



GOV. MSG. NO. 1149

EXECUTIVE CHAMBERS  
HONOLULU

DAVID Y. IGE  
GOVERNOR

May 10, 2016

The Honorable Ronald D. Kouchi,  
President  
and Members of the Senate  
Twenty-Eighth State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,  
Speaker and Members of the  
House of Representatives  
Twenty-Eighth State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

This is to inform you that on May 10, 2016, the following bill was signed into law:

HB1581 HD2 SD2 CD1

RELATING TO JUDICIAL PROCEEDINGS  
**ACT 048 (16)**

Sincerely,

DAVID Y. IGE  
Governor, State of Hawai'i

MAY 10 2016

OF  
HOUSE OF REPRESENTATIVES  
TWENTY-EIGHTH LEGISLATURE, 2016  
STATE OF HAWAII

ACT 048  
H.B. NO.

1581  
H.D. 2  
S.D. 2  
C.D. 1

# A BILL FOR AN ACT

RELATING TO JUDICIAL PROCEEDINGS.

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

1           SECTION 1. Chapter 174C, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§174C- Contested cases. (a) Chapter 91 shall apply to  
5 every contested case arising under this chapter except where  
6 chapter 91 conflicts with this chapter, in which case this  
7 chapter shall apply. Any other law to the contrary  
8 notwithstanding, including chapter 91, any contested case under  
9 this chapter shall be appealed from a final decision and order  
10 or a preliminary ruling that is of the nature defined by section  
11 91-14(a) upon the record directly to the supreme court for final  
12 decision. Only a person aggrieved in a contested case  
13 proceeding provided for in this chapter may appeal from the  
14 final decision and order or preliminary ruling. For the  
15 purposes of this section, the term "person aggrieved" includes  
16 an agency that is a party to a contested case proceeding before  
17 that agency or another agency.



1        (b) The court shall give priority to contested case  
2 appeals of significant statewide importance over all other civil  
3 or administrative appeals or matters and shall decide these  
4 appeals as expeditiously as possible."

5        SECTION 2. Chapter 183C, Hawaii Revised Statutes, is  
6 amended by adding a new section to be appropriately designated  
7 and to read as follows:

8        "§183C- Contested cases. (a) Chapter 91 shall apply to  
9 every contested case arising under this chapter except where  
10 chapter 91 conflicts with this chapter, in which case this  
11 chapter shall apply. Any other law to the contrary  
12 notwithstanding, including chapter 91, any contested case under  
13 this chapter shall be appealed from a final decision and order  
14 or a preliminary ruling that is of the nature defined by section  
15 91-14(a) upon the record directly to the supreme court for final  
16 decision, except for those appeals heard pursuant to this  
17 chapter arising in whole or in part from part III of chapter  
18 205A or arising in whole or in part from chapter 115. Only a  
19 person aggrieved in a contested case proceeding provided for in  
20 this chapter may appeal from the final decision and order or  
21 preliminary ruling. For the purposes of this section, the term



1 "person aggrieved" includes an agency that is a party to a  
2 contested case proceeding before that agency or another agency.

3 (b) The court shall give priority to contested case  
4 appeals of significant statewide importance over all other civil  
5 or administrative appeals or matters and shall decide these  
6 appeals as expeditiously as possible."

7 SECTION 3. Chapter 205, Hawaii Revised Statutes, is  
8 amended by adding a new section to be appropriately designated  
9 and to read as follows:

10 "§205- Contested cases. (a) Chapter 91 shall apply to  
11 every contested case arising under this chapter except where  
12 chapter 91 conflicts with this chapter, in which case this  
13 chapter shall apply. Any other law to the contrary  
14 notwithstanding, including chapter 91, any contested case under  
15 this chapter shall be appealed from a final decision and order  
16 or a preliminary ruling that is of the nature defined by section  
17 91-14(a) upon the record directly to the supreme court for final  
18 decision. Only a person aggrieved in a contested case  
19 proceeding provided for in this chapter may appeal from the  
20 final decision and order or preliminary ruling. For the  
21 purposes of this section, the term "person aggrieved" includes



1 an agency that is a party to a contested case proceeding before  
2 that agency or another agency.

