

CHAPTER 91
ADMINISTRATIVE PROCEDURES

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§ 91-1 Definitions.

For the purpose of this chapter:

- (1) "Agency" means each state or county board, commission, department, or officer authorized by law to make rules or to adjudicate contested cases, except those in the legislative or judicial branches.
- (2) "Persons" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies.
- (3) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any court or agency proceeding.
- (4) "Rule" means each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term does not include regulations concerning only the internal management of an agency and not affecting private rights of or procedures available to the public, nor does the term include declaratory rulings issued pursuant to [section 91-8](#), nor intra-agency memoranda.
- (5) "Contested case" means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing.
- (6) "Agency hearing" refers only to such hearing held by an agency immediately prior to a judicial review of a contested case as provided in [section 91-14](#).

[L 1961, c 103, § 1; Supp, § 6C-1; HRS § 91-1]

NOTES, REFERENCES, AND ANNOTATIONS

Purpose.

The Administrative Procedure Act is a remedial statute designed to give citizens a fair opportunity to be heard before the official of the agency who is charged with passing on that case. [Hawaii Laborers' Training Ctr. v. Agsalud, 65 Haw. 257, 650 P.2d 574 \(1982\)](#).

Rules have force of law.

Generally, administrative rules and regulations promulgated pursuant to statutory authority have the force and effect of law. [State v. Kimball, 54 Haw. 83, 503 P.2d 176 \(1972\)](#).

Compliance required.

All state and county boards, commissions, departments or offices must conform to the requirements of

the Administrative Procedure Act when acting in either a rule making capacity or in the adjudication of a contested case. [Town v. Land Use Comm'n, 55 Haw. 538, 524 P.2d 84 \(1974\)](#); [Ainoa v. Unemployment Comp. Appeals Div., 62 Haw. 286, 614 P.2d 380 \(1980\)](#).

Effect of noncompliance.

Administrative rules not promulgated in accordance with this chapter are invalid and unenforceable. [Burk v. Sunn, 68 Haw. 80, 705 P.2d 17](#), reconsideration denied, 68 Haw. 687 (1985); [Ainoa v. Unemployment Comp. Appeals Div., 62 Haw. 286, 614 P.2d 380 \(1980\)](#).

Waiver of procedures, generally.

While in the usual case parties may, among themselves, waive past irregularities in the procedure for promulgating rules and regulations under this chapter, there is no authority given to either parties or a court to suspend in futuro the statutory requirements for the promulgation of rules and regulations and make valid future rules and regulations promulgated contrary to statute. [Koolauloa Welfare Rights Group v. Chang, 65 Haw. 341, 652 P.2d 185 \(1982\)](#).

Where the statutory time requirement for filing a notice of appeal has not been met, the appeal must be dismissed. [Korean Buddhist Dae Won Sa Temple of Haw., Inc. v. Zoning Bd. of Appeals, 9 Haw. App. 298, 837 P.2d 311](#), reconsideration denied, [9 Haw. App. 659, 833 P.2d 98 \(1992\)](#).

Right of an agency to appeal.

The right of an administrative agency to appeal an adverse ruling is limited to the situation where an individual as an aggrieved party prevails in appellate court, making the agency an aggrieved party with respect to implementation of legislation entrusted to it for administration. [Fasi v. State Pub. Emp. Relations Bd., 60 Haw. 436, 591 P.2d 113 \(1979\)](#); [In re Eric G., 65 Haw. 219, 649 P.2d 1140 \(1982\)](#).

Judicial interpretation.

The supreme court, in the absence of clear legislative direction to the contrary, will not interpret provisions of the Administrative Procedure Act so as to give the government even an appearance of being arbitrary or capricious. [Ainoa v. Unemployment Comp. Appeals Div., 62 Haw. 286, 614 P.2d 380 \(1980\)](#). Cited in [Mortensen v. Board of Trustees, 52 Haw. 212, 473 P.2d 866 \(1970\)](#); [East Diamond Head Ass'n v. Zoning Bd. of Appeals, 52 Haw. 518, 479 P.2d 796 \(1971\)](#); [City & County of Honolulu v. Public Utils. Comm'n, 53 Haw. 431, 495 P.2d 1180 \(1972\)](#); [Ras v. Hasegawa, 53 Haw. 640, 500 P.2d 746 \(1972\)](#); [In re Hawaiian Elec. Co., 56 Haw. 260, 535 P.2d 1102 \(1975\)](#); [Mitchell v. BWK Joint Venture, 57 Haw. 535, 560 P.2d 1292 \(1977\)](#); [Doe v. Chang, 58 Haw. 94, 564 P.2d 1271 \(1977\)](#); [Tai v. Chang, 58 Haw. 386, 570 P.2d 563 \(1977\)](#); [Big Island Small Ranchers Ass'n v. State, 60 Haw. 228, 588 P.2d 430 \(1978\)](#); [Gealon v. Keala, 60 Haw. 513, 591 P.2d 621 \(1979\)](#); [Life of Land, Inc. v. Land Use Comm'n, 61 Haw. 3, 594 P.2d 1079 \(1979\)](#); [Filipo v. Chang, 62 Haw. 626, 618 P.2d 295 \(1980\)](#); [Waugh v. University of Haw., 63 Haw. 117, 621 P.2d 957 \(1980\)](#); [Lono v. Ariyoshi, 63 Haw. 138, 621 P.2d 976 \(1981\)](#); [Miller v. DOT, 3 Haw. App. 91, 641 P.2d 991 \(1982\)](#); [Survivors of Cariaga v. Del Monte Corp., 3 Haw. App. 681, 642 P.2d 537 \(1982\)](#); [Jordan v. Hamada, 64 Haw. 451, 643 P.2d 73 \(1982\)](#); [Foster](#)

[Village Community Ass'n v. Hess](#), 4 Haw. App. 463, 667 P.2d 850 (1983); [In re Hawaiian Elec. Co.](#), 66 Haw. 538, 669 P.2d 148 (1983); [In re Tax Appeals of Trade Wind Tours of Haw., Inc.](#), 6 Haw. App. 260, 718 P.2d 1122 (1986); [Park v. Thompson](#), 356 F. Supp. 783 (D. Haw. 1973); [Tai v. Thompson](#), 396 F. Supp. 196 (D. Haw. 1975); [Department of Educ. v. Valenzuela](#), 524 F. Supp. 261 (D. Haw. 1981); [Haal v. State](#), 7 Haw. App. 274, 756 P.2d 1048 (1988), cert. denied, 69 Haw. 677, cert. denied and appeal dismissed, 488 U.S. 803, 109 S. Ct. 33, 102 L. Ed. 2d 13 (1988); [Pele Defense Fund v. Puna Geothermal Venture](#), 77 Haw. 64, 881 P.2d 1210 (1994); [In re Hawaiian Elec. Co.](#), 81 Haw. 459, 918 P.2d 561 (1996); [Conrad Wood Preserving Co. v. Fujiki](#), 939 F. Supp. 746 (D. Haw. 1996); [RGIS Inventory Specialist v. Haw. Civ. Rights Comm'n](#), 104 Haw. 158, 86 P.3d 449, 2004 Haw. LEXIS 187 (2004).II.Agency

Honolulu police commission is an agency.

Honolulu police commission was an "agency" within meaning of Administrative Procedures Act, and was required to follow the act's procedural requirements in adjudicating contested cases. [Alejado v. City & County of Honolulu](#), 89 Haw. 221, 971 P.2d 310 (Ct. App. 1998).

This section specifically exempts legislative and judicial bodies from its purview and the Honolulu city council clearly falls within this exception. [Sandy Beach Defense Fund v. City Council](#), 70 Haw. 361, 773 P.2d 250 (1989).

Legislative bodies are excepted from the statutory definition of "agency" when acting in either a legislative or a non-legislative capacity. [Sandy Beach Defense Fund v. City Council](#), 70 Haw. 361, 773 P.2d 250 (1989).

The legislative history of this section indicates that the definition of agency does not include the state legislature, city council and board of supervisors of the state and county government or the various courts, including those which by statute the supreme court of the state of Hawaii is given rulemaking authority over. [Sandy Beach Defense Fund v. City Council](#), 70 Haw. 361, 773 P.2d 250 (1989).

Where Department of Public Safety policy providing that inmates be given six hours per week in law library had not been adopted pursuant to this chapter, policy was not binding on correction officials against whom inmates sought injunctive relief, as policy was unenforceable as agency rule or internal guideline. [Martinez v. Espinas](#), 938 F. Supp. 650 (D. Haw. 1996).

[Section 205A-1](#) does not define "agency" for purposes of Administrative Procedure Act.

[Section 205A-1](#) defines "agency" for the purposes of the Coastal Zone Management Act, Chapter 205A, and not for the purposes of this chapter, as this section provides its own definition of "agency." [Sandy Beach Defense Fund v. City Council](#), 70 Haw. 361, 773 P.2d 250 (1989).

Council is not subject to this chapter.

The Honolulu city council, as the legislative body of the county, is not subject to the Administrative Procedure Act. This chapter does not require the council to conduct contested case proceedings in

issuing special management area use permits. [Sandy Beach Defense Fund v. City Council, 70 Haw. 361, 773 P.2d 250 \(1989\)](#).

Based upon the plain language of this section and its legislative history, the Honolulu city council, as the legislative branch of the county, is not subject to the procedural requirements of this chapter when acting in either a legislative or nonlegislative capacity. [Sandy Beach Defense Fund v. City Council, 70 Haw. 361, 773 P.2d 250 \(1989\)](#).

Honolulu city council did not act in a legislative capacity by approving a special management area use permit, since the council, by so doing, administered a law already in existence. [Sandy Beach Defense Fund v. City Council, 70 Haw. 361, 773 P.2d 250 \(1989\)](#).

County planning commissions are clearly "agencies" as defined by subdivision (1) of this section. [Sandy Beach Defense Fund v. City Council, 70 Haw. 361, 773 P.2d 250 \(1989\)](#).

Board of education is subject to the provisions of paragraph (1). [Shorba v. Board of Educ., 59 Haw. 388, 583 P.2d 313 \(1978\)](#).

Board of land and natural resources is an "agency" within the executive department of the State. [McGlone v. Inaba, 64 Haw. 27, 636 P.2d 158 \(1981\)](#); [Mahendra Rudra Sharma v. State, Dep't of Land & Natural Resources, 66 Haw. 632, 673 P.2d 1030 \(1983\)](#), cert. denied, [469 U.S. 836, 105 S. Ct. 131, 83 L. Ed. 2d 72 \(1984\)](#).

Labor and industrial relations appeal board is an agency within the definition of this section. [Dependents of Cazimero v. Kohala Sugar Co., 54 Haw. 479, 510 P.2d 89 \(1973\)](#).

Police department chief was not an "agency" within the meaning of paragraph (1). [Gibb v. Spiker, 68 Haw. 432, 718 P.2d 1076 \(1986\)](#).

County police department is an "agency" required to conform to rule-making requirements of this act; however, field sobriety testing procedures do not constitute "rules" subject to rule-making requirements of this act because testing procedures concern only the "internal management" of the police department and do not affect "private rights of or procedures available to the public" within the meaning of subsection (4) of this section. [In re Doe, 9 Haw. App. 406, 844 P.2d 679 \(1992\)](#), cert. denied, [74 Haw. 651, 847 P.2d 263 \(1993\)](#).

The department of finance is an agency within the meaning of chapter 91, and was not a "person" entitled to appeal under [§ 91-14](#) prior to May 20, 1993. [County of Haw., Dep't of Fin. v. Civil Serv. Comm'n, 77 Haw. 396, 885 P.2d 1137 \(Ct. App. 1994\)](#).III.Contested Case

Hearing required by law.

Since indicted police officer demonstrated a legitimate claim of entitlement to city-provided legal representation, and an agency hearing was "required by law," officer was entitled to a "contested case" hearing with procedural protections outlined in Administrative Procedures Act. [Alejado v. City &](#)

[County of Honolulu, 89 Haw. 221, 971 P.2d 310 \(Ct. App. 1998\).](#)

Hearing not "required by law".

Where a hearing on a tenure application by an instructor was not required by law, the application did not create a contested case reviewable under the standards provided in the Administrative Procedure Act, assuming the university to be an agency to which the act applied in its employment relations. [Abramson v. Board of Regents, 56 Haw. 680, 548 P.2d 253 \(1976\).](#)

Internal agency appeals procedures.

The legislature did not intend to mandate a uniform review mechanism for all internal agency appeals, and the hearing before the Zoning Board of Appeals was properly denominated as the "agency hearing", as contemplated by the definition of "contested case" set forth in paragraph (5). [Korean Buddhist Dae Won Sa Temple v. Sullivan, 87 Haw. 217, 953 P.2d 1315 \(1998\).](#)

If the statute or rule governing the activity in question does not mandate a hearing prior to the administrative agency's decision-making, the actions of the administrative agency are not "required by law" and do not amount to "a final decision or order in a contested case" from which a direct appeal to circuit court is possible. [Bush v. Hawaiian Homes Comm'n, 76 Haw. 128, 870 P.2d 1272 \(1994\).](#)

Procedural due process.

The failure to hold a contested case hearing on the water management area designation decision did not deny plaintiff procedural due process because it is only at the permitting stage that property interests of applicants are potentially affected and the contested case hearing procedures of this chapter are required to satisfy due process. [Ko'Olau Agricultural Co. v. Commission on Water Resource Mgt., 83 Haw. 484, 927 P.2d 1367 \(1996\).](#)

Public hearing conducted pursuant to public notice is a "contested case" within the meaning of this section. [Mahuiki v. Planning Comm'n, 65 Haw. 506, 654 P.2d 874 \(1982\).](#)

Commission engaged in adjudication, not rulemaking.

In a complaint lodged with the public utilities commission, where one motor carrier charged another motor carrier with operating a "regular route scheduled bus service . . . without proper authorization," the disposition of the complaint entailed a determination of the past and present rights and liabilities of the two carriers, as it involved a determination of whether motor carrier's past conduct was unlawful, so that the proceeding was characterized by an accusatory flavor which resulted in disciplinary action; therefore, the proceeding was a "[c]ontested case" and the decision was not a "rule." [Shoreline Transp., Inc. v. Roberts Tours & Transp., Inc., 70 Haw. 585, 779 P.2d 868, reconsideration denied, 70 Haw. 662, 796 P.2d 1005 \(1989\).](#)

When public utilities commission conducted a hearing on a complaint filed by the only motor carrier authorized to transport passengers on a scheduled basis over regular routes between certain points,

which complaint claimed that another carrier was also operating a scheduled bus service over some of the same routes, the commission engaged in adjudication; therefore, the intermediate court of appeals incorrectly concluded that the commission's decision was a "rule" within the meaning of paragraph (4). [Shoreline Transp., Inc. v. Roberts Tours & Transp., Inc., 70 Haw. 585, 779 P.2d 868](#), reconsideration denied, [70 Haw. 662, 796 P.2d 1005 \(1989\)](#).

Where the statutory designation procedure conflicts with the contested case hearing procedures outlined in chapter 91, it is the specific procedure described in [§ 174C-41](#) et seq. that must be followed in deciding whether to designate a "water management area". [Ko'Olau Agricultural Co. v. Commission on Water Resource Mgt., 83 Haw. 484, 927 P.2d 1367 \(1996\)](#).

District boundary amendment review.

A case involving an amendment to district boundaries which is challenged by an adjoining landowner having property interests in the outcome of said amendment is a "contested case." [Town v. Land Use Comm'n, 55 Haw. 538, 524 P.2d 84 \(1974\)](#).

No hearing for condemnation case.

The public hearing called for under [§ 516-22](#) is not a contested case hearing for the purposes of [§ 91-9](#) nor is it a hearing such as is contemplated by [§ 91-3](#) for the adoption, amendment or repeal of rules. Moreover, the determination of public use does not appear to be a "rule" as defined in subdivision (4) of this section; thus the public hearing called for under [§ 516-22](#) serves only an informational purpose, and the agency's determination to proceed with a condemnation of a tract of land because it would serve the public purpose does not depend upon some form of prior hearing. [Takabuki v. Housing Fin. & Dev. Corp., 72 Haw. 466, 822 P.2d 955 \(1991\)](#).

Apprenticeship council meeting.

Under the express language of HRS ch. 91, the advisory role of the Hawaii State Apprenticeship Council (SAC) does not substitute for the final decision of the Hawaii Department of Labor and Industrial Relations Director. SAC approval is not a prerequisite to registration. Inasmuch as the Hawaii State Apprenticeship Council serves only in an advisory capacity, its meetings cannot be considered contested case hearings. [Intl Bhd. of Painters & Allied Trades Painters of Local Union 1944 v. Befitel, 104 Haw. 275, 88 P.3d 647, 2004 Haw. LEXIS 308 \(Haw 2004\)](#).

The "water management area" designation is not a contested case because it does not determine "the legal rights, duties, or privileges of specific parties", and [§ 174C-60](#) does not confer jurisdiction on the supreme court, nor does [§ 91-14](#) confer jurisdiction on the circuit court. [Ko'Olau Agricultural Co. v. Commission on Water Resource Mgt., 83 Haw. 484, 927 P.2d 1367 \(1996\)](#).

Special management area use permit application.

This chapter applies to special management area use permit application proceedings since, as contested cases, they are actions in which the specific parties' legal rights and duties are required by law to be

determined after an opportunity for agency hearing. [Chang v. Planning Comm'n, 64 Haw. 431, 643 P.2d 55 \(1982\)](#).

Permit applications under chapter 174C, when challenged, do trigger the "contested case hearing" provisions of chapter 91 and, pursuant to [§ 174C-60](#), the provisions of chapter 91 shall apply for challenged permit applications. [Ko'Olau Agricultural Co. v. Commission on Water Resource Mgt., 83 Haw. 484, 927 P.2d 1367 \(1996\)](#).

Criminal injuries claim denial.

Claim for compensation for victim of crime, which was denied by the criminal injuries compensation commission, was a "contested case", as that term is defined in paragraph (5). [Horner v. Criminal Injuries Comp. Comm'n, 54 Haw. 294, 506 P.2d 444 \(1973\)](#).

Prison administrative hearings are not contested cases within the meaning of paragraph (5). [State v. Alvey, 67 Haw. 49, 678 P.2d 5 \(1984\)](#).

Public hearing before the Board of Land and Natural Resources was not a contested case hearing in accordance with the department's rules. [Simpson v. Department of Land & Natural Resources, 8 Haw. App. 16, 791 P.2d 1267 \(1990\)](#).

Welfare benefit reduction review.

A hearing at which it was determined that several welfare recipients would have their benefits reduced was a "contested case." [Punohu v. Sunn, 66 Haw. 485, 666 P.2d 1133 \(1983\)](#).

Parole proceedings.

Although Hawaii Paroling Authority was an "agency", it did not adjudicate contested cases in the context of parole hearings because a parole proceeding is not a "contested case" under Hawaii Administrative Procedures Act. [Turner v. Haw. Paroling Auth., 93 Haw. 298, 1 P.3d 768, 2000 Haw. App. LEXIS 89 \(Ct. App. 2000\)](#).

Public utility commission orders.

An appeal from two orders of the public utilities commission was not "contested" under HRS § 91-1(5) because an evidentiary hearing on an application was not required by either statute, rule, the United States Constitution, or the Hawai'i Constitution, and thus [HRS § 271-32\(e\)](#) did not apply. [In re Robert's Tours & Transp., Inc., 104 Haw. 98, 85 P.3d 623, 2004 Haw. LEXIS 105 \(2004\)](#).IV.Party

Adjoining owner to property being redistricted.

Where an individual's property adjoins the property that is being redistricted, any action taken on the petition for boundary change is a proceeding in which he has legal rights as a specific and interested party and is entitled to have a determination on those rights. [Town v. Land Use Comm'n, 55 Haw. 538,](#)

[524 P.2d 84 \(1974\)](#).V.Persons

State administrative agencies are not "persons" with standing to appeal an administrative action. [In re Eric G., 65 Haw. 219, 649 P.2d 1140 \(1982\)](#).

Agency still not defined as "persons" after amendment of [§ 91-14](#).

The legislature, while not amending the definition of "persons" in subsection (2), amended [§ 91-14](#) to permit a party agency to appeal an adverse order of an adjudicatory agency. [County of Haw., Dep't of Fin. v. Civil Serv. Comm'n, 77 Haw. 396, 885 P.2d 1137 \(Ct. App. 1994\)](#).VI.Rules

"Rule" construed.

A rule, for purposes of this chapter, includes each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy. [Vega v. National Union Fire Ins. Co., 67 Haw. 148, 682 P.2d 73 \(1984\)](#).

Definition of "rule" did not significantly change distinction between rulemaking and adjudication.

If the words of the definition for "rule" were literally applied, almost every administrative process would be rulemaking, but this would deprive provisions of the Hawaii Administrative Procedure Act relating to adjudication of virtually all meaning. The definition does not significantly change the basic understanding of the distinction between rulemaking and adjudication held prior to the adoption of the act. [Shoreline Transp., Inc. v. Roberts Tours & Transp., Inc., 70 Haw. 585, 779 P.2d 868, reconsideration denied, 70 Haw. 662, 796 P.2d 1005 \(1989\)](#).

Internal regulations not included.

The term rule does not include regulations concerning only the internal management of an agency and not affecting private rights of or procedures available to the public. [Holdman v. Olim, 59 Haw. 346, 581 P.2d 1164 \(1978\)](#); [Ah Ho v. Cobb, 62 Haw. 546, 617 P.2d 1208 \(1980\)](#).

Internal office circular was not a rule or regulation under the subsection (4) definition, but merely a guideline and was not subject to the provisions of this Act. [Crosby v. State Dep't of Budget & Fin., 76 Haw. 332, 876 P.2d 1300 \(1994\)](#), cert. denied, [513 U.S. 1081, 115 S. Ct. 731, 130 L. Ed. 2d 635 \(1995\)](#).

