
A BILL FOR AN ACT

RELATING TO JUDICIAL PROCEEDINGS.

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

1 SECTION 1. Chapter 183C, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§183C- Contested cases. Chapter 91 shall apply to
5 every contested case arising under this chapter except where it
6 conflicts with this chapter, in which case this chapter shall
7 apply. Any other law to the contrary notwithstanding, including
8 chapter 91, any contested case hearing under this chapter shall
9 be appealed upon the record directly to the supreme court for
10 final decision."

11 SECTION 2. Chapter 205, Hawaii Revised Statutes, is
12 amended by adding a new section to be appropriately designated
13 and to read as follows:

14 "§205- Contested cases. Chapter 91 shall apply to
15 every contested case arising under this chapter except where it
16 conflicts with this chapter, in which case this chapter shall
17 apply. Any other law to the contrary notwithstanding, including



1 chapter 91, any contested case hearing under this chapter shall
2 be appealed upon the record directly to the supreme court for
3 final decision."

4 SECTION 3. Section 91-14, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§91-14 Judicial review of contested cases. (a) Any
7 person aggrieved by a final decision and order in a contested
8 case or by a preliminary ruling of the nature that deferral of
9 review pending entry of a subsequent final decision would
10 deprive appellant of adequate relief is entitled to judicial
11 review thereof under this chapter; but nothing in this section
12 shall be deemed to prevent resort to other means of review,
13 redress, relief, or trial de novo, including the right of trial
14 by jury, provided by law. Notwithstanding any other provision
15 of this chapter to the contrary, for the purposes of this
16 section, the term "person aggrieved" shall include an agency
17 that is a party to a contested case proceeding before that
18 agency or another agency.

19 (b) Except as otherwise provided herein, proceedings for
20 review shall be instituted in the circuit court or, if
21 applicable, the environmental court, within thirty days after



1 the preliminary ruling or within thirty days after service of
2 the certified copy of the final decision and order of the agency
3 pursuant to rule of court, except where a statute provides for a
4 direct appeal to the supreme court or the intermediate appellate
5 court, subject to chapter 602. In such cases, the appeal shall
6 be treated in the same manner as an appeal from the circuit
7 court to the supreme court or the intermediate appellate court,
8 including payment of the fee prescribed by section 607-5 for
9 filing the notice of appeal (except in cases appealed under
10 sections 11-51 and 40-91). The court in its discretion may
11 permit other interested persons to intervene.

12 (c) The proceedings for review shall not stay enforcement
13 of the agency decisions or the confirmation of any fine as a
14 judgment pursuant to section 92-17(g); but the reviewing court
15 may order a stay if the following criteria have been met:

- 16 (1) There is 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 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 hearing, application is
12 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 the court deems proper. The agency may modify its
19 findings, decision, and order by reason of the additional
20 evidence and shall file with the reviewing court, to become a



1 part of the record, the additional evidence, together with any
2 modifications or new findings or decision.

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

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; [~~or~~]

19 (2) In excess of the statutory authority or jurisdiction
20 of the agency; [~~or~~]

21 (3) Made upon unlawful procedure; [~~or~~]



1 (4) Affected by other error of law; [~~or~~]

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 of
5 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, or in which
16 constitutional issues are raised, over all other civil or
17 administrative appeals or matters and shall decide these appeals
18 as expeditiously as possible."

19 SECTION 4. Section 183C-8, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "[§]§183C-8[§] Zoning order; appeal to circuit
2 environmental court. [Any] Except as otherwise provided in this
3 chapter, any final order of the department based upon this
4 [§]chapter[§] may be appealed to the circuit environmental court
5 of the circuit in which the land in question is found. The
6 appeal shall be in accord with chapter 91 and the Hawaii rules
7 of civil procedure."

8 SECTION 5. Section 206E-5.6, Hawaii Revised Statutes, is
9 amended by amending subsection (h) to read as follows:

10 "(h) Any party aggrieved by a final decision of the
11 authority regarding the acceptance of a developer's proposal to
12 develop lands under the authority's control may seek judicial
13 review of the decision within thirty days[~~, pursuant to section~~
14 ~~91-14~~]. Chapter 91 shall apply to the judicial review except
15 where it conflicts with this chapter, in which case this chapter
16 shall apply. Any other law to the contrary notwithstanding,
17 including chapter 91, any contested case hearing under this
18 chapter shall be appealed upon the record directly to the
19 supreme court for final decision."

20 SECTION 6. Section 206E-20, Hawaii Revised Statutes, is
21 amended as follows:



1 1. By amending subsection (a) to read:

2 "(a) [~~Any~~] Except as otherwise provided in this chapter,
3 any action or proceeding to which the authority, the State, or
4 the county may be a party, in which any question arises as to
5 the validity of this chapter, shall be brought in the circuit
6 court of the circuit where the case or controversy arises, and
7 shall be heard and determined in preference to all other civil
8 cases pending therein except election cases, irrespective of
9 position on the calendar."

10 2. By amending subsection (c) to read:

11 "(c) [~~Any~~] Except as otherwise provided in this chapter,
12 any action or proceeding to which the authority, the State, or
13 the county may be a party, in which any question arises as to
14 the validity of this chapter or any portion of this chapter, may
15 be filed in the circuit court of the circuit where the case or
16 controversy arises, which court is hereby vested with original
17 jurisdiction over the action."

18 SECTION 7. If any provision of this Act, or the
19 application thereof to any person or circumstance, is held
20 invalid, the invalidity does not affect other provisions or
21 applications of the Act that can be given effect without the



1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 8. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 9. This Act shall take effect upon its approval.



Report Title:

Judicial Proceedings; Contested Case Hearings; Supreme Court;
Expedited Review

Description:

Requires contested case hearings of the land use commission,
Hawaii community development authority, and those involving
conservation districts to be appealed directly to the supreme
court. (HD1)

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

