

JAN 29 2010

A BILL FOR AN ACT

RELATING TO APPELLATE JURISDICTION.

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

1 SECTION 1. Section 11-51, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§11-51 Appeal from board.** Any affected person, political
4 party, or any of the county clerks, may appeal [~~to the~~
5 ~~intermediate appellate court,~~] a decision by a board, subject to
6 chapter 602 [~~, in the manner provided for civil appeals from the~~
7 ~~circuit court~~]; provided that the appeal is brought no later
8 than 4:30 p.m. on the tenth day after the board serves its
9 written decision, including findings of fact and conclusions of
10 law, upon the appellant. This written decision of the board
11 shall be a final appealable order. The board shall not consider
12 motions for reconsideration. Service upon the appellant shall
13 be made personally or by registered mail, which shall be deemed
14 complete upon deposit in the mails, postage prepaid, and
15 addressed to the appellant's last known address."

16 SECTION 2. Section 91-14, Hawaii Revised Statutes, is
17 amended by amending subsection (b) to read as follows:



1 "(b) Except as otherwise provided herein, proceedings for
2 review shall be instituted in the circuit court within thirty
3 days after the preliminary ruling or within thirty days after
4 service of the certified copy of the final decision and order of
5 the agency pursuant to rule of court, except where a statute
6 provides for a direct appeal to the intermediate appellate
7 court[~~7~~] or the supreme court, subject to chapter 602. In such
8 cases, the appeal shall be treated in the same manner as an
9 appeal from the circuit court [~~to the intermediate appellate~~
10 ~~court~~], including payment of the fee prescribed by section 607-5
11 for filing the notice of appeal (except in cases appealed under
12 sections 11-51 and 40-91). The court in its discretion may
13 permit other interested persons to intervene."

14 SECTION 3. Section 92F-15, Hawaii Revised Statutes, is
15 amended by amending subsection (f) to read as follows:

16 "(f) Except as to cases the circuit court considers of
17 greater importance, proceedings before the court, as authorized
18 by this section, and appeals to the supreme court therefrom,
19 take precedence on the docket over all cases and shall be
20 assigned for hearing and trial or for argument at the earliest
21 practicable date and expedited in every way."



1 SECTION 4. Section 101-32, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§101-32 Possession pending appeal. At any time after
4 judgment has been rendered in the circuit court for or in favor
5 of the plaintiff, or pending an appeal subject to chapter 602 by
6 either plaintiff or defendant, the plaintiff, if not already in
7 possession of the land sought to be condemned under an order
8 entered pursuant to sections 101-28 and 101-29, may be put into
9 possession thereof upon the payment, to the clerk of the court,
10 of the amount assessed as compensation or damages and such
11 further sum as may be required by the court as a fund to pay any
12 further compensation or damages that may be awarded, as well as
13 all damages that may be sustained by the defendant if for any
14 cause the property is not finally taken for public use. Upon
15 such payment, the court shall make an order putting plaintiff
16 into possession of the property sought to be condemned with the
17 right to use the same during the pendency of and until the final
18 conclusion of the litigation. If the plaintiff has appealed,
19 the amount shall be held by the clerk until the entry of final
20 judgment, and the final judgment shall include, as part of the
21 just compensation and damages awarded, interest at the rate
22 provided in section 101-25 from the date of the order letting



1 plaintiff into possession. If the defendant who is entitled to
2 the amount of money assessed as compensation or damages and paid
3 into court under this section has appealed, the defendant shall
4 have the right to demand and receive payment of the same at any
5 time thereafter, upon filing a receipt therefor and an
6 abandonment of all defenses to the action or proceeding, except
7 as to the amount of compensation or damages that the defendant
8 may be entitled to if a new trial shall be granted."

9 SECTION 5. Section 101-34, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§101-34 Issue as to use may be set for immediate trial.**

12 If the defendant, in the defendant's answer or in return to the
13 order to show cause, issued under section 101-28, denies that
14 the use for which the property sought to be condemned is a
15 public use, or a superior public use within the meaning of
16 section 101-7, the issue, upon the motion of any party, may be
17 set for immediate trial, without a jury and without regard to
18 position on the calendar. Notwithstanding any provision of
19 section 641-1, an interlocutory appeal shall lie from the
20 decision on the issue as of right, and the appeal shall be given
21 precedence [~~in the intermediate appellate court~~]. Failure of
22 the defendant to raise the issue within ten days after service



1 of an order granting immediate possession shall be deemed an
2 admission that the use is a public use or a superior public use,
3 as the case may be."