Construction of rules.

The general principles of statutory construction are applicable to the construction of administrative rules. [State v. DeMille, 7 Haw. App. 323, 763 P.2d 5 \(1988\)](#).

Rulemaking procedures ensure fairness.

Where the subject matter of a quasi-judicial adjudication encompasses concerns that transcend those of individual litigants and implicates matters of administrative policy, rulemaking procedures should be

followed. Procedural requirements ensure fairness by providing public notice, an opportunity for all interested parties to be heard, full factual development and opportunity for continuing comment on the proposed action before a final determination is made. [Aluli v. Lewin, 73 Haw. 56, 828 P.2d 802, reconsideration denied, 73 Haw. 625, 831 P.2d 935 \(1992\).](#)

The substitution of one word for another in an administrative rule is permitted where it is obvious that the word used in the rule is the result of clerical error and where the substitution will make the rule sensible, give it force and effect, or make it rational. [State v. DeMille, 7 Haw. App. 323, 763 P.2d 5 \(1988\).](#)

Administrative rules required to check unbridled discretion on the part of administrative agencies.

When an administrative agency, such as the Department of Health, issues a permit which has an impact that transcends the immediate interests of the actual parties whose rights were purportedly adjudicated in the permit proceedings such as a permit for a geothermal well, administrative rules are required to check unbridled discretion on the part of the administrative agency, and to ensure fairness and consistency in issuance of permits. [Aluli v. Lewin, 73 Haw. 56, 828 P.2d 802, reconsideration denied, 73 Haw. 625, 831 P.2d 935 \(1992\).](#)

Administrative rules for emissions by geothermal well required prior to issuance of permit.

Administrative rules, adopted in accordance with the Hawaii Administrative Procedures Act, pertaining to emission of H₂S into the air during the operation of a proposed geothermal well are required pursuant to [§ 342B-32](#) prior to issuance of a permit by the Department of Health authorizing activities emitting H₂S. [Aluli v. Lewin, 73 Haw. 56, 828 P.2d 802, reconsideration denied, 73 Haw. 625, 831 P.2d 935 \(1992\).](#)

Blood alcohol testing device approval.

Approval by the director of transportation of the use of the intoxilyzer in chemical testing for blood alcohol was not subject to the rule-making procedures of the Administrative Procedure Act. [State v. Tengan, 67 Haw. 451, 691 P.2d 365, reconsideration denied, 67 Haw. 684, 744 P.2d 780 \(1984\).](#)

Chief planning officer.

To the extent that the functions of the chief planning officer and the planning commission as defined by city charter is purely advisory in nature and part of the legislative process, their actions are not subject to the provisions of this chapter. [Kailua Community Council v. City & County of Honolulu, 60 Haw. 428, 591 P.2d 602 \(1979\).](#)

Classification of lands.

The adoption of district boundaries classifying lands into conservation, agricultural, rural or urban districts, or an amendment to said district boundaries, is not a rule-making process. [Town v. Land Use Comm'n, 55 Haw. 538, 524 P.2d 84 \(1974\).](#)

Department of labor statements to referees.

Where department of labor furnished to referees statements of general or particular applicability and future effect that implemented, interpreted, or prescribed law or policy, the department was engaged in rule-making. [Ainoa v. Unemployment Comp. Appeals Div., 62 Haw. 286, 614 P.2d 380 \(1980\)](#).

Hospital bylaws providing for corrective action against doctors with clinical privileges at the hospital were not "rules" within the meaning of this chapter. [Rose v. Oba, 68 Haw. 422, 717 P.2d 1029 \(1986\)](#).

Hawaii housing authority (HHA) is required to follow the rule-making procedures of the Administrative Procedure Act in adopting regulations which set forth maximum income limits for continued occupancy by tenants in federally-funded public housing administered by the HHA and which establish a schedule for rents which tenants must pay for that housing. [Aguiar v. Hawaii Hous. Auth., 55 Haw. 478, 522 P.2d 1255 \(1974\)](#).

Water system rental agreement.

A contract for the rental of excess transmission capacity within public pipelines and facilities under the custodial management of an agency is not a rule within the meaning of paragraph (4). [Ah Ho v. Cobb, 62 Haw. 546, 617 P.2d 1208 \(1980\)](#).

Sobriety roadblocks.

A Honolulu police department regulation setting forth the procedures to be followed by the police in announcing sobriety roadblocks, and establishing their times, sites, and specific locations, is an internal regulation exempt under subdivision (4) of this section from the promulgation requirements applicable generally to an agency's rules and regulations under this chapter. [State v. Fedak, 9 Haw. App. 98, 825 P.2d 1068 \(1992\)](#).

City's unwritten methodology for calculating golf course tax assessment fell within definition of a rule and should have been promulgated pursuant to administrative rulemaking procedures. [Hawai'i Prince Hotel Waikiki Corp. v. City of Honolulu, 89 Haw. 381, 974 P.2d 21 \(1999\)](#).

OPINIONS OF ATTORNEY GENERAL

This chapter is self-executing and, therefore, provides the necessary legal basis upon which the Board of Education may rely in waiving previously adopted chapter 91 administrative rules for School/Community Based Management schools. Op. Att'y Gen. No. 91-02 (1991).

Housing authority hearing If the Hawaii housing authority conducts any proceeding in which the legal rights, duties, or privileges of specified parties are required by law to be determined after an opportunity for agency hearing, it must do so pursuant to the procedures prescribed in this chapter. Op. Att'y Gen. No. 63-18 (1963).

Fair information request reviews Review of a request in connection with a personal record under former § 92E-9 did not provide for a hearing in the nature of an administrative contested case hearing under this chapter. Op. Att'y Gen. No. 84-14 (1984).

Cosmetology board enrollment policy Where the board of cosmetology has adopted a rule requiring one station for each student enrolled, it may not establish by policy and enforce a new criteria in determining the maximum enrollment of the beauty school, without amending the rule in accordance with this chapter. Op. Att'y Gen. No. 81-11 (1981).

Hawaiian home lands department rules Rules adopted by Hawaiian home lands department are subject to this chapter so long as the legislation and the rules adopted pursuant thereto are not within the types of provisions requiring the consent of the United States. Op. Att'y Gen. No. 63-16 (1963).

Housing authority rules If rules and regulations are of the type within the definition of the term rule, then the Hawaiian housing authority must comply with the Administrative Procedure Act governing rule-making. Op. Att'y Gen. No. 63-18 (1963).

Construction with former chapter 296C Although chapter 91 does not allow administrative rules to be waived, chapter 296C [repealed, see now [§ 302A-1124](#)] expressly stated that they shall be waived. Because the two chapters are irreconcilable, chapter 296C, the more specific of the two statutes, should be favored and read as an exception to the chapter 91 waiver prohibition. Op. Att'y Gen. No. 91-02 (1991).

Decision rendered by agency Because chapter 91, HRS, provides for a decision in a contested case to be rendered by an agency, a decision rendered by an official who is not within that agency would be the exception and not the rule. Op. Att'y Gen. No. 98-6.

RESEARCH REFERENCES

Hawaii Legal Reporter.

As to enjoining agency from enforcing regulation prior to due process hearing, see 80-1 Haw. Legal Rep. 80-243.

As to the requirement for a hearing prior to the revocation of a mooring permit, see 80-1 Haw. Legal Rep. 80-253.

As to the internal management of academic regulations, see 84-2 Haw. Legal Rep. 84-1403.

LEGAL PERIODICALS

Hawaii Bar Journal.

Article, The Hawaii Administrative Procedure Act, 1 Haw. B.J. 1 (1963).

Article, Standing to Challenge Administrative Action in the Federal and Hawaiian Courts, 8 Haw. B.J. 37 (1971).

Article, An Interview with Bill Yuen, Chairman of the Land Use Commission, 17 Haw. B.J. 129 (1982).

Article, Considerations in Implementing Hawaii's Development Agreements Statute, 20 Haw. B.J. 87 (1987).

University of Hawaii Law Review.

1978 Survey, Land Use: Herein of Vested Rights, Plans, and the Relationship of Planning and Controls, 2 U. Haw. L. Rev. 167 (1979).

1983 Survey, The Honolulu Development Plans: An Analysis of Land Use Implications for Oahu, 6 U. Haw. L. Rev. 33 (1983).

Recent Developments in Land Use: County Application of CZMA - [Mahuiki v. Planning Commission of the County of Kauai](#), 65 Haw. 506, 654 P.2d 874 (1982), 6 U. Haw. L. Rev. 683 (1984).

Note, Outdoor Circle v. Harold K.L. Castle Trust Estate: Judicial Review of Administrative Decisions, 7 U. Haw. L. Rev. 449 (1985).

Recent development, Sandy Beach Defense Fund v. City and County of Honolulu: The Sufficiency of Legislative Hearings in an Administrative Setting, 12 U. Haw. L. Rev. 499 (1990).

Note, [Public Access Shoreline Hawaii v. Hawaii County Planning Commission: The Affirmative Duty to Consider the Effect of Development on Native Hawaiian Gathering Rights](#), 16 U. Haw. L. Rev. 303 (1994).

§ 91-2 Public information.

(a) In addition to other rulemaking requirements imposed by law, each agency shall:

(1) Adopt as a rule a description of the methods whereby the public may obtain information or make submittals or requests.

(2) Adopt rules of practice, setting forth the nature and requirements of all formal and informal procedures available, and including a description of all forms and instructions used by the agency.

(3) Make available for public inspection all rules and written statements of policy or interpretation formulated, adopted, or used by the agency in the discharge of its functions.

(4) Make available for public inspection all final opinions and orders.

(b) No agency rule, order, or opinion shall be valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been published or made available for public inspection as herein required, except where a person has actual knowledge thereof.

(c) Nothing in this section shall affect the confidentiality of records as provided by statute.

[L 1961, c 103, § 2; Supp, § 6C-2; HRS § 91-2]

NOTES, REFERENCES, AND ANNOTATIONS

Applicability to state prison policy decisions.

The Administrative Procedure Act's publication requirement does not apply to a policy decision regarding state penal institutions, and a regulation that governs the transfer of prisoners is valid even in the absence of its publication. [Tai v. Chang, 58 Haw. 386, 570 P.2d 563 \(1977\)](#).

Effect of failure to comply.

Subsection (b) is addressed exclusively to an agency's duty to make its duly adopted rules available for public inspection, and the sanction contained in the section is independent of the sanction in [§ 91-7\(b\)](#) against rules adopted without compliance with other rule-making requirements. [Aguiar v. Hawaii Hous. Auth., 55 Haw. 478, 522 P.2d 1255 \(1974\)](#). Cited in [East Diamond Head Ass'n v. Zoning Bd. of Appeals, 52 Haw. 518, 479 P.2d 796 \(1971\)](#); [Ainoa v. Unemployment Comp. Appeals Div., 62 Haw. 286, 614 P.2d 380 \(1980\)](#).

§ 91-2.5 Fees for proposed and final rules.

(a) Notwithstanding any law to the contrary, each agency may charge up to a maximum fee of ten cents per page, plus the actual costs of mailing, for the reproduction of paper copies of the following:

(1) Proposed and final rules, whether new rules, amended rules, or repealed rules, in any format; and

(2) Notices of proposed rulemaking actions pursuant to [section 91-3\(a\)\(1\)](#). This section shall not apply to the reproduction by the office of the lieutenant governor of other agencies' rules, kept in the general collection of the office of the lieutenant governor. Charges for the reproduction of paper copies of rules in the general collection of the office of the lieutenant governor shall be as stated in [section 92-21](#).

(b) Informational or educational publications that are produced by agencies for noncommercial use and which contain copies of state statutes, proposed or final rules, or both, shall be subject to the same fees as specified in subsection (a).

(c) The fees specified in subsection (a) shall not include any charges for searching, identifying, or

segregating rules in preparation for reproduction. Agencies may charge separate fees for these activities in accordance with rules adopted by the office of information practices.

[L 1999, c 301, pt of § 2]

NOTES, REFERENCES, AND ANNOTATIONS

Editor's note.

1999 Haw. Sess. Laws, Act 301, § 1 provides:

"The legislature finds that until early last year, the Hawaii Administrative Procedure Act required agencies, as a part of the rulemaking process, to give copies of the proposed rulemaking action free of charge to persons who requested them. During the 1998 legislature, two measures were enacted that had an impact on fees charged for agency rules. The first, Act 2, Session Laws of Hawaii (SLH) 1998, required agencies adopting rules to mail copies of proposed rules to interested persons who requested them, but only after the person paid for the cost of the copy and postage, rather than free of charge as had previously been the case. In addition, Act 311, SLH 1998, raised the fee for reproducing government records from twenty-five cents a page to fifty cents a page.

"The enactment of Acts 2 and 311, SLH 1998, led to confusion among many state agencies. Some questioned whether those amendments required them to charge for copies of rules. Others wondered whether the agencies could set their own fees, or whether the statutory fee set by Act 311 would apply. In a study conducted by the legislative reference bureau entitled "The Price of Access: Fees for Copies of State Administrative Agency Rules", the bureau found that for a variety of reasons, a significant majority of state agencies or programs did not want to charge, did not plan to charge, or would not charge for copies of rules unless required to do so by a higher or other external authority.

"That requirement came in the form of a letter opinion from the attorney general dated September 21, 1998, in which the attorney general stated that by virtue of the amendments made by Acts 2 and 311, SLH 1998, agencies are now required to charge fees for copies of proposed rules, and that those fees must be at the rate of fifty cents a page. Agencies may waive the fees for other state agencies and, under [section 92-28, Hawaii Revised Statutes](#), may reduce fees charged to the public by as much as fifty per cent (i.e., down to twenty-five cents per page), but only with the approval of the governor. The bureau's study determined that copies of rules could typically be produced for less than ten cents a page.

"The legislature did not intend that fees for copies of rules be mandatory, and finds that these high fees, now interpreted to be mandatory, are a significant and unnecessary barrier to public access. At fifty cents a page, members of the public will have to pay \$11 to \$12 on average for a copy of proposed rules in a typical rulemaking action. In large rulemaking actions, the cost of a single copy could run to hundreds of dollars. These fees are simply not affordable to the average small business or private citizen. Further, since most state rules are not currently posted in electronic form, such as on the internet, the public has few alternative methods by which to obtain copies of proposed rules. Requiring all agencies to charge for copies of rules simply does not make sense. A significant majority of state agencies and

programs do not believe that it is in their best interests to charge for copies, for a variety of reasons. Agencies seeking the broadest possible dissemination of their proposed rules have no reason to establish cost barriers.

"On the other hand, mandating free copies could be unfairly burdensome to agencies whose operations are required to be self-funding, or in other instances where the demand for copies is extremely high. Where the demand is high, agencies should at least have the option to print a large number of copies and charge fees to recover their costs, which, under the circumstances, may only be a few cents per page.

"The legislature finds that authorizing, instead of requiring agencies to charge fees cuts through many of these problems. The ability of the agency to charge a higher fee, a lower fee, or no fee at all gives each agency the flexibility to determine what is in its own best interests. The legislature's intent is to ensure that any fees charged for copies, mailing, or both, do not constitute an unreasonable barrier to public access. The cost of producing copies of rules themselves, whether proposed or final, is not particularly high. The cost to agencies of staff time spent identifying and searching for rules for which copies are requested can be recovered through reasonable fees for searching, identifying, and segregating records to be copied. These types of fees and charges are now being standardized by the office of information practices in its proposed rules now pending approval by the governor.

"Many of the problems involved in charging and collecting fees can be avoided altogether by utilizing alternatives ranging from agreements with private copying services to other forms of technology. The posting of agency rules, both proposed and final, on the internet holds a great deal of promise for promoting public access while bypassing the issue of charging and collecting fees for copies. A few agencies have already taken the initiative to establish websites that include their rules. Others plan to post their rules on the internet in the near or the distant future. Meanwhile, the lieutenant governor's office is implementing an ambitious project to coordinate executive agency efforts to post all final rules on the internet. The legislature wholeheartedly endorses and supports this project as a significant step forward in promoting public access to state administrative agency rules.

"The purpose of this Act is to implement the recommendations of the legislative reference bureau's study by:

"(1) Allowing rather than requiring agencies other than the office of the lieutenant governor to charge fees for copies of proposed and final rules at a rate of not more than ten cents a page, plus actual costs of mailing, if any;

"(2) Clarifying that informational or educational publications that contain copies of statutes, agency rules, or both, are subject to the same fee considerations, and thus exempt from the statutory rate of fifty cents a page;

"(3) Specifying that the fees for copies are separate from any reasonable charges for staff time spent searching for, identifying, or segregating the rules for which copies are requested; and

"(4) Requiring state agencies, beginning January 1, 2000, to post public notices of proposed rulemaking actions and the full text of their proposed rules on the internet through the lieutenant governor's office.

"These amendments are intended to make clear that agency rules, whether proposed or final, and related publications, must be available to the public at rates that are closer to actual reproduction costs, while giving agencies the flexibility to distribute copies free of charge if they so desire. Agencies would thus be able to use newer technologies such as fax machines or posting rules on the internet without having to try to recover mandated charges of arbitrary amounts. This is intended to enable agencies to operate in the manner that they feel most appropriate, ensure that any fees allowed do not constitute unreasonable barriers to public access, and avoid the problems inherent in trying to create blanket exemptions for classes such as public interest, nonprofit, or tax exempt organizations. The one agency that is exempted from the fee requirement of ten cents per page is the office of the lieutenant governor for rules in its general collection (as opposed to the office's own rules). Making the lieutenant governor's general collection subject to the same fee of ten cents per page for copies could result in that office being overwhelmed by requests by any and every individual seeking to obtain copies of final rules for every state agency.

"Requiring agencies to post the full text of their proposed rules on the internet through the office of the lieutenant governor is intended to:

"(1) Expedite the efforts of the office of the lieutenant governor to post all final state agency rules on the internet by helping to ensure that all state departments have at least some staff capable of producing documents in the form needed for posting on the internet. The preparation for posting of proposed rules will provide earlier and more regular opportunities for departmental staffs to work with the office of the lieutenant governor in standardizing necessary procedures; and

"(2) Simultaneously improve public access and reduce the need for agencies to provide paper copies by giving interested persons the alternative of downloading or printing the proposed rules from the internet, and being able to access the information from their home, their place of business, or a public library.

"In many respects, the price of public access to its own governmental processes is tantamount to the price of democracy. The legislature intends that this price remain within reach for all."

[§ 91-2.6 Proposed rulemaking actions and rules; posting on the lieutenant governor's internet website.](#)

(a) Beginning January 1, 2000, all state agencies, through the office of the lieutenant governor, shall make available on the website of the office of the lieutenant governor each proposed rulemaking action of the agency and the full text of the agency's proposed rules or changes to existing rules. The internet website shall provide instructions regarding how to download the information regarding proposed rulemaking actions and the full text of the agency's proposed rules.

(b) Each state agency, to the greatest extent feasible, shall:

(1) Ensure that all information pertaining to that agency that is contained on the lieutenant governor's website is current and accurate; and

(2) Advise individuals contacting the state agency of the availability of the proposed rulemaking actions and the full text of the agency's proposed rules on the lieutenant governor's website.

[L 1999, c 301, pt of § 2]

NOTES, REFERENCES, AND ANNOTATIONS

Editor's note.

For the text of 1999 Haw. Sess. Laws, Act 301, § 1, which provides that administrative agencies may, but are not required to, charge fees for copies of final and proposed rules, encourages agencies to post rules on the internet, and requires agencies to post notices of proposed rulemaking actions and rules on the internet beginning January 1, 2000, see the Editor's note following [§ 91-2.5](#).

§ 91-3 Procedure for adoption, amendment, or repeal of rules.

(a) Except as provided in subsection (f), prior to the adoption of any rule authorized by law, or the amendment or repeal thereof, the adopting agency shall:

(1) Give at least thirty days' notice for a public hearing. The notice shall include:

(A) A statement of the topic of the proposed rule adoption, amendment, or repeal or a general description of the subjects involved; and

(B) A statement that a copy of the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed will be mailed to any interested person who requests a copy, pays the required fees for the copy and the postage, if any, together with a description of where and how the requests may be made;

(C) A statement of when, where, and during what times the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed may be reviewed in person; and

(D) The date, time, and place where the public hearing will be held and where interested persons may be heard on the proposed rule adoption, amendment, or repeal.

The notice shall be mailed to all persons who have made a timely written request of the agency for advance notice of its rulemaking proceedings, given at least once statewide for state agencies and in the county for county agencies. Proposed state agency rules shall also be posted on the internet as provided in [section 91-2.6](#); and

(2) Afford all interested persons opportunity to submit data, views, or arguments, orally or in writing. The agency shall fully consider all written and oral submissions respecting the proposed rule. The agency may make its decision at the public hearing or announce then the date when it intends to make its

decision. Upon adoption, amendment, or repeal of a rule, the agency, if requested to do so by an interested person, shall issue a concise statement of the principal reasons for and against its determination.

(b) Notwithstanding the foregoing, if an agency finds that an imminent peril to the public health, safety, or morals, or to livestock and poultry health, requires adoption, amendment, or repeal of a rule upon less than thirty days' notice of hearing, and states in writing its reasons for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing, including posting the abbreviated notice and hearing on the internet as provided in [section 91-2.6](#), as it finds practicable to adopt an emergency rule to be effective for a period of not longer than one hundred twenty days without renewal.

(c) The adoption, amendment, or repeal of any rule by any state agency shall be subject to the approval of the governor. The adoption, amendment, or repeal of any rule by any county agency shall be subject to the approval of the mayor of the county. This subsection shall not apply to the adoption, amendment, and repeal of the rules of the county boards of water supply.

