



OFFICE OF PLANNING STATE OF HAWAII

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

NEIL ABERCROMBIE
GOVERNOR

JESSE K. SOUKI
DIRECTOR
OFFICE OF PLANNING

Telephone: (808) 587-2846
Fax: (808) 587-2824
Web: <http://planning.hawaii.gov/>

Statement of the
OFFICE OF PLANNING
before the
HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

Tuesday, March 11, 2014
8:30 AM
State Capitol, Conference Room 325

in consideration of
SB 632, SD2
RELATING TO THE ENVIRONMENTAL COURTS.

Chair Lee, Vice Chair Thielen, and Members of the House Committee on Energy and Environmental Protection.

The Office of Planning supports the intent of the creation of an environmental court in the State of Hawaii with the following comments.

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.



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Energy & Environmental Protection

The Honorable Chris Lee, Chair

The Honorable Cynthia Thielen, Vice Chair

Tuesday, March 11, 2014, 8:30 a.m.
State Capitol, Conference Room 325

By

Elizabeth Zack
Supreme Court Staff Attorney

Bill No. and Title: Senate Bill No. 632, Senate Draft 2, Relating to the Environmental Courts.

Purpose: Establishes environmental courts as divisions within the circuit court to hear all proceedings, including certain chapter 91, Hawaii Revised Statutes, proceedings arising from certain environmental laws. Requires the Judiciary to report to the Legislature on the total number of environmental-related cases filed in the last five years. Takes effect 1/1/2015. (SD2)

Judiciary's Position:

The judiciary offers the following comments.

Senate Bill No. 632, Senate Draft 2 would establish within each circuit an environmental court with separate rules, based upon the belief that “environmental disputes are currently dealt with in a variety of courts” and “[T]his organizational structure inadvertently promotes inconsistent application of the wide variety of environmental laws.” In addition to establishing an environmental court in each circuit, Section 6 of SB 632, SD 2 requires the judiciary to conduct a study to determine the number of environmental-related cases within the past five years and to report findings to the legislature not less than 20 days prior to the regular session of 2015.



The judiciary understands the intent of wanting courts to develop expertise and consistency in environmental cases. We believe, however, that the judiciary already has in place processes to ensure consistency in all cases, including cases brought pursuant to the statutory provisions and administrative rules listed in section 7 of Senate Bill 632, SD2.

At present, all agency appeals to the circuit court, including agency appeals covering environmental issues, are 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. Furthermore, if any party in an environmental case is dissatisfied with the outcome in the circuit courts, 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.

We recognize that other jurisdictions have established environmental courts after increases in environmental violations, housing/safety code violations, and/or an increase of abandoned residences or littered properties. We do not believe the same issues are present in Hawai'i. However, if the legislature identifies particular areas of concern, it would be beneficial if the bill could be narrowed to focus on those areas as a pilot program. We further suggest that an environmental calendar be considered in place of an environmental court. Considering this alternative takes into account the present workload of our sitting judges and the reality that the addition of a separate environmental court may require expenditures for additional court staff, including another judge, a judicial assistant, a court clerk and a law clerk for the environmental court, as well as possible training costs. Having an environmental calendar, rather than an environmental court, would allow a judge assigned to the calendar to hear other types of cases during those periods when there are no environmental cases.

We make this suggestion based on our preliminary survey of cases based on the sections of HRS cited in Senate Bill 632, SD2. *See* Attachment. The total number of such cases for the period July 1, 2011 to December 31, 2013 is:

HRS violations: 69
HAR violations (Title 12): 1,697

It is important to note that the majority of the Title 12 cases are petty misdemeanors currently handled by the district court pursuant to HRS § 604-8. Moreover, the survey shows the highest number of prosecuted Title 12 cases were for individuals in closed park areas (328 cases) and illegal camping (198 cases). We acknowledge that including Title 12 cases within the jurisdiction of environmental courts adds a significant number of cases. The judiciary still believes environmental calendars, as opposed to environmental courts, will result in better use of resources and funding.



Senate Bill No. 632, Senate Draft 2 Relating to the Environmental Courts
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Although the judiciary believes the present system is adequate in addressing the concerns expressed in this measure, we are supportive of the concept proposed, we are always open to discussion and we welcome any questions regarding these matters. In the final analysis, however, due to the many issues related to the establishment of a new court, it may be more prudent to create a task force composed of the stakeholders, as proposed by Senate Concurrent Resolution No. 133, Senate Resolution No. 70, House Concurrent Resolution No. 209, and House Resolution No. 164, to address these issues and to ensure the vision reflected in the proposed bill is achieved.

Thank you for the opportunity to comment on Senate Bill No. 632, Senate Draft 2.

Attachment

**Environmental Law Cases Filed in District and Circuit Court, Hawai'i Revised Statutes
Report Including July 1, 2011 - December 31, 2013**

Violations	Filed Prior to 2000	Filed 2001 to 2010	Filed 2011 to 2013	Total
HRS § 128D - Environmental Response Law	0	0	0	0
HRS § 171-31.6 - Violation of public lands laws	0	0	0	0
HRS § 184-5 - Vilation of State Parks and recreation area laws	0	0	0	0
HRS § 188-22.8 - Limu Management Area	0	0	0	0
HRS § 188-23(a) - Possession of explosives in state waters	0	0	0	0
HRS § 188-23(b)(1) - Deposit petroleum material in state waters	0	0	0	0
HRS § 188-23(b)(2) - Deposit hypochlorous acid products in state waters	0	0	0	0
HRS § 188-23(b)(3) - Deposit preparations containing rotenone tephrosin etc in state water	0	0	0	0
HRS § 188-23(b)(4) - Deposit other deleterious materials in state waters	0	0	0	0
HRS § 188-25(a) - Fishing with firearms	0	0	0	0
HRS § 188-25(b) - Fishing with spears	0	0	0	0
HRS § 188-28.5(b) - Bullpen trap prohibitions exceeding 2000 feet	0	0	0	0
HRS § 188-28.5(d) - Bullpen trap prohibitions 1000 yards of shore	0	0	0	0
HRS § 188-28.5© - Bullpen trap prohibitions more than 16 hours	0	0	0	0
HRS § 188-29(a) - Nets	0	0	0	0
HRS § 188-29(b) - Traps	0	0	0	0
HRS § 188-29.1 Prohibition on disposal of fishing gear	0	0	0	0
HRS § 188-30 - Fine meshed throw nets	0	0	0	0
HRS § 188-30.2(1) - Fishing with gill net unattended	0	0	0	0
HRS § 188-30.2(2) - Fishing with gill net more than 4 hours	0	0	0	0
HRS § 188-30.5 - Fishing with drift gill net prohibited	0	0	0	0
HRS § 188-31(c) - Permits to take aquatic life for aquarium purposes	0	0	0	0
HRS § 188-34 - Fishing in Honolulu and Hilo harbors restricted	0	0	0	0
HRS § 188-34(a) - Fishing in Honolulu Harbor	0	0	0	0
HRS § 188-34(b) - Fishing in Hilo Harbor	0	0	0	0
HRS § 188-34(c) - Fishing in Kahului Harbor	0	0	0	0
HRS § 188-35 - Fishing in Certain Waters	0	0	2	2
HRS § 188-35(1) - Fishing in Waikiki Reclamation canal	0	0	0	0
HRS § 188-35(2) - Fishing in Kapiolani Boulevard Drainage Canal	0	0	0	0
HRS § 188-35(3) - Fishing in Kapalama Drainage Canal	0	0	0	0
HRS § 188-35(4) - Fishing off Heeia-Kea Wharf	0	0	0	0
HRS § 188-35(5) Fishing within Waialua Bay	0	0	0	0
HRS § 188-35(6) - Fishing within Pokai Bay	0	0	0	0
HRS § 188-35(7) - Fishing in Kapaa and Waikaea canals	0	0	0	0
HRS § 188-36 Hawaii Marine Laboratory Refuge	0	0	0	0
HRS § 188-39.5 Manta Rays; prohibitions	0	0	0	0
HRS § 188-40 - Minimum Size of Fishes	0	0	1	1
HRS § 188-40(1) Aholehole manini	0	0	0	0
HRS § 188-40(2) Mullet moi weke moana kumu	0	0	0	0
HRS § 188-40(3) Awa oio kala opelu kala	0	0	0	0
HRS § 188-40(4) - Opakapaka onaga uku ulua papio octopus	0	0	0	0
HRS § 188-40(5) - Kuahonu crab or Kona crab	0	0	0	0
HRS § 188-40(6) - Clams	0	0	0	0
HRS § 188-40(7) - Shark Fins prohibitions	0	0	0	0

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Violations	Filed Prior to 2000	Filed 2001 to 2010	Filed 2011 to 2013	Total
HRS § 188-40.5 - Sharks prohibitions	0	0	0	0
HRS § 188-40.6 - Shark Feeding prohibitions	0	0	0	0
HRS § 188-40.7 - Shark fins prohibitions	0	0	0	0
HRS § 188-41 - Dried nehu and iao	0	0	0	0
HRS § 188-42.5 - Hihiwai, hapawai, and opae kalaole selling prohibited	0	0	0	0
HRS § 188-43 - Hinana and oopu taking prohibited	0	0	0	0
HRS § 188-44(a) - Mullet catching prohibited	0	0	0	0
HRS § 188-45 - Nehu and iao taking prohibited	0	0	0	0
HRS § 188-46 - Opele fishing regulated	0	0	0	0
HRS § 188-50(a) - License required	0	0	0	0
HRS § 188-50(c) - Unlawful use of license	0	0	0	0
HRS § 188-53(b) - Fishing reserves	0	0	0	0
HRS § 188-57 - Certain crustaceans protected	0	0	0	0
HRS § 188-57 Licenses for certain Crustaceans	0	0	0	0
HRS § 188-58 - Crustaceans with eggs	0	0	0	0
HRS § 188-58.5(a) - Female Crabs (Ula, Samoan, Kona) Taking or killing prohibited	0	0	18	18
HRS § 188-68(a) - Stony coral and rock with marine life attached taking prohibited	0	0	0	0
HRS § 188-68(b) - Stony coral and rock with marine life attached selling prohibited	0	0	0	0
HRS § 188-71 - Harassment of fishermen	0	0	0	0
HRS § 188-71(a)(1) - Harassment of fishermen human presence	0	0	0	0
HRS § 188-71(a)(2) - Harassment of fishermen creating stimulus	0	0	0	0
HRS § 188-71(a)(3) - Harassment of fishermen personal property	0	0	0	0
HRS § 188-71(a)(4) - Harassment of fishermen obstructing access	0	0	0	0
HRS § 188-71(b) - Harassment of fishermen unlawful entry on land or water	0	0	0	0
HRS § 189-10 - Commercial marine dealers to report	0	0	0	0
HRS § 189-10(a) - Commercial marine dealers license	0	0	0	0
HRS § 189-10(b) - Commercial marine dealers export license	0	0	0	0
HRS § 189-10(c) - Commercial marine dealers statement	0	0	0	0
HRS § 189-11 - Receipts in Duplicate	0	0	4	4
HRS § 189-14 - Rights of entry	0	0	0	0
HRS § 189-15 - Violation of fish aggregation	0	0	0	0
HRS § 189-2 - Commercial marine license	0	0	0	0
HRS § 189-2.5(b) - Longline fishing prohibited	0	0	0	0
HRS § 189-2.5(c)(1) - Longline fishing prohibited fishing	0	0	0	0
HRS § 189-2.5(c)(2) - Longline fishing prohibited gear	0	0	0	0
HRS § 189-3(a) - Monthly catch report	0	0	0	0
HRS § 189-5 - Aliens not admitted to United States	0	0	0	0
HRS § 190-5 - Violation of marine life conservation program laws and rules	0	0	0	0
HRS § 195-8 - Violation of natural area reserves system laws and rules	0	0	0	0
HRS § 197-5 - Violation of aquatic resources and wildlife laws and rules	0	0	0	0
HRS § 199-6 - Failure to obey a summons	0	0	0	0
HRS § 200-10(a)(1)(2) - Moor vessel without permit/ownership	0	0	2	2
HRS § 200-31 - Vessels registered/numbered	0	0	0	0
HRS § 200-62 - Trespass to Vessel	1	0	3	4

