A BILL FOR AN ACT

RELATING TO THE LAND USE COMMISSION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The purpose of this Act is to authorize the land use commission to amend, revise, or modify a decision and order granting a land use district boundary amendment when the commission finds that a petitioner or its successors or assigns has not adhered to the conditions previously imposed by the commission.

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

"§205-4 Amendments to district boundaries involving land areas greater than fifteen acres. (a) Any department or agency of the State, 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. This section applies to all petitions for changes in district boundaries of lands within conservation districts, lands designated or sought to be designated as important agricultural..."
lands, and lands greater than fifteen acres in the agricultural, rural, and urban districts, except as provided in section 201H-38. The land use commission shall adopt rules pursuant to chapter 91 to implement section 201H-38.

(b) Upon proper filing of a petition pursuant to subsection (a), the commission, within not less than sixty and not more than one hundred and eighty days, shall 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 of the county in which the land is located and all persons with a property interest in the land as recorded in the county's real property tax records. In addition, notice of the hearing shall be mailed to all persons who have made a timely written request for advance notice of boundary amendment proceedings, and public notice shall be given at least once in the county in which the land sought to be redistricted is situated as well as once statewide at least
thirty days in advance of the hearing. The notice shall comply with 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 (e).

(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] that 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 office of planning, 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 the denial to the circuit court pursuant to
section 91-14; and
(5) The commission, pursuant to chapter 91, shall adopt rules governing the intervention of agencies and persons under this subsection. The rules shall without limitation establish:

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

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

(C) Reasonable filing fees to accompany 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 three hundred sixty-five days after the proper filing of a petition, unless otherwise ordered by a court, or unless a time extension, which shall not exceed ninety days, is established by a two-thirds vote of the members of the commission, the commission, by filing findings of fact and conclusions of law, shall 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 205-17 or to assure substantial compliance with
representations made by the petitioner in seeking a boundary
change. The commission may provide by condition that absent
substantial commencement of use of the land in accordance with
[such] the representations, the commission, upon its own motion
or upon motion by any party or interested person, shall issue
and serve upon the party bound by the condition an order to show
cause why the property should not revert to its former land use
classification or be changed to a more appropriate
classification[----Such]; provided that, if the commission finds
that the petitioner's failure to adhere to or comply with the
representations or conditions does not warrant reversion to the
land's former land use classification or change to a more
appropriate classification, the commission may modify the
conditions or impose new conditions to ensure compliance with
the decision and order and to mitigate any injury resulting from
the failure to adhere to or comply with conditions regardless of
whether there has been substantial commencement of use of the
land. All 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 proposed boundary is reasonable, not violative of section 205-2 and part III of this chapter, and consistent with the policies and criteria established pursuant to sections 205-16 and 205-17 and part III of this chapter. Six affirmative votes of the commission shall be necessary for any boundary amendment under this section.

(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 the finding appears to be contrary to the clear preponderance of the evidence.

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

(k) Regardless of whether there has been substantial
commencement of use of the land, if there has not been
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under this chapter relating to infrastructure, the environment,
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condition provides evidence to the commission showing that the violation has been cured and is not likely to be repeated. If the party bound by the condition fails to pay the fine as ordered by the commission, the commission may issue a notice of non-conformance to be recorded on the title of the property at the bureau of conveyances and pursue collection procedures in circuit court.

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

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

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

INTRODUCED BY: [Signature]
JAN 2 2 2019
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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