



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:
H.B. NO. 1581, H.D. 1, RELATING TO JUDICIAL PROCEEDINGS.

LATE

BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 1, 2016 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): WRITTEN TESTIMONY ONLY.

(For more information, contact Linda L.W Chow, Deputy Attorney General, at 587-2988)

Chair Rhoads and Members of the Committee:

The Department of the Attorney General has the following comments on this bill:

The primary purpose of this bill is to provide a direct appeal to the Hawaii Supreme Court from contested case hearings in certain instances. Specifically, the bill would affect appeals of contested cases arising under chapter 183C, Hawaii Revised Statutes (HRS), contested cases of the Land Use Commission under chapter 205, HRS, and contested cases from certain decisions of the Hawaii Community Development Authority (HCDA) under chapter 206E, HRS.

As described below, this bill may conflict with the current statutory provisions in chapter 602, HRS. We recommend an amendment to section 602-5, HRS, to remedy this problem.

A direct appeal to the Supreme Court, as set forth in this bill, is contrary to the provisions of section 602-5, HRS, relating to the jurisdiction and powers of the court. Section 602-5(a)(1), HRS, provides that the Supreme Court has jurisdiction and power to “hear and determine all questions of law, or of mixed law and fact, which are properly brought before it by application for a writ of certiorari to the intermediate appellate court or by transfer as provided in this chapter.” Appeals only go to the Supreme Court pursuant to a writ of certiorari or an application

for transfer.¹ The Supreme Court is not authorized to hear a direct appeal under the current provision.²

We recommend that an amendment to section 602-5(a)(1), HRS, be included to allow for other ways in which the Supreme Court could hear appeals. Specifically, we suggest that a new section should be included that would preface the wording in section 602-5(a)(1), HRS, with the phrase, “Except as otherwise provided.”

We also have comments on specific sections of the bill, as follows:

1. Section 1 – This section would require all contested case decisions that arise under chapter 183C, HRS, to be appealed directly to the Supreme Court. We believe the scope of this section is too broad and could unnecessarily elevate minor cases to the level of creating precedent.

As currently drafted, this section would include within its purview contested cases arising out of conservation district violations involving encroachment of vegetation or walls on the shoreline, illegal structures within the conservation district, as well as conservation district use permits for individual residences or uses. The majority of these cases, although important to the landowners, would generally not be appealed to the Supreme Court. If these cases are decided by the Supreme Court, these cases would create precedent. This section, as drafted, would also decrease the State’s discretion to decide whether to appeal an adverse judgment at the circuit court level when the facts do not support a further appeal.

¹ The other circumstances in which the supreme court may hear a matter involve reserved questions of law from other courts, original jurisdiction under writs of mandamus, issuance of writ of habeas corpus, or to issue other writs or orders in aid of its jurisdiction.

² Act 202, Sess. L. Haw. 2004, amended the jurisdictional statutes for the Supreme Court and Intermediate Court of Appeals. The sections that authorized appeals from courts and agencies to the Supreme Court were amended to authorize appeals to the Intermediate Court of Appeals instead. Act 202 did not specifically amend section 174C-60, HRS, of the State Water Code regarding contested cases. However, in 2006 the Supreme Court found that section 174C-60, HRS, was inconsistent with and could not stand together with sections 602-5 and 602-57, HRS, as amended. The Supreme Court ruled that section 174C-60, HRS, was amended by implication, effective July 1, 2006. *In the Matter of Water Use Permit Applications, Petitions for Interim Instream Flow Standard Amendments, and Petitions for Water Reservations for the Waiahole Ditch Combined Contested Case Hearing*, 113 Haw. 52, 147 P.3d 836 (2006). Unless a specific amendment is made regarding section 174C-60, HRS, the court’s interpretation of this section pursuant to Act 202 would remain in effect.

If sending all of these appeals to the Supreme Court is not the intent of the bill, then as an alternative, wording from section 3 of the bill could be inserted in section 1 to limit the types of cases that would come under section 1. Section 3 adds a new subsection (j) to section 91-14, HRS, that would require the court to give priority to contested case appeals of “significant statewide importance.” If the wording in section 1 is limited to those cases that arise under chapter 183C, HRS, that are of “significant statewide importance,” it would capture those cases that would normally be appealed to the Supreme Court. We note, however, that if the Supreme Court’s jurisdiction in these matters is limited to issues of significant statewide importance, that determination would require an exercise of discretion by the court.