**Environmental Law Cases Filed in District and Circuit Court, Hawai'i Revised Statutes
Report Including July 1, 2011 - December 31, 2013**

Violations	Filed Prior to 2000	Filed 2001 to 2010	Filed 2011 to 2013	Total
HRS § 200-73 - Unlawful to possess certain vessels or hulls	0	0	0	0
HRS § 339-4(A)(2) - Litter Outside of Receptacle	13	2	28	43
HRS § 339D - Electronic Waste	0	0	0	0
HRS § 340A - Solid Waste	0	0	0	0
HRS § 340E - Safe Drinking Water	0	0	0	0
HRS § 342B-45 - Air Pollution	1	1	7	9
HRS § 342B-49(b) - Air Pollution, false statemt/records or rendering inaccurate device	0	1	0	1
HRS § 342C - Ozone Layer Protection	0	0	0	0
HRS § 342D-33(1) - Knowing Violation (Water Pollution)	0	5	1	6
HRS § 342E - Nonpoint Source Pollution	0	0	0	0
HRS § 342F-9(a) - Noise Pollution	0	0	1	1
HRS § 342G - Integrated Solid Waste Management	0	0	0	0
HRS § 342H-30 - Solid Waste Pollution	0	2	0	2
HRS § 342H-37(a)(1) - Unauthorised Disposal ten or more cubic Yards	0	2	0	2
HRS § 342H-39(a)(1) - Solid Waste Pollution	0	0	1	1
HRS § 342I - Special Waste Recycling	0	0	0	0
HRS § 342J-9(c)(1) - Hazardous Waste	0	1	0	1
HRS § 342J-9(c)(2) - Hazardous Waste	0	1	0	1
HRS § 342J-9(c)(3) - Hazardous Waste	0	0	1	1
HRS § 342L - Underground Storage Tanks	0	0	0	0
HRS § 342P-23 - Violation of laws, permit, or variance relating to asbestos, lead	1	0	0	1
HRS § 343 - Environmental Impact Statements	0	0	0	0
HRS § 508C - Uniform Environmental Covenants Act	0	0	0	0
TOTAL	16	15	69	100
Cases that were closed prior to FY2011 are not included in these numbers				

**Environmental Law Cases in District and Circuit Court, Hawai'i Administrative Rules
Initiated July 1, 2011 - December 31, 2013**

Violation	Description	Number
HAR § 13-100-2(1)	Prohibited activities take	2
HAR § 13-100-2(2)	Prohinited activities netting	1
HAR § 13-100-2(3)	Prohibited activities sell	1
HAR § 13-104-11(6)	sticker	1
HAR § 13-104-19	Camping without a Permit in a forest reserve	1
HAR § 13-104-9	Firearms and other weapons	4
HAR § 13-105-3(a)	Prohibited entry restricted watershed	2
HAR § 13-121-3	Hunting Prohibited	1
HAR § 13-121-3(a)	Hunting prohibited	5
HAR § 13-122-12	Conditions and restrictions	1
HAR § 13-122-12(a)(1)	Carry Hunter's License	3
HAR § 13-122-12(c)(1)	Conditions and restrictions four-wheel drive vehicles	1
HAR § 13-122-12(c)(2)	Conditions and restrictions roads	2
HAR § 13-122-12(c)(3)	Conditions and restrictions loaded weapon	4
HAR § 13-122-12(e)(1)	Conditions and restrictions sell	2
HAR § 13-122-12(e)(3)	Conditions and restrictions game bird head	1
HAR § 13-122-12(f)(4)	Conditions and restrictions intoxicating substance	1
HAR § 13-122-3	Prohibited hunting	2
HAR § 13-123-22	Conditions and restrictions	24
HAR § 13-123-22(a)(1)	GAME MAMMALS - HUNTING LICENSE/PERMIT REQUIRED	18
HAR § 13-123-22(a)(3)	Hunting Unit Failure Check in	38
HAR § 13-123-22(b)(1)	Conditions and restrictions hunting license	3
HAR § 13-123-22(b)(10)	Conditions and restrictions tracer bullets blow guns gas guns	2
HAR § 13-123-22(b)(2)	GAME MAMMAL HUNTING - WEAPONS RESTRICTIONS	2
HAR § 13-123-22(b)(3)	Conditions and restrictions closed season	3
HAR § 13-123-22(b)(4)	Conditions and restrictions bag limit	1
HAR § 13-123-22(b)(5)(A)	Conditions and restrictions rifles	2
HAR § 13-123-22(e)	CLOSED AREA	11
HAR § 13-123-23	GAME MAMMAL HUNTING - PERMIT TAGS REQUIRED	2
HAR § 13-123-24(5)	Preservation of public and private property ground fires	1
HAR § 13-123-3	Prohibited hunting	16
HAR § 13-123-3(2)	GAME MAMMAL HUNTING - PROHIBITED W/O LICENSE	9
HAR § 13-123-3(5)	GAME MAMMAL HUNTING RESTRICTIONS ON MAUI	12
HAR § 13-123-4(a)	GAME MAMMALS - BAG LIMITS, OPEN SEASONS & DAYS	9
HAR § 13-123-6	Hunting hours	6
HAR § 13-124-3	Prohibited activities	1
HAR § 13-124-3(d)(1)	Prohibited activities release	2
HAR § 13-126-23(c)	ANIMAL PETS ARE NOT PERMITTED IN WILDLIFE SANCTUARIES	2
HAR § 13-126-26	CAMPING	1
HAR § 13-126-4	WILDLIFE SANCTUARIES	16
HAR § 13-126-5	WILDLIFE SANCTUARIES	1
HAR § 13-130-24(1)	Fire use ground structure	1
HAR § 13-146-10	Animals	3
HAR § 13-146-10(a)	Animals stray	2
HAR § 13-146-10(b)	Animals prohibited areas	19

**Environmental Law Cases in District and Circuit Court, Hawai'i Administrative Rules
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Violation	Description	Number
HAR § 13-146-14	Camping	196
HAR § 13-146-19(a)	Firearms and other weapons	2
HAR § 13-146-20	Fires	10
HAR § 13-146-20(a)	Fires in Wilderness Permit	2
HAR § 13-146-25(b)	Possession of alcohol	33
HAR § 13-146-29	Parking	2
HAR § 13-146-31	Portable engines and motors	2
HAR § 13-146-32(b)	Public property building sign equipment	1
HAR § 13-146-32(e)	Public property plants	1
HAR § 13-146-34	Residence prohibited	7
HAR § 13-146-38(a)	Swimming or nudity prohibited	1
HAR § 13-146-4	Closed Park Area	328
HAR § 13-146-40	Vehicle and motorized bike operation	10
HAR § 13-146-40(a)	Vehicle and motorized bike operation non-designated road	19
HAR § 13-146-41	Wildlife	1
HAR § 13-146-51	Camping Permits	8
HAR § 13-146-65	Advertisements	2
HAR § 13-146-66	Business operations	1
HAR § 13-146-67(b)	Still photograph permit	1
HAR § 13-146-68	Commercial activities	13
HAR § 13-146-9	Aircraft	1
HAR § 13-209-4	Prohibited activities	2
HAR § 13-209-4(11)	Prohibited activities water vehicle	2
HAR § 13-209-4(14)	Prohibited activities tools equipment	6
HAR § 13-209-4(16)	Prohibited activities closed area	4
HAR § 13-209-4(17)	Prohibited activities water vehicle	1
HAR § 13-221-35	Commercial activities w/o written permit	1
HAR § 13-230-4	Small Boat Harbors - Penalties	2
HAR § 13-231-2	Small Boat Harbors-Restrictions	9
HAR § 13-231-20	Houseboats prohibited	1
HAR § 13-232-23	SMALL BOAT HARBORS - RESTRICTIONS	3
HAR § 13-232-29	SMALL BOAT HARBORS - RESTRICTIONS	1
HAR § 13-232-41	SMALL BOAT HARBORS - RESTRICTIONS	10
HAR § 13-232-54	Swmming	1
HAR § 13-232-57(c)	Dogs restrictions	2
HAR § 13-232-57(d)	Dogs stray	2
HAR § 13-232-58	Sleeping or camping prohibited	73
HAR § 13-232-6	Littering land areas prohibited	1
HAR § 13-232-60(a)	Consumption of liquor prohibited	9
HAR § 13-233-44(2)	SMALL BOAT HARBORS - MOTOR VEHICLE & PARKING RULES	1
HAR § 13-234-34(c)	SMALL BOAT HARBORS - FEES & CHARGES	1
HAR § 13-234-34(d)	SMALL BOAT HARBORS - FEES & CHARGES	5
HAR § 13-241-1	BOATING - NUMBERING OF VESSELS	3
HAR § 13-241-10	BOATING - NUMBERING OF VESSELS	6
HAR § 13-241-10(e)	BOATING - NUMBERING OF VESSELS	1

**Environmental Law Cases in District and Circuit Court, Hawai'i Administrative Rules
Initiated July 1, 2011 - December 31, 2013**

Violation	Description	Number
HAR § 13-241-13	BOATING - NUMBERING OF VESSELS	11
HAR § 13-241-13(c)	Display registration sticker - vessel sides	20
HAR § 13-241-3	NUMBERING SYSTEM	1
HAR § 13-241-4	BOATING - NUMBERING OF VESSELS	6
HAR § 13-241-4(a)	BOATING - NUMBERING OF VESSELS	1
HAR § 13-241-4(b)	BOATING - NUMBERING OF VESSELS	1
HAR § 13-241-8	BOATING - NUMBERING OF VESSELS	17
HAR § 13-242-15	Stop Vessels for Inspection	1
HAR § 13-243-1	BOATING - VESSEL EQUIPMENT REQUIREMENTS	30
HAR § 13-244-33(b)(1)	Pokai Bay - No Vessel	1
HAR § 13-244-35(b)	activities	1
HAR § 13-245-10	Mooring vessels to buoys or beacons prohibited	1
HAR § 13-245-9(a)	BOATING - WATERWAY MARKING SYSTEM	48
HAR § 13-245-9(d)	BOATING - WATERWAY MARKING SYSTEM	1
HAR § 13-251-1	CATAMARAN CAPTAINS, ETC., SHALL HAVE AN OPERATOR PERMIT	1
HAR § 13-251-47	WATERS	1
HAR § 13-251-66(a)	Canoe operation, required crew	1
HAR § 13-251-76	WAIKIKI OR KAAHAPALI OCEAN WATERS AND BEACH	4
HAR § 13-254-14(a)	POINT PANIC OCEAN WATERS - SURFBOARD RESTRICTED	2
HAR § 13-256-112	MAUI HUMPBACK WHALE - PROTECTED WATERS	1
HAR § 13-256-16(b)	RESERVE	1
HAR § 13-256-16(d)	Thrill Craft - Certificate of Completion	9
HAR § 13-256-17(a)	RECREATIONAL THRILL CRAFT OPERATION - CONDITIONS	1
HAR § 13-256-17(b)	RECREATIONAL THRILL CRAFT OPERATIONS	2
HAR § 13-256-17(c)	RECREATIONAL THRILL CRAFT OPERATION - Locations	1
HAR § 13-256-22(f)	TOW-IN SURFING POSS CERT	1
HAR § 13-256-63(b)(1)	SHARKS COVE, THREE TABLES, WAIKIKI BAY RESTRICTED ZONE A	2
HAR § 13-261-10	KAHOOLAWE ISLAND RESERVE	9
HAR § 13-261-13	KAHOOLAWE-ACTIVITIES W/IN RESERVE	2
HAR § 13-261-13(a)	KAHOOLAWE ISLAND RESERVE - AUTHORIZATION REQUIRED	1
HAR § 13-261-14(a)	KAHOOLAWE - COMMERCIAL ACTIVITY	1
HAR § 13-261-14(b)(13)	KAHOOLAWE-FISHING GEAR	4
HAR § 13-30-2	Prohibited activities	10
HAR § 13-32-2	Prohibited activities	2
HAR § 13-32-2(1)	Prohibited activities fishing	2
HAR § 13-32-2(3)	Prohibited activities spear trap net	2
HAR § 13-33-2	Prohibited activities	2
HAR § 13-34-2	Prohibited activities	2
HAR § 13-34-2(1)	Prohibited activities fishing	3
HAR § 13-34-2(3)	Prohibited activities spear trap net	6
HAR § 13-35-2	Prohibited activities	4
HAR § 13-35-2(3)	Prohibited activities spear trap net	4
HAR § 13-36-2(1)	Prohibited activities fishing	2
HAR § 13-36-2(3)	Prohibited activities spear trap net	7
HAR § 13-37-2	Prohibited activities	5

**Environmental Law Cases in District and Circuit Court, Hawai'i Administrative Rules
Initiated July 1, 2011 - December 31, 2013**

Violation	Description	Number
HAR § 13-37-2(3)	Prohibited activities spear trap net	1
HAR § 13-38-3	Prohibited activities	8
HAR § 13-38-3(1)	Prohibited activities marine life	4
HAR § 13-48-3	Prohibited activities	4
HAR § 13-48-3(1)	Prohibited activities fishing	4
HAR § 13-48-3(2)	Prohibited activities live coral	1
HAR § 13-48-3(3)	Prohibited activities fishing gear	1
HAR § 13-51-2	Prohibited activities	9
HAR § 13-51-2(a)(1)	Unlawful use of net	4
HAR § 13-52-2	Prohibited activities	3
HAR § 13-52-2(1)(B)	Prohibited activities snag fishing Zone A	1
HAR § 13-55-2(a)(3)	Prohibited activities netting	2
HAR § 13-60.3-5(a)(1)	Lay nets unregistered	1
HAR § 13-60.3-5(g)(1)	Lay nets Puako-Anaehoomalu	3
HAR § 13-62-3(1)	Prohibited activities fishing license	2
HAR § 13-62-3(2)	Prohibited activities 200 feet restriction	3
HAR § 13-62-3(7)	Prohibited activities floatation device	1
HAR § 13-63-2	Prohibited activities	1
HAR § 13-63-2(8)	Prohibited activities spearing	2
HAR § 13-75-10(a)	Commercial marine license / Poss Throw Net <2" (?)	67
HAR § 13-75-10(b)	POSSESSION OF THROW NET WITH MESH LESS THAN 2"	1
HAR § 13-75-12.4	Lay Nets	36
HAR § 13-75-12.4(a)(1)	Possess Lay Net	8
HAR § 13-75-12.4(a)(2)(A)	Possess lay net >125 feet length >7 feet height	2
HAR § 13-75-12.4(a)(2)(B)	Possess Lay Net<2 3/4" mesh	3
HAR § 13-75-12.4(a)(3)	Posses Multipanel Lay Net	1
HAR § 13-75-12.4(a)(4)	Possess Lay Net no ID Tags	3
HAR § 13-75-12.4(f)(1)	Lay Net - Kaneohe Bay	7
HAR § 13-75-12.5(a)(1)	Molokai use lay net >750 feet length, >7 feet stretch height	1
HAR § 13-75-12.5(a)(2)	Molokai lay net stretched mesh <2 3/4 inch	3
HAR § 13-75-12.5(b)(1)	Molokai possess lay net no id tags	8
HAR § 13-75-12.5(b)(2)	Molokai mark lay nets with surface buoys	1
HAR § 13-75-14	USE OF NETS WITH STRETCHED MESH LESS THAN 2"	4
HAR § 13-75-14(7)	MONOFILAMENT GILL NET FISHING RESTRICTIONS	5
HAR § 13-75-15(b)(2)	USE OF TRAPS WITH RIGID MESH LESS THAN 2"	1
HAR § 13-84-1	Prohibited activities	16
HAR § 13-89-1(1)	Prohibited activities main Hawaiian island waters	2
HAR § 13-89-1(1)(A)	POSSESSION OF UNDERSIZED SPINY LOBSTERS	6
HAR § 13-91-2	Prohibited activities	1
HAR § 13-92-1(a)	Prohibited activities	2
HAR § 13-92-1(a)(1)	Prohibited activities shell	12
HAR § 13-93-2(1)	Prohibited activities holdfast	2
HAR § 13-93-2(2)	Prohibited activities reproductive nodes	1
HAR § 13-93-2(3)	Prohibited activities family consumption	1
HAR § 13-95-10	Oio	3

**Environmental Law Cases in District and Circuit Court, Hawai'i Administrative Rules
Initiated July 1, 2011 - December 31, 2013**

Violation	Description	Number
HAR § 13-95-11	Kala	42
HAR § 13-95-12	Opelu kala	6
HAR § 13-95-16	Uhu	11
HAR § 13-95-22(a)	Ulua take	10
HAR § 13-95-23(a)	Moi take	4
HAR § 13-95-23(b)	Moi daily take	1
HAR § 13-95-23(c)	Moi season	2
HAR § 13-95-4	Aholehole	10
HAR § 13-95-5	Manini	11
HAR § 13-95-50(b)	Kuhonu crab take	1
HAR § 13-95-53(a)	Spiny lobster take	7
HAR § 13-95-53(c)	Spiny lobster sell	2
HAR § 13-95-53(d)	Spiny lobster spear	4
HAR § 13-95-54(a)	Slipper lobster take	1
HAR § 13-95-55	He'e	23
HAR § 13-95-6	Moano	1
HAR § 13-95-7	Kumu	24
HAR § 13-95-70(a)	Stony corals take	1
HAR § 13-95-8(a)	Mullet size	9
HAR § 13-95-8(b)	Mullet season	9
HAR § 13-99-1	Prohibited activities	1
Total		1,697



SB632 SD2
RELATING TO THE ENVIRONMENTAL COURTS
House Committee on Energy and Environmental Protection

March 11, 2014

8:30 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB632 SD2, which would establish an environmental division within the circuit courts, for the consistent and informed adjudication of disputes regarding Hawai'i's 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 urges this Committee to **PASS** SB632 SD2. Thank you for the opportunity to testify.



**Testimony to the House Committee on Energy and Environmental Protection
Tuesday, March 11, 2014 at 8:30 A.M.
Conference Room 325, State Capitol**

RE: SENATE BILL 632, SD2 RELATING TO THE ENVIRONMENTAL COURTS

Chair Lee and Vice Chair Thielen, and members of the committee:

The Chamber **opposes** SB 632 SD2 which proposes to establish environmental courts as divisions within the circuit courts to hear all proceedings, including certain chapter 91, Hawaii Revised Statutes, proceeds arising from certain environmental laws.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

The bill provides the following justification for the bill: "The legislature finds that environmental disputes are currently dealt with in a variety of courts. This organizational structure inadvertently promotes inconsistent application of the wide variety of environmental laws.

The legislature also finds that the continued maintenance and improvement of Hawaii's environment requires constant vigilance and continued stewardship to ensure its lasting beauty, cleanliness, and uniqueness and the stability of its natural systems, all of which enhance the mental and physical well-being of Hawaii's people.

The purpose of this Act is to promote and protect Hawaii's natural environment through consistent and uniform application of environmental laws by establishing environmental courts."

It is not clear from the information provided in the Bill why only certain types of environmental laws were identified to be under the jurisdiction of the proposed Environmental Courts. It is also unclear if the intent is to have the proposed Environmental Court oversee ALL types of environmental laws and permits. For example, the environmental laws administered by the State Department of Land and Natural Resources (i.e. Chapter 183C HRS) are not proposed to be included in the oversight of the proposed Environmental Courts.

In the past, we were under the impression that the Courts considered whether or not the responsible agency complied with the processes established in the environmental laws when agencies decisions were challenged in court. If the bill proposes that now the Environmental Courts would be making judgments on the substance of the facts considered by the agency in rendering its decision, then it would beg the question as to whether or not we should eliminate



Chamber *of* Commerce HAWAII
The Voice of Business

agency discretion in issuing permits/approvals on environmental laws and simply refer all actions to the Environmental Courts.

Thank you for the opportunity to express our views on this matter.



Get The Drift & Bag It!

COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Chris Lee, Chair

Rep. Cynthia Thielen, Vice Chair

Rep. Ty J.K. Cullen

Rep. Cindy Evans

Rep. Faye P. Hanohano

Rep. Derek S.K. Kawakami

Rep. Calvin K.Y. Say

Rep. Scott Y. Nishimoto

Rep. Nicole E. Lowen

Rep. Richard Lee Fale

NOTICE OF HEARING

DATE: Tuesday, March 11, 2014

TIME: 8:30 A.M.

Ref: SB 632 SD 2

Good Morning,

My name is Chris Woolaway and I serve as the Hawai'i State Coordinator of the International Coastal Cleanup (ICC) which in Hawai'i is called "Get The Drift and Bag It!". "Get the Drift" is a program under the Statewide non-profit "Keep the Hawaiian Islands Beautiful" and it is also part of the largest global volunteer effort.

"Get The Drift and Bag It!" has been held in Hawaii since 1988 and since that time the problems such as illegal dumping have been well documented in our community. This illegal dumping, littering, along with other community environmental health and safety problems, have brought neighbors against neighbors and communities against communities-It is most divisive!

Many of these community problems already have governmental actions addressed through State/County laws and zoning but the enforcement and/or fines are difficult to implement for our law enforcement professionals. Those in our communities trying to take responsibility for the environmental health around them find enforcement of the existing laws/zoning frustrating and with unequal treatment. The Environmental Court has been successfully addressing these and other health and safety problems in other communities on the mainland since 1979.

As with the other testimony being presented, our economy is our environment for our residents and for our visitors. Our hope is that you will pass Senate Bill 632 SD 2, which will provide the tools to improve our neighborhoods and sustain long-term better health and safety in our communities statewide.

Mahalo, Chris

Chris Woolaway
Hawai'i State Coordinator
International Coastal Cleanup
P.O. Box 25008
Honolulu, HI 96825
www.getthedriftandbagit.com

The ICC is sponsored nationally and internationally by the Ocean Conservancy.
Ocean Conservancy promotes healthy and diverse ocean ecosystems and opposes practices that threaten ocean life and human life. Through research, education, and science-based advocacy, Ocean Conservancy informs, inspires, and empowers people to speak and act on behalf of the oceans. In all its work, Ocean Conservancy strives to be the world's foremost advocate for the oceans.

