

A Bill for an Act Relating to Judicial Proceedings.

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

SECTION 1. Chapter 174C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§174C- Contested cases. (a) Chapter 91 shall apply to every contested case arising under this chapter except where chapter 91 conflicts with this chapter, in which case this chapter shall apply. Any other law to the contrary notwithstanding, including chapter 91, any contested case under this chapter shall be appealed from a final decision and order or a preliminary ruling that is of the nature defined by section 91-14(a) upon the record directly to the supreme court for final decision. Only a person aggrieved in a contested case proceeding provided for in this chapter may appeal from the final decision and order or preliminary ruling. For the purposes of this section, the term “person aggrieved” includes an agency that is a party to a contested case proceeding before that agency or another agency.

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

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

“§183C- Contested cases. (a) Chapter 91 shall apply to every contested case arising under this chapter except where chapter 91 conflicts with this chapter, in which case this chapter shall apply. Any other law to the contrary notwithstanding, including chapter 91, any contested case under this chapter shall be appealed from a final decision and order or a preliminary ruling that is of the nature defined by section 91-14(a) upon the record directly to the supreme court for final decision, except for those appeals heard pursuant to this chapter arising in whole or in part from part III of chapter 205A or arising in whole or in part from chapter 115. Only a person aggrieved in a contested case proceeding provided for in this chapter may appeal from the final decision and order or preliminary ruling. For the purposes of this section, the term “person aggrieved” includes an agency that is a party to a contested case proceeding before that agency or another agency.

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

SECTION 3. Chapter 205, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§205- Contested cases. (a) Chapter 91 shall apply to every contested case arising under this chapter except where chapter 91 conflicts with this chapter, in which case this chapter shall apply. Any other law to the contrary notwithstanding, including chapter 91, any contested case under this chapter shall be appealed from a final decision and order or a preliminary ruling that is of the nature defined by section 91-14(a) upon the record directly to the supreme court for final decision. Only a person aggrieved in a contested case proceeding

provided for in this chapter may appeal from the final decision and order or preliminary ruling. For the purposes of this section, the term “person aggrieved” includes an agency that is a party to a contested case proceeding before that agency or another agency.

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

SECTION 4. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§269- Contested cases. (a) Chapter 91 shall apply to every contested case arising under this chapter except where chapter 91 conflicts with this chapter, in which case this chapter shall apply. Any other law to the contrary notwithstanding, including chapter 91, any contested case under this chapter shall be appealed from a final decision and order or a preliminary ruling that is of the nature defined by section 91-14(a) upon the record directly to the supreme court for final decision. Only a person aggrieved in a contested case proceeding provided for in this chapter may appeal from the final decision and order or preliminary ruling. For the purposes of this section, the term “person aggrieved” includes an agency that is a party to a contested case proceeding before that agency or another agency.

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

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

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

(b) Except as otherwise provided herein, proceedings for review shall be instituted in the circuit court or, if applicable, the environmental court, within thirty days after the preliminary ruling or within thirty days after service of the certified copy of the final decision and order of the agency pursuant to rule of court, except where a statute provides for a direct appeal to the supreme court or the intermediate appellate court, subject to chapter 602. In such cases, the appeal shall be treated in the same manner as an appeal from the circuit court to the supreme court or the intermediate appellate court, including payment of the fee prescribed by section 607-5 for filing the notice of appeal (except in cases appealed under sections 11-51 and 40-91). The court in its discretion may permit other interested persons to intervene.

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

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

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

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

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

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

- (1) In violation of constitutional or statutory provisions; ~~[ø]~~
- (2) In excess of the statutory authority or jurisdiction of the agency; ~~[ø]~~
- (3) Made upon unlawful procedure; ~~[ø]~~
- (4) Affected by other error of law; ~~[ø]~~
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

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

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

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

SECTION 6. Section 174C-12, Hawaii Revised Statutes, is amended to read as follows:

“~~§174C-12~~ Judicial review of rules and orders of the commission concerning the water code. ~~Judicial~~ Except as otherwise provided in this chapter, judicial review of rules and orders of the commission under this chapter shall be governed by chapter 91. Trial de novo is not allowed on review of commission actions under this chapter.”