(d) The requirements of subsection (a) may be waived by the governor in the case of the State, or by the mayor in the case of a county, whenever a state or county agency is required by federal provisions to adopt rules as a condition to receiving federal funds and the agency is allowed no discretion in interpreting the federal provisions as to the rules required to be adopted; provided that the agency shall make the adoption, amendment, or repeal known to the public by:

(1) Giving public notice of the substance of the proposed rule at least once statewide prior to the waiver of the governor or the mayor; and

(2) Posting the full text of the proposed rulemaking action on the internet as provided in [section 91-2.6](#).

(e) No adoption, amendment, or repeal of any rule shall be invalidated solely because of:

(1) The inadvertent failure to mail an advance notice of rulemaking proceedings;

(2) The inadvertent failure to mail or the nonreceipt of requested copies of the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed; or

(3) The inadvertent failure on the part of a state agency to post on the website of the office of the lieutenant governor all proposed rulemaking actions of the agency and the full text of the agency's proposed rules as provided in [section 91-2.6](#).

Any challenge to the validity of the adoption, amendment, or repeal of an administrative rule on the ground of noncompliance with statutory procedural requirements shall be forever barred unless the challenge is made in a proceeding or action, including an action pursuant to [section 91-7](#), that is begun within three years after the effective date of the adoption, amendment, or repeal of the rule.

(f) Whenever an agency seeks only to repeal one or more sections, chapters, or subchapters of the

agency's rules because the rules are either null and void or unnecessary, and not adopt, amend, or compile any other rules:

(1) The agency shall give thirty days' public notice at least once statewide of the proposed date of repeal and of:

(A) A list of the sections, chapters, or subchapters, as applicable, being repealed; and

(B) A statement of when, where, and during what times the sections, chapters, or subchapters proposed to be repealed may be reviewed in person;

(2) The agency shall post the full text of the proposed sections, chapters, or subchapters to be repealed on the internet as provided in [section 91-2.6](#); and

(3) Any interested person may petition the agency regarding the sections, chapters, or subchapters proposed to be repealed, pursuant to [section 91-6](#).

This subsection does not apply to the repeal of one or more subsections, paragraphs, subparagraphs, clauses, words, phrases, or other material within a section that does not constitute the entire section to be repealed.

[L 1961, c 103, § 3; am L 1965, c 96, § 139a; Supp, § 6C-3; HRS § 91-3; am L 1973, c 13, § 1; am L 1979, c 64, § 1; am L 1985, c 68, § 2; am L 1989, c 64, § 2; am L 1998, c 2, § § 27, 28; am L 1999, c 301, pt of § 2; am L 2000, c 283, § 6]

NOTES, REFERENCES, AND ANNOTATIONS

Editor's note.

The uncodified provisions formerly noted under this section, pertaining to the Small Business Regulatory Flexibility Act, have been codified as Chapter 201M by the revisor of statutes.

Cross references

As to additional requirements for publication of notice of public hearings, see § 92-41. As to provisions for rule-making in planning and economic development, see [§ 201-4](#).

CASE NOTES

Adoption by reference of future rules unconstitutional.

State legislation which adopts by reference future legislation, rules, or regulations, or amendments thereof, enacted, adopted, or promulgated by another sovereign entity, constitutes an unlawful delegation of legislative power. [State v. Tengan, 67 Haw. 451, 691 P.2d 365](#), reconsideration denied, [67 Haw. 684, 744 P.2d 780 \(1984\)](#).

Notice prior to effective date of authorizing statute.

Nothing in Administrative Procedure Act or caselaw requires that notice of public hearings on proposed amendments be published only after effective date of authorizing statute. [Foytik v. Chandler, 88 Haw. 307, 966 P.2d 619 \(1998\)](#).

Procedure for rule adoption and for contested case resolution is different.

The Administrative Procedure Act is so structured as to require completely different forms of proceeding when the objective is to make a rule from that which is in effect when there is a contested case resulting in an order. [In re Hawaiian Elec. Co., 66 Haw. 538, 669 P.2d 148 \(1983\)](#).

Effect of noncompliance.

Administrative rules not promulgated in accordance with this chapter are invalid and unenforceable. [Burk v. Sunn, 68 Haw. 80, 705 P.2d 17](#), reconsideration denied, 68 Haw. 687 (1985); [Ainoa v. Unemployment Comp. Appeals Div., 62 Haw. 286, 614 P.2d 380 \(1980\)](#).

City's unwritten methodology for calculating golf course tax assessment fell within definition of a rule and should have been promulgated pursuant to administrative rulemaking procedures, requiring that assessment be vacated. [Hawai'i Prince Hotel Waikiki Corp. v. City of Honolulu, 89 Haw. 381, 974 P.2d 21 \(1999\)](#).

License denial held procedurally invalid.

The denial by the contractors' license board of a license to plant and erect poles for electrical and telephone lines, which was a new classification, was procedurally invalid in 3 respects: the applicant was never afforded a hearing; the application was not acted upon for more than 8 months; and the classification scheme was applied for in January 1968, but it was not approved and signed until almost 12 months later. [Otani v. Contractors License Bd., 51 Haw. 673, 466 P.2d 1009 \(1970\)](#).

Sufficiency of notice.

This section requires advance notice of an administrative agency's plan to adopt, amend, or repeal its rules. It further requires that the notice shall contain a statement of the substance of the proposed rule, because the notice should fairly apprise interested parties of what is being proposed so they can formulate and present rational responses to the proposal. [Costa v. Sunn, 64 Haw. 389, 642 P.2d 530 \(1982\)](#); [Vega v. National Union Fire Ins. Co., 67 Haw. 148, 682 P.2d 73 \(1984\)](#).

Sufficiency of notice.

Notices which merely state the general description of proposed rules and amendments fail to provide interested parties with sufficient information to allow for criticism, recommendations or formulation of alternatives and fail to meet the requirements of this section. [State v. Rowley, 70 Haw. 135, 764 P.2d](#)

1233 (1988).

Notices held sufficient.

Where a notice clearly summarized proposed amendments and their purpose, advised where copies of the amendments could be obtained, and stated where the public could be heard on the matter, the notice provided enough information or access to information to enable interested persons to participate meaningfully in the rule amendment process; therefore, the notice met all the requirements of this section. [Hall v. State ex rel. Lewin, 10 Haw. App. 210, 863 P.2d 344](#), cert. denied, [75 Haw. 581, 868 P.2d 464 \(1993\)](#).

Notices held insufficient.

Two published notices of public hearings on proposed rules and amendments of the Rules of the Hawaii State Park System prohibiting nudity in state parks, promulgated by the department of land and natural resources, failed to conform to this section by not fairly apprising interested parties of proposed rules and amendments so that they could formulate and present rational responses to such proposals. [State v. Rowley, 70 Haw. 135, 764 P.2d 1233 \(1988\)](#).

Size of hearing room.

There is nothing in subdivision (a)(2) of this section that requires a public hearing room to be of any particular size, or in subdivision (a)(1)(C) of this section that requires a public hearing be held with a hearing officer present in person on each major island. [Hall v. State ex rel. Lewin, 10 Haw. App. 210, 863 P.2d 344](#), cert. denied, [75 Haw. 581, 868 P.2d 464 \(1993\)](#).

Waiver of procedures, generally.

While in the usual case parties may, among themselves, waive past irregularities in the procedure for promulgating rules and regulations under this chapter, there is no authority given to either parties or a court to suspend in futuro the statutory requirements for the promulgation of rules and regulations and make valid future rules and regulations promulgated contrary to statute. [Koolauloa Welfare Rights Group v. Chang, 65 Haw. 341, 652 P.2d 185 \(1982\)](#).

Public hearing and condemnation case.

The public hearing called for under [§ 516-22](#) is not a contested case hearing for the purposes of [§ 91-9](#) nor is it a hearing such as is contemplated by this section for the adoption, amendment or repeal of rules. Moreover, the determination of public use does not appear to be a "rule" as defined in [§ 91-1\(4\)](#). Thus the public hearing called for under [§ 516-22](#) serves only an informational purpose, and the agency's determination to proceed with a condemnation of a tract of land because it would serve the public purpose does not depend upon some form of prior hearing. [Takabuki v. Housing Fin. & Dev. Corp., 72 Haw. 466, 822 P.2d 955 \(1991\)](#).

Waiver of notice and hearing when no discretion is allowed.

Subsection (d) allows an administrative agency to obtain a waiver of the ordinary public notice and hearing requirements for rule-making only when the agency is allowed no discretion in interpreting federal provisions as to the rules it is required to promulgate. [Burk v. Sunn, 68 Haw. 80, 705 P.2d 17](#), reconsideration denied, 68 Haw. 687 (1985).

Waiver of notice and hearing not permitted.

Where the department of human services exercised discretion in promulgating several new financial assistance rules based on changes in the federal law, the department was not permitted to waive the rule-making public notice and hearing requirements, and therefore, those rules were invalid and unenforceable. [Burk v. Sunn, 68 Haw. 80, 705 P.2d 17](#), reconsideration denied, 68 Haw. 687 (1985).

Change in rules following hearings authorized.

This section contemplates and authorizes changes in a rule between the original proposal as presented at the public hearing and as finally adopted. To require another hearing whenever there is any revision of the text of an original proposal after full hearing is too formidable a burden on the rule-making process. [Ala Moana Boat Owners' Ass'n v. State, 50 Haw. 156, 434 P.2d 516 \(1967\)](#).

Substantive changes in rules following hearing.

Substantial changes in proposed rule after a public hearing may necessitate an additional hearing where the changes have not been previously advocated or discussed. [Ala Moana Boat Owners' Ass'n v. State, 50 Haw. 156, 434 P.2d 516 \(1967\)](#).

Compliance prerequisite to prosecution.

Before defendant can be successfully prosecuted under an administrative rule prohibiting nudity in state parks, the rule itself must be promulgated in compliance with the rule-making procedures of this chapter. [State v. Rowley, 70 Haw. 135, 764 P.2d 1233 \(1988\)](#).

No irreparable injury.

Where manufacturer of wood preservation products lost some sales, but failed to demonstrate irreparable injury if preliminary injunction against competitor's wood preservation product was not entered, manufacturer's motion was denied. [Conrad Wood Preserving Co. v. Fujiki, 939 F. Supp. 746 \(D. Haw. 1996\)](#). Cited in [Aguilar v. Hawaii Hous. Auth., 55 Haw. 478, 522 P.2d 1255 \(1974\)](#); [Kailua Community Council v. City & County of Honolulu, 60 Haw. 428, 591 P.2d 602 \(1979\)](#); [Foster Village Community Ass'n v. Hess, 4 Haw. App. 463, 667 P.2d 850 \(1983\)](#); [United States v. Larm, 824 F.2d 780 \(9th Cir. 1987\)](#); [State v. Christie, 70 Haw. 158, 766 P.2d 1198 \(1988\)](#); [Sandy Beach Defense Fund v. City Council, 70 Haw. 361, 773 P.2d 250 \(1989\)](#).

OPINIONS OF ATTORNEY GENERAL

Scope of sectionThis section is limited in applicability to rules adopted, amended, or repealed pursuant to a valid delegation of legislative power, which rules, when adopted in accordance with the procedures set forth in this chapter, have the force and effect of law. Op. Att'y Gen. No. 72-5 (1972).

Notice of rule requiredNotice of a public hearing on the proposed adoption, amendment, or repeal of a state agency rule having the force and effect of law throughout the state must be published in all counties and must be published in a newspaper of general circulation in the state. Op. Att'y Gen. No. 73-12 (1973).

Notice of public hearing requiredIf a rule to be adopted, amended, or repealed is one that will have the force and effect of law, and if the emergency rule provision does not apply, the governmental agency must schedule a public hearing, and must publish a notice of the hearing in a newspaper printed and issued in the county where the people will be affected. Op. Att'y Gen. No. 73-12 (1973).

Substantial changes to proposed rulesIn general, where material has already been aired at a public hearing and substantial changes have been made to only a portion of that material, as much material should be renoticed for public hearing as is necessary for interested parties to participate in the rest of the rulemaking process. Op. Att'y Gen. No. 91-05 (1991).

For the repeal of rules, this section and [§ 92-41](#) do not require individual notice to all property owners potentially affected by the change in the rules but only notice by publication, and a mailing to those persons who requested advance notice of the Department's rulemaking proceedings. Op. Att'y Gen. No. 97-04 (1997).

Publication in county newspapersAlthough paragraph (a)(1) of this section requires publication of notices of public hearings only in newspapers of general circulation in the State, [§ 92-41](#) requires that notices also be published in newspapers printed and issued in the counties affected. Op. Att'y Gen. No. 89-4 (1988).

Placement of notices in retail advertising sectionThere is no statutory mandate that notices of public hearings on the adoption, amendment, or repeal of rules must appear in the legal notices section of the newspaper, and they may be published where retail advertising would appear in a newspaper rather than in the legal notices section. Op. Att'y Gen. No. 89-4 (1988).

The Department of Land and Natural resources complied with the notice requirements of subsection (a) and [§ 92-41](#), by publishing a notice of public hearing in the Honolulu and the neighbor island newspapers, and by mailing a notice to all persons who requested advance notice of the Department's rulemaking proceedings. Op. Att'y Gen. No. 97-04 (1997).

Provisions to be included in public works contractsSince there is no delegation of legislative authority to prescribe rules with respect to provisions to be included in public works contracts, no notice or hearing is required when amending such provisions. Op. Att'y Gen. No. 72-5 (1972).

Cosmetology board policyWhere the board of cosmetology has adopted a rule requiring one station for each student enrolled, it may not establish, by policy, and enforce a new criteria in determining the

maximum enrollment of beauty school, to wit, the "average daily attendance" method permitting a beauty school to enroll a number of students equal to the number of stations on hand plus 10% , without amending the rule in accordance with the Hawaii Administrative Procedure Act. Op. Att'y Gen. No. 81-11 (1981).

OPINIONS OF THE OFFICE OF INFORMATION PRACTICES

No conflict with [section 92-3](#). There is no conflict between sections 91-3 and [92-3](#) as the former does not prohibit an agency from accepting public testimony on the date the agency announces its decision as to proposed rule revisions and, therefore, it is possible for a board to comply with both statutes without violating either. Opinion of the Office of Information Practices Op. Ltr. No. 01-06 (2001).

RESEARCH REFERENCES

Hawaii Legal Reporter.

As to necessity for public hearing, see 77-2 Haw. Legal Rep. 77-791.

As to improper notice of rule-making, see 78-2 Haw. Legal Rep. 78-781.

As to the need for rules to satisfy due process, see 80-1 Haw. Legal Rep. 80- 73.

As to the contested case hearing requirements for special management area permits, see 84-2 Haw. Legal Rep. 84-0759.

As to statutory authority for rule-making, see 86-2 Haw. Legal Rep. 86-1095.

[§ 91-4 Filing and taking effect of rules.](#)

(a) Each agency adopting, amending, or repealing a rule, upon approval thereof by the governor or the mayor of the county, shall file forthwith certified copies thereof with the lieutenant governor in the case of the State, or with the clerk of the county in the case of a county. In addition, the clerks of all of the counties shall file forthwith certified copies thereof with the lieutenant governor. A permanent register of the rules, open to public inspection, shall be kept by the lieutenant governor and the clerks of the counties.

(b) Each rule hereafter adopted, amended, or repealed shall become effective ten days after filing with the lieutenant governor in the case of the State, or with the respective county clerks in the case of the counties.

(1) If a later effective date is required by statute or specified in the rule, the later date shall be the effective date; provided that no rule shall specify an effective date in excess of thirty days after the filing of the rule as provided herein.

(2) An emergency rule shall become effective upon filing with the lieutenant governor in the case of the State, or with the respective county clerks in the case of the counties, for a period of not longer than one hundred twenty days without renewal unless extended in compliance with the provisions of subdivisions (1) and (2) of [section 91-3\(a\)](#), if the agency finds that immediate adoption of the rule is necessary because of imminent peril to the public health, safety, or morals. The agency's finding and brief statement of the reasons therefor shall be incorporated in the rule as filed. The agency shall make an emergency rule known to persons who will be affected by it by publication at least once in a newspaper of general circulation in the State for state agencies and in the county for county agencies within five days from the date of filing of the rule.

[L 1961, c 103, § 4; am L 1965, c 96, § 139b; Supp, § 6C-4; HRS § 91-4]

NOTES, REFERENCES, AND ANNOTATIONS

Effect of noncompliance.

Denial of license by contractor's license board based on rules which were not promulgated in accordance with this chapter was invalid. [Otani v. Contractors License Bd., 51 Haw. 673, 466 P.2d 1009 \(1970\)](#). Cited in [Aguilar v. Hawaii Hous. Auth., 55 Haw. 478, 522 P.2d 1255 \(1974\)](#); [Life of Land v. Land Use Comm'n, 58 Haw. 292, 568 P.2d 1189 \(1977\)](#); [Kailua Community Council v. City & County of Honolulu, 60 Haw. 428, 591 P.2d 602 \(1979\)](#); [Ainoa v. Unemployment Comp. Appeals Div., 62 Haw. 286, 614 P.2d 380 \(1980\)](#); [United States v. Larm, 824 F.2d 780 \(9th Cir. 1987\)](#).

§ 91-4.1 Rulemaking actions; copies in Ramseyer format.

Each state agency adopting, amending, or repealing a rule shall prepare a certified copy of the rule changes according to the Ramseyer format. Each state agency shall maintain a file of the copies in the Ramseyer format and shall make the file available for public inspection and copying at a cost as specified in [section 91-2.5](#).

[L 1979, c 216, pt of § 2; am L 1994, c 279, § 5; am L 1999, c 301, pt of § 2]

§ 91-4.2 Rule format; publication of index.

The revisor of statutes shall:

(1) Prescribe a single format for the publication, filing, and indexing of rules by all state agencies. Among other things, the revisor shall provide for the manner and form, including size, in which the agency rules shall be prepared, printed, and indexed, to the end that all rules, compilations, and codifications shall be prepared and published in a uniform manner at the earliest practicable date. The format shall provide that each rule published shall be accompanied by a reference to the statutory

authority pursuant to which the rule is adopted, the statutory section implemented by the rule, if any, and the effective date of the rule; and provide that whenever possible rules should incorporate any applicable sections of the Hawaii Revised Statutes by reference and not print the section in the rule. The stipulated format shall also provide for access by the public to all of the rules with an index, both of which shall be located in the office of the lieutenant governor.

(2) Compile and publish an index to all rules required to be filed with the lieutenant governor with annual supplements.

[L 1979, c 216, pt of § 2; am L 1980, c 67, § 1]

§ 91-4.3 Price.

(a) The lieutenant governor shall sell the Hawaii administrative rules index and its supplements at prices which as nearly as practicable will reimburse the State for all costs incurred for printing, publication, and distribution.

(b) All money received from the sale of the Hawaii administrative rules index and its supplements shall be deposited in the state general fund.

[L 1979, c 216, pt of § 2]

§ 91-4.4 Form of publication.

The revisor of statutes shall determine the form in which the Hawaii administrative rules index and its supplements shall be published. Either or both of the publications may be issued in units, in bound or loose-leaf form, separately or in combination, at the same or different times, as the revisor considers most economical and best adapted to make the index available to interested persons and the public.

[L 1979, c 216, pt of § 2]

§ 91-5 Publication of rules.

(a) Each agency shall compile, index, and publish, in the manner prescribed by the format established by the revisor of statutes under [section 91-4.2\(1\)](#), all rules adopted by the agency and remaining in effect. Compilations shall be supplemented as often as necessary and shall be revised at least once every ten years.

(b) Compilations and supplements shall be made available free of charge upon request by the state officers in the case of a state agency and by the county officers in the case of a county agency. As to other persons, each agency may fix a price to cover mailing and publication costs as specified in [section 91-2.5](#). Each state agency adopting, amending, or repealing a rule shall file a copy with the revisor of

statutes.

[L 1961, c 103, § 5; Supp, § 6C-5; HRS § 91-5; am L 1979, c 216, § 5; am L 1994, c 279, § 6; am L 1999, c 301, pt of § 2]

NOTES, REFERENCES, AND ANNOTATIONS

Decision to transfer prisoner from state to federal prison.

The publication requirement of this section does not apply to policy decisions governing the transfer of prisoners from state to federal prison. [Tai v. Chang, 58 Haw. 386, 570 P.2d 563 \(1977\)](#). Cited in [Kailua Community Council v. City & County of Honolulu, 60 Haw. 428, 591 P.2d 602 \(1979\)](#); [United States v. Larm, 824 F.2d 780 \(9th Cir. 1987\)](#).

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Deposit of published rules in state center Because rules are required to be published and issued in print, they are publications and are required to be deposited into the state publications distribution center under [§ 93-3](#). Op. Att'y Gen. No. 85-15 (1985).

[§ 91-6 Petition for adoption, amendment or repeal of rules.](#)

Any interested person may petition an agency requesting the adoption, amendment, or repeal of any rule stating reasons therefor. Each agency shall adopt rules prescribing the form for the petitions and the procedure for their submission, consideration, and disposition. Upon submission of the petition, the agency shall within thirty days either deny the petition in writing, stating its reasons for the denial or initiate proceedings in accordance with [section 91-3](#).

[L 1961, c 103, § 6; Supp, § 6C-6; HRS § 91-6]

NOTES, REFERENCES, AND ANNOTATIONS

Procedure for rule adoption is different from resolution of contested case.

The Administrative Procedure Act is so structured as to require completely different forms of proceeding when the objective is to make a "rule" from that which is in effect when there is a contested case resulting in an order. [In re Hawaiian Elec. Co., 66 Haw. 538, 669 P.2d 148 \(1983\)](#).

