

JAN 23 2009

A BILL FOR AN ACT

RELATING TO PUBLIC ROADS.

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

1 SECTION 1. Section 26-9, Hawaii Revised Statutes, is
2 amended by amending subsection (f) to read as follows:
3 "(f) The director of commerce and consumer affairs may
4 appoint a hearings officer or officers not subject to chapter 76
5 to hear and decide any case or controversy regarding licenses
6 and the application and enforcement of rules involving any of
7 the boards, commissions, or regulatory programs within the
8 department of commerce and consumer affairs[-] and any contested
9 case application filed pursuant to section 264- . The
10 hearings officer or officers shall have power to issue
11 subpoenas, administer oaths, hear testimony, find facts, and
12 make conclusions of law and a recommended decision; provided
13 that the conclusions and decisions shall be subject to review
14 and redetermination by the officer, board, or commission which
15 would have heard the case in the first instance in the absence
16 of a hearings officer. The review shall be conducted in
17 accordance with chapter 91."



1 SECTION 2. Chapter 264, Hawaii Revised Statutes, is
2 amended by adding a new section to part I to be appropriately
3 designated and to read as follows:

4 "§264- Public roads; determination of jurisdiction;
5 process; appeal. (a) Whenever there is confusion or dispute
6 regarding the existence of or jurisdiction over a public road,
7 any person may file an application for determination with the
8 department of commerce and consumer affairs as a contested case
9 pursuant to section 91-9. The application shall be transmitted
10 to the adverse parties to the contested case who shall be the
11 department of transportation, the department of land and natural
12 resources, and the appropriate corporation counsel or county
13 attorney of the county within which the road is located.

14 (b) Any hearings officer appointed by the director of
15 commerce and consumer affairs pursuant to section 26-9(f) shall
16 have jurisdiction to review and determine the application made
17 under this section.

18 (c) The contested case hearing shall be open to the public
19 and held no later than one hundred eighty days after the receipt
20 of the transmission of an application under subsection (a). A
21 final, written decision on the application shall be issued no
22 later than one hundred eighty days after the commencement of the



1 hearing. The hearings officer shall have power to issue
2 subpoenas, administer oaths, hear testimony, find facts, make
3 conclusions of law, and issue a written decision that shall be
4 final and conclusive unless a person or governmental entity
5 adversely affected by the decision appeals to the circuit court
6 of the circuit in which the road is located pursuant to section
7 91-14.

8 (d) The applicant initiating proceedings under this
9 section shall have the burden of proof, including the burden of
10 producing evidence as well as the burden of persuasion. The
11 degree or quantum of proof shall be a preponderance of the
12 evidence. All parties to the proceeding shall be afforded an
13 opportunity to present oral or written evidence, conduct cross-
14 examination as may be required, and argue all issues involved.
15 The rules of evidence shall apply.

16 (e) The hearings officer shall ensure that a record of
17 each proceeding that includes the following is compiled:

18 (1) All pleadings, motions, intermediate rulings;

19 (2) Evidence received or considered, including oral
20 testimony, exhibits, and a statement of matters
21 officially noticed;

22 (3) Offers of proof and rulings;



1 (4) Proposed findings of fact; and

2 (5) A recording of the proceeding.

3 (f) The hearings officer shall decide whether a public
4 road is a state highway, county highway, public trail, or
5 nonpublic right-of-way under section 264-1 and shall order any
6 relief that may be appropriate.

7 (g) The director of transportation shall adopt rules in
8 accordance with chapter 91 to ensure that the proceedings
9 conducted pursuant to this section afford all parties an
10 opportunity to be heard; provided that no rule may place any
11 additional financial burden on any person other than those
12 necessary to comply with the requirements of this section.

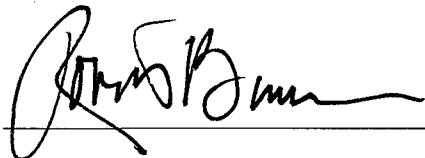
13 (h) If a hearing is not commenced within one hundred
14 eighty days after the receipt of the transmission of an
15 application or if a final written decision is not issued within
16 one hundred eighty days of the start of the hearing, any person
17 may file a declaratory action in the circuit court of the
18 circuit in which the road is located to determine jurisdiction
19 over a road; provided that the person shall have standing to sue
20 and the State shall be deemed to have waived sovereign
21 immunity."



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

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

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INTRODUCED BY:  _____



Report Title:

Public Roads; Jurisdictional Dispute; Resolution Process

Description:

Allows any person to file for a contested case hearing to determine jurisdiction over a public road and establishes the determination process.

