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## A BILL FOR AN ACT

RELATING TO CONTESTED CASES.

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

1           SECTION 1. Section 174C-12.5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "~~{~~ §174C-12.5 Contested cases; appeals. ~~}~~ (a) Chapter  
4 91 shall apply to every contested case arising under this  
5 chapter except where chapter 91 conflicts with this chapter, in  
6 which case this chapter shall apply. Any other law to the  
7 contrary notwithstanding, including chapter 91, any contested  
8 case under this chapter shall be appealed from a final decision  
9 and order or a preliminary ruling that is of the nature defined  
10 by section 91-14(a) upon the record directly to the supreme  
11 court for final decision. Only a person aggrieved in a  
12 contested case proceeding provided for in this chapter may  
13 appeal from the final decision and order or preliminary ruling.  
14 ~~[For 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.]~~



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 (c) The commission shall not receive any petition related  
6 to contested issues that were known or may have been known by  
7 persons aggrieved but not raised in a contested case before this  
8 agency or any agency with shared jurisdiction over the contested  
9 issue.

10 (d) For the purposes of this section, the term "person  
11 aggrieved" includes an agency that is a party to a contested  
12 case proceeding before that agency or another agency."

13 SECTION 2. Section 183C-9, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "[+]§183C-9[+] **Contested cases.** (a) Chapter 91 shall  
16 apply to every contested case arising under this chapter except  
17 where chapter 91 conflicts with this chapter, in which case this  
18 chapter shall apply. Any other law to the contrary  
19 notwithstanding, including chapter 91, any contested case under  
20 this chapter shall be appealed from a final decision and order  
21 or a preliminary ruling that is of the nature defined by section



1 91-14(a) upon the record directly to the supreme court for final  
2 decision, except for those appeals heard pursuant to this  
3 chapter arising in whole or in part from part III of chapter  
4 205A or arising in whole or in part from chapter 115. Only a  
5 person aggrieved in a contested case proceeding provided for in  
6 this chapter may appeal from the final decision and order or  
7 preliminary ruling. [~~For the purposes of this section, the term~~  
8 ~~"person aggrieved" includes an agency that is a party to a~~  
9 ~~contested case proceeding before that agency or another agency.~~]

10 (b) The court shall give priority to contested case  
11 appeals of significant statewide importance over all other civil  
12 or administrative appeals or matters and shall decide these  
13 appeals as expeditiously as possible.

14 (c) The board shall not receive any petition related to  
15 contested issues that were known or may have been known by  
16 persons aggrieved but not raised in a contested case before this  
17 agency or any agency with shared jurisdiction over the contested  
18 issue.

19 (d) For the purposes of this section, the term "person  
20 aggrieved" includes an agency that is a party to a contested  
21 case proceeding before that agency or another agency."



1 SECTION 3. Section 205-19, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[+]§205-19[+] Contested cases. (a) Chapter 91 shall  
4 apply to every contested case arising under this chapter except  
5 where chapter 91 conflicts with this chapter, in which case this  
6 chapter shall apply. Any other law to the contrary  
7 notwithstanding, including chapter 91, any contested case under  
8 this chapter shall be appealed from a final decision and order  
9 or a preliminary ruling that is of the nature defined by section  
10 91-14(a) upon the record directly to the supreme court for final  
11 decision. Only a person aggrieved in a contested case  
12 proceeding provided for in this chapter may appeal from the  
13 final decision and order or preliminary ruling. [~~For the~~  
14 ~~purposes of this section, the term "person aggrieved" includes~~  
15 ~~an agency that is a party to a contested case proceeding before~~  
16 ~~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  
19 or administrative appeals or matters and shall decide these  
20 appeals as expeditiously as possible.



1       (c) The commission shall not receive any petition related  
2 to contested issues that were known or may have been known by  
3 persons aggrieved but not raised in a contested case before this  
4 agency or any agency with shared jurisdiction over the contested  
5 issue.

6       (d) For the purposes of this section, the term "person  
7 aggrieved" includes an agency that is a party to a contested  
8 case proceeding before that agency or another agency."

9       SECTION 4. Section 206E-5.6, Hawaii Revised Statutes, is  
10 amended to read as follows:

11       "**§206E-5.6 Public hearing for decision-making; separate**  
12 **hearings required; contested case hearing; judicial review.** (a)  
13 When rendering a decision regarding:

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

17       (2) The acceptance of a developer's proposal to develop  
18 lands under the authority's control, the authority  
19 shall render its decision at a public hearing separate  
20 from the hearing that the proposal under paragraph (1)  
21 or (2) was presented.



1           (b) The authority shall issue a public notice in  
2 accordance with section 1-28.5 and post the notice on its  
3 website; provided that the decision-making hearing shall not  
4 occur earlier than five business days after the notice is  
5 posted. Public notice issued pursuant to this subsection for  
6 public hearings on the acceptance of a developer's proposal to  
7 develop lands under the authority's control shall state that any  
8 written motion to intervene as a formal party to the proceeding  
9 shall be received within twenty days after the publication date  
10 of the public notice.

11           (c) Prior to rendering a decision, the authority shall  
12 provide the general public with the opportunity to testify at  
13 its decision-making hearing; provided that members of the public  
14 who are not intervenors in the proceeding shall not be  
15 considered formal parties to the proceeding.

