

1. So in original. Edited pursuant to HRS §23G-16.5.

ACT 153

H.B. NO. 1149

A Bill for an Act Relating to Land Use.

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

SECTION 1. The legislature finds that achieving an abundant and sustainable future for Hawaii will require re-envisioning the State's institutional framework to better integrate sustainability principles into the organizational structure of state government, especially in planning, land use, environmental, and economic development programs.

Improved collaboration of state agencies is necessary to achieve the State's sustainability goals and clean energy benchmarks. The legislature further finds that improved integration of land use planning and environmental policy decision-making will enhance state government agencies' ability to implement climate change adaptation measures to address sea level rise and more frequent and intense storm events, and climate change mitigation measures such as increasing clean energy production and reducing greenhouse gas emissions.

Therefore, the legislature finds that it is in the public interest to consolidate various government land use functions of different agencies into a new structure under an office of planning and sustainable development in an effort to place all key decision-making and regulatory responsibility surrounding land use planning and permitting under one structure.

The purpose of this Act is to integrate the land use commission within a modified office of planning, to be renamed the office of planning and sustainable development. The legislature notes that a separate Act will integrate the office of environmental quality control within the office of planning and sustainable development. These two Acts will improve the coordination of these related functions so state government can work more efficiently to achieve the State's long-term sustainability and climate change goals for a more abundant future for the people of Hawaii.

SECTION 2. Section 26-18, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The following are placed in the department of business, economic development, and tourism for administrative purposes as defined by section 26-35: Hawaii community development authority, Hawaii housing finance and development corporation, Hawaii technology development corporation, [~~land use commission,~~] natural energy laboratory of Hawaii authority, and any other boards and commissions as shall be provided by law.”

SECTION 3. Section 201-2, Hawaii Revised Statutes, is amended to read as follows:

“**§201-2 General objective, functions, and duties of department.** [(a)] It shall be the objective of the department of business, economic development, and tourism to make broad policy determinations with respect to economic development in the State and to stimulate through research and demonstration projects those industrial and economic development efforts that offer the most immediate promise of expanding the economy of the State. The department shall endeavor to gain an understanding of those functions and activities of other governmental agencies and of private agencies that relate to the field of economic development. It shall, at all times, encourage initiative and creative thinking in harmony with the objectives of the department.

[(b)] The department of business, economic development, and tourism shall have [~~sole~~] jurisdiction over [~~the land use commission under chapter 205,~~] state planning under chapter 225M[~~;~~] and the Hawaii State Planning Act under chapter 226. Due to the inherently interdependent functions of development, planning, and land use, these functions shall not be transferred by executive order, directive, or memorandum, to any other department, nor shall these functions be subject to review or approval by any other department.”

SECTION 4. Section 205-1, Hawaii Revised Statutes, is amended to read as follows:

“**§205-1 Establishment of the commission.** [(a)] There shall be a state land use commission, hereinafter called the commission. The commission shall consist of nine members who shall hold no other public office and shall be appointed in the manner and serve for the term set forth in section 26-34. One member shall be appointed from each of the counties and the remainder shall be appointed at large; provided that one member shall have substantial experience or expertise in traditional Hawaiian land usage and knowledge of cultural land practices. The commission shall elect its chairperson from one of its 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. Six affirmative votes shall be necessary for any boundary amendment.

~~[(b)]~~ The commission shall be a part of the ~~[department of business, economic development, and tourism]~~ office of planning and sustainable development for ~~[administration]~~ administrative purposes~~[-, as provided for in section 26-35].~~

~~[(c)]~~ The commission may engage employees necessary to perform its duties, including administrative personnel and an executive officer. The executive officer shall be appointed by the commission and the executive officer's position shall be exempt from civil service. Departments of the state government shall make available to the commission such data, facilities, and personnel as are necessary for it to perform its 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 and accomplishments, and make recommendations to the governor and to the legislature through the governor.

(d) Notwithstanding any law to the contrary, the commission shall be exempt from section 26-35 with the exception of section 26-35(a)(2), (3), (7), (8), and section 26-35(b) shall apply.

(e) The land use commission shall maintain its independence on matters coming before it to which the office of planning and sustainable development is a party by establishing and adhering to the process required by section 225M-2(d)."

SECTION 5. Section 205-18, Hawaii Revised Statutes, is amended to read as follows:

"§205-18 [Periodic review] Review of districts. The office of planning ~~[shall]~~ and sustainable development may 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 office, 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 office shall submit a report of the findings to the commission~~[-], governor, legislature, and appropriate state and county agencies.~~ The office may initiate state land use boundary amendments which it deems appropriate to conform to these plans. The office may seek the assistance of appropriate state and county agencies and may employ consultants and undertake studies in making this review."