3 (b) The court shall give priority to contested case  
4 appeals of significant statewide importance over all other civil  
5 or administrative appeals or matters and shall decide these  
6 appeals as expeditiously as possible."

7 SECTION 4. Chapter 269, Hawaii Revised Statutes, is  
8 amended by adding a new section to be appropriately designated  
9 and to read as follows:

10 "§269- Contested cases. (a) Chapter 91 shall apply to  
11 every contested case arising under this chapter except where  
12 chapter 91 conflicts with this chapter, in which case this  
13 chapter shall apply. Any other law to the contrary  
14 notwithstanding, including chapter 91, any contested case under  
15 this chapter shall be appealed from a final decision and order  
16 or a preliminary ruling that is of the nature defined by section  
17 91-14(a) upon the record directly to the supreme court for final  
18 decision. Only a person aggrieved in a contested case  
19 proceeding provided for in this chapter may appeal from the  
20 final decision and order or preliminary ruling. For the  
21 purposes of this section, the term "person aggrieved" includes



1 an agency that is a party to a contested case proceeding before  
2 that agency or another agency.

3 (b) The court shall give priority to contested case  
4 appeals of significant statewide importance over all other civil  
5 or administrative appeals or matters and shall decide these  
6 appeals as expeditiously as possible."

7 SECTION 5. Section 91-14, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "§91-14 Judicial review of contested cases. (a) Any  
10 person aggrieved by a final decision and order in a contested  
11 case or by a preliminary ruling of the nature that deferral of  
12 review pending entry of a subsequent final decision would  
13 deprive appellant of adequate relief is entitled to judicial  
14 review thereof under this chapter; but nothing in this section  
15 shall be deemed to prevent resort to other means of review,  
16 redress, relief, or trial de novo, including the right of trial  
17 by jury, provided by law. Notwithstanding any other provision  
18 of this chapter to the contrary, for the purposes of this  
19 section, the term "person aggrieved" shall include an agency  
20 that is a party to a contested case proceeding before that  
21 agency or another agency.



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

15 (c) The proceedings for review shall not stay enforcement  
16 of the agency decisions or the confirmation of any fine as a  
17 judgment pursuant to section 92-17(g); but the reviewing court  
18 may order a stay if the following criteria have been met:

19 (1) There is likelihood that the subject person will  
20 prevail on the merits of an appeal from the  
21 administrative proceeding to the court;



1 (2) Irreparable damage to the subject person will result  
2 if a stay is not ordered;

3 (3) No irreparable damage to the public will result from  
4 the stay order; and

5 (4) Public interest will be served by the stay order.

6 (d) Within twenty days after the determination of the  
7 contents of the record on appeal in the manner provided by the  
8 rules of court, or within such further time as the court may  
9 allow, the agency shall transmit to the reviewing court the  
10 record of the proceeding under review. The court may require or  
11 permit subsequent corrections or additions to the record when  
12 deemed desirable.

13 (e) If, before the date set for hearing, application is  
14 made to the court for leave to present additional evidence  
15 material to the issue in the case, and it is shown to the  
16 satisfaction of the court that the additional evidence is  
17 material and that there were good reasons for failure to present  
18 it in the proceeding before the agency, the court may order that  
19 the additional evidence be taken before the agency upon such  
20 conditions as the court deems proper. The agency may modify its  
21 findings, decision, and order by reason of the additional





1 evidence and shall file with the reviewing court, to become a  
2 part of the record, the additional evidence, together with any  
3 modifications or new findings or decision.

4 (f) The review shall be conducted by the appropriate court  
5 without a jury and shall be confined to the record, except that  
6 in the cases where a trial de novo, including trial by jury, is  
7 provided by law and also in cases of alleged irregularities in  
8 procedure before the agency not shown in the record, testimony  
9 thereon may be taken in court. The court ~~[shall]~~, upon request  
10 by any party, ~~[hear oral arguments and]~~ shall receive written  
11 briefs [-] and, at the court's discretion, may hear oral  
12 arguments.

