

JAN 26 2009

S.B. NO. 853

A BILL FOR AN ACT

RELATING TO APPEALS.

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

1 SECTION 1. The purpose of this Act is to authorize
2 immediate appeals from certain orders regarding injunctions and
3 from denials of sovereign, absolute, or qualified immunity,
4 assuming such appeals were not already authorized or allowed.

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

7 "**§641-1 Appeals as of right or interlocutory, civil**
8 **matters.** (a) Appeals shall be allowed in civil matters from
9 all final judgments, orders, or decrees of circuit and district
10 courts and the land court to the intermediate appellate court,
11 subject to chapter 602.

12 (b) [~~Upon application made within the time provided by the~~
13 ~~rules of court,~~] Except for interlocutory appeals as a matter of
14 right as provided in subsection (c), an appeal in a civil matter
15 may be allowed by a circuit court in its discretion from an
16 order denying a motion to dismiss or from any interlocutory
17 judgment, order, or decree whenever the circuit court may think
18 the same advisable for the speedy termination of litigation

1 before it. The refusal of the circuit court to allow an appeal
2 from an interlocutory judgment, order, or decree shall not be
3 reviewable by any other court.

4 (c) Appeals shall be allowed from interlocutory orders of
5 the circuit courts and the land court and, as to paragraph (2)
6 only, the district courts, that:

7 (1) Grant, continue, modify, refuse, or dissolve
8 injunctions, or refuse to dissolve or modify
9 injunctions, except that the court retains
10 jurisdiction over the matter, permitting the court to,
11 at minimum, grant, continue, modify, refuse, or
12 dissolve injunctions pending the outcome of the appeal
13 to the extent necessary to preserve the status quo; or

14 (2) Deny motions seeking dismissal, or judgment for the
15 movant, based upon sovereign immunity or absolute or
16 qualified immunity.

17 [~~e~~] (d) An application to the circuit court to permit an
18 interlocutory appeal under subsection (b) and any appeal shall
19 be taken in the manner and within the time provided by the rules
20 of court."

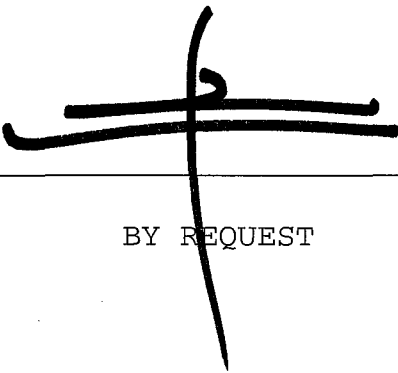
21 SECTION 3. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.

S.B. NO. 853

1 SECTION 4. This Act shall take effect upon its approval
2 and shall apply fully to all cases filed on or after its
3 effective date and all cases pending in the circuit and district
4 courts and the land court for which no final judgment has been
5 entered as of its effective date, to the extent permitted by
6 law; provided that the amendments made to section 641-1, Hawaii
7 Revised Statutes, by this Act shall not be repealed if wording
8 in section 641-1 in effect on June 30, 2006, is reenacted
9 pursuant to Act 202, Session Laws of Hawaii 2004, as amended by
10 Act 94, Session Laws of Hawaii 2006, and any other act, unless
11 the amendments made by this Act are expressly amended or
12 repealed in that other act.

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INTRODUCED BY:



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BY REQUEST

Report Title:

Appellate Jurisdiction

Description:

Authorizes immediate appeals from certain court orders regarding injunctions and denials of sovereign, absolute, or qualified immunity.

SB 853

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO APPEALS.

PURPOSE: To authorize immediate appeals from orders regarding preliminary injunctions and from denials of sovereign, absolute, or qualified immunity.

MEANS: Amend section 641-1, Hawaii Revised Statutes.

JUSTIFICATION: Currently there is no statutory provision authorizing immediate appeals from orders granting or refusing preliminary injunctions. As a consequence, erroneous rulings of lower courts granting or refusing preliminary injunctions may not be immediately reviewable and may cause substantial, often irreparable, injury by the time the orders become final decisions that are reviewable on appeal. This statute would allow orders granting or denying preliminary injunctions to be subject to immediate appellate jurisdiction, allowing aggrieved parties to seek a stay pending appeal, or other relief. This change would make state court practice consistent with current federal court practice allowing immediate appeals from preliminary orders granting or refusing injunctions. See 28 U.S.C. § 1292(a)(1).

Also, the State of Hawaii and its officials are protected by the doctrines of sovereign, absolute, and qualified immunity, in part to ensure that qualified individuals are not deterred from serving in Hawaii government positions. The burdens of being subject to a lawsuit can be substantial, including not only the potential massive monetary liability, but the tremendous burdens and expenses of litigation itself, including discovery, and the fear of unknown potential

liability once the litigation is completed. Accordingly, it is important that claims of immunity are decided not only correctly, but also quickly, because forcing state officials to have to wait until the litigation is over to appeal erroneous denials of claims of immunity irreparably subjects them to the tremendous burdens of the litigation itself. Consequently, this statute would ensure that denials of motions seeking dismissal or judgment for the defendants on grounds of sovereign, absolute, or qualified immunity would be immediately appealable. This change would subject suits brought in Hawaii state courts to the same practice already governing similar federal court suits, the latter already providing for immediate appeals from denials of sovereign immunity, see Puerto Rico Aqueduct and Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 147 (1993), and absolute and qualified immunity, see Mitchell v. Forsyth, 472 U.S. 511, 525-30 (1985).

Impact on the public: The immediate appealability of preliminary orders regarding injunctions protects the public as well as private citizens or entities from the harmful and often irreparable effects of erroneous lower court injunction rulings. As for denials of immunity claims, allowing immediate appeals would encourage members of the public to serve in government, and, by protecting the State and its officials from the needless financial burdens of litigation that should have been terminated at an earlier stage, will save the public substantial taxpayer dollars.

Impact on the department and other agencies: The immediate appealability of preliminary orders regarding injunctions protects the Department of the Attorney General, as well as other State departments and agencies, from the harmful and often irreparable effects of erroneous lower court injunction

rulings. As for denials of immunity claims, allowing immediate appeals would encourage members of the public to serve in state departments and agencies, and, by protecting the State and its officials from the needless financial burdens of litigation that should have been terminated at an earlier stage, will reduce state department or agency expenses.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Judiciary.

EFFECTIVE DATE: Upon approval.