[§ 91-7 Declaratory judgment on validity of rules.](#)

(a) Any interested person may obtain a judicial declaration as to the validity of an agency rule as provided in subsection (b) herein by bringing an action against the agency in the circuit court of the county in which petitioner resides or has its principal place of business. The action may be maintained

whether or not petitioner has first requested the agency to pass upon the validity of the rule in question.

(b) The court shall declare the rule invalid if it finds that it violates constitutional or statutory provisions, or exceeds the statutory authority of the agency, or was adopted without compliance with statutory rule-making procedures.

[L 1961, c 103, § 7; Supp, § 6C-7; HRS § 91-7]

NOTES, REFERENCES, AND ANNOTATIONS

Circuit court has jurisdiction.

The circuit court has jurisdiction to render declaratory judgments under this section and 632-1. [Life of Land v. Land Use Comm'n, 58 Haw. 292, 568 P.2d 1189 \(1977\)](#).

Scope of circuit court jurisdiction.

Although this section does not give the circuit court jurisdiction to hear a challenge to the application of an administrative rule, it grants jurisdiction to hear attacks on a rule's validity. [Puana v. Sunn, 69 Haw. 187, 737 P.2d 867 \(1987\)](#).

Alternative procedures.

Where a complaint for declaratory judgment is premised on this section, the complainant can more readily show its standing to seek the relief; however, a complaint for declaratory judgment premised on [§ 632-1](#) places the complainant under a greater and more severe test in seeking relief. [Life of Land v. Land Use Comm'n, 58 Haw. 292, 568 P.2d 1189 \(1977\)](#); [Costa v. Sunn, 5 Haw. App. 419, 697 P.2d 43, cert denied, 67 Haw. 685, 744 P.2d 781 \(1985\)](#).

Exhausting state remedies required.

Where plaintiff claimed that the regulations of the county civil service commission were unconstitutionally vague and that the regulations failed to provide for notice and hearing on charges brought against him, but did not avail himself of the remedy provided by this section, plaintiff's complaint was premature. [Cunningham v. Civil Serv. Comm'n, 252 F. Supp. 223 \(D. Haw. 1966\)](#).

Certification appropriate where certain claims were severable from the remaining adjudicated claim involving § 91-7. [Aged Hawaiians v. Hawaiian Homes Comm'n, 78 Haw. 192, 891 P.2d 279 \(1995\)](#), cert. denied, [516 U.S. 819, 116 S. Ct. 77, 133 L. Ed. 2d 36 \(1995\)](#).

Sanctions.

[Section 91-2\(b\)](#) is addressed exclusively to an agency's duty to make its duly adopted rules available for public inspection, and is independent of the sanction in subsection (b) of this section against rules

adopted without compliance with other rule-making requirements. [Aguiar v. Hawaii Hous. Auth., 55 Haw. 478, 522 P.2d 1255 \(1974\).](#)

Monetary relief.

The circuit court has authority to grant ancillary monetary relief in a declaratory judgment action under this section. *Jacober ex rel. [Jacober v. Sunn, 6 Haw. App. 160, 715 P.2d 813](#)*, cert. denied, 68 Haw. 691 (1986).

"Interested person" under this section.

Party who would have, or already has qualified as an "aggrieved person" under [§ 91-14](#) qualifies as an "interested person" under this section. [Richard v. Metcalf, 82 Haw. 249, 921 P.2d 169 \(1996\)](#). Cited in *State v. [Lee, 51 Haw. 516, 465 P.2d 573 \(1970\)](#)*; [Ainoa v. Unemployment Comp. Appeals Div., 62 Haw. 286, 614 P.2d 380 \(1980\)](#); [Life of Land v. Land Use Comm'n, 63 Haw. 166, 623 P.2d 431 \(1981\)](#); *Kiyomi [Asada v. Sunn, 66 Haw. 454, 666 P.2d 584 \(1983\)](#)*; [Punohu v. Sunn, 66 Haw. 485, 666 P.2d 1133 \(1983\)](#); [Hall v. State ex rel. Lewin, 10 Haw. App. 210, 863 P.2d 344 \(1993\)](#); [Foytik v. Chandler, 88 Haw. 307, 966 P.2d 619 \(1998\)](#); [RGIS Inventory Specialist v. Haw. Civ. Rights Comm'n, 104 Haw. 158, 86 P.3d 449, 2004 Haw. LEXIS 187 \(2004\)](#).

LEGAL PERIODICALS

Hawaii Bar Journal.

Article, Standing to Challenge Administrative Action in the Federal and Hawaiian Courts, 8 Haw. B.J. 37 (1971).

University of Hawaii Law Review.

Article, Public Employee Arbitration in Hawaii, A Study in Erosion, 2 U. Haw. L. Rev. 477 (1981).

§ 91-8 Declaratory rulings by agencies.

Any interested person may petition an agency for a declaratory order as to the applicability of any statutory provision or of any rule or order of the agency. Each agency shall adopt rules prescribing the form of the petitions and the procedure for their submission, consideration, and prompt disposition. Orders disposing of petitions in such cases shall have the same status as other agency orders.

[L 1961, c 103, § 8; Supp, § 6C-8; HRS § 91-8]

NOTES, REFERENCES, AND ANNOTATIONS

Cross references

As to the exemption of this section from the requirements of open public agency meetings and records, see [§ 92-6](#).

CASE NOTES

Standing.

Hawaii Civil Rights Commission did not have jurisdiction to hear a petition for a declaratory order brought by its executive director, requesting a ruling that the statutory prohibitions against discrimination on the basis of sex, HRS ch. 378, encompassed discrimination because of or due to the person's being transgender or transsexual or because of the person's apparent gender. The executive director was not an "agency," as the executive director neither made rules nor adjudicated contested cases. The executive director's reasonable cause determination neither imposed liability on the respondent nor relieved the respondent of liability and thus could not be an "adjudication." In addition, the executive director was not an "interested person"; the executive director's interest stemmed only from her or his official capacity as an agency employee and thus was insufficient to satisfy the standing requirements of HRS § 91-8. [RGIS Inventory Specialist v. Haw. Civ. Rights Comm'n, 104 Haw. 158, 86 P.3d 449, 2004 Haw. LEXIS 187 \(2004\)](#).

Hawai'i Administrative Rule invalid.

Hawaii Administrative Rule § 12-46-61 is invalid to the extent that it permits the executive director of the Hawaii Civil Rights Commission to petition for a declaratory order. [RGIS Inventory Specialist v. Haw. Civ. Rights Comm'n, 104 Haw. 158, 86 P.3d 449, 2004 Haw. LEXIS 187 \(2004\)](#).

Where Department of Public Safety policy providing that inmates be given six hours per week in law library had not been adopted pursuant to this chapter, policy was not binding on correction officials against whom inmates sought injunctive relief, as policy was unenforceable as agency rule or internal guideline. [Martinez v. Espinas, 938 F. Supp. 650 \(D. Haw. 1996\)](#). Cited in [Fasi v. State Pub. Emp. Relations Bd., 60 Haw. 436, 591 P.2d 113 \(1979\)](#); [Chang v. Planning Comm'n, 64 Haw. 431, 643 P.2d 55 \(1982\)](#); [Foster Village Community Ass'n v. Hess, 4 Haw. App. 463, 667 P.2d 850 \(1983\)](#); [Vail v. Employees' Retirement Sys., 75 Haw. 42, 856 P.2d 1227 \(1993\)](#).

OPINIONS OF ATTORNEY GENERAL

Scope of agency's authority This section does not empower a board to vary the provisions of any statute, either by extending or waiving its provisions or making exceptions thereto. Op. Att'y Gen. No. 69-14 (1969).

LEGAL PERIODICALS

University of Hawaii Law Review.

Article, Public Employee Arbitration in Hawaii, A Study in Erosion, 2 U. Haw. L. Rev. 477 (1981).

§ 91-8.5 Mediation in contested cases.

(a) An agency may encourage parties to a contested case hearing under this chapter to participate in mediation prior to the hearing subject to conditions imposed by the agency in rules adopted in accordance with this chapter. The agency may suspend all further proceedings in the contested case pending the outcome of the mediation.

(b) No mediation period under this section shall exceed thirty days from the date the case is referred to mediation, unless otherwise extended by the agency.

(c) The parties may jointly select a person to conduct the mediation. If the parties are unable to jointly select a mediator within ten days of the referral to mediation, the agency shall select the mediator. All costs of the mediation shall be borne equally by the parties unless otherwise agreed, ordered by the agency, or provided by law.

(d) No mediation statements or settlement offers tendered shall be admitted into any subsequent proceedings involving the case, including the contested case hearing or a court proceeding.

(e) No preparatory meetings, briefings, or mediation sessions under this section shall constitute a meeting under [section 92-2](#). Any mediator notes under this section shall be exempt from [section 92-21](#) and chapter 92F. [Section 91-10](#) shall not apply to mediation proceedings.

[L 2003, c 76, § 1]

NOTES, REFERENCES, AND ANNOTATIONS

Editor's note.

2003 Haw. Sess. Laws, Act 76, § 4, provides: "This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date."

Effective date. This act became effective May 20, 2003.

§ 91-9 Contested cases; notice; hearing; records.

(a) Subject to [section 91-8.5](#), in any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) The notice shall include a statement of:

(1) The date, time, place, and nature of hearing;

(2) The legal authority under which the hearing is to be held;

(3) The particular sections of the statutes and rules involved;

(4) An explicit statement in plain language of the issues involved and the facts alleged by the agency in support thereof; provided that if the agency is unable to state such issues and facts in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application a bill of particulars shall be furnished;

(5) The fact that any party may retain counsel if the party so desires and the fact that an individual may appear on the individual's own behalf, or a member of a partnership may represent the partnership, or an officer or authorized employee of a corporation or trust or association may represent the corporation, trust, or association.

(c) Opportunities shall be afforded all parties to present evidence and argument on all issues involved.

(d) Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(e) For the purpose of agency decisions, the record shall include:

(1) All pleadings, motions, intermediate rulings;

(2) Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed;

(3) Offers of proof and rulings thereon;

(4) Proposed findings and exceptions;

(5) Report of the officer who presided at the hearing;

(6) Staff memoranda submitted to members of the agency in connection with their consideration of the case.

(f) It shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review.

(g) No matters outside the record shall be considered by the agency in making its decision except as provided herein.

[L 1961, c 103, § 9; Supp, § 6C-9; HRS § 91-9; am L 1980, c 130, § 1; am imp L 1984, c 90, § 1; am L 2003, c 76, § 2]

NOTES, REFERENCES, AND ANNOTATIONS

Editor's note.

2003 Haw. Sess. Laws, Act 76, § 4, provides: "This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date."

The 2003 amendment, effective May 20, 2003, substituted "Subject to [section 91-8.5](#), in" for "In" in subsection (a).

Cross references

As to exemption of this section from the open public agency meetings and records, see [§ 92-6](#).

CASE NOTES

Contested case.

Generally, a contested case is one in which an administrative agency performs an adjudicative as compared to an administrative function. [Hawaii Gov't Employees' Ass'n v. Public Employees Comp. Appeals Bd.](#), 10 Haw. App. 99, 861 P.2d 747 (1993), (decided under prior law).

"Full hearing" is one in which ample opportunity is afforded to all parties to make, by evidence and argument, a showing fairly adequate to establish the propriety or impropriety, from the standpoint of justice and law, of the step asked to be taken. [In re Kauai Elec. Div. of Citizens Utils. Co.](#), 60 Haw. 166, 590 P.2d 524 (1978).

Administrative agencies may not consult sources outside the record when acting in an adjudicatory capacity.

Where an agency consults outside sources, the right of a party to cross-examine those sources and present rebuttal evidence is violated; however, where an agency conducts further proceedings such as a rehearing, and affords the parties the opportunity to cross-examine the outside source and to present rebuttal evidence, the improper effect of the agency consulting sources outside the record may be cured. [Mauna Kea Power Co. v. Board of Land & Natural Resources](#), 76 Haw. 259, 874 P.2d 1084 (1994).

Aid to Families with Dependent Children.

Under Hawaii law, an applicant for or recipient of Aid to Families with Dependent Children who is determined to be non-cooperative may have a determination of non-cooperation reviewed in a fair hearing at which she may present evidence and arguments relevant to the non-cooperation determination. If the hearings officer affirms the non-cooperation determination, the aggrieved party may appeal to the state courts. [Tomas v. Rubin](#), 926 F.2d 906 (9th Cir. 1991), see also, [935 F.2d 1555 \(9th Cir. 1991\)](#).

Hawaii has implemented the requirements of federal regulations in its administrative regulations relating to Aid to Families with Dependent Children. [Tomas v. Rubin, 926 F.2d 906 \(9th Cir. 1991\)](#), see also, [935 F.2d 1555 \(9th Cir. 1991\)](#).

Notice of rescheduled meetings.

Neither this section nor the planning commission rules require that notice of a meeting rescheduled for a later date be provided within the 30 and 25 day limits imposed on the original notice. [Chang v. Planning Comm'n, 64 Haw. 431, 643 P.2d 55 \(1982\)](#).

Waiver by stipulation.

The requirements of [§ 91-11](#) relating to service of a proposed decision upon a party adversely affected may be waived pursuant to subsection (d). [White v. Board of Educ., 54 Haw. 10, 501 P.2d 358 \(1972\)](#).

Receiving improper evidence.

Where the board received a letter from a party and took a view of the premises after the public hearing was closed and without giving the opponents of the variance a chance to rebut either, the granting of the variance was reversed for procedural error even though the board disclaimed reliance upon the improper evidence. [Waikiki Shore, Inc. v. Zoning Bd. of Appeals, 2 Haw. App. 43, 625 P.2d 1044 \(1981\)](#).

Disallowing repetitious evidence not error.

This chapter does not preclude an administrative agency from disallowing repetitious arguments and cross-examination. [Outdoor Circle v. Castle Trust Estate, 4 Haw. App. 633, 675 P.2d 784 \(1983\)](#), cert. denied, [67 Haw. 1, 677 P.2d 965 \(1984\)](#).

Lack of hearing officer transcript.

Where a hearing officer has submitted a summary of the evidence and the agency has permitted the parties to file exceptions and to submit briefs and to argue the exceptions, the absence of the transcript of the proceedings before the hearing officer during the agency's hearing does not invalidate the decision of the agency. [You v. Minami, 65 Haw. 411, 652 P.2d 632 \(1982\)](#).

Application for disability retirement.

Constitutional due process and this chapter require that applicants for accidental disability retirement benefits receive a hearing on the contested issues of fact before the board of trustees of the [employees' retirement system](#). [Mortensen v. Board of Trustees, 52 Haw. 212, 473 P.2d 866 \(1970\)](#).

Termination of public land lease.

Where the board of land and natural resources was acting as the lessor of public land, it did not perform

any adjudicatory function, and a summary termination of a lease by the board for breach of the terms and conditions of the lease did not deprive the lessee of due process. [Mahendra Rudra Sharma v. State, Dep't of Land & Natural Resources, 66 Haw. 632, 673 P.2d 1030 \(1983\)](#), cert. denied, [469 U.S. 836, 105 S. Ct. 131, 83 L. Ed. 2d 72 \(1984\)](#).

Pricing appeal.

Whether chapter 91 contested case proceedings apply to pricing appeals provided for in [§ 77-4](#) depends upon whether the pricing appeal is a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing. [Hawaii Gov't Employees' Ass'n v. Public Employees Comp. Appeals Bd., 10 Haw. App. 99, 861 P.2d 747 \(1993\)](#), (decided under prior law).

Public hearing and condemnation case.

The public hearing called for under [§ 516-22](#) is not a contested case hearing for the purposes of this section, nor is it a hearing such as is contemplated by [§ 91-3](#) for the adoption, amendment or repeal of rules. Moreover, the determination of public use does not appear to be a "rule" as defined in [§ 91-1\(4\)](#); thus the public hearing called for under [§ 516-22](#) serves only an informational purpose, and the agency's determination to proceed with a condemnation of a tract of land because it would serve the public purpose does not depend upon some form of prior hearing. [Takabuki v. Housing Fin. & Dev. Corp., 72 Haw. 466, 822 P.2d 955 \(1991\)](#).

Special management area use permit application.

This chapter applies to special management area use permit application proceedings since, as contested cases, they are actions in which the specific parties' legal rights and duties are required by law to be determined after an opportunity for agency hearing. [Chang v. Planning Comm'n, 64 Haw. 431, 643 P.2d 55 \(1982\)](#).

Transfer of prisoner from state to federal prison.

The decision to transfer a prisoner from the state penal system to the federal penal system does not require a hearing under this section. [Tai v. Chang, 58 Haw. 386, 570 P.2d 563 \(1977\)](#).

Prejudice must be shown to reverse an agency decision.

Closed deliberations of the planning commission concerning a special management area use permit application and subsequent motion to reconsider a decision granting the permit violated county planning commission rules and county charter provision requiring open deliberations, but the reviewing court may not reverse the commission's decision granting the use permit under this chapter unless appellant alleges and establishes prejudice to his substantive rights. [Chang v. Planning Comm'n, 64 Haw. 431, 643 P.2d 55 \(1982\)](#).

Subsection (c) satisfied.

A review of the record indicated that the Department of Labor and Industrial Relations satisfied subsection (c) when conducting the administrative hearing. [Rife v. Akiba, 81 Haw. 84, 912 P.2d 581 \(Ct. App. 1996\)](#). Cited in [City & County of Honolulu v. Public Utils. Comm'n, 53 Haw. 431, 495 P.2d 1180 \(1972\)](#); [Town v. Land Use Comm'n, 55 Haw. 538, 524 P.2d 84 \(1974\)](#); [Scott v. Contractors License Bd., 2 Haw. App. 92, 626 P.2d 199 \(1981\)](#); [Neighborhood Bd. No. 24 v. State Land Use Comm'n, 64 Haw. 265, 639 P.2d 1097 \(1982\)](#); [Miller v. DOT, 3 Haw. App. 91, 641 P.2d 991 \(1982\)](#); [Hawaii Pub. Emp. Relations Bd. v. United Pub. Workers, Local 646, 66 Haw. 461, 667 P.2d 783 \(1983\)](#); [In re Hawaii Elec. Light Co., 67 Haw. 425, 690 P.2d 274 \(1984\)](#); [Jordan v. Hawaii Gov't Employees' Ass'n, Local 152, 472 F. Supp. 1123 \(D. Haw. 1979\)](#); [Korean Buddhist Dae Won Sa Temple v. Sullivan, 87 Haw. 217, 953 P.2d 1315 \(1998\)](#); [Munoz v. Chandler, 2002 Haw. App. LEXIS 25, 98 Haw. 80, 42 P.3d 657 \(Ct. App. 2002\)](#).

OPINIONS OF ATTORNEY GENERAL

Substantial evidence means such evidence as a reasonable mind might accept as adequate to support a conclusion, and where in proceedings in which a fuel adjustment clause was approved, the evidence included at least one exhibit introduced by the utility and another by the public utilities department which calculated the fuel factor to be used in the fuel clause, as well as the present and proposed rate schedules, the procedural requirements of this chapter and chapter 269 were satisfied. Op. Att'y Gen. No. 76-1 (1976).

Record of oral testimony A commission is required to keep a record of the oral testimony as part of the record, although it need not transcribe it unless requested for purposes of rehearing or court review. Op. Att'y Gen. No. 64-4 (1964).

Cost of transcript of administrative hearing Cost of the transcript of a commission hearing required to be filed in circuit court as part of the record on appeal must be borne by the commission, but the transcript is a public record, and an appellant is not entitled as a matter of right to a copy thereof for his personal use unless he pays the fee prescribed for copies of records. Op. Att'y Gen. No. 64-4 (1964).

RESEARCH REFERENCES

ALR.

[Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine. 10 A.L.R.5th 1.](#)

Hawaii Legal Reporter.

As to right to counsel at administrative hearing, see 77-1 Haw. Legal Rep. 76- 295.

As to due process hearing requirements for cancellation of vocational license, see 78-2 Haw. Legal Rep. 78-1391.

As to the requirement for a hearing prior to the revocation of a mooring permit, see 80-1 Haw. Legal Rep. 80-253.

As to violation of due process by agency, see 80-1 Haw. Legal Rep. 80-637.

As to contested case hearing required for a special management area permit, see 84-2 Haw. Legal Rep. 84-0759.

LEGAL PERIODICALS

University of Hawaii Law Review.

Article, Whither Hawaii? Land Use Management in an Island State, 1 U. Haw. L. Rev. 48 (1979).

1978 Survey, Land Use: Herein of Vested Rights, Plans, and the Relationship of Planning and Controls, 2 U. Haw. L. Rev. 167 (1979).

Recent Developments in Development of Occupational Hazard in Hawaii: Lopez v. Board of Trustees, Employees Retirement System; Komatsu v. Board of Trustees, Employees Retirement System, 8 U. Haw. L. Rev. 245 (1986).

§ 91-9.5 Notification of hearing; service.

(a) Unless otherwise provided by law, all parties shall be given written notice of hearing by registered or certified mail with return receipt requested at least fifteen days before the hearing.

(b) Unless otherwise provided by law, if service by registered or certified mail is not made because of the refusal to accept service or the board or its agents have been unable to ascertain the address of the party after reasonable and diligent inquiry, the notice of hearing may be given to the party by publication at least once in each of two successive weeks in a newspaper of general circulation. The last published notice shall appear at least fifteen days prior to the date of the hearing.

[L 1976, c 100, § 1]

NOTES, REFERENCES, AND ANNOTATIONS

Hawaii Legal Reporter.

As to violation of due process by agency, see 80-1 Haw. Legal Rep. 80-637.

§ 91-10 Rules of evidence; official notice.

