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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:**

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

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

9           "**§205-4 Amendments to district boundaries involving land**  
10 **areas greater than fifteen acres.** (a) Any department or agency  
11 of the State, any department or agency of the county in which  
12 the land is situated, or any person with a property interest in  
13 the land sought to be reclassified, may petition the land use  
14 commission for a change in the boundary of a district. This  
15 section applies to all petitions for changes in district  
16 boundaries of lands within conservation districts, lands  
17 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  
7 sixty and not more than one hundred and eighty days, shall  
8 conduct a hearing on the appropriate island in accordance with  
9 the provisions of sections 91-9, 91-10, 91-11, 91-12, and 91-13,  
10 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~~] before the hearing of a petition,  
8 the commission and its staff may view and inspect any land  
9 [~~which~~] that is the subject 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 sustainable  
14 development, and the county planning department shall  
15 in every case appear as parties and make  
16 recommendations relative to the proposed boundary  
17 change;

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



- 1           (3) All persons who have some property interest in the  
2           land, who lawfully reside on the land, or who  
3           otherwise can demonstrate that they will be so  
4           directly and immediately affected by the proposed  
5           change that their interest in the proceeding is  
6           clearly distinguishable from that of the general  
7           public shall be admitted as parties upon timely  
8           application for intervention;
- 9           (4) All other persons may apply to the commission for  
10          leave to intervene as parties. Leave to intervene  
11          shall be freely granted; provided that the commission  
12          or its hearing officer, if one is appointed, may deny  
13          an application to intervene when in the commission's  
14          or hearing officer's sound discretion it appears that:
- 15          (A) The position of the applicant for intervention  
16          concerning the proposed change is substantially  
17          the same as the position of a party already  
18          admitted to the proceeding; and
- 19          (B) The admission of additional parties will render  
20          the proceedings inefficient and unmanageable.



1 A person whose application to intervene is denied may  
2 appeal the denial to the circuit court pursuant to  
3 section 91-14; and

4 (5) The commission, pursuant to chapter 91, shall adopt  
5 rules governing the intervention of agencies and  
6 persons under this subsection. The rules shall  
7 without limitation establish:

8 (A) The information to be set forth in any  
9 application for intervention;

10 (B) The limits within which applications shall be  
11 filed; and

12 (C) Reasonable filing fees to accompany applications.

13 (f) Together with other witnesses that the commission may  
14 desire to hear at the hearing, [~~it~~] the commission shall allow a  
15 representative of a citizen or a community group to testify who  
16 indicates a desire to express the view of [~~such~~] the citizen or  
17 community group concerning the proposed boundary change.

18 (g) Within a period of not more than three hundred sixty-  
19 five days after the proper filing of a petition, unless  
20 otherwise ordered by a court, or unless a time extension, which  
21 shall not exceed ninety days, is established by a two-thirds



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



1 the failure to adhere to or comply with conditions, regardless  
2 of whether there has been substantial commencement of use of the  
3 land. All conditions, if any, shall run with the land and be  
4 recorded in the bureau of conveyances.

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

14 (i) Parties to proceedings to amend land use district  
15 boundaries may obtain judicial review thereof in the manner set  
16 forth in section 91-14[~~7~~]; provided that the court may also  
17 reverse or modify a finding of the commission if [~~such~~] the  
18 finding appears to be contrary to the clear preponderance of the  
19 evidence.

20 (j) At the hearing, all parties may enter into appropriate  
21 stipulations as to findings of fact, conclusions of law, and



1 conditions of reclassification concerning the proposed boundary  
2 change. The commission may but shall not be required to approve  
3 ~~such~~ any stipulations based on the evidence adduced.

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



1 associated hearing expenses, until the party bound by the  
2 condition provides evidence to the commission showing that the  
3 violation has been cured and is not likely to be repeated. If  
4 the party bound by the condition fails to pay the fine as  
5 ordered by the commission, the commission may issue a notice of  
6 non-conformance to be recorded on the title of the property at  
7 the bureau of conveyances and pursue collection procedures in  
8 circuit court.

9       (1) For the purposes of this section, "substantial  
10 commencement" means completion of all public improvements and  
11 infrastructure required by conditions imposed pursuant to this  
12 chapter, within and outside the project area, and completed  
13 construction of twenty per cent of the physical private  
14 improvements so that they are usable or habitable."

15       SECTION 3. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

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



**Report Title:**

Land Use Commission; District Boundary Amendments; Substantial Commencement

**Description:**

Authorizes the Land Use Commission to amend, revise, or modify a decision and order granting a district boundary amendment, or fine a petitioner, upon finding 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". (SD1)

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

