

HAWAI'I REVISED STATUTES
TITLE 8. PUBLIC PROCEEDINGS AND RECORDS
CHAPTER 91
ADMINISTRATIVE PROCEDURE

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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]

§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]

§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(1)]

§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(1)]

§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, §2(2); am L 2000, c 283, §6]

§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]

§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, §2(3)]

§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, §2(4)]

§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]

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

§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]

[§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]

§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; gen ch 1985; am L 2003, c 76, §2]

[§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]

§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]

§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]

§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; gen ch 1985]

§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) 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.

(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) A rbitrary, 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]

§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]

§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]