


August 30, 2016

PROCESSED

SEP 1 2016

SEP 1 2016

MEMO TO: PIA-3(2) File

F R O M: Michael P. Victorino, Chair   
Policy and Intergovernmental Affairs Committee

SUBJECT: **TRANSMITTAL OF LEGISLATIVE PROPOSAL RELATING TO  
2017 HAWAII STATE ASSOCIATION OF COUNTIES  
LEGISLATIVE PACKAGE** (PAF-16-149)

The attached legislative proposal pertains to Item 3(2) on the Committee's agenda.

paf:kcw:16-149c

Attachment

# Resolution

No. \_\_\_\_\_

APPROVING FOR INCLUSION IN THE 2017 HAWAII  
STATE ASSOCIATION OF COUNTIES LEGISLATIVE  
PACKAGE A STATE BILL TO ALLOW COUNTIES TO  
PETITION THE STATE LAND USE COMMISSION FOR  
REGIONAL DISTRICT BOUNDARY AMENDMENTS  
AFTER ADOPTION OF GENERAL PLAN UPDATES  
AND TO GRANT TO THE STATE LAND USE  
COMMISSION ADDITIONAL ENFORCEMENT  
AUTHORITY OVER ITS DECISIONS AND ORDERS

WHEREAS, under current law, the State Land Use Commission has a single remedy, reversion of land back to its original designation, to address violations of conditions imposed on district boundary amendment approvals; and

WHEREAS, enforcing conditions by reversion is reserved for instances of violation of conditions on developments that have not substantially commenced on the site; and

WHEREAS, the process of enforcing conditions on the reclassification of land would be improved by providing the land use commission with the authority to amend, revise, or modify a decision and order granting a district boundary amendment for a property; and

WHEREAS, State law requires the counties to adopt general plans and update them on a regular basis; and

WHEREAS, there is no specific provision for the counties to comprehensively seek district boundary amendments for lands identified for reclassification pursuant to the general plans; and

WHEREAS, allowing the counties to petition the land use commission for regional district boundary amendments needed after adoption of updates to their county general plans would ensure that recommendations made in the plan are processed in an orderly, efficient, and timely manner; now, therefore,

**Resolution No. \_\_\_\_\_**

BE IT RESOLVED by the Council of the County of Maui:

1. That the proposed State bill, attached as Exhibit "A," to expand the enforcement powers of the State Land Use Commission and to specifically allow the counties to engage in comprehensive, regional reclassification of land after the adoption of updates to the counties' general plans, is approved for inclusion in the 2017 Hawaii State Association of Counties Legislative Package; and
2. That a copy of this resolution be transmitted to the Hawaii State Association of Counties Executive Committee.

paf:kcw:16-149b

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# A BILL FOR AN ACT

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RELATING TO LAND USE.

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

1       SECTION 1. The legislature enacted the state land use  
2 commission law in 1961 because of the perception that inadequate  
3 controls allowed many of Hawaii's limited and valuable lands to  
4 be used for the short-term gain of a few, resulting in a long-  
5 term loss to the growth and potential of Hawaii's economy.

6       The legislature finds that over the past half century,  
7 various commissions and task forces have reviewed the state land  
8 use commission chapter to ensure proper conservation, control,  
9 and development of resources.

10       The legislature further finds that only one remedy  
11 currently exists to address violations to conditions imposed by  
12 the land use commission: reversion of the land back to the  
13 land's original designation. The land use commission is  
14 restricted in its ability to enforce conditions by reversion to  
15 only instances of violation of conditions on developments that  
16 have not been "substantially commenced" on the site.

17       The purposes of this Act are twofold: (1) to amend chapter  
18 205, Hawaii Revised Statutes, to specifically allow the counties

**EXHIBIT "A"**

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1 to petition the land use commission for regional district  
2 boundary amendments needed after adopting updates to their  
3 general plan; and (2) to provide the land use commission with  
4 the power to amend, revise, or modify a decision and order  
5 granting a land use district boundary amendment when there has  
6 been a finding by the land use commission that a petitioner or  
7 its successor or assign has not adhered to the representations  
8 made to or conditions imposed by the commission.

