
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
18 designated or sought to be designated as important agricultural



1 lands, and lands greater than fifteen acres in the agricultural,
2 rural, and urban districts, except as provided in section
3 201H-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



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

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

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

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

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

19 (3) All persons who have some property interest in the
20 land, who lawfully reside on the land, or who
21 otherwise can demonstrate that they will be so



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

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

- 20 (5) The commission shall pursuant to chapter 91 adopt
21 rules governing the intervention of agencies and



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

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

12 (g) Within a period of not more than three hundred sixty-
13 five days after the proper filing of a petition, unless
14 otherwise ordered by a court, or unless a time extension, which
15 shall not exceed ninety days, is established by a two-thirds
16 vote of the members of the commission, the commission, by filing
17 findings of fact and conclusions of law, shall act to approve
18 the petition, deny the petition, or to modify the petition by
19 imposing conditions necessary to uphold the intent and spirit of
20 this chapter or the policies and criteria established pursuant
21 to section 205-17 or to assure substantial compliance with



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

20 (h) No amendment of a land use district boundary shall be
21 approved unless the commission finds upon the clear



1 preponderance of the evidence that the proposed boundary is
2 reasonable, not violative of section 205-2 [~~and part III of this~~
3 ~~chapter~~], and consistent with the policies and criteria
4 established pursuant to sections 205-16 and 205-17[-] and part
5 III of this chapter. Six affirmative votes of the commission
6 shall be necessary for any boundary amendment under this
7 section.

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

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

18 (k) Regardless of whether there has been substantial
19 commencement of use of the land, if there has not been
20 compliance with representations made or a condition imposed
21 under this chapter relating to infrastructure, the environment,



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



1 property at the bureau of conveyances and pursue collection
2 procedures in circuit court.

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

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

11 SECTION 4. This Act shall take effect on March 15, 2094.

12



Report Title:

Land Use Commission; District Boundary Amendments; Substantial Commencement

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, regardless of whether there has been substantial commencement of use of the land. Defines "substantial commencement". Effective March 15, 2094. (SD1)

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

