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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 legislature finds that the land use  
2 commission serves an important role in the preservation and  
3 development of Hawaii's land. Given the limited amount of land  
4 available for use in the State, it is vital that the commission  
5 incorporate and promote long-term land use planning when  
6 carrying out its duties.

7           The purpose of this Act is to expand the authority of the  
8 land use commission with respect to the district boundary  
9 amendments process, to assist the commission in long-term land  
10 use planning.

11           SECTION 2. Chapter 205, Hawaii Revised Statutes, is  
12 amended by adding a new section to part I to be appropriately  
13 designated and to read as follows:

14           "§205-    Penalty. (a) Any petitioner for an amendment to  
15 a district boundary that:

16           (1) Violates; or

17           (2) Neglects or fails to conform to or comply with,



1 this chapter or any lawful order of the land use commission may  
 2 be subject to a civil penalty not to exceed \$50,000 per day that  
 3 the violation, neglect, or failure occurs, or reversion pursuant  
 4 to section 205-4(g), but not both. The civil penalty shall be  
 5 assessed by the land use commission after a hearing in  
 6 accordance with chapter 91.

7 (b) Upon written application filed within fifteen days  
 8 after service of an order imposing a civil penalty pursuant to  
 9 this section, the land use commission may remit or mitigate the  
 10 penalty upon terms that it deems proper.

11 (c) If any civil penalty imposed pursuant to this section  
 12 is not paid within a time period as the land use commission may  
 13 direct, the attorney general shall institute a civil action for  
 14 recovery of the civil penalty in circuit court."

15 SECTION 3. Section 205-4, Hawaii Revised Statutes, is  
 16 amended to read as follows:

17 "§205-4 Amendments to district boundaries involving land  
 18 areas greater than fifteen acres. (a) Any department or agency  
 19 of the State, any department or agency of the county in which  
 20 the land is situated, or any person with a property interest in  
 21 the land sought to be reclassified, may petition the land use



1 commission for a change in the boundary of a district. This  
2 section applies to all petitions for changes in district  
3 boundaries of lands within conservation districts, lands  
4 designated or sought to be designated as important agricultural  
5 lands, and lands greater than fifteen acres in the agricultural,  
6 rural, and urban districts, except as provided in section 201H-  
7 38. The land use commission shall adopt rules pursuant to  
8 chapter 91 to implement section 201H-38.

9 (b) Upon proper filing of a petition pursuant to  
10 subsection (a), the commission [~~shall~~], within not less than  
11 sixty and not more than one hundred and eighty days, shall  
12 conduct a hearing on the appropriate island in accordance with  
13 the provisions of sections 91-9, 91-10, 91-11, 91-12, and 91-13,  
14 as applicable.

15 (c) Any other provision of law to the contrary  
16 notwithstanding, notice of the hearing together with a copy of  
17 the petition shall be served on the county planning commission  
18 and the county planning department of the county in which the  
19 land is located and all persons with a property interest in the  
20 land as recorded in the county's real property tax records. In  
21 addition, notice of the hearing shall be mailed to all persons



1 who have made a timely written request for advance notice of  
2 boundary amendment proceedings, and public notice shall be given  
3 at least once in the county in which the land sought to be  
4 redistricted is situated as well as once statewide at least  
5 thirty days in advance of the hearing. The notice shall comply  
6 with section 91-9, shall indicate the time and place that maps  
7 showing the proposed district boundary may be inspected, and  
8 further shall inform all interested persons of their rights  
9 under subsection (e).

10 (d) Any other provisions of law to the contrary  
11 notwithstanding, prior to hearing of a petition, the commission  
12 and its staff may view and inspect any land which is the subject  
13 of the petition.

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

17 (1) The petitioner, the office of planning, and the county  
18 planning department shall in every case appear as  
19 parties and make recommendations relative to the  
20 proposed boundary change.



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

4 (3) All persons who have some property interest in the  
5 land, who lawfully reside on the land, or who  
6 otherwise can demonstrate that they will be so  
7 directly and immediately affected by the proposed  
8 change that their interest in the proceeding is  
9 clearly distinguishable from that of the general  
10 public shall be admitted as parties upon timely  
11 application for intervention.

