
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. Chapter 91 shall apply to
5 every contested case arising under this chapter except where it
6 conflicts with this chapter, in which case this chapter shall
7 apply. Any other law to the contrary notwithstanding, including
8 chapter 91, any contested case hearing under this chapter shall
9 be appealed upon the record directly to the supreme court for
10 final decision."

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

14 "§183C- Contested cases. Chapter 91 shall apply to
15 every contested case arising under this chapter except where it
16 conflicts with this chapter, in which case this chapter shall
17 apply. Any other law to the contrary notwithstanding, including



1 chapter 91, any contested case hearing under this chapter shall
2 be appealed upon the record directly to the supreme court for
3 final decision."

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

7 "§205- Contested cases. Chapter 91 shall apply to
8 every contested case arising under this chapter except where it
9 conflicts with this chapter, in which case this chapter shall
10 apply. Any other law to the contrary notwithstanding, including
11 chapter 91, any contested case hearing under this chapter shall
12 be appealed upon the record directly to the supreme court for
13 final decision."

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

17 "§269- Contested cases. Chapter 91 shall apply to
18 every contested case arising under this chapter except where it
19 conflicts with this chapter, in which case this chapter shall
20 apply. Any other law to the contrary notwithstanding, including
21 chapter 91, any contested case hearing under this chapter shall



1 be appealed upon the record directly to the supreme court for
2 final decision."

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

5 "§91-14 Judicial review of contested cases. (a) Any
6 person aggrieved by a final decision and order in a contested
7 case or by a preliminary ruling of the nature that deferral of
8 review pending entry of a subsequent final decision would
9 deprive appellant of adequate relief is entitled to judicial
10 review thereof under this chapter; but nothing in this section
11 shall be deemed to prevent resort to other means of review,
12 redress, relief, or trial de novo, including the right of trial
13 by jury, provided by law. Notwithstanding any other provision
14 of this chapter to the contrary, for the purposes of this
15 section, the term "person aggrieved" shall include an agency
16 that is a party to a contested case proceeding before that
17 agency or another agency.

18 (b) Except as otherwise provided herein, proceedings for
19 review shall be instituted in the circuit court or, if
20 applicable, the environmental court, within thirty days after
21 the preliminary ruling or within thirty days after service of



1 the certified copy of the final decision and order of the agency
2 pursuant to rule of court, except where a statute provides for a
3 direct appeal to the supreme court or the intermediate appellate
4 court, subject to chapter 602. In such cases, the appeal shall
5 be treated in the same manner as an appeal from the circuit
6 court to the supreme court or the intermediate appellate court,
7 including payment of the fee prescribed by section 607-5 for
8 filing the notice of appeal (except in cases appealed under
9 sections 11-51 and 40-91). The court in its discretion may
10 permit other interested persons to intervene.

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

- 15 (1) There is likelihood that the subject person will
16 prevail on the merits of an appeal from the
17 administrative proceeding to the court;
- 18 (2) Irreparable damage to the subject person will result
19 if a stay is not ordered;
- 20 (3) No irreparable damage to the public will result from
21 the stay order; and



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

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

9 (e) If, before the date set for hearing, application is
10 made to the court for leave to present additional evidence
11 material to the issue in the case, and it is shown to the
12 satisfaction of the court that the additional evidence is
13 material and that there were good reasons for failure to present
14 it in the proceeding before the agency, the court may order that
15 the additional evidence be taken before the agency upon such
16 conditions as the court deems proper. The agency may modify its
17 findings, decision, and order by reason of the additional
18 evidence and shall file with the reviewing court, to become a
19 part of the record, the additional evidence, together with any
20 modifications or new findings or decision.



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

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

- 16 (1) In violation of constitutional or statutory
17 provisions; [~~or~~]
- 18 (2) In excess of the statutory authority or jurisdiction
19 of the agency; [~~or~~]
- 20 (3) Made upon unlawful procedure; [~~or~~]
- 21 (4) Affected by other error of law; [~~or~~]



1 (5) Clearly erroneous in view of the reliable, probative,
2 and substantial evidence on the whole record; or

3 (6) Arbitrary, or capricious, or characterized by abuse of
4 discretion or clearly unwarranted exercise of
5 discretion.

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

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

13 (j) The court shall give priority to contested case
14 appeals of significant statewide importance over all other civil
15 or administrative appeals or matters and shall decide these
16 appeals as expeditiously as possible."

