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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, environmental assessment  
13           cases, or environmental impact statement cases  
14           involving renewable energy projects over twenty  
15           megawatts in size, except cases involving  
16           incineration, to be appealed from an agency's decision



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1 directly to the Hawaii supreme court for final  
2 decision; and

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

5 SECTION 2. Section 91-14, Hawaii Revised Statutes, is  
6 amended to read as follows:

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

20 (b) Except as otherwise provided herein, proceedings for  
21 review shall be instituted in the circuit court or, if



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

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

18 (1) There is a likelihood that the subject person will  
19 prevail on the merits of an appeal from the  
20 administrative proceeding to the court;



1 (2) Irreparable damage to the subject person will result  
2 if a stay is not ordered;

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

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

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

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



1 additional evidence and shall file with the reviewing court, to  
2 become a part of the record, the additional evidence, together  
3 with any modifications or new findings [~~or~~], decision[~~or~~], or  
4 order.

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

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

19 (1) In violation of constitutional or statutory  
20 provisions;



1           (2) In excess of the statutory authority or jurisdiction  
2                   of the agency;

3           (3) Made upon unlawful procedure;

4           (4) Affected by other error of law;

5           (5) Clearly erroneous in view of the reliable, probative,  
6                   and substantial evidence on the whole record; or

7           (6) Arbitrary, [~~or~~] capricious, or characterized by abuse  
8                   of discretion or clearly unwarranted exercise of  
9                   discretion.

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

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

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

13        (l) Notwithstanding any other provision of this chapter to  
14 the contrary, for the purposes of this section, the term "person  
15 aggrieved" includes an agency that is a party to a contested  
16 case proceeding before that agency or another agency."

17        SECTION 3. Section 343-7, Hawaii Revised Statutes, is  
18 amended to read as follows:

19        **"§343-7 [~~Limitation~~] Judicial review; limitation of**  
20 **actions [-]; jurisdiction.** (a) Any judicial proceeding, the  
21 subject of which is the lack of assessment required under

1 section 343-5, shall be initiated within one hundred twenty days  
2 of the agency's decision to carry out or approve the action, or,  
3 if a proposed action is undertaken without a formal  
4 determination by the agency that a statement is or is not  
5 required, a judicial proceeding shall be instituted within one  
6 hundred twenty days after the proposed action is started. The  
7 office, any agency responsible for approval of the action, or  
8 the applicant shall be adjudged an aggrieved party for the  
9 purposes of bringing judicial action under this subsection.  
10 Others, by environmental court action, may be adjudged  
11 aggrieved.

12 (b) Any judicial proceeding, the subject of which is the  
13 determination that a statement is required for a proposed  
14 action, shall be initiated within sixty days after the public  
15 has been informed of [~~such~~] the determination pursuant to  
16 section 343-3. Any judicial proceeding, the subject of which is  
17 the determination that a statement is not required for a  
18 proposed action, shall be initiated within thirty days after the  
19 public has been informed of [~~such~~] the determination pursuant to  
20 section 343-3. The applicant shall be adjudged an aggrieved  
21 party for the purposes of bringing judicial action under this



1 subsection. Others, by environmental court action, may be  
2 adjudged aggrieved.

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

18 (d) Notwithstanding any other law to the contrary, any  
19 case under this chapter that involves renewable energy projects  
20 over twenty megawatts in size, except cases that involve any  
21 form of incineration, shall be appealed from an agency's:



1       (1) Determination that an environmental impact statement  
2       is required for a proposed action; or  
3       (2) Acceptance or nonacceptance of an environmental  
4       assessment or an environmental impact statement,  
5       directly to the supreme court for final decision. Only a person  
6       aggrieved in the case may appeal the agency's decision,  
7       determination, acceptance, or nonacceptance. The court shall  
8       give priority to these cases over all other civil or  
9       administrative appeals or matters and shall decide these appeals  
10       as expeditiously as possible. For the purposes of this  
11       subsection, "person" includes an agency."

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

14       "(a) [~~The~~] Except as otherwise provided in section  
15       91-14(k) or 343-7(d), the environmental courts shall have  
16       exclusive, original jurisdiction over all proceedings, including  
17       judicial review of administrative proceedings and proceedings  
18       for declaratory judgment on the validity of agency rules  
19       authorized under chapter 91, arising under chapters 6D, 6E, 6K,  
20       128D, 339, 339D, 340A, 340E, 342B, 342C, 342D, 342E, 342F, 342G,



1 342H, 342I, 342J, 342L, 342P, 343, and 508C, and title 12;  
2 provided that:

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

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

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

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



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INTRODUCED BY:

ZNC

JAN 16 2025



# H.B. NO. 366

**Report Title:**

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

**Description:**

Requires contested cases, environmental assessment cases, or environmental impact statement cases involving renewable energy projects over twenty megawatts in size, except cases that involve any form of 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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