In contested cases:

(1) Except as provided in [section 91-8.5](#), any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The agencies shall give effect to the rules of privilege recognized by law;

(2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available; provided that upon request parties shall be given an opportunity to compare the copy with the original;

(3) Every party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence;

(4) Agencies may take notice of judicially recognizable facts. In addition, they may take notice of generally recognized technical or scientific facts within their specialized knowledge; but parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed; and

(5) Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.

[L 1961, c 103, § 10; Supp, § 6C-10; HRS § 91-10; am L 1978, c 76, § 1; am L 2003, c 76, § 3]

NOTES, REFERENCES, AND ANNOTATIONS

Editor's note.

2003 Haw. Sess. Laws, Act 76, § 4, provides: "This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date." The 2003 amendment, effective May 20, 2003, added the exception in paragraph (1) and made stylistic changes.

CASE NOTES

Origin of section.

Paragraph (1) is a deviation from the revised model act and a verbatim copy of a portion of the evidence proviso of the Federal Administrative Procedure Act. [Dependents of Cazimero v. Kohala Sugar Co., 54 Haw. 479, 510 P.2d 89 \(1973\)](#), (decided prior to 2003 amendment of paragraph (1)).

Applicability.

The labor and industrial relations appeal board is an agency within the definition of this chapter, and a contested case heard by it is bound by the proscriptions of this section. [Dependents of Cazimero v. Kohala Sugar Co., 54 Haw. 479, 510 P.2d 89 \(1973\)](#).

Scope of evidentiary review.

The function of the appellate court, when error is alleged in the admission of evidence, is to determine from the competent evidence whether substantial evidence exists on the record to sustain the agency's decision. [Shorba v. Board of Educ., 59 Haw. 388, 583 P.2d 313 \(1978\)](#).

The rules of evidence in administrative hearings, unlike those applicable to judicial proceedings, allow admission of hearsay evidence. [Price v. Zoning Bd. of Appeals, 77 Haw. 168, 883 P.2d 629 \(1994\)](#).

Liberal policy on evidence required.

Administrative agencies in hearing contested cases must adopt a liberal policy toward admission of evidence, limited only by considerations of relevancy, materiality, and avoidance of undue repetition. [Dependents of Cazimero v. Kohala Sugar Co., 54 Haw. 479, 510 P.2d 89 \(1973\)](#).

The admission of an exhibit consisting of responses to an opponent's informational requests cannot be held to have violated paragraph (1) of this section absent some showing by the opponent that the evidence was irrelevant, immaterial, or unduly repetitious. [In re Hawaiian Tel. Co., 65 Haw. 293, 651 P.2d 475 \(1982\)](#), overruled on other grounds, [Camara v. Aagsalud, 67 Haw. 212, 685 P.2d 794 \(1984\)](#).

Rules of evidence less formal in administrative hearings.

The rules of evidence governing administrative hearings are much less formal than those governing judicial proceedings, and as long as evidence of appellant's conviction and the police reports were relevant as defined by [HRE Rule 401](#), it was proper for the Board to admit them. [Loui v. Board of Medical Exmrs., 78 Haw. 21, 889 P.2d 705 \(1995\)](#).

Admission of incompetent evidence is not reversible error if there is substantial competent evidence to sustain the decision of the hearing body. [Shorba v. Board of Educ., 59 Haw. 388, 583 P.2d 313 \(1978\)](#).

Relevant evidence.

Plain language of HRS § 91-10(1) does not provide for the exclusion of otherwise relevant evidence on grounds of prejudice or potential compromise of the trier of fact's impartiality. Section 91-10(1) provides only for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. [In re Wai'ola O Moloka'i, Inc., 103 Haw. 401, 83 P.3d 664 \(2004\)](#).

Disallowing repetitious evidence not error.

This chapter does not preclude an administrative agency from disallowing repetitious arguments and cross-examination. [Outdoor Circle v. Castle Trust Estate, 4 Haw. App. 633, 675 P.2d 784 \(1983\)](#), cert. denied, [67 Haw. 1, 677 P.2d 965 \(1984\)](#).

Graders' handwritten notes properly excluded.

Where a hearings officer properly refused to admit the graders' handwritten notes into evidence pursuant to HRS § 91-10(1), and the use of the "secret blue cards" did not violate the grading criteria established by Haw. Admin. R. 16-79-103(c) and 16-79-105, the Board of Dental Examiners and exam graders did not violate Haw. Admin. R. 16-79-110; as a result, a dentist's licensing exam was not entitled to be regraded. *Yamane v. State (In re Yamane)*, 2003 Haw. LEXIS 576 (Nov. 25, 2003).

Burden of proof.

Reviewing court properly affirmed the insurance commissioner's decision upholding an insurer's denial of no-fault benefits to an injured driver as the driver failed to prove a causal connection between his medical condition and the car accident. [Hoffacker v. State Farm Mut. Auto. Ins. Co., 101 Haw. 21, 61 P.3d 532 \(Ct. App. 2002\)](#).

Zoning board of appeals can hear evidence and consider documents.

The fact that the zoning board of appeals heard evidence and considered documents verifying that the appellants were permitting a zoning violation to continue on their property is perfectly consistent with the dictates of this section. [Price v. Zoning Bd. of Appeals, 77 Haw. 168, 883 P.2d 629 \(1994\)](#).

The board of education is subject to the provisions of paragraph (1). [Shorba v. Board of Educ., 59 Haw. 388, 583 P.2d 313 \(1978\)](#). Cited in [Mortensen v. Board of Trustees, 52 Haw. 212, 473 P.2d 866 \(1970\)](#); [Dependents of Pacheco v. Orchids of Haw., 54 Haw. 66, 502 P.2d 1399 \(1972\)](#); [Town v. Land Use Comm'n, 55 Haw. 538, 524 P.2d 84 \(1974\)](#); [Waikiki Resort Hotel, Inc. v. City & County of Honolulu, 63 Haw. 222, 624 P.2d 1353 \(1981\)](#); [Scott v. Contractors License Bd., 2 Haw. App. 92, 626 P.2d 199 \(1981\)](#); [Hawaii Pub. Emp. Relations Bd. v. United Pub. Workers, Local 646, 66 Haw. 461, 667 P.2d 783 \(1983\)](#); [Chock v. Bitterman, 5 Haw. App. 59, 678 P.2d 576 \(1984\)](#); [In re Hawaii Elec. Light Co., 67 Haw. 425, 690 P.2d 274 \(1984\)](#); [In re Hawaiian Elec. Co., 5 Haw. App. 445, 698 P.2d 304 \(1985\)](#); [Jordan v. Hawaii Gov't Employees' Ass'n, Local 152, 472 F. Supp. 1123 \(D. Haw. 1979\)](#); [Kaiser Found. Health Plan, Inc. v. Department of Labor & Indus. Relations, 70 Haw. 72, 762 P.2d 796 \(1988\)](#); [Korean Buddhist Dae Won Sa Temple v. Sullivan, 87 Haw. 217, 953 P.2d 1315 \(1998\)](#); [In re Gray Line Haw., Ltd., 2000 Haw. LEXIS 91, 93 Haw. 45, 995 P.2d 776 \(2000\)](#).

OPINIONS OF ATTORNEY GENERAL

Substantial evidence means such evidence as a reasonable mind might accept as adequate to support a conclusion, and where in proceedings in which a fuel adjustment clause was approved the evidence included at least one exhibit introduced by the utility and another by the public utilities department which calculated the fuel factor to be used in the fuel clause, as well as the present and proposed rate schedules, the procedural requirements of this chapter and chapter 269 were satisfied. Op. Att'y Gen.

No. 76-1 (1976).

RESEARCH REFERENCES

Hawaii Legal Reporter.

As to the burden of proof and the denial of no-fault benefits during assignment of claim to insurer, see 81-2 Haw. Legal Rep. 81-0705.

As to the application requirements for the professional licensing of a psychologist, see 81-2 Haw. Legal Rep. 81-0997.

LEGAL PERIODICALS

University of Hawaii Law Review.

1978 Survey, Land Use: Herein of Vested Rights, Plans, and the Relationship of Planning and Controls, 2 U. Haw. L. Rev. 167 (1979).

Recent Developments in Development of Occupational Hazard in Hawaii: Lopez v. Board of Trustees, Employees Retirement System; Komatsu v. Board of Trustees, Employees Retirement System, 8 U. Haw. L. Rev. 245 (1986).

§ 91-11 Examination of evidence by agency.

Whenever in a contested case the officials of the agency who are to render the final decision have not heard and examined all of the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision containing a statement of reasons and including determination of each issue of fact or law necessary to the proposed decision has been served upon the parties, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties.

[L 1961, c 103, § 11; Supp, § 6C-11; HRS § 91-11]

NOTES, REFERENCES, AND ANNOTATIONS

Consideration of evidence by decision makers required.

Under this section where all of the membership that participated in the decision has heard the evidence, no proposed decision is required. [Cariaga v. Del Monte Corp., 65 Haw. 404, 652 P.2d 1143 \(1982\)](#); [In re Oahu Term. Servs., Inc., 52 Haw. 221, 473 P.2d 573 \(1970\)](#); [White v. Board of Educ., 54 Haw. 10, 501 P.2d 358 \(1972\)](#); [In re Term. Transp., Inc., 54 Haw. 134, 504 P.2d 1214 \(1972\)](#).

"Final decision," as used in this section, means a decision on the merits of the case after a hearing thereon, giving the parties opportunity to present all the material evidence relative to the subject of the controversy, such decision determining the rights, duties, or privileges of the parties involved in the proceedings. [Mitchell v. BWK Joint Venture, 57 Haw. 535, 560 P.2d 1292 \(1977\)](#).

Adoption of hearing officer report.

The board of education may adopt the report of a hearing officer appointed by the board as its proposed final decision as required by this section. [White v. Board of Educ., 54 Haw. 10, 501 P.2d 358 \(1972\)](#).

Effect of lack of hearing officer transcript.

Where a hearing officer has submitted a summary of the evidence and the agency has permitted the parties to file exceptions and to submit briefs and to argue the exceptions, the absence of the transcript of the proceedings before the hearing officer during the agency's hearing does not invalidate the decision of the agency. [You v. Minami, 65 Haw. 411, 652 P.2d 632 \(1982\)](#).

Refusal to hear arguments and consider exceptions.

Where an appellant, because of lack of a transcript, presented broad, general exceptions to a proposed determination by a hearing officer, the director of the department of labor and industrial relations violated this section by refusing to allow arguments and refusing to consider the exceptions in connection with the record in the case. [Hawaii Laborers' Training Ctr. v. Aagsalud, 65 Haw. 257, 650 P.2d 574 \(1982\)](#).

Disallowing repetitious evidence not error.

This chapter does not preclude an administrative agency from disallowing repetitious arguments and cross-examination. [Outdoor Circle v. Castle Trust Estate, 4 Haw. App. 633, 675 P.2d 784 \(1983\)](#), cert. denied, [67 Haw. 1, 677 P.2d 965 \(1984\)](#).

Waiver by stipulation.

The requirements of this section relating to service of a proposed decision upon a party adversely affected may be waived pursuant to § 91-9(d). [White v. Board of Educ., 54 Haw. 10, 501 P.2d 358 \(1972\)](#). Cited in [In re Charley's Tour & Transp., Inc., 55 Haw. 463, 522 P.2d 1272 \(1974\)](#); [Chock v. Bitterman, 5 Haw. App. 59, 678 P.2d 576 \(1984\)](#).

RESEARCH REFERENCES

ALR.

[Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine. 10 A.L.R.5th 1.](#)

§ 91-12 Decisions and orders.

Every decision and order adverse to a party to the proceeding, rendered by an agency in a contested case, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the agency shall incorporate in its decision a ruling upon each proposed finding so presented. The agency shall notify the parties to the proceeding by delivering or mailing a certified copy of the decision and order and accompanying findings and conclusions within a reasonable time to each party or to the party's attorney of record.

[L 1961, c 103, § 12; Supp, § 6C-12; HRS § 91-12; am L 1980, c 232, § 4; am imp L 1984, c 90, § 1]

NOTES, REFERENCES, AND ANNOTATIONS

Findings of fact and conclusions of law are required.

An administrative agency in its decision and order must, under this section, state separate findings of fact and conclusions of law. In so doing, the agency must make its findings reasonably clear in order that the parties and the court are not left with the dilemma of guessing the precise findings of the agency as to any material questions of fact. [In re Term. Transp., Inc., 54 Haw. 134, 504 P.2d 1214 \(1972\)](#); [In re Hawaiian Tel. Co., 54 Haw. 663, 513 P.2d 1376 \(1973\)](#); [In re Hawaii Elec. Light Co., 60 Haw. 625, 594 P.2d 612 \(1979\)](#); [Survivors of Freitas v. Pacific Contractors Co., 1 Haw. App. 77, 613 P.2d 927 \(1980\)](#).

Purpose of setting out findings and conclusions.

The purpose of the statutory requirement that the agency set forth separately its findings of fact and conclusions of law is to assure reasoned decision making by the agency and enable judicial review of agency decisions. [In re Hawaii Elec. Light Co., 60 Haw. 625, 594 P.2d 612 \(1979\)](#).

Scope of findings.

A separate ruling on each proposed finding filed by a party is not required, as the statute only requires that the parties not be left to guess, with respect to any material questions of fact, or to any group of minor matters that may have cumulative significance, the precise findings of the agency. [In re Term. Transp., Inc., 54 Haw. 134, 504 P.2d 1214 \(1972\)](#); [Mitchell v. BWK Joint Venture, 57 Haw. 535, 560 P.2d 1292 \(1977\)](#); [Outdoor Circle v. Castle Trust Estate, 4 Haw. App. 633, 675 P.2d 784 \(1983\)](#), cert. denied, [67 Haw. 1, 677 P.2d 965 \(1984\)](#); [Dedman v. Board of Land & Natural Resources, 69 Haw. 255, 740 P.2d 28 \(1987\)](#), cert. denied, [485 U.S. 1020, 108 S. Ct. 1573, 99 L. Ed. 2d 888 \(1988\)](#).

Effect of failure to rule on proposed findings.

In failing in its decision to rule on the competing carriers' proposed findings, the public utilities commission violated this section. [In re Term. Transp., Inc., 54 Haw. 134, 504 P.2d 1214 \(1972\).](#)

Decision vacated where agency's findings did not decide whether the employee satisfied his burden of proving that one or more of the alleged three reasons were facts and, if so, whether one or more of these facts constituted good cause for his terminating his employment. [Rife v. Akiba, 81 Haw. 84, 912 P.2d 581 \(Ct. App. 1996\).](#)

Findings of fact and conclusions of law by circuit court.

Where the circuit court overturns an agency's order in a contested case under the Administrative Procedure Act, a bare statement of the court's ultimate conclusions is insufficient and the court is under an obligation to enter findings of fact and conclusions of law pursuant to [HRCP, Rule 52\(a\)](#), sufficient to enable a reviewing court to determine the steps by which the court reached its ultimate conclusions on each issue. [Scott v. Contractors License Bd., 2 Haw. App. 92, 626 P.2d 199 \(1981\).](#)

Order of an administrative agency must conform to the decision as reflected in the agency minutes. [In re Oahu Term. Servs., Inc., 52 Haw. 221, 473 P.2d 573 \(1970\).](#)

Notice of general tax assessment.

Where neither the statute nor procedural due process required an agency hearing before the director of taxation issued notices of general excise tax assessment, the proceeding was not a contested case, and findings of fact and conclusions of law were not required to accompany those notices. [In re Tax Appeals of Trade Wind Tours of Haw., Inc., 6 Haw. App. 260, 718 P.2d 1122 \(1986\).](#)

Workers' compensation presumptions.

In accordance with its responsibilities under this section, the labor and industrial relations appeals board should ordinarily state in its decision whether or not it has applied the statutory presumption contained in [§ 386- 85](#) in determining whether an injury or death is work connected. [Survivors of Freitas v. Pacific Contractors Co., 1 Haw. App. 77, 613 P.2d 927 \(1980\).](#) Cited in [Horner v. Criminal Injuries Comp. Comm'n, 54 Haw. 294, 506 P.2d 444 \(1973\); In re Charley's Tour & Transp., Inc., 55 Haw. 463, 522 P.2d 1272 \(1974\); In re Kauai Elec. Div. of Citizens Utils. Co., 60 Haw. 166, 590 P.2d 524 \(1978\); Jordan v. Hawaii Gov't Employees' Ass'n, Local 152, 472 F. Supp. 1123 \(D. Haw. 1979\); Waikiki Shore, Inc. v. Zoning Bd. of Appeals, 2 Haw. App. 43, 625 P.2d 1044 \(1981\); Jones v. Hawaiian Elec. Co., 64 Haw. 289, 639 P.2d 1103 \(1982\); Hawaii Pub. Emp. Relations Bd. v. United Pub. Workers, Local 646, 66 Haw. 461, 667 P.2d 783 \(1983\); In re Akina Bus Serv., Ltd., 9 Haw. App. 240, 833 P.2d 93 \(1992\); Davenport v. City of Honolulu, 100 Haw. 297, 59 P.3d 932 \(Ct. App. 2001\), cert. granted, 97 Haw. 542, 40 P.3d 944 \(2002\); Hartman v. Thew, 101 Haw. 37, 61 P.3d 548 \(Ct. App. 2002\).](#)

RESEARCH REFERENCES

Hawaii Legal Reporter.

As to a contested case hearing being required for a special management area permit, see 84-2 Haw. Legal Rep. 84-0759.

§ 91-13 Consultation by officials of agency.

No official of an agency who renders a decision in a contested case shall consult any person on any issue of fact except upon notice and opportunity for all parties to participate, save to the extent required for the disposition of ex parte matters authorized by law.

[L 1961, c 103, § 13; Supp, § 6C-13; HRS § 91-13]

§ 91-13.1 Administrative review of denial or refusal to issue license or certificate of registration.

Except as otherwise provided by law, any person aggrieved by the denial or refusal of any board or commission subject to the jurisdiction of the department of commerce and consumer affairs, to issue a license or certificate of registration, shall submit a request for a contested case hearing pursuant to chapter 91 within sixty days of the date of the refusal or denial. Appeal to the circuit court under [section 91-14](#), or any other applicable statute, may only be taken from a board or commission's final order.

[L 1986, c 181, § 1; am L 1994, c 279, § 7]

§ 91-13.5 Maximum time period for business or development-related permits, licenses, or approvals; automatic approval; extensions.

(a) Unless otherwise provided by law, an agency shall adopt rules that specify a maximum time period to grant or deny a business or development-related permit, license, or approval; provided that the application is not subject to state administered permit programs delegated, authorized, or approved under federal law.

(b) All such issuing agencies shall clearly articulate informational requirements for applications and review applications for completeness in a timely manner.

(c) All such issuing agencies shall take action to grant or deny any application for a business or development-related permit, license or approval within the established maximum period of time, or the application shall be deemed approved.

(d) The maximum period of time established pursuant to this section shall be extended in the event of a national disaster, state emergency, or union strike, which would prevent the applicant, the agency, or the department from fulfilling application or review requirements.

(e) For purposes of this section, "application for a business or development-related permit, license, or approval" means any state or county application, petition, permit, license, certificate, or any other form of a request for approval required by law to be obtained prior to the formation, operation, or expansion of a commercial or industrial enterprise, or for any permit, license, certificate, or any form of approval required under [sections 46-4](#), [46-4.2](#), [46-4.5](#), [46-5](#), and chapters 183C, 205, 205A, 340A, 340B, 340E, 340F, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, and 342P.

[L 1998, c 164, § 3]

§ 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) [Effective until July 1, 2006.] Except as otherwise provided herein, proceedings for review shall be instituted in the circuit 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, which appeal shall be subject to chapter 602, and in such cases the appeal shall be in like manner as an appeal from the circuit court to the supreme 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.

(b) [Effective July 1, 2006.] Except as otherwise provided herein, proceedings for review shall be instituted in the circuit 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 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 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 receive written briefs.

(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; or
- (2) In excess of the statutory authority or jurisdiction of the agency; or
- (3) Made upon unlawful procedure; or
- (4) Affected by other error of law; or
- (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.

[L 1961, c 103, § 14; Supp, § 6C-14; HRS § 91-14; am L 1973, c 31, § 5; am L 1974, c 145, § 1; am L 1979, c 111, § 9; am L 1980, c 130, § 2; am L 1983, c 160, § 1; am L 1986, c 274, § 1; am L 1993, c 115, § 1; am L 2004, c 202, § 8]

NOTES, REFERENCES, AND ANNOTATIONS

Editor's note.

2004 Haw. Sess. Laws, Act 202, § 82, provides that appeals pending in the supreme court as of the effective date of the act may be transferred to the intermediate appellate court or retained at the supreme court as the chief justice, in the chief justice's sole discretion, directs. The 2004 amendment, effective July 1, 2006, substituted "intermediate appellate court" for "supreme court" and made stylistic and related changes in subsection (b).

Cross references

As to judicial review of workers' compensation cases, see [§ 383-41](#).

CASE NOTES

I. General Consideration

In general.

The review under this chapter is conducted by the appropriate court without a jury and is confined to the record. [Hoh Corp. v. Motor Vehicle Indus. Licensing Bd.](#), 69 Haw. 135, 736 P.2d 1271 (1987).

Legislature has inherent power to establish procedure for particular type of case. [Medeiros v. Hawaii County Planning Comm'n](#), 8 Haw. App. 183, 797 P.2d 59, reconsideration denied, 8 Haw. App. 661, 868 P.2d 466 (1990).

Jurisdiction of circuit court.

The circuit court has subject matter jurisdiction over appeals brought from actions of administrative agencies. [Life of Land v. Land Use Comm'n](#), 58 Haw. 292, 568 P.2d 1189 (1977); [In re Haw. Gov't Employees' Ass'n](#), 63 Haw. 85, 621 P.2d 361 (1980).