2. Section 3 – New subsection (i) added to section 91-14, HRS, would allow the court to reserve jurisdiction over an appeal and to appoint a master or monitor to ensure compliance with the court’s orders. We believe this section is unnecessary as the court always has the authority to enforce its own orders.

3. Section 6 – This section amends section 206E-20, HRS, to distinguish this section from the amended provisions of section 206E-5.6, HRS. We do not believe section 6 is necessary and recommend that it be removed from the bill to avoid confusion. Section 206E-5.6, HRS, applies only to final decisions of the HCDA regarding the acceptance of a developer’s proposal to develop lands under the HCDA’s control. By contrast, section 206E-20, HRS, only applies to actions in which the authority, the State, or the county may be a party in which a question arises as to the validity of chapter 206E, HRS. There does not appear to be an overlap in subject matter such that an exception has to be noted in section 206E-20, HRS.

Thank you for the opportunity to testify.



LATE

The Judiciary, State of Hawaii

Testimony to the House Committee on Judiciary

Representative Karl Rhoads, Chair

Representative Joy A. San Buenaventura, Vice Chair

Tuesday March 1, 2016 2:00 p.m.
State Capitol, Conference Room 325

by

Rodney A. Maile

Administrative Director of the Courts

BILL TITLE: House Bill No. 1581, H.D. 1, Relating to Judicial Proceedings.

PURPOSE: Requires contested case hearings of the Land Use Commission, Hawai'i Community Development Authority, and those involving conservation districts, to be appealed directly to the supreme court.

JUDICIARY'S POSITION:

The Judiciary recognizes and appreciates that allowing direct appeals from agencies to the Hawai'i Supreme Court will expedite the appellate resolution of cases. Presently, there are direct appeals to the Intermediate Court of Appeals (ICA) from the Public Utilities Commission, the Water Commission, and the Labor and Industrial Relations Appeals Board. These appeals are subject to review by the Supreme Court by an acceptance of transfer or an application for writ of certiorari.

The Judiciary proposed a measure in 2010 that would have allowed direct appeals of certain categories of cases from the circuit court to the Supreme Court rather than to the ICA in order to streamline the appellate process. The bill also proposed that two categories of cases that could already be directly appealed from an administrative agency to the ICA would instead proceed directly to the Supreme Court.

The present bill would provide that contested case appeals from decisions of the Land Use Commission, the Hawai'i Community Development Authority, and those involving conservation districts proceed directly from the agency level to the Supreme Court.



The Judiciary offers the following comments and suggestions:

1. The bill requires the court, upon request of any party, to hear oral arguments and receive written briefs. There may be situations, however, where the court determines that oral argument is not necessary, as the court is able to make a ruling based on the written briefs. Requiring oral argument in such situations could delay the disposition of the case. Consequently, we suggest that the bill be amended to provide the court discretion to hold oral arguments in accordance with its own rules. Giving the court discretion in this matter would appear to be consistent with the intent of this bill.
2. The proposed new subsection (j) to H.R.S. § 91-14 provides that the court shall give priority to contested appeals of significant statewide importance or where constitutional issues are raised. The Judiciary respectfully suggests that the reference to cases raising constitutional issues be deleted. Such cases do not always merit the priority handling that this bill envisions. To the extent they do, they could be given priority as involving questions of “significant statewide importance.” The Judiciary also respectfully suggests that civil appeals involving determination of parental rights under HRS chapter 587 be given equal priority under this bill, given the importance of the prompt disposition of such cases to the well-being of the children who are involved.
3. The Judiciary notes that under section 4 of the bill, appeals governed by this measure will bypass the environmental courts. These courts were established by Act 218 of the 2014 legislative session in order to promote consistency and uniformity in decision making related to environmental issues.

Thank you for allowing the Judiciary to submit testimony on this bill.

March 1, 2016

The Honorable Karl Rhoads, Chair

House Committee on Judiciary
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 1581, Relating to Relating to Judicial Proceedings

HEARING: Tuesday, March 1, 2016 at 2:00 p.m.

Aloha Chair Rhoads, Vice Chair San Buenaventura, and Members of the Committee:

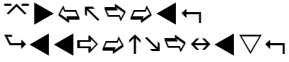
I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® (“HAR”), the voice of real estate in Hawai'i, and its 8,800 members. HAR **supports the intent** of H.B. 1581 which requires contested case hearings of the land use commission, Hawaii community development authority, and those involving conservation districts to be appealed directly to the supreme court.

