



The Judiciary, State of Hawai‘i

**Testimony to the
Senate Committee on Judiciary and Labor**
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S. L. Shimabukuro, Vice Chair

Thursday, March 31, 2016, 9:30 a.m.
State Capitol, Conference Room 016

By
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WRITTEN TESTIMONY ONLY

BILL TITLE: House Bill No. 1581, H.D. 2, S.D. 1, Relating to Judicial Proceedings.

PURPOSE: Requires contested case decisions of the Commission on Water Resource Management, Land Use Commission, Public Utilities Commission, Hawai‘i Community Development Authority, and those involving conservation districts, to be appealed directly to the Supreme Court. Requires Judiciary to report to 2019 Legislature. Sunsets on July 1, 2019.

JUDICIARY’S POSITION:

This bill provides for a direct appeal to the Hawai‘i Supreme Court from contested case proceedings arising under Hawai‘i Revised Statutes (HRS) chapters 174C (State Water Code), 183C (Conservation District), 205 (Land Use Commission), 269 (Public Utilities Commission), and particular provisions of 206E (Hawai‘i Community Development Authority).

The Judiciary recognizes and appreciates that allowing direct appeals from agencies to the Hawai‘i Supreme Court will establish an abbreviated appellate process for contested cases covered by this bill. However, as noted in our prior testimony on this bill, appeals governed by section 2 of this measure will bypass the environmental courts. These courts were established by Act 218 of the 2014 legislative session to promote consistency and uniformity in decision-making related to environmental issues. The extent of that bypass was recently made clear by testimony provided by the Department of the Attorney General. The Department noted that this



bill “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 number of cases that could be directly appealed to the Hawai‘i Supreme Court annually under this measure could include approximately 150 cases for shoreline vegetation matters and an additional 20 to 30 cases involving other conservation district issues (e.g., shoreline encroachments and conservation district use permit cases).

Direct appeals of these cases to the Hawai‘i Supreme Court would create a substantial backlog. Thus, although the bill provides that the Supreme Court “shall give priority to contested case appeals of significant statewide importance over all other civil or administrative appeals or matters and shall decide these appeals as expeditiously as possible,” the Court’s ability to expeditiously resolve important cases will be greatly impeded if 175 cases are added to its docket each year.

Given the significant implications of this bill for litigants (both potential and actual), the Hawai‘i Judiciary, and the executive branch (including the Department of the Attorney General, the Department of Land and Natural Resources, the Land Use Commission, the Public Utilities Commission, and the Hawai‘i Community Development Authority), we respectfully request that this bill be deferred so that the Judiciary or the Legislature may convene a task force with stakeholders to determine how best to achieve the bill’s purpose without these unintended negative consequences. The task force would submit its findings and recommendations, including any proposed legislation, to the Legislature prior to the convening of the 2017 session.

If this bill is to proceed without the benefit of a task force, we propose that section 2 of the bill be amended to retain the environmental court’s jurisdiction over all appeals arising under HRS chapter 183C. One of two alternatives could then be included in the bill to ensure the expeditious resolution of such cases. First, the environmental court could be directed to decide such cases on an expedited basis, with a subsequent direct appeal to the Hawai‘i Supreme Court. Alternatively, the bill could allow for transfer of such cases from the environmental courts to the Supreme Court on the grounds that the cases involve a matter of significant statewide importance. This process would be akin to that established under HRS § 602-58 for transfer of an appeal from the Intermediate Court of Appeals to the Hawai‘i Supreme Court.

We would further ask that the bill’s effective date be changed to July 1, 2017, and that the sunset date be changed to July 1, 2020. A delayed effective date would give the Judiciary time to: (1) pursuant to HRS § 602-11, develop the necessary rules and procedures that detail the requirements for direct appeals to the Supreme Court; (2) educate stakeholders and attorneys about the legislation so that timely and important decisions can be made about existing and impending litigation; and (3) work with stakeholders, such as the Department of Land and



House Bill No. 1581, H.D. 2, S.D. 1, Relating to Judicial Proceedings
Senate Committee on Judiciary and Labor
Thursday, March 31, 2016
Page 3

Natural Resources, to ensure timely and fair proceedings and an understanding of the process. A sunset date of July 1, 2020 will provide adequate time for the Judiciary to evaluate the success of the law and the need, if any, for amendments.

Again, the Judiciary supports the underlying goal of ensuring the speedy resolution of agency appeals. We believe the best way to achieve that objective is through the creation of a task force, composed of stakeholders, to ensure that these appeals are decided efficiently while preserving the role envisioned for the environmental courts.

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



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RE: HOUSE BILL 1581 HD 2 SD 1 RELATING TO JUDICIAL PROCEEDINGS

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** HB 1581 HD 2 SD 1, which requires contested case hearings of the commission on water resource management, land use commission, public utilities commission, Hawaii community development authority, and those involving conservation districts to be appealed directly to the supreme court. Requires the judiciary to submit a report to the legislature.

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.