Jurisdiction of family court.

The district family courts could not exercise judicial review of administrative proceedings conducted pursuant to the Individuals with Disabilities Education Act (IDEA), [20 U.S.C.S. 1400-1487](#), and lacked subject matter jurisdiction to order the department of education to alter a child's grade placement. In the [Interest of Doe Children](#), 105 Haw. 38, 93 P.3d 1145, 2004 Haw. LEXIS 405 (2004).

Effect on appeal jurisdiction of agency acting without jurisdiction.

An appeal from a decision of an administrative board which acts without jurisdiction confers no jurisdiction on the appellate court. [Association of Apt. Owners v. M.F.D., Inc.](#), 60 Haw. 65, 587 P.2d 301 (1978).

Agency approval of appeal unnecessary.

There is no language in this chapter, or any other provisions of law, which requires agency approval before an interlocutory appeal may be taken from a ruling of such agency. [In re Haw. Gov't Employees' Ass'n, 63 Haw. 85, 621 P.2d 361 \(1980\)](#).

Procedure for appeal of rule adoption is different from the appeal of contested case decisions.

The Administrative Procedure Act is so structured as to require completely different forms of proceeding when the objective is to make a "rule" from that which is in effect when there is a contested case resulting in an order. [In re Hawaiian Elec. Co., 66 Haw. 538, 669 P.2d 148 \(1983\)](#).

Review limited to issues raised below.

Review of insurance commissioner's decision was confined to the issues properly raised in the record of the proceedings leading up to that decision. [Aetna Life Ins. Co. v. Park, 5 Haw. App. 115, 678 P.2d 1101](#), cert. denied, [67 Haw. 685, 744 P.2d 781 \(1984\)](#).

Declaratory relief is barred in cases seeking to overturn agency determinations in contested cases where they are reviewable under this section. [Punohu v. Sunn, 66 Haw. 485, 666 P.2d 1133 \(1983\)](#).

Review by circuit court is on record.

A review before a circuit court on appeal from a decision of a civil service commission is on the record. [Cunningham v. Civil Serv. Comm'n, 48 Haw. 278, 398 P.2d 155 \(1964\)](#).

Right/wrong standard in appellate review.

Appellate court's review of the circuit court's review of an administrative agency's decision is based on the "right/wrong" standard. In order to determine whether the circuit court's decision was right or wrong, the appellate court must apply subsection (g) to the agency's decision. [Outdoor Circle v. Castle Trust Estate, 4 Haw. App. 633, 675 P.2d 784 \(1983\)](#), cert. denied, [67 Haw. 1, 677 P.2d 965 \(1984\)](#).

Failure of agency to follow own rules.

Where an administrative agency, by the failure to follow its rules, prejudices the substantial rights of a party before it, it may be necessary for the reviewing court, under the power to modify the decision and order of the agency, to fashion relief appropriately remedying the prejudice caused. [Nakamine v. Board of Trustees, 65 Haw. 251, 649 P.2d 1162 \(1982\)](#).

Additional evidence.

Under subsection (e), the decision to order an agency to take additional evidence or not to do so is a discretionary one and will not be overturned absent a showing of abuse. [Kilauea Neighborhood Ass'n v.](#)

[Land Use Comm'n, 7 Haw. App. 227, 751 P.2d 1031 \(1988\).](#)

Order for reratification election for collective bargaining contract abuse of discretion.

An order of the public employment relations board mandating a reratification election for a collective bargaining contract was an abuse of discretion, where a cease and desist order alone would have been sufficient, as the parties to the contract had been observing and performing its terms and provisions for some 20 months when the order was issued. [Ariyoshi v. Hawaii Pub. Emp. Relations Bd., 5 Haw. App. 533, 704 P.2d 917](#), reconsideration denied, [5 Haw. App. 682, 753 P.2d 253 \(1985\)](#).

Appeals from labor and industrial relations board.

Appeals from the labor and industrial relations appeals board are allowed under [§ 386-88](#); however, they are governed by the provisions of this chapter and particularly by subsection (a) of this section. [Williams v. Kleenco, 2 Haw. App. 219, 629 P.2d 125](#), reconsideration denied, 2 Haw. App. 686 (1981).

Where a rule promulgated by the director unambiguously had spoken on the matter in question, whether the director of the department of labor and industrial relations had cited a general contractor under the correct safety regulation after an inspection revealed 13 holes in a concrete slab at the ground level, the appeals board was wrong in deciding that the regulation did not apply to shallow holes at ground level; although the contractor argued that the court's deference to the board's decision was due, the court's inquiry ended. Dir., [Dep't of Labor & Indus. Rel. v. Kiewit Pac. Co., 104 Haw. 22, 84 P.3d 530, 2004 Haw. App. LEXIS 1 \(Ct. App. 2004\)](#).

Appeal from decision of Hawai'i Commission of Civil Rights.

In a prosecution for discrimination in a place of public accommodation, the circuit court correctly applied the de novo standard of review of a decision of the Hawai'i Commission of Civil Rights under HRS § 386-16(a) rather than to apply the standard of review under § 91-14(g), wherein the circuit court applies a clearly erroneous standard to the findings of fact by an agency, and a de novo review of the agency's conclusions of law under the right or wrong standard, inasmuch as [HRS § 368-16\(a\)](#) is the more specific statute. [State v. Hoshijo, 102 Haw. 307, 76 P.3d 550 \(2003\)](#).

Standard of review for interpretation of rule by Hawai'i Labor and Industrial Relations Appeal Board.

Interpretation of an administrative rule presents a question of law; thus, the Hawai'i Labor and Industrial Relations Appeals Board's interpretation of a rule is reviewed under the right/wrong standard. [Cabatbat v. County of Hawai'i, 103 Haw. 1, 78 P.3d 756 \(2003\)](#).

Appeal from utilities commission rate order.

An appeal to the supreme court from a rate order of the public utilities commission is authorized by [§ 269-16\(f\)](#) and, on such an appeal, the standard of review is set forth in subsection (g). [In re Miller & Lieb Water Co., 65 Haw. 310, 651 P.2d 486 \(1982\)](#).

Standards of review applied to appeal of orders of public utilities commission.

Standard of review articulated in HRS § 91-14 applied to an appeal in a noncontested case where a competitor was appealing two orders of the public utilities commission, which allowed an applicant to extend its operating authority and denied the competitor's motion for reconsideration. [In re Robert's Tours & Transp., Inc., 104 Haw. 98, 85 P.3d 623, 2004 Haw. LEXIS 105 \(2004\).](#)

A direct appeal to the Supreme Court from an order by the Public Utility Commission was dismissed for lack of appellate jurisdiction where the dispute and subsequent order did not pertain to "regulation of utility rates" or "ratemaking procedures". [Peterson v. Hawaii Elec. Light Co., 85 Haw. 322, 944 P.2d 1265 \(1997\).](#)

Construction costs for utilities.

The concerns of violated consumer expectations and double recovery are eliminated by [§ 269-7.5](#); however, the rebuttable presumption that construction costs for utilities were included in the sale of the lots still applies to cases involving utility companies that commenced operations before 1978 but have not yet proposed initial regulated rates, and utility companies now charging regulated rates that fail to reflect customer contributions included in the initial sale price of the lots. [In re Puhi Sewer & Water Co., 83 Haw. 132, 925 P.2d 302 \(1996\).](#)

The Public Service Commission's policy that the construction of a utility system as part of a real estate development creates a rebuttable presumption that the developer recouped its construction costs through the sale of the lots was limited by the Intermediate Court of Appeals to instances where there was a utility company/real estate developer relationship and other salient characteristics. [In re Puhi Sewer & Water Co., 83 Haw. 132, 925 P.2d 302 \(1996\).](#)

The rebuttable presumption that a contribution was made by lot owners for the construction of a utility system arises only if the presence of certain factors, or salient characteristics, reveals an intent by a real estate developer to obtain a double recovery for its capital construction costs. [In re Puhi Sewer & Water Co., 83 Haw. 132, 925 P.2d 302 \(1996\).](#)

Zoning board decision appeal.

Having comported with all procedural dictates of the zoning board of appeals, a "person aggrieved" under subsection (a) is entitled to judicial review. [East Diamond Head Ass'n v. Zoning Bd. of Appeals, 52 Haw. 518, 479 P.2d 796 \(1971\).](#)

County's or board's decision on geothermal resource permit application pursuant to public hearing is appealable directly to supreme court for review in accordance with subsections (b) and (g) of this section. However, such decision is not subject to contested case hearing. [Medeiros v. Hawaii County Planning Comm'n, 8 Haw. App. 183, 797 P.2d 59](#), reconsideration denied, [8 Haw. App. 661, 868 P.2d 466 \(1990\)](#). Cited in [Wee v. Board of Accountancy, 51 Haw. 80, 452 P.2d 94 \(1969\)](#); [Levin v. Hasegawa, 55 Haw. 250, 517 P.2d 773 \(1973\)](#); [Aguiar v. Hawaii Hous. Auth., 55 Haw. 478, 522 P.2d 1255 \(1974\)](#); [Tangen v. State Ethics Comm'n, 57 Haw. 87, 550 P.2d 1275 \(1976\)](#); [National Tire of Haw., Ltd. v.](#)

[Kauffman](#), 58 Haw. 265, 567 P.2d 1233 (1977); [Yoshino v. Saga Food Serv.](#), 59 Haw. 139, 577 P.2d 787 (1978); [Holdman v. Olim](#), 59 Haw. 346, 581 P.2d 1164 (1978); [Survivors of Freitas v. Pacific Contractors Co.](#), 1 Haw. App. 77, 613 P.2d 927 (1980); [Ah Ho v. Cobb](#), 62 Haw. 546, 617 P.2d 1208 (1980); [Yuclan Enters., Inc. v. Arre](#), 488 F. Supp. 820 (D. Haw. 1980); [Waikiki Shore, Inc. v. Zoning Bd. of Appeals](#), 2 Haw. App. 43, 625 P.2d 1044 (1981); [Noor v. Agsalud](#), 2 Haw. App. 560, 634 P.2d 1058 (1981); [Jones v. Hawaiian Elec. Co.](#), 64 Haw. 289, 639 P.2d 1103 (1982); [Travelers Ins. Co. v. Hawaii Roofing, Inc.](#), 64 Haw. 380, 641 P.2d 1333 (1982); [Chang v. Planning Comm'n](#), 64 Haw. 431, 643 P.2d 55 (1982); [Santos v. State, DOT](#), 64 Haw. 648, 646 P.2d 962 (1982); [Wailuku Sugar Co. v. Agsalud](#), 65 Haw. 146, 648 P.2d 1107 (1982); [You v. Minami](#), 65 Haw. 411, 652 P.2d 632 (1982); [Cariaga v. Del Monte Corp.](#), 65 Haw. 404, 652 P.2d 1143 (1982); [Danuser v. J.A. Thompson & Son](#), 3 Haw. App. 564, 655 P.2d 887 (1982); [Lewis v. Board of Trustees ex rel. Employees' Retirement Sys.](#), 66 Haw. 304, 660 P.2d 36 (1983); [Survivors of Medeiros v. Maui Land & Pineapple Co.](#), 66 Haw. 290, 660 P.2d 1316 (1983); [In re Estate of Campbell](#), 66 Haw. 354, 662 P.2d 206 (1983); [Punohu v. Sunn](#), 66 Haw. 489, 666 P.2d 1135 (1983); [Foster Village Community Ass'n v. Hess](#), 4 Haw. App. 463, 667 P.2d 850 (1983); [Kalapodes v. E.E. Black, Ltd.](#), 66 Haw. 561, 669 P.2d 635 (1983); [Armbruster v. Nip](#), 5 Haw. App. 37, 677 P.2d 477 (1984); [Chock v. Bitterman](#), 5 Haw. App. 59, 678 P.2d 576 (1984); [In re Kaanapali Water Corp.](#), 5 Haw. App. 71, 678 P.2d 584 (1984); [In re Maldonado](#), 5 Haw. App. 185, 683 P.2d 394 (1984); [In re Wind Power Pac. Investors-III](#), 67 Haw. 342, 686 P.2d 831 (1984); [In re Maldonado](#), 67 Haw. 347, 687 P.2d 1 (1984); [In re Hawaiian Tel. Co.](#), 67 Haw. 370, 689 P.2d 741 (1984); [In re Hawaii Elec. Light Co.](#), 67 Haw. 425, 690 P.2d 274 (1984); [Williams v. Hawaii Hous. Auth.](#), 5 Haw. App. 325, 690 P.2d 285 (1984); [In re Hawaiian Elec. Co.](#), 5 Haw. App. 445, 698 P.2d 304 (1985); [Myers v. Board of Trustees](#), 68 Haw. 94, 704 P.2d 902 (1985); [Stop H-3 Ass'n v. State, DOT](#), 68 Haw. 154, 706 P.2d 446 (1985); [Mahiai v. Suwa](#), 69 Haw. 349, 742 P.2d 359 (1987); [Katz v. Ke Nam Kim](#), 379 F. Supp. 65 (D. Haw. 1974), (decided under prior law); [Jordan v. Hawaii Gov't Employees' Ass'n, Local 152](#), 472 F. Supp. 1123 (D. Haw. 1979); [Yuclan Int'l, Inc. v. Arre](#), 504 F. Supp. 1008 (D. Haw. 1980); [Sandy Beach Defense Fund v. City Council](#), 70 Haw. 361, 773 P.2d 250 (1989); [Davis v. Rubin](#), 9 Haw. App. 198, 828 P.2d 1284 (1991); [Kaapu v. Aloha Tower Dev. Corp.](#), 74 Haw. 365, 846 P.2d 882 (1993); [Vail v. Employees' Retirement Sys.](#), 75 Haw. 42, 856 P.2d 1227 (1993); [Raquinio v. Nakanelua](#), 77 Haw. 499, 889 P.2d 76 (Ct. App. 1995); [Bumanglag v. Oahu Sugar Co.](#), 78 Haw. 275, 892 P.2d 468 (1995); [University of Haw. Professional Ass'y v. Tomasu](#), 79 Haw. 154, 900 P.2d 161 (1995); [Zemis v. SCI Contractors](#), 80 Haw. 442, 911 P.2d 77 (1996); [Ipsen v. Akiba](#), 80 Haw. 481, 911 P.2d 116 (Ct. App. 1996); [Shipley v. Ala Moana hotel](#), 83 Haw. 361, 926 P.2d 1284 (1996); [Keanini v. Akiba](#), 84 Haw. 407, 935 P.2d 122, 2000 Haw App. LEXIS 58 (Ct. App. 1997); [Mitchell v. State, Dep't of Educ.](#), 85 Haw. 250, 942 P.2d 514 (1997); [Alvarez v. Liberty House, Inc.](#), 85 Haw. 275, 942 P.2d 539 (1997); [Waikiki Marketplace Inv. Co. v. Chair of Zoning Bd. of Appeals](#), 86 Haw. 343, 949 P.2d 183 (Ct. App. 1997); [Steinberg v. Hoshijo](#), 88 Haw. 10, 960 P.2d 1218 (1998); [Kim v. Contractors License Bd.](#), 88 Haw. 264, 965 P.2d 806 (1998); [Estate of Cabral v. AIG Haw. Ins. Co.](#), 88 Haw. 345, 966 P.2d 1071 (Ct. App. 1998), *aff'd*, 88 Haw. 344, 966 P.2d 1070 (1998); [GEICO v. Dang](#), 89 Haw. 8, 967 P.2d 1066 (1998); [Alejado v. City & County of Honolulu](#), 89 Haw. 221, 971 P.2d 310 (Ct. App. 1998); [Potter v. Hawaii Newspaper Agency](#), 89 Haw. 411, 974 P.2d 51 (1999); [Curtis v. Board of Appeals](#), 90 Haw. 384, 978 P.2d 822 (1999); [Henley v. Hawaii Hous. Auth.](#), 92 Haw. 319, 990 P.2d 1201 (Ct. App. 1999); [Flor v. Holguin](#), 2000 Haw. LEXIS 133, 93 Haw. 245, 999 P.2d 843 (2000); [Korsak v. Haw. Permanente Med. Group, Inc.](#), 94 Haw. 297, 12 P.3d 1238, 2000 Haw. LEXIS 416 (2000); [Tamashiro v. Control Specialist, Inc.](#), 2001 Haw. LEXIS 430, 97 Haw. 86, 34 P.3d 16 (2001); [Igawa v. Koa House Rest.](#), 97 Haw. 402, 38 P.3d 570, 2001 Haw. LEXIS 334 (2001); [Davenport v. City of Honolulu](#), 100

[Haw. 297, 59 P.3d 932 \(Ct. App. 2001\)](#), cert. granted, [97 Haw. 542, 40 P.3d 944 \(2002\)](#); [Poe v. Haw. Labor Relations Bd., 2002 Haw. LEXIS 102, 97 Haw. 528, 40 P.3d 930 \(2002\)](#); [Hoffacker v. State Farm Mut. Auto. Ins. Co., 101 Haw. 21, 61 P.3d 532 \(Ct. App. 2002\)](#); [TIG Ins. Co. v. Kauhane, 101 Haw. 311, 67 P.3d 810 \(Ct. App. 2003\)](#); [Haw. Elec. Light Co. v. Dep't of Land & Natural Res., 102 Haw. 257, 75 P.3d 160 \(2003\)](#); [In re Wai'ola O Moloka'i, Inc., 103 Haw. 401, 83 P.3d 664 \(2004\)](#); [Allstate Ins. Co. v. Schmidt, 104 Haw. 261, 88 P.3d 196, 2004 Haw. LEXIS 245 \(Haw. 2004\)](#); [Harker v. Shamoto, 104 Haw. 536, 92 P.3d 1046, 2004 Haw. App. LEXIS 15 \(2004\)](#), cert. denied, [105 Haw. 196, 95 P.3d 627, 2004 Haw. LEXIS 433 \(2004\)](#); [Morgan v. Planning Dep't, 104 Haw. 173, 86 P.3d 982, 2004 Haw. LEXIS 207 \(2004\)](#); [Hindman v. Microsoft Corp., 104 Haw. 319, 88 P.3d 1209, 2004 Haw. LEXIS 311 \(Apr 30, 2004\)](#); [Univ. of Hawai'i v. Befitel, - Haw. -, - P.3d -, 2004 Haw. LEXIS 413 \(2004\)](#); [In re Water Use Permit Applications, 105 Haw. 1, 93 P.3d 643, 2004 Haw. LEXIS 429 \(2004\)](#).

II. Constitutionality

Full due process rights not automatic in a quasi-judicial hearing.

Full rights of due process present in a court of law, including presentation of witnesses and cross-examination, do not automatically attach to quasi-judicial hearing. Basic elements of procedural due process of law require notice and opportunity to be heard at meaningful time and in meaningful manner before governmental deprivation of significant property interest. [Medeiros v. Hawaii County Planning Comm'n, 8 Haw. App. 183, 797 P.2d 59](#), reconsideration denied, [8 Haw. App. 661, 868 P.2d 466 \(1990\)](#).

Determination of specific procedures required to satisfy due process requires a balancing of several factors: (1) private interest which will be affected; (2) risk of erroneous deprivation of such interest through procedures actually used, and probable value, if any, of additional or alternative procedural safeguards; and (3) governmental interest, including burden that additional procedural safeguards would entail. [Medeiros v. Hawaii County Planning Comm'n, 8 Haw. App. 183, 797 P.2d 59](#), reconsideration denied, [8 Haw. App. 661, 868 P.2d 466 \(1990\)](#).

Procedure adequate to satisfy due process requirements.

Because the appellants were afforded an adequate opportunity to challenge the assessed fine on appeal at both the administrative and judicial levels before they incurred any obligation to pay it, the application of the procedural mechanism set forth in the land use ordinance did not violate their right to due process of law. [Price v. Zoning Bd. of Appeals, 77 Haw. 168, 883 P.2d 629 \(1994\)](#).

A contested case hearing under this section is not essential to the guarantee of due process. [Medeiros v. Hawaii County Planning Comm'n, 8 Haw. App. 183, 797 P.2d 59](#), reconsideration denied, [8 Haw. App. 661, 868 P.2d 466 \(1990\)](#).

The Constitution guarantees the right to be heard, not the right to have one's views adopted. Neither does the Constitution establish the contested case as the only forum for ensuring property owner's right to be heard. [Medeiros v. Hawaii County Planning Comm'n, 8 Haw. App. 183, 797 P.2d 59](#), reconsideration denied, [8 Haw. App. 661, 868 P.2d 466 \(1990\)](#).

Contested case hearing on geothermal permit proceeding not required.

Geothermal permit proceeding is essentially a zoning matter. Historically and universally, such matters have been decided after notice and a public hearing. There is no precedent for holding that the Constitution requires a contested case hearing on a zoning change application. [Medeiros v. Hawaii County Planning Comm'n, 8 Haw. App. 183, 797 P.2d 59](#), reconsideration denied, [8 Haw. App. 661, 868 P.2d 466 \(1990\)](#).

Procedure on geothermal permit proceeding upheld.

Constitutional right to due process of law was not violated where, in public hearing on application for a geothermal resource permit, Hawaii County Planning Commission adhered to the following procedures: (1) time limitations were imposed on testimony at public hearing; (2) public comments on procedures employed by the Commission were not accepted; (3) request for second hearing was denied; (4) parties had no voice in selecting mediator; and (5) strict time constraints were imposed on mediation process. [Medeiros v. Hawaii County Planning Comm'n, 8 Haw. App. 183, 797 P.2d 59](#), reconsideration denied, [8 Haw. App. 661, 868 P.2d 466 \(1990\)](#).

Determination of constitutional questions by agency.