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 11, 2014

TO: HONORABLE CHRIS LEE, CHAIR, HONORABLE CYNTHIA THIELEN, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

SUBJECT: **OPPOSITION TO S.B. 632, SD2, 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 certain environmental laws. Requires the Judiciary to report to the Legislature on the total number of environmental-related cases filed in the last five years. Takes effect 1/1/2015. (SD2)

HEARING

DATE: Tuesday, March 11, 2014
TIME: 8:30 a.m.
PLACE: Conference Room 325

Dear Chair Lee, Vice Chair Thielen and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over approximately hundred (600) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

S.B. 632, SD2 proposes to establish an environmental court within each circuit court to preside over matters related to environmental laws. GCA is in opposition to S.B. 632 SD1 because it is not necessary. GCA believes that this measure is not necessary because most environmental-related cases are resolved by administrative proceedings and not by the Courts. Furthermore, there is no evidence that the state courts system of handling environmental cases is below standard and that such environmental courts would actually improve the outcome of such cases, in fact the creation of such a court could spur an increase of litigious actions filed in this area. Also, the State Judiciary has concerns about the establishment of environmental courts.

The Judiciary's attachment to its testimony before the Senate Committee on Judiciary and Labor reflects only 67 cases from FY 2011 to FY 2013 that were environmentally related to the provisions of the law that the bill proposes to cover. This measure may have unintended consequences and may spur increased litigation by those claiming environmental injustice. Additionally, the assignment of certain areas of the law to environmental court jurisdiction could indiscriminately result in uneven application of the law.

For these reasons, GCA opposes S.B. 632, SD2 and respectfully requests that this bill be deferred.

COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Chris Lee, Chair

Rep. Cynthia Thielen, Vice Chair

Rep. Ty J.K. Cullen

Rep. Cindy Evans

Rep. Faye P. Hanohano

Rep. Derek S.K. Kawakami

Rep. Calvin K.Y. Say

Rep. Scott Y. Nishimoto

Rep. Nicole E. Lowen

Rep. Richard Lee Fale

NOTICE OF HEARING

DATE: Tuesday, March 11, 2014

TIME: 8:30 A.M.

Keep the Hawaiian Islands Beautiful strongly supports SB632 SD2, and asks that the Committee on Energy and Environmental Protection, under your leadership, express its commitment to keeping Hawaii in the forefront of advances in environmental justice nationwide by passing SB632 SD2.

Keep the Hawaiian Islands Beautiful is a local 501(c)(3) non-profit, serving as the Hawaii State affiliate of the national Keep America Beautiful organization. KHIB provides support to a wide variety of environmentally active groups, organizations, and agencies.

Including volunteers, the environmentally active, involved, and concerned citizens of this State number in the thousands. Those who may not be actively participating in the various beach cleanups, graffiti removal efforts, roadside trash removal, beautification, and other "hands-on" activities, but nevertheless show their interest and concern by donating to these efforts or take the time and effort to voluntarily recycle everything from cell phones to appliances, number in the tens of thousands.

These are your constituents, they are impacted by violations of State environmental laws, and they are looking for leadership from you in those areas that directly affect their quality of life, and without a doubt one of these more significant areas is the environment.

As outlined in SB632 SD2, the establishment of an environmental court in Hawaii will bring significant benefits to the State in both the short- and long-term. It gives visibility and presence to Hawaii's commitment to environmental stewardship, and will help ensure fair and equal application of our rapidly evolving environmental laws, with both direct and indirect benefits to our economy.

Keep the Hawaiian Islands Beautiful asks for your leadership in support of SB632 SD2.

Mahalo,

Michael C. Owens, President

Keep the Hawaiian Islands Beautiful

743 Waiakamilo Rd Ste H, Honolulu HI 96817-4336 USA

Ph: (808) 383-8177 Fax: (808) 847-5301



March 10, 2014

Representative Chris Lee, Chair
Representative Cynthia Thielen, Vice Chair
House Committee on Energy and Environmental Protection

Testimony in Opposition to SB 632, SD2, Relating to the Environmental Courts (Establishes environmental courts as divisions within the circuit courts to preside over 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.)

Tuesday, March 11, 2014, 8:30 a.m., in Conference Room 325

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF appreciates the opportunity to provide testimony **in opposition to SB 632, SD2**, and to offer comments.

SB 632, SD2. The underlying purpose of this bill is to promote and protect Hawaii's natural environment through consistent and uniform application of environmental laws by establishing environmental courts within the circuit courts. The SD1 version of the bill narrows the subject matter areas of environmental concern by deleting certain statutory provisions pursuant to which cases would be brought in environmental courts.

LURF's Position. LURF members include private property owners, farmers, ranchers and agricultural operators who, as agricultural and environmental stakeholders, understand the need to protect the State's natural resources. LURF therefore supports the intent of this bill which is to promote and protect Hawaii's natural environment. From a practical perspective, however, LURF is unable to support the establishment of environmental courts as an appropriate or proper mechanism to attain that stated objective.

There is No Justification or Need for This Bill.

○ **Most Environmental-Related Cases are Resolved by Administrative Proceedings and Not by the Courts.**

LURF believes there is no need for this legislation, as most environmental-related cases in this State are heard by administrative hearings officers and resolved outside of the regular court system. Only appeals of the administrative decisions are brought in State circuit court, and LURF understands that the number of such appeal cases is limited and would not justify the establishment of a special type of court.

○ **There is no Evidence that the State Courts' Present System of Handling Environmental Cases is Deficient or that Establishment of Environmental Courts Would Actually Improve the Outcome of Such Cases.**

Proponents of this measure have not identified any actual inadequacies in, or deficiencies of the courts' present handling of environmental cases, or any unsound decisions arising from the courts' application of environmental laws. Neither have proponents of this bill shown that establishment of environmental courts will 1) actually improve the consistency and uniformity of the application of environmental laws¹; or 2) that consistent and uniform application of laws to environmental cases will "promote and protect Hawaii's natural environment," as claimed.

LURF believes the significant cost and expense of establishing the proposed environmental courts (which would necessarily include the court space, the framework and function of said courts within the existing circuit court system, salaries for judges and staff, equipment, and training, to the development and adoption of new environmental court rules) warrants more than speculative results, and that such a proposal must be supported by convincing data and findings by the State Judiciary (the State's authority on such matters), which has, in fact, provided testimony presenting comments which do not support this bill.

○ **The State Judiciary Does Not Support the Establishment of Environmental Courts.**

In its testimony, the State Judiciary clearly indicates that the present judicial system is believed to be adequate in addressing the concerns expressed in this measure. On Oahu, agency appeals covering environmental issues are already assigned regularly to one designated circuit court judge, and are handled in due course by civil judges on a rotation basis on the other islands. The Judiciary has further testified that its research has not found the present court system deficient in providing uniform application of environmental laws, and that any unsatisfied party could appeal to the State appellate courts, which appellate process would safeguard consistent application of environmental laws.

○ **The Need for Dedicated Environmental Courts Must be Warranted.**

According to testimony submitted by the Judiciary regarding this proposed measure, there is also no data available to indicate that the establishment of environmental courts would serve to deter further environmental law violations, resolve environmental cases more expeditiously than the present circuit court system.

¹ It must be further noted that from a legal standpoint, the consistent and uniform application of law (environmental or otherwise) does not necessarily assure a better outcome or decision in a case. Consistent and uniform application of law that is bad, for example, would nevertheless result in poor outcomes and decisions.

To justify the time, effort and cost of their establishment, environmental courts will require a caseload of sufficient size and complexity. A separate environmental forum must be determined from court records and statistics to be truly warranted to avoid down-time and inequitable workload distribution within the judiciary. It would make no sense, for example, if environmental judges would need to take on non-environmental matters to fill their calendars.

- **Creation of Dedicated Court Sets Bad Precedent as There are Other Competing Areas of Law Deserving of Special Attention and Expertise.**

As there are so many other areas of law that are equally or more complex legally and factually (e.g., labor/employment, health), the establishment of a dedicated, expert forum for environmental issues sets bad precedent and leads to the fragmentation of the State's judicial system whereby both judges and subject matter tend to become isolated from the mainstream resulting in skewed decisions and results.

- **Specialized Courts are More Readily Subject to Bias and Influence.**

The specialized knowledge of and experience in environmental law required by those sufficiently qualified to be appointed as environmental court judges will likely have prejudiced those decision makers, so that decisions made may not be neutral. In many environmental courts in other jurisdictions, sitting judges and decision makers have, in fact, come from backgrounds in environmental advocacy and are therefore believed to be "overly environmental" and are not trusted to be fair by opposing interests.

Small, specialized courts such as those proposed to be established by this bill, can also be more prone to influence and control than the general court system. Such a situation is often experienced in agencies where powerful and influential groups use political pressure to maneuver and control the appointments process, and in some cases, the tenure and salaries of judges sitting in these smaller, isolated courts.

- **Other, Less Costly and Potentially More Efficient Options Should be Explored and Pursued.**

Other options in lieu of creating a separate, specialized court do not appear to have been discussed or even explored.

- **Establishment of an Improved Administrative Law Judicial System.**

LURF understands, for example, that other State agencies have suggested the establishment of an improved administrative law judicial system, including appointment of long-term hearings officers with specialized knowledge and experience. Such a system could be implemented more economically and could handle environmental, as well as other types of cases arising from all state agencies. If established, such an administrative judicial system could perhaps better fulfill the intent of this bill by ensuring more uniform and consistent application of specialized laws such as environmental laws.

- **Reform From Within the Judiciary.**

If knowledge of environmental law is critical, then all judges and other decision-makers should be given an opportunity to be trained in that special subject matter area. Cases can then be informally directed to those who are particularly interested or experienced in that area of law, and generalist judges would also be better trained to hear environmental cases.

This informal assignment approach to environmental cases has reportedly worked in other jurisdictions.

In view of the circumstances, there appears to be no viable justification or support for this proposed measure, especially in view of the availability of less costly and possibly more efficient options. Given the position of the State Judiciary (the State's ultimate authority and expert on matters relating to the courts), it is difficult to understand why SB 632, SD2 continues to be urged.

For the reasons stated above, LURF **must oppose SB 632, SD2**, and respectfully requests that this bill be held in Committee.

Thank you for the opportunity to present testimony regarding this matter.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

THE VOICE OF THE CONSTRUCTION INDUSTRY

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JW, Inc.

Ryan Engle

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Stephen Hanson

simplicityHR by ALTRES

TESTIMONY TO THE HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Tuesday, March 11, 2014

8:30 a.m.

State Capitol, Room 325

RE: S.B. 632 S.D. 2, Relating to the Environmental Courts

Dear Chair Lee, Vice-Chair Thielen, and members of the Committee:

My name is Gladys Marrone, Government Relations Director for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

BIA-Hawaii is **opposed** to S.B. 632 S.D. 2, which would establish environmental courts as divisions within the circuit courts to hear all proceedings, including certain chapter 91, Hawaii Revised Statutes, proceedings arising from certain environmental laws. The bill would also require the Judiciary to report to the Legislature on the total number of environmental-related cases filed in the last five years.

Environmental disputes are not handled by a variety of courts, as the bill states. Currently, our state Circuit Courts have jurisdiction over appeals of any administrative decisions, and exclusive jurisdiction over virtually all disputes that would involve environmental matters. This bill unnecessarily expands our current court system.

