

JAN 24 2019

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

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

10           "§205-4   Amendments to district boundaries involving land  
11 areas greater than fifteen acres.   (a) Any department or agency  
12 of the State, any department or agency of the county in which  
13 the land is situated, or any person with a property interest in  
14 the land sought to be reclassified, may petition the land use  
15 commission for a change in the boundary of a district. This  
16 section applies to all petitions for changes in district  
17 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 201H-  
4 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



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 is the subject  
9 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 citizen or community group  
14 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 representations, the commission, upon its own motion or  
8 upon motion by any party or interested person, shall issue and  
9 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[~~—Sueh~~]; 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 such  
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, does not [~~violative of~~] violate section 205-2 [~~and~~  
7 ~~part III of this chapter~~], and is consistent with the policies  
8 and criteria established pursuant to sections 205-16 and  
9 205-17[~~7~~] and part III of this chapter. Six affirmative votes  
10 of the commission shall be necessary for any boundary amendment  
11 under this 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 finding appears to  
16 be contrary to the clear preponderance of the evidence.

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



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





# S.B. NO. 1135

1 repeated. If the party bound by the condition fails to pay the  
 2 fine as ordered by the commission, the commission may issue a  
 3 notice of non-conformance to be recorded on the title of the  
 4 property at the bureau of conveyances and pursue collection  
 5 procedures in circuit court.

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

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

14 SECTION 4. This Act shall take effect on July 1, 2019.

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INTRODUCED BY:

*[Handwritten signature: Bill Ruess]*  
*[Handwritten signature: Russ E. R.]*  
*[Handwritten signature: Simon Drevada K.]*  
*[Handwritten signature: Kurt Favelle]*



# S.B. NO. 1135

**Report Title:**

Land Use Commission; District Boundary Amendments; Substantial Commencement

**Description:**

Provides the Land Use Commission with the power to amend, revise, or modify a decision and order granting a district boundary amendment, or fine a petitioner, when there has been a finding by the Land Use Commission 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".

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

