

SB 632

RELATING TO THE ENVIRONMENTAL COURTS.

Establishes environmental courts as divisions within the circuit courts to hear all proceedings, including certain chapter 91, Hawaii Revised Statutes, proceedings arising from environmental laws. Requires the Judiciary to report to the Legislature on the total number of environmental-related cases filed in the last five years



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Energy and Environment
The Honorable Mike Gabbard, Chair
The Honorable Russell E. Ruderman, Vice Chair

Thursday, January 31, 2013, 2:45 p.m.
State Capitol, Conference Room 225

by

Elizabeth Zack
Supreme Court Staff Attorney

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 632, Relating to the Environmental Courts.

Field Code Changed

Field Code Changed

Purpose: Establishes environmental courts as divisions within the circuit court to hear all proceedings, including chapter 91, Hawaii Revised Statutes, proceedings arising from environmental laws. Requires the Judiciary to report to the Legislature on the total number of environmental-related cases filed in the last five years.

Judiciary's Position:

The Judiciary must respectfully oppose Senate Bill No 632.

Field Code Changed

Senate Bill No. 632 would establish within each circuit an environmental court with separate rules, based upon the misunderstanding that "environmental disputes are currently dealt with in a variety of courts" and "this organizational structure inadvertently promotes inconsistent application of the wide variety of environmental laws." Although the Judiciary does not maintain statistical information regarding the application of environmental laws, all agency appeals to the circuit court, including agency appeals covering environmental issues, are now assigned regularly to one designated judge in the first judicial circuit and are rotated among the civil judges in the second, third, and fifth judicial circuits, and are handled in due course.

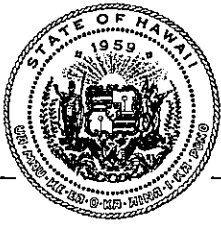


Senate Bill No. 632, Relating to the Environmental Courts
Senate Committee on Energy and Environment
January 31, 2013
Page 2

Senate Bill No. 632 attempts to address the perception that environmental cases are dealt with by a variety of courts by requiring the chief justice to designate circuit judges in each circuit to hear environmental cases. Our research has not indicated that the present court system fails to provide uniform application of environmental laws. Furthermore, if any party in an environmental case is dissatisfied with the outcome, that party has a remedy by way of appeal to the Intermediate Court of Appeals and then to the Supreme Court. This appellate process insures consistent application of environmental laws for the trial courts are bound to follow the appellate court decisions.

In other jurisdictions, environmental courts have been established after increases in environmental violations, housing/safety code violations, and/or an increase of abandoned residences or littered properties. In the City and County of Honolulu, environmental cases, such as improper grading and major runoff issues, have been resolved in the circuit courts. We have not been able to find data that demonstrates that the establishment of environmental courts will serve to deter further violations of environmental laws, or resolve environmental cases more expeditiously than the present circuit court system. Accordingly, we do not believe that the establishment of special environmental courts necessary at this point in time.

Thank you for the opportunity to comment on Senate Bill No. 632.



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of
JESSE K. SOUKI
Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON ENERGY AND ENVIRONMENT
Thursday, January 31, 2013
2:45 PM
State Capitol, Conference Room 225

in consideration of
SB 632
RELATING TO ENVIRONMENTAL COURTS.

Chair Gabbard, Vice Chair Ruderman, and Members of the Senate Committee on Energy.

The Office of Planning supports the creation of an environmental court in the State of Hawaii.

A judicial process that fosters clearly articulated decisions resolving the complex laws and technical facts related to environmental and land use disputes will benefit landowners, regulators, and the public. However, the court should include land use matters and be renamed accordingly.

The focus of the court should not be constrained to "environment." Our key state land use and environmental laws expect decision-makers to balance several needs in the interest of the public's welfare. In particular, the purpose of the Hawaii Environmental Policy Act ("HEPA") is "to establish a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations. See L. 1979, c 197, §1(1), codified as HRS § 343-1. The purpose of Hawaii's land use law is to "preserve, protect and encourage the development of the lands in the State for those uses to which they are best suited for the public welfare[.]" See L. 1961, c 187, §1. The purpose of the Hawaii State Planning Act, which guides all county and state agency decisions, is

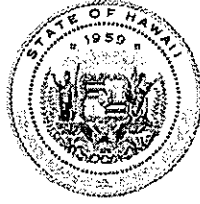
“to set forth the Hawaii state plan that shall serve as a guide for the future long-range development of the State[.]” See L. 1978, c 100, pt of § 2, codified as HRS § 226-1.