13 (g) Upon review of the record, the court may affirm the  
14 decision of the agency or remand the case with instructions for  
15 further proceedings; or it may reverse or modify the decision  
16 and order if the substantial rights of the petitioners may have  
17 been prejudiced because the administrative findings,  
18 conclusions, decisions, or orders are:

19 (1) In violation of constitutional or statutory  
20 provisions; [e#]



- 1 (2) In excess of the statutory authority or jurisdiction  
2 of the agency; [øx]
- 3 (3) Made upon unlawful procedure; [øx]
- 4 (4) Affected by other error of law; [øx]
- 5 (5) Clearly erroneous in view of the reliable, probative,  
6 and substantial evidence on the whole record; or
- 7 (6) Arbitrary, or capricious, or characterized by abuse of  
8 discretion or clearly unwarranted exercise of  
9 discretion.

10 (h) Upon a trial de novo, including a trial by jury as  
11 provided by law, the court shall transmit to the agency its  
12 decision and order with instructions to comply with the order.

13 (i) Where a court remands a matter to an agency for the  
14 purpose of conducting a contested case hearing, the court may  
15 reserve jurisdiction and appoint a master or monitor to ensure  
16 compliance with its orders.

17 (j) The court shall give priority to contested case  
18 appeals of significant statewide importance over all other civil  
19 or administrative appeals or matters and shall decide these  
20 appeals as expeditiously as possible."



1 SECTION 6. Section 174C-12, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[+]§174C-12[+] Judicial review of rules and orders of the  
4 commission concerning the water code. [~~Judicial~~] Except as  
5 otherwise provided in this chapter, judicial review of rules and  
6 orders of the commission under this chapter shall be governed by  
7 chapter 91. Trial de novo is not allowed on review of  
8 commission actions under this chapter."

9 SECTION 7. Section 183C-8, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "[+]§183C-8[+] Zoning order; appeal to circuit  
12 environmental court. [~~Any~~] Except as otherwise provided in this  
13 chapter, any final order of the department based upon this  
14 [+]chapter[+] may be appealed to the circuit environmental court  
15 of the circuit in which the land in question is found. The  
16 appeal shall be in accord with chapter 91 and the Hawaii rules  
17 of civil procedure."

18 SECTION 8. Section 206E-5.6, Hawaii Revised Statutes, is  
19 amended to read as follows:



1           "§206E-5.6 Public hearing for decision-making; separate  
2 hearings required; contested case hearing; judicial review. (a)  
3 When rendering a decision regarding:

4           (1) An amendment to any of the authority's community  
5 development rules established pursuant to chapter 91  
6 and section 206E-7; or

7           (2) The acceptance of a developer's proposal to develop  
8 lands under the authority's control,  
9 the authority shall render its decision at a public hearing  
10 separate from the hearing that the proposal under paragraph (1)  
11 or (2) was presented.

12           (b) The authority shall issue a public notice in  
13 accordance with section 1-28.5 and post the notice on its  
14 website; provided that the decision-making hearing shall not  
15 occur earlier than five business days after the notice is  
16 posted. Public notice issued pursuant to this subsection for  
17 public hearings on the acceptance of a developer's proposal to  
18 develop lands under the authority's control shall state that any  
19 written motion to intervene as a formal party to the proceeding  
20 shall be received within twenty days after the publication date  
21 of the public notice.



1 (c) Prior to rendering a decision, the authority shall  
2 provide the general public with the opportunity to testify at  
3 its decision-making hearing; provided that members of the public  
4 who are not intervenors in the proceeding shall not be  
5 considered formal parties to the proceeding.

6 (d) The authority shall notify the president of the senate  
7 and speaker of the house:

8 (1) Of any public hearing upon posting of the hearing  
9 notice; and

10 (2) With a report detailing the public's reaction at the  
11 public hearing, within one week after the hearing.