16           (d) The authority shall notify the president of the senate  
17 and speaker of the house:

18           (1) Of any public hearing upon posting of the hearing  
19 notice; and

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



1           (e) When considering any developer's proposal to develop  
2 lands under the authority's control that includes any request  
3 for a variance, exemption, or modification of a community  
4 development plan or of the authority's community development  
5 rules, the authority shall consider the request for variance,  
6 exemption, or modification at a public hearing, noticed in  
7 accordance with section 1-28.5, separate from and subsequent to  
8 the hearing at which the developer's proposal was presented;  
9 provided that the authority may consider all requests applicable  
10 to a single proposal at the same public hearing. The  
11 authority's decision on requests subject to this subsection  
12 shall be rendered at the decision-making hearing on the  
13 developer's proposal.

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

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

20           (h) Any party aggrieved by a final decision of the  
21 authority regarding the acceptance of a developer's proposal to



1 develop lands under the authority's control may seek judicial  
2 review of the decision within thirty days. Chapter 91 shall  
3 apply to the judicial review except where chapter 91 conflicts  
4 with this chapter, in which case this chapter shall apply. Any  
5 other law to the contrary notwithstanding, including chapter 91,  
6 any contested case under this chapter shall be appealed from a  
7 final decision and order or a preliminary ruling that is of the  
8 nature defined by section 91-14(a) upon the record directly to  
9 the supreme court for final decision. Only a person aggrieved  
10 in a contested case proceeding provided for in this chapter may  
11 appeal from the final decision and order or preliminary ruling.  
12 ~~[For the purposes of this section, the term "person aggrieved"~~  
13 ~~includes an agency that is a party to a contested case~~  
14 ~~proceeding before that agency or another agency.]~~

15 (i) 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 (j) The authority shall not receive any petition related  
20 to contested issues that were known or may have been known by  
21 persons aggrieved but not raised in a contested case before this





1 agency or any agency with shared jurisdiction over the contested  
2 issue.

3       ~~(j)~~ (k) The authority shall not approve any developer's  
4 proposal to develop lands under the authority's control unless  
5 the authority finds that the proposed development project is  
6 reasonable and is consistent with the development rules and  
7 policies of the relevant development district. In making its  
8 finding pursuant to this subsection, the authority shall  
9 consider:

- 10       (1) The extent to which the proposed project:
- 11           (A) Advances the goals, policies, and objectives of
  - 12                   the applicable district plan;
  - 13           (B) Protects, preserves, or enhances desirable
  - 14                   neighborhood characteristics through compliance
  - 15                   with the standards and guidelines of the
  - 16                   applicable district rules;
  - 17           (C) Avoids a substantially adverse effect on
  - 18                   surrounding land uses through compatibility with
  - 19                   the existing and planned land use character of
  - 20                   the surrounding area; and



1 (D) Provides housing opportunities for all income  
2 groups, particularly low, moderate, and other  
3 qualified income groups;

4 (2) The impact of the proposed project on the following  
5 areas of urban design, as applicable:

6 (A) Pedestrian oriented development, including  
7 complete streets design;

8 (B) Transit oriented development, including rail,  
9 bus, and other modes of rapid transit; and

10 (C) Community amenities such as gathering places,  
11 community centers, culture and arts facilities,  
12 and the full array of public facilities normally  
13 provided by the public sector;

14 (3) The impact of the proposed project on the following  
15 areas of state concern:

16 (A) Preservation of important natural systems or  
17 habitats;

18 (B) Maintenance of valued cultural, historical, or  
19 natural resources;

20 (C) Maintenance of other resources relevant to the  
21 State's economy;



- 1 (D) Commitment of state funds and resources;
- 2 (E) Employment opportunities and economic
- 3 development; and
- 4 (F) Maintenance and improvement of the quality of
- 5 educational programs and services provided by
- 6 schools;

7 (4) The representations and commitments made by the  
 8 developer in the permit application process.

9 (1) For the purposes of this section, the term "person  
 10 aggrieved" includes an agency that is a party to a contested  
 11 case proceeding before that agency or another agency."

12 SECTION 5. Section 269-15.51, Hawaii Revised Statutes, is  
 13 amended to read as follows:

14 "[+]§269-15.51[+] **Contested cases.** (a) Chapter 91 shall  
 15 apply to every contested case arising under this chapter except  
 16 where chapter 91 conflicts with this chapter, in which case this  
 17 chapter shall apply. Any other law to the contrary  
 18 notwithstanding, including chapter 91, any contested case under  
 19 this chapter shall be appealed from a final decision and order  
 20 or a preliminary ruling that is of the nature defined by section  
 21 91-14(a) upon the record directly to the supreme court for final



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

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

11 (c) The public utilities commission shall not receive any  
12 petition related to contested issues that were known or may have  
13 been known by persons aggrieved but not raised in a contested  
14 case before this agency or any agency with shared jurisdiction  
15 over the contested issue.

16 (d) For the purposes of this section, the term "person  
17 aggrieved" includes an agency that is a party to a contested  
18 case proceeding before that agency or another agency."

19 SECTION 6. If any provision of this Act, or the  
20 application thereof to any person or circumstance, is held  
21 invalid, the invalidity does not affect other provisions or



1 applications of the Act that can be given effect without the  
2 invalid provision or application, and to this end the provisions  
3 of this Act are severable.

4 SECTION 7. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 8. This Act shall take effect upon its approval.

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INTRODUCED BY: Scam B/R

JAN 23 2020



# H.B. NO. 2545

**Report Title:**

Contested Case Hearings; Supreme Court; Expedited Review

**Description:**

Precludes aggrieved persons from filing additional appeals with the supreme court arising in 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 regarding contested issues that those aggrieved persons knew or may have known but did not raise before the agency issued a final decision.

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

