



HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

February 11, 2019
Rm. 325, 2:00 p.m.

To: The Honorable Chris Lee, Chair
The Honorable Joy A. San Buenaventura, Vice Chair
Members of the House Committee on Judiciary

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: H.B. No. 274, H.D. 1

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services. The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

H.B. No. 274, H.D. 1, requires agencies to maintain a website with a list of open contested cases and requires access to all documents filed that are not confidential by law. The bill requires that each agency establish a subscription-based email notification system that notifies interested parties of all filings made in a contested case proceeding.

The HCRC supports the intent of this measure, but informs the Committee that as an agency we do not have the funding or resources to comply with such a measure. We support public access, and our contested case proceedings and files are open to the public. However, our agency does not have the resources to scan and upload pleadings in a timely manner, in all cases, and send them via electronic mail. HCRC hearings are similar to Circuit Court hearings and can involve a large number of filings and exhibits. We would need funding and staff to comply with this bill.

Parties in a HCRC hearing may also request that documents be sealed or viewed in camera.

It is unclear if this bill provides for that possibility, or the possibility of redacting documents to protect the privacy of minors, or of a person's private information or medical records prior to the required posting.

Our agency does not have a method to provide an e-mail notification of filings, other than sending them individually. This would be a burdensome process.

We'd like to point out that the Hawai'i State Circuit Courts do not have online access to all documents filed, because it is burdensome. The federal courts do provide access to pleadings, for a fee.

The HCRC supports the intent of the bill, but would have difficulty complying with H.B. No. 274, H.D. 1, if passed, and would request additional funding to help with scanning and posting, as well as aid from the Office of Enterprise Technology Services to ensure that all posted documents were accessible when posted.



**STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES**

P.O. Box 339
Honolulu, Hawaii 96809-0339

February 10, 2019

TO: The Honorable Representative Chris Lee, Chair
House Committee on Judiciary

FROM: Pankaj Bhanot, Director

SUBJECT: **HB274 HD1 – RELATING TO ADMINISTRATIVE PROCEDURE**

Hearing: February 11, 2019, 10:00 a.m.
Conference Room 325, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the legislature's intent to create a website list of contested cases and access to all documents filed on the agencies websites to the public and to create a web-based filing notifications. DHS appreciates the amendments of House Committee on Labor & Public Employment specifying that the listed open cases and accessible documents be cases and documents that are not confidential by law.

Regarding the e-mail subscription, due to the confidential nature of DHS administrative appeal matters as described in previous testimony, we ask for an amendment that for cases that are confidential by law, "interested parties" be limited to applicant/claimants or recipient/claimants or providers and or their authorized representatives.

To implement the e-mail subscription, and or any web-based listing, DHS will require additional IT resources, both in staff, and appropriations, to develop, upgrade and build the system; DHS will also consult with other executive departments on developing a uniform process. Further, DHS requests a one-year Pilot Project to determine the number of DHS clients who may be subscribing to e-mail notification and calculate additional resources needs required to design, implement and maintain the service that remains timely and secure.

PURPOSE: The purpose of this bill is to require agencies to maintain a website with a list of open contested cases that are not confidential by law; provide access to documents filed that are not confidential by law; and establish a subscription-based email notification system that notifies interested parties of all filings made in a contested case proceeding. (HB274 HD1)

Thank you for this opportunity to provide comments on this bill.

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LIEUTENANT GOVERNOR



SCOTT T. MURAKAMI
DIRECTOR

LEONARD HOSHIJO
DEPUTY DIRECTOR

**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

830 PUNCHBOWL STREET, ROOM 321

HONOLULU, HAWAII 96813

www.labor.hawaii.gov

Phone: (808) 586-8844 / Fax: (808) 586-9099

Email: dlir.director@hawaii.gov

February 11, 2019

To: The Honorable Chris Lee, Chair,
The Honorable Joy A. San Buenaventura, Vice Chair, and
Members of the House Committee on Judiciary

Date: Monday, February 11, 2019

Time: 2:00 p.m.

Place: Conference Room 325, State Capitol

From: Scott T. Murakami, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 274 H.D. 1 RELATING TO ADMINISTRATIVE PROCEDURE

The DLIR appreciates the intent of this measure and supports transparency, open government, and public access to government records, but has grave concerns regarding the measure. These concerns include privacy, and operational and resource constraints.

Although the Department appreciates that the measure contains an exception for open contested cases that are confidential by law, the Department remains concerned about the privacy of parties in Hawaii Labor Relations Board and Hawaii Civil Rights Commission cases. As drafted, the measure does not clearly address situations where a party submits a document containing confidential information, such as Social Security numbers, medical information, or personnel information; submits a document under seal; or alleges that another party has filed a document containing confidential information.

In addition, the Department does not have funding or staffing to implement the requirements of this measure. The Department does not have a website with a list of open contested cases, a subscription-based email notification system, or information technology staff with the expertise to create and maintain either. In order to create, develop, and maintain a website and subscription-based email notification system, the Department would need to hire information technology and security staff and purchase more electronic supplies like computers, servers, and scanners. The DLIR would also need to hire and train additional staff to review documents for confidential information, make the documents ADA-compliant, and to timely scan and upload documents in the contested cases.

DAVID Y. IGE
GOVERNOR OF
HAWAII



LATE

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

KALEO L. MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
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
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
SUZANNE D. CASE
Chairperson

Before the House Committee on
JUDICIARY

Monday, February 11, 2019
2:00 PM
State Capitol, Conference Room 325

In consideration of
HOUSE BILL 274, HOUSE DRAFT 1
RELATING TO ADMINISTRATIVE PROCEDURE

House Bill 274, House Draft 1 proposes to require agencies to maintain a website with a list of open contested cases and requires access to all documents filed. It also requires that each agency establish a subscription-based email notification system that notifies interested parties of all filings made in a contested case proceeding. **The Department of Land and Natural Resources (Department) appreciates the intent of this measure and offers comments.**

The Department believes that its companion Senate bill SB757, SD1 offers a better approach that should have sufficiently addressed the needs of the parties to the Department's contested cases while creating no significant burdens to the operation and process of the Department. This Senate draft will only require an agency to maintain a list of their contested cases on their website. This should give the parties a timely notice to contact the agency and determine if they have all the filings in the case.

The Department offers the following comments to the current House version:

First, the Department understands the bill's intent is to ensure that all parties before a regulatory agency enjoy equal access to information, but believes that the proposed procedures are not necessary as far as the Department is concerned. The Department's administrative procedure rules currently require the Department and all parties in a contested case to timely serve the hearing officer, the counsel to the tribunal, and all other parties their filings with a certificate of service. In addition, the hearing officer in a Department contested case often requires or allows service by E-Mail delivery, depending on the parties' technical capability. This practice allows the hearing officer to determine the best way to handle the record and ensure fair and timely access by all parties,

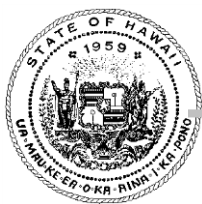
including those who appear in the proceedings pro se and could be disadvantaged in an all-digitized case process. The Department is not aware of any past cases in which a party was not able to timely receive or gain access to information or documentation in a contested case proceeding.

Second, the Department's administrative rules regarding practice and procedure allow us to quickly identify the parties to a contested case hearing. This is different from the experience of some other state departments as described in the preamble of the bill. For those parties who may be interested in participating in a pending contested case proceeding of the Department as an additional party or intervenor, they can always find the case information of the relevant Land Board action on the Department's website. It should also be noted that the Department's rules preclude a third party who is not a cited violator from participating in an enforcement case.

Third, the Department believes that, if the two tasks in this bill were to be implemented, it would create a substantial need for additional funding and staff positions as the aggregate volume of the Department's contested case filings can be sizable. In fact, the Department processes contested cases that vary in size. Some cases are in lengthy proceedings with multiple parties and voluminous filings, mostly involving land uses and development. Others are short and simple proceedings with few filings, mostly enforcement cases that are contested by the cited violators, but the number of these cases is large. The Department believes that requiring online posting of all filings in those large cases may take substantial staff time and unnecessarily further prolong the already lengthy process. On the other hand, in those small enforcement cases, the Department sees little value in posting all the filings online as required by this bill.

The Department further believes that, if online access to a listing of the contested cases and/or filings in all contested cases should be provided to indefinite parties or the general public, it should be developed and hosted centrally at the state level instead of by the individual agencies. It may adopt the model of the State of Hawaii eProcurement system (HiePro). This will provide optimal uniform accessibility experience for the users and much savings from system development and maintenance.

Thank you for the opportunity to comment on this measure.



HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

February 11, 2019
Rm. 325, 2:00 p.m.

To: The Honorable Chris Lee, Chair
The Honorable Joy A. San Buenaventura, Vice Chair
Members of the House Committee on Judiciary

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

LATE

Re: H.B. No. 274, H.D. 1

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services. The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

H.B. No. 274, H.D. 1, requires agencies to maintain a website with a list of open contested cases and requires access to all documents filed that are not confidential by law. The bill requires that each agency establish a subscription-based email notification system that notifies interested parties of all filings made in a contested case proceeding.

The HCRC supports the intent of this measure, but informs the Committee that as an agency we do not have the funding or resources to comply with such a measure. We support public access, and our contested case proceedings and files are open to the public. However, our agency does not have the resources to scan and upload pleadings in a timely manner, in all cases, and send them via electronic mail. HCRC hearings are similar to Circuit Court hearings and can involve a large number of filings and exhibits. We would need funding and staff to comply with this bill.

Parties in a HCRC hearing may also request that documents be sealed or viewed in camera.

It is unclear if this bill provides for that possibility, or the possibility of redacting documents to protect the privacy of minors, or of a person's private information or medical records prior to the required posting.

Our agency does not have a method to provide an e-mail notification of filings, other than sending them individually. This would be a burdensome process.

We'd like to point out that the Hawai'i State Circuit Courts do not have online access to all documents filed, because it is burdensome. The federal courts do provide access to pleadings, for a fee.

The HCRC supports the intent of the bill, but would have difficulty complying with H.B. No. 274, H.D. 1, if passed, and would request additional funding to help with scanning and posting, as well as aid from the Office of Enterprise Technology Services to ensure that all posted documents were accessible when posted.

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LIEUTENANT GOVERNOR

SCOTT T. MURAKAMI
DIRECTOR, DLIR

LEONARD HOSHIJO
DEPUTY DIRECTOR, DLIR



MARCUS R. OSHIRO
BOARD CHAIR

SESNITA A.D. MOEPONO
BOARD MEMBER

J N. MUSTO, Ph.D
BOARD MEMBER

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

830 PUNCHBOWL STREET, ROOM 434
HONOLULU, HAWAII 96813

Phone (808) 586-8610 / FAX (808) 586-8613
Email: dlir.laborboard@hawaii.gov

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

The Hawai'i Labor Relations Board (HLRB or Board) recognizes the intent of HB 274 HD 1, and supports public access and transparency in government. **However, the HLRB has serious reservations regarding the measure, and respectfully requests the Committee's consideration of the Board's comments.** Specifically, HB 274 HD 1 raises concerns about the privacy of personal and highly confidential information contained in the HLRB case records.

The language of HB 274 HD 1 would require public access to all pleadings, correspondence, and other documents filed by the parties appearing before the Board. In some cases, this may include personal information such as financial records and work personnel files.

To address privacy concerns, the HLRB notifies and requires that the parties submitting such documents electronically or manually redact or encrypt all personal information, including "social security numbers, home addresses, dates of birth, bank account numbers, medical and health records, and any other information in which a person has a significant privacy interest[;] and further, that to the extent that any personal information is relevant to the Board's consideration of the case that the submitting party submit the confidential information by means of a Confidential Information Form that substantially conforms to Form 2 of the Hawai'i Court Records Rules, as amended." The HLRB additionally informs the parties that failure to redact or encrypt such personal information is grounds for sanctions. However, this system relies on the compliance of the parties and is thus not foolproof; documents that are not in conformance with these requirements are at times submitted.

Further, the HLRB case files may include documents which have been placed under seal to protect the privacy rights of individuals involved in the case. When these documents are transferred to circuit court for the appeals process, they are not available for public viewing because of the privacy concerns. However, at this time, the HLRB has no protocol in place to ensure that documents filed under seal would not be disclosed with public access to the HLRB's case files.

In addition, pursuant to Hawai'i Revised Statutes (HRS) § 396-3 and 396-11(h), the HLRB is the appeals board for HRS Chapter 396, Hawai'i's Occupational Safety and Health law. Under that authority, the HLRB conducts de novo hearings on any notice of contest, except where the rules require a prior formal hearing at the department level (HRS § 396-11(h)). The Office of Information Practices (OIP) in OIP Op. Ltr. No. 95-17 (July 26, 1995) has determined that, in the absence of a unique emergency situation, the records or determination in any HIOSH administrative proceedings may be withheld from public inspection and copying.

Furthermore, in order to implement the public access envisioned by this bill, the HLRB would require an additional staff member and sufficient funds to obtain software and training to ensure that all privacy rights are protected. At this time, the HLRB is unable to estimate the amount of additional funds that would be required for implementation of HB 274 HD 1.

Finally, the HLRB notes that members of the public may in accordance with HRS Chapter 92F, the Uniform Information Practices Act, submit requests for HLRB records.

Thank you for your time and consideration of the HLRB's comments and concerns regarding HB 274 HD 1.



DAVID Y. IGE
Governor

JOSH GREEN
Lieutenant Governor

MIKE MCCARTNEY
Director

LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

DANIEL ORODENKER
Executive Officer

Bert K. Saruwatari
Planner

SCOTT A.K. DERRICKSON AICP
Planner

RILEY K. HAKODA
Chief Clerk/Planner

RASMI AGRAHARI
Planner

FRED A. TALON
Drafting Technician

Statement of
Daniel E. Orodenker
Executive Officer
Land Use Commission
Before the
House Committee on Judiciary

Monday February 11, 2019
2:00 PM
State Capitol, Conference Room 325

In consideration of
HB 274 HD1
RELATING TO ADMINISTRATIVE PROCEDURE

Chair Lee; Vice Chair San Buenaventura; and members of the Committee on Judiciary:

The Land Use Commission (LUC) supports the intent of HB 274 HD1 in that it seeks to make information regarding contested cases readily available to interested parties electronically and enhances transparency. However, the LUC is concerned that the provision requiring that all interested parties be notified of every filing in a proceeding will create an undue burden on Commission staff resources.

It should be noted that the LUC has already voluntarily taken the initiative to comply with most of the requirements of this measure. The LUC has developed a website where all filings, calendars, agendas and information concerning on-going dockets, procedures and rules are located and readily accessible and downloadable by the public. The home page provides a form to subscribe to an e-mail notification list and receive regular notices from the LUC on all contested case hearing proceedings. Filings by parties in contested case hearings are organized by case, posted immediately upon receipt, and updated daily.

Requiring the LUC to notify every "interested party" to a proceeding will create a burden on staff. The LUC holds as many as 6 to 8 contested case proceedings a month, each having a multitude of filings. In some cases, we have had dozens of people initially notice the LUC that they request to be notified of proceeding agendas and notices, such that they could be deemed "interested parties". Requiring additional notice of all filings would be onerous.

Given the availability of information on the LUC website, its daily updating and allowed access to all filings organized by proceeding, we do not believe any harm to the public will occur

if they are not given notice of all filings. Regular review of the Commission's website by an interested party will reveal and provide access to all of the necessary information in a timely manner.

Thank you for the opportunity to testify on this matter.

COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/E-Mail: (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON JUDICIARY

Rep. Chris Lee, Chair

Rep. Joy SanBuenaventura, Vice Chair

Monday, February 11, 2019

2:00 pm

Room 325

STRONG SUPPORT FOR HB 274 HD1 - Transparency & Access To Admin Procedures

Aloha Chair Lee, Vice Chair SanBuenaventura and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the families of **ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE** as well as the approximately 5,400 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that more than 1,600 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

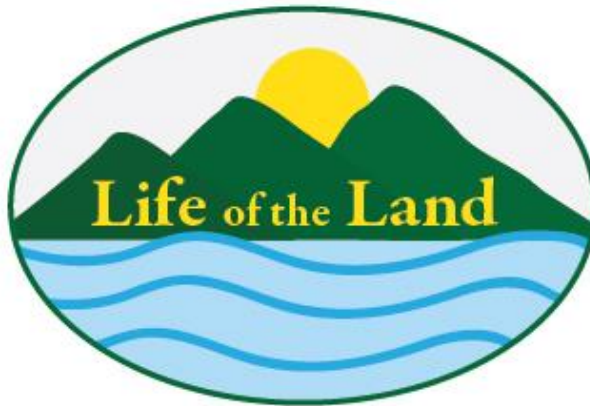
HB 274 HD1 requires agencies to maintain a website with a list of open contested cases that are not confidential by law; provide access to documents filed that are not confidential by law; and establish a subscription-based email notification system that notifies interested parties of all filings made in a contested case proceeding.

Community Alliance on Prisons is in strong support of this measure. A vibrant democracy demands public engagement. It has become increasingly difficult to get information from government agencies these days. And when information is given, it is sometimes a document dump making it difficult to follow what is happening.

Please pass this important bill. Mahalo for this opportunity to testify.



SUNSHINE IS THE BEST DISINFECTANT



P.O. Box 37158, Honolulu, Hawai'i 96837-0158
Phone: 927-0709 henry.lifeoftheland@gmail.com

COMMITTEE ON JUDICIARY

Rep. Chris Lee, Chair

Rep. Joy A. San Buenaventura, Vice Chair

DATE: Monday, February 11, 2019

TIME: 2:00 pm

PLACE: Conference Room 325

HB 274, HD1 RELATING TO ADMINISTRATIVE PROCEDURE.

SUPPORT

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

Life of the Land is Hawai'i's own energy, environmental and community action group advocating for the people and `aina for 49 years. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

HB 274 HD1 accomplishes several things that would help proceedings at agencies such as the Land Use Commission, the Water Commission, the Board of Land and Natural Resources, the Public Utilities Commission, the Department of Health's Clean Air, Clean Water, Solid Waste, and Hazardous Waste Divisions, and others.

First, it enables parties to be able to follow proceedings that they are in. The Department of Health's Clean Air Branch has an open proceeding, temporarily suspended due to Madame Pele, in which for over two years during the docket's active phase, the list of documents in the official record was unknown. The hearing officer stated when he needed a document he asked the Department of Health for it.

Numerous labor cases which are confidential are excluded. Confidential documents are not posted.

A great example is the Public Utilities Commission which maintains a web-based listing of 5,000-10,000 dockets opened since 1998 with 99 percent of the public files available for searching and downloading.

Second, the bill calls for prompt uploading of documents. For the Public Utilities Commission, exclusion complex rate case filings, this takes one business day.

Third, it allows for timely manner to the website "subscription-based email notification system of all filings." Currently the Public Utilities Commission uploads all documents quickly but usually mandates that hard copies are mailed, and that the date that a five-day or ten-day response must be made may be delayed two or more business days to allow for hard copies to be received in the mail.

Many parties get expensive mailings with large postage amounts, open them to make sure that confidential discs are not included, and then throw out the entire mailing without reading it. This is a tremendous waste of resources and isn't climate change friendly.

The Hawai'i Supreme Court is paperless. Most legislative testimony that is filed is paperless. It is time for state executive agencies to follow suit in administrative proceedings.

This would also allow for a tremendous saving of space.

The Public Utilities Commission currently requires one electronic copy and 8-10 hard copies for most filings, and they get 100,000's of pages per year.

The Consumer Advocate mails a 2-3 page letter to every party in every proceeding stating that they are taking no position on motions to intervene. Think of the time and money it takes to copy, collate, and mail, a boilerplate letter. Instead, the Consumer Advocate could upload a sentence that states, "no comment."

Mahalo

Henry Curtis
Executive Director

HB-274-HD-1

Submitted on: 2/10/2019 1:41:33 PM

Testimony for JUD on 2/11/2019 2:00:00 PM

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

Comments: