CONCURRING OPINION BY ACOBA, J.

I believe that the circuit court of the first circuit (the court) had appellate jurisdiction to review the order of the Hawai'i Labor Relations Board (HLRB) denying the petition for a declaratory ruling by the State of Hawai'i Department of Transportation (DOT) on the bases set forth herein. Therefore, I concur.

I.

A.

Hawai'i Revised Statutes (HRS) § 91-8 (1993) authorizes interested persons to petition agencies for declaratory rulings.[1] The final sentence of HRS § 91-8 provides that "[o]rders disposing of petitions in such cases shall have the same status as other agency orders." (Emphasis added.) Intervenor/Appellant-Appellee Hawai'i Government Employees Association, AFSCME, Local 152, AFL-CIO (HGEA) maintains that, based upon this language, "orders disposing" of petitions for declaratory rulings "have the same status as a final order in a

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[1] HRS § 91-8 provides as follows:

> **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.

(Emphasis added.)

contested case, and thus may be appealed to the Circuit Court under HRS § 91-14(a)."[2]

"Other agency orders" is not defined in the Hawai'i Administrative Procedure Act (HAPA), HRS chapter 91.[3] However, we may look to other parts of HAPA to aid or explain the meaning of "other agency orders." HRS § 1-16 (1993) mandates that "laws in pari materia, or upon the same subject matter, shall be construed with reference to each other." This rule "has the greatest probative force in the case of statutes relating to the same subject matter passed at the same session of the legislature, especially if they were enacted on the same day." Kam v. Noh, 70 Haw. 321, 326, 770 P.2d 414, 417 (1989). All of the statutes comprising HAPA, now codified as HRS chapter 91, were introduced collectively as House Bill No. 5 and signed into law on the same date, May 23, 1961, as Act 103. 1961 Haw. Sess. L. Act 103, § 21, at 91. Thus, "each part or section [of HAPA] should be construed in connection with every other part or section so as to produce a harmonious whole." Kam, 70 Haw. at

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[2] HRS § 91-14 (1993) states, in relevant part, as follows:

> **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;

(Emphasis added.)

[3] HRS § 91-1 (1993) defines "agency" to mean "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." "Order" is defined as a "mandate; precept; command or direction authoritatively given[.]" Black's Law Dictionary 1096 (6th ed. 1990).

327, 770 P.2d at 418 (citations omitted).

The only "other agency orders" referred to in HAPA are orders "rendered by an agency in a contested case" under HRS § 91-12.[4] Thus, reading HRS § 91-8 in pari materia with HRS § 91-12, declaratory rulings have the "same status" as contested case orders. Contested case orders are subject to judicial review pursuant to HRS § 91-14. Inasmuch as declaratory orders "share the same status," they, like contested case orders, are subject to judicial review.

B.

Legislative history confirms this in pari materia construction of HRS § 91-8. See State v. Wells, 78 Hawai'i 373, 376, 894 P.2d 70, 73 (1995) (recognizing that this court may look to relevant legislative history to determine the purpose of a statute). In 1946, the National Conference of Commissioners on Uniform State Laws issued the Model State Administrative Procedure Act. Model State Admin. Procedure Acts (amended 1981), 15 U.L.A. 175-76 (Master ed. 2000) The Model Act was then revised in 1961 (Revised Model Act). Id. at 174. HAPA was modeled after the 1959 draft of the Revised Model Act. Hse. Stand. Com. Rep. No. 8, in 1961 House Journal, at 654.

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[4] HRS § 91-12 (1993) states, in part, as follows:

> **Decisions and orders.** Every decision and order adverse to a party to the proceeding, rendered by an agency in a contested case, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law.

