STANDING AND TIME LIMITATIONS TO BRING ENVIRONMENTAL ACTIONS

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FOREWORD

This study on standing to bring environmental actions and time limitations within which such actions are permitted was prepared in response to House Resolution No. 678, H.D. 1, of the Ninth Legislature of the State of Hawaii, Regular Session of 1977.

Comments on this study were solicited from various interested parties in order to fulfill the input requirement directed in the resolution. The Outdoor Circle, Department of the Attorney General, Land Use Commission, Department of Land and Natural Resources, Environmental Quality Commission, and the General Contractors Association provided responses and their cooperation is sincerely appreciated.

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Chapter 1

INTRODUCTION

House Resolution No. 678, H.D. 1 (Appendix A), adopted by the House of Representatives at the Regular Session of 1977, requested the Office of the Legislative Reference Bureau to review current provisions for standing to sue and the time limitations within which such actions are permitted, to consider input from the various affected agencies and community groups, and to submit a report along with any conclusions and recommendations for legislative action to make these provisions internally consistent with minimum social costs.

In this study standing to sue regarding the environment will be discussed, but the term "environment" is difficult to define. The "environment", as used in this study, means the totality of circumstances surrounding an organism or group of organisms, specifically, the combination of external or extrinsic physical conditions that affect and influence the growth and development of organisms.[1] This study is primarily concerned with statutes relating to the physical surroundings such as the earth, air, and water and includes the classification and use of land. Statutes relating to the protection of animal, bird, and vegetable life, protection of fish and plant life, protection of marine life, junkyard control, and regulation of outdoor advertising[2] were omitted from this study.

The plaintiff in a civil action must have standing to bring the action, i.e. the person bringing the action must be the proper person to do so. Generally, the plaintiff must be the person injured by the act of which the person complains. For instance, where A is injured by B, only A would have standing to bring suit, and C could not file an action for this injury. The court's determination that a person has standing only means that the person can bring an action into court. The merits of the case would be determined later if and only if the person has standing. If

the person lacks standing, then the case on its merits never reaches the court for a decision.

There are two situations where a private individual (or group) may seek standing to bring an action. The first situation is where an individual seeks standing to bring an action in the courts without having gone through the administrative process. The second situation is where the individual is involved in an action which begins at the administrative level, and seeks standing at the administrative hearing and again in the courts while seeking judicial review of the administrative decision. In both of these situations standing may be obtained under a statute (if there is one) or under case law.

The statute of limitation establishes the time within which action must be brought or be subject to dismissal by the court. Thus, even if the person has standing to bring the action, if he brings an action after the time period has expired, the action may be dismissed without a hearing on the merits. Standing and statutes of limitation are prerequisites which have to be met before a plaintiff can even present the case to the court.

Chapter 2

STANDING TO BRING AN ACTION ORIGINALLY IN THE COURTS

PART I.
STANDING IN THE STATE COURTS

Standing to bring an environmental action originally in the courts without any involvement in the administrative agency process may be based on either statute or common law. A statute which specifically grants or determines standing in a particular case governs the question of standing in that case. Common law, the body of law developed by the courts prior to and independent of statutory (legislative) law determines standing only in the absence of a statute. The courts, however, may have to interpret statutory standing provisions and may depend on common law in their interpretation of the statute. Standing, however, is based on the statute and not on common law in this interpretive situation.

While specific statutory standing to bring an environmental action without any prior involvement in the administrative process does not exist, standing is granted under section 632-1, Hawaii Revised Statutes, to seek a declaratory judgment where the plaintiff asserts a concrete interest in a legal relation. For example, in an action brought under section 632-1, Hawaii Revised Statutes on the validity of rezoning ordinances, the Hawaii Supreme Court held that the plaintiffs had standing because they had a concrete interest in a legal relation. In making the determination on standing, the Court stated:[1]

> Plaintiffs' interest in this case is that they "reside in very close proximity" to the proposed development. In fact two of the plaintiffs apparently "live across the street from said real property" upon which defendants plan to build high rise apartment buildings, thus restricting the scenic view, limiting the sense of space and increasing the density of population.

Section 91-7, Hawaii Revised Statutes, appears to be the only other statute on standing which may be used to bring an environmental action originally in the courts, and provides that any interested person may obtain a declaratory judgment on the validity of an agency rule without asking the agency to make a ruling thereon beforehand.

Hawaii case law on standing to bring an environmental action originally in the courts without any prior involvement in the administrative process is sparse, perhaps because most environmental actions do involve some administrative agency decision and process. Where there is involvement in the agency process, administrative law imposes additional requirements which the plaintiff must meet to seek judicial review, requirements which the plaintiff would not have to meet if the action was brought originally in the courts. For example, the courts require a plaintiff seeking judicial review of an administrative decision to have exhausted any existing administrative remedies before coming to court; i.e. the plaintiff must appeal the decision within the administrative framework before the courts will review the case.

The general rule on standing to bring environmental actions for enforcement of statutes and rules is that the state (usually by the attorney general) has standing, but a private individual has standing only if the individual suffered some injury peculiar to the individual apart from an injury to the public.[2] Generally mere interest in the enforcement of laws is not enough, although, some courts allow standing for a private individual to enforce public rights where the attorney general has refused to act. In this latter situation it appears that the individual need not have suffered an injury peculiar to that individual, and that the individual's interest in enforcement of state law is enough.[3]

PART II.
STANDING IN THE FEDERAL COURTS

The doctrine of standing to bring an action in the federal courts has experienced repeated change since 1968. Prior to 1968 the federal law

on standing was expressed in Frothingham v. Mellon[4] where the United States Supreme Court held that to have standing to attack a federal spending program, the plaintiff must show that the plaintiff has sustained or is in immediate danger of sustaining some direct injury from the enforcement of the statute, and not merely that the plaintiff suffered in some indefinite way as a member of the public.

In the federal courts standing is part of the issue of justiciability. Article III of the U.S. Constitution restricts the federal judicial power to cases and controversies.[5] The question of standing then, according to the United States Supreme Court in Flast v. Cohen[6] in 1968, is whether the plaintiff has a personal stake in the outcome of the controversy and whether the dispute touches upon the legal relations of parties having adverse legal interests. The Court held that there must be a logical nexus (connection) between the status asserted by the plaintiff and the claim sought to be adjudicated. The plaintiff in the Flast case was required to show a logical connection between his status (as a federal taxpayer) and the type of statute attacked (taxing and spending), and also between his status (as a federal taxpayer) and the precise nature of the constitutional infringement alleged (statute attacked violates specific constitutional limitations on spending and taxation powers).

In 1970 the United States Supreme Court in Association of Data Processing Service Organizations, Inc. v. Camp[7] rejected the requirement that standing be based on a legal interest. In making this decision it overruled a 1938 case in which the Court denied standing unless the right invaded was a legal right, one of property, contract, protection against torts, or founded upon a statute conferring a privilege.[8] The Court in the Association of Data Processing Service Organizations, Inc. case stated that the legal interest test goes to the merits, and the question of standing is different. The Court held that the plaintiff has standing if he alleges that the challenged action has caused him injury in fact, economic or otherwise, and if the interest sought to be protected is arguably within the zone of interest to be protected or regulated by the state or

constitutional guarantee in question. The plaintiff's interest can be noneconomic, i.e. aesthetic, conservational, recreational, and spiritual values have been recognized.

In 1972 the United States Supreme Court in Sierra Club v. Morton[9] held that noneconomic injury was enough for standing but denied standing to the Sierra Club because the club failed to allege that either it or any of its members would be affected by the challenged action in their use of the area in question.

Mere interest in the problem as a long standing advocate of environmental protection was not enough to confer standing on the Sierra Club as an aggrieved or adversely affected person under the federal Administrative Procedure Act.

There is some indication that the federal trend of opening up standing to sue in the public interest from the Frothingham case to the Association of Data Processing Service Organizations, Inc. case is slowing down. In 1974 the United States Supreme Court in United States v. Richardson[10] (case demanding accounting of C.I.A. spending) and in Schlesinger v. Reservists Committee to Stop the War[11] (case attacking armed services reserve status of congressmen) held that standing required some direct or concrete injury suffered by the plaintiff and that generalized grievances about the conduct of government or an interest held in common with the public is not enough. The fact that there may not be anyone else to bring an action is not a factor in standing, and direct injury suffered by the plaintiff is required.

Summary

Standing to bring an environmental action originally in the courts without prior involvement in the administrative process may be based on either statute or case law. Specific statutory standing in this area does not exist in Hawaii. Hawaii case law on standing in this area is sparse.

The general rule on standing to bring environmental actions to enforce statutes or rules is that the state has standing, but a private individual has standing only if the individual suffered some injury peculiar to the individual apart from an injury to the public.

The doctrine of standing in the federal courts has experienced repeated change since 1968, directed in a more liberal trend. The present federal law is that a plaintiff has standing if the plaintiff alleges an injury suffered in fact, economic or otherwise, and that the interest sought to be protected is arguably within the zone of interest to be protected or regulated by the statute or constitutional guarantee in question.

Chapter 3

STANDING TO BRING AN ACTION INVOLVING THE ADMINISTRATIVE PROCESS

In an action which begins with the administrative agency process and which may eventually be brought to court for judicial review of the agency process and decision, an individual may seek standing in either the administrative decision process or in the courts for review, or in both situations. Generally the person will be required to have sought standing in the administrative process as an exhaustion of administrative remedies before being able to bring an action for judicial review.

Hawaii Administrative Procedure Act

The Hawaii Administrative Procedure Act (hereinafter referred to as HAPA), enacted in 1961, is crucial in any study on standing to bring environmental actions. All state and county boards, commissions, departments, and officers authorized to make rules or to adjudicate contested cases must conform to the requirements of chapter 91, Hawaii Revised Statutes (HAPA), when acting in either a rule-making (quasi-legislative) or in an adjudicative (quasi-judicial) capacity, and compliance is mandatory even if the statutes creating the agency fail to mention the HAPA.[1]

The scope of the Hawaii Administrative Procedure Act[2] can be illustrated by citing the definitions of "agency", "rule", "contested case", and "party" in section 91-1, Hawaii Revised Statutes. "Agency" is broadly defined to include any state or county board, commission, department, or officer, except those in the legislative and judicial branches, authorized by law to make rules or to adjudicate contested cases. Authorization to make rules or to adjudicate contested cases is found in various environmental statutes.[3] The term "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, but does not include internal management regulations not affecting the private rights of or procedures available to the public. The term "contested case" means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after opportunity for an agency hearing.

The term "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. The HAPA is based upon the Revised Model State Act,[4] and Mr. Frank E. Cooper, principal authority on the model act, comments on the definition of "party":[5]

> The first branch of the statutory definition--embracing each person named or admitted as a party--merely restates long-established legal concepts. The second branch--including within the term each person or agency properly seeking and entitled as of right to be admitted as a party--serves to protect the right of a party who is entitled to intervene to seek judicial review, or otherwise attack, an administrative order if his timely petition to intervene is denied. Although not admitted as a party, such a person possesses, by virtue of the statutory definition, all the rights he would have had if the agency had permitted him to intervene.

The Hawaii Administrative Procedure Act has provisions in section 91-3, Hawaii Revised Statutes, for the adoption, amendment, or repeal of rules, and in section 91-9, Hawaii Revised Statutes, for the hearing of contested cases. It is important to remember that the HAPA applies to many environmental suits, but environmental suits and issues make up only a small portion of agency action subject to the HAPA. There are many other types of agency rule making and adjudication which have nothing to do with the environment.

Standing Under the HAPA

Standing under the HAPA is largely defined in terms of "interested persons" and "aggrieved persons". The statutes under the HAPA do not clarify who are interested or aggrieved persons, and clarification has been largely left up to the courts.

An interested person under the HAPA:

(1) Shall be afforded the opportunity to submit data, views, or arguments prior to the adoption, amendment, or repeal of a rule (section 91-3, Hawaii Revised Statutes);

(2) May petition an agency for the adoption, amendment, or repeal of a rule (section 91-6, Hawaii Revised Statutes);

(3) May obtain a declaratory judgment as to the validity of a rule (section 91-7, Hawaii Revised Statutes); and

(4) May petition an agency for a declaratory order on the applicability of any statute or rule (section 91-8, Hawaii Revised Statutes).

