



The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Judiciary

Senator Karl Rhoads, Chair

Senator Glenn Wakai, Vice Chair

Thursday, February 7, 2019, 9:00 a.m.
State Capitol, Conference Room 016

by

Rodney A. Maile

Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 416, 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 Senate Bill No. 416, 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 Hawaii’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.



Senate Bill No. 416, Relating to Judicial Proceedings
Senate Committee on Judiciary
Thursday, February 7, 2016, 9:00 a.m.
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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 Hawaii 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 Hawaii 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.



TESTIMONY TO THE SENATE COMMITTEE ON JUDICIARY
Thursday, February 7, 2019
1:20 PM
State Capitol, Conference Room 016

RE: SB 416 - RELATING TO JUDICIAL PROCEEDINGS

Chair Rhoads, Vice Chair Wakai, and members of the committee:

My name is Gladys Quinto-Marrone, CEO of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities that people call home.

BIA-Hawaii is in **strong support** of S.B. No. 416, 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.

The bill would reduce the time that land use entitlement decisions from the Land Use Commission are delayed due to litigation. Hawaii's land use entitlement process is probably one of the longest in the nation. Litigation at various steps in the process only add more time and risk to a project, and time is money. With the median price of homes on Oahu around \$800,000.00, any improvement to the existing system would reduce risks and uncertainty, hopefully moving toward lowering home prices.

We are in strong support of S.B. 416, and appreciate the opportunity to express our views on this matter.



Chamber of Commerce HAWAII

The Voice of Business

Testimony to the Senate Committee on Judiciary
Thursday, February 7, 2019 at 9:00 A.M.
Conference Room 016, State Capitol

RE: SB 416 RELATING TO JUDICIAL PROCEEDINGS

Chair Rhoads, Vice Chair Wakai, and members of the committee:

The Chamber is in support of SB 416 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.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 2,000+ 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 bill would reduce the time that land use entitlement decisions from the Land Use Commission are delayed due to litigation. Hawaii's land use entitlement process is probably one of the longest in the nation. Litigation at various steps in the process only add more time and risk to project. With our median price of houses on Oahu exceeding \$800,000.00, any improvement to the existing system would reduce risks and uncertainty and hopefully go toward lowering home prices.

Thank you for the opportunity to testify.



MAUNAKEA OBSERVATORIES

To: Senator Karl Rhoads, Chair, Senate Committee on Judiciary
From: Maunakea Observatories
Subj: Letter Supporting SB416 Relating to Judicial Proceedings
Date: 5 February 2019

Through this letter the Maunakea Observatories express their strong **support** for SB416 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. SB416 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)

February 5, 2019

RE: SB416 RELATED TO JUDICIAL PROCEEDINGS

Dear Senator Rhoads and the Senate Committee on Judiciary,

The Kona-Kohala Chamber of Commerce is in support of SB416 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 SB416.

Sincerely,



Wendy J. Laros

Executive Director, Kona-Kohala Chamber of Commerce

SB-416

Submitted on: 2/6/2019 7:53:37 AM

Testimony for JDC on 2/7/2019 9:00:00 AM

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

Comments:

I support SB 416. It will save tons of time and money.

HOWEVER, I don't like the last phrase about "with certain exceptions". That could lead to MORE litigation, not less. Please tighten it up and include specifics regarding conditions that would qualify as exceptions.

Mahalo.

SB-416

Submitted on: 2/6/2019 8:40:10 AM

Testimony for JDC on 2/7/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:

SB-416

Submitted on: 2/6/2019 8:40:37 AM

Testimony for JDC on 2/7/2019 9:00:00 AM

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

Comments:

Aloha,

I support SB 416, 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 as important, adjudicate the matter in a timely manner.

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

David S. De Luz, Jr.

808-895-4284

Senator Karl Rhoads, Chair
Senator Glenn Wakai, Vice Chair
Committee on Judiciary
Senate of the State of Hawai'i

Lance D. Collins, Ph.D
Law Office of Lance D. Collins

Tuesday, February 7, 2019
Opposition to Senate Bill No. 416, Relating to Judicial Proceedings

I strongly oppose this bill.

The best way to help reduce the number of pending appeals is to increase the number of intermediate court of appeals judges. Six judges can create 16 combinations of judges in merit panels of three judges. With an additional judge, the number of combinations of judges in merit panels doubles to 31. In addition to lessening the overall time for appeals, the broadening of number of panels means that any given panel will be more likely to dispose of an appeal closer to the average.

The intermediate court of appeals has also been at a disability for the last two years with a near perpetual vacancy. Unlike all other courts, there is no statutory authority for a retired judge or a judge of a lower court to sit by designation on a particular case to help lessen the burden by the vacancy. This has meant that all cases had to be resolved by merit panels of eight combinations over the last two years.

Furthermore, resolution of appeals by the intermediate court of appeals first allows cases that do not present novel legal issues to be disposed of and for those with novel legal issues or of public importance to have those issues clarified first before arriving at the supreme court.

Mandatory bypassing of the intermediate court of appeals bypasses this important function and has and will continue to have the unintended consequence of taking up more time overall for the appellate courts than if such appeals would go through the normal appellate process creating more delay in the disposition of appeals.

Thank you for this opportunity to testify.

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**SB-416**

Submitted on: 2/5/2019 11:06:58 AM

Testimony for JDC on 2/7/2019 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Douglass Adams      | Individual          | Support                   | No                        |

Comments:

Honorable Chair Rhoads, Vice-Chair Wakai and Members of the Committee on Judiciary,

I encourage you to support SB416. 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

**SB-416**

Submitted on: 2/5/2019 3:17:18 PM

Testimony for JDC on 2/7/2019 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Rhea R. Lee-Moku    | Individual          | Support                   | No                        |

Comments:

Aloha,

I am submitting testimony in support of SB 416.

The current judicial process for contested case hearings for certain agencies and those involving conservation districts is a long drawn-out process and can add years of delay and inflated costs to projects. This process has a negative impact to our State's business reputation and keeps good projects out of Hawaii.

I urge you to support passage of SB 416.

Thank you for your time.

Rhea Lee-Moku

**SB-416**

Submitted on: 2/5/2019 6:07:16 PM

Testimony for JDC on 2/7/2019 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Mary                | Individual          | Support                   | No                        |

## Comments:

I speak in strong support for removal of the sunset date on this measure. While all land is important our conservation lands are extra special and should be given the attention of the highest court in the smoothest manner. Taking contested cases directly to the supreme court is respectful of all parties involved. Please pass this bill. Thank you for your time and attention. Mary Begier

**SB-416**

Submitted on: 2/5/2019 7:45:38 PM

Testimony for JDC on 2/7/2019 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Jennifer Zelko      | Individual          | Support                   | No                        |

Comments:

I stongly support SB 416, which will require 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 very much for the oppportunity to testify in support of SB416

Jennifer Zelko-Schlueter



**SB-416**

Submitted on: 2/5/2019 9:54:03 PM

Testimony for JDC on 2/7/2019 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| 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.

**SB-416**

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

Testimony for JDC on 2/7/2019 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Miles Yoshioka      | Individual          | Support                   | No                        |

Comments:

Aloha,

I support SB 416 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

**SB-416**

Submitted on: 2/6/2019 8:55:05 AM

Testimony for JDC on 2/7/2019 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Denise Antolini     | Individual          | Oppose                    | No                        |

Comments:

Dear Chair Rhoads, Vice Chair Wakai, and Committee Members,

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

**SB-416**

Submitted on: 2/6/2019 9:19:53 AM

Testimony for JDC on 2/7/2019 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Lisa Dangelmaier    | Individual          | Support                   | No                        |

Comments:

*Aloha,*

*I support SB 416 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 for your time*

**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](mailto: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.



Barry K. Taniguchi