

JAN 20 2017

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. 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



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

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

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



1 thirty days in advance of the hearing. The notice shall comply
2 with section 91-9, shall indicate the time and place that maps
3 showing the proposed district boundary may be inspected, and
4 further shall inform all interested persons of their rights
5 under subsection (e).

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

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

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

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

20 (3) All persons who have some property interest in the
21 land, who lawfully reside on the land, or who



1 otherwise can demonstrate that they will be so
2 directly and immediately affected by the proposed
3 change that their interest in the proceeding is
4 clearly distinguishable from that of the general
5 public shall be admitted as parties upon timely
6 application for intervention.

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



1 (5) The commission shall pursuant to chapter 91 adopt
2 rules governing the intervention of agencies and
3 persons under this subsection. Such rules shall
4 without limitation establish: (A) the information to
5 be set forth in any application for intervention; (B)
6 time limits within which such applications shall be
7 filed; and (C) reasonable filing fees to accompany
8 such applications.

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

14 (g) Within a period of not more than three hundred sixty-
15 five days after the proper filing of a petition, unless
16 otherwise ordered by a court, or unless a time extension, which
17 shall not exceed ninety days, is established by a two-thirds
18 vote of the members of the commission, the commission, by filing
19 findings of fact and conclusions of law, shall act to approve
20 the petition, deny the petition, or to modify the petition by
21 imposing conditions necessary to uphold the intent and spirit of



1 this chapter or the policies and criteria established pursuant
2 to section 205-17 or to assure substantial compliance with
3 representations made by the petitioner in seeking a boundary
4 change. The commission may provide by condition that absent
5 substantial commencement of use of the land in accordance with
6 such representations, the commission, upon its own motion or
7 upon motion by any party or interested person, shall issue and
8 serve upon the party bound by the condition an order to show
9 cause why the property should not revert to its former land use
10 classification or be changed to a more appropriate
11 classification~~[.—Such]~~; provided that, if the commission finds
12 that the petitioner's failure to adhere to or comply with the
13 representations or conditions does not warrant reversion to the
14 land's former land use classification or change to a more
15 appropriate classification, the commission may modify such
16 conditions or impose new conditions to ensure compliance with
17 the decision and order and to mitigate any injury resulting from
18 the failure to adhere to or comply with conditions regardless of
19 whether or not there has been substantial commencement of use of
20 the land. All conditions, if any, shall run with the land and
21 be recorded in the bureau of conveyances.



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

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

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

20 (k) Regardless of whether there has been substantial
21 commencement of use of the land, if there has not been



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



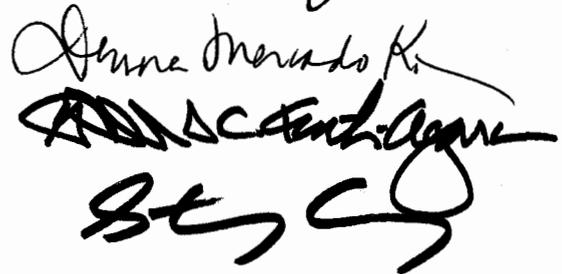
1 notice of non-conformance to be recorded on the title of the
2 property at the bureau of conveyances and pursue collection
3 procedures in circuit court.

4 (1) For purposes of this section, "substantial
5 commencement" means completion of all public improvements and
6 infrastructure required by conditions imposed pursuant to this
7 chapter, both within and outside the project area and completed
8 construction of twenty per cent of the physical private
9 improvements such that they are usable or habitable."

10 SECTION 3. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

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

13

INTRODUCED BY: 




S.B. NO. 629

Report Title:

Land Use Commission; District Boundary Amendments

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 have not adhered to the conditions imposed by the commission.

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