As a general matter, the House Judiciary Committee identified a "basic purpose" of HAPA to be "providfing] for judicial review of agency decisions and orders on the record, except where the right of trial de novo, including the right of trial by jury, is provided by law." Id. at 655 (emphases added). The House Committee's report provides a section-by-section analysis of Bill No. 5, with reference to the Revised Model Act. As to the section on declaratory rulings, now codified as HRS § 91-8, the Committee stated,

> Section 8 of the Revised Model Act has been adopted with the following changes:
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> (a) The amendment to this section changes the style of the language to conform to Section 6 of this bill. The language of this section does not necessarily require an agency to issue a declaratory order in every instance but is intended to induce them to do so more frequently than they may have been doing in the past. This section would require each agency to adopt rules governing the issuance of declaratory orders. These rules, however, could provide for the agency having some discretionary power to refuse to make a declaratory ruling. Since the refusal in itself would be an agency order, in appropriate cases, application for judicial review on the grounds that denial was an abuse of discretion on the part of the agency may be made.

Id. at 658-59 (emphases added). This report is instructive in three respects.[5]

First, the legislature expressly adopted Section 8 of the Revised Model Act and apparently made only stylistic changes in order "to conform to Section 6." To reiterate, HRS § 91-8, entitled "Declaratory rulings by agencies," provides that

[5] According to the conference committee reports, both houses were "in accord with the intent and purpose of House Bill No. 5." Conf. Com. Rep. No. 9, in 1961 House Journal, at 1058; Conf. Com. Rep. No. 10, in 1961 Senate Journal, at 1047.

> [a]ny 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.

(Emphases added.) Section 8 of the Revised Model Act stated that

> [e]ach agency shall provide by rule for the filing and prompt dispositon of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. Rulings disposing of petitions have the same status as agency decisions or orders in contested cases.

Model State Admin Procedures Acts, 15 U.L.A. at 267 (emphases added.)

Section 8 of the Revised Model Act did not contain language found in Section 6 to the effect that "any interested person may petition an agency" for declaratory rulings.[6] Thus, it appears that the legislature's changes to the Revised Model Act in this respect was to make clear that "any interested person" can petition for (1) the adoption, amendment, or repeal of a rule under HRS § 91-6 and (2) a declaratory ruling pursuant to HRS § 91-8. Such petitions would be for declaratory "orders." Additionally, the final sentence in HRS § 91-8 states that

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[6] Section 6 of Bill No. 5, now codified as HRS § 91-6, states:

> **§ 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.

"[o]rders disposing of petitions in such cases shall have the same status as other agency orders." (Emphases added.) The last sentence of Revised Model Act Section 8 is substantially similar, providing that "[r]ulings disposing of petitions have the same status as agency decisions or orders in contested cases." (Emphases added.)

The legislature's statement that Section 8 of the Revised Model Act had been adopted confirms that use of the term "orders"[7] rather than "rulings" or the use of the phrase "other agency orders" rather than "agency decisions or orders in contested cases" did not constitute a substantive change. As stated previously, in HAPA, the only "other agency orders" are orders resolving contested cases. Hence the reference to "other agency orders" in HRS § 91-8 is the equivalent of the Revised Model's Section 8 "agency decisions or orders in contested cases." The legislature expressly stated that it was adopting the Revised Model Act Section 8 with stylistic amendments and, hence, any differences between these two sentences was not viewed as substantive.

Second, the House report instructs that HRS § 91-8 was adopted to "induce" agencies to issue declaratory orders "more frequently than they may have been doing in the past." This legislative intent coincides with the intent of the drafters of

[7] The drafters of the Revised Model Act believed the declaratory ruling procedure applied to "orders as well as rules." Frank E. Cooper, State Administrative Law 242 (1965) (internal quotation marks omitted).

the Revised Model Act who were "determined to make it more difficult for agencies to decline to issue declaratory rulings." Frank E. Cooper, State Administrative Law 242 (1965).