SECTION 6. Section 225M-1, Hawaii Revised Statutes, is amended to read as follows:

"§225M-1 Purpose. The purpose of this chapter is to establish an office of planning and sustainable development to assist the governor ~~[and]~~ the director of business, economic development, and tourism; the legislature; and state and county agencies in maintaining an overall framework to guide the development of the State through a continuous process of comprehensive, long-range, and strategic planning to meet the physical, economic, and social needs of Hawaii's people, and provide for the wise use of Hawaii's resources in a coordinated, efficient, and economical manner, including the conservation of those natural, environmental, recreational, scenic, historic, and other limited and irreplaceable resources which are required for future generations.

The establishment of an office of planning and sustainable development in the department of business, economic development, and tourism, for administrative purposes, is intended to:

- (1) Fix responsibility and accountability to successfully carry out statewide planning programs, policies, and priorities;
- (2) Improve the efficiency and effectiveness of the operations of the executive branch; and
- (3) Ensure comprehensive planning and coordination to enhance the quality of life of the people of Hawaii.”

SECTION 7. Section 225M-2, Hawaii Revised Statutes, is amended to read as follows:

“§225M-2 Office of planning[,] and sustainable development; establishment; responsibilities. (a) There is established the office of planning and sustainable development within the department of business, economic development, and tourism [~~an office of planning.~~] for administrative purposes only. The head of the office shall be known as the director of the office of planning[,] and sustainable development and referred to in this chapter as director. The director shall have: [~~training~~]

- (1) Training in the field of urban or regional planning, public administration, or other related fields; [~~experience~~]
- (2) Experience in programs or services related to governmental planning; and [~~experience~~]
- (3) Experience in a supervisory, consultative, or administrative capacity.

The director shall be nominated by the governor and, by and with the advice and consent of the senate, appointed by the governor without regard to chapter 76, and shall be compensated at a salary level set by the governor. The director shall be included in any benefit program generally applicable to the officers and employees of the State. The director [~~shall~~] may retain [~~such~~] staff as may be necessary for the purposes of this chapter, in conformity with chapter 76. The director shall report to the director of business, economic development, and tourism and shall not be required to report directly to any other principal executive department. The director may also employ staff without regard to chapter 76, as authorized in this chapter and as may be necessary.

(b) The office of planning and sustainable development shall gather, analyze, and provide information to the governor, the legislature, and state and county agencies to assist in the overall analysis and formulation of state policies and strategies to provide central direction and cohesion in the allocation of resources and effectuation of state activities and programs and effectively address current or emerging issues and opportunities. More specifically, the office shall engage in the following activities:

- (1) State comprehensive planning and program coordination. Formulating and articulating comprehensive statewide goals, objectives, policies, and priorities, and coordinating their implementation through the statewide planning system established in part II of chapter 226;
- (2) Strategic planning. Identifying and analyzing significant issues, problems, and opportunities confronting the State, and formulating strategies and alternative courses of action in response to identified problems and opportunities by:
 - (A) Providing in-depth policy research, analysis, and recommendations on existing or potential areas of critical state concern;
 - (B) Examining and evaluating the effectiveness of state programs in implementing state policies and priorities;
 - (C) Monitoring [~~through surveys, environmental scanning, and other techniques—current~~] current social, economic, and

physical conditions and trends[;] through surveys, environmental scanning, and other techniques; and

- (D) Developing, in collaboration with affected public or private agencies and organizations, implementation plans and schedules and, where appropriate, assisting in the mobilization of resources to meet identified needs;
- (3) Planning coordination and cooperation. Facilitating coordinated and cooperative planning and policy development and implementation activities among state agencies and between the state, county, and federal governments, by:
 - (A) Reviewing, assessing, and coordinating, as necessary, major plans, programs, projects, and regulatory activities existing or proposed by state and county agencies;
 - (B) Formulating mechanisms to simplify, streamline, or coordinate interagency development and regulatory processes; and
 - (C) Recognizing the presence of federal defense and security forces and agencies in the State as important state concerns;
- (4) Statewide planning and geographic information system. Collecting, integrating, analyzing, maintaining, and disseminating various forms of data and information, including geospatial data and information, to further effective state planning, policy analysis and development, and delivery of government services by:
 - (A) Collecting, assembling, organizing, evaluating, and classifying existing geospatial and non-geospatial data and performing necessary basic research, conversions, and integration to provide a common database for governmental planning and geospatial analyses by state agencies;
 - (B) Planning, coordinating, and maintaining a comprehensive, shared statewide planning and geographic information system and associated geospatial database. The office shall be the lead agency responsible for coordinating the maintenance of the multi-agency, statewide planning and geographic information system and coordinating, collecting, integrating, and disseminating geospatial data sets that are used to support a variety of state agency applications and other spatial data analyses to enhance decision-making. The office shall promote and encourage free and open data sharing among and between all government agencies. To ensure the maintenance of a comprehensive, accurate, up-to-date geospatial data resource that can be drawn upon for decision-making related to essential public policy issues such as land use planning, resource management, homeland security, and the overall health, safety, and well-being of Hawaii's citizens, and to avoid redundant data development efforts, state agencies shall provide to the shared system either their respective geospatial databases or, at a minimum, especially in cases of secure or confidential data sets that cannot be shared or must be restricted, metadata describing existing geospatial data. In cases where agencies provide restricted data, the office of planning and sustainable development shall ensure the security of that data; and
 - (C) Maintaining a centralized depository of state and national planning references;
- (5) Land use planning. Developing and presenting the position of the State in all boundary change petitions and proceedings before the

