

JAN 22 2016

S.B. NO. 2355

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## A BILL FOR AN ACT

RELATING TO THE LAND USE COMMISSION.

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

SECTION 1. 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, 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 applies to all petitions for changes in district boundaries of lands within conservation districts, lands designated or sought to be designated as important agricultural lands, and lands greater than fifteen acres in the agricultural, rural, and urban districts, except as provided in section 201H-38. The land use commission shall adopt rules pursuant to chapter 91 to implement section 201H-38.

(b) Upon proper filing of a petition pursuant to subsection (a) the commission shall, within not less than sixty



1 and not more than one hundred and eighty days, conduct a hearing  
2 on the appropriate island in accordance with the provisions of  
3 sections 91-9, 91-10, 91-11, 91-12, and 91-13, as applicable.

4 (c) Any other provision of law to the contrary  
5 notwithstanding, notice of the hearing together with a copy of  
6 the petition shall be served on the county planning commission  
7 and the county planning department of the county in which the  
8 land is located and all persons with a property interest in the  
9 land as recorded in the county's real property tax records. In  
10 addition, notice of the hearing shall be mailed to all persons  
11 who have made a timely written request for advance notice of  
12 boundary amendment proceedings, and public notice shall be given  
13 at least once in the county in which the land sought to be  
14 redistricted is situated as well as once statewide at least  
15 thirty days in advance of the hearing. The notice shall comply  
16 with section 91-9, shall indicate the time and place that maps  
17 showing the proposed district boundary may be inspected, and  
18 further shall inform all interested persons of their rights  
19 under subsection (e).

20 (d) Any other provisions of law to the contrary  
21 notwithstanding, prior to hearing of a petition the commission



1 and its staff may view and inspect any land which is the subject  
2 of the petition.

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

6 (1) The petitioner, the office of planning, and the county  
7 planning department shall in every case appear as  
8 parties and make recommendations relative to the  
9 proposed boundary change.

10 (2) All departments and agencies of the State and of the  
11 county in which the land is situated shall be admitted  
12 as parties upon timely application for intervention.

13 (3) All persons who have some property interest in the  
14 land, who lawfully reside on the land, or who  
15 otherwise can demonstrate that they will be so  
16 directly and immediately affected by the proposed  
17 change that their interest in the proceeding is  
18 clearly distinguishable from that of the general  
19 public shall be admitted as parties upon timely  
20 application for intervention.



1       (4) All other persons may apply to the commission for  
2       leave to intervene as parties. Leave to intervene  
3       shall be freely granted, provided that the commission  
4       or its hearing officer if one is appointed may deny an  
5       application to intervene when in the commission's or  
6       hearing officer's sound discretion it appears that:

7       (A) the position of the applicant for intervention  
8       concerning the proposed change is substantially the  
9       same as the position of a party already admitted to  
10      the proceeding; and (B) the admission of additional  
11      parties will render the proceedings inefficient and  
12      unmanageable. A person whose application to intervene  
13      is denied may appeal such denial to the circuit court  
14      pursuant to section 91-14.

15      (5) The commission shall pursuant to chapter 91 adopt  
16      rules governing the intervention of agencies and  
17      persons under this subsection. Such rules shall  
18      without limitation establish: (A) the information to  
19      be set forth in any application for intervention; (B)  
20      time limits within which such applications shall be



1           filed; and (C) reasonable filing fees to accompany  
2           such applications.

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

8           (g) Within a period of not more than three hundred sixty-  
9           five days after the proper filing of a petition, unless  
10          otherwise ordered by a court, or unless a time extension, which  
11          shall not exceed ninety days, is established by a two-thirds  
12          vote of the members of the commission, the commission, by filing  
13          findings of fact and conclusions of law, shall act to approve  
14          the petition, deny the petition, or to modify the petition by  
15          imposing conditions necessary to uphold the intent and spirit of  
16          this chapter or the policies and criteria established pursuant  
17          to section 205-17 or to assure substantial compliance with  
18          representations made by the petitioner in seeking a boundary  
19          change. The commission may provide by condition that absent  
20          substantial commencement of use of the land in accordance with  
21          such representations, the commission shall issue and serve upon



1 the party bound by the condition an order to show cause why the  
2 property should not revert to its former land use classification  
3 or be changed to a more appropriate classification. Such  
4 conditions, if any, shall run with the land and be recorded in  
5 the bureau of conveyances.