The term "interested person" is used in the HAPA to define standing to participate in procedures relating to rules, largely at the agency level. The focus and purpose of this study, on the other hand, is standing and time limitations to bring an action seeking judicial review of an agency decision, usually in a contested case. This study will not discuss in detail the state court's definition of "interested person" since rule making is not the main problem and focus of this study. It must be noted, however, that some of the courts' discussion of "aggrieved person" are in terms of plaintiff's legal interest,[6] and thus, this discussion could be said to apply to interested persons as well.

Section 91-9, Hawaii Revised Statutes, gives all "parties" an opportunity for a hearing on a contested case. A "party" is defined as a person or agency admitted as a party or properly seeking and entitled to be admitted as a party in any court or agency proceeding.[7] Under this definition a party is a person who has been admitted or who is entitled

under the law on standing to be admitted, and review of the agency decision on the admission of parties is apparently left ultimately to the courts. The Hawaii Supreme Court has held that a person may be aggrieved and entitled to judicial review in a contested case even though the agency denied the person standing as a party at the agency level as long as the person participated in the case in another capacity or attempted to participate.[8]

The term "aggrieved party" is used in section 91-15, Hawaii Revised Statutes, to provide that an aggrieved party may secure a review by the supreme court under the Hawaii Rules of Civil Procedure of any final circuit court judgment under the HAPA.

The term "aggrieved person", the crucial term in discussing standing to bring environmental suits, is used in section 91-14, Hawaii Revised Statutes, and various environmental statutes[9] to provide that an aggrieved person may seek judicial review of an agency decision.

Several environmental statutes[10] attempt to provide greater detail as to who is entitled to standing. For example, in statutes relating to land, landowners whose property will be directly affected may apply for changes in forest and water reserve zones (section 183-41, Hawaii Revised Statutes), and persons with some property interest in the land sought to be reclassified, who reside on the land, or who can show that they will be so directly and immediately affected by the proposed change that their interest in the hearing is clearly distinguishable from the general public, shall be admitted as parties in the agency proceeding (section 205-4, Hawaii Revised Statutes). Standing is specifically restricted in section 343-6, Hawaii Revised Statutes, to allow judicial review of the acceptability of an environmental impact statement only to affected agencies and persons who will be aggrieved and who have submitted written comments to the statement.

Hawaii Case Law on Standing

In contrast to the federal cases on standing, Hawaii's courts started with a liberal view on standing, later taking a more conservative trend. As early as 1883, in Castle v. Kapena,[11] the Hawaii Supreme Court recognized standing for citizens and taxpayers to sue for a writ of mandamus to prevent the illegal act of a public official, stating that otherwise there may not be any remedy since the attorney general was unlikely to proceed against the defendant, a member of the same cabinet. The Court, in 1904, in Lucas v. American-Hawaiian Engineering and Construction Co., Ltd.,[12] upheld standing in a taxpayer suit to restrain a public official from performing an illegal act, stating that plaintiff did not have to show actual damage to himself and others similarly situated since the object of the action was to prevent a law violation by a public officiale

The Hawaii Supreme Court adopted a more conservative view on standing and denied standing in two cases just prior to the enactment of the HAPA. In 1960 in Gustetter v. City and County,[13] the Court held that there was no appeal to the circuit court from an action of an administrative board unless allowed by statute. In 1962 in Mahelona Hospital v. Kauai Civil Service Commission,[14] the Court held that the right of appeal of an administrative decision only existed where there was an appropriate statute or constitutional provision. The Court did not discuss the recently enacted HAPA.

The Hawaii Administrative Procedure Act was enacted in 1961, and according to Mr. Frank E. Cooper, the model act embraces the principle that in contested cases any person who is in fact aggrieved by an administrative decision may seek judicial review.[15] In referring to several state statutes on judicial review by aggrieved persons in contested cases, including section 91-14, Hawaii Revised Statutes, Mr. Cooper states:[16]

> Under all these statutes, the central inquiry in determining standing is not whether a person was a party to the administrative proceeding, or whether he has suffered what is elusively denominated as "legal wrong," but simply whether he

> in fact is aggrieved or adversely affected by the administrative action.

The committee report on House Bill No. 5, now the HAPA, makes no mention of what was meant by an aggrieved person or whether Mr. Cooper's interpretation of standing was intended for use in Hawaii.[17] The Hawaii Supreme Court has taken a different and more conservative view of standing than Mr. Cooper.

In 1969 in Dalton v. City and County of Honolulu,[18] the Hawaii Supreme Court held that the plaintiff had standing to seek a declaratory judgment under section 632-1, Hawaii Revised Statutes, as a party asserting a legal relation in which he had a concrete interest. The Court states that plaintiffs' interest in the case was that they reside in very close proximity to the proposed development which would restrict the scenic view, limit the sense of space, and increase the population density.

In 1971 in East Diamond Head Association v. Zoning Board of Appeals,[19] the Hawaii Supreme Court discusses standing as an aggrieved person under section 91-14, Hawaii Revised Statutes, relating to judicial review of contested cases. The Court reaffirmed its holding in the Dalton case that an owner whose property adjoins land subject to rezoning has a legal interest worthy of judicial recognition to preserve the continued enjoyment of his realty by protecting it from threatening neighborhood change. The Court stated that the zoning variance immediately and directly affected each homeowner (including the plaintiffs). Citing another case, Hattem v. Silver, the Court stated that to be a person aggrieved who may attack a zoning board decision one must be specially, personally, and adversely affected as distinguished from one who is merely in the general class of a taxpayer whose only interest is to have strict enforcement of zoning regulations, and that there must be special injury or damage to one's personal or property rights as distinguished from the role of only being a champion of causes. The Court held that under the Dalton and Hattem cases, the plaintiffs had standing.

The Court imposed another requirement for standing under section 91-14, Hawaii Revised Statutes, as an aggrieved person in the East Diamond Head Association case. The Court held that some participation in the contested case by the plaintiffs was necessary to qualify as aggrieved persons entitled to judicial review under section 91-14, Hawaii Revised Statutese The agency failed to provide for intervention procedures and thus plaintiffs' failure to intervene did not affect standing since the plaintiffs complied with all existing, necessary administrative procedures.

In 1972 in City and County of Honolulu v. Public Utilities Commission,[20] the Hawaii Supreme Court held that standing as a person aggrieved by a final decision in a contested case under section 91-14, Hawaii Revised Statutes, is limited to persons who participated in the contested case under agency rules allowing either intervention as a party or some other participation. The Court rejected the appellant's argument that participation in the contested case was not intended since the legislature used "aggrieved person" instead of "aggrieved party". Appellants argued that use of the term "party" implied the necessity of participation in the proceedings whereas use of the term "person" did note

The East Diamond Head Association case can be distinguished from the City and County of Honolulu case. In the former case the agency failed to provide for intervention, and thus plaintiffs were not required to intervene in the contested case at the administrative level. In the latter case the agency provided for intervention or some other participation, and plaintiff's failure to take advantage of available administrative procedures for participation barred standing as an aggrieved person. The Court in the City and County of Honolulu case emphasized appellant's failure to comply with the agency's prescribedeadministrative procedurese As stated earlier in administrative law a person seeking judicial review must first exhaust his administrative remedies, if available, to give the agency a chance to correct its error.[21]

In 1973 in Waianae Model Neighborhood Area Association v. City and County,[22] the Hawaii Supreme Court held that the corporation plaintiff had standing under its own right, reaffirming the conservative holdings in the Dalton and East Diamond Head Association cases. The Court distinguished a federal case, Sierra Club v. Morton, finding that there was a sufficient showing of individualized harm to plaintiff and its members.

In 1975 in Melemanu Woodlands Community Association, Inc. v. Koga,[23] the Hawaii Supreme Court held that an appeal to a circuit court from an administrative board order is allowed only to the extent specifically authorized by statute. This holding is similar to the conservative view of standing held by the court in the Gustetter and Mahelona Hospital cases prior to enactment of the HAPA.

In 1975 in In re Application of Hawaiian Electric Co., Inc.,[24] the Hawaii Supreme Court stated that the question of standing is an elementary proposition that one who is injured by the act of another may legally challenge the propriety of the other's action. The Court held that intervention as a party in a rate hike hearing is in the discretion of the agency. In discussing standing as an aggrieved person under section 91-14, Hawaii Revised Statutes, the Court cited the Dalton and East Diamond Head Association cases and held that a person aggrieved is one whose personal or property right has been injuriously or adversely affected by the agency's action, that the plaintiff must be specially, personally, and adversely affected by the agency action, and that the plaintiff must have been involved in the contested case. The Court held that as a user of electricity, the plaintiff was aggrieved by the electrical rate hike. Although the Court found that the public utilities commission was an indispensable party (to the appeal), the Court permitted standing to the plaintiff noting that the public utilities commission staff did not appeal the decision of the public utilities commission and that to deny standing would be to silence the voice of the public interest.

Standing is a difficult term to define in concrete terms applicable to all, and the Court's interpretation of standing and aggrieved persons is vague. The Court appears to define standing in light of the circumstances of each case, and this case by case approach is probably necessary since the plaintiff's interests in a land case may not be the same in another case, e.g. water pollutione

It appears that to have standing as an aggrieved person in Hawaii the plaintiff must show that the plaintiff has a legal interest (personal or property right) injured or adversely affected by the agency action, that this injury is personal and peculiar toethe plaintiff as an individual and not as a member of the general public, and that the plaintiff participated in the contested case under available agency procedures.

Summary

In an action which begins with the administrative process, a person seeking judicial review of the administrative process and decision will be required to have exhausted the administrative remedies available to that person before the court will grant judicial review. The Hawaii Administrative Procedure Act (HAPA) governs the rule-making and adjudicatory processes of governmental agencies, including those processes involving environmental issues.

Standing under the HAPA for the purposes of this study is defined in terms of "aggrieved persons", a term which has been left to the courts to interpret. Under the HAPA and specific environmental statutes, a person aggrieved by an agency decision may seek judicial review of that decisione Some environmental statutes define standing in more specific terms, e.g. having an interest in the land being reclassified.

A review of Hawaii case law on standing shows the Hawaii Supreme Court starting out with a very liberal view of standing and adopting a more conservative trend in recent years even after passage of the HAPA

in 1961. Mr. Cooper, principal authority on the Revised State Model Act on which the HAPA is based, interprets standing as having suffered injury in fact, a position similar to the federal courts. There is no indication of whether the legislature intended to adopt the injury in fact basis for standing when the legislature adopted the HAPA. The Hawaii Supreme Court has held to the more conservative view, stating that there is no right to appeal an administrative decision without an appropriate statute or constitutional provisione

The present Hawaii case law on standing as an aggrieved person in a HAPA contested case is that to have standing, the plaintiff must show that the plaintiff has a legal interest (personal or property right) adversely affected by the agency action, that this injury is personal and peculiar to the plaintiff as an individual and not as a member of the general public, and that the plaintiff participated in the contested case under available agency procedures.

Chapter 4

TIME LIMITATIONS ON ENVIRONMENTAL ACTIONS

There are two types of time limitation statutes which are discussed in this chapter; the first is the statute of limitation stating the time in which an action must be brought into court, and the second are time provisions within environmental statutes and the HAPA stating the time within which some act must be performed at the agency level. The statute of limitation operates independently of standing, i.e. the plaintiff may have standing to bring the action, but if the time period of the statute of limitation has passed, then the court may dismiss the action without going into the merits of the case. Similarly, the petitioner at the agency level must meet time limitation requirements even if he has standing or the agency may refuse to hear his case.