9 SECTION 2. Section 205-3.1, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "§205-3.1 Amendments to district boundaries. (a)

12 District boundary amendments involving lands in the conservation  
13 district, land areas greater than fifteen acres, or lands  
14 delineated as important agricultural lands shall be processed by  
15 the land use commission pursuant to section 205-4.

16 (b) Any department or agency of the State, and department  
17 or agency of the county in which the land is situated, or any  
18 person with a property interest in the land sought to be  
19 reclassified may petition the appropriate county land use  
20 decision-making authority of the county in which the land is  
21 situated for a change in the boundary of a district involving  
22 lands less than fifteen acres presently in the rural and urban

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1 districts and lands less than fifteen acres in the agricultural  
2 district that are not designated as important agricultural  
3 lands.

4 (c) District boundary amendments involving land areas of  
5 fifteen acres or less, except as provided in subsection (b),  
6 shall be determined by the appropriate county land use decision-  
7 making authority for the district and shall not require  
8 consideration by the land use commission pursuant to section  
9 205-4; provided that such boundary amendments and approved uses  
10 are consistent with this chapter. The appropriate county land  
11 use decision-making authority may consolidate proceedings to  
12 amend state land use district boundaries pursuant to this  
13 subsection, with county proceedings to amend the general plan,  
14 development plan, zoning of the affected land, or such other  
15 proceedings. Appropriate ordinances and rules to allow  
16 consolidation of such proceedings may be developed by the county  
17 land use decision-making authority.

18 (d) The county land use decision-making authority shall  
19 serve a copy of the application for a district boundary  
20 amendment to the land use commission and the department of  
21 business, economic development, and tourism and shall notify the  
22 commission and the department of the time and place of the

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1 hearing and the proposed amendments scheduled to be heard at the  
2 hearing. A change in the state land use district boundaries  
3 pursuant to this subsection shall become effective on the day  
4 designated by the county land use decision-making authority in  
5 its decision. Within sixty days of the effective date of any  
6 decision to amend state land use district boundaries by the  
7 county land use decision-making authority, the decision and the  
8 description and map of the affected property shall be  
9 transmitted to the land use commission and the department of  
10 business, economic development, and tourism by the county  
11 planning director.

12 (e) After the completion of county proceedings to amend  
13 the county's general plan, including adoption by the county  
14 council, each county may submit the general plan to the land use  
15 commission for review and petition the commission to approve any  
16 boundary amendments as may be required under subsection (a), to  
17 be processed pursuant to section 205-4."

18 SECTION 3. Section 205-4, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 **"§205-4 Amendments to district boundaries involving land**  
21 **areas greater than fifteen acres. (a) Any department or agency**  
22 **of the State, any department or agency of the county in which**

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1 the land is situated, or any person with a property interest in  
2 the land sought to be reclassified, may petition the land use  
3 commission for a change in the boundary of a district. This  
4 section applies to all petitions for changes in district  
5 boundaries of lands within conservation districts, lands  
6 designated or sought to be designated as important agricultural  
7 lands, and lands greater than fifteen acres in the agricultural,  
8 rural, and urban districts, except as provided in section 201H-  
9 38. The land use commission shall adopt rules pursuant to  
10 chapter 91 to implement section 201H-38.