When determination of the constitutional issue depends on factual determinations, they should be made first by the administrative officials who are especially equipped to inquire, in the first instance, into the facts. [Sotomura v. County of Haw., 402 F. Supp. 95 \(D. Haw. 1975\)](#).

Substantial rights not affected.

The decision of the agency director must be confirmed where the consultation of evidence outside the record by the Director did not affect the parties' substantial rights. [Korean Buddhist Dae Won Sa Temple v. Sullivan, 87 Haw. 217, 953 P.2d 1315 \(1998\)](#).

Post-deprivation remedy.

Review of defendant county's refusal to amend plaintiffs' special permit would have been proper under this section and provided plaintiffs with an adequate post-deprivation remedy; therefore, although plaintiffs chose not to proceed under this section, their right to procedural due process was not denied. [Souza v. County of Haw., 694 F. Supp. 738 \(D. Haw. 1988\)](#).III.Initiation of Review

Judicial review.

This section provides the means by which judicial review of administrative contested cases can be obtained. [Pele Defense Fund v. Puna Geothermal Venture, 77 Haw. 64, 881 P.2d 1210 \(1994\)](#).

Exhaustion requirement.

In proceedings under Chapter 587, Child Protective Act, the family court lacked jurisdiction to order Hawai'i Department of Health (DOH) to pay for the children's services under the Individuals with

Disabilities Education Act, [20 U.S.C.S. § 1400](#) et seq., because DOH's legal obligation to pay had not been established through the administrative process mandated by [20 U.S.C.S. § 1415\(f\)\(1\)](#) or [HRS § 302A-443\(a\)](#) or by judicial review of any administrative decision under [20 U.S.C.S. § 1415\(i\)\(2\)\(A\)](#) or this section. [In re Doe Children, 96 Haw. 272, 30 P.3d 878, 2001 Haw. LEXIS 344 \(2001\)](#).

This section is superseded by [HRS § 386-88](#), but only with respect to statement that judicial review be instituted with the circuit court. [Bocalbos v. Kapiolani Medical Ctr. for Women & Children, 2000 Haw. App. LEXIS 39, 93 Haw. 116, 997 P.2d 42 \(Ct. App. 2000\)](#).

Alternative remedies.

One seeking judicial review of administrative action must follow the procedures outlined in this section and [HRCP, Rule 72](#). But since nothing prevents resort to other means of review, redress or relief provided by law, the appellant may also challenge the constitutionality of the statute supporting the agency action at the same time it challenges the agency action. [Hoh Corp. v. Motor Vehicle Indus. Licensing Bd., 69 Haw. 135, 736 P.2d 1271 \(1987\)](#).

Participation and injury sufficient to seek judicial review.

While some of the appellee's demonstrated sufficient participation and potential injury in fact to seek judicial review of the agency decision, others did not sufficiently participate in the contested case and were precluded from seeking judicial review under subsection (a). [Pele Defense Fund v. Puna Geothermal Venture, 77 Haw. 64, 881 P.2d 1210 \(1994\)](#).

Effect of failure to notice other parties.

Lack of service of a certified copy of the notice of appeal on every other party to the proceedings pursuant to subsection (b) and [HRCP, Rule 72\(c\)](#) is not jurisdictional. [Life of Land v. Land Use Comm'n, 58 Haw. 292, 568 P.2d 1189 \(1977\)](#).

Effect of failure to designate agency as appellee.

In an appeal from an administrative agency's decision, the failure to designate the agency as an appellee is not cause for dismissal, particularly where there is a policy favoring judicial review of administrative actions. [Jordan v. Hamada, 62 Haw. 444, 616 P.2d 1368 \(1980\)](#); [In re Haw. Gov't Employees' Ass'n, 63 Haw. 85, 621 P.2d 361 \(1980\)](#).

Not applicable to workers' compensation cases.

[Section 386-73](#) and [§ 386-88](#) supersede subsection (b) with regard to workers' compensation proceedings brought under Chapter 386. [Ras v. Hasegawa, 53 Haw. 640, 500 P.2d 746 \(1972\)](#); [De Victoria v. H & K Contractors, 56 Haw. 552, 545 P.2d 692 \(1976\)](#).

The Zoning Board of Appeals is the administrative agency designated to hear and determine appeals from the director's actions in the administration of the City and County of Honolulu zoning code, and

the order of the Board was an administrative decision subject to review by the circuit court. [Windward Marine Resort, Inc. v. Sullivan, 86 Haw. 171, 948 P.2d 592 \(Ct. App. 1997\)](#).

Applicability of 30-day limit in federal court.

The federal court properly enforced the 30-day limitation period, in an action concerning education of handicapped children, for review of a state hearing officer's administrative decision. [Department of Educ. v. Carl D., 695 F.2d 1154 \(9th Cir. 1983\)](#).

Date the 30-day limitation begins to run.

The time period for filing an appeal to the circuit court from a land use commission decision begins to run from the date of service of the signed written decision and order. [Life of Land, Inc. v. West Beach Dev. Corp., 63 Haw. 529, 631 P.2d 588 \(1981\)](#).

Timeliness of appeal.

Employee's appeal from a denial of his application for unemployment benefits was untimely when it was filed 33 days after he was served the denial by mail; [Haw. R. Civ. P. 6\(a\)](#) operates to extend the time for the appeal if due date falls on a weekend or holiday after the two-day extension in [Haw. R. Civ. P. 6\(e\)](#) is applied. [Rivera v. Dep't of Labor & Indus. Relations, 100 Haw. 348, 60 P.3d 298 \(2002\)](#).IV.Standing to AppealA.In General

Three-part injury in fact test.

In order to establish standing for purposes of this section, a party must demonstrate that its interests were injured, which is evaluated via a three-part injury in fact test requiring: (1) an actual or threatened injury; which (2) is traceable to the challenged action; and (3) is likely to be remedied by favorable judicial action. [Ka Pa'akai O Ka'Aina v. Land Use Comm'n, 94 Haw. 31, 7 P.3d 1068, 2000 Haw. LEXIS 302 \(2000\)](#).

Possibility of injury insufficient.

Where party did not allege any concrete injury but only the possibility of injury, the question of standing to appeal turned on the fact that such a possibility of injury was not sufficient to constitute concrete injury. [United Public Workers, Local 646 v. Brown, 80 Haw. 376, 910 P.2d 147 \(Ct. App. 1996\)](#).

No standing to challenge agency rule in geothermal development permit proceeding.

Persons seeking to challenge agency's rule that applicant for geothermal development permit had to make reasonable attempt to give notice of public hearing on its application to residents beyond 300 feet but within 1,000 feet of perimeter of project's boundaries on ground that rule was facially inadequate because geothermal development activity had potential to affect property and human health over large areas of region, but who did not show that they had been injured by the rule, had no standing to raise the issue. [Pele Defense Fund v. Puna Geothermal Venture, 8 Haw. App. 203, 797 P.2d 69 \(1990\)](#).

Participation in proceedings below.

Appellant has standing to appeal an administrative agency's decision under this section if he has been aggrieved thereby and has participated in the contested case proceedings below. [Jordan v. Hamada, 64 Haw. 451, 643 P.2d 73 \(1982\)](#); [City & County of Honolulu v. Public Utils. Comm'n, 53 Haw. 431, 495 P.2d 1180, reh'g denied, 53 Haw. 669, 500 P.2d 745](#); [In re Hawaiian Elec. Co., 56 Haw. 260, 535 P.2d 1102 \(1975\)](#); [Mahuiki v. Planning Comm'n, 65 Haw. 506, 654 P.2d 874 \(1982\)](#); [Gibb v. Spiker, 68 Haw. 432, 718 P.2d 1076 \(1986\)](#); [Bush v. Hawaiian Homes Comm'n, 76 Haw. 128, 870 P.2d 1272 \(1994\)](#).

Service of the certified copy of an administrative agency's decision is complete when the certified copy is deposited in the mail. [Korean Buddhist Dae Won Sa Temple of Haw., Inc. v. Zoning Bd. of Appeals, 9 Haw. App. 298, 837 P.2d 311, reconsideration denied, 9 Haw. App. 659, 833 P.2d 98 \(1992\)](#).

The language of subsection (b) clearly indicates that the legislature intended that the manner of service generally provided for by the Hawaii Rules of Civil Procedure would govern service of the notice of appeal under this section. [Korean Buddhist Dae Won Sa Temple of Haw., Inc. v. Zoning Bd. of Appeals, 9 Haw. App. 298, 837 P.2d 311, reconsideration denied, 9 Haw. App. 659, 833 P.2d 98 \(1992\)](#).

Interested persons.

Plaintiffs endowed with interests that may have been adversely affected, and who were deemed aggrieved persons in a prior case with similar allegations, are undoubtedly interested persons authorized to challenge an agency rule. [Life of Land v. Land Use Comm'n, 63 Haw. 166, 623 P.2d 431 \(1981\)](#).

Adversarial participation.

Standing to appeal from an administrative decision is not conditioned upon formal intervention in the agency proceeding. Participation in a hearing as an adversary is sufficient to give rise to appeal rights. [Mahuiki v. Planning Comm'n, 65 Haw. 506, 654 P.2d 874 \(1982\)](#).

Amendment allows agencies to appeal.

IVA The legislature, while not amending the definition of "persons" in [§ 91-1\(2\)](#), amended this section to permit a party agency to appeal an adverse order of an adjudicatory agency. [County of Haw., Dep't of Fin. v. Civil Serv. Comm'n, 77 Haw. 396, 885 P.2d 1137 \(Ct. App. 1994\)](#).

Before May 20, 1993 agencies not entitled to appeal.

The department of finance is an agency within the meaning of chapter 91, and was not a "person" entitled to appeal under this section prior to May 20, 1993. [County of Haw., Dep't of Fin. v. Civil Serv. Comm'n, 77 Haw. 396, 885 P.2d 1137 \(Ct. App. 1994\)](#).

Review standard and application of enumerated standards.

Review of the circuit court's review of the agency's decision was based on the right/wrong standard, and applied the standards in this section to the board's decision suspending plaintiff from practicing medicine for one year. [Loui v. Board of Medical Exmrs., 78 Haw. 21, 889 P.2d 705 \(1995\)](#). B. Person Aggrieved

"Person aggrieved" construed.

A person aggrieved within the meaning of this section is one whose personal or property right has been injuriously or adversely affected by an agency's action. A ratepayer who is compelled to pay higher utility rates by agency action is a person specially, personally and adversely affected. [In re Hawaiian Elec. Co., 56 Haw. 260, 535 P.2d 1102 \(1975\)](#); [Life of Land, Inc. v. Land Use Comm'n, 61 Haw. 3, 594 P.2d 1079 \(1979\)](#); [Ariyoshi v. Hawaii Pub. Emp. Relations Bd., 5 Haw. App. 533, 704 P.2d 917, reconsideration denied, 5 Haw. App. 682, 753 P.2d 253 \(1985\)](#).

Party who would have, or already has, qualified as an "aggrieved person" under this section qualifies as an "interested person" under [§ 91-7](#). [Richard v. Metcalf, 82 Haw. 249, 921 P.2d 169 \(1996\)](#).

Owner whose property adjoins land subject to a zoning variance which he opposes is a "person aggrieved" under subsection (a). [East Diamond Head Ass'n v. Zoning Bd. of Appeals, 52 Haw. 518, 479 P.2d 796 \(1971\)](#).

Organization with members living adjacent to property reclassified.

Organization which opposes reclassification of properties and which is composed of members who live adjacent to the reclassified properties is a person aggrieved under subsection (a). [Life of Land, Inc. v. Land Use Comm'n, 61 Haw. 3, 594 P.2d 1079 \(1979\)](#).

Effect of decision moot.

Appellant was not aggrieved by agency action where the agency's decision was not implemented until appellant was no longer in a position to be affected thereby. [Jordan v. Hamada, 64 Haw. 451, 643 P.2d 73 \(1982\)](#).

Department of education was not a person aggrieved or adversely affected by final decision of an impartial hearings officer, and was not entitled to appeal to the circuit court from that decision. [In re Eric G., 65 Haw. 219, 649 P.2d 1140 \(1982\)](#).

No standing to challenge agency rule in geothermal development permit proceeding.

Persons seeking to challenge agency's rule that applicant for geothermal development permit had to make reasonable attempt to give notice of public hearing on its application to residents beyond 300 feet but within 1,000 feet of perimeter of project's boundaries on ground that rule was facially inadequate because geothermal development activity had potential to affect property and human health over large areas of region, but who did not show that they had been injured by the rule, had no standing to raise the issue. [Pele Defense Fund v. Puna Geothermal Venture, 8 Haw. App. 203, 797 P.2d 69 \(1990\)](#).

Right of an agency to appeal.

The right of an administrative agency to appeal an adverse ruling is limited to the situation where an individual as an aggrieved party prevails in appellate court, making the agency an aggrieved party with respect to implementation of legislation entrusted to it for administration. [Fasi v. State Pub. Emp. Relations Bd.](#), 60 Haw. 436, 591 P.2d 113 (1979); [In re Eric G.](#), 65 Haw. 219, 649 P.2d 1140 (1982). V. Contested Case

A public hearing conducted pursuant to public notice can be a contested case within the meaning of § 91-1. [Mahuiki v. Planning Comm'n](#), 65 Haw. 506, 654 P.2d 874 (1982).

Hearing not required by law is not contested case.

Where a hearing on a tenure application by an instructor was not required by law, the application did not create a contested case reviewable under the standards provided in the Hawaii Administrative Procedure Act, assuming the university to be an agency to which the act applies in its employment relations. [Abramson v. Board of Regents](#), 56 Haw. 680, 548 P.2d 253 (1976).

If the agency has held a hearing on a matter pending before it, that proceeding cannot constitute a contested case hearing for purposes of determining a person's right to appellate review unless the hearing was "required by law," i.e., specifically mandated by statute, rule, or the due process guarantees of the state and federal constitutions. [Bush v. Hawaiian Homes Comm'n](#), 76 Haw. 128, 870 P.2d 1272 (1994).

The hearing that took place was not "required by law" and therefore did not constitute a "contested case" for the purposes of obtaining appellate review pursuant to this section; consequently, judicial review by the circuit court of the commission's denial of appellant's request for a contested case hearing as well as review of the commission's approval of the third party agreements between non-Hawaiian farmers and native Hawaiian lessees was unattainable due to a lack of subject matter jurisdiction. [Bush v. Hawaiian Homes Comm'n](#), 76 Haw. 128, 870 P.2d 1272 (1994).

The "water management area" designation is not a contested case because it does not determine "the legal rights, duties, or privileges of specific parties", and § 174C-60 does not confer jurisdiction on the supreme court, nor does this section confer jurisdiction on the circuit court. [Ko'Olau Agricultural Co. v. Commission on Water Resource Mgt.](#), 83 Haw. 484, 927 P.2d 1367 (1996).

Standing for contested case established.

Plaintiff sufficiently demonstrated standing to participate in a contested case, and the circuit court had jurisdiction to determine the issues raised by plaintiff. [Public Access Shoreline Haw. ex rel. Rothstein v. Hawaii County Planning Comm'n ex rel. Fujimoto](#), 79 Haw. 425, 903 P.2d 1246 (1995), cert. denied, 517 U.S. 1163, 116 S. Ct. 1559, 134 L. Ed. 2d 660 (1996).

Procedures followed for contested case.

Having followed the procedures set forth by the Hawaii County Planning Commission, plaintiff's participation in the Special Management Area use permit proceeding amounted to involvement "in a contested case" under subsection (a). [Public Access Shoreline Haw. ex rel. Rothstein v. Hawaii County Planning Comm'n ex rel. Fujimoto, 79 Haw. 425, 903 P.2d 1246 \(1995\)](#), cert. denied, [517 U.S. 1163, 116 S. Ct. 1559, 134 L. Ed. 2d 660 \(1996\)](#).

PUC rules provided for contested case hearings.

The PUC rules did not preclude anyone from becoming a party to the contested case proceeding. [In re Hawaiian Elec. Co., 81 Haw. 459, 918 P.2d 561 \(1996\)](#).

Public Employees Compensation Appeals Board pricing appeal was not accorded contested case procedures.

The circuit court lacked jurisdiction to entertain an appeal of an initial pricing appeal brought under former § 77-4 before the Public Employees' Compensation Appeals Board (PECAB), since the function of the PECAB is legislative in nature rather than adjudicatory, and the pricing appeal was not entitled to be accorded contested case procedures. [Hawaii Gov't Employees' Ass'n v. Public Employees Comp. Appeals Bd., 10 Haw. App. 99, 861 P.2d 747 \(1993\)](#), (decided under prior law).

Permit application proceeding a contested case.

The Special Management Area use permit application proceeding before the Hawaii County Planning Commission was a contested case. [Public Access Shoreline Haw. ex rel. Rothstein v. Hawaii County Planning Comm'n ex rel. Fujimoto, 79 Haw. 425, 903 P.2d 1246 \(1995\)](#), cert. denied, [517 U.S. 1163, 116 S. Ct. 1559, 134 L. Ed. 2d 660 \(1996\)](#).

Hearing on reduction of welfare benefits.

A hearing at which it was determined that several welfare recipients would have their benefits reduced was a contested case and as such, was reviewable in accordance with the provisions of this section. [Punohu v. Sunn, 66 Haw. 485, 666 P.2d 1133 \(1983\)](#).

Hearings on applications for authority to construct permits.

Although the relevant statute and agency rules provided the department of health with discretionary authority to hold hearings on applications for authority to construct permits, the proceedings constituted contested cases because they were required by constitutional due process and the circuit court was vested with appellate jurisdiction under subsection (a). [Pele Defense Fund v. Puna Geothermal Venture, 77 Haw. 64, 881 P.2d 1210 \(1994\)](#).

Public hearing before the Board of Land and Natural Resources was not a contested case hearing in accordance with the department's rules. [Simpson v. Department of Land & Natural Resources, 8 Haw. App. 16, 791 P.2d 1267 \(1990\)](#).

Registration of apprenticeship program.

Contested case hearing pursuant to HRS § 91-14(a) was not required in the determination by the Director of the Hawaii Department of Labor and Industrial Relations to register an apprenticeship program pursuant to [HRS § 372-4](#). None of the local unions represented by the international brotherhood and their respective joint apprenticeship committees purportedly acting on their behalf were deprived of any identifiable property interest by the registration of an apprenticeship program initiated by the carpenters union so as to have invoked due process protections by way of a contested case hearing. [Intl Bhd. of Painters & Allied Trades Painters of Local Union 1944 v. Befitel, 104 Haw. 275, 88 P.3d 647, 2004 Haw. LEXIS 308 \(Haw 2004\)](#).

The general public had substantial opportunity to provide input to the PUC, and therefore, established the necessary procedures by which the ratepayers could manifest their consent in order to persuade the PUC that the cost of underground routing of [transmission lines was acceptable. In re Hawaiian Elec. Co., 81 Haw. 459, 918 P.2d 561 \(1996\)](#).

Parole hearing not a contested case.

Prison parole hearing was not a contested case hearing subject to judicial review under Hawaii Administrative Procedures Act, and thus inmate was not entitled to appeal under this section from denial of his parole request. [Turner v. Haw. Paroling Auth., 93 Haw. 298, 1 P.3d 768, 2000 Haw. App. LEXIS 89 \(Ct. App. 2000\)](#). VI.Final Decision or Order A.In General

Final order means an order ending the proceedings, leaving nothing further to be accomplished. Consequently, an order is not final if the rights of a party involved remain undetermined or if the matter is retained for further action. [Gealon v. Keala, 60 Haw. 513, 591 P.2d 621 \(1979\)](#); [In re Haw. Gov't Employees' Ass'n, 63 Haw. 85, 621 P.2d 361 \(1980\)](#).

Attachment of condition, even though of prospective application, to geothermal resource permit would not affect finality of decision approving permit for appeal purposes. [Pele Defense Fund v. Puna Geothermal Venture, 8 Haw. App. 203, 797 P.2d 69 \(1990\)](#).

When decision becomes final.

The commission on water resource management's decision to designate a water management area becomes final and appealable on the date it is published in a newspaper of general circulation and must be appealed within 30 days following publication. [Ko'olau Agric. Co. v. Commission on Water Resource Mgt., 76 Haw. 37, 868 P.2d 455 \(1994\)](#). B.Decision or Order Final

Order denying intervention.

Order denying a petitioner's motion for intervention was one ending the proceedings in regard to the petitioner, and therefore was a final order. [In re Haw. Gov't Employees' Ass'n, 63 Haw. 85, 621 P.2d 361 \(1980\)](#).

State administrative board order.

Because dentist who failed state examination three times chose not to exercise his right of appeal in state court, the dental board's order became final and operated with preclusive effect. [Mischia v. Pirie, 60 F.3d 626 \(9th Cir. 1995\)](#).

Denial of motion for reconsideration.

Where an administrative agency's regulations permit the filing of a petition or motion for reconsideration, and such a motion is timely filed, for the purposes of an appeal, the denial of the petition or motion for reconsideration is the final decision and order of the agency. The service of a certified copy of the denial starts the 30-day appeal period running. [McPherson v. Zoning Bd. of Appeals, 67 Haw. 603, 699 P.2d 26 \(1985\)](#).

Refusal to process permit application.

Decision of director of county planning department not to process limited partnership's permit application was a final decision equivalent to a denial of the application, and therefore appealable under this section. [GATRI v. Blane, 88 Haw. 108, 962 P.2d 367 \(1998\)](#).

Disability benefits.

A decision that finally adjudicates the matter of medical and temporary disability benefits is an appealable final order under this section, even though the matter of permanent disability has been left for later determination. [Bocalbos v. Kapiolani Med. Ctr., 89 Haw. 436, 974 P.2d 1026 \(1999\)](#).

Worker's compensation.