SECTION 7. Section 183C-8, Hawaii Revised Statutes, is amended to read as follows:

“~~§183C-8~~ Zoning order; appeal to circuit environmental court. ~~Any~~ Except as otherwise provided in this chapter, any final order of the department based upon this ~~chapter~~ may be appealed to the circuit environmental court of the circuit in which the land in question is found. The appeal shall be in accord with chapter 91 and the Hawaii rules of civil procedure.”

SECTION 8. Section 206E-5.6, Hawaii Revised Statutes, is amended to read as follows:

“~~§206E-5.6~~ Public hearing for decision-making; separate hearings required; contested case hearing; judicial review. (a) When rendering a decision regarding:

- (1) An amendment to any of the authority’s community development rules established pursuant to chapter 91 and section 206E-7; or
- (2) The acceptance of a developer’s proposal to develop lands under the authority’s control,

the authority shall render its decision at a public hearing separate from the hearing that the proposal under paragraph (1) or (2) was presented.

(b) The authority shall issue a public notice in accordance with section 1-28.5 and post the notice on its website; provided that the decision-making hearing shall not occur earlier than five business days after the notice is posted. Public notice issued pursuant to this subsection for public hearings on the acceptance of a developer’s proposal to develop lands under the authority’s control shall state that any written motion to intervene as a formal party to the proceeding shall be received within twenty days after the publication date of the public notice.

(c) Prior to rendering a decision, the authority shall provide the general public with the opportunity to testify at its decision-making hearing; provided that members of the public who are not intervenors in the proceeding shall not be considered formal parties to the proceeding.

(d) The authority shall notify the president of the senate and speaker of the house:

- (1) Of any public hearing upon posting of the hearing notice; and
- (2) With a report detailing the public’s reaction at the public hearing, within one week after the hearing.

(e) When considering any developer’s proposal to develop lands under the authority’s control that includes any request for a variance, exemption, or modification of a community development plan or of the authority’s community development rules, the authority shall consider the request for variance, exemption, or modification at a public hearing, noticed in accordance with section 1-28.5, separate from and subsequent to the hearing at which the developer’s proposal was presented; provided that the authority may consider all requests applicable to a single proposal at the same public hearing. The authority’s decision on requests subject to this subsection shall be rendered at the decision-making hearing on the developer’s proposal.

(f) No final decision of the authority on a developer's proposal shall be issued until after all proceedings required by this section are finally concluded.

(g) Proceedings regarding the acceptance of a developer's proposal to develop lands under the authority's control shall be considered a contested case hearing.

(h) Any party aggrieved by a final decision of the authority regarding the acceptance of a developer's proposal to develop lands under the authority's control may seek judicial review of the decision within thirty days ~~[-, pursuant to section 91-14]. Chapter 91 shall apply to the judicial review except where chapter 91 conflicts with this chapter, in which case this chapter shall apply. Any other law to the contrary notwithstanding, including chapter 91, any contested case under this chapter shall be appealed from a final decision and order or a preliminary ruling that is of the nature defined by section 91-14(a) upon the record directly to the supreme court for final decision. Only a person aggrieved in a contested case proceeding provided for in this chapter may appeal from the final decision and order or preliminary ruling. For the purposes of this section, the term "person aggrieved" includes an agency that is a party to a contested case proceeding before that agency or another agency.~~

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

~~(j)~~ (j) The authority shall not approve any developer's proposal to develop lands under the authority's control unless the authority finds that the proposed development project is reasonable and is consistent with the development rules and policies of the relevant development district. In making its finding pursuant to this subsection, the authority shall consider:

- (1) The extent to which the proposed project:
 - (A) Advances the goals, policies, and objectives of the applicable district plan;
 - (B) Protects, preserves, or enhances desirable neighborhood characteristics through compliance with the standards and guidelines of the applicable district rules;
 - (C) Avoids a substantially adverse effect on surrounding land uses through compatibility with the existing and planned land use character of the surrounding area; and
 - (D) Provides housing opportunities for all income groups, particularly low, moderate, and other qualified income groups;
- (2) The impact of the proposed project on the following areas of urban design, as applicable:
 - (A) Pedestrian oriented development, including complete streets design;
 - (B) Transit oriented development, including rail, bus, and other modes of rapid transit; and
 - (C) Community amenities such as gathering places, community centers, culture and arts facilities, and the full array of public facilities normally provided by the public sector;
- (3) The impact of the proposed project on the following areas of state concern:
 - (A) Preservation of important natural systems or habitats;
 - (B) Maintenance of valued cultural, historical, or natural resources;
 - (C) Maintenance of other resources relevant to the State's economy;
 - (D) Commitment of state funds and resources;

- (E) Employment opportunities and economic development; and
- (F) Maintenance and improvement of the quality of educational programs and services provided by schools;
- (4) The representations and commitments made by the developer in the permit application process.”

SECTION 9. Section 269-15.5, Hawaii Revised Statutes, is amended to read as follows:

“**§269-15.5 Appeals.** ~~[An]~~ Except as otherwise provided in this chapter, an appeal from an order of the public utilities commission under this chapter shall lie, subject to chapter 602, in the manner provided for civil appeals from the circuit courts. Only a person aggrieved in a contested case proceeding provided for in this chapter may appeal from the order, if the order is final, or if preliminary, is of the nature defined by section 91-14(a). The commission may elect to be a party to all matters from which an order of the commission is appealed, and the commission may file appropriate responsive briefs or pleadings in the appeal; provided that where there was no adverse party in the case below, or in cases where there is no adverse party to the appeal, the commission shall be a party to all matters in which an order of the commission is appealed and shall file the appropriate responsive briefs or pleadings in defending all such orders. The appearance of the commission as a party in appellate proceedings in no way limits the participation of persons otherwise qualified to be parties on appeal. The appeal shall not of itself stay the operation of the order appealed from, but the appellate court may stay the order after a hearing upon a motion therefor and may impose conditions it deems proper, including but not limited to requiring a bond, requiring that accounts be kept, or requiring that other measures be taken as ordered to secure restitution of the excess charges, if any, made during the pendency of the appeal, in case the order appealed from is sustained, reversed, or modified in whole or in part.”

SECTION 10. Section 602-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) ~~[The]~~ Except as otherwise provided, the supreme court shall have jurisdiction and powers as follows:

- (1) To hear and determine all questions of law, or of mixed law and fact, which are properly brought before it by application for a writ of certiorari to the intermediate appellate court or by transfer as provided in this chapter;
- (2) To answer, in its discretion, any question of law reserved by a circuit court, the land court, or the tax appeal court, or any question or proposition of law certified to it by a federal district or appellate court if the supreme court shall so provide by rule;
- (3) To exercise original jurisdiction in all questions arising under writs directed to courts of inferior jurisdiction and returnable before the supreme court, or if the supreme court consents to receive the case arising under writs of mandamus directed to public officers to compel them to fulfill the duties of their offices; and such other original jurisdiction as may be expressly conferred by law;
- (4) To issue writs of habeas corpus, or orders to show cause as provided by chapter 660, returnable before the supreme court or a circuit court, and any justice may issue writs of habeas corpus or such orders to show cause, returnable as above stated;

ACT 48

- (5) To make or issue any order or writ necessary or appropriate in aid of its jurisdiction, and in such case, any justice may issue a writ or an order to show cause returnable before the supreme court; and
- (6) To make and award such judgments, decrees, orders and mandates, issue such executions and other processes, and do such other acts and take such other steps as may be necessary to carry into full effect the powers which are or shall be given to it by law or for the promotion of justice in matters pending before it.”

SECTION 11. The judiciary shall submit a report to the legislature of its findings and recommendations regarding the change in judicial proceedings made by this Act, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2019.

SECTION 12. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 14. This Act shall take effect on August 1, 2016, and shall be repealed on July 1, 2019; provided that sections 91-14, 174C-12, 183C-8, 206E-5.6(h), 269-15.5, and 602-5(a), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day prior to the effective date of this Act.

(Approved May 10, 2016.)

Note

- 1. Edited pursuant to HRS §23G-16.5.