We appreciate the opportunity to share with you our views.

COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Chris Lee, Chair

Rep. Cynthia Thielen, Vice Chair

Rep. Ty J.K. Cullen

Rep. Cindy Evans

Rep. Faye P. Hanohano

Rep. Derek S.K. Kawakami

Rep. Calvin K.Y. Say

Rep. Scott Y. Nishimoto

Rep. Nicole E. Lowen

Rep. Richard Lee Fale

NOTICE OF HEARING

DATE: Tuesday, March 11, 2014

TIME: 8:30 A.M.

In Hawaii, the Environment is the Economy.

Keep America Beautiful's (KAB) role in the area of environmental courts is a direct result of the community affiliates longstanding involvement in local effort to reduce litter and improve community waste handling practices.

The nation's first environmental court was established in 1978. As the concept for a special court to hear environmental cases focused on changing people's attitudes and behaviors, the benefits and environmental safeguards that these courts are now providing have created a KAB national resource initiative that is being proposed for Hawaii.

It was at the national KAB conference that I first heard Judge Larry Potter discuss the Memphis Shelby County (TN) Division 14 Environmental Courts. Judge Potter visited Hawaii and spoke at the statewide Laulima conference of 2008. His analysis of our judicial system, legislative process, and citizen's involvement indicated the concept of environmental court could be initiated without prohibitive costs administratively or legislatively and discussed this with Chief Justice Moon; he spoke before a legislative group and the University of Hawaii at Manoa William S. Richardson School of Law Environmental Law Program.

In 2012, Judge Potter returned to keynote the Laulima Conference held on Maui and a Senate Bill was proposed by Senator Gil Keith-Agaran and others to further advance this initiative into a judicial commitment which benefits our communities statewide.

Passage of SB632 SD2 this session can begin the necessary docket that compliments our Hawaiian environmental law and that continues to keep the Hawaiian Islands beautiful.

Mahalo, Jan Dapitan
Executive Director (KAB)
Keep the Hawaiian Islands Beautiful



P.O. Box 253, Kunia, Hawai'i 96759
Phone: (808) 848-2074; Fax: (808) 848-1921
e-mail info@hfbf.org; www.hfbf.org

March 11, 2014

HEARING BEFORE THE HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL
PROTECTION

TESTIMONY ON SB 632 SD2
RELATING TO THE ENVIRONMENTAL COURTS
Room 325
8:30 AM

Aloha Chair Lee, Vice Chair Thielen, and Members of the Committee:

I am Christopher Manfredi, President of the Hawaii Farm Bureau Federation (HFB). Organized since 1948, the HFB is comprised of 1,832 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interests of our diverse agricultural community.

HFB **opposes SB 632 SD2** that would establish environmental courts to hear all proceedings arising from certain environmental and conservation laws. Our members, farmers and ranchers throughout the State who cherish the land from which they derive a living, believe that funding for this effort would be better spent preventing natural resource and environmental calamities from occurring in the first place; for example, by helping businesses comply with the extremely complex environmental laws and regulations already in place.

Separate court system unnecessary

We are unable to support this bill because there is no evidence that a new court system would deter environmental law violations or resolve environmental cases more expeditiously than the present circuit court system. And, based on the number of cases filed on these matters and the expert opinion of the judiciary itself, it is apparently unnecessary. As part of its testimony on the bill, the judiciary provided a preliminary survey of relevant cases filed over the past 13 years. That survey indicates that there is NO need for an environmental court in Hawaii. The total number of such cases filed in district and circuit courts **from 2001 through 2013 is only 53**. If all cases filed before 2000 are included, the total number of cases is only slightly higher, 67.

Timing of the required study should be BEFORE the establishment of the system

The bill calls for a study to be done to determine the number of environmental cases filed in each of the past five years. As mentioned above, the judiciary has already conducted a preliminary study that indicates, based on the number of filings, that a separate court system is **not needed**. This measure requires the environmental court system to take effect on Jan 1, 2015, **before** the results of any study can be analyzed and evaluated. **If the legislature has reason to believe this type of court system is necessary, the required study should be conducted prior to the establishment of the court system, saving taxpayers' money.**

If the study isn't conducted and the results aren't assessed *before* the system is put into place, there is no purpose whatsoever in conducting the study.

Furthermore, the study should not be limited to the determination of the number of filed cases, but should also include whether such a system is needed AND whether it would produce significant benefits.

Nationally respected UH Law Professor David Callies noted that environmental plaintiffs have been extremely successful in the Hawaii Supreme Court, which "has managed to find in favor of Sierra Club, Friends of the Earth, Earthjustice, 90% of the time..."

The Judiciary itself believes that it has processes in place to ensure consistency in all cases, including environmental ones. Because the trial courts must follow the appellate court decisions, the process insures consistent application of environmental laws.

Inefficient use of funds

HFB urges this body to consider better utilizing the significant funds that would be needed for an entirely new court system. Hawaii businesses are hyper-regulated with regard to environmental matters, but are not offered any kind of assistance in complying with these complex regulations. While it is true that some states have established environmental courts, Hawaii does not have the same issues nor volume of cases that warrants creation of a new, parallel and redundant system.

Instead, funds should be used proactively to increase awareness of the current environmental regulatory framework and through educational programs, assist businesses toward compliance; ultimately reducing the likelihood of potentially harmful activity that would protect resources before a violation occurs, negating the need for the system represented by this legislation, and leading to more favorable outcomes.

Please **oppose SB 632 SD2**.

ERIK W. KVAM
4188-4 KEANU STREET
HONOLULU, HAWAII 96816
TEL: (808) 371-1475
E-MAIL: ekvam@zeroemissions.us

Testimony in SUPPORT of SB 632 SD 2 RELATING TO THE ENVIRONMENTAL COURTS

Before the
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

March 11, 2014 8:30 a.m.

Aloha Chair Lee, Vice-Chair Thielen and members of the Committee,

Thank you for this opportunity to testify in strong **SUPPORT** of SB 632 SD 2 to establish an Environmental Court in the State of Hawaii.

Hawaii's constitution ensures that all residents have a right to a "clean and healthful environment." We have departments at the state and county levels entrusted with protecting our natural resources for use now and forever into the future.

Yet, enforcement against violations of our environmental laws is often inconsistent between courts and within agencies. This fosters confusion, undermines compliance, and fuels further litigation. Environmental statutes and regulations are sometimes very technical and require considerable study before judges are equipped to rule in these cases.

I urge you to pass SB 632 SD2 because establishing a section of our state court system to adjudicate violations of our environmental laws will help to improve enforcement of these laws. Improved enforcement will lead to reliability in the interpretation of and better compliance with environmental laws. This will lead to a cleaner environment and better public health for all residents of Hawaii.

Thank you for this opportunity to testify.

Erik Kvam



**Testimony of
Martha Townsend, Executive Director
The Outdoor Circle**

**Before the House Committee on
Energy and Environmental Protection**

Regarding SB632, SD2 relating to the Environmental Courts

**Tuesday March 11, 2014
8:30 am in room 325**

Aloha Chairman Lee and members of the Committee on Energy and Environmental Protection,

The Outdoor Circle **strongly supports the passage of SB632, SD2.** Protecting Hawai'i's natural environment is fundamental to the public's health and the laws of our state. As you know, Article XI, section 1, the Hawai'i Constitution mandates "the state and its political subdivision shall conserve and protect Hawai'i's natural beauty and all natural resources." It further provides in Article XI, section 9 that "each person has the right to a clean and healthful environment... including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings." These protections are echoed in state statutes and county ordinances that seek to protect Hawai'i's unique natural and cultural resources.

Despite these protections, ensuring compliance with these laws has not been a priority of our government in the past. Illegal dumping, auto-repair in residential neighborhoods, contamination in state wildlife refuges, harassment of state protected species, litter along streams and beaches, noise pollution, sludge released into our neighborhoods, medical waste in our ocean, repeated violation of state-issued environmental permits -- these have all become common experiences in our islands. As it is now, many of these violations do not even make it into a court room. The historic lack of enforcement has cultivated a culture of disregard for environmental protections. In Hawai'i, our laws may be strong, but the enforcement for crimes against the environment are lax.

If our environmental laws are to mean anything, then we must act to enforcement them.

State and county agencies are beginning to make changes to ensure proper compliance with our environmental laws. Establishing an Environmental Court is a key mechanism to support these advancements. In the same way that Family Court has helped to raise awareness of and address issues related to domestic violence and youth criminal activity, the Environmental Court can help to raise awareness of and encourage protection of Hawai'i's imperiled natural environment.

Environmental Courts are used in 340 countries around the world and 34 Environmental Courts are found in the United States. In these jurisdictions, the rates of both enforcement of and compliance with environmental laws is higher than in jurisdictions without an Environmental Court. Unlike Hawai'i, these jurisdictions are tracking environmental cases and their evidence documents the trends in improved citizen reporting, timely action by enforcement officers, greater attention from prosecuting agencies, and consistency in case outcomes. We encourage the Committee to review "Greening Justice: Creating and Improving Environmental Courts and Tribunals" by George Pring and Catherine Pring, published for The Access Initiative by the World Resources Institute.

The concept of an environmental court is broadly supported in Hawai'i. Dozens of private individuals, and state agencies like the Department of Land and Natural Resources and the Office of Hawaiian Affairs have submitted testimony in strong support of implementing an Environmental Court in Hawaii. These constituents all echoed the same concern for Hawai'i's beloved environment and the State's abysmal track record for enforcing the laws designed to protect that environment.

Even the Judiciary supports the implementation of mechanisms to improve enforcement of environmental laws. This includes a subject-specific calendar for environmental cases and a pilot program focusing on specific statutes. All of these would be steps in the right direction.

It is true that many environmental enforcement cases are adjudicated at the District Court level, while appeals from administrative agency hearings are handled at the Circuit Court level. Establishing an environmental court at either level of the court system would help to demonstrate the effectiveness of an environmental court system.

We also note the support of key advocacy organizations like Keep the Hawaiian Islands Beautiful, Get the Drift and Bag It, Conservation Council of Hawai'i, the Hawai'i Wildlife Fund, the Maui Outdoor Circle, and the Hawai'i Chapter of Americans for Democratic Action.

It is not surprising that the corporate interests represented by LURF, Chamber of Commerce, Farm Bureau, and General Contractors Association oppose passage of this bill. Improved enforcement of environmental laws is often assumed to be undermine the interests of business. Yet, as we have seen in the case of other major corporate ventures -- like Apple, Inc. for example -- protecting the environment while delivering a quality product is both good for the planet and the corporate bottomline. Moreover, we know that businesses thrive where the rules are clear and the enforcement is consistent. Establishing an environmental court would help create a better climate for business, as well as improve public health. Even LURF recommends improving administrative enforcement of environmental violations.

This signals a general consensus that we need to improve adjudication of environmental cases.

With this bill we are seeking a change in the attitudes and culture of Hawai'i. We want a Hawai'i where our laws are respected and our environment is protected, where grand proclamations of a clean and healthy environment are not undercut by lax enforcement. Passing SB632 is the first step towards ensuring fair and consistent enforcement of our environmental laws.

Thank you for the opportunity to provide testimony. I am available to answer questions, if there are any.

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Martha Townsend, Executive Director
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Thank you for the opportunity to provide testimony. I am available to answer questions, if there are any.

