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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 that grants 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 have  
6 not adhered to their representations or conditions previously  
7 imposed by the commission, regardless of whether there has been  
8 substantial commencement of use of the land.

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



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

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

12 (c) Any other provision of law to the contrary  
13 notwithstanding, notice of the hearing together with a copy of  
14 the petition shall be served on the county planning commission  
15 and the county planning department of the county in which the  
16 land is located and all persons with a property interest in the  
17 land as recorded in the county's real property tax records. In  
18 addition, notice of the hearing shall be mailed to all persons  
19 who have made a timely written request for advance notice of  
20 boundary amendment proceedings, and public notice shall be given  
21 at least once in the county in which the land sought to be



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

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

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

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

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



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

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

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

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



1 A person whose application to intervene is denied may  
2 appeal the denial to the circuit court pursuant to  
3 section 91-14; and

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

8 (A) The information to be set forth in any  
9 application for intervention;

10 (B) The limits within which applications shall be  
11 filed; and

12 (C) Reasonable filing fees to accompany applications.

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

18 (g) Within a period of not more than three hundred sixty-  
19 five days after the proper filing of a petition, unless  
20 otherwise ordered by a court, or unless a time extension, which  
21 shall not exceed ninety days, is established by a two-thirds



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



1 the failure to adhere to or comply with representations or  
2 conditions regardless of whether there has been substantial  
3 commencement of use of the land. All conditions, if any, shall  
4 run with the land and be recorded in the bureau of conveyances.

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

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

19 (j) At the hearing, all parties may enter into appropriate  
20 stipulations as to findings of fact, conclusions of law, and  
21 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) 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 representation or condition an order  
11 to show cause why the commission should not take action under  
12 this section to ensure compliance with the representation or  
13 condition. Regardless of whether there has been substantial  
14 commencement of use of the land, if the commission finds that  
15 one or more of such representations or conditions contained in a  
16 decision and order made pursuant to this chapter have not been  
17 adhered to, the commission may assess an administrative fine  
18 against the party bound by the representation or condition in an  
19 amount not to exceed \$50,000 per day plus the costs of  
20 enforcement, including but not limited to associated hearing  
21 expenses, until such time as the party bound by the





1 representation or condition provides evidence to the commission  
 2 showing that the violation has been cured and is not likely to  
 3 be repeated. If the party bound by the representation or  
 4 condition fails to pay the fine as ordered by the commission,  
 5 the commission may issue a notice of non-conformance to be  
 6 recorded on the title of the property at the bureau of  
 7 conveyances and pursue collection procedures in 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, within and outside the project area, and completed  
 12 construction of twenty per cent of any affordable housing  
 13 requirement such 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 on December 31,  
 17 2050.



**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 a representation made by the petitioner or a condition imposed by the commission, regardless of whether there has been substantial commencement of use of the land. Defines "substantial commencement". Takes effect 12/31/2050. (SD1)

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