The statute of limitation for tort damages and for actions against the state is two years.[1] There is a six-year statute of limitation for personal actions of any nature whatsoever not specifically covered by state law.[2] The six-year limitation appears to also apply to actions in equity and environmental actions are likely to be actions in equity, e.g. injunctions, rather than actions at law (money damages). There does not appear to be any problem in environmental equity actions meeting the time limitation of the statute of limitation since actions in equity generally seek to remedy an ongoing situation, and each day constitutes a new violation for which a new statute time period beginsc The environmental action in equity more likely would be barred by the doctrine of laches rather than by the statute of limitationc

Laches is imposed in equity actions by the court and denies the equitable relief sought where the plaintiff unduly delayed in bringing the action and the defendant was prejudiced by the delayc Unlike the statute of limitation, laches does not depend on a specific time period but instead is based upon the equitable considerations of the particular case.[3] Thus,

laches could bar an action in equity even if it was brought where the plaintiff had standing and before the statute of limitation had runc On the other hand, under its equity powers the court may prohibit the defendant from raising the statute of limitation to bar an action where it would be equitable to do so, e.g. where the defendant used fraud to prevent the plaintiff from bringing the action in time.[4]

Various environmental statutes have some time provision within which some act by the agency or petitioner must take place and vary in the amount of time mandated.[5] For example, the agency has 90 days to hold a hearing on coastal zone management and 180 days to hold a hearing on land use districting.[6] The agency has 30 days to render a decision on coastal zone management and 180 days to decide on land use districting.[7]

Some environmental statutes provide for an automatic granting of the petitioner's request where the agency fails to hear and decide on the request within the required time.[8] In Town v. Land Use Commission,[9] the Hawaii Supreme Court held that where a statute (section 205-4, Hawaii Revised Statutes) is plain and unambiguous that a decision must be rendered by the agency within a specified time period, it is mandatory and not merely directiveç and any decision rendered by the agency after the time period has elapsed is void. The Court recognized that the petitioner may waive the time requirement but held that the waiver was insufficient because other interested parties (opposing adjoining landowners) also had the right to have the time requirement met. Apparently the petitioner in this case requested continuances of the hearing, beyond the time period, in hopes of tiring out the opposing adjoining landownersc

An aggrieved party under the HAPA has up to 30 days to seek judicial review, and a person seeking judicial review of the environmental impact statement has from 60 to 180 days to seek judicial review.c[10]

Summary

Environmental actions have two types of time restrictions, the statute of limitation stating the time within which an action must be brought into court and time limitations within which some act must be performed at the agency level. These time limitations must be met, even if the plaintiff has standing, or the court (or the agency as the case may be) may dismiss the action. The six-year statute of limitation applies to environmental actions in equity.

Most environmental actions are likely to be actions in equity, e.g. injunctions, and as such are subject to laches, a doctrine under which a court may dismiss a case, even if the plaintiff had standing and the action was brought within the statute of limitation. There are also various time limitations in the HAPA and specific environmental statutes within which the agency must act to grant a hearing or render a decision or the petitioner must appeal.

Chapter 5

LIMITATIONS ON ACTIONS IN EQUITY

A brief discussion of actions in equity is necessary since environmental actions must be brought in equity, and the courts in hearing an equity action have broad powers to impose limitations and to bar the action. For example, the courts have allowed actions to be brought after the statute of limitation had run where it was equitable to do so.[1] The requirements of standing and the statutes of limitations (generally) must still be met.

Actions in equity include primarily the injunction, sometimes defined as a restraining order or as a prohibitory writ restraining a person from committing an act, which may be issued by the court in its discretion considering the principles of equity and the circumstances of the particular case.[2] Generally the court will issue an injunction only where the remedy at law is inadequate, e.g. where damages alone will not be enough or where the threatened harm would be irreparable.[3]

In deciding whether to issue the injunction, the court will examine the conduct of the plaintiff to determine whether it would be fair or equitable to grant to that plaintiff the remedy sought. The court might bar the injunction where the plaintiff unduly delayed (laches) in bringing the action and the delay resulted in prejudice to the defendant or where the plaintiff acquiesced in the wrong being committed.[4] For example, where the defendant starts to build not knowing that a small part of the building would be on plaintiff's land, and the plaintiff knows of the error but lets the defendant build without saying anything, the court may deny plaintiff an injunction against the trespass to plaintiff's land. The plaintiff, however, may still has a remedy at law for money damages for trespass even though the equitable relief is denied.

The writ of mandamus is an order from the courts issued in the name of the State to a public official requiring the official to perform a specified duty arising from the office which will be issued only where there is a clear right in the plaintiff, a corresponding clear duty in the defendant, and no other adequate relief available.[5] Mandamus may compel the performance of specific, imperative, and ministerial duties, but will not compel the performance of discretionary dutiesc[6] The courts will not issue mandamus to choose for a public official which of two discretionary acts to perform, e.g. to grant or not to grant a permit. The courts may issue mandamus, however, to require the official to make the decision where the official is under a duty to decide.[7] Mandamus is classified as a legal remedy, but its issuance or nonissuance is largely governed by equitable principles, to be made in the court's discretion.[8]

The law on mandamus in Hawaii is vague because of apparently conflicting provisions. Hawaii's statute on mandamus was repealed in 1972, but the repealing act states that repeal does not signify abolition of the writ.[9] Rule 81.1 of the Hawaii Rules of Civil Procedure states that the writ of mandamus is abolished in the circuit courts except when directed to an inferior court, but relief heretofore available by mandamus may be obtained by appropriate action or motion under the rulesc The relief available under mandamus may still be obtained under the Hawaii Rules of Civil Procedure and is apparently subject to the same equitable principles and limitations as the writ of mandamusc

Summary

The courts have broad powers to limit the bringing of environmental actions in equity, e.g. an injunction, even if the requirements of standing and the statute of limitation are met. The injunction, a restraining order prohibiting some act, may be issued in the court's discretion where the remedy at law is inadequate and where issuance of the injunction would be equitable considering the circumstances of the case and the plaintiff's conduct. The writ of mandamus is subject to

similar equitable considerations although the writ of mandamus is considered a legal remedy. The writ of mandamus is a court order requiring a public official to perform a clear, specific, ministerial duty.

Chapter 6

CONCLUSIONS AND RECOMMENDATIONS FOR LEGISLATIVE ACTION

PART I. SUMMARY

There are no Hawaii statutes and few Hawaii cases relating to standing to bring an environmental action originally in the courts without prior involvement in the administrative process. The general rule on standing to bring an action is that a private individual has standing only if the individual suffered some injury peculiar to the individual apart from any injury to the publicc

The present federal law on standing, part of a more liberal trend in viewing standing, is that the plaintiff must allege an injury suffered in fact, economic or otherwise, and that the injury sought to be protected is arguably within the zone of interest to be protected or regulated by the statute or constitutional guarantee in questionc

The courts will require that a person seeking judicial review of an action originating in the administrative process to have exhausted available administrative remedies before going to court.

The Hawaii Administrative Procedure Act (HAPA) governs the rule-making and adjudicatory processes of governmental agencies, including those involving environmental issues. Standing as a person aggrieved by an agency decision to seek judicial review of the decision is granted in the HAPA and specific environmental statutes. The interpretation of who is an aggrieved person has been left to the courts.

The present Hawaii case law on standing as an aggrieved person, part of a more conservative trend in viewing standing, is that the

plaintiff must show that the plaintiff has a legal interest (personal or property right) adversely affected by the agency action, that this injury is personal and peculiar to the plaintiff as an individual and not as a member of the general public, and that the plaintiff participated in the contested case under available agency procedures.

Environmental actions are subject to the statute of limitation at the court level and various time limitations at the agency level. The time limitations imposed must be met, even if the plaintiff has standing, or the court (or the agency as the case may be) may dismiss the action. Laches, undue delay in bringing an environmental action in equity which results in prejudice to the defendant, might bar the action in equity even if the plaintiff had standing and the action was brought within the time limits of the statute of limitation.

Environmental actions in equity, e.g. an injunction, are subject to equitable limitations imposed by the courts and might be barred by the courts considering the fairness of the case and plaintiff's conduct. The writ of mandamus, a legal remedy, is also subject to these equitable limitations. These equitable limitations might bar an action in equity even if standing and the statute of limitation are mete

PART II.
CONCLUSIONS AND RECOMMENDATIONS

Three possible alternatives for legislative action regarding standing and time limitations to bring environmental actions are presented in this study: placing further restrictions on the filing of environmental actions; maintaining the present law on standing and time limitations, with some minor modification; and opening up standing to allow more private individuals to bring an action.

Further Restrictions on Bringing Actions

Arguments in favor of imposing further restrictions on the bringing of environmental actions by private individuals are that environmental actionse are often frivolous and result in tremendous delay in completion of important private and public projects costing the public and businesses many millions of dollars, create additional hardship for the workers and businesses in the already declining construction industry, and deprive the public and private sectors of necessary projects.[1] Allowing the private individual to bring actions for what are essentially public rights results in the overcrowding of the courts, depriving more worthwhile cases of adequate hearing.[2] If the environmental action has merit, then the proper party to file an action is the attorney general as the government agency trained and responsible for law enforcement.[3]

It may be desirable to more narrowly define what constitutes standing instead of using such terms as "aggrieved" which the courts are required to interpret. For example, standing in sections 183-41 and 205-4, Hawaii Revised Statutes, is granted to land owners whose property will be directly affected or who have some kind of property interest in the land. In statutes not relating to land, e.g. environmental impact statements, it may be necessary to speak of standing in different terms.

Another means to further restrict standing might be to require participation in agency proceedings and exhaustion of administrative review procedures in all relevant statutes before seeking judicial review. For example, under section 343-6, Hawaii Revised Statutes, standing is specifically restricted to persons who are aggrieved and who submitted written comments on the subject matter.

Adoption of statutes denying the right to judicial review of administrative decisions may be another possibility. Statutes denying judicial review have been upheld, but the courts allow exceptions to provide review where constitutional rights are violated, the decision is

not in accordance with law, or vested property rights are affected.[4] The Hawaii Supreme Court has held that there is no right to judicial review except as provided by statute or constitutional provision[5] and might uphold a statute which precludes judicial review. There may be numerous actions to challenge the validity of such statutes or to claim an exception thereunder, and the practical effect may be to increase the number of actions filed.

Under present law, there are specific statutes of limitation for various actions and certain time limitations at the agency level. It may be desirable to provide stricter time limits within which to seek judicial review and to make these time limits apply to all environmental actions.[6]

The requirement that a party post a bond to cover court costs is recognized in Hawaii, e.g. section 607-3.5, Hawaii Revised Statutes, and it is possible to require plaintiffs to post such a bond in environmental actions. House Bill No. 1371,[7] Regular Session of 1977, apparently would go farther and give the courts the power to require the posting of bond equal to 10 per cent of the construction contract. The requirement of posting a bond to cover costs for delay in construction or of imposing extremely strict time limitations may be construed in effect as denying judicial review, and the courts might provide for exceptions similar to those for statutes denying judicial review.[8]

Maintaining the Present Law

Arguments in favor of maintaining the present law on standing and time limitations are that although some minor modification may be desirable, the present law is effective and maintains a good balance between the two extremes, i.e. between further restricting standing and time limitations and opening up standing. The Hawaii Supreme Court's interpretation of standing, i.e. having a legal (personal or property right) interest injured by agency action where such injury is personal to the plaintiff, apart from the injury to the general public,[9] is already more

restrictive than the test of the federal courts and the Revised Model State Act on which the HAPA is based. For example, there is no legal right to freedom from competition, and thus no standing in Hawaii courts to challenge an agency action which increases competition for the appellant. Under the federal courts and the Revised Model State Act, however, the appellant is in fact (though not legally) injured by the agency action and might have standing to seek review.[10]

The legal interest requirement imposed by the Hawaii Supreme Court is the most restrictive view taken by the Hawaii Supreme Court thus far, and has not resulted in a floodgate of frivolous legal actions. It should be noted that statistics on the number of environmental actions brought by private parties were not available. The two most publicized environmental actions in Hawaii in recent years, the reef runway and TH-3 cases, were decided in federal courts under federal law on standing.[11] It should be noted that any changes made in state law on standing will not affect federal court cases.

On the other hand, the legal interest requirement used in state courts appears to be sufficient to allow a judicial forum for the protection of legal rights and interests. A strong policy argument may be made that if an interest is legally recognized as a personal or property right, then that interest should and must be afforded review in a court of law, but anything less, such as an injury in fact, need not be.

Another possible concern in maintaining the present law on time limitations, might be to examine the various time provisions, especially for judicial review, for consistency and efficiency given the particular purposes of the statute. It may be that different time provisions are made because of the differences in subject matter work load incurred under each particular statute.

