



# JUDICIARY COMM. NO. 11

Office of the Administrative Director of the Courts – THE JUDICIARY • STATE OF HAWAII  
417 SOUTH KING STREET • ALI'OLANI HALE • HONOLULU, HAWAII 96813 • TELEPHONE (808) 539-4900 • FAX (808) 539-4855

**Rodney A. Maile**  
ADMINISTRATIVE DIRECTOR

**Brandon M. Kimura**  
DEPUTY ADMINISTRATIVE DIRECTOR

December 20, 2018

The Honorable Ronald D. Kouchi  
President of the Senate  
State Capitol, Room 409  
Honolulu, HI 96813

The Honorable Scott K. Saiki  
Speaker of the House of Representatives  
State Capitol, Room 431  
Honolulu, HI 96813

Dear President Kouchi and Speaker Saiki:

Pursuant to Section 91-14, Hawai'i Revised Statutes, the Judiciary is transmitting a copy of the *Report on Judicial Review of Contested Cases*, including findings and recommendations regarding the change in judicial proceedings made by Act 48, Session Laws of Hawai'i 2016.

In accordance with Section 93-16, Hawai'i Revised Statutes, we are also transmitting a copy of this report to the Legislative Reference Bureau Library.

The public may view an electronic copy of this report on the Judiciary's website at the following link: [http://www.courts.state.hi.us/news\\_and\\_reports/reports/reports.html](http://www.courts.state.hi.us/news_and_reports/reports/reports.html).

Should you have any questions regarding this report, please feel free to contact Karen Takahashi of the Judiciary's Legislative Coordinating Office at 539-4896, or via e-mail at [Karen.T.Takahashi@courts.hawaii.gov](mailto:Karen.T.Takahashi@courts.hawaii.gov).

Sincerely,

A handwritten signature in blue ink that reads "Rodney A. Maile".

Rodney A. Maile  
Administrative Director of the Courts

Enclosure

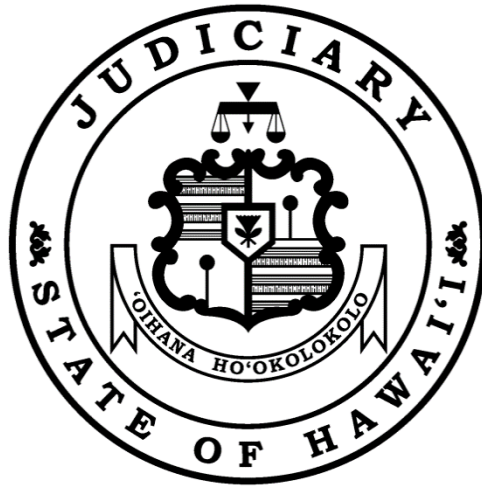
c: Legislative Reference Bureau Library  
Office of the Clerk, Hawai'i State Senate  
Office of the Clerk, Hawai'i House of Representatives

REPORT TO THE THIRTIETH LEGISLATURE  
2019 REGULAR SESSION

ON

ACT 48, SESSION LAWS OF HAWAI'I 2016

A Report on Judicial Proceedings



Prepared by:

The Office of the Chief Justice

The Judiciary, State of Hawai'i

December 2018

**REPORT TO THE THIRTIETH LEGISLATURE**

**2019 REGULAR SESSION**

**ON**

**ACT 48, SESSION LAWS OF HAWAI'I 2016**

This report is respectfully prepared pursuant to Act 48, Session Laws of Hawai'i, 2016, which requires the judiciary to submit a report to the legislature of its findings and recommendations regarding the change in judicial proceedings made by the Act, including any proposed legislation to the legislature. The report is due no later than twenty days prior to the convening of the regular session of 2019. Pursuant to Act 48, section 14, the Act took effect on August 1, 2016 and shall be repealed on July 1, 2019. During the 2017 legislative session, the legislature made housekeeping amendments to Act 48.

Act 48 requires certain agency appeals to be filed directly to the supreme court. The following statutes and agencies were affected by Act 48.

