

JAN 22 2007

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**A BILL FOR AN ACT**

RELATING TO PLANNING.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. Under the authority set forth in chapters 46  
2 and 226, Hawaii Revised Statutes, the counties prepare general  
3 plans, community development plans, or development plans that  
4 provide a vision to guide the growth and development of their  
5 individual counties. These plans are adopted after extensive  
6 local community input. The congruence of state land use  
7 district boundaries with adopted county land use plans is  
8 critical to the effective implementation of these plans, and to  
9 the counties' ability to effectively manage land use to sustain  
10 the vision contained in the plans.

11       This congruence could be accomplished by means of periodic  
12 regional or islandwide district boundary amendments. However,  
13 under current law, all boundary amendments before the land use  
14 commission are required to meet the evidentiary and procedural  
15 standards of a "contested case" proceeding. These standards  
16 require metes and bounds surveys and archaeological, historical,  
17 and cultural surveys of all affected parcels, certified mail  
18 notice to every property owner with an interest in affected

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1 lands, and the participation of all parties with an interest in  
2 all affected lands through formal trial-like hearings with  
3 representation by legal counsel. The cost in terms of time,  
4 staff resources, and money of such proceedings are prohibitive  
5 for a region-wide petition involving multiple parcels.

6 Thus, the legislature finds that an alternative to the  
7 contested case proceeding is needed for regional state land use  
8 district boundary amendments based on adopted county plans. A  
9 quasi-legislative process for state and county initiated, county  
10 plan-based, regional boundary amendments would facilitate long-  
11 range planning and land use management.

12 At the same time, the legislature is very concerned that a  
13 shift from the contested case proceeding must be carefully  
14 considered and implemented, in order to avoid unintended policy  
15 consequences. The legislature finds that it is essential that  
16 state interests are addressed and the needs of a diverse range  
17 of stakeholders are balanced under a quasi-legislative process.

18 The purpose of this Act is to authorize a pilot project for  
19 the conduct and evaluation of a quasi-legislative, county plan-  
20 based boundary amendment procedure based on a joint application  
21 by a county and the state office of planning. The Act tasks the  
22 office of planning, in consultation with the land use commission

1 and the county planning departments, to conduct the pilot  
2 project. The pilot project will be limited to a single county  
3 with a county plan adopted within the last five years, and the  
4 Act will sunset if the project has not commenced within two  
5 years of the effective date of the Act.

6 The plan-based boundary amendment process shall be  
7 conducted in accordance with the provisions set forth in section  
8 2 of this Act. The evaluation component of the project shall  
9 include consultation with a range of interest groups, and shall  
10 provide findings and recommendations as to the efficacy of the  
11 pilot process in terms of improving planning practice and  
12 increasing effectiveness in managing growth and development in  
13 Hawaii.

14 **SECTION 2. Pilot project for a county plan-based boundary**  
15 **amendment process.** The office of planning, in consultation with  
16 the executive officer of the state land use commission and the  
17 county planning directors, shall implement a pilot project for  
18 the conduct and evaluation of a county plan-based boundary  
19 amendment process based upon a joint application of a county and  
20 the office of planning. Only one county shall be selected for  
21 the pilot project. This Act and the pilot project shall sunset

1 if no activity has commenced within twenty-four months of the  
2 effective date of this Act.

3       **SECTION 3. Selection of a county for the pilot project.**

4 Any county with a general plan, community, or development plan  
5 adopted by its county council within five years of the effective  
6 date of this Act shall be eligible for participation in the  
7 pilot project. Participation in the pilot project will be  
8 determined on a first-come, first-served basis. The office of  
9 planning shall send a written notice to the county mayors, the  
10 chairs of the county councils, and the county planning directors  
11 inviting each county to participate in the pilot project,  
12 specifying any requirements and the deadline for written letters  
13 of interest. The office of planning may consult with the  
14 executive officer of the state land use commission in selecting  
15 the county to participate in the pilot project. The office of  
16 planning shall designate the participating county for the pilot  
17 project.