H.B. 1581 proposes to substantially reduce the time required to resolve disputes on agency actions requiring quasi-judicial, contested case hearings by removing the lower courts from the appeal process. Reducing the number of decisions and appeals on an already cumbersome land use entitlement process would improve the predictability and certainty, and also reduce the risk currently associated with Hawaii's land use entitlement process.

For instance, on Maui, two 201H projects held up by legal appeals to their approvals. Both, ironically are in the same district of Lahaina named for the stream that runs next to both properties: Kahoma. One project, Kahoma Residential Project, is a 70-unit, single family 100 percent affordable housing project proposed by West Maui Land Development Company and is associated with Habitat for Humanity and Na Hale O Maui.

Two parties intervened against the proposal which one intervener appealed to 2nd Circuit Court, lost and then appealed to the Intermediate Court of Appeals – where the case remains, marooned. Because the rights of the intervener are magnified under this process, the costs to affordable housing developers mushroom and projects are delayed indefinitely.

HAR believes this proposal may substantially reduce the time required to resolve such disputes. Mahalo for the opportunity to testify.



FW: HB 1581 HD1 - Relating to Judicial Proceedings - In Support
Ltr in Support of HB 1581 HD1.pdf

Attached is a letter in support of the provisions of H.B. No. 1581 H.D. 1. Please contact Mr. Graham if you have any questions.

*Shari E. Ogata, Secretary
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Wilson & Chun, LLP
4334 Rice Street, Suite 202
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LORNA A. NISHIMITSU

ASSOCIATE:
IAN K. JUNG

February 26, 2016

The Honorable Karl Rhoads, Chair
The Honorable Joy San Buenaventura, Vice Chair
House Committee on Judiciary

VIA EMAIL ONLY

Re: **HB 1581 HD1 – Relating to Judicial Proceedings – In Support
Tuesday, March 1, 2016 – 2:00 PM, Room 325**

Dear Chair Rhoads, Vice Chair San Buenaventura and Members of the Committee:

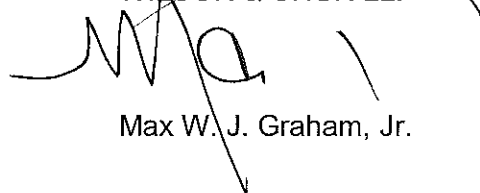
I am writing to you in support of the provisions of H.B. No. 1581 H.D. 1 which provide for the direct appeal of decisions rendered by either the Land Use Commission or the Board of Land and Natural Resources in contested case proceedings directly to appellate courts (Intermediate Court of Appeals/Supreme Court). Such a process will benefit all parties in such cases by providing an expedited review and decision in what are generally important land use cases involving important constitutional and environmental matters.

I also recommend that such direct appeals follow the procedure currently contained in the Hawaii Rules of Appellate Procedure ("HRAP"), whereby appeals (unless transferred to the Supreme Court under HRAP Rule 40.2) are first considered by the Intermediate Court of Appeals, with subsequent consideration by the Supreme Court, in its decision, in cases where certiorari is granted pursuant to HRAP Rule 40.1. Such a process will allow for an expedited review while preserving the orderly handling of appeals at the appellate court level.

Thank you for the opportunity to provide testimony in support of this Bill.

Sincerely yours,

BELLES GRAHAM PROUDFOOT
WILSON & CHUN LLP



Max W. J. Graham, Jr.

MWJG:jgm

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

THE VOICE OF THE CONSTRUCTION INDUSTRY

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Testimony to the House Committee on Judiciary
Tuesday, March 1, 2016
2:00 PM.
State Capitol - Conference Room 325

LATE

RE: HB 1581 HD1: Relating to Judicial Review.

Dear Chair Rhoads, Vice-Chair San Buenaventura, and members of the Committee:

My name is Gladys Marrone, Chief Executive Officer 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 supports the intent of H.B 1581 HD 1, which proposes to require contested case hearings of the land use commission, Hawaii community development authority, and those involving conservation districts to be appealed directly to the supreme court.

The proposed bill would substantially reduce the time required to resolve disputes on agency actions requiring quasi-judicial, contested case hearings by removing the lower courts from the appeal process. Reducing the number of decisions and appeals on an already cumbersome land use entitlement process would improve the predictability and certainty, and also reduce the risk currently associated with Hawaii's land use entitlement process.