Opening Up Standing

Arguments in favor of opening up standing are that there is no floodgate of frivolous actions under present law, and that there would not be any floodgate if the statutes were enacted to allow even greater private individual standing to bring an action.[12] If delays occur in completing projects which result in higher costs and more crowded courtrooms, then the delays may be occurring because the persons involved failed to comply with the environmental laws, not because actions are brought to enforce these laws. It would be senseless to have laws for the protection of the public which are not enforcede

The argument that the enforcement of public rights should be left to the attorney general is weak where the attorney general, perhaps due to a heavy caseload, is unable or unwilling to bring environmental suits.[13] The attorney general's failure to bring an action may be detrimental to the public interest. Actions brought by private individuals play an important part in assuring compliance with lawse For example, in the antitrust and civil rights fields, statutes specifically provide for civil actions by private individuals in part to assure greater compliance with the law. Standing in Hawaii is granted where the plaintiff alleges a legal injury personal to that plaintiff individually, apart from any injury to the public.[14] Thus, standing is not merely a question of public rights, there are individual rights involved in which the individual, not the attorney general, would be the proper party to file the action.

One possible way to open up standing might be to adopt the injury in fact test of the federal courts and of the Revised Model State Act and to allow standing where the person is in fact aggrieved (injured) by the agency action, regardless of legal interest or whether the appellant participated in the agency proceeding.

The second possibility is to adopt a statute similar to the Michigan Environmental Protection Act which grants standing to any person to

enforce environmental statutes. Professor Joseph L. Sax, principal author of the Michigan Act, considered the experience in Michigan courts based upon the Act and refutes the argument that such an act would result in a floodgate of frivolous suitse In the first 3 years after enactment of the Michigan Act, only 74 cases were initiated, and of the 47 cases completed at the time that Professor Sax made his report, 26 cases were resolved in favor of the plaintiffs and 16 cases in favor of the defendants, with 5 cases not researched. The average length of the cases was 10 months.[15]

The Michigan Act provides for a bond of $500 to cover court costs.[16] Such a bond to cover court costs should the plaintiff lose the case appears sufficient deterrence to the filing of frivolous suitse

Professor Sax also cites the experience in Michigan that opening up standing actually encouraged state agencies to more actively enforce the environmental laws, helped formulate better laws and enforcement by allowing lower echelon employees to bring out problems regarding the laws and enforcement during testimony at trial, which they might not otherwise have had the opportunity to do.[17] The view that environmental actions and the judicial system would be abused by the citizens of the state if granted more open standing has been refuted in Michigan, and there is no reason to expect Hawaii's citizens to be any less responsible. In 1973, a bill similar to the Michigan Act was introduced in Hawaii but did not passe[18]

Recommendatione Maintain the Present Law

It is the recommendation of the Legislative Reference Bureau that the present law on standing be maintained. The present law on standing appears to be effective in protecting the interests of the environmental groups, construction industry, and the general public. The requirement of a legal injury under the present law of standing is sufficiently broad to allow the required recognition and litigation of legal interests and yet

sufficiently narrow so as not to allow litigation of nonlegal injury (such as injury in fact allowed in the federal courts). There is a strong policy argument that legal injuries should and must be afforded judicial review. The policy argument, however, does not extend to recognition and protection under judicial review of nonlegal injuries. Hawaii's present law on standing, then, maintains a good balance between the extreme alternatives, i.e. between further restricting standing and opening up standing.

The other alternatives, further restricting standing and opening up standing, are unnecessary and do not appear feasible. The arguments (for further restricting standing) that the attorney general is able to vigorously enforce the state environmental laws is subject to question. Due to possibly inadequate staffing and heavy workloads, the attorney general may not be able to adequately enforce environmental laws, and private individuals bringing environmental actions are necessary for adequate enforcement. Furthermore, since the private individual is required to have suffered a legal injury personal and peculiar to that individual, apart from any injury to the general public, protection of private interests as well as enforcement of state laws are involved. Thus, the private individual who suffered the injury, and not the attorney general, appears to be the proper party to bring the action.

The possibilities of precluding judicial review by statute or of imposing strict bond or time limitation requirements may be subject to attack as denying due process (effectively precluding a day in court) and denying equal protection (discriminating against certain classes of individuals). Courts generally have created exceptions to statutes precluding judicial review, and the creation, development, and raising of these exceptions may in effect increase the environmental litigation instead of decreasing it.

Arguments for the third alternative, opening up standing, are also subject to some doubt. There is insufficient data to argue that opening

up standing would not create a floodgate of litigationc Private individuals bringing environmental actions do help to enforce the state environmental laws. The present law on standing, however, is sufficiently broad to allow private individual litigation and adequate enforcement of the laws, and opening up standing appears not to be justified. The experience under Michigan's environmental standing statute does not necessarily mean that Hawaii would not experience a floodgate of environmental litigation under an open standing statute. The judicial system in Michigan is much larger than the judicial system in Hawaii. The cases initiated under an expanded standing statute may not have been a drain on the Michigan court system but might result in overcrowding of Hawaii's court systemc

It is the recommendation of the Legislative Reference Bureau that the present law on standing be maintained.

It is also the recommendation of the Legislative Reference Bureau that all statutes providing for judicial review of an agency decision be amended where necessary to provide for a 30-day time limitation in which to seek judicial review of that decision. Under the present law on time limitations, section 91-14, Hawaii Revised Statutes, provides for a 30-day limit to seek review of contested casesc Some environmental statutes provide for different time periods to seek review while other statutes do not specify any time period.[19] There is no clear reason for the differences in or for the omission of time limitations in seeking judicial review of environmental administrative decisions. Adoption of the 30-day limitation would create a consistency in seeking judicial review of different environmental agency decisions which is now lacking and might make the judicial review process more efficient.

PART IIIc
COMMUNITY AND AGENCY REVIEW OF STUDY

The Office of the Legislative Reference Bureau sent out preliminary drafts of this study to various community groups and agencies for input

as mandated by H.R. 678, H.D. 1, including: Life of the Land; Sierra Club Hawaii Chapter; the Outdoor Circle; Citizens Against Noise; Common Cause Hawaii; Hawaii State Federation of Labor; Home Builders Association of Hawaii; General Contractors Association; Construction Industry Legislative Organization; Department of the Attorney General; Land Use Commission; Department of Land and Natural Resources; and the Environmental Quality Commission. Comments were received from: The Outdoor Circle; Department of the Attorney General; Land Use Commission; Department of Land and Natural Resources; General Contractors Association; and the Environmental Quality Commission.[20] Appendix E contains the texts of the letters of transmittal and responses. The Legislative Reference Bureau's position regarding the responses received from The Outdoor Circle, Environmental Quality Commission, the Attorney General, and the General Contractors Association are as follows:

The Outdoor Circle's position toward this study is primarily one of policy, with two basic comments:

(1) The Outdoor Circle comments that enlarging standing would only increase use of the courts by citizens to complain about the performance of various agencies, a function which belongs to overseeing agencies such as the Legislative Auditor and not the courts; and

(2) Cases involving complaints about the performances of various agencies are not within the traditional jurisdiction of and should not be left to the courts.

The Bureau recognizes that different policy arguments regarding the role of the judiciary in taking environmental actions may be made and concludes that these decisions regarding policy are ultimately within the discretion of the legislaturec

The Environmental Quality Commission comments regarding this study are basically:

(1) Standing of private citizens and of the Commission should be enlarged; and

(2) This study's recommendation that a 30-day limitation for seeking judicial review of administrative decisions be imposed is not justified.

The Legislative Reference Bureau's position on the first comment, that standing of private citizens and the Environmental Quality Commission should be enlarged, is discussed elsewhere in this chapter and remains basically a policy question. Furthermore, the question of standing of the Commission is not an issue in this study. The Commission comments, without providing specific data, that a 30-day limitation may be too short a time to seek review of environmental impact statements. While this comment may have some validity in the case of environmental impact statements which are complicated, however, without specific data, the recommendation of the Bureau remains the same. The Legislative Reference Bureau stands by its recommendation that a 30-day limitation be applied to the other environmental statutes since apparently the person seeking review need only file a complaint stating the basis for judicial review within 30 days to meet the statutory deadline.

Mr. Laurence K. Lau, deputy attorney general, makes two basic commentse

(1) The arguments for and against a change in standing require more documentation; and

(2) This study's interpretation of Hawaii case law as: being more conservative than federal cases; requiring a legal interest (personal or property right) injured; and being different from the injury in fact test of the federal courts, is erroneous.

The Bureau's position is that the arguments for and against a change in standing do not require further documentation as the study was not designed to prove the truth or falsity of the arguments of the various positions. For the purposes of this study, the arguments for expansion, further limitation, and maintaining the law on standing are presented to show the conflicting views in this area, and not to convince the reader of the correctness of any one point of view.

In response to the second comment, the Legislative Reference Bureau has reviewed the cases cited by Mr. Lau and used in this study, and remains satisfied with its interpretation of Hawaii case law on standing reached and presented in this studye

The General Contractors Association made three comments regarding this study which can be summarized as follows:

(1) That the terms "aggrieved person" and "interested person" be specifically defined in the Hawaii Administrative Procedure Act using the court's interpretation of these termse

(2) That, concurring with the recommendation of this study, a 30-day limitation be imposed in seeking judicial review of an agency decisione and

(3) That a study be made of the effectiveness of imposing a bonding requirement to seek judicial review of an agency decision.

The Legislative Reference Bureau's position concerning the first comment, that "aggrieved persons" and "interested persons" be specifically defined using the court's interpretation of these terms, is discussed elsewhere in this chapter as an alternative for consideration and remains basically a question of policye

The study of a bonding requirement proposed in the third comment does not appear necessary or feasible. To properly conduct a study to ascertain the effectiveness of a bonding requirement as a condition to appealing an administrative decisione the Bureau would have to ascertain a jurisdiction (probably mainland) with such a requirement and which furthermore has applied it to a sufficient number of cases that a study of the results of such a requirement would enable the researcher to form an opinion based on the data of its effectivenesse This would necessitate the Bureau sending a researcher to the mainland to search through the administrative agency's and court files. The cost of such an effort (transportation, per diem, etc.) would probably outweigh the benefits. This is especially so in view of the legal problems a bonding requirement faces.

The legale problems and possibilities of imposing a bonding requirement are discussed previously in this study and the possible constitutional problems were pointed out. To reiterate in summary here, the Hawaii Supreme Court could find that requiring a bond to cover costs of delay may deny a person judicial review and thus deny that person due processe Furthermore a statute imposing a bonding requirement only on judicial review of environmental decisions may be found to be discriminatory and a denial of equal protectione On the other hand, courts in other states have held that due process is not violated even where a statute denies judicial review of agency decisions and; thus, the Hawaii court could hold that since judicial review may be denied, judicial review may be granted subject to certain conditions such as the bonding requirement.

Concerning the possible discriminatory aspect of imposing a bonding requirement for court review of environmental decisions only, the court may defer to legislative discretion and uphold such a statute. It is unclear which position the Hawaii Supreme Court would take on bonding requirements. Therefore, a study concerning the effectiveness of a bonding requirement may be rendered academic if the courts do not uphold such a requirement's legality.

FOOTNOTES

Chapter 1

1. American Heritage Publishing Co. and Houghton Mifflin Co., The American Heritage Dictionary of the English Language (1969), p. 438.

2. Hawaii Rev. Stat., sections 187-3, 188-21, 190-5, 264-88, and 445-120.

Chapter 2

1. Dalton v. City and County of Honolulu, 51 Haw. 400, 462 P.2d 199 (1969).

2. 59 Am Jur. 2d Parties, sec. 30 (1971).

3. Ibid., sec. 30 (1971).

4. 262 U.S. 447 (1923).

5. Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150 (1970).

6. 392 U.S. 83 (1968).

7. 397 U.S. 150 (1970).

8. Tennessee Electric Power Co. v. TVA, 306 U.S. 118 (1938).

9. 405 U.S. 727 (1972).

10. 418 U.S. 166 (1974).

11. 418 U.S. 208 (1974).

