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# A BILL FOR AN ACT

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RELATING TO ENDANGERED AND THREATENED SPECIES.

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

1       SECTION 1. Chapter 195D, Hawaii Revised Statutes, is  
2       amended by adding a new section to be appropriately designated  
3       and to read as follows:

4       "§195D-       Contested cases challenging issuance of a  
5       habitat conservation plan or safe harbor agreement and  
6       accompanying license. (a) No person may challenge the approval  
7       of a habitat conservation plan or safe harbor agreement or the  
8       issuance of an accompanying license except through a contested  
9       case hearing before the board in accordance with chapter 91.

10       (b) In any contested case challenging the approval of a  
11       habitat conservation plan or safe harbor agreement and the  
12       issuance of an accompanying license, any party alleging an  
13       emergency posing a significant risk to the well-being of any  
14       species of fish, wildlife, or plant may petition for an  
15       emergency stay of the habitat conservation plan or safe harbor  
16       agreement and accompanying license. If the board has not yet  
17       made a determination of entitlement to a contested case hearing,  
18       any person alleging an emergency posing a significant risk to



1 the well-being of any species of fish, wildlife, or plant who  
2 has requested a contested case to challenge the approval of a  
3 habitat conservation plan or safe harbor agreement and  
4 accompanying license may petition for an emergency stay. The  
5 chairperson or hearings officer, if one has been selected, shall  
6 conduct a hearing and render a decision on the petition for  
7 emergency stay within forty-eight hours after the filing of the  
8 petition.

9 (c) Any person aggrieved by a decision by the chairperson  
10 or hearings officer to grant or deny a stay of a habitat  
11 conservation plan or safe harbor agreement and accompanying  
12 license or by a failure of the chairperson or hearings officer  
13 to render a timely decision on a petition for a stay may  
14 immediately seek review in the circuit court of the decision or  
15 failure to render a decision pursuant to section 91-14.

16 (d) Where the chairperson or hearings officer has denied  
17 or failed to render a decision on a petition for a stay of a  
18 habitat conservation plan or safe harbor agreement and  
19 accompanying license, the reviewing court may order a stay if  
20 the criteria set forth in section 91-14(c) have been met."



1       SECTION 2. Section 195D-2, Hawaii Revised Statutes, is  
2 amended by adding a new definition to be appropriately inserted  
3 and to read as follows:

4       "Chairperson" means the chairperson of the board of land  
5 and natural resources."

6       SECTION 3. Section 195D-27, Hawaii Revised Statutes, is  
7 repealed.

8       ~~["§195D-27 Administrative enforcement of rules, plans,~~  
9 ~~agreements, or licenses. (a) Any person may petition the~~  
10 ~~chairperson to appoint a hearings officer to hear a request to~~  
11 ~~enjoin any person, including the State and any other government~~  
12 ~~agency, alleged to be in violation of this chapter, including~~  
13 ~~any rule adopted pursuant to this chapter, habitat conservation~~  
14 ~~plan, safe harbor agreement, or incidental take license, or to~~  
15 ~~require the State to take action to enforce this chapter,~~  
16 ~~including any rule adopted pursuant to this chapter or any term~~  
17 ~~of a habitat conservation plan, safe harbor agreement, or~~  
18 ~~incidental take license.~~

19       ~~(b) Upon receipt of a petition, the chairperson shall make~~  
20 ~~a diligent effort to resolve the subject matter of the petition~~  
21 ~~and, if appropriate, to cause the noncomplying or other~~  
22 ~~responsible party to comply with the habitat conservation plan,~~



~~safe harbor agreement, or incidental take license. If the chairperson is unable to resolve the subject matter of the petition within a period of time deemed reasonable under the circumstances, but in no event more than ninety days, or if the petitioner is not satisfied with the chairperson's resolution of the subject matter, then the chairperson shall appoint a hearings officer to hear the petition. The hearings officer shall commence a contested case hearing in accordance with chapter 91 and, within thirty days of the completion of the hearing, grant in whole or in part, or deny the petition.~~

~~(c) Nothing in this section shall grant any authority whatsoever upon a hearings officer to assess monetary damages or criminal penalties against any party found to be in violation of this chapter, however, the hearings officer shall issue findings of fact and, if appropriate, an order directing the party found to be in violation to take specific action to comply with this chapter.~~

~~(d) Any person who believes that a violation of a habitat conservation plan, safe harbor agreement, or incidental take license has occurred, is occurring, or is likely to occur, may petition the chairperson for an immediate hearing. The petition shall be accompanied by an affidavit alleging:~~



~~(1) Specific facts showing that the continued existence of  
an endangered or threatened species is likely to be  
jeopardized unless the alleged violation is  
immediately enjoined, and~~

~~(2) The efforts that have been made to notify the  
landowner of the alleged violation.~~

~~If the chairperson finds that there exists good cause for a  
hearing, then a hearings officer shall be appointed who shall  
conduct a hearing forthwith, and in any event within forty eight  
hours after the filing of the petition. If the hearings officer  
determines that there is a substantial likelihood that the  
continued existence of an endangered or threatened species will  
be jeopardized unless the violation is immediately enjoined,  
then the hearings officer shall order temporary injunctive  
relief, which shall expire upon such terms as the hearings  
officer determines." ]~~

SECTION 4. Act 380, Session Laws of Hawaii 1997, as  
amended by Act 3, Session Laws of Hawaii 2001, as amended by Act  
90, Session Laws of Hawaii 2006, is amended by amending section  
13 to read as follows:

"SECTION 13. This Act shall take effect upon its  
approval[, provided that no new safe harbor agreements, habitat



1 ~~conservation plans, or incidental take licenses issued pursuant~~  
2 ~~to section 195D-4, 195D-21, or 195D-22, Hawaii Revised Statutes,~~  
3 ~~shall be approved or issued subsequent to July 1, 2012]."~~

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

6 SECTION 6. This Act shall take effect upon its approval;  
7 provided that section 4 of this Act shall take effect on  
8 June 30, 2012.



**Report Title:**

Conservation of Wildlife; Contested Case Hearing

**Description:**

Repeals provision on administrative enforcement of rules, habitat conservation plans, safe harbor agreements, and incidental take licenses. Requires persons challenging a conservation plan, safe harbor agreement, or accompanying license to bring a contested case hearing before the board of land and natural resources pursuant to chapter 91, Hawaii Revised Statutes. Repeals the prohibition on approval of issuance of new safe harbor agreements, habitat conservation plans, and incidental take licenses after July 1, 2012. (SD1)

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