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



LATE

P.O. Box 253, Kunia, Hawai'i 96759
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e-mail info@hfbf.org; www.hfbf.org

March 1, 2016

HEARING BEFORE THE
HOUSE COMMITTEE ON JUDICIARY

TESTIMONY ON HB 1581 HD1
RELATING TO JUDICIAL PROCEEDINGS

Room 325
2:00 PM

Aloha Chair Rhoads, Vice Chair Buenaventura, and Members of the Committee:

I am Randy Cabral, President of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,900 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.

The Hawaii Farm Bureau supports HB 1581, HD1, which requires contested case hearings of the land use commission, Hawaii community development authority, and those involving conservation districts to be appealed directly to the supreme court.

HB 1581, HD1 aims to streamline the judicial process relating to certain contested cases in order to expedite the resolution of these conflicts. It provides for direct Supreme Court review, and it gives priority to those contested case appeals (specifically involving the Land Use Commission, the Hawaii Community Development Authority, and Conservation Districts) that are of significant statewide importance, or in which constitutional issues are raised.

Thank you for the opportunity to provide testimony.



Chamber of Commerce HAWAII

The Voice of Business

LATE

**Testimony to the House Committee on Judiciary
Tuesday, March 1, 2016 at 2:00 P.M.
Conference Room 325, State Capitol**

RE: HOUSE BILL 1581 HD 1 RELATING TO JUDICIAL PROCEEDINGS

Chair Rhoads, Vice Chair San Buenaventura, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports the intent of** HB 1581 HD 1, which requires contested case hearings of the land use commission, Hawaii community development authority, and those involving conservation districts to be appealed directly to the supreme court.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 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 members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The proposed bill would substantially reduce the time required to resolve disputes on agency actions requiring quasi-judicial, contested case hearings by removing the lower courts from the appeal process. Reducing the number of decisions and appeals on an already cumbersome land use entitlement process would improve the predictability and certainty, and also reduce the risk currently associated with Hawaii's land use entitlement process.

Thank you for the opportunity to testify.



LATE

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March 1, 2016

HEARING BEFORE THE
HOUSE COMMITTEE ON JUDICIARY

TESTIMONY ON HB 1581 HD1
RELATING TO JUDICIAL PROCEEDINGS

Room 325
2:00 PM

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Thank you for the opportunity to provide testimony.

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 29, 2016 6:10 PM
To: JUDtestimony
Cc: labford@hawaiiantel.net
Subject: *Submitted testimony for HB1581 on Mar 1, 2016 14:00PM*

HB1581

Submitted on: 2/29/2016
Testimony for JUD on Mar 1, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Lawrence Ford	Individual	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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February 26, 2016

The Honorable Karl Rhoads, Chair
The Honorable Joy San Buenaventura, Vice Chair
House Committee on Judiciary

RE: HB 1581, HD1 – Relating to Judicial Proceedings – In Support
Tuesday, March 1, 2016 – 2:00 PM, Room 325

Aloha Chair Rhoads, Vice Chair San Buenaventura and members of the Committee,

My name is Lisa Hirahara, and I am writing in strong support of HB 1581, HD 1. I am a licensed attorney in Hawaii, and I have practiced administrative law for over ten years. I am testifying in my individual capacity.

Allowing a direct appeal from a contested case to the Hawaii Supreme Court would be efficient and in the best interest of applicants and opposing parties alike. Currently, after a contested case results in a decision, any appeal must be filed in the Circuit Court. After the Circuit Court, a further appeal must be taken in the Intermediate Court of Appeal, with the ability to apply for a transfer to the Hawaii Supreme Court. If the transfer is denied, an appeal may still reach the Hawaii Supreme Court by application for a writ of certiorari. By time certainty is achieved about whether a project may move forward, a permit application could have gone through a contested case hearing and no less than three levels of court. Worthy projects and justified oppositions could decide to stop pursuing the matter at any point in the appeal process due to lack of resources.

The ability to directly appeal a contested case decision to the Hawaii Supreme Court would be extremely efficient, saving time and money for all parties, and would provide finality regarding the subject application at an earlier date than if appeals must be taken at the various court levels. In addition, the Hawaii Supreme Court often overrules the decisions of the lower courts. It serves only to delay and add costs to the appeal process if parties must wait until the Hawaii Supreme Court eventually rules on the matter. Proceeding directly to the Hawaii Supreme Court would benefit everyone. The passage of this bill would be a positive step in streamlining the land use permitting process, which is often blamed, in part, for Hawaii's excessive housing costs.

Thank you for the opportunity to provide testimony in support of this bill.

Very truly yours,



Lisa S. Hirahara
Honolulu, Hawaii