Chapter 3

1. Town v. Land Use Commission, 55 Haw. 538, 524 P.2d 84 (1974).

2. See Appendix B.

3. See Appendix C.

4. House Standing Committee Report No. 8 on House Bill No. 5, First Legislature, 1961, State of Hawaii. Hawaii, Journal of the House of the First Legislature, Regular Session of 1961, p. 655.

5. Frank E. Cooper, State Administrative Law (New York: The Bobbs-Merrill Co., Inc. 1965), p. 128.

6. Dalton v. City and County of Honolulu, 51 Haw. 400, 462 P.2d 199 (1969).

7. Hawaii Rev. Stat., sec. 91-1.

8. In re Application of Hawaiian Electric Co., Inc., 56 Haw. 260, 535 P. 2d 1102 (1975).

9. See Appendix C.

10. See Appendix C.

11. 5 Haw. 27 (1883).

12. 16 Haw. 80 (1904).

13. 44 Haw. 484, 354 P.2d 956 (1960).

14. 46 Haw. 261, 377 P.2d 703 (1962).

15. Frank E. Cooper, State Administrative Law (New York: The Bobbs-Merrill Co., Inc. 1965), p. 536.

16. Ibid., at 537.

17. House Standing Committee Report No. 8 on House Bill 5, First Legislature, 1961, State of Hawaii. Hawaii, Journal of the House of the First Legislature, Regular Session of 1961, p. 655.

18. 51 Haw. 400, 462 P.2d 199 (1969).

19. 52 Haw. 518, 479 P.2d 796 (1971).

20. 53 Haw. 431, 495 P.2d 1180 (1972).

21. 2 Am Jur. 2d Administrative Law, sec. 595 (1962).

22. 55 Haw. 40, 514 P.2d 861 (1973).

23. 56 Haw. 235, 533 P.2d 489 (1975).

24. 56 Haw. 260, 535 P.2d 1102 (1975).

Chapter 4

1. Hawaii Rev. Stat., secs. 657-7, 661-5, and 662-4.

2. Hawaii Rev. Stat., 657-1.

3. 42 Am Jur. 2d Injunctions, sec. 61 (1969).

4. Houghtailing v. De La Nux, 25 Haw. 438, 357 P.2d 108 (1920).

5. See Appendix C.

6. Hawaii Rev. Stat., secs. 205-4 and 205A-29.

7. Ibid., secs. 205-4 and 205A-29.

8. Ibid., secs. 183-41 and 342-6.

9. 55 Haw. 538, 524 P.2d 84 (1974).

10. Hawaii Rev. Stat., secs. 91-14 and 343-6.

Chapter 5

1. Houghtailing v. De La Nux, 25 Haw. 438, 357 P.2d 108 (1920).

2. 42 Am Jur. 2d Injunctions, secs. 1 and 24 (1969).

3. Ibid., sec. 39.

4. Ibid., sec. 61.

5. 52 Am Jur. 2d Mandamus, secs. 1 and 31 (1970); Castle v. Kapena, 5 Haw. 27 (1883).

6. 52 Am Jur. 2d Mandamus, sec. 76 (1970).

7. Ibid., sec. 77.

8. Ibid., sec. 32.

9. 1972 Haw. Sess. Laws, Act 90.

Chapter 6

1. The Honolulu Star-Bulletin, May 13, 1975, editorial page; House Resolution 678, H.D. 1, Ninth Legislature, 1977, State of Hawaii (see Appendix A)e

2. House Standing Committee Report No. 515 on House Bill 1783, Seventh Legislature, 1973, State of Hawaii (see Appendix D)e

3. 59 Am Jur. 2d Parties, sec. 30 (1971).

4. 2 Am Jur. 2d Administrative Law, secs. 564 and 565 (1962)e

5. Gustetter v. City and County, 44 Haw. 484, 354 P.2d 956 (1960)e

6. See Appendix C.

7. See Appendix D.

8. 2 Am Jur. 2d Administrative Law, secs. 564 and 565 (1962)e

9. In re Application of Hawaiian ElectriceCo., Inc., 56 Haw. 260, 535 P.2d 1102 (1975).

10. Association of Data Processing Service Organizations, Inc.ev. Camp, 397 U.S. 150, 151 (1970); Frank E. Cooper, State Administrative Law (New York: The Bobbs-Merrill Co., Inc. 1965), p. 537.

11. Life of the Landev. Bunegar, 363 F. Supp. 1171, aff'd. 485 F.2d 460 9th Cir. 1973); Stop H-3 Associationev. Bunegar, 389 F. Supp. 1102 (D. Hi. 1972).

12e House Standing Committee Report 515 on House Bill 1783, Seventh Legislature, 1973, State of Hawaii (see Appendix D).

13e Castle v. Kapenae 5 Haw. 27 (1883)e

14. Inere Application of Hawaiian ElectriceCo., Inc., 56 Haw. 260, 535 P.2d 1102 (1975)e

15. Sax and DiMento, "Environmental Citizen Suits: Three Yearsė Experience Under the Michigan Environmental Protection Act," Ecology Law Quarterly 7 (Winter 1974).

16e Mich. Comp. Laws Ann.e sec. 691.1201 (see Appendix D).

17e House Standing Committee Report No. 515 on House Bill 1783e Seventh Legislaturee 1973e State of Hawaii (see Appendix D)e

18e House Bill 515e Seventh Legislature, 1973e State of Hawaii (see Appendix D).

19e See Appendix C.

20e See Appendix E.

APPENDICES

APPENDIX A

(To be made one and ten copies)

HOUSE OF REPRESENTATIVES
NINTH LEGISLATURE, 19 77
STATE OF HAWAII

H.R. NO. 678 H.D. 1

HOUSE RESOLUTION

REQUESTING A STUDY OF CITIZENS RIGHTS TO MAINTAIN ACTIONS ON COMPLIANCE WITH ENVIRONMENTAL POLICIES AND ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURES.

WHEREAS, the Legislature of the State of Hawaii has enacted a substantial body of law requiring assessment of the impact of public and private actions on the environment, and has established substantive policies to be followed with regard to activities affecting the environment; and

WHEREAS, a number of Hawaii's environmental laws grant broad rule making powers to agencies of the state regulating activities deemed to have impact on environmental quality; and

WHEREAS, recent trends have been to grant broader powers to agencies with regard to rule making, to include greater numbers of policy criteria with increasing specificity, and to bring more categories of public agency and private individual activity within the scope of environmental regulation; and

WHEREAS, the degree to which public agencies enforce environmental laws and properly apply rule making authority and the substance of rules, to which environmental policies define proper public and private behavior; and to which procedures required by law, such as environmental impact assessments; have been followed in specific instances; are matters in which citizens may have grounds to sue public and private agencies; in order to compel conformity with law and rule; and

WHEREAS, the practical effect of such suits may be to halt any development, processing of development permission; or other constructive activity; until legal and procedural matters are adjudicated by a court of competent jurisdiction; and

WHEREAS, delays for environmental litigation constitute a very real social cost; in that delays bring on greater costs for public activity and for the ultimate consumers of private development activity; and

ECEN 4831

WHEREAS, greater attention should be given to environmental litigation procedures, to ensure that they fairly consider the interests of landowners, developers, and others with a direct interest in development activity; the general public, which bears the direct cost of public works, the ultimate cost of private construction, and the long run effects of change in environmental quality; and persons seeking to raise environmental compliance issues before the courts; now, therefore,

BE IT RESOLVED by the House of Representatives of the Ninth Legislature of the State of Hawaii, Regular Session of 1977, that the Office of the Legislative Reference Bureau is requested to review current provisions for standing to bring suit and the time limits within which suits are permitted; and

BE IT FURTHER RESOLVED that the Office of the Legislative Reference Bureau consider input from the various affected agencies and community groups such as Life of the Land, the Hawaii State Federation of Labor, the Home Builders Association, the General Contractors Association, the Construction Industry Legislative Organization and other interested parties; and

BE IT FURTHER RESOLVED that the Office of the Legislative Reference Bureau is requested to submit a report on this matter, together with any conclusions and recommendations for Legislative action to make these provisions internally consistent with minimum social costs to the Legislature not less than 20 days prior to the first day of the Regular Session of 1978;

BE IT FURTHER RESOLVED that a certified copy of this Resolution be transmitted to the Director of the Office of the Legislative Reference Bureau.

APPENDIX B

PROVISIONS FROM THE HAWAII ADMINISTRATIVE PROCEDURE ACT

Sec. 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.

Sec. 91-3 Procedure for adoption, amendment or repeal of rules. (a) Prior to the adoption of any rule authorized by law, or the amendment or repeal thereof, the adopting agency shall:

(1) Give at least twenty days' notice for a public hearing. Such notice shall include a statement of the substance of the proposed rule, and of the date, time and place where interested persons may be heard thereon. 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 and published at least once in a newspaper of general circulation in the State for state agencies and in the county for county agencies.

(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 as to when it intends to make its decision. Upon adoption, amendment, or repeal of a rule, the agency shall, if requested to do so by an interested person, 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 twenty days' notice of hearing and states in writing its reasons for such finding, it may proceed without prior notice or hearing upon such abbreviated notice and hearing 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 chairman of the board of supervisors or the mayor of the county. The provisions of this subsection shall not apply to the adoption, amendment, and repeal of the rules and regulations of the county board of water supply.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 91-9 Contested cases; notice; hearing; records. (a) 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 he so desires.

(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.

Sec. 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.

(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 the provisions of the Hawaii Rules of Civil Procedure, except where a statute provides for a direct appeal to the supreme court 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.

Sec. 91-15 Appeals. An aggrieved party may secure a review of any final judgment of the circuit court under this chapter by appeal to the supreme court. The appeal shall be taken in the manner provided in the Hawaii Rules of Civil Procedure.

APPENDIX C

ENVIRONMENTAL STATUTES

HAWAII REVISED STATUTES	SUBJECT	STANDING	TIME LIMITATION	RULE MAKING AND ADJUDICATORY POWERS	PENALTIES
Chapter 91	Hawaii Administrative Procedure Act	--interested person may submit data etc. regarding rule (91-3) --interested person may petition regarding rule (91-6) --interested person may seek declaratory judgment on rule validity (91-7) --interested person may seek declaratory judgment on rule applicability (91-8) --parties entitled to hearing in contested case (91-9) --aggrieved person may seek judicial review of final decision in contested case (91-14) --aggrieved party may appeal circuit court decision to supreme court (91-15)	--30 days to deny petition on rules or initiate proceeding (91-6) --30 days to initiate judicial review of contested case (91-14)		
Chapter 177	Ground water	--aggrieved person may seek judicial review of agency order (177-12)			
Chapter 181	Strip mining	--aggrieved person may seek judicial review of agency order (181-8)			--Not more than $5,000 fine for strip mining violation (181-9)
Chapter 183	Forest and water reserves	--landowner whose property is directly affected may apply for zone changes (183-41) --person aggrieved by strip mining zoning order may seek judicial review (183-43)	--notice, hearing, and decision on nonconforming use within 180 days or automatically granted (183-41)	--Rules under HAPA for forest reserves (183-2) --Rules under sec. 91-3 for watershed areas (183-31) --Rules regarding changes in forest and water reserve zones under sec. 183-41(d) (183-41)	--Not more than $500 fine for violation of forest reserve law (183-4) --Not more than $100 fine or not more than 1 year in jail for timber trespass in forest reserve (183-18)

HAWAII REVISED STATUTES	SUBJECT	STANDING	TIME LIMITATION	RULE MAKING AND ADJUDICATORY POWERS	PENALTIES
Chapter 183 (con't.)					--Not more than $500 fine for violation of forest and water reserve law (183-41)
Chapter 195	Natural area reserves			--Rules under HAPA for natural area reserves (195-5)	--Not more than $100 fine or not more than 30 days in jail, or both for violation of natural area reserves law (195-8)
Chapter 195D	Conservation and resources			--Rules under HAPA for conservation and resources (195D-6)	--Not more than $1,000 fine or not more than 1 year in jail, or both for violation of conservation law (195D-9)
Chapter 205	Land use district boundaries Shoreline setback	--persons with property interest in land, or who are directly and immediately affected so that their interest is distinguishable from the public have standing to seek to reclassify district boundaries (205-4)	--60 to 180 days to hold hearing and 45 to 180 days thereafter to decide (205-4) --45 days to approve or disapprove plan on shoreline (205-35)	--Hearing under HAPA for changes in district boundaries (205-4) --Rules under HAPA for land use district boundaries (205-7) --Hearing under HAPA for variances on shoreline setback (205-35)	
Chapter 205A	Coastal zone management	--aggrieved person may seek judicial review of agency order (205A-31)	--21 to 90 days to hold hearing and must decide within 30 days thereafter (205A-29)	--Rules under HAPA for coastal zone management (205A-29) --Hearing under HAPA for permit to develop under coastal zone management (205A-29)	--Not more than $10,000 civil fine for violation and in addition, not more than $500 fine for each day violation persists (205A-32)

