

HB-341

Submitted on: 2/5/2021 5:26:18 PM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Bianca Isaki	Individual	Oppose	No

Comments:

Aloha Committee Members,

HB341 includes language that is too vague to be operable. What does it mean that a decision has "already been issued"? Different agencies have different jurisdictions. More importantly, why would you remove the favored declaratory order vehicle as a means of relief for unsettled questions on issues committed to an agency? The "interested person" standard for seeking declaratory relief is the same that is required for HRS chapter 343 appeals. The declaratory order vehicle is an important tool for especially those questions that impact a wider public and should not be foreshortened under a purposeless amendment to HRS 91-8. I have litigated appeals under active consideration by the appellate courts that concern declaratory orders dealing with matters of broad public interest and the declaratory petition mechanism has been very important to getting issues in front of decisionmakers and the appellate courts.

Yours,

Bianca Isaki



HB341
RELATING TO ADMINISTRATIVE PROCEDURE
Ke Kōmike Hale o ka Hoʻokolokolo a me ke Kuleana Hawaiʻi

Pepeluali 9, 2020

2:00 p.m.

Lumi 325

The Office of Hawaiian Affairs Beneficiary Advocacy and Empowerment Committee will recommend that the Board of Trustees **OPPOSE** HB341, which could substantially restrict or eliminate mechanisms relied upon by Native Hawaiians to uphold and protect their rights and interests.

First, by stating that agency declaratory rulings are “unappealable,” this measure may foreclose any due process or judicial review of agency determinations that are arbitrary, capricious, or contrary to the law. Notably, there have been many, many instances where appeals of agency rulings have been necessary to correct misapplications of the law as it relates to Native Hawaiian rights. OHA’s nearly decade-long investment in a training course for board and commission members regarding Native Hawaiian Rights and the Public Trust arose, in part, due to the continual agency misunderstanding and misapplication of statutes and rules impacting Native Hawaiian traditional and customary practices, requiring costly appellate intervention to correct after-the-fact. While the training course has helped to mitigate these erroneous agency decisions, the ability to appeal agency decisions, including declaratory rulings, remains a critical safeguard against decisionmaking that can negatively impact or even foreclose the constitutionally protected rights of Native Hawaiians. **Rendering all declaratory rulings “unappealable” may also result in inconsistent applications of the law that will inevitably lead to costly legal and extralegal conflict, substantial uncertainty as to how any law may be applied, and an overall loss of confidence in the rule of law.**

Second, declaratory ruling petitions are a mechanism by which Native Hawaiians and others can seek to have agencies apply the law to protect their rights and legal interests. While it is unclear what the intended scope of an “issue or question” may be, or what the term “shared jurisdiction” means, broad interpretations of these terms may prohibit agencies with the appropriate expertise or institutional knowledge from accepting declaratory ruling petitions from those seeking to vindicate their rights, and encourage “agency shopping” by those seeking to foreclose administrative challenges to their actions. For example, an entity seeking a favorable legal interpretation of a statutory provision may petition and obtain a declaratory ruling from an agency most likely to render such an interpretation, notwithstanding potential impacts to the rights of Native Hawaiians or others. This would then prevent impacted parties, including Native Hawaiians, from seeking or obtaining a legal determination by an agency with much greater expertise or

knowledge of their rights. Such practices may again result in result in inconsistent applications of the law that will, again, lead to costly legal and extralegal conflict, substantial uncertainty as to how any law may be applied, and an overall loss of confidence in the rule of law.

Accordingly, OHA urges the Committee to **HOLD** HB341. Mahalo nui for the opportunity to testify on this matter.

HB-341

Submitted on: 2/8/2021 12:47:29 AM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Banner Fanene	Individual	Oppose	No

Comments:

STRONGLY OPPOSE!

HB-341

Submitted on: 2/8/2021 2:09:50 AM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Gordon B. Lindsey	Individual	Oppose	No

Comments:

I strongly oppose HB341 for many reasons

HB-341

Submitted on: 2/8/2021 8:26:48 AM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kamalani Keliikuli	Individual	Oppose	No

Comments:

I oppose of this bill we should have a right to voice our opinions by submitting a petition

HB-341

Submitted on: 2/8/2021 8:31:47 AM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jun Shin	Individual	Oppose	No

Comments:

Stop the legal subersion of the State's public trust duties.

