

ACT 30

H. B. NO. 34

A Bill for an Act Relating to Eminent Domain Proceedings in Circuit Courts, Amending Sections 101-20, 101-27, 101-30, 101-34, 101-52, and 101-54, Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 101-20, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 101-20 Notice. When the owner or claimant of the land sought to be condemned is known, the summons shall be served by delivering to him, or to an agent authorized by appointment or by law to receive service of process, a certified copy thereof, together with a copy of the plaintiff’s complaint. If the owner or claimant, although known, was never a resident of the State or has removed therefrom or cannot for any reason be served with process within the State, or if the owner or claimant is unknown, then the service of the summons upon the owner or claimant may be made in the manner provided by sections 634-59, 634-60, and 634-63. If the defendants are joined in the complaint by describing them as a class, then the service of the summons upon the defendants may be made by publication in a newspaper of general circulation in the county in which the property is situated, in the manner pro-

ACT 30

vided by sections 634-59(3) and 634-63, and by giving such further notice as the court may order. The service of summons, as provided for in this section, shall be sufficient to give the court jurisdiction to proceed with and finally determine the case.”

SECTION 2. Section 101-27, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 101-27 Defendant allowed damages upon abandonment or dismissal of proceedings. Whenever any proceedings instituted under this part are abandoned or discontinued before reaching a final judgment, or if, for any cause, the property concerned is not finally taken for public use, a defendant who would have been entitled to compensation or damages had the property been finally taken, shall be entitled, in such proceedings, to recover from the plaintiff all such damage as may have been sustained by him by reason of the bringing of the proceedings and the possession by the plaintiff of the property concerned if the possession has been awarded including his costs of court, a reasonable amount to cover attorney’s fees paid by him in connection therewith, and other reasonable expenses; and the possession of the property concerned shall be restored to the defendant entitled thereto. Issues of fact arising in connection with any claim for such damage shall be tried by the court without a jury unless a trial by jury is demanded by either party, pursuant to the rules of court, within ten days from the date of the entry of an order or judgment allowing the discontinuance of the proceedings, or dismissing the proceedings or denying the right of the plaintiff to take the property concerned for public use. In the event judgment is entered in favor of the defendant and against the plaintiff, any moneys which have been paid, and any additional security which has been furnished, by the plaintiff to the clerk of the court under sections 101-28 and 101-29, shall be applied or enforced toward the satisfaction of the judgment. In the case of the State or a county, if the moneys so paid to the clerk of the court are insufficient, then the balance of such judgment shall be paid from any moneys available or appropriated for the acquisition of the property concerned, or if that is insufficient then the same shall be paid from the general fund of the State or county, as the case may be.”

SECTION 3. Section 101-30, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 101-30 Order of possession. No order of possession shall issue unless the plaintiff has paid to the clerk of the court issuing the order, for the use of the persons entitled thereto, the amount of the estimated compensation or damages stated in the motion for the issuance of the order and, in the case of a plaintiff other than the State or a county, has so paid such additional amount, or furnished such additional security, as may be required by the court.

An order of possession issued under section 101-29 shall not become effective until (1) summons in the action has been served personally on the defendants within or without the State, as provided in section 101-20 or section 634-60, or (2) the first publication of the summons directed to the defendants has occurred and notice has been posted as provided in section 634-59, or (3) the papers mailed to the defendants have been received as provided in section

634-60, or (4) the best notice practicable under the circumstances has been given as ordered by the court for good cause shown.”

SECTION 4. Section 101-34, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 101-34 Issue as to use may be set for immediate trial.** If the defendant in his answer, or in return to the order to show cause, issued under section 101-28, denies that the use for which the property sought to be condemned is a public use, or a superior public use within the meaning of section 101-7, the issue may, upon the motion of any party, be set for immediate trial, without a jury and without regard to position on the calendar. Notwithstanding any provision of section 641-2, an interlocutory appeal shall lie from the decision on the issue as of right, and the appeal shall be given precedence in the supreme court. Failure of the defendant to raise the issue within ten days after service of an order granting immediate possession shall be deemed an admission that the use is a public use or a superior public use, as the case may be.”

SECTION 5. Sections 101-52 and 101-54, Hawaii Revised Statutes, are amended by deleting the words shown in the second column below opposite the section number, wherever the same appear in the designated section, and inserting in lieu thereof the words shown in the third column:

SECTION NUMBER	WORDS TO BE DELETED	WORDS TO BE INSERTED
101-52	circuit judges at chambers	circuit courts
101-52	circuit judge at chambers	circuit court
101-52	on his own motion	on its own motion
101-54	sitting as a circuit judge at chambers	sitting without a jury

SECTION 6. In sections 1 to 4, statutory material to be repealed is bracketed, and new material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 7. This Act shall take effect on July 1, 1973.

(Approved May 4, 1973.)

*Edited accordingly.