HAWAII REVISED STATUTES	SUBJECT	STANDING	TIME LIMITATION	RULE MAKING AND ADJUDICATORY POWERS	PENALTIES
Chapter 262	Airport zoning	--aggrieved person may seek judicial review of agency order (262-8)			
Chapter 266	Harbor pollution			--Rules under HAPA for prevention of harbor pollution (266-3)	--Not more than $1,000 fine for each person and also for each vessel for harbor pollution (266-25)
Chapter 321	Industrial hygiene			--Rules on industrial hygiene (321-71t)	
Chapter 342	Environmental quality	--interested person may submit written reviews of variance application (342-7) --aggrieved person may seek judicial review of agency order (342-13)	--failure to act upon permit application within 180 days is an automatic grant (342-6) --180 days to act on variance renewal application, and applicant must apply 180 days before variance expires (342-7)	--Rules under HAPA on prevention of various types of pollution (342-3) --Hearing under HAPA for permit on environmental quality (342-6) --Hearing under HAPA for variance of environmental quality (342-7) --Hearing under sec. 342-7 for variance (342-7)	--Not less than $25 nor more than $2,500 fine for vehicular noise or emission violation; Not more than $10,000 fine for open burning violation; Other violations of environmental quality control have not more than $10,000 fine; Not less than $2,500 nor more than $25,000 fine for violation of water pollution law; Not more than $500 fine for obstructing inspection (342-11t)

HAWAII REVISED STATUTES	SUBJECT	STANDING	TIME LIMITATION	RULE MAKING AND ADJUDICATORY POWERS	PENALTIES
Chapter 343	Environmental impact statement	--affected agencies and persons who will be aggrieved and who have submitted written comments may seek judicial review on the acceptability of the statement (343-6)	--180 days to initiate review of lack of determination that statement is or is not required; 60 days to initiate review of determination that statement is or is not required; 60 days to initiate review of acceptability of statement (343-6)	--Rules under HAPA for environmental impact statement (343-5)	
Chapter 657	Statute of limitation		--2 years for tort action (657-7) --6 years for personal actions of any kind not otherwise provided for (657-1)		
Chapters 661 and 662	Actions against the State--statute of limitation		--2 years for action against the State (661-5, 662-4)		
Act 2, 1st special session of 1977	Litter control			--Rules under HAPA for litter control	
Act 84, Session Laws of Hawaii 1976	Safe drinking water			--Rules on safe drinking water --Variances and exemptions from rules	--Not more than $5,000 fine for violation of safe drinking water law

APPENDIX D

1. H.B. NO. 1371 - NINTH LEGISLATURE, REGULAR SESSION OF 1977

2. MICHIGAN - THOMAS J. ANDERSON, GORDON ROCKWELL ENVIRONMENTAL PROTECTION ACT OF 1970

3. HOUSE OF REPRESENTATIVES STANDING COMMITTEE REPORT NO. 515 (1973) REGARDING H.B. NO. 1783

4. H.B. NO. 1783 - SEVENTH LEGISLATURE, REGULAR SESSION OF 1973

(To be made one and ten copies)

HOUSE OF REPRESENTATIVES
NINTH LEGISLATURE, 1977
STATE OF HAWAII

H.B. NO. 1371

A BILL FOR AN ACT

RELATING TO LIMITATION OF ACTIONS.

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

SECTION 1. Chapter 657, part I, Hawaii Revised Statutes, is amended by adding a new section to read:

"Sec. 657- Limitation of environmental action. (a) No court action seeking to challenge procedural compliance with any environmental policy or environmental impact statement act shall be brought more than forty-five days after final approval is given of any action or statement required by such act by the responsible government agency or official.

(b) No court action seeking to challenge substantive compliance with any environmental policy or environmental impact statement act shall be brought more than ninety days after final approval is given of any action or statement required by such act by the responsible government agency or official; provided that the circuit court having jurisdiction over any such court action may for good cause appearing allow the commencement of such action upon the filing with

the clerk of the court, cash or bond in the amounttof ten per cent of the construction contract amountt"

SECTION 2. New statutory material is underscored. In printing this Act, the revisor of statutes need not include the underscoring.

SECTION 3. This Act shall take effect upon its approval. This Act is not retroactive and shall apply only to those actions which have not received all necessary approvals from agencies, boards, or commissions, or officials authorized to approve such actions.

INTRODUCED BY:

FEB 25 1977

THOMAS J. ANDERSON, GORDON ROCKWELL ENVIRONMENTAL PROTECTION ACT OF 1970

MICH. COMP. LAWS ANN. 691.1201-.1207 (Supp. 1973)

The People of the State of Michigan enact:

Sec. 1. This act, shall be known and may be cited as the "Thomas J. Anderson, Gordon Rockwell environmental protection act of 1970."

Sec. 2. (1) The attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may maintain an action in the circuit court having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief against the state, any political subdivision thereof, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity for the protection of the air, water and other natural resources and the public trust therein from pollution, impairment or destruction.

(2) In granting relief provided by subsection (1) where there is involved a standard for pollution or for an anti-pollution device or procedure, fixed by rule or otherwise, by an instrumentality or agency of the state or a political subdivision thereof, the court may:

(a) Determine the validity, applicability and reasonableness of the standard.

(b) When a court finds a standard to be deficient, direct the adoption of a standard approved and specified by the court.

Sec. 2a. If the court has reasonable ground to doubt the solvency of the plaintiff or the plaintiff's ability to pay any cost or judgment which might be rendered against him in an action brought under this act the

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MUCC v. Anthony, No. 2331, Decision of Nov. 10, 1972 (Cir. Ct., Smith, J.), the Indian fishing case, is still being fought out in other fora. See note 183 and text accompanying note 201 *supra*. Payant v. DNR, No. 1100 (Cir. Ct., filed July 13, 1971), the antlerless deer hunting case, continues to provoke intense controversy. *See* Ann Arbor News, Oct. 21, 1973, at 40, col. 1.

242. *See* J. DiMento, Administrative Agency Response to Innovative Environmental Legislation (1974) (unpublished dissertation in Univ. of Michigan Library). The dissertation explores some social-psychological factors in the reaction of the DNR and the Michigan Department of Agriculture to the EPA.

court may order the plaintiff to post a surety bond or cash not to exceed $500.00.

Sec. 3. (1) When the plaintiff in the action has made a prima facie showing that the conduct of the defendant has, or is likely to pollute, impair or destroy the air, water or other natural resources or the public trust therein, the defendant may rebut the prima facie showing by the submission of evidence to the contrary. The defendant may also show, by way of an affirmative defense, that there is no feasible and prudent alternative to defendant's conduct and that such conduct is consistent with the promotion of the public health, safety and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment or destruction. Except as to the affirmative defense, the principles of burden of proof and weight of the evidence generally applicable in civil actions in the circuit courts shall apply to actions brought under this act.

(2) The court may appoint a master or referee, who shall be a disinterested person and technically qualified, to take testimony and make a record and a report of his findings to the court in the action.

(3) Costs may be apportioned to the parties if the interests of justice require.

Sec. 4. (1) The court may grant temporary and permanent equitable relief, or may impose conditions on the defendant that are required to protect the air, water and other natural resources or the public trust therein from pollution, impairment or destruction.

(2) If administrative, licensing or other proceedings are required or available to determine the legality of the defendant's conduct, the court may remit the parties to such proceedings, which proceedings shall be conducted in accordance with and subject to the provisions of Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.313 of the Compiled Laws of 1948. In so remitting the court may grant temporary equitable relief where necessary for the protection of the air, water and other natural resources or the public trust therein from pollution, impairment or destruction. In so remitting the court shall retain jurisdiction of the action pending completion thereof for the purpose of determining whether adequate protection from pollution, impairment or destruction has been afforded.

(3) Upon completion of such proceedings, the court shall adjudicate the impact of the defendant's conduct on the air, water or other natural resources and on the public trust therein in accordance with this act. In such adjudication the court may order that additional evidence be taken to the extent necessary to protect the rights recognized in this act.

(4) Where, as to any administrative, licensing or other proceeding, judicial review thereof is available, notwithstanding the provisions to the contrary of Act No. 306 of the Public Acts of 1969, pertaining to judicial review, the court originally taking jurisdiction shall maintain jurisdiction for purposes of judicial review.

Sec. 5. (1) Whenever administrative, licensing or other proceedings,

and judicial review thereof are available by law, the agency or the court may permit the attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity to intervene as a party on the filing of a pleading asserting that the proceeding or action for judicial review involves conduct which has, or which is likely to have, the effect of polluting, impairing or destroying the air, water or other natural resources or the public trust therein.

(2) In any such administrative, licensing or other proceedings, and in any judicial review thereof, any alleged pollution, impairment or destruction of the air, water or other natural resources or the public trust therein, shall be determined, and no conduct shall be authorized or approved which does, or is likely to have such effect so long as there is a feasible and prudent alternative consistent with the reasonablee requirements of the public health, safety and welfare.

(3) The doctrines of collateral estoppel and res judicata may be applied by the court to prevent multiplicity of suits.

Sec. 6. This act shall be supplementary to existing administrative and regulatory procedures provided by law.

Sec. 7. This act shall take effect October 1, 1970.

This act is ordered to take immediate effect.

STAND. COM. REP. NO. 515

Honolulu, Hawaii
March 23, 1973

RE: H. B. No. 1783

PERMANENT FILE - DOWNTOWN

The Honorable Tadao Beppu
Speaker, House of Representatives
Seventh Legislature
Regular Session, 1973
State of Hawaii

Sir:

Your Committee on Environmental Protection to which was referred H. B. No. 1783 entitled: "A BILL FOR AN ACT RELATING TO DECLARATORY AND EQUITABLE RELIEF IN ENVIRONMENTAL PROTECTION", begs leave to report as follows:

The purpose of this bill is to bridge a vital gap in the environmental protection laws today by permitting declaratory and equitable relief to be sought by interested citizens.

An almost identical law was enacted by the State of Michigan almost three years ago. The experience of Michigan, Connecticut, Florida, Indiana, Massachusetts and Minnesota belies the fears expressed by the opponents of this bill. There has been no avalanche of frivolous suits in those states. Your Committee believes that the citizens of Hawaii would be no less responsible.

Moreover, it was pointed out by Professor Joseph L. Sax of the University of Michigan Law School, that the Attorney General of the State of Michigan and his staff are wholeheartedly in support of this law, despite the fact that the public agencies of that state are at times made defendants in those suits.

Your Committee was particularly impressed by Professor Sax's observation that this bill would have, as it has had in Michigan, a singularly beneficial result in bridging the impasse of bureaucratic inertia. Also, even where there is a responsible and energetic staff, their recommendations may be stifled or shunted aside and this law would further provide respite in those instances for the concerned citizen.

We note that despite the Attorney General's written opposition, his deputy's response to oral inquiry elicited his concurrence with the legislative policy and necessity reflected by this bill. In the final analysis, he conceded that the thrust of this bill was desirable, but merely contended that the concepts of the bill should be more narrowly defined.

It is your Committee's view that this bill as formulated in the model of the Michigan statute, must be the first step toward obtaining effective response to our environmental protection concerns of our state. The broad scope of this bill matches the wide sweep of environmental protection problems that defy narrowed and technically defined attempts at solution. Like the laws of "negligence", "nuisance", "due process", "interstate commerce", "unfair restraints of trade", "unfair labor practices", to name but a few, it is felt that placed in the arena of the common law, time and responsible ingenuity of our judicial process will weave, on a case by case basis, a fabric of effective and equitable justice.