HB-341

Submitted on: 2/8/2021 8:33:13 AM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
andrea jonna charuk	Individual	Oppose	No

Comments:

This bill seems to assign undue and disproportionate power to state agencies in an attempt to expedite processes that concern community input, thus circumventing the democratic process and dispossess citizens of their rights to appeal. If relations between governing bodies and communities were in better shape this bill would not seem so sinister. However, having witnessed the arrest and attempts to silence community opposition on a number of projects in the past few years (Maunakea, Sherwoods, Kahuku, Ala Wai Army Corps project, Ala Moana Beach Park to name a few), this bill reads as an attempt to sap further power from citizens who stand in righteous opposition to projects they deem unsuitable for their community, culture, or society at large. Inherent in this bill seems to be a view that citizens are roadblocks to the otherwise benevolent work of a trustworthy government who, hampered by a stalwart populace, is unable to operate in the manners and timeframe they desire; so further punitive and non-transparent measures are being added to aid govt agencies in limiting access and creating roadblocks for civic engagement. This is an offensive outlook and one that perpetuates a historical injury and rift between the occupying governing body and the host culture desires for self determination and agency in affairs that affect our home. Instead of taking the opportunity to build bridges by examining a necessary overhaul to govt/community relations & processes, this bill burns bridges by finding punitive ways to intimidate and/or remove citizens from exercising their right to oppose projects that they feel will negatively impact their community.

HB-341

Submitted on: 2/8/2021 9:12:51 AM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sally Thrasher	Individual	Oppose	No

Comments:

Please stop trying to violate our rights. When something is hewa, we will stand up to protect our rights. Do not forget that this affects your ohana.

HB-341

Submitted on: 2/8/2021 9:15:03 AM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Pilialoa Callahan	Individual	Oppose	No

Comments:

I strongly oppose this bill. This bill takes away the voices of those who love this land and were born from it. By essentially supporting projects such as the Thirty Meter Telescope, the wind turbines, and other projects of destruction and desecration, those who do proper research of our 'Ä• ina are not given any chance to fight. By not allowing appeals to agencies who make decisions to build on land that they have no connection to, you are silencing those who have a kuleana to protect it. Over the last century, Kanaka and our allies have been protesting and advocating for sacred places, providing evidence of thier significance and sacrificing their livilood to ensure it's safety. There have been so many projects that are proposed and overlook burial sites, water access, land titles, the effects on the community, and more. Only with the advocates who support protecting the above mentioned, are we able to get these agencies to take a second look. This bill will take that away and make it nearly impossible to protect our sacred land. It will destroy the beauty of this place and with that, nearly everything we love about it. Please do not pass this bill. It is poorly thought out and can only do more harm than good.

HB-341

Submitted on: 2/8/2021 9:53:10 AM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Tiana C.N. Dole	Individual	Oppose	No

Comments:

I oppose HB341, it is not in the best interest of us as Kanaka Maoli to support this.

HB-341

Submitted on: 2/8/2021 10:02:43 AM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jessica Pelekai	Individual	Oppose	No

Comments:

I oppose this bill because it is dangerous and in violation of our rights to appeal decisions. It enables agencies to obtain approval to proceed with projects and other things which will have a negative and harmful impact on our 'Ä• ina even if they didn't follow due process along the way. And we, the caretakers of this 'Ä• ina, will not be able to practice our right to appeal. This bill poses huge threats to our future.

HB-341

Submitted on: 2/8/2021 10:05:05 AM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Shaylyn Kimura	Individual	Oppose	No

Comments:

I vehemently oppose this bill as it seems to target Kanaka, first and foremost, as we are the ones with disputes that many times cross State/City/County agency lines. We need the Courts. With passage, Hawaiians suffer. Aloha Aina advocates suffer as this bill seeks to rob us of due process and is an insult to Democratic ideals altogether. This bill limits both the rights of those who wish to litigate and essentially circumvents the Judicial system and would prevent the Judiciary from hearing cases and from serving in its role as a non-biased body.

Kill this bill before it kills the people's right to due process. I implore you to vote A'OLE (NO) on HB341.

HB-341

Submitted on: 2/8/2021 10:13:47 AM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer McGurn	Individual	Oppose	No

Comments:

I oppose this bill as it denies citizens their full right to have an issue heard by the courts. Agencies should not have the final word without a chance for citizens to be heard by the courts.



HAWAI‘I CIVIL RIGHTS COMMISSION

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

February 9, 2021
Rm. 325, 2:00 p.m.
Videoconference

To: The Honorable Mark M. Nakashima, Chair
The Honorable Scot Z. Matayoshi, Vice Chair
Members of the House Committee on Judiciary and Hawaiian Affairs

From: Liann Ebesugawa, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: H.B. No. 341

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 (on the basis of disability). 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. 341 prohibits agencies from accepting petitions for declaratory rulings on issues or questions for which a decision was already issued by another agency that has sole or shared jurisdiction with the agency receiving the petition and provides that agency orders under the State’s administrative procedure law relating to declaratory rulings are final and not appealable.

