

**DAVID Y. IGE**  
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**SHAN S. TSUTSUI**  
Lieutenant Governor

**LUIS P. SALAVERIA**  
Director

**MARY ALICE EVANS**  
Acting Deputy Director



**LAND USE COMMISSION**  
Department of Business, Economic Development & Tourism  
State of Hawai`i

**DANIEL ORODENKER**  
Executive Officer

**Bert K. Saruwatari**  
Planner  
**SCOTT A.K. DERRICKSON AICP**  
Planner

**RILEY K. HAKODA**  
Chief Clerk/Planner

**FRED A. TALON**  
Drafting Technician

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Statement of  
**Daniel E. Orodenker**  
**Executive Officer**  
Land Use Commission  
Before the  
**House Committee on Water & Land**  
February 13, 2015  
10:00 AM  
State Capitol, Conference Room 325

In consideration of  
**HB 828**  
**RELATING TO LAND USE**

Chair Yamane, Vice Chair Cullen, and members of the Committee on Water and Land:

The Land Use Commission (LUC) opposes HB 828 that would amend Chapter 205-4, Hawai`i Revised Statutes (HRS) providing for automatic boundary amendments that conform to adopted county plans; with concurrence of the LUC. No other action or hearing would be required. Further, the bill would require within one year of any adopted boundary amendments, that public agencies with responsibility for infrastructure necessary to support development in these areas to prepare budgets prioritizing such projects. This would, in effect, give the counties control over state budgets and could cause agencies such as the Department of Transportation (DOT) and Department of Education (DOE) significant hardship.

We would also note that this measure may be inconsistent with Hawaii Supreme Court decisions with regard to due process requirements in cases involving property rights. Under the State Supreme Court Decision of Towne v Land Use Commission it was determined that decisions impacting ownership rights must be subject to a quasi-judicial process. Specifically “any action taken on the petition for boundary change is a proceeding in which ..[a property owner or adjoining property owner]...has legal rights as a specific and interested party and is entitled by law to have a determination on these rights”.

A contested case, or quasi-judicial proceeding with allowances for intervention, is therefore a due process requirement and mandated by law. This rule applies to both the State and the counties (as further defined by the Hawaii Administrative Procedures Act). This measure would remove the due process requirement protections currently available by allowing decisions to be made without a hearing.

The Hawaii Supreme Court also requires that decisions regarding re-classification of land analyze all of the issues arising under the “public trust doctrine”. These include preservation of rights and artifacts associated with cultural and archeological resources as well as gathering rights and water rights. The County process does not take these into account. Changes to district boundaries made without detailed analysis could therefore be violative of the public trust doctrine as well.

State-level boundary amendments are a deliberative process designed to protect the public interest under the umbrella of the public trust doctrine, while also protecting this body and taxpayers from having to provide infrastructure improvements solely to the benefit of private developers. We do recognize that State planning and the review of boundary changes could be improved upon and can be done in a more collaborative manner. However, for the reasons stated, this measure runs the risk of causing significant problems with public policy and State budgeting. This bill does not ensure that State concerns and interests would be adequately considered or protected. We concur with the State Office of Planning in requesting that this bill be held.

Thank you for the opportunity to testify on this matter.