Your Committee now addresses itself to the central core of the problem, which may be stated in two parts. The first is that the heart of the matter in environmental problems is that the individual common citizen whose quality of life is affected by damage to the environment shares that harm in common with all persons in the community. This is particularly true of Hawaii with its limited geography and fragile environment. The second is the frequent disparity of resources and influence between those whose actions, however unintentionally, damage the environment and those who seek redress through governmental agencies.

In connection with the first, your Committee feels that the issue of "standing to sue" must be dealt with on a case by case basis. Upon analysis, it is found that the Association of Data Processing Service Organization, Inc. v. Camp, 397 U.S. 150 (1970), cited by the Attorney General, does not define the issue of standing as to its application in environmental cases. Moreover, the experience of Michigan reveals that the defendants are not foreclosed from raising that issue. This is not to say that faced with the problem as discussed, your Committee is not aware of the need for effective judicial innovation in this area. This is precisely the reason it must be left to solution on a case by case basis.

With reference to the second part of the problem, your Committee noted with keen interest Professor Sax's observation that responsible lower echelon governmental officers and similarly situated corporate employees often express relief at being required to respond to questions under the power of subpoena at trials commenced through the type of law being considered here. For such peoplet the protective cloak of the subpoena enables them to tell of their stifled efforts and recommendationst and sometimes of continued injurious practices maintained long after staff reports and evaluations had warned of consequent public harmt

Your Committee further noted with interest testimony to the effect that frequently simply the possibility of suit resulted in corrective action, and in other instances that agreements for corrective action were arrived at without the necessity of a completed trial.

Finallyt your Committee would reiterate its conviction that this bill is the necessary first step toward permitting our state to come to grips with our environmental problemst Before any accomplishment can be expected, we must bridge the impasse often presented the ordinary citizen who, being definitely affected in the quality of his life, wouldt with keen and responsible determinationt seek to challenge that wrong.

Your Committee on Environmental Protection istin accord with the intent and purpose of H.tB. No. 1783 and recommends that it pass Second Reading and be referred to the Committee on Judiciaryt

Respectfully submittedt

JEAN KONG, Chairman

WING KONG CHONG, Member

STANLEY H. ROEHRIG, Vice Chairman

JOHN LEOPOLD, Member

HIROSHI KATO, Member

DENNIS YAMADA, Member

RICHARD A. KAWAKAMI, Member

(To be made one and ten copies

HOUSE OF REPRESENTATIVES
SEVENTH LEGISLATURE, 19 73
STATE OF HAWAII

H.B. NO. 1783

PERMANENT FILE INFORMATION

A BILL FOR AN ACT

RELATING TO DECLARATORY AND EQUITABLE RELIEF IN ENVIRONMENTAL PROTECTION

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

SECTION 1. Purpose. The purpose of this Act is to provide for actions for declaratory and equitable relief in matters of environmental protection relating to air, water and other natural resources and the public trust therein; to prescribe the rights, duties and functions of the attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity; and to provide for judicial proceedings relative thereto.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter 670 to read as follows:

"Sec. 670-1. Declaratory and equitable relief. The attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may maintain an action in the circuit court having jurisdictio where the alleged violation occurred or is likely to occur for declaratory and equitable relief against the state, any political

subdivision thereof, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity for the protection of the air, water and other natural resources and the public trust therein from pollution, impairment or destruction.

Sec. 670-2. Resolving matters involving standard. In granting relief provided by subsection (1) where there is involvedta standard for pollution or for an anti-pollution device or procedure, fixed by rule or otherwise, by an instrumentality or agency of the statet or a political subdivision thereof, the court may:

(a) Determine the validity, applicability and reasonableness of the standard.

(b) When a court finds a standard to be deficient, direct the adoption of a standard approved and specified by the court.

Sec. 670-3t Bond. If the court has reasonable ground to doubt the solvency of the plaintiff or the plaintiff's ability to pay any cost or judgment which might be rendered against him in an action brought under this act, the court may order the plaintiff to post a surety bond or cash not to exceed $500.00t

Sec. 670-4. Procedure. (a) When the plaintiff in the action has made a prima facie showing that the conduct of the defendant hast or is likely to pollute, impair or destroy the air, water or other natural resources or the public trust therein, the defendant may rebut th prima facie showing by the submission of evidence to the contraryt The defendant may also show, by way of an affirmative defense, that there is

no feasible and prudent alternative to defendant's conduct and that such conduct is consistent with the promotion of the public health, safety and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment or destruction. Except as to the affirmative defense, the principles of burden of proof and weight of the evidence generally applicable in civil actions in the circuit courts shall apply to actions brought under this act.

(b) The court may appoint a master or referee, who shall be a disinterested person and technically qualified, to take testimony and make a record and a report of his findings to the court in the action.

(c) Costs may be apportioned to the parties if the interests of justice require.

Sec. 670-5. Relief to be granted. (a) The court may grant temporary and permanent equitable relief, or may impose conditions on the defendant that are required to protect the air, water and other natural resources or the public trust therein from pollution, impairment or destruction.

(b) If administrative, licensing or other prodeedings are required or available to determine the legality of the defendant's conduct, the court may remit the parties to such prodeedings. In so remitting the court may grant temporary equitable relief where necessary for the protection of the air, water and other natural resources or the public trust therein from pollution, impairment or destruction. In so remitting the court shall retain jurisdiction of the action pending

completion thereof for the purpose of determining whether adequate protection from pollution, impairment or destruction has been afforded.

(c) Upon completion of such proceedings, the court shall adjudicate the impact of the defendant's conduct on the air, water or other natural resources and on the public trust therein in accordance with this act. In such adjudication the court may order that additional evidence be taken to the extent necessary to protect the rights recognized in the act.

(d) Where, as to any administrative, licensing or other proceeding, judicial review thereof is available, the court originally taking jurisdiction shall maintain jurisdiction for purposes of judicial review.

Sec. 670-6 Intervention. (a) Whenever administrative, licensing, or other proceedings, and judicial review thereof are available by law, the agency or the court may permit the attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity to intervene as a party on the filing of a pleading asserting that the proceeding or action for judicial review involves conduct which has, or which is likely to have, the effect of polluting, impairing or destroying the air, water or other natural resources or the public trust therein.

(b) In any such administrative, licensing or other proceedings, and in any judicial review thereof any alleged pollution, impairment or destruction of the air, water or other natural resources or the public trust therein, shall be determined, and no conduct shall be

authorized or approved which does, or is likely to have such effect so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare.

(c) The doctrines of collateral estoppel and res judicata may be applied by the court to prevent multiplicity of suits.

SECTION 3. Relation to existing laws. This act shall be supplementary to existing administrative and regulatory procedures provided by law.

SECTION 4. This act shall take effect upon approval.

INTRODUCED BY: Dennis King

APPENDIX E

COMMUNITY AND AGENCY REVIEW OF STUDY

Samuel B. K. Chang
Director

COPY

LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol
Honolulu, Hawaii 96813
Phone 548-6237

September 14, 1977

0582A

Life of the Land
404 Piikoi Street, Room 209
Honolulu, Hawaii 96814

Dear Sir:

The Office of the Legislative Reference Bureau was requested to study standing to bring environmental actions and applicable time limitations. Enclosed you will find a copy of a preliminary final draft of the study. We would appreciate your typewritten comments concerning the study and would like to receive your comments by October 14, 1977. Please send any correspondence to:

Legislative Reference Bureau
State Capitol, Room 004
Honolulu, Hawaii 96813

Attention: Lester Ishado

Thank you very much for your cooperation.

Very truly yours,

Lester Ishado
Researcher

LI:ck
Enclosure

Life of the Land
404 Piikoi Street, Room 209
Honolulu, Hawaii 96814

Sierra Club Hawaii Chapter
404 Piikoi Street, Room 209
Honolulu, Hawaii 96814

The Outdoor Circle
200 N. Vineyard Blvd.
Honolulu, Hawaii 96817

Citizens Against Noise
205 Merchant Street, Room 18
Honolulu, Hawaii 96813

Common Cause Hawaii
250 S. Hotel Street
Honolulu, Hawaii 96813

Hawaii State Federation of Labor
547 Halekauwila Street, Room 216
Honolulu, Hawaii 96813

Home Builders Association of Hawaii
965 N. Nimitz Hwy.
Honolulu, Hawaii 96817

Mr. Wilfred S. Nakakura
General Contractor's Assoc.
1065 Ahua Street
Honolulu, Hawaii 96819

Mr. John B. Connell
Construction Industry Legislative
Organization
Suite 2110
2828 Paa Street
Honolulu, Hawaii 96819

Department of Attorney General
State Capitol
Honolulu, Hawaii 96813

Land Use Commission
Pacific Trade Center, Suite 1795
Honolulu, Hawaii 96813

Department of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813

Environmental Quality Commission
550 Halekauwila Street
Honolulu, Hawaii 96813

Mr. Tom Lee
Loaned Management Personnel
Aloha United Way
Community Service Center
200 North Vineyard Blvd.
P. O. Box 1996
Honolulu, Hawaii 96808

GEORGE R. ARIYOSHI
GOVERNOR

LKL:gb

RONALD Y. AMEMIYA
ATTORNEY GENERAL

LARRY L. ZENKER
ASSISTANT ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
STATE CAPITOL
HONOLULU, HAWAII 96813

October 20, 1977

MEMORANDUM

TO: Mr. Lester Ishado, Researcher
Legislative Reference Bureau

FROM: Laurence K. Lau
Deputy Attorney General

SUBJECT: Draft Study on Standing and Time Limitations in Environmental Actions

This Memo comments on the above draft study as requested by your cover letter dated September 14, 1977.

1. Citizen Rights. While not directly relevant to your study, one should note that laws such as the Michigan Act expand citizen standing by expanding citizens' legal rights. As you undoubtedly recognize, there's a difference between who may go into court and what they may argue about once they get there. Michigan's Act gives its citizens and legal entities a legal right against the pollution, impairment or destruction of air, water, or other natural resources. This is a broader right than the right to have other people or entities comply with existing government regulations, for example.

2. Definition of Environment. The definition of environment at page I-1 is inconsistent; it is very broad generally but excludes very important items specifically. "Environment" can be defined by statute to be of almost any scope for whatever purpose the Legislature deems necessary.

3. Hawaii Case Law Interpretation. Is the "legal interest" requirement which you see in Hawaii cases significantly different from the Data Processing test? You state that the Hawaii Supreme Court is "more conservative" on standing than the federal courts, and I question the accuracy of the statement. Do you mean to imply that the legal interest requirement somehow resembles the old "legal wrong" test, which really went to the merits and which has since been discarded? Consider, for example, whether a property owner has a substantive legal right in a particular zoning of his neighbor's property.

The sharing of harm does not deny standing to an individual who is among those sharing said harm. Consider the Hawaiian Electric case and especially its citation to U.S. vs. S.C.R.A.P., 412 U.S. 669 (1973). Consider the lack of uniqueness of an electricity user whose electric rate will be increased.

The Melemanu Woodlands case dealt with the finality and interlocutory nature of decisions rather than standing, and citing it as a case limiting standing is dubious.

4. The assertions contained in the arguments for greater or lesser restrictions on standing need documentation. I realize that such documentation may not be possible with your present resources, but it is hard to evaluate the relative merits of the arguments without data. Stylistically, you might try to rank the arguments in order of importance and list them in an outline form. For your reference, consider the following law reviews:

1. DiMento, Citizen Environmental Legislation in the States: An Overview, 53 J. Urban L. 413 (1976);

2. Haynes, Michigan's Environmental Protection Act in its Sixth Year: Substantive Environmental Law From Citizen Suits, 53 J. Urban L. 589, 6 ELR 50067 [revised] (1976); and

3. Three Recent Cases: State Environmental Protection Acts Revisited, 1975 Detroit Colr L. Rev. 265.

and see the Environmental Law Reporter Law Review bibliography, generally, 7 ELR 60001-60013.

I hope these comments assist you. If you have any questions or comments, please feel free to call or write.