The HCRC opposes H.B. No. 341. This bill amends HRS § 91-8 and states that “Agency orders issued under this section shall be final and are not appealable.” By doing so, the bill eliminates the due process right of appeal and judicial review, defeating a basic tenet of administrative law. Administrative bodies hear issues, including declaratory relief, lightening

courts' caseloads. By denying the right to appeal, this bill will increase the burden on the judiciary because there will be no reason to file declaratory relief with an agency; parties will go directly to court to seek judicial review and relief, with the right to appeal to a higher appellate court.

Just as HRS § 91-14 allows judicial review of contested cases heard before an agency, so too should declaratory relief be appealable to the court, as a matter of due process.

The HCRC opposes H.B. No. 341.

HB-341

Submitted on: 2/8/2021 10:28:57 AM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sarah Hsiao	Individual	Oppose	No

Comments:

This bill if adopted would be flat out unconstitutional.

The Hawaii Administrative Procedures Act which is patterned after the Federal Administrative Procedures Act is one of the most important protections against Government infringement of property and liberty interests. It accomplishes this aim by requiring the government to go through notice of the planned action and allowing the public to participate in crafting those regulations. It also accomplishes that purpose by allowing the Courts rather than a politically appointed agency bureaucracy to arbitrarily impose regulations.

On an individual level, it allows a citizen to request judicial review of an agency decision on a case before it. For example, an allegation of employment discrimination before the labor board. The ridiculousness of this bill is that it would apply the principle of res judicata among all review boards for totally different circumstances. An absurd effect would result wherein an agency who has the expertise within a certain subject would have to give deference to an agency decision who does not. You would, for instance, require the HLRB follow a BLNR decision on a related question of law.

This unsound bill would also require every attorney and citizen in Hawaii to be up to date with every single precedent that every single agency releases.

Both the Supreme Court of the US and the Hawaii Supreme Court have established that there is a presumption of reviewability for any government action. This bill is an attempt to take away that right to review which protects an individual's constitutionally protected interests is unconscionable and a blatant attempt against those constitutionally protected rights. If this bill passes, I expect the lawsuits to follow.

HB-341

Submitted on: 2/8/2021 10:46:01 AM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michelle Cabalse	Individual	Oppose	No

Comments:

I oppose

HB-341

Submitted on: 2/8/2021 11:07:22 AM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Forest Frizzell	Individual	Oppose	No

Comments:

I stand in opposition to this bill as its written.

HB-341

Submitted on: 2/8/2021 11:14:25 AM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Will Caron	Individual	Oppose	No

Comments:

Dear committee,

I strongly oppose HB341, which seeks to deprive the people of our right to appeal an agency decision to the Judiciary branch, an essential component of our system of checks and balances. The bill also asks agencies to share orders between them, which does not make sense. Together, these changes violate our constitutional right to due process.

Additionally, there is no question who this bill is for and who this bill is targeting. This bill is clearly for corporate interests and anyone who stands to profit from major projects like the TMT. And it is plain as day, therefore, that this bill is targeted, primarily, at aloha 'Ā• ina activists and organizers who stand against projects like the TMT for perfectly legitimate reasons.

The right to peacefully oppose projects like TMT, even through legitimate acts of civil disobedience, is fundamental to our democracy. Such demonstrations may be inconvenient for corporations and the politicians who benefit from their campaign donations, but that is not a legitimate reason to deprive people of their rights or facilitate the consolidation of corporate control over our democracy. This bill would do just that and it has no place in our legislature.

Courts are not political. The job of the judiciary is to hear the case, review the facts and relevant statutes and make a fair determination. It is neither the fault of the courts nor the fault of the people that this process has ruled against corporate interests in the past, and attempting to legislate around this process is a dangerous precedent to set that erodes the checks and balances we have in place between branches of government.

This bill is poorly thought out, unconstitutional and harmful. Help us stop it now by voting to kill it in your committee.

Mahalo for the opportunity to testify.

