

JAN 24 2013

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 district boundary amendment when
4 there has been a finding by the land use commission that a
5 petitioner or its successors or assigns has not adhered to the
6 conditions imposed by the commission.

7 SECTION 2. Section 205-4, Hawaii Revised Statutes, is
8 amended by amending subsection (g) to read as follows:

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

S.B. NO. 1026

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,]~~ representations made to the commission,
5 or absent substantial compliance with any condition imposed
6 under this chapter, the commission, on its own motion or upon
7 motion by any party or interested person, shall issue and serve
8 upon the party bound by the condition an order to show cause why
9 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 another
15 classification, the commission may instead modify the conditions
16 or impose new conditions to ensure compliance with the decision
17 and order. All conditions, if any, shall run with the land and
18 be recorded in the bureau of conveyances."

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S.B. NO. 1026

1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect upon its approval.
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INTRODUCED BY:

Anna Mercedes Ki

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BY REQUEST

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S.B. NO. 1026

Report Title:

Land Use Commission

Description:

Provides the Land Use Commission with more efficient and varied methods of dealing with situations where a petitioner has violated the conditions contained in a decision and order.

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 with more efficient and varied methods of dealing with situations where a landowner has violated the conditions contained in a decision and order.

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

JUSTIFICATION: Under section 205-4, Hawaii Revised Statutes, the Land Use Commission may include conditions in its decisions granting a district boundary amendment designed to ensure that the State, counties, and public are protected and that impacts of the decision on state and county infrastructure and the social and natural environment will be minimized. If a petitioner fails to adhere to those conditions the Land Use Commission may hold a hearing on the matter requesting that the petitioner show why the land should not revert to its original classification. Reversion is the only remedy currently available to the Land Use Commission.

Recent cases have shown that often it is many years since the original order is granted before a violation occurs or is brought to the attention of the Land Use Commission. In certain circumstances, reversion of the land back to its original classification may make no sense given what has occurred in surrounding areas or it may be unfair to a petitioner who has already invested considerable capital in a project before the violation is brought to light.

The proposed amendment would reinforce the Land Use Commission's right to place conditions on a boundary amendment and give it the ability to fashion a remedy that better fits the needs of the situation. This would provide a much more effective tool to the Land Use Commission to ensure the State's, the counties' and the public's interests are protected.

Impact on the public: Provides the general public and developers more effective ways of dealing with violations.

Impact on the department and other agencies: It will give the Commission more flexibility and the ability to meet its statutory mandate more effectively. Office of Planning will now have the ability to negotiate amendments to decisions and orders where a violation occurs.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: BED 103.

OTHER AFFECTED AGENCIES: Office of Planning

EFFECTIVE DATE: Upon approval.