
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 authorize the
2 land use commission to amend, revise, or modify a decision and
3 order granting a land use district boundary amendment when the
4 commission finds that a petitioner or its successors or assigns
5 has not adhered to the conditions previously imposed by the
6 commission.

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

9 "**§205-4 Amendments to district boundaries involving land**
10 **areas greater than fifteen acres.** (a) Any department or agency
11 of the State, any department or agency of the county in which
12 the land is situated, or any person with a property interest in
13 the land sought to be reclassified, may petition the land use
14 commission for a change in the boundary of a district. This
15 section applies to all petitions for changes in district
16 boundaries of lands within conservation districts, lands
17 designated or sought to be designated as important agricultural



1 lands, and lands greater than fifteen acres in the agricultural,
2 rural, and urban districts, except as provided in section
3 201H-38. The land use commission shall adopt rules pursuant to
4 chapter 91 to implement section 201H-38.

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



1 thirty days in advance of the hearing. The notice shall comply
2 with section 91-9, shall indicate the time and place that maps
3 showing the proposed district boundary may be inspected, and
4 further shall inform all interested persons of their rights
5 under subsection (e).

6 (d) Any other provisions of law to the contrary
7 notwithstanding, prior to hearing of a petition the commission
8 and its staff may view and inspect any land ~~[which]~~ that is the
9 subject of the petition.

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

13 (1) The petitioner, the office of planning, and the county
14 planning department shall in every case appear as
15 parties and make recommendations relative to the
16 proposed boundary change;

17 (2) All departments and agencies of the State and of the
18 county in which the land is situated shall be admitted
19 as parties upon timely application for intervention;

20 (3) All persons who have some property interest in the
21 land, who lawfully reside on the land, or who



1 otherwise can demonstrate that they will be so
2 directly and immediately affected by the proposed
3 change that their interest in the proceeding is
4 clearly distinguishable from that of the general
5 public shall be admitted as parties upon timely
6 application for intervention;

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

13 (A) The position of the applicant for intervention
14 concerning the proposed change is substantially
15 the same as the position of a party already
16 admitted to the proceeding; and

17 (B) The admission of additional parties will render
18 the proceedings inefficient and unmanageable.

19 A person whose application to intervene is denied may
20 appeal the denial to the circuit court pursuant to
21 section 91-14; and



1 (5) The commission, pursuant to chapter 91, shall adopt
2 rules governing the intervention of agencies and
3 persons under this subsection. The rules shall
4 without limitation establish:

5 (A) The information to be set forth in any
6 application for intervention;

7 (B) The limits within which applications shall be
8 filed; and

9 (C) Reasonable filing fees to accompany applications.

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

15 (g) Within a period of not more than three hundred sixty-
16 five days after the proper filing of a petition, unless
17 otherwise ordered by a court, or unless a time extension, which
18 shall not exceed ninety days, is established by a two-thirds
19 vote of the members of the commission, the commission, by filing
20 findings of fact and conclusions of law, shall act to approve
21 the petition, deny the petition, or to modify the petition by



1 imposing conditions necessary to uphold the intent and spirit of
2 this chapter or the policies and criteria established pursuant
3 to section 205-17 or to assure substantial compliance with
4 representations made by the petitioner in seeking a boundary
5 change. The commission may provide by condition that absent
6 substantial commencement of use of the land in accordance with
7 [such] the representations, the commission, upon its own motion
8 or upon motion by any party or interested person, shall issue
9 and serve upon the party bound by the condition an order to show
10 cause why the property should not revert to its former land use
11 classification or be changed to a more appropriate
12 classification~~[such]~~; provided that, if the commission finds
13 that the petitioner's failure to adhere to or comply with the
14 representations or conditions does not warrant reversion to the
15 land's former land use classification or change to a more
16 appropriate classification, the commission may modify the
17 conditions or impose new conditions to ensure compliance with
18 the decision and order and to mitigate any injury resulting from
19 the failure to adhere to or comply with conditions regardless of
20 whether there has been substantial commencement of use of the



1 land. All conditions, if any, shall run with the land and be
2 recorded in the bureau of conveyances.

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

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

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



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

3 (k) Regardless of whether there has been substantial
4 commencement of use of the land, if there has not been
5 compliance with representations made or a condition imposed
6 under this chapter relating to infrastructure, the environment,
7 cultural resources, archaeological resources, or the public
8 trust doctrine, the commission, upon its own motion or upon
9 motion by any party or interested person, may issue and serve
10 upon the party bound by the condition or representation an order
11 to show cause why the commission should not take action under
12 this section to ensure compliance with the condition or
13 representation. Regardless of whether there has been
14 substantial commencement of use of the land as defined by this
15 section, if the commission finds that one or more of the
16 conditions or representations contained in a decision and order
17 made pursuant to this chapter have not been adhered to, the
18 commission may assess an administrative fine against the party
19 bound by the condition in an amount not to exceed \$50,000 per
20 day plus the costs of enforcement including but not limited to
21 associated hearing expenses, until the party bound by the



1 condition provides evidence to the commission showing that the
 2 violation has been cured and is not likely to be repeated. If
 3 the party bound by the condition fails to pay the fine as
 4 ordered by the commission, the commission may issue a notice of
 5 non-conformance to be recorded on the title of the property at
 6 the bureau of conveyances and pursue collection procedures in
 7 circuit court.

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

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

16 SECTION 4. This Act shall take effect upon its approval.
 17

INTRODUCED BY: 

JAN 22 2019



H.B. NO. 921

Report Title:

Land Use Commission; District Boundary Amendments; Substantial Commencement

Description:

Authorizes the Land Use Commission to amend, revise, or modify a decision and order granting a district boundary amendment, or fine a petitioner, upon finding that a petitioner or its successors or assigns have not adhered to the conditions imposed by the commission, regardless of whether there has been substantial commencement of use of the land. Defines "substantial commencement".

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