

JAN 18 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. In making land use decisions or orders, the
2 legislature finds that the land use commission relies on
3 promises made by the applicant as to the nature, scope, and size
4 of a proposed project and to the applicant's mitigation
5 measures. The purpose of this Act is to enable the land use
6 commission to hold the applicant accountable for promises made
7 and to enforce the conditions or covenants contained in its
8 decisions or orders.

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

11 "**§205-4 Amendments to district boundaries involving land**
12 **areas greater than fifteen acres.** (a) Any department or agency
13 of the State, any department or agency of the county in which
14 the land is situated, or any person with a property interest in
15 the land sought to be reclassified, may petition the land use
16 commission for a change in the boundary of a district. This
17 section applies to all petitions for changes in district
18 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
4 201H-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
22 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
22 directly and immediately affected by the proposed



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

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

- 19 (5) The commission shall pursuant to chapter 91 adopt
20 rules governing the intervention of agencies and
21 persons under this subsection. Such rules shall
22 without limitation establish: (A) the information to



1 be set forth in any application for intervention; (B)
2 time limits within which such applications shall be
3 filed; and (C) reasonable filing fees to accompany
4 such 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 citizen or community group
9 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 representations, the commission shall issue and serve upon
2 the party bound by the condition an order to show cause why the
3 property should not revert to its former land use classification
4 or be changed to a more appropriate classification. Such
5 conditions, if any, shall run with the land and be recorded in
6 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 finding appears to
19 be contrary to the clear preponderance of the evidence.

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



1 change. The commission may but shall not be required to approve
2 such stipulations based on the evidence adduced.

3 (k) Whenever the commission issues a decision or order
4 regarding reclassification of land use districts or amendments
5 to land use district boundaries containing conditions or
6 mitigation measures to be fulfilled by the applicant, the
7 reclassification or amendment is temporary and subject to
8 revocation and reversion by the commission until the commission
9 affirms that the applicant has fulfilled the conditions or
10 completed the mitigation measures stated in the decision or
11 order."

12 SECTION 3. New statutory material is underscored.

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

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INTRODUCED BY:

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Report Title:

Land Use Commission; Enforcement Powers

Description:

Enables the land use commission to enforce the conditions or covenants contained in its decisions or orders.

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