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Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Energy and Environmental Protection
Tuesday, March 11, 2014 at 8:30 A.M.
Conference Room 325, State Capitol**

RE: SENATE BILL 632 SD2 RELATING TO THE ENVIRONMENTAL COURTS

Chair Lee and Vice Chair Thielen, and members of the committee:

The Chamber **opposes** SB 632 SD2 which proposes to establish environmental courts as divisions within the circuit courts to hear all proceedings, including judicial review of administrative proceedings and proceedings for declaratory judgment on the validity of agency rules authorized under chapter 91, arising under chapters:

- 6D (Protection of Caves)
- 6E (Historic Preservation)
- 6K (Kahoolawe Island Reserve)
- 128D (Environmental Response Law)
- 339 (Litter Control)
- 339D (Electronic Waste and Television Recycling and Recovery Act)
- 340A (Solid Waste)
- 340E (Safe Drinking Water)
- 342B (Air Pollution)
- 342C (Ozone Layer Protection)
- 342D (Water Pollution)
- 342E (Nonpoint Source Pollution Management and Control)
- 342F (Noise Pollution)
- 342G (Integrated Solid Waste Management)
- 342H (Solid Waste Pollution)
- 342I (Special Waste Recycling)
- 342J (Hazardous Waste)
- 342L (Underground Storage Tanks)
- 342P (Asbestos and Lead)
- 343 (Environmental Impact Statements)
- 508C (Uniform Environmental Covenants Act).

The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the “Voice of Business” in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state’s economic climate and to foster positive action on issues of common concern.



The bill provides the following justification for the bill: “The legislature finds that environmental disputes are currently dealt with in a variety of courts. This organizational structure inadvertently promotes inconsistent application of the wide variety of environmental laws.

The legislature also finds that the continued maintenance and improvement of Hawaii's environment requires constant vigilance and continued stewardship to ensure its lasting beauty, cleanliness, and uniqueness and the stability of its natural systems, all of which enhance the mental and physical well-being of Hawaii's people.

The purpose of this Act is to promote and protect Hawaii's natural environment through consistent and uniform application of environmental laws by establishing environmental courts.”

It is not clear from the information provided in the Bill why only certain types of environmental laws were identified to be under the jurisdiction of the proposed Environmental Courts. It is also unclear if the intent is to have the proposed Environmental Court oversee ALL types of environmental laws and permits. For example, the environmental laws administered by the State Department of Land and Natural Resources (i.e. Chapter 183C HRS) are not proposed to be included in the oversight of the proposed Environmental Courts.

It is also unclear from the information provided, the specific instances where “. . . inconsistent application of the wide variety of environmental law” has led to environmental disputes. Is the intent of the bill to allow parties in a Chapter 91 HRS proceeding to request judicial review of the administrative proceedings or allow for judicial review of all proceedings dealing with the administration of the 21 section of the statutes listed in the bill?

Until more clarity is provided on the specific problems that will be addressed, we are opposed to the bill as presently drafted.

Thank you for the opportunity to express our views on this matter.

LATE

SB632

Submitted on: 3/10/2014

Testimony for EEP on Mar 11, 2014 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Gottlieb	Hawaii Cattlemen's Council	Oppose	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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LATE

SB632

Submitted on: 3/11/2014

Testimony for EEP on Mar 11, 2014 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Arvid Tadao Youngquist	Sky Ohana	Support	Yes

Comments: Chair, EEP Committee Vice Chair, EEP Committee The Right Honorable Members of the House EEP Committee The Sky Ohana is pleased to lend its support to SB 632 SD2 Relating to an Environmental Court. Concept is long overdue, especially since the Super Ferry and the PLDC misunderstandings of the environmental laws and the provisions of the various DLNR/PUC/LUC guidelines and laws that they administer. Please recommend approval of a strong language in your Committee report. Looking at the previous testifiers at the Senate level will be a revelation. What is somewhat puzzling to us, though, is that an erstwhile supportive testimnies from two agencies were suddely transformed to just "comments". We are encouraged, however, that most comments as well as supportive testimonies appear to be supportive of this measure introduced by six (6) worthy legislators, who over the years have not been afraid to speak to power. Thank you for hearing this measure so early in the morning. Arvid Tadao Youngquist Founder, Admiistrator, & Spokesman The Sky Ohana *Note: REgistered Voter, CD1, US Congressional District, Kalihi Valley resident

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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The Judiciary, State of Hawai‘i

Testimony to the House Committee on Energy & Environmental Protection

The Honorable Chris Lee, Chair

The Honorable Cynthia Thielen, Vice Chair

Tuesday, March 11, 2014, 8:30 a.m.
State Capitol, Conference Room 325

By

Elizabeth Zack
Supreme Court Staff Attorney

Bill No. and Title: Senate Bill No. 632, Senate Draft 2, Relating to the Environmental Courts.

Purpose: Establishes environmental courts as divisions within the circuit court to hear all proceedings, including certain chapter 91, Hawaii Revised Statutes, proceedings arising from certain environmental laws. Requires the Judiciary to report to the Legislature on the total number of environmental-related cases filed in the last five years. Takes effect 1/1/2015. (SD2)

Judiciary's Position:

The judiciary offers the following comments.

Senate Bill No. 632, Senate Draft 2 would establish within each circuit an environmental court with separate rules, based upon the belief that “environmental disputes are currently dealt with in a variety of courts” and “[T]his organizational structure inadvertently promotes inconsistent application of the wide variety of environmental laws.” In addition to establishing an environmental court in each circuit, Section 6 of SB 632, SD 2 requires the judiciary to conduct a study to determine the number of environmental-related cases within the past five years and to report findings to the legislature not less than 20 days prior to the regular session of 2015.



The judiciary understands the intent of wanting courts to develop expertise and consistency in environmental cases. We believe, however, that the judiciary already has in place processes to ensure consistency in all cases, including cases brought pursuant to the statutory provisions and administrative rules listed in section 7 of Senate Bill 632, SD2.

At present, all agency appeals to the circuit court, including agency appeals covering environmental issues, are 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. Furthermore, if any party in an environmental case is dissatisfied with the outcome in the circuit courts, 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.

We recognize that other jurisdictions have established environmental courts after increases in environmental violations, housing/safety code violations, and/or an increase of abandoned residences or littered properties. We do not believe the same issues are present in Hawai'i. However, if the legislature identifies particular areas of concern, it would be beneficial if the bill could be narrowed to focus on those areas as a pilot program. We further suggest that an environmental calendar be considered in place of an environmental court. Considering this alternative takes into account the present workload of our sitting judges and the reality that the addition of a separate environmental court may require expenditures for additional court staff, including another judge, a judicial assistant, a court clerk and a law clerk for the environmental court, as well as possible training costs. Having an environmental calendar, rather than an environmental court, would allow a judge assigned to the calendar to hear other types of cases during those periods when there are no environmental cases.

We make this suggestion based on our preliminary survey of cases based on the sections of HRS cited in Senate Bill 632, SD2. *See* Attachment. The total number of such cases for the period July 1, 2011 to December 31, 2013 is:

HRS violations: 69
HAR violations (Title 12): 1,697

It is important to note that the majority of the Title 12 cases are petty misdemeanors currently handled by the district court pursuant to HRS § 604-8. Moreover, the survey shows the highest number of prosecuted Title 12 cases were for individuals in closed park areas (328 cases) and illegal camping (198 cases). We acknowledge that including Title 12 cases within the jurisdiction of environmental courts adds a significant number of cases. The judiciary still believes environmental calendars, as opposed to environmental courts, will result in better use of resources and funding.



Senate Bill No. 632, Senate Draft 2 Relating to the Environmental Courts
House Committee on Energy & Environmental Protection
March 11, 2014, 8:30 a.m.
Page 3

Although the judiciary believes the present system is adequate in addressing the concerns expressed in this measure, we are supportive of the concept proposed, we are always open to discussion and we welcome any questions regarding these matters. In the final analysis, however, due to the many issues related to the establishment of a new court, it may be more prudent to create a task force composed of the stakeholders, as proposed by Senate Concurrent Resolution No. 133, Senate Resolution No. 70, House Concurrent Resolution No. 209, and House Resolution No. 164, to address these issues and to ensure the vision reflected in the proposed bill is achieved.

Thank you for the opportunity to comment on Senate Bill No. 632, Senate Draft 2.

Attachment

**Environmental Law Cases Filed in District and Circuit Court, Hawai'i Revised Statutes
Report Including July 1, 2011 - December 31, 2013**

Violations	Filed Prior to 2000	Filed 2001 to 2010	Filed 2011 to 2013	Total
HRS § 128D - Environmental Response Law	0	0	0	0
HRS § 171-31.6 - Violation of public lands laws	0	0	0	0
HRS § 184-5 - Vilation of State Parks and recreation area laws	0	0	0	0
HRS § 188-22.8 - Limu Management Area	0	0	0	0
HRS § 188-23(a) - Possession of explosives in state waters	0	0	0	0
HRS § 188-23(b)(1) - Deposit petroleum material in state waters	0	0	0	0
HRS § 188-23(b)(2) - Deposit hypochlorous acid products in state waters	0	0	0	0
HRS § 188-23(b)(3) - Deposit preparations containing rotenone tephrosin etc in state water	0	0	0	0
HRS § 188-23(b)(4) - Deposit other deleterious materials in state waters	0	0	0	0
HRS § 188-25(a) - Fishing with firearms	0	0	0	0
HRS § 188-25(b) - Fishing with spears	0	0	0	0
HRS § 188-28.5(b) - Bullpen trap prohibitions exceeding 2000 feet	0	0	0	0
HRS § 188-28.5(d) - Bullpen trap prohibitions 1000 yards of shore	0	0	0	0
HRS § 188-28.5© - Bullpen trap prohibitions more than 16 hours	0	0	0	0
HRS § 188-29(a) - Nets	0	0	0	0
HRS § 188-29(b) - Traps	0	0	0	0
HRS § 188-29.1 Prohibition on disposal of fishing gear	0	0	0	0
HRS § 188-30 - Fine meshed throw nets	0	0	0	0
HRS § 188-30.2(1) - Fishing with gill net unattended	0	0	0	0
HRS § 188-30.2(2) - Fishing with gill net more than 4 hours	0	0	0	0
HRS § 188-30.5 - Fishing with drift gill net prohibited	0	0	0	0
HRS § 188-31(c) - Permits to take aquatic life for aquarium purposes	0	0	0	0
HRS § 188-34 - Fishing in Honolulu and Hilo harbors restricted	0	0	0	0
HRS § 188-34(a) - Fishing in Honolulu Harbor	0	0	0	0
HRS § 188-34(b) - Fishing in Hilo Harbor	0	0	0	0
HRS § 188-34(c) - Fishing in Kahului Harbor	0	0	0	0
HRS § 188-35 - Fishing in Certain Waters	0	0	2	2
HRS § 188-35(1) - Fishing in Waikiki Reclamation canal	0	0	0	0
HRS § 188-35(2) - Fishing in Kapiolani Boulevard Drainage Canal	0	0	0	0
HRS § 188-35(3) - Fishing in Kapalama Drainage Canal	0	0	0	0
HRS § 188-35(4) - Fishing off Heeia-Kea Wharf	0	0	0	0
HRS § 188-35(5) Fishing within Waialua Bay	0	0	0	0
HRS § 188-35(6) - Fishing within Pokai Bay	0	0	0	0
HRS § 188-35(7) - Fishing in Kapaa and Waikaea canals	0	0	0	0
HRS § 188-36 Hawaii Marine Laboratory Refuge	0	0	0	0
HRS § 188-39.5 Manta Rays; prohibitions	0	0	0	0
HRS § 188-40 - Minimum Size of Fishes	0	0	1	1
HRS § 188-40(1) Aholehole manini	0	0	0	0
HRS § 188-40(2) Mullet moi weke moana kumu	0	0	0	0
HRS § 188-40(3) Awa oio kala opelu kala	0	0	0	0
HRS § 188-40(4) - Opakapaka onaga uku ulua papio octopus	0	0	0	0
HRS § 188-40(5) - Kuahonu crab or Kona crab	0	0	0	0
HRS § 188-40(6) - Clams	0	0	0	0
HRS § 188-40(7) - Shark Fins prohibitions	0	0	0	0

