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# A BILL FOR AN ACT

RELATING TO LAND USE.

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

1           SECTION 1. The legislature enacted the state land use  
2 commission law in 1961 due to the perception that inadequate  
3 controls allowed many of Hawaii's limited and valuable lands to  
4 be used for the short-term gain of a few, resulting in a long-  
5 term loss to the growth and potential of Hawaii's economy.

6           The legislature finds that over the past half century,  
7 various commissions and task forces have reviewed the state land  
8 use commission chapter to ensure proper conservation, control,  
9 and development of resources.

10           The legislature further finds that only one remedy  
11 currently exists to address violations to conditions imposed by  
12 the land use commission: reversion of the land back to the  
13 land's original designation. The land use commission is  
14 restricted in its ability to enforce conditions by reversion to  
15 only instances of violation of conditions on developments that  
16 have not been "substantially commenced" on the site.

17           The purpose of this Act is to provide guidance and  
18 clarification to chapter 205, Hawaii Revised Statutes, by



1 requiring the counties to petition the land use commission for  
2 regional district boundary amendments needed after adopting  
3 updates to their general plan and to provide the land use  
4 commission with the power to amend, revise, or modify a decision  
5 and other granting of a land use district boundary amendment  
6 when there has been a finding by the land use commission that a  
7 petitioner or its successors or assigns has not adhered to the  
8 representations made to or conditions imposed by the commission.

9 SECTION 2. Section 205-3.1, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "§205-3.1 Amendments to district boundaries. (a)

12 District boundary amendments involving lands in the conservation  
13 district, land areas greater than fifteen acres, or lands  
14 delineated as important agricultural lands shall be processed by  
15 the land use commission pursuant to section 205-4.

16 (b) Any department or agency of the State, and department  
17 or agency of the county in which the land is situated, or any  
18 person with a property interest in the land sought to be  
19 reclassified may petition the appropriate county land use  
20 decision-making authority of the county in which the land is  
21 situated for a change in the boundary of a district involving



1 lands less than fifteen acres presently in the rural and urban  
2 districts and lands less than fifteen acres in the agricultural  
3 district that are not designated as important agricultural  
4 lands.

5 (c) District boundary amendments involving land areas of  
6 fifteen acres or less, except as provided in subsection (b),  
7 shall be determined by the appropriate county land use decision-  
8 making authority for the district and shall not require  
9 consideration by the land use commission pursuant to section  
10 205-4; provided that such boundary amendments and approved uses  
11 are consistent with this chapter. The appropriate county land  
12 use decision-making authority may consolidate proceedings to  
13 amend state land use district boundaries pursuant to this  
14 subsection, with county proceedings to amend the general plan,  
15 development plan, zoning of the affected land, or such other  
16 proceedings. Appropriate ordinances and rules to allow  
17 consolidation of such proceedings may be developed by the county  
18 land use decision-making authority.

19 (d) The county land use decision-making authority shall  
20 serve a copy of the application for a district boundary  
21 amendment to the land use commission and the department of



1 business, economic development, and tourism and shall notify the  
2 commission and the department of the time and place of the  
3 hearing and the proposed amendments scheduled to be heard at the  
4 hearing. A change in the state land use district boundaries  
5 pursuant to this subsection shall become effective on the day  
6 designated by the county land use decision-making authority in  
7 its decision. Within sixty days of the effective date of any  
8 decision to amend state land use district boundaries by the  
9 county land use decision-making authority, the decision and the  
10 description and map of the affected property shall be  
11 transmitted to the land use commission and the department of  
12 business, economic development, and tourism by the county  
13 planning director.

14 (e) After the completion of county proceedings to amend  
15 its general plan, and adoption by the county council, each  
16 county shall submit the general plan to the land use commission  
17 for review and petition the commission to approve any boundary  
18 amendments as may be required under subsection (a), to be  
19 processed pursuant to section 205-4."

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



1       "§205-4 Amendments to district boundaries involving land  
2 areas greater than fifteen acres. (a) Any department or agency  
3 of the State, any department or agency of the county in which  
4 the land is situated, or any person with a property interest in  
5 the land sought to be reclassified, may petition the land use  
6 commission for a change in the boundary of a district. This  
7 section applies to all petitions for changes in district  
8 boundaries of lands within conservation districts, lands  
9 designated or sought to be designated as important agricultural  
10 lands, and lands greater than fifteen acres in the agricultural,  
11 rural, and urban districts, except as provided in section 201H-  
12 38. The land use commission shall adopt rules pursuant to  
13 chapter 91 to implement section 201H-38.

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

19       (c) Any other provision of law to the contrary  
20 notwithstanding, notice of the hearing together with a copy of  
21 the petition shall be served on the county planning commission



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

14 (d) Any other provisions of law to the contrary  
15 notwithstanding, prior to hearing of a petition the commission  
16 and its staff may view and inspect any land which is the subject  
17 of the petition.