12 (e) When considering any developer's proposal to develop  
13 lands under the authority's control that includes any request  
14 for a variance, exemption, or modification of a community  
15 development plan or of the authority's community development  
16 rules, the authority shall consider the request for variance,  
17 exemption, or modification at a public hearing, noticed in  
18 accordance with section 1-28.5, separate from and subsequent to  
19 the hearing at which the developer's proposal was presented;  
20 provided that the authority may consider all requests applicable  
21 to a single proposal at the same public hearing. The



1 authority's decision on requests subject to this subsection  
2 shall be rendered at the decision-making hearing on the  
3 developer's proposal.

4 (f) No final decision of the authority on a developer's  
5 proposal shall be issued until after all proceedings required by  
6 this section are finally concluded.

7 (g) Proceedings regarding the acceptance of a developer's  
8 proposal to develop lands under the authority's control shall be  
9 considered a contested case hearing.

10 (h) Any party aggrieved by a final decision of the  
11 authority regarding the acceptance of a developer's proposal to  
12 develop lands under the authority's control may seek judicial  
13 review of the decision within thirty days [~~pursuant to section~~  
14 ~~91-14~~]. Chapter 91 shall apply to the judicial review except  
15 where chapter 91 conflicts with this chapter, in which case this  
16 chapter shall apply. Any other law to the contrary  
17 notwithstanding, including chapter 91, any contested case under  
18 this chapter shall be appealed from a final decision and order  
19 or a preliminary ruling that is of the nature defined by section  
20 91-14(a) upon the record directly to the supreme court for final  
21 decision. Only a person aggrieved in a contested case



1 proceeding provided for in this chapter may appeal from the  
2 final decision and order or preliminary ruling. For the  
3 purposes of this section, the term "person aggrieved" includes  
4 an agency that is a party to a contested case proceeding before  
5 that agency or another agency.

6 (i) The court shall give priority to contested case  
7 appeals of significant statewide importance over all other civil  
8 or administrative appeals or matters and shall decide these  
9 appeals as expeditiously as possible.

10 ~~(+i)~~ (j) The authority shall not approve any developer's  
11 proposal to develop lands under the authority's control unless  
12 the authority finds that the proposed development project is  
13 reasonable and is consistent with the development rules and  
14 policies of the relevant development district. In making its  
15 finding pursuant to this subsection, the authority shall  
16 consider:

- 17 (1) The extent to which the proposed project:
- 18 (A) Advances the goals, policies, and objectives of
  - 19 the applicable district plan;
  - 20 (B) Protects, preserves, or enhances desirable
  - 21 neighborhood characteristics through compliance



- 1 with the standards and guidelines of the
- 2 applicable district rules;
- 3 (C) Avoids a substantially adverse effect on
- 4 surrounding land uses through compatibility with
- 5 the existing and planned land use character of
- 6 the surrounding area; and
- 7 (D) Provides housing opportunities for all income
- 8 groups, particularly low, moderate, and other
- 9 qualified income groups;
- 10 (2) The impact of the proposed project on the following
- 11 areas of urban design, as applicable:
- 12 (A) Pedestrian oriented development, including
- 13 complete streets design;
- 14 (B) Transit oriented development, including rail,
- 15 bus, and other modes of rapid transit; and
- 16 (C) Community amenities such as gathering places,
- 17 community centers, culture and arts facilities,
- 18 and the full array of public facilities normally
- 19 provided by the public sector;
- 20 (3) The impact of the proposed project on the following
- 21 areas of state concern:





- 1 (A) Preservation of important natural systems or
- 2 habitats;
- 3 (B) Maintenance of valued cultural, historical, or
- 4 natural resources;
- 5 (C) Maintenance of other resources relevant to the
- 6 State's economy;
- 7 (D) Commitment of state funds and resources;
- 8 (E) Employment opportunities and economic
- 9 development; and
- 10 (F) Maintenance and improvement of the quality of
- 11 educational programs and services provided by
- 12 schools;

13 (4) The representations and commitments made by the  
 14 developer in the permit application process."