18       **SECTION 4. Pilot plan-based boundary amendment process.**

19 (a) The office of planning and the planning department of the  
20 designated pilot county shall undertake a joint review of the  
21 state land use district boundaries of lands in the affected  
22 county. The joint boundary review shall review the district

1 boundaries with respect to the county general plans, county  
2 development, or county community plans, the Hawaii state plan  
3 and plans prepared pursuant to chapter 226, and the policies and  
4 standards contained in this chapter. The office of planning  
5 shall prepare a report of the findings of the boundary review  
6 and recommendations for boundary amendments for submittal to the  
7 state land use commission and the appropriate county planning  
8 commission.

9 (b) The joint boundary review process shall include but  
10 not be limited to:

11 (1) Opportunities for public participation and input on  
12 issues and concerns that need to be considered in the  
13 boundary review, and feedback on the findings and  
14 recommendations being made based on the boundary  
15 review;

16 (2) The identification and recommendation of areas where  
17 district boundary amendments would enable conformance  
18 of state land use districts and the county plan's land  
19 use policies and designations;

20 (3) The development of recommendations for boundary  
21 amendments to be submitted to the land use commission  
22 for the pilot process.

1 (c) The office of planning shall facilitate state and  
2 county agency discussions to ensure that state agency concerns  
3 and interests, including state infrastructure and support  
4 services required to support the land use patterns in the county  
5 plans, are raised and addressed in the boundary review process.  
6 The office of planning may seek the assistance of appropriate  
7 state and county agencies, employ consultants, and undertake  
8 additional studies in conducting this review.

9 (d) Upon completion of the boundary review report, the  
10 office of planning and the county planning department shall  
11 submit a joint application to the land use commission to amend  
12 the district boundaries of certain lands to conform to adopted  
13 county plans pursuant to this section, based on recommendations  
14 contained in the joint boundary review report. The joint  
15 application shall include, but not be limited to:

- 16 (1) A listing of each boundary amendment requested;  
17 (2) The rationale for the proposed boundary amendments;  
18 and  
19 (3) Documentation of the consistency of each boundary  
20 amendment with a land use map contained in a general  
21 plan, community development plan, regional development

1 plan, district development plan, or other similar  
2 comprehensive plan adopted by ordinance.

3 (e) Within thirty days from the acceptance of a complete  
4 filing of the joint application, the land use commission shall  
5 post a copy of the entire application on its website. Not less  
6 than thirty days and not more than ninety days from the  
7 acceptance of a complete filing of the joint application, the  
8 land use commission shall conduct no less than three public  
9 hearings on the application on the island or islands where the  
10 subject lands are situated. The county and the office of  
11 planning shall present the findings of the joint boundary review  
12 report and the recommendations contained in the joint  
13 application at the first noticed public hearing.

14 (f) Notwithstanding any provision of the law to the  
15 contrary, the land use commission shall provide timely notice in  
16 newspapers of general circulation statewide and in a newspaper  
17 that is printed and issued at least weekly in the county  
18 affected by the proposed action. The notice shall include:

- 19 (1) A statement of the topic of the public hearing;  
20 (2) A statement providing the website address for the  
21 application;

1           (3) A statement that a copy of the application shall be  
2                   mailed to any interested person who requests a copy,  
3                   pays the required fees for the copy and the postage,  
4                   if any, together with a description of where and how  
5                   the requests may be made;

6           (4) A statement of when, where, and during what times the  
7                   application may be reviewed in person; and

8           (5) The date, time, and place where the public hearing or  
9                   hearings shall be held and where interested persons  
10                  may be heard on the proposed application.

11           The notice shall be mailed to all persons who have made a  
12           timely written request of the land use commission for advance  
13           notice of boundary amendment proceedings. Notice of the hearing  
14           or hearings shall be served on the office of planning, county  
15           planning commission, and county planning agency of the county in  
16           which the land is located.

