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# A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY.

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

1           SECTION 1. The legislature finds that in order to achieve  
2 the State's goal of one hundred per cent renewable energy by the  
3 year 2045, there is a need to support the efficient permitting  
4 of renewable energy projects. Due to the urgency of climate  
5 change, it is necessary that the State facilitates a swift  
6 transition to clean energy and supports innovative projects that  
7 seek to reduce the State's climate impact. As a global leader  
8 in clean energy, the State can support such projects by  
9 expediting the arduous permitting process for projects that  
10 align with its clean energy goal.

11           The purpose of this Act is to:

12           (1) Require contested cases or environmental impact  
13           statement cases involving renewable energy, except  
14           cases involving incineration, to be appealed from an  
15           agency's decision directly to the Hawaii supreme court  
16           for final decision; and



1           (2) Require the cases to be prioritized and decided  
2                           expeditiously.

3           SECTION 2. 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~~] shall be entitled to  
10 judicial review thereof under this chapter; [~~but~~] provided that  
11 nothing in this section shall be deemed to prevent resort to  
12 other means of review, redress, relief, or trial de novo,  
13 including the right of trial by jury, provided by law.  
14 [~~Notwithstanding any other provision of this chapter to the~~  
15 ~~contrary, for the purposes of this section, the term "person~~  
16 ~~aggrieved" shall include an agency that is a party to a~~  
17 ~~contested case proceeding before that 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[~~r~~] 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~~] those cases, the  
5 appeal shall be treated in the same manner as an appeal from the  
6 circuit court to the supreme court or the intermediate appellate  
7 court, including payment of the fee prescribed by section 607-5  
8 for 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~~] provided that the  
14 reviewing court may order a stay if the following criteria have  
15 been met:

- 16 (1) There is a likelihood that the subject person will  
17 prevail on the merits of an appeal from the  
18 administrative proceeding to the court;
- 19 (2) Irreparable damage to the subject person will result  
20 if a stay is not ordered;



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

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

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

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



1 with any modifications or new findings [~~or~~], decision[-], or  
2 order.

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

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

- 17 (1) In violation of constitutional or statutory  
18 provisions;
- 19 (2) In excess of the statutory authority or jurisdiction  
20 of the agency;
- 21 (3) Made upon unlawful procedure;



- 1 (4) Affected by other error of law;
- 2 (5) Clearly erroneous in view of the reliable, probative,
- 3 and substantial evidence on the whole record; or
- 4 (6) Arbitrary, [~~or~~] capricious, or characterized by abuse
- 5 of discretion or clearly unwarranted exercise of
- 6 discretion.

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

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

14 (j) The court shall give priority to contested case  
15 appeals of significant statewide importance over all other civil  
16 or administrative appeals or matters and shall decide these  
17 appeals as expeditiously as possible. [~~An aggrieved~~] A person  
18 aggrieved seeking judicial review of an administrative decision  
19 under the Hawaii administrative procedure act must initiate  
20 review proceedings within thirty days after service of the final  
21 decision and order, as provided in this section; this section



1 does not permit the filing of cross-appeals of agency decisions  
2 outside the thirty-day window.

3 (k) Notwithstanding this chapter or any other law to the  
4 contrary, any contested case under this chapter that involves  
5 renewable energy, except cases that involve any form of  
6 incineration, shall be appealed from a final decision and order  
7 or a preliminary ruling that is of the nature defined by  
8 subsection (a) upon the record directly to the supreme court for  
9 final decision. Only a person aggrieved in a contested case  
10 proceeding provided for in this chapter may appeal from the  
11 final decision and order or preliminary ruling. The court shall  
12 give priority to these cases over all other civil or  
13 administrative appeals or matters and shall decide these appeals  
14 as expeditiously as possible.

15 (l) Notwithstanding any other provision of this chapter to  
16 the contrary, 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 3. Section 343-7, Hawaii Revised Statutes, is  
20 amended to read as follows:



1           "§343-7 [~~Limitation~~] Judicial review; limitation of  
2 actions[-]; jurisdiction. (a) Any judicial proceeding, the  
3 subject of which is the lack of assessment required under  
4 section 343-5, shall be initiated within one hundred twenty days  
5 of the agency's decision to carry out or approve the action, or,  
6 if a proposed action is undertaken without a formal  
7 determination by the agency that a statement is or is not  
8 required, a judicial proceeding shall be instituted within one  
9 hundred twenty days after the proposed action is started. The  
10 office, any agency responsible for approval of the action, or  
11 the applicant shall be adjudged an aggrieved party for the  
12 purposes of bringing judicial action under this subsection.  
13 Others, by environmental court action, may be adjudged  
14 aggrieved.