15 SECTION 9. Section 269-15.5, Hawaii Revised Statutes, is  
 16 amended to read as follows:

17 "§269-15.5 Appeals. [An] Except as otherwise provided in  
 18 this chapter, an appeal from an order of the public utilities  
 19 commission under this chapter shall lie, subject to chapter 602,  
 20 in the manner provided for civil appeals from the circuit  
 21 courts. Only a person aggrieved in a contested case proceeding

1 provided for in this chapter may appeal from the order, if the  
2 order is final, or if preliminary, is of the nature defined by  
3 section 91-14(a). The commission may elect to be a party to all  
4 matters from which an order of the commission is appealed, and  
5 the commission may file appropriate responsive briefs or  
6 pleadings in the appeal; provided that where there was no  
7 adverse party in the case below, or in cases where there is no  
8 adverse party to the appeal, the commission shall be a party to  
9 all matters in which an order of the commission is appealed and  
10 shall file the appropriate responsive briefs or pleadings in  
11 defending all such orders. The appearance of the commission as  
12 a party in appellate proceedings in no way limits the  
13 participation of persons otherwise qualified to be parties on  
14 appeal. The appeal shall not of itself stay the operation of  
15 the order appealed from, but the appellate court may stay the  
16 order after a hearing upon a motion therefor and may impose  
17 conditions it deems proper, including but not limited to  
18 requiring a bond, requiring that accounts be kept, or requiring  
19 that other measures be taken as ordered to secure restitution of  
20 the excess charges, if any, made during the pendency of the



1 appeal, in case the order appealed from is sustained, reversed,  
2 or modified in whole or in part."

3 SECTION 10. Section 602-5, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) ~~[The]~~ Except as otherwise provided, the supreme court  
6 shall have jurisdiction and powers as follows:

7 (1) To hear and determine all questions of law, or of  
8 mixed law and fact, which are properly brought before  
9 it by application for a writ of certiorari to the  
10 intermediate appellate court or by transfer as  
11 provided in this chapter;

12 (2) To answer, in its discretion, any question of law  
13 reserved by a circuit court, the land court, or the  
14 tax appeal court, or any question or proposition of  
15 law certified to it by a federal district or appellate  
16 court if the supreme court shall so provide by rule;

17 (3) To exercise original jurisdiction in all questions  
18 arising under writs directed to courts of inferior  
19 jurisdiction and returnable before the supreme court,  
20 or if the supreme court consents to receive the case  
21 arising under writs of mandamus directed to public



1 officers to compel them to fulfill the duties of their  
2 offices; and such other original jurisdiction as may  
3 be expressly conferred by law;

4 (4) To issue writs of habeas corpus, or orders to show  
5 cause as provided by chapter 660, returnable before  
6 the supreme court or a circuit court, and any justice  
7 may issue writs of habeas corpus or such orders to  
8 show cause, returnable as above stated;

9 (5) To make or issue any order or writ necessary or  
10 appropriate in aid of its jurisdiction, and in such  
11 case, any justice may issue a writ or an order to show  
12 cause returnable before the supreme court; and

13 (6) To make and award such judgments, decrees, orders and  
14 mandates, issue such executions and other processes,  
15 and do such other acts and take such other steps as  
16 may be necessary to carry into full effect the powers  
17 which are or shall be given to it by law or for the  
18 promotion of justice in matters pending before it."

19 SECTION 11. The judiciary shall submit a report to the  
20 legislature of its findings and recommendations regarding the  
21 change in judicial proceedings made by this Act, including any



1 proposed legislation, to the legislature no later than twenty  
2 days prior to the convening of the regular session of 2019.

3 SECTION 12. If any provision of this Act, or the  
4 application thereof to any person or circumstance, is held  
5 invalid, the invalidity does not affect other provisions or  
6 applications of the Act that can be given effect without the  
7 invalid provision or application, and to this end the provisions  
8 of this Act are severable.

9 SECTION 13. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 14. This Act shall take effect on August 1, 2016,  
12 and shall be repealed on July 1, 2019; provided that sections  
13 91-14, 174C-12, 183C-8, 206E-5.6(h), 269-15.5, and 602-5(a),  
14 Hawaii Revised Statutes, shall be reenacted in the form in which  
15 they read on the day prior to the effective date of this Act.

APPROVED this 10 day of MAY, 2016



GOVERNOR OF THE STATE OF HAWAII

