
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 January 1, 2020.



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". Effective 1/1/2020. (SD2)

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