15           (b) Any judicial proceeding, the subject of which is the  
16 determination that a statement is required for a proposed  
17 action, shall be initiated within sixty days after the public  
18 has been informed of [~~such~~] the determination pursuant to  
19 section 343-3. Any judicial proceeding, the subject of which is  
20 the determination that a statement is not required for a  
21 proposed action, shall be initiated within thirty days after the





1 public has been informed of [~~such~~] the determination pursuant to  
2 section 343-3. The applicant shall be adjudged an aggrieved  
3 party for the purposes of bringing judicial action under this  
4 subsection. Others, by environmental court action, may be  
5 adjudged aggrieved.

6 (c) Any judicial proceeding, the subject of which is the  
7 acceptance or nonacceptance of an environmental impact statement  
8 required under section 343-5, shall be initiated within sixty  
9 days after the public has been informed pursuant to section 343-  
10 3 of the acceptance or nonacceptance of [~~such~~] the statement.  
11 Affected agencies and persons who provided written comment to an  
12 accepted statement during the designated review period shall be  
13 adjudged aggrieved parties for the purpose of bringing judicial  
14 action under this subsection; provided that for aggrieved  
15 parties, the contestable issues shall be limited to issues  
16 identified and discussed in the written comment, and for  
17 applicants bringing judicial action under this section on the  
18 nonacceptance of a statement, the contestable issues shall be  
19 limited to those issues identified by the accepting authority as  
20 the basis for nonacceptance of the statement.



1        (d) Notwithstanding any other law to the contrary, any  
2 case under this chapter that involves renewable energy, except  
3 cases that involve any form of incineration, shall be appealed  
4 from an agency's:

5        (1) Determination that an environmental impact statement  
6 is required for a proposed action; or

7        (2) Acceptance or nonacceptance of an environmental impact  
8 statement,

9 directly to the supreme court for final decision. Only a person  
10 aggrieved in the case may appeal from the agency's decision,  
11 determination, acceptance, or nonacceptance. The court shall  
12 give priority to these cases over all other civil or  
13 administrative appeals or matters and shall decide these appeals  
14 as expeditiously as possible. For the purposes of this  
15 subsection, "person" includes an agency."

16        SECTION 4. Section 604A-2, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:

18        "(a) [~~The~~] Except as otherwise provided in section  
19 91-14(k) or 343-7(d), the environmental courts shall have  
20 exclusive, original jurisdiction over all proceedings, including  
21 judicial review of administrative proceedings and proceedings



1 for declaratory judgment on the validity of agency rules  
2 authorized under chapter 91, arising under chapters 6D, 6E, 6K,  
3 128D, 339, 339D, 340A, 340E, 342B, 342C, 342D, 342E, 342F, 342G,  
4 342H, 342I, 342J, 342L, 342P, 343, and 508C, and title 12;  
5 provided that:

6 (1) The environmental courts shall not have exclusive,  
7 original jurisdiction over any proceedings relating to  
8 any motor vehicle, motorcycle, motor scooter, or moped  
9 parking violations adopted under agency rules pursuant  
10 to chapter 91 and authorized under chapters 6D, 6E,  
11 6K, 128D, 339, 339D, 340A, 340E, 342B, 342C, 342D,  
12 342E, 342F, 342G, 342H, 342I, 342J, 342L, 342P, 343,  
13 and 508C, and title 12; and

14 (2) Upon the motion of a party or sua sponte by the chief  
15 justice, the chief justice may assign to the  
16 environmental courts issues before the courts when the  
17 chief justice determines that due to their subject  
18 matter the assignment is required to ensure the  
19 uniform application of environmental laws throughout  
20 the State or to otherwise effectuate the purpose of  
21 this chapter."



# H.B. NO. 1629

1 SECTION 5. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: Luke A. Clu

JAN 16 2024



# H.B. NO. 1629

**Report Title:**

Supreme Court; Jurisdiction; Environmental Impact Statements;  
Renewable Energy Projects

**Description:**

Requires contested cases or environmental impact statement cases involving renewable energy, except cases involving incineration, to be appealed from an agency's decision directly to the Hawaii Supreme Court for final decision. Requires the cases to be prioritized and decided expeditiously.

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