HB-341

Submitted on: 2/8/2021 11:31:02 AM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kuikeokalani Kamakea-Ohelo	Individual	Oppose	No

Comments:

I strongly oppose this bill. By passing this and not allowing appeals to agencies and their proposed projects, you take away the opportunity to take a second look at the land(s) that are in potential danger of destruction and desecration. There are too many places that are sacred for numerous reasons (burial sites, cultural importance, water supply significance, etc) to leave a decision about building on them in the hands of one agency whom may not even have any knowledge nor connection to that place. There have been many projects in the past and even now in the present that threaten the livelihood of our communities, 'Āina, oceans, and animals both on land and sea to pass this bill and take away the rights of the kanaka who are born into the kuleana of protecting them. he ali'i ka 'Āina, he kauā ke kanaka. The land is chief and the people are servants. We must never forget this, less we lose everything.

HB-341

Submitted on: 2/8/2021 11:35:18 AM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michelle Bogus	Individual	Oppose	No

Comments:

I do not support this bill and what it suggests. Appeals to agencies are one way that Kanaka and our allies are able to stop destruction and get these companies to look into where they are trying to build.

HB-341

Submitted on: 2/8/2021 11:41:37 AM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sandee Moniz Pa	Individual	Oppose	No

Comments:

This bill goes against the people.

HB-341

Submitted on: 2/8/2021 11:42:39 AM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Euliana Hudson	Individual	Oppose	No

Comments:

This is another blatant attack on those protecting our environment. The permitting process is extremely biased, rushed and favors contractors with money/connections. There have been many examples where permits were passed regardless of the existing laws that protect our environment.

Again, I ask you to think of your children's children. Your great great great children, nephews, nieces, etc. What kind of Hawaii do you want to leave them?! They cannot eat concrete. They cannot drink oil. Protect this land for the generations to come by opposing this bill.

MAHALO.

HB-341

Submitted on: 2/8/2021 11:59:34 AM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Donna Leong	Individual	Oppose	No

Comments:

All avenues to communicate a position, a stand or what one believes in should not be curtailed or limited. Petitioners should be able to appeal and submit to agencies, courts and others their concerns. House Bill 341 will not allow this. I oppose this Bill.

HB-341

Submitted on: 2/8/2021 12:11:19 PM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joanna Maile Pokipala Resurrection	Individual	Oppose	No

Comments:

Aloha,

I am Joanna and I oppose this bill. This bill seeks to deprive people of their right to appeal an agency decision to the Court. It also asks agencies to share orders between them, which does not make sense. Together, these changes violate our rights to due process.

The people harmed are, primarily, aloha 'Ä• ina advocates. Think DLNR issuing a permit to build TMT. Think about the agency agreeing with that permit and issuing an order to allow them to do it.

Advocates under this bill could not appeal that order by the agency to the Court. Agency decisions would be final.

It forecloses on your rights to fully litigate claims before a Court to see if an agency acted properly or violated the law. It targets kÄ• naka because we, and our allies, are the ones with these disputes (i.e. water, state land, etc.)

Please note we have had great success in our courts. Courts are not political. Their job is to hear the case, review the law/facts and make a determination. Because of this success, the legislature has retaliated by proposing bills like this.

This bill is poorly thought out, unconstitutional and harmful. Help us stop it now.

mahalo



SIERRA CLUB OF HAWAI'I

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

February 9, 2021 2:00 PM

In **OPPOSITION** of **HB341**: Relating to Administrative Procedures

Aloha Chair Nakashima, Vice Chair Matayoshi, and members of the committee,

On behalf of our 27,000 members and supporters, the Sierra Club of Hawai'i **strongly opposes HB 341**, which proposes to amend Section § 91-8 of the Hawai'i Revised Statutes to prohibit agencies from accepting petitions for declaratory rulings on issues or questions for which a decision was already issued by another agency that has sole or shared jurisdiction with the agency receiving the petition. It provides that agency orders under the State's administrative procedure law relating to declaratory rulings are final and not appealable.

HB 341 is unconstitutional on its face for two key reasons

1) it violates the **due process clause** of the 14th Amendment of the US Constitution because it deprives citizens the right to judicial review of a declaratory ruling by an executive agency.

2) the bill violates the **doctrine of separation of powers** by which three branches of government (Executive, Legislative and Judiciary) are kept separate to provide a system of checks and balances to ensure that our democracy and rights are protected.

A declaratory ruling is the method by which citizens, both Native Hawaiians and the general public, can petition a state agency to protect their rights and interests in life, liberty and/or property. An appeal of a declaratory ruling issued by any agency through the judiciary provides a process by which all citizens can ensure that the order, and agency action, are sound and comply with the law.

Appeal of a declaratory ruling provides the minimum "checks and balance" on agency actions necessary for a functional democracy. Importantly, citizens are the primary beneficiaries of appeals on agency declarations. The courts provide citizens the forum for objectively assessing the intended actions of the Executive Branch before people's interests are harmed. Catching problematic agency actions before they cause serious injury to the interests and rights of specific people also helps to save our state government from costly future litigation.