6 (h) No amendment of a land use district boundary shall be  
7 approved unless the commission finds upon the clear  
8 preponderance of the evidence that the proposed boundary is  
9 reasonable, not violative of section 205-2 and part III of this  
10 chapter, and consistent with the policies and criteria  
11 established pursuant to sections 205-16 and 205-17. Six  
12 affirmative votes of the commission shall be necessary for any  
13 boundary amendment under this section.

14 (i) At the time the commission takes action under  
15 subsection (g), notwithstanding any other provision of law to  
16 the contrary, the commission shall specify conditions of direct  
17 state concern as described in this subsection, that if imposed  
18 upon a petitioner pursuant to subsection (g) and not  
19 substantially met, authorizes the commission to vacate, void,  
20 modify, or amend any boundary amendment or any specified  
21 condition of direct state concern in any petition for a boundary



1 amendment approved under this section. The conditions of direct  
2 state concern shall include but not be limited to:

3 (1) Conditions that relate to or require the installation  
4 of state infrastructure, including but not limited to  
5 public schools, state highways, or state facilities;  
6 and

7 (2) Conditions that promote or protect specific state  
8 policies, including but not limited to the  
9 preservation of state agricultural lands, increasing  
10 state agricultural production, enhancing the state  
11 marine and terrestrial environment, and protecting  
12 traditional and cultural practices.

13 All parties to a proceeding shall be given notice that the  
14 commission has imposed such conditions of direct state concern  
15 on the petition pursuant to this subsection and that the  
16 commission may impose a fine of not more than \$10,000 per day of  
17 failure to substantially meet the conditions of direct state  
18 concern.

19 In vacating, voiding, modifying, or amending any boundary  
20 amendment or condition of direct state concern pursuant to this  
21 subsection, the commission shall not be obligated to repeat the



1 boundary amendment procedures described in subsections (a) to  
2 (h) .

3 (j) The commission is authorized to impose a fine of not  
4 more than \$10,000 per day of failure to substantially meet the  
5 conditions of direct state concern as described in subsection  
6 (i) .

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

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

18 SECTION 2. Section 205-6, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "§205-6 **Special permit.** (a) Subject to this section, the  
21 county planning commission may permit certain unusual and





1 reasonable uses within agricultural and rural districts other  
2 than those for which the district is classified. Any person who  
3 desires to use the person's land within an agricultural or rural  
4 district other than for an agricultural or rural use, as the  
5 case may be, may petition the planning commission of the county  
6 within which the person's land is located for permission to use  
7 the person's land in the manner desired. Each county may  
8 establish the appropriate fee for processing the special permit  
9 petition. Copies of the special permit petition shall be  
10 forwarded to the land use commission, the office of planning,  
11 and the department of agriculture for their review and comment.

12 (b) The planning commission, upon consultation with the  
13 central coordinating agency, except in counties where the  
14 planning commission is advisory only in which case the central  
15 coordinating agency, shall establish by rule or regulation, the  
16 time within which the hearing and action on petition for special  
17 permit shall occur. The county planning commission shall notify  
18 the land use commission and such persons and agencies that may  
19 have an interest in the subject matter of the time and place of  
20 the hearing.



1           (c) The county planning commission may, under such  
2 protective restrictions as may be deemed necessary, permit the  
3 desired use, but only when the use would promote the  
4 effectiveness and objectives of this chapter; provided that a  
5 use proposed for designated important agricultural lands shall  
6 not conflict with any part of this chapter. A decision in favor  
7 of the applicant shall require a majority vote of the total  
8 membership of the county planning commission.