4 SECTION 6. Section 101-52, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§101-52 Proceedings authorized.** Any officer authorized
7 to bring eminent domain proceedings under part I, and any county
8 when thereunto authorized in the manner provided by section 101-
9 13, which is made applicable to this part, may file or cause to
10 be filed a special proceeding for the acquisition by the State
11 or county, as the case may be, of public property required for
12 public uses which are under the officer's or county's
13 jurisdiction and control. The circuit courts may try and
14 determine the proceedings without a jury, subject only to an
15 appeal in accordance with chapter 602 [~~in the manner provided~~
16 ~~for civil appeals from the circuit courts~~]. The circuit court,
17 on its own motion or on motion of any party, may try and
18 determine any issue in the case in advance of other issues.
19 Compensation or damages shall be paid by the condemning
20 authority for the condemnation of any public property taken
21 under this chapter."



1 SECTION 7. Section 380-10, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§380-10 Appeal. Whenever any court of the State issues
4 or denies any temporary injunction in a case involving or
5 growing out of a labor dispute, an appeal shall lie as of right,
6 subject to chapter 602, [~~in the manner provided for civil~~
7 ~~appeals from the circuit courts,~~] notwithstanding any provision
8 of section 641-1. The appeal shall be heard and the temporary
9 injunctive order affirmed, modified, or set aside with the
10 greatest possible expedition, giving the proceedings precedence
11 over all other matters of the same character."

12 SECTION 8. Section 602-5, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) The supreme court shall have jurisdiction and powers
15 as follows:

16 (1) To hear and determine all questions of law, or of
17 mixed law and fact, which are properly brought before
18 it by [~~application~~]:

19 (A) Application for a writ of certiorari to the
20 intermediate appellate court or by transfer from
21 the intermediate appellate court as provided in
22 this chapter;



- 1 (B) Appeal pursuant to section 11-51, 92F-15(f), 101-
- 2 32, 101-34, 101-52, 174C-60, or 380-10;
- 3 (C) Appeal pursuant to section 641-11, if the
- 4 judgment includes a sentence of life
- 5 imprisonment; or
- 6 (D) Appeal of a decision of any court or agency when
- 7 appeals to the intermediate appellate court or
- 8 the supreme court are otherwise allowed by law,
- 9 and the decision:
- 10 (i) Invalidates an amendment to the state
- 11 constitution; or
- 12 (ii) Determines a state statute, county
- 13 ordinance, or agency rule is invalid on the
- 14 grounds that it was invalidly enacted or is
- 15 unconstitutional, on its face or as applied,
- 16 under the constitution of either the State
- 17 or the United States;
- 18 (2) To answer, in its discretion, any question of law
- 19 reserved by a circuit court, the land court, or the
- 20 tax appeal court, or any question or proposition of
- 21 law certified to it by a federal district or appellate
- 22 court if the supreme court shall so provide by rule;



- 1 (3) To exercise original jurisdiction in all questions
2 arising under writs directed to courts of inferior
3 jurisdiction and returnable before the supreme court,
4 or if the supreme court consents to receive the case
5 arising under writs of mandamus directed to public
6 officers to compel them to fulfill the duties of their
7 offices; and such other original jurisdiction as may
8 be expressly conferred by law;
- 9 (4) To issue writs of habeas corpus, or orders to show
10 cause as provided by chapter 660, returnable before
11 the supreme court or a circuit court, and any justice
12 may issue writs of habeas corpus or such orders to
13 show cause, returnable as above stated;
- 14 (5) To make or issue any order or writ necessary or
15 appropriate in aid of its jurisdiction, and in such
16 case, any justice may issue a writ or an order to show
17 cause returnable before the supreme court; and
- 18 (6) To make and award such judgments, decrees, orders and
19 mandates, issue such executions and other processes,
20 and do such other acts and take such other steps as
21 may be necessary to carry into full effect the powers



1 which are or shall be given to it by law or for the
2 promotion of justice in matters pending before it."