- land use commission, and assisting state agencies in the development and submittal of petitions for land use district boundary amendments, and conducting [periodic] reviews of the classification and districting of all lands in the State, as specified in chapter 205;
- (6) Coastal and ocean policy management, and sea level rise adaptation coordination. Carrying out the lead agency responsibilities for the Hawaii coastal zone management program, as specified in chapter 205A. Also:
 - (A) Developing and maintaining an ocean and coastal resources information, planning, and management system;
 - (B) Further developing and coordinating implementation of the ocean resources management plan; and
 - (C) Formulating ocean policies with respect to the exclusive economic zone, coral reefs, and national marine sanctuaries;
 - (7) Regional planning and studies. Conducting plans and studies to determine:
 - (A) The capability of various regions within the State to support projected increases in both resident populations and visitors;
 - (B) The potential physical, social, economic, and environmental impact on these regions resulting from increases in both resident populations and visitors;
 - (C) The maximum annual visitor carrying capacity for the State by region, county, and island; and
 - (D) The appropriate guidance and management of selected regions and areas of statewide critical concern.

The studies in subparagraphs (A) to (C) shall be conducted at appropriate intervals, but not less than once every five years;
 - (8) Regional, national, and international planning. Participating in and ensuring that state plans, policies, and objectives are consistent, to the extent practicable, with regional, national, and international planning efforts;
 - (9) Climate adaptation and sustainability planning and coordination. Conducting plans and studies and preparing reports as follows:
 - (A) Develop, monitor, and evaluate strategic climate adaptation plans and actionable policy recommendations for the State and counties addressing expected statewide climate change impacts identified under chapter 225P and sections 226-108 and 226-109; and
 - (B) Provide planning and policy guidance and assistance to state and county agencies regarding climate change and sustainability; and
 - (10) Smart growth and transit-oriented development. Acting as the lead agency to coordinate and advance smart growth and transit-oriented development planning within the State as follows:
 - (A) Identify transit-oriented development opportunities shared between state and county agencies, including relevant initiatives such as the department of health's healthy Hawaii initiative and the Hawaii clean energy initiative;
 - (B) Refine the definition of "transit-oriented development" in the context of Hawaii, while recognizing the potential for smart growth development patterns in all locations;
 - (C) Clarify state goals for transit-oriented development and smart growth that support the principles of the Hawaii State Plan-

ning Act by preserving non-urbanized land, improving worker access to jobs, and reducing fuel consumption;

- (D) Target transit-oriented development areas for significant increase in affordable housing and rental units;
- (E) Conduct outreach to state agencies to help educate state employees about the ways they can support and benefit from transit-oriented development and the State’s smart growth goals;
- (F) Publicize coordinated state efforts that support smart growth, walkable neighborhoods, and transit-oriented development;
- (G) Review state land use decision-making processes to identify ways to make transit-oriented development a higher priority and facilitate better and more proactive leadership in creating walkable communities and employment districts, even if transit will only be provided at a later date; and
- (H) Approve all state agencies’ development plans for parcels along the rail transit corridor. For the purposes of this subparagraph, “development plans” means conceptual land use plans that identify the location and planned uses within a defined area.

(c) The land use commission’s executive officer, chief clerk, and employees shall be administratively attached to the office, and section 205-1(c) shall apply.

(d) The office of planning and sustainable development and the land use commission shall establish procedures and safeguards to avoid actual or perceived conflicts of interest that may otherwise arise as a result of any proceedings before the land use commission to which the office of planning and sustainable development is a party, including but not limited to petitions for amendments to district boundaries involving land areas greater than fifteen acres pursuant to section 205-4, and contested case proceedings pursuant to section 205-19. These procedures and safeguards shall include a reporting structure for the land use commission and its executive director and employees that is separate from the reporting structure for the land use division of the office.”

SECTION 8. Sections 4E-1, 6K-6, 195-6, 200D-2, 201-102, 205-4, 205-6, 205-47, 205-48, 205-49, 205-50, 205A-1, 214-4, 223-2, 223-3, 225M-3, 225M-4, 225M-8, 225P-3, 225P-4, 225P-6, 226-2, 226-53, 226-56, 226-59, 226-64, 226-65, and 279A-4, Hawaii Revised Statutes, are amended by substituting the phrase “office of planning and sustainable development”, or similar term, wherever the phrase “office of planning”, or similar term, appears, as the context requires.

SECTION 9. The revisor of statutes shall substitute the phrase “office of planning and sustainable development”, or similar term, wherever the phrase “office of planning”, or similar term, appears, as the context requires, in any Acts of the Session Laws of Hawaii 2021.

SECTION 10. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act shall take effect on July 1, 2021.

(Approved July 1, 2021.)