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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 require contested cases,  
12 environmental assessment cases, or environmental impact  
13 statement cases involving renewable energy projects over twenty  
14 megawatts in size, except cases involving incineration, to be  
15 appealed from an agency's decision directly to the Hawaii  
16 supreme court for final decision and to be prioritized and  
17 decided expeditiously.



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

3       **"§91-14 Judicial review of contested cases.** (a) Any  
4 person aggrieved by a final decision and order in a contested  
5 case or by a preliminary ruling of the nature that deferral of  
6 review pending entry of a subsequent final decision would  
7 deprive appellant of adequate relief [~~is~~] shall be entitled to  
8 judicial review thereof under this chapter; [~~but~~] provided that  
9 nothing in this section shall be deemed to prevent resort to  
10 other means of review, redress, relief, or trial de novo,  
11 including the right of trial by jury, provided by law.  
12 [~~Notwithstanding any other provision of this chapter to the~~  
13 ~~contrary, for the purposes of this section, the term "person~~  
14 ~~aggrieved" shall include an agency that is a party to a~~  
15 ~~contested case proceeding before that agency or another agency.]~~

16       (b) Except as otherwise provided herein, proceedings for  
17 review shall be instituted in the circuit court or, if  
18 applicable, the environmental court[~~7~~] within thirty days after  
19 the preliminary ruling or within thirty days after service of  
20 the certified copy of the final decision and order of the agency  
21 pursuant to rule of court, except where a statute provides for a



1 direct appeal to the supreme court or the intermediate appellate  
2 court, subject to chapter 602. In [~~such~~] those cases, the  
3 appeal shall be treated in the same manner as an appeal from the  
4 circuit court to the supreme court or the intermediate appellate  
5 court, including payment of the fee prescribed by section 607-5  
6 for filing the notice of appeal (except in cases appealed under  
7 sections 11-51 and 40-91). The court in its discretion may  
8 permit other interested persons to intervene.

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

- 14 (1) There is a likelihood that the subject person will  
15 prevail on the merits of an appeal from the  
16 administrative proceeding to the court;
- 17 (2) Irreparable damage to the subject person will result  
18 if a stay is not ordered;
- 19 (3) No irreparable damage to the public will result from  
20 the stay order; and
- 21 (4) Public interest will be served by the stay order.



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

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



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

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

15 (1) In violation of constitutional or statutory  
16 provisions;

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

19 (3) Made upon unlawful procedure;

20 (4) Affected by other error of law;



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

3 (6) Arbitrary, ~~or~~ capricious, or characterized by abuse  
4 of discretion or clearly unwarranted exercise of  
5 discretion.

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

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

13 (j) The court shall give priority to contested case  
14 appeals of significant statewide importance over all other civil  
15 or administrative appeals or matters and shall decide these  
16 appeals as expeditiously as possible.

17 (k) Notwithstanding this chapter or any other law to the  
18 contrary, any contested case under this chapter that involves  
19 renewable energy projects over twenty megawatts in size, except  
20 cases that involve any form of incineration, shall be appealed  
21 from a final decision and order or a preliminary ruling that is



1 of the nature defined by subsection (a) upon the record directly  
2 to the supreme court for final decision. Only a person  
3 aggrieved in a contested case proceeding provided for in this  
4 chapter may appeal from the final decision and order or  
5 preliminary ruling. The court shall give priority to these  
6 cases over all other civil or administrative appeals or matters  
7 and shall decide these appeals as expeditiously as possible.

8 (1) Notwithstanding any other provision of this chapter to  
9 the contrary, for the purposes of this section, the term "person  
10 aggrieved" includes an agency that is a party to a contested  
11 case proceeding before that agency or another agency."

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

14 **"§343-7 [~~Limitation~~] Judicial review; limitation of**  
15 **actions[-]; jurisdiction.** (a) Any judicial proceeding, the  
16 subject of which is the lack of assessment required under  
17 section 343-5, shall be initiated within one hundred twenty days  
18 of the agency's decision to carry out or approve the action, or,  
19 if a proposed action is undertaken without a formal  
20 determination by the agency that a statement is or is not  
21 required, a judicial proceeding shall be instituted within one



1 hundred twenty days after the proposed action is started. The  
2 office, any agency responsible for approval of the action, or  
3 the applicant shall be adjudged an aggrieved party for the  
4 purposes of bringing judicial action under this subsection.

5 Others, by environmental court action, may be adjudged  
6 aggrieved.

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

19 (c) Any judicial proceeding, the subject of which is the  
20 acceptance or nonacceptance of an environmental impact statement  
21 required under section 343-5, shall be initiated within sixty





1 days after the public has been informed pursuant to section 343-  
2 3 of the acceptance or nonacceptance of [~~such~~] the statement.  
3 Affected agencies and persons who provided written comment to an  
4 accepted statement during the designated review period shall be  
5 adjudged aggrieved parties for the purpose of bringing judicial  
6 action under this subsection; provided that for aggrieved  
7 parties, the contestable issues shall be limited to issues  
8 identified and discussed in the written comment, and for  
9 applicants bringing judicial action under this section on the  
10 nonacceptance of a statement, the contestable issues shall be  
11 limited to those issues identified by the accepting authority as  
12 the basis for nonacceptance of the statement.

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

17 (1) Determination that an environmental impact statement  
18 is required for a proposed action;

19 (2) Acceptance or nonacceptance of an environmental impact  
20 statement; or



1       (3) Determination of a finding of no significant impact  
2           for an environmental assessment,  
3 directly to the supreme court for final decision. Only a person  
4 aggrieved in the case may appeal the agency's decision,  
5 determination, acceptance, or nonacceptance. The court shall  
6 give priority to these cases over all other civil or  
7 administrative appeals or matters and shall decide these appeals  
8 as expeditiously as possible. For the purposes of this  
9 subsection, "person" includes an agency."

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

12       "(a) ~~[The]~~ Except as otherwise provided in section  
13 91-14(k) or 343-7(d), the environmental courts shall have  
14 exclusive, original jurisdiction over all proceedings, including  
15 judicial review of administrative proceedings and proceedings  
16 for declaratory judgment on the validity of agency rules  
17 authorized under chapter 91, arising under chapters 6D, 6E, 6K,  
18 128D, 339, 339D, 340A, 340E, 342B, 342C, 342D, 342E, 342F, 342G,  
19 342H, 342I, 342J, 342L, 342P, 343, and 508C, and title 12;  
20 provided that:



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

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

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

SECTION 6. This Act shall take effect on July 1, 3000.



**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. Effective 7/1/3000. (HD1)

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

