



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

LATE

ON THE FOLLOWING MEASURE:

H.B. NO. 1261, RELATING TO JUDICIAL PROCEEDINGS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, February 7, 2019 **TIME:** 2:05 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Clare E. Connors, Attorney General, or
Robyn Chun, Deputy Attorney General

Chair Lee and Members of the Committee:

The Department of the Attorney General submits the following comments on this bill.

House Bill No. 1261 makes permanent the requirement that final decisions in contested case hearings of the Commission on Water Resource Management, the Land Use Commission, Public Utilities Commission, Hawaii Community Development Authority and contested case hearing decisions involving conservation districts be appealed directly to the Hawai'i Supreme Court. This appellate procedure by passes the circuit courts, thereby expediting the final resolution of the issues raised in contested case hearings involving these agencies and the Board of Land and Natural Resources. Expediting the resolution of issues that potentially affect community development and growth is likely to have a positive impact on not only the State's own development projects but also on the State's efforts to promote a business friendly environment that attracts and supports new businesses and development.

We see no legal problems or issues in House Bill No. 1261.



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Judiciary
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair

Thursday, February 7, 2019 2:05 PM
State Capitol, Conference Room 325

by
Rodney A. Maile
Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1261, Relating to Judicial Proceedings.

Purpose: The bill makes permanent Act 48, which requires certain agency appeals to be filed directly with the Supreme Court.

Judiciary's Position:

In 2016, the legislature enacted Act 48, which allowed certain agency appeals to be filed directly with the Supreme Court, bypassing the circuit courts (including the environmental courts), and the Intermediate Court of Appeals. In accordance with requirements set forth in Act 48 of 2016, on December 20, 2018, the Judiciary submitted to the legislature A Report on Judicial Proceedings setting forth its findings and recommendations regarding the direct appeals (JC11).

With regard to House Bill No. 1261, the Judiciary offers the following comments and suggested amendments. The Judiciary respectfully recommends that the appellate jurisdiction of the environmental courts be restored for some of the appeals subject to the Act 48 of 2016. The legislature established the environmental courts in 2014 to promote and protect Hawai‘i’s natural environment through consistent and uniform application of environmental laws. Accordingly, specialized environmental courts were established in each judicial circuit. Restoring the jurisdiction of the environmental courts will ensure fulfillment of the goals envisioned by the establishment of the environmental courts.



House Bill No. 1261, Relating to Judicial Proceedings
House Committee on Judiciary
Thursday, February 7, 2016 2:05 PM
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If jurisdiction of the environmental courts is restored, the agency appeals that are the subject of Act 48 of 2016, except those from the State Water Commission, the Public Utilities Commission, and the Hawai'i Community Development Authority, would proceed first to the environmental courts. The Judiciary recommends that if any parties to the cases decided by the environmental courts wish to then seek further appellate review, that those appeals be filed directly with the Supreme Court, bypassing the Intermediate Court of Appeals.

The specialized environmental courts sitting as appellate courts should be able to more quickly address an initial appeal, and after the initial appeal, a further appeal to the Supreme Court may not be required. Proceeding in this manner should also have the advantage of providing a more complete record and focusing and limiting the issues brought to the Supreme Court, which should expedite the Supreme Court's final disposition. If the Judiciary's proposal is adopted, appeals from matters before the State Water Commission, the Public Utilities Commission, and the Hawai'i Community Development Authority would proceed directly to the Supreme Court.

Thank you for the opportunity to testify, and for your consideration of the Judiciary's comments.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Judiciary
Thursday, February 7, 2019, at 2:05 p.m.

by
Carrie Okinaga, Vice President for Legal Affairs
University of Hawai'i System

HB 1261 – RELATED TO JUDICIAL PROCEEDINGS

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

Thank you for the opportunity to present testimony in support of HB 1261, Related to Judicial Proceedings.

HB 1261 would make permanent Act 48, Session Laws of Hawaii 2016. Act 48 requires that decisions in 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 be appealed directly to the Supreme Court, with certain exceptions.

The expedited judicial review process under Act 48, removes some of the uncertainty and cost related to land use development by public institutions, like the University. This is particularly important to the formation of public-private partnerships, where private investment in capital public projects is more costly to the public as risk increases. Importantly, the benefits of Act 48 do not come at the expense of judicial oversight.

Based on the foregoing, the University supports HB 1261.



February 5, 2019

RE: HB1261 RELATED TO JUDICIAL PROCEEDINGS

Dear Representative Lee and the House Committee on Judiciary,

The Kona-Kohala Chamber of Commerce is in support of HB1261 RELATED TO JUDICIAL PROCEEDINGS that makes permanent the requirement that decisions in contested case hearings of the Commission on Water Resource Management, Land Use Commission, Public Utilities Commission, Hawai'i Development Authority, and those involving conservation districts be appealed directly to the Supreme Court, with certain exceptions.

The Kona-Kohala Chamber of Commerce is a 501(c)(6) non-profit organization with nearly 500 member businesses that represent a wide range of industries in the private, non-profit and public sectors in the Kona and Kohala districts on the West side of the island of Hawai'i. Our members range in size from small businesses with less than 10 employees to large corporations with over 1000 employees. Our organization exists to provide leadership and advocacy for a successful business environment in West Hawai'i.

Since our founding in 1968, the Kona-Kohala Chamber of Commerce has advocated for innovative ways to strengthen the local economy and promote our community. We strongly support the astronomy industry, science, culture and environmental stewardship of Maunakea. We strongly support the development of the Thirty Meter Telescope as well as the current Maunakea management structure and stewardship initiatives. We would like to see the renewal of the State's lease to the Maunakea Observatories. Based on previous cases surrounding these issues, we advocate for timely and complete resolution of contested cases that may arise in the future and support HB1261.

Sincerely,

A handwritten signature in black ink that reads "Wendy J. Laros". The signature is written in a cursive, flowing style.

Wendy J. Laros

Executive Director, Kona-Kohala Chamber of Commerce



MAUNAKEA OBSERVATORIES

To: Representative Chris Lee, Chair, House Committee on Judiciary
From: Maunakea Observatories
Subj: Letter Supporting HB1261 Relating to Judicial Proceedings
Date: 5 February 2019

Through this letter the Maunakea Observatories express their strong **support** for HB1261 which makes permanent the requirement that decisions in 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 be appealed directly to the Supreme Court, with certain exceptions.

This legislation is crucial for the Maunakea Observatories given that future land authorization for the Maunakea Science Reserve (MKSR), which the University of Hawai'i is now pursuing, may be subject to a contested case, introducing lengthy delays in the land authorization process. The current Master Lease for the MKSR expires at the end of 2033 and the timely renewal of this agreement, reflecting a long-term commitment on the part of the State of Hawai'i to support astronomy, is essential. Everything from facility upgrades to new instrumentation and long-term operations planning requires the State's commitment to enable Maunakea Observatories' operations well beyond the 2033 expiration of the current Master Lease. The numerous international federal funding agencies which sponsor the Maunakea Observatories, including the US National Science Foundation, Canadian National Research Council, NASA, MEXT of Japan, etc. have collectively invested billions of dollars over the 50+ year history of the Maunakea Observatories, most of which has been injected directly into Hawai'i's economy. It is in the interests of the State, Federal sponsors, Maunakea Observatories, and broader community to have timely and complete resolution of contested cases that may arise in the MKSR land authorization process, ensuring continued investments in Hawai'i for the benefit of future generations. HB1261 is one of many important steps needed to ensure a bright future for Hawai'i astronomy and the thousands of people that stand to benefit from Hawai'i astronomy in the decades ahead, hence our wholehearted support of this legislation.


Mahalo,



Director Doug Simons, Canada-France-Hawaii Telescope



Director Pierre Martin, Hoku Kea Observatory



Director Paul Ho, James Clerk Maxwell Telescope (East Asian Observatory)



Director Walter Briske, Long Baseline Observatory



Director John Rayner, NASA Infrared Telescope Facility

M. Yoshida

Director Michitoshi Yoshida, Subaru Telescope

Klaus Hodapp

Director Klaus Hodapp, UKIRT

Hilton Lewis

Director Hilton Lewis, W.M. Keck Observatory (Keck I and Keck II)

HB-1261

Submitted on: 2/6/2019 8:57:56 AM

Testimony for JUD on 2/7/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
David S. De Luz, Jr.	David S. De Luz, Sr. Enterprises, Inc.	Support	No

Comments:

Aloha,

I support HB1261 which will make a permanent change requiring that decisions in contested case hearings of certain agencies and those involving conservation districts, be appealed directly to the Supreme Court.

Contested cases involving matters of great importance to the State should be granted an expedited judicial review by the Supreme Court. This process can reduce years of delay and inflated costs to projects, which combined, could permanently terminate good projects and expedite the decision process in a more timely manner,

Mahalo for your time and the oppurtunity to share my thoughts on this matter

David S. De Luz, Jr.

808-895-4284,

HB-1261

Submitted on: 2/6/2019 8:34:45 AM

Testimony for JUD on 2/7/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Glen Kagamida	Hawaii Island Chamber of Commerce	Support	No

Comments:

I support HB 1261. It will save tons of time and money.

HOWEVER, I don't like the wording "with certain exceptions." That could lead to MORE litigation, not less. Please tighten it up and include specifics regarding the conditions when exceptions would apply.

Mahalo.



LATE

February 7, 2019

Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair
House Committee on Judiciary

Support of HB 1261 RELATED TO JUDICIAL PROCEEDINGS. (Makes permanent the requirement that decisions in 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 be appealed directly to the Supreme Court, with certain exceptions. Effective 6/30/19)

JUD Hearing: Thursday, February 7, 2019, 2:05 p.m., in Conf. Rm. 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, resort operators and major utility companies. LURF's mission 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 **supports HB 1261**, which would make permanent the requirement that decisions in contested case hearings of the Commission on Water Resource Management (CWRM), Land Use Commission (LUC), Public Utilities Commission (PUC), Hawaii Community Development Authority (HCDA), and those involving conservation districts (BLNR - Board of Land and Natural Resources) be appealed directly to the Supreme Court, with certain exceptions (collectively, "agency appeals").

Since the Act 48 (SLH2016) was enacted, The Hawaii Supreme Court and State Judiciary have done a commendable job in facilitating training and implementing the process for litigants to file agency appeals directly with the Supreme Court. As confirmed in the Judiciary's Report on Judicial Proceedings (Judiciary's Report), submitted on December 20, 2018, to the Legislature, Act 48(SLH 2016) has been successful, with the results summarized below:

2016 Direct appeals filed: Two of three 3 appeals have been concluded; one appeal is pending.

- 2016: Dismissed (BLNR Conservation District)
- 2016: Dismissed (BLNR Conservation District)
- Disposition pending; Oral argument held in 2018 (Hawaii County Planning Commission)

2017 Direct appeals filed: Five of seven appeals have been concluded (four related to the same matter); two appeals are pending.

- 2018: Dismissed (BLNR)
- 2018: Opinion and Amended Opinion filed (BLNR)
- 2018: Opinion and Amended Opinion filed (BLNR)
- 2018: Opinion and Amended Opinion filed (BLNR)
- 2018: Opinion filed (CWRM)
- Disposition pending; Oral argument held in 2018 (LUC)
- Disposition pending; Oral argument held in 2018 (PUC)

2018 Direct appeals filed: All three appeals (two related to the same agency matter) have been stayed at the request of the parties to provide an opportunity to resolve the issues with the agency without court involvement.

- Stayed until January 31, 2019, by request of the parties (CWRM)
- Stayed until January 31, 2019, by request of the parties (CWRM)
- Stayed until February 27, 2019, by request of the parties (CWRM)

In the Judiciary's Report and in its current testimony, it recommends that the jurisdiction of the environmental courts be restored, which would mean that appeals from the LUC, county planning commissions, county councils and other land use appeals involving housing matters, would be required to go through the current lengthy appeals process. With all due respect, given the severe shortage of affordable housing and the importance of land use issues, LURF would respectfully recommend that **HB 1261 be passed unamended.**

Based on the continued diligence of the Hawaii Supreme Court and the State Judiciary and the success of Act 48 (SLH 2016), LURF respectfully urges your Committee to **favorably consider HB 1261.**

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

HB-1261

Submitted on: 2/5/2019 6:19:35 PM

Testimony for JUD on 2/7/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mary	Individual	Support	No

Comments:

I am testifying in strong support for this bill. Please remove the sunset date. Such matters are of utmost importance to all the citizens of Hawaii. Taking the contested cases directly to the supreme court is the appropriate thing to do. Please pass this measure as written. Thank you for your service and the opportunity to testify. Mary Begier

HB-1261

Submitted on: 2/5/2019 9:01:29 PM

Testimony for JUD on 2/7/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Rhea R. Lee-Moku	Individual	Support	No

Comments:

Aloha,

I support the passage of HB 1261, which will make a permanent change requiring that decisions in contested case hearings of certain agencies and those involving conservation districts, be appealed directly to the Supreme Court.

Any effort to shorten the time and reduce the expense of proposed project decisions should be supported.

Mahalo for your time.

Rhea Lee-Moku

HB-1261

Submitted on: 2/5/2019 9:54:33 PM

Testimony for JUD on 2/7/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Steve Ueda	Individual	Support	No

Comments:

Good projects can die if government cannot move quickly. This bill would allow important issues to be evaluated thoroughly and quickly.

Stephen Ueda

HB-1261

Submitted on: 2/6/2019 8:36:30 AM

Testimony for JUD on 2/7/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Miles Yoshioka	Individual	Support	No

Comments:

Aloha,

I support HB1261 which will make a permanent change requiring that decisions in contested case hearings of certain agencies and those involving conservation districts, be appealed directly to the Supreme Court.