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HRS § 188-40.5 - Sharks prohibitions	0	0	0	0
HRS § 188-40.6 - Shark Feeding prohibitions	0	0	0	0
HRS § 188-40.7 - Shark fins prohibitions	0	0	0	0
HRS § 188-41 - Dried nehu and iao	0	0	0	0
HRS § 188-42.5 - Hihiwai, hapawai, and opae kalaole selling prohibited	0	0	0	0
HRS § 188-43 - Hinana and oopu taking prohibited	0	0	0	0
HRS § 188-44(a) - Mullet catching prohibited	0	0	0	0
HRS § 188-45 - Nehu and iao taking prohibited	0	0	0	0
HRS § 188-46 - Opehu fishing regulated	0	0	0	0
HRS § 188-50(a) - License required	0	0	0	0
HRS § 188-50(c) - Unlawful use of license	0	0	0	0
HRS § 188-53(b) - Fishing reserves	0	0	0	0
HRS § 188-57 - Certain crustaceans protected	0	0	0	0
HRS § 188-57 Licenses for certain Crustaceans	0	0	0	0
HRS § 188-58 - Crustaceans with eggs	0	0	0	0
HRS § 188-58.5(a) - Female Crabs (Ula, Samoan, Kona) Taking or killing prohibited	0	0	18	18
HRS § 188-68(a) - Stony coral and rock with marine life attached taking prohibited	0	0	0	0
HRS § 188-68(b) - Stony coral and rock with marine life attached selling prohibited	0	0	0	0
HRS § 188-71 - Harassment of fishermen	0	0	0	0
HRS § 188-71(a)(1) - Harassment of fishermen human presence	0	0	0	0
HRS § 188-71(a)(2) - Harassment of fishermen creating stimulus	0	0	0	0
HRS § 188-71(a)(3) - Harassment of fishermen personal property	0	0	0	0
HRS § 188-71(a)(4) - Harassment of fishermen obstructing access	0	0	0	0
HRS § 188-71(b) - Harassment of fishermen unlawful entry on land or water	0	0	0	0
HRS § 189-10 - Commercial marine dealers to report	0	0	0	0
HRS § 189-10(a) - Commercial marine dealers license	0	0	0	0
HRS § 189-10(b) - Commercial marine dealers export license	0	0	0	0
HRS § 189-10(c) - Commercial marine dealers statement	0	0	0	0
HRS § 189-11 - Receipts in Duplicate	0	0	4	4
HRS § 189-14 - Rights of entry	0	0	0	0
HRS § 189-15 - Violation of fish aggregation	0	0	0	0
HRS § 189-2 - Commercial marine license	0	0	0	0
HRS § 189-2.5(b) - Longline fishing prohibited	0	0	0	0
HRS § 189-2.5(c)(1) - Longline fishing prohibited fishing	0	0	0	0
HRS § 189-2.5(c)(2) - Longline fishing prohibited gear	0	0	0	0
HRS § 189-3(a) - Monthly catch report	0	0	0	0
HRS § 189-5 - Aliens not admitted to United States	0	0	0	0
HRS § 190-5 - Violation of marine life conservation program laws and rules	0	0	0	0
HRS § 195-8 - Violation of natural area reserves system laws and rules	0	0	0	0
HRS § 197-5 - Violation of aquatic resources and wildlife laws and rules	0	0	0	0
HRS § 199-6 - Failure to obey a summons	0	0	0	0
HRS § 200-10(a)(1)(2) - Moor vessel without permit/ownership	0	0	2	2
HRS § 200-31 - Vessels registered/numbered	0	0	0	0
HRS § 200-62 - Trespass to Vessel	1	0	3	4

**Environmental Law Cases Filed in District and Circuit Court, Hawai'i Revised Statutes
Report Including July 1, 2011 - December 31, 2013**

Violations	Filed Prior to 2000	Filed 2001 to 2010	Filed 2011 to 2013	Total
HRS § 200-73 - Unlawful to possess certain vessels or hulls	0	0	0	0
HRS § 339-4(A)(2) - Litter Outside of Receptacle	13	2	28	43
HRS § 339D - Electronic Waste	0	0	0	0
HRS § 340A - Solid Waste	0	0	0	0
HRS § 340E - Safe Drinking Water	0	0	0	0
HRS § 342B-45 - Air Pollution	1	1	7	9
HRS § 342B-49(b) - Air Pollution, false statemt/records or rendering inaccurate device	0	1	0	1
HRS § 342C - Ozone Layer Protection	0	0	0	0
HRS § 342D-33(1) - Knowing Violation (Water Pollution)	0	5	1	6
HRS § 342E - Nonpoint Source Pollution	0	0	0	0
HRS § 342F-9(a) - Noise Pollution	0	0	1	1
HRS § 342G - Integrated Solid Waste Management	0	0	0	0
HRS § 342H-30 - Solid Waste Pollution	0	2	0	2
HRS § 342H-37(a)(1) - Unauthorised Disposal ten or more cubic Yards	0	2	0	2
HRS § 342H-39(a)(1) - Solid Waste Pollution	0	0	1	1
HRS § 342I - Special Waste Recycling	0	0	0	0
HRS § 342J-9(c)(1) - Hazardous Waste	0	1	0	1
HRS § 342J-9(c)(2) - Hazardous Waste	0	1	0	1
HRS § 342J-9(c)(3) - Hazardous Waste	0	0	1	1
HRS § 342L - Underground Storage Tanks	0	0	0	0
HRS § 342P-23 - Violation of laws, permit, or variance relating to asbestos, lead	1	0	0	1
HRS § 343 - Environmental Impact Statements	0	0	0	0
HRS § 508C - Uniform Environmental Covenants Act	0	0	0	0
TOTAL	16	15	69	100
Cases that were closed prior to FY2011 are not included in these numbers				

**Environmental Law Cases in District and Circuit Court, Hawai'i Administrative Rules
Initiated July 1, 2011 - December 31, 2013**

Violation	Description	Number
HAR § 13-100-2(1)	Prohibited activities take	2
HAR § 13-100-2(2)	Prohinited activities netting	1
HAR § 13-100-2(3)	Prohibited activities sell	1
HAR § 13-104-11(6)	sticker	1
HAR § 13-104-19	Camping without a Permit in a forest reserve	1
HAR § 13-104-9	Firearms and other weapons	4
HAR § 13-105-3(a)	Prohibited entry restricted watershed	2
HAR § 13-121-3	Hunting Prohibited	1
HAR § 13-121-3(a)	Hunting prohibited	5
HAR § 13-122-12	Conditions and restrictions	1
HAR § 13-122-12(a)(1)	Carry Hunter's License	3
HAR § 13-122-12(c)(1)	Conditions and restrictions four-wheel drive vehicles	1
HAR § 13-122-12(c)(2)	Conditions and restrictions roads	2
HAR § 13-122-12(c)(3)	Conditions and restrictions loaded weapon	4
HAR § 13-122-12(e)(1)	Conditions and restrictions sell	2
HAR § 13-122-12(e)(3)	Conditions and restrictions game bird head	1
HAR § 13-122-12(f)(4)	Conditions and restrictions intoxicating substance	1
HAR § 13-122-3	Prohibited hunting	2
HAR § 13-123-22	Conditions and restrictions	24
HAR § 13-123-22(a)(1)	GAME MAMMALS - HUNTING LICENSE/PERMIT REQUIRED	18
HAR § 13-123-22(a)(3)	Hunting Unit Failure Check in	38
HAR § 13-123-22(b)(1)	Conditions and restrictions hunting license	3
HAR § 13-123-22(b)(10)	Conditions and restrictions tracer bullets blow guns gas guns	2
HAR § 13-123-22(b)(2)	GAME MAMMAL HUNTING - WEAPONS RESTRICTIONS	2
HAR § 13-123-22(b)(3)	Conditions and restrictions closed season	3
HAR § 13-123-22(b)(4)	Conditions and restrictions bag limit	1
HAR § 13-123-22(b)(5)(A)	Conditions and restrictions rifles	2
HAR § 13-123-22(e)	CLOSED AREA	11
HAR § 13-123-23	GAME MAMMAL HUNTING - PERMIT TAGS REQUIRED	2
HAR § 13-123-24(5)	Preservation of public and private property ground fires	1
HAR § 13-123-3	Prohibited hunting	16
HAR § 13-123-3(2)	GAME MAMMAL HUNTING - PROHIBITED W/O LICENSE	9
HAR § 13-123-3(5)	GAME MAMMAL HUNTING RESTRICTIONS ON MAUI	12
HAR § 13-123-4(a)	GAME MAMMALS - BAG LIMITS, OPEN SEASONS & DAYS	9
HAR § 13-123-6	Hunting hours	6
HAR § 13-124-3	Prohibited activities	1
HAR § 13-124-3(d)(1)	Prohibited activities release	2
HAR § 13-126-23(c)	ANIMAL PETS ARE NOT PERMITTED IN WILDLIFE SANCTUARIES	2
HAR § 13-126-26	CAMPING	1
HAR § 13-126-4	WILDLIFE SANCTUARIES	16
HAR § 13-126-5	WILDLIFE SANCTUARIES	1
HAR § 13-130-24(1)	Fire use ground structure	1
HAR § 13-146-10	Animals	3
HAR § 13-146-10(a)	Animals stray	2
HAR § 13-146-10(b)	Animals prohibited areas	19

**Environmental Law Cases in District and Circuit Court, Hawai'i Administrative Rules
Initiated July 1, 2011 - December 31, 2013**

