
A BILL FOR AN ACT

RELATING TO THE LAND USE COMMISSION.

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

1 SECTION 1. Section 205-4, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "§205-4 Amendments to district boundaries involving land
4 areas greater than fifteen acres. (a) Any department or agency
5 of the State, any department or agency of the county in which
6 the land is situated, or any person with a property interest in
7 the land sought to be reclassified, may petition the land use
8 commission for a change in the boundary of a district. This
9 section applies to all petitions for changes in district
10 boundaries of lands within conservation districts, lands
11 designated or sought to be designated as important agricultural
12 lands, and lands greater than fifteen acres in the agricultural,
13 rural, and urban districts, except as provided in section
14 201H-38. The land use commission shall adopt rules pursuant to
15 chapter 91 to implement section 201H-38.

16 (b) Upon proper filing of a petition pursuant to
17 subsection (a) the commission shall, within not less than sixty
18 and not more than one hundred and eighty days, conduct a hearing



1 on the appropriate island in accordance with the provisions of
2 sections 91-9, 91-10, 91-11, 91-12, and 91-13, as applicable.

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

19 (d) Any other provisions of law to the contrary
20 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. For the purposes of this subsection,
6 "substantial commencement" means the completion of all public
7 improvements and infrastructure required by conditions imposed
8 pursuant to this chapter, both within and outside the project
9 area, and completed construction of twenty per cent of the
10 physical private improvements such that they are usable or
11 habitable.

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

20 (i) Notwithstanding any other provision of law to the
21 contrary, the commission by motion of the commission or any



1 interested party may vacate, void, modify, or amend any boundary
2 amendment or any condition of direct state concern in any
3 petition for a boundary amendment approved under this section.
4 The conditions of direct state concern shall include but not be
5 limited to:

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

10 (2) Conditions that promote or protect specific state
11 policies, including but not limited to the
12 preservation of state agricultural lands, increasing
13 state agricultural production, protecting or enhancing
14 the state marine and terrestrial environment,
15 protecting traditional and cultural practices, and
16 protecting archaeological features and burial grounds,
17 and conditions relating to the public trust doctrine.

18 All parties to a proceeding shall be given notice that the
19 commission has imposed such conditions of direct state concern
20 on the petition pursuant to this subsection and that the
21 commission may impose a fine of not more than \$50,000 per day of



1 failure to substantially meet the conditions of direct state
2 concern.

3 In vacating, voiding, modifying, or amending any boundary
4 amendment or condition of direct state concern pursuant to this
5 subsection, the commission shall not be obligated to repeat the
6 boundary amendment procedures described in subsections (a) to
7 (h).

8 (j) The commission is authorized to impose a fine of not
9 more than \$50,000 per day of failure to substantially meet the
10 conditions of direct state concern as described in subsection
11 (i).

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

18 ~~[(j)]~~ (l) At the hearing, all parties may enter into
19 appropriate stipulations as to findings of fact, conclusions of
20 law, and conditions of reclassification concerning the proposed



1 boundary change. The commission may but shall not be required
2 to approve such stipulations based on the evidence adduced."

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

5 "§205-6 Special permit. (a) Subject to this section, the
6 county planning commission may permit certain unusual and
7 reasonable uses within agricultural and rural districts other
8 than those for which the district is classified. Any person who
9 desires to use the person's land within an agricultural or rural
10 district other than for an agricultural or rural use, as the
11 case may be, may petition the planning commission of the county
12 within which the person's land is located for permission to use
13 the person's land in the manner desired. Each county may
14 establish the appropriate fee for processing the special permit
15 petition. Copies of the special permit petition shall be
16 forwarded to the land use commission, the office of planning,
17 and the department of agriculture for their review and comment.

18 (b) The planning commission, upon consultation with the
19 central coordinating agency, except in counties where the
20 planning commission is advisory only in which case the central
21 coordinating agency, shall establish by rule or regulation, the



1 time within which the hearing and action on petition for special
2 permit shall occur. The county planning commission shall notify
3 the land use commission and such persons and agencies that may
4 have an interest in the subject matter of the time and place of
5 the hearing.

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

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



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

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

16 (f) Land uses substantially involving or supporting
17 educational ecotourism, related to the preservation of native
18 Hawaiian endangered, threatened, proposed, and candidate
19 species, that are allowed in an approved habitat conservation
20 plan under section 195D-21 or safe harbor agreement under
21 section 195D-22, which are not identified as permissible uses



1 within the agricultural district under sections 205-2 and
2 205-4.5, may be permitted in the agricultural district by
3 special permit under this section, on lands with soils
4 classified by the land study bureau's detailed land
5 classification as overall (master) productivity rating class C,
6 D, E, or U.

7 (g) Notwithstanding any other provision of law to the
8 contrary, the commission by motion of the commission or any
9 interested party may vacate, void, modify, or amend any special
10 permit approved or any condition of direct state concern
11 imposed, under this section. The conditions of direct state
12 concern shall include but not be limited to:

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

17 (2) Conditions that promote or protect specific state
18 policies, including but not limited to the
19 preservation of state agricultural lands, increasing
20 state agricultural production, protecting or enhancing
21 the state marine and terrestrial environment,



1 protecting traditional and cultural practices, and
2 protecting archaeological features and burial grounds,
3 and conditions relating to the public trust doctrine.

4 All parties to a proceeding shall be given notice that the
5 commission has imposed such conditions of direct state concern
6 on the petition pursuant to this subsection and that the
7 commission may impose a fine of not more than \$50,000 per day of
8 failure to substantially meet the conditions of direct state
9 concern.

10 In vacating, voiding, modifying, or amending any special
11 permit or condition or direct state concern pursuant to this
12 subsection, no action by the county planning commission shall be
13 required.

14 (h) The commission is authorized to impose a fine of not
15 more than \$50,000 per day of failure to substantially meet the
16 conditions of direct state concern as described in subsection
17 (g)."

18 SECTION 3. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

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



Report Title:

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

Description:

Authorizes the 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, by motion of the commission or of any interested party. Allows the 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. Adds a definition for "substantial commencement" in section 205-4(g), HRS. (SD1)

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

