
A BILL FOR AN ACT

RELATING TO THE LAND USE COMMISSION.

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

1 SECTION 2. 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 201H-
14 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
21 and its staff may view and inspect any land ~~which~~ that is the
22 subject of the petition.



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

4 (1) The petitioner, the office of planning, and the county
5 planning department shall in every case appear as
6 parties and make recommendations relative to the
7 proposed boundary change. In this capacity, the
8 office of planning shall represent all other state
9 departments and agencies, unless a state department or
10 agency is admitted as a party pursuant to paragraph
11 (2).

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

15 (3) All persons who have some property interest in the
16 land, who lawfully reside on the land, or who
17 otherwise can demonstrate that they will be so
18 directly and immediately affected by the proposed
19 change that their interest in the proceeding is
20 clearly distinguishable from that of the general
21 public shall be admitted as parties upon timely
22 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~~] The position of the applicant for
 8 intervention concerning the proposed change is
 9 substantially the same as the position of a party
 10 already admitted to the proceeding; and

11 (B) [~~the~~] The admission of additional parties will
 12 render the proceedings inefficient and
 13 unmanageable. A person whose application to
 14 intervene is denied may appeal [~~such~~] the denial
 15 to the circuit court pursuant to section 91-14.

16 (5) The commission shall [~~pursuant to chapter 91~~] adopt
 17 rules pursuant to chapter 91 governing the
 18 intervention of agencies and persons under this
 19 subsection. [~~Such~~] The rules shall without limitation
 20 establish:

21 (A) [~~the~~] The information to be set forth in any
 22 application for intervention;



1 (B) [~~time~~] Time limits within which [~~such~~] the
2 applications shall be filed; and

3 (C) [~~reasonable~~] Reasonable filing fees to accompany
4 [~~such~~] the 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~~] any citizen or community
9 group 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



1 ~~[such]~~ the representations, the commission shall issue and serve
2 upon the party bound by the condition an order to show cause why
3 the property should not revert to its former land use
4 classification or be changed to a more appropriate
5 classification. ~~[Such]~~ The conditions, if any, shall run with
6 the land and be recorded in the bureau of conveyances.

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

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

21 (j) At the hearing, all parties may enter into appropriate
22 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 [~~sueh~~] the stipulations based on the evidence adduced.

4 (k) On each anniversary date of the approval of a
5 petition, the petitioner shall file annual reports to the
6 commission, in a form prescribed by the executive officer,
7 setting forth the status of the subject project and petitioner's
8 progress in complying with any conditions imposed with the
9 approval of the petition. The commission shall:

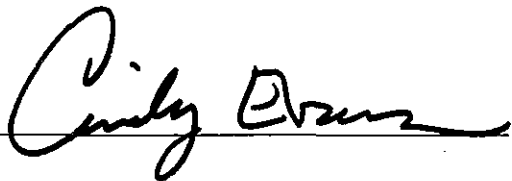
- 10 (1) Make the annual reports available to all state
- 11 departments and agencies; and
- 12 (2) Post the annual reports electronically on its
- 13 website."

14 SECTION 2. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 3. This Act shall take effect upon its approval.

17

INTRODUCED BY:



JAN 19 2010



Report Title:

Land Use Commission; District Boundary Amendments

Description:

Requires office of planning to represent all state departments and agencies in proceedings on a petition to land use commission to amend district boundaries, unless departments and agencies have been admitted as a separate party. Requires petitioner of an approved petition to file annual reports on the status of the subject project and compliance with conditions, if any, of an approved petition.

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