The final sentence of the House report, that "[s]ince the refusal in itself would be an agency order, in appropriate cases, application for judicial review on the grounds that denial was an abuse of discretion on the part of the agency may be made," Hse. Stand. Com. Rep. No. 8, in 1961 House Journal, at 659, also confirms that judicial review was contemplated for declaratory ruling orders, denial of a declaratory ruling application also being considered an agency order. See discussion infra. Thus, the in pari materia construction of HRS § 91-8 -- that courts may review declaratory rulings -- is in consonance with legislative intent.

C.

While not expressly setting forth a construction of HRS § 91-8, as discussed above, prior cases of this court have consistently recognized that the circuit courts have jurisdiction to review HRS § 91-8 declaratory rulings[8] ostensibly by way of the procedure in HRS § 91-14. See e.g., Vail v. Employees' Ret. Sys., 75 Haw. 42, 49-51, 856 P.2d 1227, 1232-33 (1993) (disposing

[8] Intervenor/Appellee-Appellant United Public Workers, AFSCME, Local 646, AFL-CIO (UPW) concedes that "where the labor board actually issues a declaratory ruling on the merits affecting the rights[,] duties[,] and privileges of the specific parties[,] judicial review is afforded by the court." As discussed, however, judicial review of declaratory rulings is statutorily mandated.

of an appeal, brought pursuant to HRS § 91-14, of a HRS § 91-8 declaratory order); Fasi v. State Pub. Employment Relations Bd., 60 Haw. 436, 441, 591 P.2d 113, 116 (1979) (concluding that the "circuit court acquired jurisdiction [over a declaratory ruling] as the result of institution . . . , pursuant to HRS § 91-14, of proceedings for review of the Board's decision"); Kim v. Employees' Ret. Sys., 89 Hawai'i 70, 71, 968 P.2d 1081, 1082 (App. 1998) (disposing of an appeal of a declaratory order concerning recalculation and increase of retirement benefits). See also Sierra Club v. Hawai'i Tourism Auth., 100 Hawai'i 242, 264 (2002) (explaining that HAPA "applies only to judicial review of contested case hearings, see HRS § 91-14, or . . . a declaratory order from an agency regarding 'the applicability of any statutory provision or of any rule or order of the agency,' HRS § 91-8" (emphasis added)).

II.

UPW distinguishes an agency order "refusing" to issue a declaratory ruling from an order issuing a declaratory ruling. However, as stated previously, HRS § 91-8 provides that "[o]rders disposing of petitions in such cases shall have the same status as other agency orders." (Emphasis added.) To "dispose of" is to "exercise finally, in any manner, one's power of control over; to pass into the control of someone else; to alienate, relinquish, part with, or get rid of; to put out of the way; to finish with; to bargain away." Black's Law Dictionary at 471.

Orders refusing to issue a declaratory ruling would fall within the definition of actions "disposing" of petitions. See Human Rights Party v. Michigan Corr. Comm'n, 256 N.W.2d 439, 442 (Mich. Ct. App. 1977) (holding that "a refusal to issue a declaratory ruling . . . is subject to judicial review as an agency final decision or order in a contested case" (emphasis added)); Cooper, supra, at 243 (observing that because "a ruling declining to rule upon a particular question . . . would have the same status as any other final order of the agency[,] . . . in appropriate cases, the refusal of the agency to make a ruling could be appealed to the courts" (emphases added)). HLRB's order represented the final exercise of its "power of control over" DOT's petition. Thus, the order of "refusal" was an order of the HLRB "disposing" of the petition. It follows, then, that like "other agency orders," orders that "exercise finally, in any manner," the agency's "power of control over" a petition for declaratory ruling are subject to judicial review.

Again, legislative history confirms the interpretation of HRS § 91-8 as vesting the court with jurisdiction over HLRB's order. As was mentioned previously, the House Judiciary Committee acknowledged that "refusal [to make a declaratory ruling] would be an agency order" and therefore "in appropriate cases, application for judicial review . . . may be made." Hse. Stand. Com. Rep. No. 8, in 1961 House Journal, at 659 (emphasis added). Thus, the legislature contemplated that an agency may

refuse to issue a declaratory ruling, that such a refusal constituted "an agency order," and, hence, like "other agency orders," such action was subject to judicial review.