3 SECTION 9. Section 602-58, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§602-58 Application for transfer to the supreme court.**

6 [~~(a) The supreme court, in the manner and within the time~~
7 ~~provided by the rules of court, shall grant an application to~~
8 ~~transfer any case within the jurisdiction of the intermediate~~
9 ~~appellate court to the supreme court upon the grounds that the~~
10 ~~case involves:~~

11 ~~(1) A question of imperative or fundamental public~~
12 ~~importance;~~

13 ~~(2) An appeal from a decision of any court or agency when~~
14 ~~appeals are allowed by law:~~

15 ~~(A) Invalidating an amendment to the state~~
16 ~~constitution; or~~

17 ~~(B) Determining a state statute, county ordinance, or~~
18 ~~agency rule to be invalid on the grounds that it~~
19 ~~was invalidly enacted or is unconstitutional, on~~
20 ~~its face or as applied, under either the~~
21 ~~constitution of the State or the United States;~~

22 ~~or~~



1 ~~(3)~~ A sentence of life imprisonment without the
2 possibility of parole.

3 ~~(b)~~] (a) The supreme court, in a manner and within the
4 time provided by the rules of court, may grant an application to
5 transfer any case within the jurisdiction of the intermediate
6 appellate court to the supreme court upon the grounds that the
7 case involves:

8 (1) A question of imperative or fundamental public
9 importance;

10 ~~(1)~~] (2) A question of first impression or a novel legal
11 question; or

12 ~~(2)~~] (3) Issues upon which there is an inconsistency in
13 the decisions of the intermediate appellate court or
14 of the supreme court.

15 ~~(e)~~] (b) The grant or denial of an application for
16 transfer under subsection ~~(b)~~] (a) shall be discretionary and
17 shall not be subject to further review. Denial of an
18 application for transfer under subsection ~~(b)~~] (a) shall not
19 prejudice a later application for a writ of certiorari."

20 SECTION 10. Section 641-2, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§641-2 Review on and disposition of appeal. In case of
2 appeal from a judgment, order, or decree of a circuit or
3 district court or the land court, in a civil matter, the
4 appellate court shall have power to review, reverse, affirm,
5 amend, or modify such judgment, order, or decree, in whole or in
6 part, as to any or all of the parties. It may enter an amended
7 or modified judgment, order, or decree, or may remand the case
8 to the trial court for the entry of the same or for other or
9 further proceedings, as in its opinion the facts and law
10 warrant. Any judgment, order, or decree entered by the
11 appellate court may be enforced by it or remitted for
12 enforcement by the trial court.

13 ~~Every~~ Unless otherwise provided by statutes, every appeal
14 shall be taken on the record, and no new evidence shall be
15 introduced [~~in the supreme court~~]. The appellate court may
16 correct any error appearing on the record, but need not consider
17 a point that was not presented in the trial court in an
18 appropriate manner. No judgment, order, or decree shall be
19 reversed, amended, or modified for any error or defect, unless
20 the court is of the opinion that it has injuriously affected the
21 substantial rights of the appellant."



1 SECTION 11. Section 641-11, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§641-11 From circuit courts. Any party aggrieved by the
4 judgment of a circuit court in a criminal matter, except a
5 judgment that includes a life sentence, may appeal to the
6 intermediate appellate court, subject to chapter 602, in the
7 manner and within the time provided by the rules of court. A
8 judgment that includes a life sentence may be appealed to the
9 supreme court. The sentence of the court in a criminal case
10 shall be the judgment. All appeals shall be filed with the
11 clerk of the supreme court and shall be subject to one filing
12 fee."

13 SECTION 12. Section 85 of Act 202, Session Laws of Hawaii
14 2004, as amended by section 1 of Act 94, Session Laws of Hawaii
15 2006, is amended to read as follows:

16 "SECTION 85. This Act shall take effect upon its approval;
17 provided that sections 1 through 82 shall take effect on July 1,
18 2006 [~~, and shall be repealed on June 30, 2010~~]."

19 SECTION 13. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



1 SECTION 14. This Act shall take effect on June 29, 2010.

2

INTRODUCED BY: _____

~~_____~~
BY REQUEST



Report Title:

Appellate Jurisdiction

Description:

Expands category of cases directly appealable to Hawaii Supreme Court. Makes discretionary the transfer to supreme court of appeal involving question of imperative or fundamental public importance. Rescinds repeal of Act 202, SLH 2004.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