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



- 1           (1) The petitioner, the office of planning, and the county  
2           planning department shall in every case appear as  
3           parties and make recommendations relative to the  
4           proposed boundary change.
- 5           (2) All departments and agencies of the State and of the  
6           county in which the land is situated shall be admitted  
7           as parties upon timely application for intervention.
- 8           (3) All persons who have some property interest in the  
9           land, who lawfully reside on the land, or who  
10          otherwise can demonstrate that they will be so  
11          directly and immediately affected by the proposed  
12          change that their interest in the proceeding is  
13          clearly distinguishable from that of the general  
14          public shall be admitted as parties upon timely  
15          application for intervention.
- 16          (4) All other persons may apply to the commission for  
17          leave to intervene as parties. Leave to intervene  
18          shall be freely granted, provided that the commission  
19          or its hearing officer if one is appointed may deny an  
20          application to intervene when in the commission's or  
21          hearing officer's sound discretion it appears that:



1 (A) the position of the applicant for intervention  
2 concerning the proposed change is substantially the  
3 same as the position of a party already admitted to  
4 the proceeding; and (B) the admission of additional  
5 parties will render the proceedings inefficient and  
6 unmanageable. A person whose application to intervene  
7 is denied may appeal such denial to the circuit court  
8 pursuant to section 91-14.

9 (5) The commission shall pursuant to chapter 91 adopt  
10 rules governing the intervention of agencies and  
11 persons under this subsection. Such rules shall  
12 without limitation establish: (A) the information to  
13 be set forth in any application for intervention; (B)  
14 time limits within which such applications shall be  
15 filed; and (C) reasonable filing fees to accompany  
16 such 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 citizen or community group  
21 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 the commission, on its own motion or upon motion by any party,  
16 shall issue and serve upon the party bound by the condition an  
17 order to show cause why the property should not revert to its  
18 former land use classification or be changed to a more  
19 appropriate classification~~[-.—Such]~~; provided that, if the  
20 commission finds that the petitioner's failure to adhere to or  
21 comply with the representations or conditions does not warrant



1 reversion to the land's former land use classification or change  
2 to a more appropriate classification, the commission may modify  
3 the conditions or impose new conditions to ensure compliance  
4 with the decision and order and to mitigate any injury resulting  
5 from the failure to adhere to or comply with conditions  
6 regardless of whether there has been substantial commencement of  
7 use of the land. All conditions, if any, shall run with the  
8 land and be recorded in the bureau of conveyances.

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

16 (h) No amendment of a land use district boundary shall be  
17 approved unless the commission finds upon the clear  
18 preponderance of the evidence that the proposed boundary is  
19 reasonable, not violative of section 205-2 [~~and part III of this~~  
20 ~~chapter~~], and consistent with the policies and criteria  
21 established pursuant to sections 205-16 and 205-17[-] and part



1 III of this chapter. Six affirmative votes of the commission  
2 shall be necessary for any boundary amendment under this  
3 section.

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

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

14 (k) Regardless of whether there has been substantial  
15 commencement of the use of the land, if there has not been  
16 compliance with representations made or a condition imposed  
17 under this chapter relating to infrastructure, the environment,  
18 cultural resources, archaeological resources, or the public  
19 trust doctrine, the commission, on its own motion or upon motion  
20 by any party, may issue and serve upon the party bound by the  
21 representation or condition an order to show cause why the



1 commission should not take action under this section to ensure  
2 compliance with the representation or condition or mitigate  
3 injury. Regardless of whether there has been substantial  
4 commencement, as defined in this section, of the use of the  
5 land, if the commission finds that one or more such  
6 representations or conditions contained in a decision and order  
7 made pursuant to this chapter have not been adhered to, the  
8 commission may assess an administrative fine against the party  
9 bound by the representation or condition of an amount not to  
10 exceed \$50,000 per day and the costs of enforcement, including  
11 but not limited to associated hearing expenses, until the party  
12 bound by the representation or condition provides evidence to  
13 the commission showing that the violation has been cured and is  
14 not likely to be repeated. If the party bound by the  
15 representation or condition fails to pay the fine as ordered by  
16 the commission, the commission may issue a notice of non-  
17 conformance to be recorded on the title of the property at the  
18 bureau of conveyances and pursue collection procedures in  
19 circuit court."

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



**1** SECTION 5. This Act shall take effect July 1, 2076.



**Report Title:**

State Land Use Commission; Zoning; Boundary Amendments

**Description:**

Requires the counties to petition the Land Use Commission to reclassify lands. Provides flexibility to the Land Use Commission in addressing violations of representations made to the Commission or conditions imposed by the Commission in the Commission's decisions and orders. Effective 7/1/2076. (SD2)

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