III.

Without reaching the merits of the appeal, the facts indicate the adverse effects of the HLRB's ruling. HGEA is the certified exclusive representative of employees with respect to job positions in Bargaining Unit 2 (BU-02). HGEA's collective bargaining agreement "requires that temporarily vacant BU-02 job positions should be filled by BU-02 employees via a temporary transfer or assignment." UPW, on the other hand, is the certified exclusive representative of employees and job positions in Bargaining Unit 1 (BU-01). In apparent conflict with HGEA's agreement, UPW's collective bargaining agreement "requires that temporarily vacant BU-02 positions should be filled by BU-01 employees via a temporary promotion."

The underlying dispute in this case arose when DOT filled a temporarily vacant BU-02 job position with a BU-02 employee. UPW filed a grievance against DOT on behalf of William Kapuwai, a BU-01 employee. On October 8, 1996, UPW gave notice of its intent to arbitrate the grievance. While the arbitration was still in progress, on October 20, 1997, DOT filed its petition for declaratory ruling with the HLRB. The HLRB subsequently permitted UPW, HGEA, and all of the employer-

counties of Hawai'i to intervene in the petition for declaratory ruling.[9]

On May 11, 1998, the arbitrator issued his final written decision and award in favor of Kapuwai, thus placing a BU-01 employee in a BU-02 job position. On May 15, 1998, UPW filed a motion in the circuit court[10] to confirm the arbitration award. The motion to confirm was granted on July 21, 1998.[11] Some two years later, on June 7, 2000, the HLRB dismissed DOT's petition for declaratory ruling on the ground that the Kapuwai arbitration rendered the case moot.

By declaring the petition moot, the HLRB left unsettled the issue of how temporary BU-02 job positions should be filled. On appeal to the circuit court, the court agreed with HGEA that the case was not moot. In its April 11, 2001 order remanding the case to the HLRB, the court concluded that the HLRB "committed an error of law when it determined that the case had lost its character as a present live controversy inasmuch as the petition for declaratory ruling, as stated, indicates a recurring problem." (Emphasis added.)

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[9] On November 14, 1997, DOT also filed a prohibited practice complaint against UPW, alleging that UPW's position in the Kapuwai grievance was contrary to HRS § 89-9(d). DOT requested that the HLRB stay proceedings before the arbitrator.

[10] The Honorable Kevin Chang presided.

[11] In its brief, HGEA cites to other arbitration decisions that conflict with the Kapuwai arbitration decision.

According to HGEA, the two collective bargaining agreements have apparently resulted in conflicting arbitration awards, a conflict which will likely continue to evade judicial review via individual arbitration awards. The HLRB had granted HGEA's and other appellants' requests to intervene in DOT's petition. But the HLRB dismissed DOT's petition on mootness grounds almost two years after the arbitration award was confirmed. In supporting the court's decision, HGEA argues that an exception to the mootness doctrine applies. It contends that pursuant to Kona Old Hawaiian Trails Group v. Lyman, 69 Haw. 81, 87, 734 P.2d 161, 165 (1987), a case should not be dismissed as moot if "the question involved affects the public interest, and it is likely in the nature of things that similar questions arising in the future would likewise become moot before a needed authoritative determination by an appellate court can be made." Under these circumstances, whether the HLRB's ruling comes within an exception to the mootness doctrine presents a question susceptible to judicial review pursuant to HRS § 91-8.

IV.

Based on the foregoing, I believe that HAPA provides for judicial review of declaratory ruling orders, including what may be characterized as a "refusal" to issue a declaratory ruling. In my view, because the court had jurisdiction to review HLRB's order denying DOT's petition, and the question presented plainly affects the public interest and is susceptible of arising

again in the future without being resolved by appellate review, the court's remand to the HLRB was correct.