

A Bill for an Act Relating to Amendments to District Boundaries by the State Land Use Commission and to Special Use Permits.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 205-4, Hawaii Revised Statutes, is amended to read:

“Sec. 205-4 Amendments to district boundaries. (a) Any department or agency of the State including the land use commission, any department or agency of the county in which the land is situated, or any person with a property interest in the land sought to be reclassified, may petition the land use commission for a change in the boundary of a district.

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

(c) Any other provision of law to the contrary notwithstanding, notice of the hearing together with a copy of the petition shall be served on the county planning commission and the county planning department and all persons with a property interest in the land recorded at the department of taxation. In addition, such notice shall be mailed to all persons who have made a timely written request for advance notice of boundary amendment proceedings, and shall be published at least once in a newspaper in the county in which the land sought to be redistricted is situated as well as once in a newspaper of general circulation in the State at least thirty days in advance of the hearing. The notice shall comply with the provisions of section 91-9, shall indicate the time and place that maps showing the proposed district boundary may be inspected, and further shall inform all interested persons of their rights under subsection (d) of this section.

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

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

- (1) The petitioner, the department of planning and economic development and the county planning department shall in every case appear as parties and make recommendations relative to the proposed boundary change.
- (2) All departments and agencies of the State and of the county in which the land is situated shall be admitted as parties upon timely application for intervention.
- (3) All persons who have some property interest in the land, who lawfully reside on the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application for intervention.
- (4) All other persons may apply to the commission for leave to intervene as parties. Leave to intervene shall be freely granted, provided that the commission or its hearing officer if one is appointed may deny an application to intervene when in the commission's or hearing officer's sound discretion it appears that: (A) the position of the applicant for intervention concerning the proposed change is substantially the same as the position of a party already admitted to the proceeding; and (B) the admission of additional parties will render the proceedings inefficient and unmanageable. A person whose application to intervene is denied may appeal such denial to the circuit court pursuant to section 91-14.
- (5) The commission shall pursuant to chapter 91 adopt rules governing the intervention of agencies and persons under this subsection. Such rules shall without limitation establish: (A) the information to be set forth in any application for intervention; (B) time limits within which such applications shall be filed; and (C) reasonable filing fees to accompany such applications.

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

(g) Within a period of not more than one hundred and eighty and not less than forty-five days after the close of the hearing, unless otherwise ordered by a court, the commission shall, by filing findings of fact and conclusions of law, act to approve the petition, deny the petition, or to modify the petition by imposing conditions necessary to uphold the intent and spirit of this chapter or the policies and criteria established pursuant to section 205-16.1 or to assure substantial compliance with representations made by the petitioner in seeking a boundary change. Such conditions, if any, shall run with the land and be recorded in the bureau of conveyances.

(h) No amendment of a land use district boundary shall be approved unless the commission finds upon the clear preponderance of the evidence that the

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proposed boundary is reasonable, not violative of section 205-2 and consistent with the interim policies and criteria established pursuant to section 205-16.1, or any state plan enacted by the legislature which plan shall supersede any interim guidance policies.

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

SECTION 2. Section 205-6, Hawaii Revised Statutes, is amended to read:

"Sec. 205-6 Special permit. The county planning commission may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified. Any person who desires to use his land within an agricultural or rural district other than for an agricultural or rural use, as the case may be, may petition the planning commission or the county within which his land is located for permission to use his land in the manner desired.

The planning commission shall conduct a hearing within a period of not less than thirty nor more than one hundred twenty days from the receipt of the petition. The planning commission shall notify the land use commission and such persons and agencies that may have an interest in the subject matter of the time and place of the hearing.

The planning commission may under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter. The planning commission shall act on the petition not earlier than fifteen days after the public hearing. A decision in favor of the applicant shall require a majority vote of the total membership of the planning commission, which shall be subject to the approval of the land use commission, provided that the land use commission may impose additional restrictions as may be necessary or appropriate in granting such approval, including the adherence to representations made by the applicant. A copy of the decision together with the findings shall be transmitted to the commission within sixty days after the decision is rendered. Within forty-five days after receipt of the county agency's decision, the commission shall act to approve, approve with modification, or deny the petition. A denial either by the county agency or by the commission, or a modification by the commission, as the case may be, of the desired use shall be appealable to the circuit court of the circuit in which the land is situated and shall be made pursuant to the Hawaii Rules of Civil Procedure."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

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

(Approved April 6, 1976.)

*Edited accordingly.