
A BILL FOR AN ACT

RELATING TO ENDANGERED AND THREATENED SPECIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 195D, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§195D- Contested cases challenging issuance of a
5 habitat conservation plan or safe harbor agreement and
6 accompanying license. (a) No person may challenge the approval
7 of a habitat conservation plan or safe harbor agreement or the
8 issuance of an accompanying license except through a contested
9 case hearing before the board in accordance with chapter 91.

10 (b) In any contested case challenging the approval of a
11 habitat conservation plan or safe harbor agreement and the
12 issuance of an accompanying license, any party alleging an
13 emergency posing a significant risk to the well-being of any
14 species of fish, wildlife, or plant may petition for an
15 emergency stay of the habitat conservation plan or safe harbor
16 agreement and accompanying license. If the board has not yet
17 made a determination of entitlement to a contested case hearing,
18 any person alleging an emergency posing a significant risk to



1 the well-being of any species of fish, wildlife, or plant who
2 has requested a contested case to challenge the approval of a
3 habitat conservation plan or safe harbor agreement and
4 accompanying license may petition for an emergency stay. The
5 chairperson or hearings officer, if one has been selected, shall
6 conduct a hearing and render a decision on the petition for
7 emergency stay within forty-eight hours after the filing of the
8 petition.

9 (c) Any person aggrieved by a decision by the chairperson
10 or hearings officer to grant or deny a stay of a habitat
11 conservation plan or safe harbor agreement and accompanying
12 license or by a failure of the chairperson or hearings officer
13 to render a timely decision on a petition for a stay may
14 immediately seek review in the circuit court of the decision or
15 failure to render a decision pursuant to section 91-14.

16 (d) Where the chairperson or hearings officer has denied
17 or failed to render a decision on a petition for a stay of a
18 habitat conservation plan or safe harbor agreement and
19 accompanying license, the reviewing court may order a stay if
20 the criteria set forth in section 91-14(c) have been met."



1 SECTION 2. Section 195D-2, Hawaii Revised Statutes, is
2 amended by adding a new definition to be appropriately inserted
3 and to read as follows:

4 "Chairperson" means the chairperson of the board of land
5 and natural resources."

6 SECTION 3. Section 195D-27, Hawaii Revised Statutes, is
7 repealed.

8 [~~§195D-27 Administrative enforcement of rules, plans,~~
9 ~~agreements, or licenses. (a) Any person may petition the~~
10 ~~chairperson to appoint a hearings officer to hear a request to~~
11 ~~enjoin any person, including the State and any other government~~
12 ~~agency, alleged to be in violation of this chapter, including~~
13 ~~any rule adopted pursuant to this chapter, habitat conservation~~
14 ~~plan, safe harbor agreement, or incidental take license, or to~~
15 ~~require the State to take action to enforce this chapter,~~
16 ~~including any rule adopted pursuant to this chapter or any term~~
17 ~~of a habitat conservation plan, safe harbor agreement, or~~
18 ~~incidental take license.~~

19 ~~(b) Upon receipt of a petition, the chairperson shall make~~
20 ~~a diligent effort to resolve the subject matter of the petition~~
21 ~~and, if appropriate, to cause the noncomplying or other~~
22 ~~responsible party to comply with the habitat conservation plan,~~



1 ~~safe harbor agreement, or incidental take license. If the~~
2 ~~chairperson is unable to resolve the subject matter of the~~
3 ~~petition within a period of time deemed reasonable under the~~
4 ~~circumstances, but in no event more than ninety days; or if the~~
5 ~~petitioner is not satisfied with the chairperson's resolution of~~
6 ~~the subject matter, then the chairperson shall appoint a~~
7 ~~hearings officer to hear the petition. The hearings officer~~
8 ~~shall commence a contested case hearing in accordance with~~
9 ~~chapter 91 and, within thirty days of the completion of the~~
10 ~~hearing, grant in whole or in part, or deny the petition.~~

11 ~~(c) Nothing in this section shall grant any authority~~
12 ~~whatsoever upon a hearings officer to assess monetary damages or~~
13 ~~criminal penalties against any party found to be in violation of~~
14 ~~this chapter, however, the hearings officer shall issue findings~~
15 ~~of fact and, if appropriate, an order directing the party found~~
16 ~~to be in violation to take specific action to comply with this~~
17 ~~chapter.~~

18 ~~(d) Any person who believes that a violation of a habitat~~
19 ~~conservation plan, safe harbor agreement, or incidental take~~
20 ~~license has occurred, is occurring, or is likely to occur, may~~
21 ~~petition the chairperson for an immediate hearing. The petition~~
22 ~~shall be accompanied by an affidavit alleging:~~



1 ~~(1) Specific facts showing that the continued existence of~~
2 ~~an endangered or threatened species is likely to be~~
3 ~~jeopardized unless the alleged violation is~~
4 ~~immediately enjoined; and~~

5 ~~(2) The efforts that have been made to notify the~~
6 ~~landowner of the alleged violation.~~

7 ~~If the chairperson finds that there exists good cause for a~~
8 ~~hearing, then a hearings officer shall be appointed who shall~~
9 ~~conduct a hearing forthwith, and in any event within forty eight~~
10 ~~hours after the filing of the petition. If the hearings officer~~
11 ~~determines that there is a substantial likelihood that the~~
12 ~~continued existence of an endangered or threatened species will~~
13 ~~be jeopardized unless the violation is immediately enjoined,~~
14 ~~then the hearings officer shall order temporary injunctive~~
15 ~~relief, which shall expire upon such terms as the hearings~~
16 ~~officer determines."]~~

17 SECTION 4. Act 380, Session Laws of Hawaii 1997, as
18 amended by Act 3, Session Laws of Hawaii 2001, as amended by Act
19 90, Session Laws of Hawaii 2006, is amended by amending section
20 13 to read as follows:

21 "SECTION 13. This Act shall take effect upon its
22 approval [~~; provided that no new safe harbor agreements, habitat~~



1 ~~conservation plans, or incidental take licenses issued pursuant~~
2 ~~to section 195D-4, 195D-21, or 195D-22, Hawaii Revised Statutes,~~
3 ~~shall be approved or issued subsequent to July 1, 2012]."~~

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

6 SECTION 6. This Act shall take effect on July 1, 2050.



Report Title:

Conservation of Wildlife; Contested Case Hearing

Description:

Requires persons challenging a conservation plan, safe harbor agreement, or accompanying license to bring a contested case hearing before the board of land and natural resources pursuant to chapter 91, Hawaii Revised Statutes. Repeals provision on administrative enforcement of rules, habitat conservation plans, safe harbor agreements, and incidental take licenses. Repeals the prohibition on approval of issuance of new safe harbor agreements, habitat conservation plans, and incidental take licenses after July 1, 2012. Effective 7/1/2050. (SD2)

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