Violation	Description	Number
HAR § 13-146-14	Camping	196
HAR § 13-146-19(a)	Firearms and other weapons	2
HAR § 13-146-20	Fires	10
HAR § 13-146-20(a)	Fires in Wilderness Permit	2
HAR § 13-146-25(b)	Possession of alcohol	33
HAR § 13-146-29	Parking	2
HAR § 13-146-31	Portable engines and motors	2
HAR § 13-146-32(b)	Public property building sign equipment	1
HAR § 13-146-32(e)	Public property plants	1
HAR § 13-146-34	Residence prohibited	7
HAR § 13-146-38(a)	Swimming or nudity prohibited	1
HAR § 13-146-4	Closed Park Area	328
HAR § 13-146-40	Vehicle and motorized bike operation	10
HAR § 13-146-40(a)	Vehicle and motorized bike operation non-designated road	19
HAR § 13-146-41	Wildlife	1
HAR § 13-146-51	Camping Permits	8
HAR § 13-146-65	Advertisements	2
HAR § 13-146-66	Business operations	1
HAR § 13-146-67(b)	Still photograph permit	1
HAR § 13-146-68	Commercial activities	13
HAR § 13-146-9	Aircraft	1
HAR § 13-209-4	Prohibited activities	2
HAR § 13-209-4(11)	Prohibited activities water vehicle	2
HAR § 13-209-4(14)	Prohibited activities tools equipment	6
HAR § 13-209-4(16)	Prohibited activities closed area	4
HAR § 13-209-4(17)	Prohibited activities water vehicle	1
HAR § 13-221-35	Commercial activities w/o written permit	1
HAR § 13-230-4	Small Boat Harbors - Penalties	2
HAR § 13-231-2	Small Boat Harbors-Restrictions	9
HAR § 13-231-20	Houseboats prohibited	1
HAR § 13-232-23	SMALL BOAT HARBORS - RESTRICTIONS	3
HAR § 13-232-29	SMALL BOAT HARBORS - RESTRICTIONS	1
HAR § 13-232-41	SMALL BOAT HARBORS - RESTRICTIONS	10
HAR § 13-232-54	Swmming	1
HAR § 13-232-57(c)	Dogs restrictions	2
HAR § 13-232-57(d)	Dogs stray	2
HAR § 13-232-58	Sleeping or camping prohibited	73
HAR § 13-232-6	Littering land areas prohibited	1
HAR § 13-232-60(a)	Consumption of liquor prohibited	9
HAR § 13-233-44(2)	SMALL BOAT HARBORS - MOTOR VEHICLE & PARKING RULES	1
HAR § 13-234-34(c)	SMALL BOAT HARBORS - FEES & CHARGES	1
HAR § 13-234-34(d)	SMALL BOAT HARBORS - FEES & CHARGES	5
HAR § 13-241-1	BOATING - NUMBERING OF VESSELS	3
HAR § 13-241-10	BOATING - NUMBERING OF VESSELS	6
HAR § 13-241-10(e)	BOATING - NUMBERING OF VESSELS	1

**Environmental Law Cases in District and Circuit Court, Hawai'i Administrative Rules
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Violation	Description	Number
HAR § 13-241-13	BOATING - NUMBERING OF VESSELS	11
HAR § 13-241-13(c)	Display registration sticker - vessel sides	20
HAR § 13-241-3	NUMBERING SYSTEM	1
HAR § 13-241-4	BOATING - NUMBERING OF VESSELS	6
HAR § 13-241-4(a)	BOATING - NUMBERING OF VESSELS	1
HAR § 13-241-4(b)	BOATING - NUMBERING OF VESSELS	1
HAR § 13-241-8	BOATING - NUMBERING OF VESSELS	17
HAR § 13-242-15	Stop Vessels for Inspection	1
HAR § 13-243-1	BOATING - VESSEL EQUIPMENT REQUIREMENTS	30
HAR § 13-244-33(b)(1)	Pokai Bay - No Vessel	1
HAR § 13-244-35(b)	activities	1
HAR § 13-245-10	Mooring vessels to buoys or beacons prohibited	1
HAR § 13-245-9(a)	BOATING - WATERWAY MARKING SYSTEM	48
HAR § 13-245-9(d)	BOATING - WATERWAY MARKING SYSTEM	1
HAR § 13-251-1	CATAMARAN CAPTAINS, ETC., SHALL HAVE AN OPERATOR PERMIT	1
HAR § 13-251-47	WATERS	1
HAR § 13-251-66(a)	Canoe operation, required crew	1
HAR § 13-251-76	WAIKIKI OR KAAHAPALI OCEAN WATERS AND BEACH	4
HAR § 13-254-14(a)	POINT PANIC OCEAN WATERS - SURFBOARD RESTRICTED	2
HAR § 13-256-112	MAUI HUMPBACK WHALE - PROTECTED WATERS	1
HAR § 13-256-16(b)	RESERVE	1
HAR § 13-256-16(d)	Thrill Craft - Certificate of Completion	9
HAR § 13-256-17(a)	RECREATIONAL THRILL CRAFT OPERATION - CONDITIONS	1
HAR § 13-256-17(b)	RECREATIONAL THRILL CRAFT OPERATIONS	2
HAR § 13-256-17(c)	RECREATIONAL THRILL CRAFT OPERATION - Locations	1
HAR § 13-256-22(f)	TOW-IN SURFING POSS CERT	1
HAR § 13-256-63(b)(1)	SHARKS COVE, THREE TABLES, WAIKIKI BAY RESTRICTED ZONE A	2
HAR § 13-261-10	KAHOOLAWE ISLAND RESERVE	9
HAR § 13-261-13	KAHOOLAWE-ACTIVITIES W/IN RESERVE	2
HAR § 13-261-13(a)	KAHOOLAWE ISLAND RESERVE - AUTHORIZATION REQUIRED	1
HAR § 13-261-14(a)	KAHOOLAWE - COMMERCIAL ACTIVITY	1
HAR § 13-261-14(b)(13)	KAHOOLAWE-FISHING GEAR	4
HAR § 13-30-2	Prohibited activities	10
HAR § 13-32-2	Prohibited activities	2
HAR § 13-32-2(1)	Prohibited activities fishing	2
HAR § 13-32-2(3)	Prohibited activities spear trap net	2
HAR § 13-33-2	Prohibited activities	2
HAR § 13-34-2	Prohibited activities	2
HAR § 13-34-2(1)	Prohibited activities fishing	3
HAR § 13-34-2(3)	Prohibited activities spear trap net	6
HAR § 13-35-2	Prohibited activities	4
HAR § 13-35-2(3)	Prohibited activities spear trap net	4
HAR § 13-36-2(1)	Prohibited activities fishing	2
HAR § 13-36-2(3)	Prohibited activities spear trap net	7
HAR § 13-37-2	Prohibited activities	5

**Environmental Law Cases in District and Circuit Court, Hawai'i Administrative Rules
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Violation	Description	Number
HAR § 13-37-2(3)	Prohibited activities spear trap net	1
HAR § 13-38-3	Prohibited activities	8
HAR § 13-38-3(1)	Prohibited activities marine life	4
HAR § 13-48-3	Prohibited activities	4
HAR § 13-48-3(1)	Prohibited activities fishing	4
HAR § 13-48-3(2)	Prohibited activities live coral	1
HAR § 13-48-3(3)	Prohibited activities fishing gear	1
HAR § 13-51-2	Prohibited activities	9
HAR § 13-51-2(a)(1)	Unlawful use of net	4
HAR § 13-52-2	Prohibited activities	3
HAR § 13-52-2(1)(B)	Prohibited activities snag fishing Zone A	1
HAR § 13-55-2(a)(3)	Prohibited activities netting	2
HAR § 13-60.3-5(a)(1)	Lay nets unregistered	1
HAR § 13-60.3-5(g)(1)	Lay nets Puako-Anaehoomalu	3
HAR § 13-62-3(1)	Prohibited activities fishing license	2
HAR § 13-62-3(2)	Prohibited activities 200 feet restriction	3
HAR § 13-62-3(7)	Prohibited activities floatation device	1
HAR § 13-63-2	Prohibited activities	1
HAR § 13-63-2(8)	Prohibited activities spearing	2
HAR § 13-75-10(a)	Commercial marine license / Poss Throw Net <2" (?)	67
HAR § 13-75-10(b)	POSSESSION OF THROW NET WITH MESH LESS THAN 2"	1
HAR § 13-75-12.4	Lay Nets	36
HAR § 13-75-12.4(a)(1)	Possess Lay Net	8
HAR § 13-75-12.4(a)(2)(A)	Possess lay net >125 feet length >7 feet height	2
HAR § 13-75-12.4(a)(2)(B)	Possess Lay Net<2 3/4" mesh	3
HAR § 13-75-12.4(a)(3)	Posses Multipanel Lay Net	1
HAR § 13-75-12.4(a)(4)	Possess Lay Net no ID Tags	3
HAR § 13-75-12.4(f)(1)	Lay Net - Kaneohe Bay	7
HAR § 13-75-12.5(a)(1)	Molokai use lay net >750 feet length, >7 feet stretch height	1
HAR § 13-75-12.5(a)(2)	Molokai lay net stretched mesh <2 3/4 inch	3
HAR § 13-75-12.5(b)(1)	Molokai possess lay net no id tags	8
HAR § 13-75-12.5(b)(2)	Molokai mark lay nets with surface buoys	1
HAR § 13-75-14	USE OF NETS WITH STRETCHED MESH LESS THAN 2"	4
HAR § 13-75-14(7)	MONOFILAMENT GILL NET FISHING RESTRICTIONS	5
HAR § 13-75-15(b)(2)	USE OF TRAPS WITH RIGID MESH LESS THAN 2"	1
HAR § 13-84-1	Prohibited activities	16
HAR § 13-89-1(1)	Prohibited activities main Hawaiian island waters	2
HAR § 13-89-1(1)(A)	POSSESSION OF UNDERSIZED SPINY LOBSTERS	6
HAR § 13-91-2	Prohibited activities	1
HAR § 13-92-1(a)	Prohibited activities	2
HAR § 13-92-1(a)(1)	Prohibited activities shell	12
HAR § 13-93-2(1)	Prohibited activities holdfast	2
HAR § 13-93-2(2)	Prohibited activities reproductive nodes	1
HAR § 13-93-2(3)	Prohibited activities family consumption	1
HAR § 13-95-10	Oio	3

**Environmental Law Cases in District and Circuit Court, Hawai'i Administrative Rules
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Violation	Description	Number
HAR § 13-95-11	Kala	42
HAR § 13-95-12	Opelu kala	6
HAR § 13-95-16	Uhu	11
HAR § 13-95-22(a)	Ulua take	10
HAR § 13-95-23(a)	Moi take	4
HAR § 13-95-23(b)	Moi daily take	1
HAR § 13-95-23(c)	Moi season	2
HAR § 13-95-4	Aholehole	10
HAR § 13-95-5	Manini	11
HAR § 13-95-50(b)	Kuhonu crab take	1
HAR § 13-95-53(a)	Spiny lobster take	7
HAR § 13-95-53(c)	Spiny lobster sell	2
HAR § 13-95-53(d)	Spiny lobster spear	4
HAR § 13-95-54(a)	Slipper lobster take	1
HAR § 13-95-55	He'e	23
HAR § 13-95-6	Moano	1
HAR § 13-95-7	Kumu	24
HAR § 13-95-70(a)	Stony corals take	1
HAR § 13-95-8(a)	Mullet size	9
HAR § 13-95-8(b)	Mullet season	9
HAR § 13-99-1	Prohibited activities	1
Total		1,697

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



LATE

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
KAIHOLAWA ISLAND RESERVE COMMISSION
LAND
STATE PARKS

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 House Committee on
ENERGY & ENVIRONMENTAL PROTECTION

Tuesday, March 11, 2014
8:30 a.m.
State Capitol, Conference Room 325

In consideration of
SENATE BILL 632, SENATE DRAFT 2

Senate Bill 632, Senate Draft 2 proposes to establish environmental courts as divisions within the circuit courts to hear both original actions involving environmental laws and appeals from administrative agencies under Hawaii Revised Statutes, Chapter 91. In addition, the Judiciary is 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 the management and protection of Hawaii's natural and cultural resources. Consolidating environmental and natural resource law cases to a single judge in one circuit could facilitate the timely, fair, and equitable disposition of such cases.

To this end, it is important that the environmental court judges possess adequate experience and expertise in environmental and natural resource laws, and be well versed in the Department's numerous guiding statutes and administrative rules.

The Department would like to work with the State Judiciary in establishing such a system.

Thank you for the opportunity to testify.