17           (g) The boundary amendment proceeding under this section  
18           shall be subject to the provisions of chapter 92, Hawaii Revised  
19           Statutes, except as contained herein. The commission shall  
20           decide the petition solely on matters presented in the record  
21           and on testimony at public hearings. Ex parte communication



1 with the members of the land use commission on the subject  
2 matter of the application shall be prohibited.

3 (h) Prior to the hearing of an application under this  
4 section, the land use commission and its staff may view and  
5 inspect any land that is the subject of the application.

6 (i) Within one hundred eighty days from the acceptance of  
7 a complete filing of an application, the land use commission  
8 shall either approve or deny the application as a whole or  
9 approve or deny, in part or whole, the individual boundary  
10 amendments contained within the application. Any decision under  
11 this section shall require the affirmative vote of two-thirds of  
12 the members to which the land use commission is entitled. The  
13 land use commission shall not impose any conditions on any land  
14 or owner of property reclassified to a different state land  
15 classification under this application process.

16 (j) No boundary amendment shall be approved unless the  
17 land use commission finds by a preponderance of the evidence  
18 that the proposed boundary:

19 (1) Conforms to the land use pattern in the affected  
20 county plan;

21 (2) Conforms to the applicable state district standards;

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- 1           (3) Conforms to the applicable goals, objectives, and  
2           policies of the Hawaii state plan and relates to the  
3           applicable priority guidelines of the Hawaii state  
4           plan and the adopted functional plans;
- 5           (4) Is consistent with the district policies and standards  
6           and the objectives, policies, and criteria related to  
7           important agricultural lands contained in chapter 205,  
8           Hawaii Revised Statutes; and
- 9           (5) Has a positive impact on the following areas of state  
10          concern:
- 11           (A) Preservation or maintenance of important natural  
12           systems or habitats;
- 13           (B) Maintenance of valued cultural, historical, or  
14           natural resources;
- 15           (C) Maintenance of other natural resources relevant  
16           to Hawaii's economy, including agricultural  
17           resources; and
- 18           (E) Provision of sufficient reserve area for  
19           foreseeable growth.
- 20          (k) The land use commission shall maintain a record of the  
21          proceeding and issue a written report that itemizes the actions  
22          taken and provides the rationale for the actions taken. The

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1 land use commission's report shall be transmitted to the county  
2 mayors, the chairs of the county councils, the county planning  
3 directors, and the office of planning. The land use commission  
4 shall also make the report available to the public. The land  
5 use commission shall also provide notice to state and county  
6 agencies of the changes to land use district boundaries. The  
7 land use commission shall be the sole authority responsible for  
8 boundary interpretations.

9 (1) Individual district boundary amendment requests shall  
10 be not be permitted under this Act, and shall remain subject to  
11 land use commission procedures under sections 205-3.1 and 205-4,  
12 Hawaii Revised Statutes. Any land that is denied  
13 reclassification under this pilot process may be the subject of  
14 a petition under section 205-3.1 or section 205-4, as  
15 applicable.

16 (m) A change in land use district classification of a  
17 parcel or parcels resulting from a land use commission decision  
18 pursuant to this Act may be appealed to the circuit court of the  
19 circuit in which the land in question is found. The district  
20 boundaries and classification of parcels not subject to an  
21 appeal shall remain in full force and effect. The appeal shall  
22 be filed within sixty days of the effective date of the land use

1 commission's decision. The appeal shall be in accord with  
2 chapter 91, Hawaii Revised Statutes, and the Hawaii rules of  
3 civil procedure.

4 (n) Any change in the district designation of lands under  
5 this section shall not invalidate the county zoning of affected  
6 parcels.

