition to administrative costs and damages to state land. After written notification from the department, wilful violation of this section may incur an additional fine of up to \$500 per day for each day in which [such] the violation persists.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 29, 1992.)