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

19 "~~+~~§174C-12~~+~~ **Judicial review of rules and orders of the**
20 **commission concerning the water code.** [~~Judicial~~] Except as
21 otherwise provided in this chapter, judicial review of rules and



1 orders of the commission under this chapter shall be governed by
2 chapter 91. Trial de novo is not allowed on review of
3 commission actions under this chapter."

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

6 "[+]§183C-8[+] Zoning order; appeal to circuit
7 environmental court. [Any] Except as otherwise provided in this
8 chapter, any final order of the department based upon this
9 [+]chapter[+] may be appealed to the circuit environmental court
10 of the circuit in which the land in question is found. The
11 appeal shall be in accord with chapter 91 and the Hawaii rules
12 of civil procedure."

13 SECTION 8. Section 206E-5.6, Hawaii Revised Statutes, is
14 amended by amending subsection (h) to read as follows:

15 "(h) Any party aggrieved by a final decision of the
16 authority regarding the acceptance of a developer's proposal to
17 develop lands under the authority's control may seek judicial
18 review of the decision within thirty days [~~7, pursuant to section~~
19 ~~91-14~~]. Chapter 91 shall apply to the judicial review except
20 where it conflicts with this chapter, in which case this chapter
21 shall apply. Any other law to the contrary notwithstanding,



1 including chapter 91, any contested case hearing under this
2 chapter shall be appealed upon the record directly to the
3 supreme court for final decision."

4 SECTION 9. Section 206E-20, Hawaii Revised Statutes, is
5 amended as follows:

6 1. By amending subsection (a) to read:

7 "(a) ~~[Any]~~ Except as otherwise provided in this chapter,
8 any action or proceeding to which the authority, the State, or
9 the county may be a party, in which any question arises as to
10 the validity of this chapter, shall be brought in the circuit
11 court of the circuit where the case or controversy arises, and
12 shall be heard and determined in preference to all other civil
13 cases pending therein except election cases, irrespective of
14 position on the calendar."

15 2. By amending subsection (c) to read:

16 "(c) ~~[Any]~~ Except as otherwise provided in this chapter,
17 any action or proceeding to which the authority, the State, or
18 the county may be a party, in which any question arises as to
19 the validity of this chapter or any portion of this chapter, may
20 be filed in the circuit court of the circuit where the case or



1 controversy arises, which court is hereby vested with original
2 jurisdiction over the action."

3 SECTION 10. Section 269-15.5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§269-15.5 Appeals. [~~An~~] Except as otherwise provided in
6 this chapter, an appeal from an order of the public utilities
7 commission under this chapter shall lie, subject to chapter 602,
8 in the manner provided for civil appeals from the circuit
9 courts. Only a person aggrieved in a contested case proceeding
10 provided for in this chapter may appeal from the order, if the
11 order is final, or if preliminary, is of the nature defined by
12 section 91-14(a). The commission may elect to be a party to all
13 matters from which an order of the commission is appealed, and
14 the commission may file appropriate responsive briefs or
15 pleadings in the appeal; provided that where there was no
16 adverse party in the case below, or in cases where there is no
17 adverse party to the appeal, the commission shall be a party to
18 all matters in which an order of the commission is appealed and
19 shall file the appropriate responsive briefs or pleadings in
20 defending all such orders. The appearance of the commission as
21 a party in appellate proceedings in no way limits the



1 participation of persons otherwise qualified to be parties on
2 appeal. The appeal shall not of itself stay the operation of
3 the order appealed from, but the appellate court may stay the
4 order after a hearing upon a motion therefor and may impose
5 conditions it deems proper, including but not limited to
6 requiring a bond, requiring that accounts be kept, or requiring
7 that other measures be taken as ordered to secure restitution of
8 the excess charges, if any, made during the pendency of the
9 appeal, in case the order appealed from is sustained, reversed,
10 or modified in whole or in part."

11 SECTION 11. If any provision of this Act, or the
12 application thereof to any person or circumstance, is held
13 invalid, the invalidity does not affect other provisions or
14 applications of the Act that can be given effect without the
15 invalid provision or application, and to this end the provisions
16 of this Act are severable.

17 SECTION 12. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 13. This Act shall take effect upon its approval.



Report Title:

Judicial Proceedings; Contested Case Hearings; Supreme Court;
Expedited Review

Description:

Requires contested case hearings of the commission on water resource management, land use commission, public utilities commission, Hawaii community development authority, and those involving conservation districts to be appealed directly to the supreme court. (HD2)

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