7 (o) Any state or county approval of projects involving a  
8 land use or zone change, subdivision, or other entitlement for  
9 use on lands that are reclassified by the land use commission  
10 pursuant to this section, shall be subject to sections 6E-2, 6E-  
11 8, and 6E-42, Hawaii Revised Statutes, pertaining to historic,  
12 archaeological, and cultural resource preservation; provided  
13 that any applicable studies shall be completed at the earliest  
14 stage of the county land use application and decision-making  
15 process.

16 SECTION 5. **Certain statutes not applicable to pilot**  
17 **project.** Notwithstanding any other law to the contrary, the  
18 pilot boundary amendment process conducted pursuant to this Act  
19 shall be exempt from chapter 343, Hawaii Revised Statutes,  
20 except for boundary amendments that reclassify land from the  
21 conservation district; provided that any application for a  
22 proposed use on lands reclassified pursuant to this Act, which

1 require ministerial or discretionary approval by a county or  
2 state body shall be subject to chapter 343 where such  
3 applications require conformance to chapter 343.

4       **SECTION 6. Evaluation of pilot process; report to**  
5 **legislature.** (a) The office of planning shall conduct an  
6 evaluation of the quasi-legislative, plan-based boundary  
7 amendment process with respect to its promotion of sound long-  
8 range planning practices and its potential for improving  
9 management of growth and development in Hawaii. The evaluation  
10 shall include, but not be limited to:

11       (1) The use of instruments and meetings, such as survey  
12 instruments, participatory forums, or public meetings,  
13 with which to solicit comments and concerns from the  
14 public and a wide range of government, private sector,  
15 and community groups on:

16               (A) The pilot process;

17               (B) Alternative approaches; and

18               (C) Findings and recommendations resulting from the  
19 completed evaluation;

20       (2) A description of the pilot boundary review process and  
21 an assessment of the efficacy of the pilot boundary  
22 review process, including operational problems or

1           impediments that arose in the course of the boundary  
2           review;

3           (3) A description of the pilot plan-based boundary  
4           amendment process and an assessment of the efficacy of  
5           the pilot boundary amendment process, including  
6           operational problems or impediments that arose in the  
7           course of the pilot process;

8           (4) A discussion of the cost of implementing the pilot  
9           process with respect to any cost savings or efficiency  
10          improvements that may be attributed to the pilot  
11          process;

12          (5) An assessment of the pilot process with respect to its  
13          impact or potential impacts on:

14               (A) The improvement of long-range planning; and

15               (B) The coordination and effectiveness of state and  
16               county efforts to support planned growth or  
17               conserve legacy resources; and

18          (6) The development of recommendations as to whether a  
19          plan-based boundary amendment process should be made  
20          permanent, and the features and mechanisms that are  
21          essential to the successful implementation of such a  
22          process.

1           The office of planning may use consulting services to  
2           conduct the evaluation of the pilot process.

3           (b)   The pilot process and the evaluation of the pilot  
4           process shall be completed before the opening of the 2012  
5           legislature regular session.   The office of planning shall  
6           submit a report on the pilot process, including legislative  
7           recommendations, no less than twenty days prior to the convening  
8           of the 2012 legislature regular session.

9           SECTION 7.   There is appropriated out of the general  
10          revenues of the State of Hawaii the sum of \$300,000, or so much  
11          thereof as may be necessary for fiscal year 2007-2008, for the  
12          conduct of the pilot boundary amendment process and the  
13          evaluation of the pilot process.   The sum appropriated shall be  
14          expended by the office of planning to support state and county  
15          activities related to the pilot process, and to conduct studies,  
16          surveys, or public meetings, as needed, for the evaluation of  
17          the pilot process.