Laurence K. Lau

LAURENCE K. LAU
Deputy Attorney General

GEORGE R. ARIYOSHI
GOVERNOR

Donald A. Bremner
CHAIRMAN

TELEPHONE NO.
548-6915

STATE OF HAWAII
ENVIRONMENTAL QUALITY COMMISSION
OFFICE OF THE GOVERNOR
550 HALEKAUWILA ST.
ROOM 301
HONOLULU, HAWAII 96813

November 1, 1977

Legislative Reference Bureau
State Capitol
Room 004
Honolulu, HI 96813

Attention: Mr. Lester Ishado

Dear Mr. Ishado:

Thank you for this opportunity to review the preliminary draft of your report on "Standing and Time Limitations to Bring Environmental Actions."

On the basis of our experience with Chapter 343, HRS, we take positions different from your's.

With respect to your first recommendation, we perceive a need to broaden standing in one instance, such that any member of the general public may bring judicial action under HRS Section 343-6-(a)a We realize that this change would be at odds with the general rule on standing in Hawaii case law, but there seem to be special considerations here.

Chapter 343 was enacted to institute a major administrative reform through which environmental concerns would be given appropriate regard in governmentedecision-making. The statute meets this objective by prescribing certain procedures that an agency must follow before approving or undertaking a project. These procedures enable the agency to evaluate the environmental consequences of the proposed project before the "go" or "no go" decision is made. Where an agency altogether ignores these procedures, the environmental review protection that the law seeks to establish is lost entirely. Whereas, Chapter 344, HRS has declared each person to be a "trustee" of the environment, the State should provide for the enforcement of Chapter 343 procedural requirements by the general public, maintaining, however, present restrictions on standing relating to substantive issues arising from the observance of these procedures (i.e., the restrictions in Sections 343-6-(b) and -(c)).

We also see a need to provide the Environmental Quality Commission with standing under Sections 343-6-(a) and -(b) and to provide that contestable issues by the EQC are unlimited under Section 343-6-(c)a

An omnibus EIS bill--HB 1065, HD 1, SD 1, CD 1 (attached in pertinent part)--included such provisions but was recommitted to conference committee in the waning days of the last legislative session. We would like to see these provisions enacted next year, as we believe the EQC must be empowered to bring court action if it is to properly administer Chapter 343. Inasmuch as these provisions appear consistent with the general rule on standing in Hawaii case law, we hope your first recommendation might be amended to also reflect these needs.

We have reservations with your second recommendation as well, which recommendation calls for the systemization of a 30-day limit for seeking judicial review of agency decisions. Consistency for its own sake is an arbitrary consideration where several administrative processes of widely varying characteristics are involved.

In the case of Chapter 343, 180-day and 60-day limitations seem justified. Where an agency ignores Chapter 343 procedural requirements and fails to publicly assess a project, it may reasonably take 180 days for the public to learn of the agency's negligence. Where an agency observes the procedures but makes a decision that another party finds contestable, court action may be looked upon as a last resort under a 60-day limitation. Here, the contesting party has time enough to seek other, informal means for resolving issues with the agency. A 30-day limitation, however, does not provide for much latitude and may compel the contesting party to seek judicial relief at the earliest time. Contrary to your contention, then, judiciary efficiency would seem to be gained only at the expense of consistency in this case.

In summary, we find that your broad recommendations of general applicability have overlooked circumstances particular to one statute, at least. Your point of departure perhaps should not be case law, which develops in the absence of statutory law, but the practical needs of existing statutes, which the Legislature afterall has the authority to provide for. It may be worthwhile to supplement your study with individual assessments of environmental statutes and to provide recommendations specific to particular statutes.

Thank you, again, for this opportunity to review your report. Thank you also for your indulgence in receiving these late comments.

Very truly yours,

Allen Bremner

for Donald A. Bremner
Chairman

CONFERENCE COMMITTEE REPORT NO. 38

Honolulu, Hawaii
April 12, 1977

RE: H.B. No. 1065
H.D. 1,
S.D. 1
C.D. 1

The Honorable James H. Wakatsuki
Speaker, House of Representatives
Ninth Legislature
Regular Session, 1977
State of Hawaii

Sir:

Your Committee on Conference on the disagreeing vote of the House of Representatives to the amendments proposed by the Senate in H.B. No. 1065, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ENVIRONMENTAL IMPACT STATEMENTS", having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this bill is to revise the environmental impact statement (EIS) process by amending Chapter 343 of the Hawaii Revised Statutes.

This bill would allow the various counties of the State of Hawaii to designate areas within the county which would require an EIS.

Your Committee upon further consideration has made the following amendments to H.B. No. 1065, H.D. 1, S.D. 1:

(1) The addition of three definitions, "Approval", "Discretionary Approval", and "Environmental Assessment."

(2) The specific requirement for an assessment before a determination as to the necessity of an EIS.

(3) The addition of actions within the Special Management Areas, established pursuant to Chapter 205A to those actions which would require an environmental assessment.

(4) The establishment of procedures whereby exempt classes of actions are established.

(5) Providing standing to sue to the Environmental Quality Commission (EQC) or the agencies responsible for approval of an action in cases where an action is undertaken without a determination that an EIS is or is not requiredt

(6) Providing thattcontestable issues by the commission are unlimited.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 1065, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1065, H.D. 1, S.D. 1, C.D. 1.

Respectfully submittedt

MANAGERS ON THE PART OF THE SENATE

JEAN S. KING, Chairmad

ANSON CHONG

JOHN J. HULTEN

MARY GEORGE

MANAGERS ON THE PART OF THE HOUSE

RUSSELL BLAIR, Chairman

JACK [illegible]SEN

OLIVER LUNASCO

CHARLES T. TOGUCHI

ANDREW POEPOE

SECTION 5. Section 343-6 of the Hawaii Revised Statutes is amended to read:

"Sec. 343-6 Limitations of actions. (a) Any judicial proceeding, the subject of which is the lack of determination that a statement is or is not required for a proposed action not otherwise exempted, shall be initiated within [180] one hundred eighty days of the agency's decision to carry out or approve the action [, or if]. If a proposed action, not otherwise exempted, is undertaken without a formal determination by the agency that a statement is or is not required, a judicial proceeding shall be instituted within [180] one hundred eighty days after the proposed action is started. The applicant proposing the action shall be adjudged aggrieved in situations where no determination is made within thirty days. Where a proposed action is undertaken without formal assessment and determination that a statement is or is not required, the environmental quality commission, or any governmental agencies responsible for approval of the action shall be adjudged an aggrieved party for purposes of bringing a judicial action in accordance with the above time limitations.

(b) Any judicial proceeding, the subject of which is the appropriateness of a determination that a statement is or is not required for a proposed action, shall be initiated within sixty days after the public has been informed of such determination pursuant to section 343-2. The environmental quality commission or applicant shall be aggrieved parties for the purposes of bringing

judicial action as described above. Others may by court action be adjudged aggrievedt

(c) Any judicial proceeding, the subject of which is the acceptability of a statement, shall be initiated within sixty days after the public has been informed pursuant to section 343-2 of the acceptance of such statement; provided that [only] the commissiont affected agencies, or persons who will be aggrieved by a proposed action and who provided written comments to such statement during the designated review period shall have standing to file suit; further provided that contestable issues by the commission are unlimitedt and those of any other party shall be limited to issues identified and discussed [by the plaintiff] in the written commentst

SECTION 6. Statutory material to be repealed is bracketedt New material is underscoredt In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoringt

SECTION 7. This Act shall take effect upon its approval, but is not retroactive and shall not apply to those actions which have received approvals from appropriate agencies authorized to approve actions covered by this Actt

THE OUTDOOR CIRCLE 200 No. Vineyard, Honolulu, Hawaii 96817

OCT 13 1977

October 12, 1977

Legislative Reference Bureau
State of Hawaii
State Capitol Room 004
Honolulu, Hawaii 96813

Attn: Lester Ishado
Dear Mr. Ishado:

The Outdoor Circle appreciates the opportunity given us to review the preliminary draft on "Standing and Time Limitations to Bring Environmental Actions".

We would first point out a conflict between the sentence commencing on line 11 of VI-9 and the sentence commencing on line 11 of VI-11 concerning the probability of Hawaii's citizens abusing the right to bring legal action.

Our major comment is that the report does not deal with a fundamental question we believe the legislature should address: How far should the courts undertake the role of auditor of governmental processes?

Where an identifiable and substantial private legal interest is involved, the case involves the kinds of fact and interest with which the courts have traditionally dealt. Enlargement of standing is for the purpose of enabling citizens to present to the courts their complaints that governmental agencies are not doing their jobs. As more general interests are recognized, the courts get progressively closer to the kind of oversight which a legislature gives to the agencies it creates, such as the legislative auditor, rather than acting to protect private interests from governmental action.

Lester Ishado
Legislative Reference Bureau
Continued

This has to be considered from the standpoint of the political desirability of breaching the separation of powers and the value of the courts entry into this fiels, and not only from the standpoint of the increased case load. This is a particular problem under the Michigan Act, which empowers the courts to step in and make administrative decisions.

Very truly yours,

Betty Crocker

Mrs. Theodore Crocker
President

BC/ha

DEPARTMENT OF PLANNING
AND ECONOMIC DEVELOPMENT

• • •

LAND USE COMMISSION

Suite 1795, Pacific Trade Center, 190 S. King Street, Honolulu, Hawaii 96813

OCT 20 [illegible]

October 24, 1977

Mr. Lester Ishado
Researcher
Legislative Reference Bureau
State Capitol, Room 004
Honolulu, Hawaii 96813

Dear Mr. Ishado:

Thank you for the opportunity to comment on your draft report on "Standing and Time Limitations to Bring Environmental Actions". At this time, we have no comments regarding this matter.

Sincerely,

GORDAN Y. FURUTANI
Executive Officer

GYF:jy

GEORGE R. ARIYOSHI
GOVERNOR OF HAWAII

W. Y. THOMPSON, Chairman
BOARD OF LAND & NATURAL RESOURCES

EDGAR A. HAMASU
DEPUTY TO THE CHAIRMAN

DIVISIONS:
CONVEYANCES
FISH AND GAME
FORESTRY
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
P. O. BOX 621
HONOLULU, HAWAII 96809

September 28, 1977

Mr. Lester Ishado
Researcher
Legislative Reference Bureau
State of Hawaii
State Capitol, Rm. 004
Honolulu, HI 96813

Dear Mrt Ishadot

Thank you for your letter of September 14t 1977 and enclosure relating to standing and time limitations to bring environmental actions prepared by your officet

Inasmuch as this document is one which draws heavily upon a legal and judicial aspect of the environmentt we have forwarded the attachment to our attorney for their direct responset

If we may be of any further servicet please feel free to contact Mr. Roger C. Evans of our Planning Office at 548-7837.

Very truly yours,

W. Y. THOMPSON
Chairman of the Board

Hawaiian Dredging & Construction Company

NOV 2 3 1977

November 25, 1977

Lester Ishado
Legislative Reference Bureau
State of Hawaii
State Capitol Room 004
Honolulu, Hawaii 96813

Dear Mr. Ishadot

We have reviewed your preliminary final draft of the study of standing to bring environmental actions and applicable time limitations. We appreciate the opportunity and would like to offer the following comments.

It is our recommendation that the term "aggrieved person" and "interested person" as used in the Hawaii Administrative Procedure Act be specifically defined. Such definition should be consistent with the present interpretation of "standing" rendered by the Hawaii courtst "Aggrieved person" and "interested person" could be defined in the act as:

> "a person who has a legal interest (personal or property right) adversely affected by the agency action and that injury is personal and peculiar to the person as an individual and not as a member of the general public."

The purpose of our recommendation is that it will insure that a person who brings an action in an administrative proceeding will also have standing to seek judicial reviewt

We concur with the recommendation of the study that there should be a 30-day time limitation in which to seek judicial review of an administrative agency decision. It is in the best interest of

A DILLINGHAM COMPANY
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the appealing party as well as the defendant to have the dispute resolved at the earliest date possible.

Our final recommendation is that a similar Legislative Reference Bureau study be made on the effectiveness of imposing a bonding requirement on all plaintiffs who decide to seek judicial review of an administrative agency decision. It is our opinion that such a requirement will deter unwarranted lawsuits which unnecessarily delay and increase the cost of construction projects.

Yours truly,

ED HOO
On behalf of the
General Contractors
Association

cc: Elroy Chun
Mike Kido