9           (d) Special permits for land the area of which is greater  
10 than fifteen acres or for lands designated as important  
11 agricultural lands shall be subject to approval by the land use  
12 commission. The land use commission may impose additional  
13 restrictions as may be necessary or appropriate in granting the  
14 approval, including the adherence to representations made by the  
15 applicant.

16           (e) A copy of the decision, together with the complete  
17 record of the proceeding before the county planning commission  
18 on all special permit requests involving a land area greater  
19 than fifteen acres or for lands designated as important  
20 agricultural lands, shall be transmitted to the land use  
21 commission within sixty days after the decision is rendered.



1        Within forty-five days after receipt of the complete record  
2        from the county planning commission, the land use commission  
3        shall act to approve, approve with modification, or deny the  
4        petition. A denial either by the county planning commission or  
5        by the land use commission, or a modification by the land use  
6        commission, as the case may be, of the desired use shall be  
7        appealable to the circuit court of the circuit in which the land  
8        is situated and shall be made pursuant to the Hawaii rules of  
9        civil procedure.

10        (f) Land uses substantially involving or supporting  
11        educational ecotourism, related to the preservation of native  
12        Hawaiian endangered, threatened, proposed, and candidate  
13        species, that are allowed in an approved habitat conservation  
14        plan under section 195D-21 or safe harbor agreement under  
15        section 195D-22, which are not identified as permissible uses  
16        within the agricultural district under sections 205-2 and  
17        205-4.5, may be permitted in the agricultural district by  
18        special permit under this section, on lands with soils  
19        classified by the land study bureau's detailed land  
20        classification as overall (master) productivity rating class C,  
21        D, E, or U.



1        (g) At the time the commission takes action under  
2        subsection (e), notwithstanding any other provision of law to  
3        the contrary, the commission shall specify conditions of direct  
4        state concern as described in this section, that if imposed upon  
5        a petition pursuant to subsection (d) and not substantially met,  
6        authorizes the commission to vacate, void, modify, or amend any  
7        special permit approved, or any specified condition of direct  
8        state concern imposed, under this section. The conditions of  
9        direct state concern shall include but not be limited to:

10        (1) Conditions that relate to or require the installation  
11        of state infrastructure, including but not limited to  
12        public schools, state highways, or state facilities;  
13        and

14        (2) Conditions that promote or protect specific state  
15        policies, including but not limited to the  
16        preservation of state agricultural lands, increasing  
17        state agricultural production, enhancing the state  
18        marine and terrestrial environment, and protecting  
19        traditional and cultural practices.

20        All parties to a proceeding shall be given notice that the  
21        commission has imposed such conditions of direct state concern



1 on the petition pursuant to this subsection and that the  
2 commission may impose a fine of not more than \$10,000 per day of  
3 failure to substantially meet the conditions of direct state  
4 concern.


5 In vacating, voiding, modifying, or amending any special  
6 permit or condition or direct state concern pursuant to this  
7 subsection, no action by the county planning commission shall be  
8 required.

9 (h) The commission is authorized to impose a fine of not  
10 more than \$10,000 per day of failure to substantially meet the  
11 conditions of direct state concern as described in subsection  
12 (g)."

13 SECTION 3. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 4. This Act shall take effect upon its approval.

16 INTRODUCED BY:

  
Joanna Chun Oakland



# S.B. NO. 2355

**Report Title:**

Land Use Commission; Boundary Amendments; Special Permit;  
Conditions; Enforcement; Fine; Authority

**Description:**

Authorizes the state land use commission to amend, modify, or vacate boundary amendment approvals, special permit approvals, and conditions of direct state concern granted pursuant to chapter 205, Hawaii Revised Statutes, if the commission finds a failure to substantially meet conditions of direct state concern, to be specified by the commission at the time it approves, denies, or modifies a boundary amendment or special permit. Allows the state land use commission to fine parties who fail to comply with conditions of direct state concern after they have been notified of violations of the conditions.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