18          SECTION 8.   Any provision of this Act to the contrary  
19          notwithstanding, the appropriation authorized under this Act  
20          shall not lapse at the end of the fiscal year for which the  
21          appropriation is made.   Any unexpended and unencumbered balance

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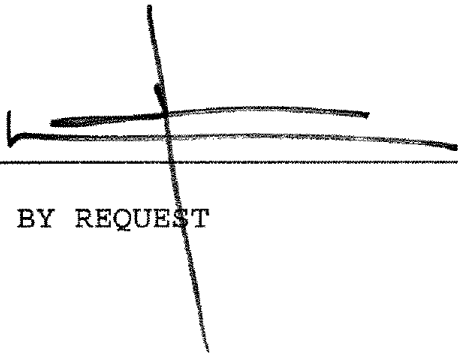
1 of the appropriation made in this Act as of the close of  
2 business on June 30, 2009, shall lapse.

3 SECTION 9. This Act shall take effect upon its approval,  
4 and shall be repealed on June 30, 2012.

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INTRODUCED BY: \_\_\_\_\_



7

BY REQUEST



JUSTIFICATION SHEET

DEPARTMENT Business, Economic Development, and  
Tourism

TITLE: A BILL FOR AN ACT RELATING TO PLANNING.

PURPOSE: To authorize a pilot project that would allow plan-based petitions submitted jointly by the state and county for land use district boundary amendments to be conducted under quasi-legislative proceedings rather than the present quasi-judicial proceedings for the duration of the pilot project and provide for an evaluation of the pilot project.

MEANS: Enact a session law.

JUSTIFICATION: The proposed legislation authorizes a pilot project for plan-based land use district boundary amendments. Under the pilot project, petitions for land use district boundary amendments that are based on county general or development plans and are jointly submitted by the state and the county shall be subject to quasi-legislative rather than quasi-judicial procedures when reviewed by the state land use commission during the duration of the pilot project.

A change is needed because under the existing land use system, long-range land use policy is in effect decided on a project-by-project basis as cases come before the state land use commission. There is a need for the state land use commission to take a longer range, more comprehensive, and planning oriented view. County general and development or community plans have been prepared with extensive community input and have been prepared at the

level closest to those affected. The proposed legislation would allow a different type of land use commission review for petitions for boundary amendments based on county plans. These plan-based petitions would not be development project specific but would cover larger regional or island-wide areas.

The quasi-judicial or "court-like" approach currently utilized by the Land Use Commission is time-consuming and in many aspects duplicates the county-level review process. Under the proposed legislation, plan-based petitions would be subject to quasi-legislative rather than quasi-judicial review by the state land use commission. This will streamline the review process for these plan-based petitions. Different procedures are warranted since the petitions will be based on county plans which have undergone considerable community review, multiple public hearings and county council and mayor approval. Furthermore, the quasi-legislative process will remain a public process with public hearings and opportunities for public testimony. In addition, state and county governments will have agreed on the areas to be reclassified under the plan-based petitions.

A time limit is established for the pilot project after which it will sunset. Upon termination, there will be an evaluation of the project's effectiveness, benefits and drawbacks.

The bill also includes an appropriation to conduct the pilot project and for project evaluation.

Impact on the public: The public would be involved in broader community-level discussions about the impacts of

potential boundary amendments. Planning and provision of infrastructure and services may improve as coordination of State and county agency plans would be addressed in the pilot procedure. The pilot process may also provide greater predictability to the public and development community about where growth is to occur. The pilot project also allows an evaluation and adjustment of the procedure to address any shortcomings in implementation.

Impact on the department and other agencies: The office of planning would have an increased workload and need resources to support the proposed pilot process and project. The state land use commission and its staff would be required to work under a new procedure, but in the long run, may find that the pilot process reduces the number of individual petitions the commission must consider. Other state agencies that rely on the land use commission quasi-judicial procedure to obtain developer compliance with agency facility needs and concerns will be required to coordinate their efforts and will also need to attend to how their concerns are addressed under the pilot procedure.

GENERAL FUND: \$300,000.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: BED-144.

OTHER AFFECTED  
AGENCIES: Land Use Commission, Office of  
Planning, County Planning Departments,  
and other state agencies.

EFFECTIVE DATE: Upon approval.