As proposed, this bill would cancel this process all together by making agency declaratory rulings final and not appealable. It re-assigns the Court's authority to review agency actions to

the agency itself. Thus, the result would be unconstitutional because citizens would not have any remedy for relief if the agency violated the law.

HB 341 is vague and overbroad

This bill appears to expand the statutory mandate of an agency to adopt and enforce the orders of other agencies. This is problematic and will lead to an absurd result because each agency is governed by its own statutory mandates, which are distinct and different from other agencies.

By sharing rulings between agencies that have different missions and laws that govern them, we run the risk of agencies violating their own mandates in an attempt to comply with declaratory rulings of other agencies. Imagine the confusion between agencies trying to following the rulings of other separate agencies. Agency staff would have to track the rulings across agencies. How would this be implemented? Who is responsible for updating agency rulings? How will agencies ensure there is consistency? In addition, this approach would deprive citizens the right to fully litigate and dispose of their claims that emerge from the distinct statutory laws of an agency at issue.

For these reasons, this bill flies in the face of our most basic notions of democracy and common understanding of our constitutional rights. Thus, we ask you to **vote no on HB 341**.

HB-341

Submitted on: 2/8/2021 1:06:48 PM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Laura Safranski	Individual	Oppose	No

Comments:

Opposed

HB-341

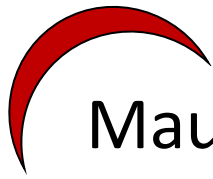
Submitted on: 2/8/2021 1:07:32 PM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Deron Akiona	Individual	Oppose	No

Comments:

I oppose HB 341. HB 341 removes the appeal of agency decisions. This will severely restrict the peoples ability to directly address agency decisions without going to a formal judicial hearing. This will make a appeal too costly for non-profit citizen advocacy groups.



Maunakea Observatories

To: Representative Mark Nakashima, Chair
Representative Scot Matayoshi, Vice-Chair
Committee on Judiciary and Hawaiian Affairs

From: Maunakea Observatories

Subj: HB 341 Relating to Administrative Procedure – In Support
Tuesday, February 9, 2021; 2:00 p.m.; conference room 325; Via Videoconference

Date: 8 February 2021

Aloha Chair Nakashima, Vice Chair Matayoshi and Members of the Committee,

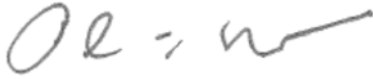
Through this letter the Maunakea Observatories express their strong **support** for HB 341 which specifies that agencies are prohibited from accepting petitions for declaratory rulings on issues or questions for which a decision was already issued by another agency that has sole or shared jurisdiction with the agency receiving the petition and provides that agency orders under the State's administrative procedure law relating to declaratory rulings are final and not appealable.

The Maunakea Observatories strongly support public input to decisions about the use of public lands, while also supporting timely land use decisions by the State. This legislation is crucial for the Maunakea Observatories given that future land authorization for the Maunakea Science Reserve (MKSR) may be subject to contested cases, introducing lengthy delays in the land authorization process. This legislation helps ensure that a contested case outcome applies to all State agencies, and cases cannot be reopened in different agencies once decided. The current Master Lease for the MKSR expires at the end of 2033 and the timely renewal of this land authorization, 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 beyond the 2033 expiration of the current Master Lease. The numerous international federal funding agencies and research institutions which sponsor the Maunakea Observatories, including the US National Science Foundation, Canadian National Research Council, NASA, MEXT of Japan, and universities 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 land use decisions that may arise in the MKSR land authorization.

Mahalo,



Director Doug Simons, Canada-France-Hawaii Telescope



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



Director John Rayner, NASA Infrared Telescope Facility



Director Michitoshi Yoshida, Subaru Telescope



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

LATE

HB-341

Submitted on: 2/8/2021 2:47:00 PM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
travis thomas mokiao	Individual	Oppose	No

Comments:

Aloha, I am Kealii of Ewa, Oahu and while I am not a lawyer, I strongly oppose HB341. I do so as a kuleana land Kia'i and a kuleana land heir/kuleana intrest holder and One whom shares public land interest. I oppose this bill for moral and ethical reasons. It is wrong for the DHHL to even request that a casino be built on lands that are for the benefit of US NATIVE HAWAIIANS who qualify for the program by blood quantum let alone a 40 year lease to non-beneficiaries. I am sure by now the state of Hawaii is aware of the status on almost all of the states land titles.

Recent events have shown that the state of Hawaii shares interest and titles with almost all native Hawaiian descendants in state lands, public lands or crown lands, even DHHL lands have shared interest. Interest that was created by THE GREAT MAHELE OF 1848 which is upheld by international laws. When the state of Hawaii and DHHL Openly make decisions on behalf of US NATIVE HAWAIIANS and HAWAII NATIONALS without consultation with regards to Building on lands or using land or making revenue on lands that legally belong to the NATIVE HAWAIIANS/ HAWAII NATIONALS & US NATIVE HAWAIIANS. I believe the signal of this bill is a huge bash towards the US NATIVE HAWAIIAN & HAWAII NATIONALS and NATIVE HAWAIIAN communities that are striving to become more self sustainable verses HIGHLY relying on tourism for sustainability. I also believe that this bill may also be encroaching on numerous international laws between the state of Hawaii and the COUNTRY OF HAWAII. which has already been recognized by ACADEMIC. Dr. David Keanu Sai and others, dr. Keanu sai explains that Hawaii's legal status is of a military occupation With that being said we are all civilians in occupation and there may be humanitarian laws that may be violated if this BILL is passed, violated onto the KANAKA MAOLI/NATIVE HAWAIIAN & HAWAII NATIONALS. The United States congress annexation on a joint resolution of annexation questions the legitimacy of the United States acquiring Hawaii through a joint resolution rather than a treaty. Upon annexation, the republic of Hawaii transferred over 1.7 million acres of Hawaiian government/crown lands to the United States which is held by the state of Hawaii. The 1993 Apology Resolution by President Clinton was the United States officially apologizing and acknowledging that the republic of Hawaii illegally transferred lands and that the "Indigenous Hawaiians never directly relinquished their claims over there NATIONAL LANDS to the UNITED STATES OF AMERICA."

This bill seems specifically targeted towards NATIVE HAWAIIANS AND HAWAIIAN NATIONALS by having this bill/sb go on this far. KANAKA MAOLI HAWAII NATIONALS AND US NATIVE HAWAIIANS HAVE protected rights and interest in all public and private lands, crown lands, state lands, government lands, that the great mahele set into decree by HIS MAJESTY KING KAMEHAMEHA III kauikeauoli in 1848. yet HAWAIIAN NATIONALS have no means to stop the illegal misconduct of lands and are still not being consulted on development on lands that belong to the COUNTRY OF HAWAII

Constitution Declaration of rights: Art 4 states "all men shall have the right in an orderly and peaceably manner to assemble, TO CONSULT UPON COMMON GOODS, give instructions to their representatives and to petition the king of legislature for a redress of grievances" CONSTITUTION and LAWS 1852 by KING KAMEHAMEHA III, acknowledged in international law.

The aforementioned is why I strongly oppose HB341. If this bill is passed, wouldn't you the representative be impeding on a oath as a United state representative in international law and be considered an act of war by restricting or tampering with the rights of NATIVE HAWAIIAN/HAWAIIAN NATIONALS & US NATIVE HAWAIIAN.

LATE

HB-341

Submitted on: 2/8/2021 2:57:15 PM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Pohaku Kipikane	Individual	Oppose	No

Comments:

Aloha, My name is Pohaku Kipikane and I am submitting this testimony because I stand OPPOSED to this bill here, HB341, For it is unethical and only helpful to you folks. Please hear our people , as we ask you to refrain from passing this bill for it will never benefit your KEIKIS KEIKIS KEIKIS KEIKIS KEIKIS and so on. God bless you all, Mahalo for letting me submit my testimony. Aloha• 'Ā€ina Forever

LATE

HB-341

Submitted on: 2/8/2021 5:23:28 PM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Bronson Kainoa Kiyoshi Azama	Individual	Oppose	No

Comments:

This bill should be illegal! Many issues oftentimes are met with resistance should issues begin to unravel after a project or initiative proceeds. People have a right to be able to submit petitions to agencies or departments to oppose a project if a large portion of the community is in opposition to what is occurring in their community. This would then result in better public relations should the agency/department side with the community and ceasing any operation the community opposes, we ought to work together not against one another and petitions are a good way of triggering that process.

LATE

HB-341

Submitted on: 2/8/2021 5:28:41 PM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Raelyn Reyno Yeomans	Individual	Oppose	No

Comments:

I oppose this bill.

LATE

HB-341

Submitted on: 2/8/2021 8:02:25 PM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Biechler	Individual	Oppose	No

Comments:

I strongly oppose this measure as declaratory rulings have been an avenue to address numerous important concerns under the jurisdiction of our State's administrative agencies. Often times the decisions lead to important case law precedent.

This bill is not a good use of the legislature's time and efforts. It does not fix any real problem or make anything better. There are real issues that need solved by this committee and the legislature as a whole. This is a distraction. Please defer this bill and focus on protecting the aina, respecting native Hawaiian rights, funding native Hawaiian programs, increasing access to justice, and transparency and in government. This is what we need from the JHA Committee at this juncture in our State.

Where multiple agencies have overlapping jurisdiction, there are always different rights, responsibilities, obligations, and considerations that one agency must compare to the other agency. A good example would be the Department of Agriculture (DOA) and the Water Commission (CWRM). The DOA promotes and advocates for agriculture. The CWRM has constitutional duties to manage a public trust resource that is necessary for agriculture. Both could be asked the same question(s) in a petition for a declaratory ruling and would be required to evaluate different considerations. It makes no sense to bind, for example, the CWRM to a decision made by the DOA. Similar conflicts could arise between competing interests of agencies such as the DOA vs. LUC, or DHHL and CWRM.

Removing court review would be a horrible decision. The administrative agencies have hard jobs, limited resources, and lots of rights and obligations to consider. They make mistakes, just like all people. We need the courts to be able to review these declaratory rulings when they are egregious or conflict with established law or constitutional rights. Additionally, these declaratory rulings affect people's rights to due process and so are likely also required to be subject to judicial review regardless of this bill's language under the 5th, 6th, and 14th amendments of the U.S. Constitution.

Please defer this bill.

Aloha,

Mike Biechler

LATE

HB-341

Submitted on: 2/8/2021 9:19:06 PM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kaui Pratt-Aquino, Esq.	Individual	Oppose	No

Comments:

Thank you for the opportunity to submit testimony in **strong opposition** to House Bill 341 (“HB341”).

HB341 proposes to amend Section § 91-8 of the HawaiËi Revised Statutes to prohibit agencies from accepting petitions for declaratory rulings on issues or questions for which a decision was already issued by another agency that has sole or shared jurisdiction with the agency receiving the petition and provides that agency orders under the State’s administrative procedure law relating to declaratory rulings are final and not appealable.

HB341 is unconstitutional for several reasons. First, it violates the due process clause of the 14th Amendment of the US Constitution because it deprives citizens the right to judicial review of a declaratory ruling by an executive agency. Secondly, the bill violates the doctrine of separation of powers by which three branches of government (Executive, Legislative and Judiciary) are kept separate to provide a system of checks and balances to ensure that our democracy and rights are protected.

Here, a declaratory ruling is the end by which citizens, both Native Hawaiians and the general public, can petition a state agency to protect their rights and interests in life, liberty and/or property. An appeal of a declaratory ruling issued by any agency through the judiciary provides a process by which all citizens can ensure that the order, and agency action, are sound and in compliance with the law.

By appealing a declaratory ruling, the judiciary can put a “check” on the agency. HB341 proposes to get rid of this process all together by making declaratory rulings final and not appealable at the agency level. It delegates the Court’s authority on to the agency. Thus, the result would be unconstitutional because citizens would not have any remedy for relief if the agency violated the law.

Further, HB 341 is vague and overbroad. It expands the statutory mandate of an agency to adopt and enforce the orders of other agencies. This is problematic and will lead to an absurd result because each agency is governed by its own statutory mandates, which are distinct and different from other agencies.

By sharing rulings between agencies that have different laws that govern them, first, the agency might violate its own mandate. Secondly, it would deprive citizens the right to fully litigate and dispose of their claims that emerge from the distinct statutory laws of the agency at issue. This would lead to inconsistent rulings across agencies. The bill would also inadvertently create a separate entity of government that does not currently exist. Staff would have to track the rulings across agencies to ensure consistency. Or, agencies will have to create positions within the agency to track these rulings. How will this be implemented? Who is responsible for this? For these reasons, this bill can not move forward. It flies in the face of our most basic constitutional rights. Thus, I encourage you to vote no on HB341.

LATE

HB-341

Submitted on: 2/8/2021 9:57:30 PM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Marlee Kamakaala-Miller	Individual	Oppose	No

Comments:

I strongly oppose HB341.