- HRS Chapter 174C - State Water Code under the control of the Water Commission
- HRS Chapter 183C - Conservation Districts under the control of the Board of Land and Natural Resources
- HRS Chapter 205 - Land Use Commission
- HRS Chapter 206E - Hawai'i Community Development Authority
- HRS Chapter 269 - Public Utilities Commission

Upon the adoption of Act 48, the supreme court implemented a process for litigants to file these agency appeals directly with the supreme court. The court facilitated training on the use of the Judiciary Electronic Filing and Service System for the affected government agencies. Prior to preparing this report, the judiciary sought input as to whether the agencies had any comments about the direct appeal process. None of the agencies submitted any comments.

Since the adoption of Act 48, thirteen direct appeals have been filed with the supreme court.

**2016** - Three direct appeals were filed. Two of the three appeals were dismissed for lack of jurisdiction.

1. SCOT-16-0000690, The Community Association of Hualalai v. County of Hawai'i, Leeward Planning Commission  
Oral argument was held on May 3, 2018. The disposition is pending.
2. SCOT-16-0000788, Mauna Kea Anaina Hou v. BLNR  
An appeal challenging interlocutory orders issued in the TMT at Mauna Kea contested case matter. The appeal was dismissed for lack of appellate jurisdiction on December 2, 2016.
3. SCOT-16-0000804, Nobriga, et al. v. BLNR  
An appeal filed by the Temple of Lono challenging interlocutory orders issued in the TMT at Mauna Kea contested case matter. The appeal was dismissed for lack of appellate jurisdiction on December 20, 2016.

**2017** - Seven direct appeals were filed. Four of the appeals were related to the same agency matter.

1. SCOT-17-0000705, In re Contested Case Hearing for TMT at Mauna Kea (Vicente v. BLNR)  
Due to Appellant's failure to file an opening brief, the appeal was dismissed on March 15, 2018.
2. SCOT-17-0000777, In re Contested Case Hearing for TMT at Mauna Kea (Mauna Kea Anaina Hou v. BLNR)  
Oral argument was held on June 21, 2018. The supreme court issued the opinion on October 30, 2018. An amended opinion was filed on November 30, 2018.
3. SCOT-17-0000811, In re Contested Case Hearing for TMT at Mauna Kea (Temple of Lono v. BLNR)  
Oral argument was held on June 21, 2018. The supreme court issued the opinion on October 30, 2018. An amended opinion was filed on November 30, 2018.

4. SCOT-17-0000812, In re Contested Case Hearing for TMT at Mauna Kea (Ferberstrom, et al. v. BLNR)  
Oral argument was held on June 21, 2018. The supreme court issued the opinion on October 30, 2018. An amended opinion was filed on November 30, 2018.
5. SCOT-17-0000184, In re Contested Case Hearing on Water Use Permit, Kukui (Molokai) Inc.  
Oral argument was held on May 31, 2018. The supreme court issued the opinion on December 10, 2018.
6. SCOT-17-0000526, Lanaians for Sensible Growth v. Land Use Commission  
Oral argument was held on July 12, 2018. The disposition is pending.
7. SCOT-17-0000630, In re Application of HELCO  
Oral argument was held on October 18, 2018. The disposition is pending.

**2018 -** Three direct appeals were filed. Two were related to the same agency matter. At the request of the parties, all three appeals were stayed to provide the parties an opportunity to resolve the issues with the agency without court involvement.

1. SCOT-18-0000513, Bock v. Commission on Water Resource Management  
At the request of the parties, the appeal is stayed until January 31, 2019.
2. SCOT-18-0000572, Bock v. Commission on Water Resource Management  
(consolidated with SCOT-18-0000513)  
At the request of the parties, the appeal is stayed until January 31, 2019.
3. SCOT-18-0000593, Makila Plantations Homeowners Association v. Commission on Water Resource Management  
At the request of the parties, the appeal is stayed until February 27, 2019.

Should the legislature decide to make an expedited appellate process permanent, it is recommended that the jurisdiction of the environmental court be restored for Act 48 cases. In that event, the agency appeals would proceed first to the environmental court and then, upon an appeal, directly to the supreme court.