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

16 (c) Any other provision of law to the contrary  
17 notwithstanding, notice of the hearing together with a copy of  
18 the petition shall be served on the county planning commission  
19 and the county planning department of the county in which the  
20 land is located and all persons with a property interest in the  
21 land as recorded in the county's real property tax records. In  
22 addition, notice of the hearing shall be mailed to all persons



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1 who have made a timely written request for advance notice of  
2 boundary amendment proceedings, and public notice shall be given  
3 at least once in the county in which the land sought to be  
4 redistricted is situated as well as once statewide at least  
5 thirty days in advance of the hearing. The notice shall comply  
6 with section 91-9, shall indicate the time and place that maps  
7 showing the proposed district boundary may be inspected, and  
8 further shall inform all interested persons of their rights  
9 under subsection (e).

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

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

17 (1) The petitioner, the office of planning, and the county  
18 planning department shall in every case appear as  
19 parties and make recommendations relative to the  
20 proposed boundary change.

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1           (2) All departments and agencies of the State and of the  
2                 county in which the land is situated shall be admitted  
3                 as parties upon timely application for intervention.

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

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

18                (A) the position of the applicant for intervention  
19                concerning the proposed change is substantially the  
20                same as the position of a party already admitted to  
21                the proceeding; and (B) the admission of additional  
22                parties will render the proceedings inefficient and

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

4 (5) The commission shall pursuant to chapter 91 adopt  
5 rules governing the intervention of agencies and  
6 persons under this subsection. Such rules shall  
7 without limitation establish: (A) the information to  
8 be set forth in any application for intervention; (B)  
9 time limits within which such applications shall be  
10 filed; and (C) reasonable filing fees to accompany  
11 such applications.

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

17 (g) Within a period of not more than three hundred sixty-  
18 five days after the proper filing of a petition, unless  
19 otherwise ordered by a court, or unless a time extension, which  
20 shall not exceed ninety days, is established by a two-thirds  
21 vote of the members of the commission, the commission, by filing  
22 findings of fact and conclusions of law, shall act to approve

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

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1 use of the land. All conditions, if any, shall run with the  
2 land and be recorded in the bureau of conveyances.

3 For purposes of this section "substantial commencement"  
4 shall mean completion of all public improvements and  
5 infrastructure required by conditions imposed pursuant to this  
6 chapter, both within the project area and outside the project  
7 area and completed construction of twenty per cent of the  
8 physical private improvements such that they are usable or  
9 habitable.

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

19 (i) Parties to proceedings to amend land use district  
20 boundaries may obtain judicial review thereof in the manner set  
21 forth in section 91-14, provided that the court may also reverse

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1 or modify a finding of the commission if such finding appears to  
2 be contrary to the clear preponderance of the evidence.

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

8 (k) Regardless of whether there has been substantial  
9 commencement of the use of the land, if there has not been  
10 compliance with representations made or a condition imposed  
11 under this chapter relating to infrastructure, the environment,  
12 cultural resources, archaeological resources, or the public  
13 trust doctrine, the commission, on its own motion or upon motion  
14 by any party, may issue and serve upon the party bound by the  
15 representation or condition an order to show cause why the  
16 commission should not take action under this section to ensure  
17 compliance with the representation or condition or mitigate  
18 injury. Regardless of whether there has been substantial  
19 commencement, as defined in this section, of the use of the  
20 land, if the commission finds that one or more such  
21 representations or conditions contained in a decision and order  
22 made pursuant to this chapter have not been adhered to, the

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1 commission may assess an administrative fine against the party  
2 bound by the representation or condition of an amount not to  
3 exceed \$50,000 per day and the costs of enforcement, including  
4 but not limited to associated hearing expenses, until the party  
5 bound by the representation or condition provides evidence to  
6 the commission showing that the violation has been cured and is  
7 not likely to be repeated. If the party bound by the  
8 representation or condition fails to pay the fine as ordered by  
9 the commission, the commission may issue a notice of non-  
10 conformance to be recorded on the title of the property at the  
11 bureau of conveyances and pursue collection procedures in  
12 circuit court."

13 SECTION 4. Statutory material to be deleted is bracketed  
14 and in strikethrough. New statutory material is underscored.

15 SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY: \_\_\_\_\_

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