The focus of the bill should be on the capacity and expertise of judges on the subject of “land use law,” which includes planning, permitting, and environmental laws. To achieve the purposes of Hawaii’s key land use laws, the Hawaii land use system has evolved with the advancement of science to better mitigate, avoid, and minimize reasonably foreseeable impacts from proposed projects on the environment, community, and economy. A court that is well versed in the practice of land use and environmental laws will provide timely, consistent, predictable, and clearly articulated decisions to the benefit of all parties involved.

Consistent with the above, we recommend amending the bill to include judicial review of administrative proceedings, proceedings for declaratory judgment on the validity of agency rules, and legislative county decisions related to subdivision, permitting, and zoning. In addition, the name of the court should be changed to, “Land Use Courts,” to reflect these broader interests.

Thank you for the opportunity to provide testimony on this measure.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the Senate Committees on
WATER AND LAND
&
ENERGY AND ENVIRONMENT**

**Thursday, January 29, 2013
2:15 PM
State Capitol, Room 225**

**In consideration of
SENATE BILL 632
RELATING TO THE ENVIRONMENTAL COURTS**

Senate Bill 632 proposes to establish environmental courts as divisions within the circuit courts to hear all proceedings, including certain Chapter 91, Hawaii Revised Statutes, proceedings arising from environmental laws, and requires the Judiciary to report to the Legislature on the total number of environmental-related cases filed in the last five years. The Department of Land and Natural Resources (Department) supports this bill and provides the following comments.

The Department recognizes that consistent application of environmental laws plays a critical role in natural resource management and protection in Hawaii. The Department notes that if a single judge is appointed to oversee the environmental court it would be vital for that judge to be well versed in the Department's numerous guiding statutes and rules.

The Department supports this bill, thank you for the opportunity to testify.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS



SB632
RELATING TO THE ENVIRONMENTAL COURTS
Senate Committee on Energy and Environment

January 31, 2013

2:45 p.m.

Room 225

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment (BAE) **SUPPORTS** SB632, which would establish an environmental division within the circuit courts, for the consistent and informed adjudication of disputes regarding environmental laws.

Environmental courts will better ensure consistent and informed decision making for disputes involving environmental and cultural laws and resources. Over the last several years, numerous concerns have been raised regarding potential inconsistencies or lowered judicial scrutiny for legal disputes involving Hawai'i's environmental laws. Such inconsistencies have resulted in the need for protracted and expensive legal appeals, and may foster speculative posturing even in administrative proceedings prior to circuit court involvement. In other jurisdictions, environmental "courts" have been created to address these concerns, by ensuring that environmental laws are adjudicated by a specialized tribunal that can develop institutional knowledge of laws directly related to environmental protection and planning processes. The specialized docket proposed by this bill will provide similar benefits to the adjudication of environmental laws in Hawai'i.

OHA believes that a circuit court docket specializing in environmental cases may also provide a long-term means to better protect and enforce the rights of OHA's beneficiaries. Despite the existence of numerous laws recognizing and protecting the interests of Native Hawaiians and the general public in Hawai'i's natural and cultural resources, the enforcement of these laws in some instances requires the possibility of litigation, as well as the ability to confidently assert consistent interpretations of the law to state decision makers. OHA accordingly believes that the existence of a specialized environmental court or docket, as this bill proposes, will in the long-term greatly facilitate the actual implementation of laws that are intended to protect the environmental and cultural interests of both Native Hawaiians and other Hawai'i residents.

Therefore, OHA's BAE Committee urges this Committee to **PASS** SB 632. Thank you for the opportunity to testify.



CONSERVATION COUNCIL FOR HAWAII

Testimony Submitted to the Senate Committee Energy and Environment
Hearing: Thursday, January 31, 2013 2:45 pm
Room 225

In Support of SB 632 Relating to the Environmental Courts

Aloha. The Conservation Council for Hawai'i supports SB 632, which establishes environmental courts as divisions within the circuit courts to hear all proceedings, including certain chapter 91, Hawaii Revised Statutes, proceedings arising from environmental laws. Requires the Judiciary to report to the Legislature on the total number of environmental-related cases filed in the last five years.

Environmental courts specializing in environmental laws will help to develop competence, expertise, and institutional knowledge in the environmental legal arena, and will help to provide consistency and informed decisions. These courts may even help to streamline environmental cases. Increasing legal expertise in veterans' courts and labor courts has worked well elsewhere and will benefit Hawai'i.

In a related matter, we should also build capacity at the agency level. We need hearings officers with expertise in environmental areas, as well as administrative law judges to focus on process. Currently, too much effort is spent by concerned citizens just to be heard.

Please support SB 632. Mahalo nui loa for the opportunity to testify.

Sincerely,

Marjorie Ziegler



Hawai'i's Voice for Wildlife -- *Ko Leo Hawai'i no na haloholona iohu*

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Directors: Rick Barboza * Lida Pigott Burney * Maka'ala Ka'aumoana * Koalani Kaulukukui * Robin Kaye
Executive Director: Marjorie Ziegler



Hawai'i Wildlife Fund

January 30, 2013

Chairman Senator Mike Gabbard
Energy and Environment Committee
Date of Hearing: Jan 31, 2012 2:45pm
Room 225 at the Capitol Building of the Senate

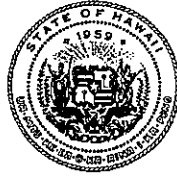
Aloha Honorable Chairman Gabbard and Committee Members:

I am writing as President of a locally-based non-profit conservation organization to **support passage of SB 632 relating to establishing environmental court as divisions within circuit courts to handle environmental law issues.**

Many of us involved in conservation in Hawai'i, including our communities and our law enforcement branch of DLNR: DOCARE, have long recognized the need for a separate court context for environmental matters. We hope that the establishment of this environmental court division will result in a much better understanding of the impact of violations of laws designed to protect our precious natural resources. There is also the potential for more appropriate fines to be levied once environmental matters are evaluated separately from those that involve domestic and serious criminal activities that threaten public safety, and this might assist in more effective deterrence of future violations. Mahalo for the opportunity to support this important bill.

Me ke aloha pumehana,
Hannah Bernard
Hannah Bernard, President
Hawai'i Wildlife Fund

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

S.B. No. 632, Relating to the Environmental Courts

Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.
Director of Health

January 31, 2013
2:45 p.m.

1 **Department's Position:** The Department of Health appreciates the intent of this bill but has
2 reservations and comments.

3 **Fiscal Implications:** This bill calls for the establishment of environmental courts as divisions within
4 the circuit courts, for a report from the Judiciary to the Legislature, and for the supreme court to adopt
5 rules regarding the proposed courts. All of these items would require the Judiciary to increase its current
6 budget with funding from the state general fund.

7 **Purpose and Justification:** The purpose of this bill is to promote and protect Hawaii's natural
8 environment. The proposed means to accomplish this goal is to establish environmental courts as
9 divisions in the circuit courts of the state. The department supports the bill's environmental protection
10 purpose, but it has reservations as to its actual impact on the department's environmental cases.
11 Currently, the majority of the department's environmental cases are resolved at the administrative level
12 under a Hearings Officer, with very few cases being appealed to the circuit courts.

13 The department believes that the environmental purpose of this bill could be better achieved by
14 establishing a more robust administrative law judicial system, including official dockets, court reporters,

"Promoting Lifelong Health and Wellness"

1 long term appointed hearings officers, hearing rooms, and most importantly, official record keeping.
2 The administrative law judicial system could be implemented more economically and be made available
3 to all state agencies dealing with environmental cases. A well established administrative judicial system
4 would better fulfill the intent of the proposed bill by ensuring more consistent, uniform, and efficient
5 application of environmental laws.

6 The proposed bill may also pose a few judicial challenges. If the Attorney General's Office were
7 to bring a misdemeanor criminal action for a violation of the department's regulations, the misdemeanor
8 criminal case would be brought before the local circuit court judge for environmental cases, rather than
9 the local district judge for criminal misdemeanors generally. This would potentially remove district
10 court jurisdiction over a class of misdemeanors by giving that jurisdiction to the circuit courts, thereby
11 increasing the circuit courts' already heavy workload. And if the Attorney General's Office were to
12 bring a felony criminal action for a violation of the department's regulations, the criminal case would be
13 brought before the circuit court judge for environmental cases, rather than before a regular circuit court
14 criminal case judge. This could pose a problem because while the environmental court judge might be
15 well versed in environmental issues, he or she might not be as familiar with criminal procedures.

16 Thank you for the opportunity to testify.



SB632
RELATING TO THE ENVIRONMENTAL COURTS
Senate Committee on Energy and Environment

January 31, 2013

2:45 p.m.

Room 225

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Therefore, OHA's BAE Committee urges this Committee to **PASS** SB 632. Thank you for the opportunity to testify.

SB632

Submitted on: 1/28/2013

Testimony for ENE on Jan 31, 2013 14:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Davlantes	Individual	Support	No

Comments:

SB632

Submitted on: 1/30/2013

Testimony for ENE on Jan 31, 2013 14:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
David M. Johnston	Individual	Support	No

Comments: