

JAN 27 2016

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# A BILL FOR AN ACT

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RELATING TO THE LAND USE COMMISSION.

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

1       SECTION 1. The purpose of this Act is to provide the land  
2 use commission with the power to amend, revise, or modify a  
3 decision and order granting a land use district boundary  
4 amendment when there has been a finding by the land use  
5 commission that a petitioner or its successors or assigns has  
6 not adhered to the conditions previously imposed by the  
7 commission.

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

10       "**§205-4 Amendments to district boundaries involving land**  
11 **areas greater than fifteen acres.** (a) Any department or agency  
12 of the State, any department or agency of the county in which  
13 the land is situated, or any person with a property interest in  
14 the land sought to be reclassified, may petition the land use  
15 commission for a change in the boundary of a district. This  
16 section applies to all petitions for changes in district  
17 boundaries of lands within conservation districts, lands  
18 designated or sought to be designated as important agricultural

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1 lands, and lands greater than fifteen acres in the agricultural,  
2 rural, and urban districts, except as provided in section 201H-  
3 38. The land use commission shall adopt rules pursuant to  
4 chapter 91 to implement section 201H-38.

5 (b) Upon proper filing of a petition pursuant to  
6 subsection (a) the commission shall, within not less than sixty  
7 and not more than one hundred and eighty days, conduct a hearing  
8 on the appropriate island in accordance with the provisions of  
9 sections 91-9, 91-10, 91-11, 91-12, and 91-13, as applicable.

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

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1 showing the proposed district boundary may be inspected, and  
2 further shall inform all interested persons of their rights  
3 under subsection (e).

4 (d) Any other provisions of law to the contrary  
5 notwithstanding, prior to hearing of a petition the commission  
6 and its staff may view and inspect any land which is the subject  
7 of the petition.

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

11 (1) The petitioner, the office of planning, and the county  
12 planning department shall in every case appear as  
13 parties and make recommendations relative to the  
14 proposed boundary change.

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

18 (3) All persons who have some property interest in the  
19 land, who lawfully reside on the land, or who  
20 otherwise can demonstrate that they will be so  
21 directly and immediately affected by the proposed  
22 change that their interest in the proceeding is

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1 clearly distinguishable from that of the general  
2 public shall be admitted as parties upon timely  
3 application for intervention.

4 (4) All other persons may apply to the commission for  
5 leave to intervene as parties. Leave to intervene  
6 shall be freely granted, provided that the commission  
7 or its hearing officer if one is appointed may deny an  
8 application to intervene when in the commission's or  
9 hearing officer's sound discretion it appears  
10 that: (A) the position of the applicant for  
11 intervention concerning the proposed change is  
12 substantially the same as the position of a party  
13 already admitted to the proceeding; and (B) the  
14 admission of additional parties will render the  
15 proceedings inefficient and unmanageable. A person  
16 whose application to intervene is denied may appeal  
17 such denial to the circuit court pursuant to section  
18 91-14.

19 (5) The commission shall pursuant to chapter 91 adopt  
20 rules governing the intervention of agencies and  
21 persons under this subsection. Such rules shall  
22 without limitation establish: (A) the information to

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1           be set forth in any application for intervention; (B)  
2           time limits within which such applications shall be  
3           filed; and (C) reasonable filing fees to accompany  
4           such applications.

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

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

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1 ~~[such representations,]~~ representations made to the commission,  
2 the commission, on its own motion or upon motion by any party or  
3 interested person, shall issue and serve upon the party bound by  
4 the condition an order to show cause why the property should not  
5 revert to its former land use classification or be changed to a  
6 more appropriate classification~~[.—Such]~~; provided that, if the  
7 commission finds that the petitioner's failure to adhere to or  
8 comply with the representations or conditions does not warrant  
9 reversion to the land's former land use classification or change  
10 to a more appropriate classification, the commission may modify  
11 such conditions or impose new conditions to ensure compliance  
12 with the decision and order and to mitigate any injury resulting  
13 from the failure to adhere to or comply with conditions  
14 regardless of whether or not there has been substantial  
15 commencement of use of the land. All conditions, if any, shall  
16 run with the land and be recorded in the bureau of conveyances.  
17 For purposes of this section "substantial commencement" shall be  
18 defined as completion of all public improvements and  
19 infrastructure required by conditions imposed pursuant to this  
20 chapter, both within the project area and outside the project  
21 area and completed construction of twenty per cent of the

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1 physical private improvements such that they are usable or  
2 habitable.

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

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

17 (j) At the hearing, all parties may enter into appropriate  
18 stipulations as to findings of fact, conclusions of law, and  
19 conditions of reclassification concerning the proposed boundary  
20 change. The commission may but shall not be required to approve  
21 such stipulations based on the evidence adduced.

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1       (k) Regardless of whether there has been substantial  
2 commencement of the use of the land, if there has not been  
3 compliance with representations made or a condition imposed  
4 under this chapter relating to infrastructure, the environment,  
5 cultural resources, archeological resources, or the public trust  
6 doctrine, the commission, on its own motion or upon motion by  
7 any party or interested person, may issue and serve upon the  
8 party bound by the condition or representation an order to show  
9 cause why the commission should not take action under this  
10 section to ensure compliance with the condition or  
11 representation. Regardless of whether or not there has been  
12 substantial commencement of the use of the land as defined by  
13 this section, if the commission finds that one or more of such  
14 conditions or representations contained in a decision and order  
15 made pursuant to this chapter has not been adhered to, the  
16 commission may assess an administrative fine against the party  
17 bound by the condition an amount not to exceed \$50,000 per day  
18 and the costs of enforcement including, but not limited to  
19 associated hearing expenses, until such time as the party bound  
20 by the condition provides evidence to the commission showing  
21 that the violation has been cured and is not likely to be  
22 repeated. If the party bound by the condition fails to pay such



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1 fine as ordered by the commission the commission may issue a  
2 notice of non-conformance to be recorded on the title of the  
3 property at the bureau of conveyances and pursue collection  
4 procedures in circuit court."

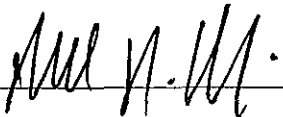
5 SECTION 3. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

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

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INTRODUCED BY:

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10

BY REQUEST

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**Report Title:**

Land Use Commission

**Description:**

Provides the Land Use Commission with the power to amend, revise, or modify a decision and order granting a district boundary amendment, or fine a petitioner, when there has been a finding by the Land Use Commission that a petitioner or its successors or assigns has not adhered to the conditions imposed by the commission.

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

JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT RELATING TO THE LAND USE COMMISSION.

PURPOSE: To provide the Land Use Commission (LUC) with the power, after proper notice and hearing, to fine a petitioner or landowner for failing to adhere to a condition that relates to a state infrastructure interest or a public trust issue (water, environment or cultural issue) or in certain cases, to amend or revise a condition to ensure compliance.

MEANS: Amend section 205-4, Hawaii Revised Statutes (HRS).

JUSTIFICATION: This measure is designed to rectify problems raised by the Supreme Court's decision in the Bridge 'Āina Le'a (Bridge) case and to deal with a refusal, on the part of some developers, to adhere to requirements placed on them by the Land Use Commission as a condition of approving district boundary amendments. Currently, the LUC has only one remedy for a violation of its orders; reversion of the land back to the land's original designation. This is considered a harsh remedy and is only used in extreme cases. Even so, under the Bridge case the court has restricted the LUC's ability to enforce conditions by reversion to only those cases where the petitioner has not "substantially commenced" development of the site.

This measure would provide the LUC with additional powers to enforce conditions that are directly related to the violation and ensure that public policy and public trust concerns are met without completely stopping approved development.

Impact on the public: Provides assurance to both the general public and development community that a process is in place to hold developers accountable to complying with conditions of land use approvals in a fair and equitable way.

Impact on the department and other agencies: Commission may see an increase in "order to show cause hearings". The Office of Planning (OP) and county planning agencies will be required to participate in these hearings.

GENERAL FUND: There may be a slight increase in the operating expenses for the OP and LUC as a result of additional hearings. Fines levied will result in an increase in revenue to the General Fund.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: BED 103.

OTHER AFFECTED  
AGENCIES: State Office of Planning; counties.

EFFECTIVE DATE: Upon approval.