The court had jurisdiction over an appeal by a worker's compensation claimant from an order suspending her benefits until she complied with an order to submit to a medical examination requested by the employer, even though the order did not finally determine her entitlement to benefits, as the claimant asserted that the order was unlawful and that the option of complying with the order was not adequate relief, and no relief was or would be available absent review. [Tam v. Kaiser Permanente, 2001 Haw. LEXIS 52, 94 Haw. 487, 17 P.3d 219 \(2001\)](#).

An order regarding the award or denial of attorney's fees and costs with respect to [HRS § 386-93\(b\)](#) is a final order under HRS § 91-14(a) purposes of appeal. [Lindinha v. Hilo Coast Processing Co., 104 Haw. 164, 86 P.3d 973, 2004 Haw. LEXIS 190 \(2004\)](#).C.Decision or Order Not Final

No immediate review on error of law in preliminary order.

The fact that an agency commits an error of law in one of its preliminary orders does not confer jurisdiction for immediate judicial review and the mere fact that there was delay or extra expenses involved did not amount to prejudice so as to allow a preliminary order to be subject to judicial review.

[Mitchell v. State, Dep't of Educ., 77 Haw. 305, 884 P.2d 368 \(1994\).](#)

Workers' compensation claim.

Where the labor and industrial relations appeals board remanded a matter to the director of workers' compensation for a determination of the amount of the award, the decision and order was not final and was therefore not appealable. [Williams v. Kleenco, 2 Haw. App. 219, 629 P.2d 125](#), reconsideration denied, 2 Haw. App. 686 (1981); [Hawaii Laborers' Training Ctr. v. Agsalud, 65 Haw. 257, 650 P.2d 574 \(1982\).](#)

Retirement board remand to determine severity of incapacity.

Order of board of trustees of employees' retirement system, which remanded an action to a hearings officer but made no determination as to the severity of an employee's incapacity or whether the incapacity was caused by a service-connected accident, was not a final decision or order subject to judicial review. [Inouye v. Board of Trustees, 4 Haw. App. 526, 669 P.2d 638 \(1983\).](#)

Granting a special management area minor permit.

A county planning director's decision to grant a special management area minor permit was not a final decision or order in a contested case from which an appeal was possible. [Kona Old Hawaiian Trails Group ex rel. Serrano v. Lyman, 69 Haw. 81, 734 P.2d 161 \(1987\).](#) VII. Clearly Erroneous Standard

Applicability.

Appellate review of the circuit court's decision on the findings of fact of an administrative agency is governed by the clearly erroneous standard. [Feliciano v. Board of Trustees, 4 Haw. App. 26, 659 P.2d 77](#), reconsideration denied, 4 Haw. App. 674 (1983).

Standard for circuit court and appellate court is same.

The standard of review of an administrative agency's decision is the same for both the circuit court and the appellate court. [Kilauea Neighborhood Ass'n v. Land Use Comm'n, 7 Haw. App. 227, 751 P.2d 1031 \(1988\).](#)

When an appeal is taken from a finding of fact, the court considers whether such a finding is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. [Wharton v. Hawaiian Elec. Co., 80 Haw. 120, 906 P.2d 127 \(1995\).](#)

Construed.

When reviewing the findings under the clearly erroneous standard, the test is whether the appellate court is left with a firm and definite conviction that a mistake has been made. [De Victoria v. H & K Contractors, 56 Haw. 552, 545 P.2d 692 \(1976\)](#); [Lee v. Civil Serv. Comm'n, 50 Haw. 426, 442 P.2d 61 \(1968\)](#); [DeFries v. Association of Owners, 57 Haw. 296, 555 P.2d 855 \(1976\)](#); [In re Kauai Elec. Div. of](#)

[Citizens Utils. Co.](#), 60 Haw. 166, 590 P.2d 524 (1978); [In re Hawaii Elec. Light Co.](#), 60 Haw. 625, 594 P.2d 612 (1979); [Hamabata v. Hawaiian Ins. & Guar. Co.](#), 1 Haw. App. 350, 619 P.2d 516 (1980); [Homes Consultant Co. v. Agsalud](#), 2 Haw. App. 421, 633 P.2d 564 (1981); [McGlone v. Inaba](#), 64 Haw. 27, 636 P.2d 158 (1981); [In re Hawaiian Tel. Co.](#), 65 Haw. 293, 651 P.2d 475 (1982), overruled on other grounds, [Camara v. Agsalud](#), 67 Haw. 212, 685 P.2d 794 (1984); [Foodland Super Mkt., Ltd. v. Agsalud](#), 3 Haw. App. 569, 656 P.2d 100 (1982); [Feliciano v. Board of Trustees](#), 4 Haw. App. 26, 659 P.2d 77, reconsideration denied, 4 Haw. App. 674 (1983); [Aio v. Hamada](#), 66 Haw. 401, 664 P.2d 727 (1983); [Agsalud v. Lee](#), 66 Haw. 425, 664 P.2d 734 (1983); [Camara v. Agsalud](#), 67 Haw. 212, 685 P.2d 794 (1984); [Protect Ala Wai Skyline v. Land Use & Controls Comm.](#), 6 Haw. App. 540, 735 P.2d 950 (1987), overruled on other grounds, [GATRI v. Blane](#), 88 Haw. 108, 962 P.2d 367 (1998); [Chun v. Board of Trustees](#), 87 Haw. 152, 952 P.2d 1215 (1998).

An agency's decision carries a presumption of validity and the appellant has the heavy burden of making a convincing showing that the decision is invalid because it is unreasonable and unjust in its consequences. [Kilauea Neighborhood Ass'n v. Land Use Comm'n](#), 7 Haw. App. 227, 751 P.2d 1031 (1988).

In a proceeding for declaratory judgment brought under [§ 632-1](#), a circuit court is not required to defer to an agency's findings, but is able to make its own independent findings regarding the salient facts of the case. [Hawaii's Thousand Friends v. City & County of Honolulu](#), 75 Haw. 237, 858 P.2d 726 (1993).

Agency's discretion not reversed absent abuse.

Upon judicial review of an agency's decision before the supreme court, the agency's discretionary determination will not be reversed in the absence of abuse. [Kaiser Found. Health Plan, Inc. v. Department of Labor & Indus. Relations](#), 70 Haw. 72, 762 P.2d 796 (1988).

The clearly erroneous standard gives the reviewing court greater leeway to reverse a lower court's findings than the substantial evidence test applicable to review of jury verdicts and administrative fact-finding under the federal Administrative Procedures Act. [DeFries v. Association of Owners](#), 57 Haw. 296, 555 P.2d 855 (1976).

Clearly erroneous standard applies to findings.

The "clearly erroneous" standard of review is only applicable to an agency's factual findings and is not applicable to conclusions of law. [Kaiser Found. Health Plan, Inc. v. Department of Labor & Indus. Relations](#), 70 Haw. 72, 762 P.2d 796 (1988).

Conviction of mistake.

An agency's findings are not clearly erroneous and will be upheld if supported by reliable, probative and substantial evidence, unless the reviewing court is left with a firm and definite conviction that a mistake has been made. [Kilauea Neighborhood Ass'n v. Land Use Comm'n](#), 7 Haw. App. 227, 751 P.2d 1031 (1988).

Findings not clearly erroneous.

It was not clearly erroneous for the board to find that claimant was not interested or motivated in pursuing vocational rehabilitation. [Atchley v. Bank of Hawaii, 80 Haw. 239, 909 P.2d 567 \(1996\)](#).

For the purposes of determining the gross income of self-employed father, it was not clearly erroneous for the Hearing Officer to rely upon handwritten ledgers instead of tax returns. [Doe v. Child Support Enforcement Agency, 87 Haw. 178, 953 P.2d 209 \(Ct. App. 1998\)](#).

Direct and natural result standard applied.

Where the direct and natural result standard was applied to determine whether compensability should be extended to a subsequent injury, the test used was (1) whether any causal connection existed between the original and subsequent injury; and, if so, (2) whether the cause of the subsequent injury was attributable to some activity that would be customary in light of the claimant's condition. [Diaz v. Oahu Sugar Co., 77 Haw. 152, 883 P.2d 73 \(1994\)](#).

Failure to give preclusive effect to judge's determination was clearly erroneous.

State agency's decision constituted a clearly erroneous finding where it failed to give preclusive effect to a judge's specific determination that a municipal administrator had been effectively demoted rather than downwardly reallocated, after three separate factfinders had arrived at this conclusion upon review of all the available evidence. [Sussel v. Civil Serv. Comm'n, 74 Haw. 599, 851 P.2d 311](#), reconsideration denied, [74 Haw. 650, 857 P.2d 600 \(1993\)](#).

Odd-lot cases.

In an odd-lot case, the test on review is whether the agency's determination that the claimant fell within the scope of the odd-lot doctrine is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. [Tsuchiyama v. Kahului Trucking & Storage, Inc., 2 Haw. App. 659, 638 P.2d 1381 \(1982\)](#).

Review confined to record.

Judicial review of an administrative agency's decision is confined to the record of the agency's proceedings. [Kilauea Neighborhood Ass'n v. Land Use Comm'n, 7 Haw. App. 227, 751 P.2d 1031 \(1988\)](#).

VIII. Findings and Conclusions

Purpose.

The purpose of the statutory requirement that the agency set forth separately its findings of fact and conclusions of law is to assure reasoned decision making by the agency and enable judicial review of agency decisions. [In re Hawaii Elec. Light Co., 60 Haw. 625, 594 P.2d 612 \(1979\)](#).

In order for the court to revise or modify an agency decision, it must find that an appellant's substantial rights may have been prejudiced by an agency under one of the six subsections of the statute. [In re Hawaiian Elec. Co., 81 Haw. 459, 918 P.2d 561 \(1996\).](#)

Question of whether an agency's determination is a finding of fact or a conclusion of law is a question of law. [Kilauea Neighborhood Ass'n v. Land Use Comm'n, 7 Haw. App. 227, 751 P.2d 1031 \(1988\).](#)

Standard for review.

Conclusions of law are reviewable under subsections (1), (2), and (4); questions regarding procedural defects under subsection (3); findings of fact under subsection (5); and an agency's exercise of discretion under subsection (6). [Loui v. Board of Medical Exmrs., 78 Haw. 21, 889 P.2d 705 \(1995\); In re Hawaiian Elec. Co., 81 Haw. 459, 918 P.2d 561 \(1996\); In re Gray Line Haw., Ltd., 2000 Haw. LEXIS 91, 93 Haw. 45, 995 P.2d 776 \(2000\).](#)

Conclusions of law are freely reviewable to determine if the agency decision was in violation of constitutional or statutory provisions, in excess of statutory authority or jurisdiction, or affected by other error of law. [In re Water Use Permit Applications, 94 Haw. 97, 9 P.3d 409, 2000 Haw. LEXIS 231 \(2000\).](#)

Findings of fact are reviewable under the clearly erroneous standard to determine if the agency decision was clearly erroneous in view of reliable, probative, and substantial evidence on the whole record. [In re Water Use Permit Applications, 94 Haw. 97, 9 P.3d 409, 2000 Haw. LEXIS 231 \(2000\).](#)

Mere recapitulations of evidence do not constitute findings of fact as a general rule. [Kilauea Neighborhood Ass'n v. Land Use Comm'n, 7 Haw. App. 227, 751 P.2d 1031 \(1988\).](#)

Standard of review for findings and conclusions compared.

An agency's findings of fact are reviewable for clear error, while its conclusions of law are freely reviewable. [Kilauea Neighborhood Ass'n v. Land Use Comm'n, 7 Haw. App. 227, 751 P.2d 1031 \(1988\); Topliss v. Planning Comm'n, 9 Haw. App. 377, 842 P.2d 648 \(1993\); Protect Ala Wai Skyline v. Land Use & Controls Comm., 6 Haw. App. 540, 735 P.2d 950 \(1987\), overruled on other grounds, GATRI v. Blane, 88 Haw. 108, 962 P.2d 367 \(1998\).](#)

Mixed questions of law and fact.

A conclusion of law that presents mixed questions of fact and law is reviewed under the clearly erroneous standard because the conclusion is dependent upon the facts and circumstances of the particular case; when mixed questions of law and fact are presented, an appellate court must give deference to the agency's expertise and experience in the particular field. [In re Water Use Permit Applications, 94 Haw. 97, 9 P.3d 409, 2000 Haw. LEXIS 231 \(2000\).](#)

Alleged errors of law reviewed de novo.

Because each of plaintiff's points of error on appeal involved alleged errors of law, the board's conclusions were reviewed de novo under the right/wrong standard of review. [Loui v. Board of Medical Exmrs., 78 Haw. 21, 889 P.2d 705 \(1995\)](#).

An agency's legal conclusions are freely reviewable upon judicial review. [Kaiser Found. Health Plan, Inc. v. Department of Labor & Indus. Relations, 70 Haw. 72, 762 P.2d 796 \(1988\)](#).

Agency fact findings are reviewable for clear error. In contrast, an agency's legal conclusions are freely reviewable. [Protect Ala Wai Skyline v. Land Use & Controls Comm., 6 Haw. App. 540, 735 P.2d 950 \(1987\)](#), overruled on other grounds, [GATRI v. Blane, 88 Haw. 108, 962 P.2d 367 \(1998\)](#).

Ultimate facts must be supported by basic facts.

In order that the reviewing court might be informed of the factual basis upon which the agency relies, the findings of ultimate facts must be supported by findings of basic facts which in turn are required to be supported by the evidence in the record. [In re Hawaii Elec. Light Co., 60 Haw. 625, 594 P.2d 612 \(1979\)](#); [Scott v. Contractors License Bd., 2 Haw. App. 92, 626 P.2d 199 \(1981\)](#).

Effect of incomplete findings.

A remand is appropriate if an agency's findings are incomplete and provide no basis for review. [International Bhd. of Elec. Workers, Local 1357 v. Hawaiian Tel. Co., 68 Haw. 316, 713 P.2d 943 \(1986\)](#).

Decision vacated where agency's findings did not decide whether the employee satisfied his burden of proving that one or more of the alleged three reasons were facts and, if so, whether one or more of these facts constituted good cause for his terminating his employment. [Rife v. Akiba, 81 Haw. 84, 912 P.2d 581 \(Ct. App. 1996\)](#).

Finding not reasonable.

Under the abuse of discretion standard provided in HRS § 91-14(g)(6), a determination by the Department of Labor and Industrial Relations' (DLIR) that its wait of two years before issuing a notification of violation to a contractor was reasonable was not entitled to deference. The legislature had not granted the DLIR any discretion or authority to interpret the procedural requirements of [HRS § 104-23](#), and the two-year wait was found to be unreasonable because the DLIR could have begun proceedings on a third violation instead of waiting two years for the completion of the appeal on a second violation. [Paul's Elec. Serv. v. Befitel, 104 Haw. 412, 91 P.3d 494, 2004 Haw. LEXIS 399 \(2004\)](#).

Findings must show steps followed by agency.

An agency's findings must be sufficient to allow the reviewing court to track the steps by which the agency reached its decision. [Kilauea Neighborhood Ass'n v. Land Use Comm'n, 7 Haw. App. 227, 751](#)

[P.2d 1031 \(1988\).](#)

Where an administrative agency's findings indicate that the agency has complied with statutory provisions regarding the consideration and observance of statutory policies and criteria governing its decision and its findings are supported by substantial evidence, the agency's decision will not be overturned. [Kilauea Neighborhood Ass'n v. Land Use Comm'n, 7 Haw. App. 227, 751 P.2d 1031 \(1988\).](#)IX.Costs

Plaintiffs not entitled to damages for costs.

In an administrative action, pursuant to § 91-14, there was no authority vested in the hearing officer, the circuit court, or the court of appeals to award damages to the plaintiffs for costs they incurred as a result of the Department of Human Services' request to be repaid the amount the plaintiffs were overpaid in Aid to Families with Dependent Children benefits. [Munoz v. Chandler, 2002 Haw. App. LEXIS 25, 98 Haw. 80, 42 P.3d 657 \(Ct. App. 2002\)](#). Cited in [Nickells v. Wal-Mart Stores, Inc., 2002 Haw. App. LEXIS 153, 98 Haw. 508, 51 P.3d 375 \(Ct. App. 2002\)](#); [Brady v. Chandler, 2002 Haw. LEXIS 529 \(Aug. 30, 2002\)](#).

OPINIONS OF ATTORNEY GENERAL

Record of oral testimonyA commission is required to keep a record of the oral testimony as part of the record, although it need not transcribe it unless requested for purposes of rehearing or court review. Op. Att'y Gen. No. 64-4 (1964).

Cost of transcript of administrative hearingCost of the transcript of a commission hearing required to be filed in circuit court as part of the record on appeal must be borne by the commission, but the transcript is a public record, and an appellant is not entitled as a matter of right to a copy thereof for his personal use unless he pays the fee prescribed for copies of records. Op. Att'y Gen. No. 64-4 (1964).

Fair information law hearingsFormer sections 92E-9 and 92E-11 did not provide for a hearing on a request for access to one's personal record in the nature of an administrative contested case hearing under this chapter. Op. Att'y Gen. No. 84-14 (1984).

RESEARCH REFERENCES

Hawaii Legal Reporter.

As to appeal by government agency from adverse decision, see 79 Haw. Legal Rep. 79-0573.

As to time limit for filing appeal from agency decision, see 79 Haw. Legal Rep. 79-0643.

As to stay of order pending appeal, see 79 Haw. Legal Rep. 79-0703.

As to the ruling that the office of Hawaiian affairs is not a state agency subject to the Hawaii Administrative Procedure Act, see 87-1 Haw. Legal Rep. 87-537.

LEGAL PERIODICALS

Hawaii Bar Journal.

Article, Standing to Challenge Administrative Action in the Federal and Hawaiian Courts, 8 Haw. B.J. 37 (1971).

University of Hawaii Law Review.

1978 Survey, Land Use: Herein of Vested Rights, Plans, and the Relationship of Planning and Controls, 2 U. Haw. L. Rev. 167 (1979).

Article, Public Employee Arbitration in Hawaii, A Study in Erosion, 2 U. Haw. L. Rev. 477 (1981).

1983 Survey, The Honolulu Development Plans: An Analysis of Land Use Implications for Oahu, 6 U. Haw. L. Rev. 33 (1983).

Recent Developments in Land Use: County Application of CZMA - [Mahuiki v. Planning Commission of the County of Kauai](#), 65 Haw. 506, 654 P.2d 874 (1982), 6 U. Haw. L. Rev. 683 (1984).

Article, The Hawaii State Plan Revisited, 7 U. Haw. L. Rev. 29 (1985).

Article, Appellate Standards of Review in Hawaii, 7 U. Haw. L. Rev. 273 (1985).

Note, Outdoor Circle v. Harold K.L. Castle Trust Estate: Judicial Review of Administrative Decisions, 7 U. Haw. L. Rev. 449 (1985).

Note, In re Maldonado: The Stacking of No-Fault Benefits on Workers' Compensation Benefits for the Same Loss, 8 U. Haw. L. Rev. 619 (1986).

§ 91-15 Appeals.

Review of any final judgment of the circuit court under this chapter shall be governed by chapter 602.

[L 1961, c 103, § 15; Supp, § 6C-15; HRS § 91-15; am L 1979, c 111, § 10]

NOTES, REFERENCES, AND ANNOTATIONS

Right of an agency to appeal.

The right of an administrative agency to appeal an adverse ruling is limited to the situation where an individual as an aggrieved party prevails in appellate court, making the agency an aggrieved party with respect to implementation of legislation entrusted to it for administration. [In re Eric G.](#), 65 Haw. 219,

[649 P.2d 1140 \(1982\)](#); [Fasi v. State Pub. Emp. Relations Bd., 60 Haw. 436, 591 P.2d 113 \(1979\)](#).

Effect of other law.

In the enactment of 1970 Haw. Sess. Laws, Act 188, amending former § 641-1, the legislature did not specifically repeal the appeal provided for in this section. [State v. Gustafson, 54 Haw. 519, 511 P.2d 161 \(1973\)](#). Cited in [Homes Consultant Co. v. Agsalud, 2 Haw. App. 421, 633 P.2d 564 \(1981\)](#); [Santos v. State, DOT, 64 Haw. 648, 646 P.2d 962 \(1982\)](#); [Foodland Super Mkt., Ltd. v. Agsalud, 3 Haw. App. 569, 656 P.2d 100 \(1982\)](#); [Feliciano v. Board of Trustees, 4 Haw. App. 26, 659 P.2d 77 \(1983\)](#); [Foster Village Community Ass'n v. Hess, 4 Haw. App. 463, 667 P.2d 850 \(1983\)](#); [Outdoor Circle v. Castle Trust Estate, 4 Haw. App. 633, 675 P.2d 784 \(1983\)](#).

LEGAL PERIODICALS

University of Hawaii Law Review.

Article, Public Employee Arbitration in Hawaii, A Study in Erosion, 2 U. Haw. L. Rev. 477 (1981).

Article, Appellate Standards of Review in Hawaii, 7 U. Haw. L. Rev. 273 (1985).

Note, Outdoor Circle v. Harold K.L. Castle Trust Estate: Judicial Review of Administrative Decisions, 7 U. Haw. L. Rev. 449 (1985).

§ 91-16 Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

[L 1961, c 103, § 16; Supp, § 6C-16; HRS § 91-16]

§ 91-17 Federal aid.

The provisions of [section 91-14](#) shall not be applicable where such applicability would jeopardize federal aid or grants of assistance.

[L 1961, c 103, § 19; Supp, § 6C-17; HRS § 91-17]

§ 91-18 Short title.

This chapter may be cited as the Hawaii Administrative Procedure Act.

[L 1961, c 103, § 20; Supp, § 6C-18; HRS § 91-18]