Contested cases involving matters of great importance to the State should be granted an expedited judicial review by the Supreme Court. This process can reduce years of delay and inflated costs to projects, which combined, could permanently terminate good projects.

Mahalo,

Miles Yoshioka

HB-1261

Submitted on: 2/6/2019 8:51:58 AM

Testimony for JUD on 2/7/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Laura	Individual	Support	No

Comments:

I support HB 1261 because important matters of the State should be granted judicial review and by going directly to the Supreme Court, this will reduce potentially years of delays. Let's expedite the process. Thank you for your time.

HB-1261

Submitted on: 2/6/2019 8:35:06 AM

Testimony for JUD on 2/7/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Douglass Adams	Individual	Support	No

Comments:

Honorable Chair Lee, Vice-Chair San Buenaventura and Members of the Committee on Judiciary,

I encourage you to support HB1261. This is a practical response to delays that can occur when long-term projects are being considered by state agencies responsible for tough decisions. Providing for judicial review is a vital element of our governing system, and this bill ensures that due process will be sustained through the appellate process.

respectfully,

Doug Adams

Hilo, Hawaii

HB-1261

Submitted on: 2/6/2019 8:58:11 AM

Testimony for JUD on 2/7/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Denise Antolini	Individual	Oppose	No

Comments:

Dear Chair Lee, Vice Chair San Buenaventura, and Members of the Committee,

I strongly **oppose** any extension of the "judicial fast track" provisions for **Conservation District Use Permit** cases.

I strongly recommend that this matter be referred to the Legislative Reference Buruea for a neutral review of the impact of this significant change in judicial review.

In particular, I am concerned that stripping CDUP cases from Hawaii's Environmental Court, which this Legislature established in 2014 (effective 2015) is a confusing message and backwards step in our efforts to better protect Hawaii's environmental and cultural resources.

My understanding is that sending the Water Code and PUC cases to the Supreme Court is actually not a major change in past practice, but the CDUP provision *is*.

This CDUP fast-tracking deserves much more careful attention before becoming permanent law.

Mahalo nui,

Denise Antolini

HB-1261

Submitted on: 2/6/2019 9:27:13 AM

Testimony for JUD on 2/7/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Dangelmaier	Individual	Support	No

Comments:

Aloha,

I support HB1261 which will make a permanent change requiring that decisions in contested case hearings of certain agencies and those involving conservation districts, be appealed directly to the Supreme Court.

Contested cases involving matters of great importance to the State should be granted an expedited judicial review by the Supreme Court. This process can reduce years of delay and inflated costs to projects, which combined, could permanently terminate good projects.

Mahalo

Lisa Dangelmaier

HB-1261

Submitted on: 2/6/2019 2:12:04 PM

Testimony for JUD on 2/7/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ross Wilson Jr.	Individual	Support	No

Comments:

Contested cases should be granted expedited judicial review and go directly to the State Supreme Court. This will allow cases to be dealt with in an expeditious manner and avoid the sometimes years of delays. These delays kill good projects that the State wants and needs.

HB-1261

Submitted on: 2/6/2019 5:35:00 PM

Testimony for JUD on 2/7/2019 2:05:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Thomas Blackburn	Individual	Support	No

Comments:

I support HB 1261 and encourage the House Judiciary Committee to move it forward. Some State of Hawaii contested cases involve matters of great importance and should be granted an expedited judicial review by going directly to the Supreme Court. While important that all sides be heard in any contested case, this bill can reduce potential years of unnecessary delay. As a result, positive development that the citizens of Hawaii want and need will not be discouraged. In recent years, in fact, we have seen long, drawn out contested case hearings add significantly to the cost of the projects involved. The danger is that good projects could potentially be killed, projects that are favored by the majority of the state's citizens and that will benefit those citizens.

LATE

Barry K. Taniguchi

50 E. Puainako Street, Hilo Hawai'i 96720
Phone (808) 959-2817, Fax (808) 959-8050
E-mail: barry_taniguchi@ktasuperstores.com

Testimony in Support of HB1261 and SB 416

February 7, 2019

Aloha,

I support SB 416 and HB1261 which will make a permanent change requiring that decisions in contested case hearings of certain agencies and those involving conservation districts, be appealed directly to the Supreme Court.

Contested cases involving matters of great importance to the State should be granted an expedited judicial review by the Supreme Court. This process can reduce years of delay and inflated costs to projects, which combined, could permanently terminate good projects.

Thank you for your time.

A handwritten signature in black ink, appearing to read "Barry K. Taniguchi". The signature is fluid and cursive, with the first name "Barry" and last name "Taniguchi" clearly distinguishable.

Barry K. Taniguchi