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# 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  
9 hearing under this chapter shall be appealed upon the record  
10 directly to the supreme court for final decision. Only a person  
11 aggrieved in a contested case proceeding provided for in this  
12 chapter may appeal from the order, if the order is final, or if  
13 preliminary, is of the nature defined by section 91-14(a). For  
14 the purposes of this section, the term "person aggrieved"  
15 includes an agency that is a party to a contested case  
16 proceeding before that agency or another agency.

17           (b) The court shall give priority to contested case  
18 appeals of significant statewide importance over all other civil



1 or administrative appeals or matters and shall decide these  
2 appeals as expeditiously as possible."

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

6 "§183C- Contested cases. (a) Chapter 91 shall apply to  
7 every contested case arising under this chapter except where  
8 chapter 91 conflicts with this chapter, in which case this  
9 chapter shall apply. Any other law to the contrary  
10 notwithstanding, including chapter 91, any contested case  
11 hearing under this chapter shall be appealed upon the record  
12 directly to the supreme court for final decision, except for  
13 those appeals heard pursuant to this chapter arising from part  
14 III of chapter 205A or arising from chapter 115. Only a person  
15 aggrieved in a contested case proceeding provided for in this  
16 chapter may appeal from the order, if the order is final, or if  
17 preliminary, is of the nature defined by section 91-14(a). For  
18 the purposes of this section, the term "person aggrieved"  
19 includes an agency that is a party to a contested case  
20 proceeding before 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 3. Chapter 205, Hawaii Revised Statutes, is  
6 amended by adding a new section to be appropriately designated  
7 and to read as follows:

8        "§205- 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  
13 hearing under this chapter shall be appealed upon the record  
14 directly to the supreme court for final decision. Only a person  
15 aggrieved in a contested case proceeding provided for in this  
16 chapter may appeal from the order, if the order is final, or if  
17 preliminary, is of the nature defined by section 91-14(a). For  
18 the purposes of this section, the term "person aggrieved"  
19 includes an agency that is a party to a contested case  
20 proceeding before 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 4. Chapter 269, Hawaii Revised Statutes, is  
6 amended by adding a new section to be appropriately designated  
7 and to read as follows:

8       "§269- 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  
13 hearing under this chapter shall be appealed upon the record  
14 directly to the supreme court for final decision.

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

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



1           "§91-14 Judicial review of contested cases. (a) Any  
2 person aggrieved by a final decision and order in a contested  
3 case or by a preliminary ruling of the nature that deferral of  
4 review pending entry of a subsequent final decision would  
5 deprive appellant of adequate relief is entitled to judicial  
6 review thereof under this chapter; but nothing in this section  
7 shall be deemed to prevent resort to other means of review,  
8 redress, relief, or trial de novo, including the right of trial  
9 by jury, provided by law. Notwithstanding any other provision  
10 of this chapter to the contrary, for the purposes of this  
11 section, the term "person aggrieved" shall include an agency  
12 that is a party to a contested case proceeding before that  
13 agency or another agency.

14           (b) Except as otherwise provided herein, proceedings for  
15 review shall be instituted in the circuit court or, if  
16 applicable, the environmental court, within thirty days after  
17 the preliminary ruling or within thirty days after service of  
18 the certified copy of the final decision and order of the agency  
19 pursuant to rule of court, except where a statute provides for a  
20 direct appeal to the supreme court or the intermediate appellate  
21 court, subject to chapter 602. In such cases, the appeal shall



1 be treated in the same manner as an appeal from the circuit  
2 court to the supreme court or the intermediate appellate court,  
3 including payment of the fee prescribed by section 607-5 for  
4 filing the notice of appeal (except in cases appealed under  
5 sections 11-51 and 40-91). The court in its discretion may  
6 permit other interested persons to intervene.

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

- 11 (1) There is likelihood that the subject person will  
12 prevail on the merits of an appeal from the  
13 administrative proceeding to the court;
- 14 (2) Irreparable damage to the subject person will result  
15 if a stay is not ordered;
- 16 (3) No irreparable damage to the public will result from  
17 the stay order; and
- 18 (4) Public interest will be served by the stay order.

19 (d) Within twenty days after the determination of the  
20 contents of the record on appeal in the manner provided by the  
21 rules of court, or within such further time as the court may



1 allow, the agency shall transmit to the reviewing court the  
2 record of the proceeding under review. The court may require or  
3 permit subsequent corrections or additions to the record when  
4 deemed desirable.

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

17 (f) The review shall be conducted by the appropriate court  
18 without a jury and shall be confined to the record, except that  
19 in the cases where a trial de novo, including trial by jury, is  
20 provided by law and also in cases of alleged irregularities in  
21 procedure before the agency not shown in the record, testimony



1 thereon may be taken in court. The court [~~shall~~], upon request  
2 by any party, [~~hear oral arguments and~~] shall receive written  
3 briefs [~~-~~] and, at the court's discretion, may hear oral  
4 arguments.

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

- 11 (1) In violation of constitutional or statutory  
12 provisions; [~~ex~~]
- 13 (2) In excess of the statutory authority or jurisdiction  
14 of the agency; [~~ex~~]
- 15 (3) Made upon unlawful procedure; [~~ex~~]
- 16 (4) Affected by other error of law; [~~ex~~]
- 17 (5) Clearly erroneous in view of the reliable, probative,  
18 and substantial evidence on the whole record; or
- 19 (6) Arbitrary, or capricious, or characterized by abuse of  
20 discretion or clearly unwarranted exercise of  
21 discretion.





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

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

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

10 "[+]§174C-12[+] Judicial review of rules and orders of the  
11 commission concerning the water code. [~~Judicial~~] Except as  
12 otherwise provided in this chapter, judicial review of rules and  
13 orders of the commission under this chapter shall be governed by  
14 chapter 91. Trial de novo is not allowed on review of  
15 commission actions under this chapter."

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

18 "[+]§183C-8[+] Zoning order; appeal to circuit  
19 environmental court. [~~Any~~] Except as otherwise provided in this  
20 chapter, any final order of the department based upon this  
21 [~~chapter~~] may be appealed to the circuit environmental court



1 of the circuit in which the land in question is found. The  
2 appeal shall be in accord with chapter 91 and the Hawaii rules  
3 of civil procedure."

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

6 "(h) Any party aggrieved by a final decision of the  
7 authority regarding the acceptance of a developer's proposal to  
8 develop lands under the authority's control may seek judicial  
9 review of the decision within thirty days [~~], pursuant to section~~  
10 91-14]. Chapter 91 shall apply to the judicial review except  
11 where chapter 91 conflicts with this chapter, in which case this  
12 chapter shall apply. Any other law to the contrary  
13 notwithstanding, including chapter 91, any contested case  
14 hearing under this chapter shall be appealed upon the record  
15 directly to the supreme court for final decision."

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

18 "**§269-15.5 Appeals.** [~~An~~] Except as otherwise provided in  
19 this chapter, an appeal from an order of the public utilities  
20 commission under this chapter shall lie, subject to chapter 602,  
21 in the manner provided for civil appeals from the circuit



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



**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, with certain exceptions. Requires the judiciary to submit a report to the legislature. Repeals on 7/1/2019.  
(SD2)

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