12 (4) All other persons may apply to the commission for  
13 leave to intervene as parties. Leave to intervene  
14 shall be freely granted, provided that the commission  
15 or its hearing officer if one is appointed may deny an  
16 application to intervene when in the commission's or  
17 hearing officer's sound discretion it appears that:

18 (A) [~~the~~] The position of the applicant for  
19 intervention concerning the proposed change is  
20 substantially the same as the position of a party  
21 already admitted to the proceeding; and



1 (B) [~~the~~] The admission of additional parties will  
2 render the proceedings inefficient and  
3 unmanageable.

4 A person whose application to intervene is denied may  
5 appeal such denial to the circuit court pursuant to  
6 section 91-14.

7 (5) The commission shall pursuant to chapter 91 adopt  
8 rules governing the intervention of agencies and  
9 persons under this subsection. [~~Such~~] The rules shall  
10 without limitation establish:

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

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

15 (C) [~~reasonable~~] Reasonable filing fees to accompany  
16 [~~such~~] the applications.

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



1 (g) Within a period of not more than three hundred sixty-  
2 five days after the proper filing of a petition, unless  
3 otherwise ordered by a court, or unless a time extension, which  
4 shall not exceed ninety days, is established by a two-thirds  
5 vote of the members of the commission, the commission, by filing  
6 findings of fact and conclusions of law, shall act to approve  
7 the petition, deny the petition, or to modify the petition by  
8 imposing conditions necessary to uphold the intent and spirit of  
9 this chapter or the policies and criteria established pursuant  
10 to section 205-17 or to assure substantial compliance with  
11 representations made by the petitioner in seeking a boundary  
12 change. The commission may provide by condition that absent  
13 substantial commencement of use of the land in accordance with  
14 ~~[such representations,]~~ representations made to the commission,  
15 or absent substantial compliance with the conditions imposed  
16 under this chapter, the commission, on its own motion or upon  
17 motion by any party or interested person, shall issue and serve  
18 upon the party bound by the condition an order to show cause why  
19 the property should not revert to its former land use  
20 classification or be changed to a more appropriate  
21 classification. ~~[Such conditions,]~~ If the commission finds that



1 the petitioner's failure to adhere to or comply with the  
2 representations or conditions does not warrant reversion to the  
3 land's former land use classification, including by reason of  
4 ineligibility, the commission may:

5       (1) Record a notice of noncompliance on the land with the  
6           bureau of conveyances; or

7       (2) Modify the existing conditions or impose new  
8           conditions to ensure compliance with the decision and  
9           order.

10 All conditions imposed under this subsection, if any, shall run  
11 with the land and be recorded in the bureau of conveyances.

12       All motions requesting an order to show cause based on an  
13 alleged failure to perform a condition, representation, or  
14 commitment on the part of a petitioner, may be filed only by the  
15 commission or a person who was a party to the proceedings,  
16 including successful intervenors, that resulted in the  
17 reclassification.

18       (h) No amendment of a land use district boundary shall be  
19 approved unless the commission finds upon the clear  
20 preponderance of the evidence that the proposed boundary is  
21 reasonable, not violative of section 205-2 and part III of this





1 chapter, and consistent with the policies and criteria  
2 established pursuant to sections 205-16 and 205-17. Six  
3 affirmative votes of the commission shall be necessary for any  
4 boundary amendment under this section.

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

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

15 (k) In reclassifying lands to the urban district, the  
16 commission may consider incremental districting approval only  
17 for those petitions where substantial development of the  
18 petition area is not anticipated to be completed within twenty  
19 years from the date of the commission's approval of the petition  
20 for district boundary amendment. Nothing in this subsection  
21 shall prohibit the commission from reclassifying the entire



1 petition area, regardless of the time anticipated to complete  
2 development."

3 SECTION 4. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 5. This Act shall take effect on July 1, 2050.



**Report Title:**

Land Use Commission; Incremental Districting; Order to Show Cause; Penalty

**Description:**

Establishes penalties for any petitioner for an amendment to a district boundary that violates, neglects or fails to conform to or comply with chapter 205, HRS, (land use commission) or any lawful order of the land use commission. Authorizes the land use commission to record a notice of noncompliance, modify existing conditions, or impose new conditions on land that has been petitioned for a boundary amendment where there has been a failure to adhere to or comply with the petitioner's representations or the land use commission's conditions. Clarifies who may motion for an order to show cause based on an alleged failure to perform a condition, representation, or commitment. Extends incremental districting to urban districts to twenty years. (HB2044 HD1)

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