LATE

HB-341

Submitted on: 2/9/2021 5:23:55 AM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nathan Yuen	Individual	Oppose	No

Comments:

I strongly oppose HB341. This bill is authoritarian. It seeks to deprive people of their right to appeal an agency decision to the Court. Our right to fully litigate claims before a Court to see if an agency acted properly or violated the law is fundamental to democracy. A contest case hearing is effective in getting all the facts of the case to be examined and considered in a court of law. Terminating this ability is authoritarian and I strongly oppose HB341.

t targets kÄ• naka because we, and our allies, are the ones with these disputes (i.e. water, state land, etc.)

Please note we have had great success in our courts. Courts are not political. Their job is to hear the case, review the law/facts and make a determination. Because of this success, the legislature has retaliated by proposing bills like this.

This bill is poorly thought out, unconstitutional and harmful. Help us stop it now.

Submit testimony and then call your rep/senator to kill this bill.

LATE

HB-341

Submitted on: 2/9/2021 7:24:11 AM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dana Fergerstrom	Individual	Oppose	No

Comments:

I oppose this bill. I feel this is unconstitutional and denies the petitioner due process to appeal a decision made by an agency. One should be allowed to petition the courts should they find unjust cause made by the agency/agencies involved.

DAVID Y. IGE
Governor

JOSH GREEN
Lieutenant Governor

MIKE MCCARTNEY
Director



LATE

DANIEL ORODENKER
Executive Officer

SCOTT A.K. DERRICKSON AICP
Planner

RILEY K. HAKODA
Chief Clerk/Planner

NATASHA A. QUIÑONES
Program Specialist

FRED A. TALON
Drafting Technician

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

Statement of
Daniel E. Orodenker
Executive Officer
State Land Use Commission

Before the
House Committee on
Judiciary and Hawaiian Affairs

Tuesday February 9, 2021
2:00 PM
State Capitol, Conference Room 325 Via Videoconference

In consideration of
HB 341
RELATING TO ADMINISTRATIVE PROCEDURE

Chair Nakashima; Vice Chair Matayoshi; and members of the House Committee on Judiciary and Hawaiian Affairs:

The LUC opposes HB 341, Relating to Administrative Procedure in that it prohibits agencies from accepting petitions for declaratory rulings on issues or questions where a decision has already been issued by another agency that has sole or shared jurisdiction.

The LUC is concerned the measure is unclear with regard to issues that may involve several agencies with overlapping or shared jurisdiction. The agency with primary jurisdiction may inadvertently be prohibited from rendering decision in a situation where another agency has jurisdiction only because it's a party to a proceeding or the matter is subjectively within their area of control. Such a situation could result in "forum shopping" if overlap does exist. It could also lead to confusion and unwitting loss of due process if the issue raised were similar but not exactly the same either factually or legally.

The LUC also questions whether the section of the bill denying the right to appeal can withstand legal scrutiny.

Thank you for the opportunity to testify on this measure.

LATE

HB-341

Submitted on: 2/9/2021 8:18:58 AM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Natasha Boteilho	Individual	Oppose	No

Comments:

Aloha Reps,

I am appalled and OPPOSE HB341. Taking away our right to voice our concerns on issues that affects us all. This bill would basically strip me of my First Amendment rights and that is NOT acceptable and is a clear abuse of power from Rep Saiki who introduced it.

Natasha Boteilho

LATE

HB-341

Submitted on: 2/9/2021 9:14:24 AM

Testimony for JHA on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Julie Stowell	Individual	Oppose	No

Comments:

Regarding HB 344, the elimination of contested cases for land and water issues. This bill takes away ALL Contested Cases about any Water or Land disputes. It takes away rights guaranteed by law both in the Hawaii Administrative Rule and Federal Law. Matters regarding Land and Water are of particular interest and importance to Hawaiians.

In U.S. Public Law 103-150 (Apology Bill) states that Hawaiians never directly relinquished their inherent Sovereignty or their National Lands and Hawaiian are intrinsically tied to the land.

To remove Land and Water from contested cases would directly and adversely impact Hawaiians who primarily challenge matters of Land and Water as they have unresolved claims to all water and lands, especially, but not limited to the Ceded Lands .

Hawaiians are well known to be highly impoverished and lack legal expertise and credentials that would be required to practice law before the courts.

A contested case hearing, on the other hand, does not require legal credentials to participate, thus allowing more of the public to participate, offer information, informally present expertise in matters that have direct impact on the public.

As Henry Curtis, executive director of environmental action group Life of the Land, stated in his testimony "HB 344 appears to say that if an agency fails to do its job in protecting public trust resources, rather than filing a contested case proceeding, one must hire a lawyer and clog up the courts," Curtis' statement read. "As for those without abundant funds, tough noodles."

Please oppose HB 344.

Mahalo,

Julie Stowell

