



**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

**SCOTT A.K. DERRICKSON AICP**  
Planner

**RILEY K. HAKODA**  
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**NATASHA A. QUIÑONES**  
Program Specialist

**FRED A. TALON**  
Drafting Technician

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

Before the  
**House Committee on**  
**Consumer Protection and Commerce**

Wednesday February 10, 2021  
2:00 PM  
State Capitol, Conference Room 329 Via Videoconference

In consideration of  
**HB 343**  
**RELATING TO CONTESTED CASES**

Chair Johanson; Vice Chair Kitagawa; and members of the House Committee on Consumer Protection and Commerce:

The LUC supports the intent of HB 343, Relating to Contested Case Hearings in that it seeks to reduce the difficulty of procurement and costs associated with the utilization of hearings officers. However, we believe that the measure is overly broad and in contradiction of Chapter 205 HRS and the workings of the State Land Use Commission.

Under Chapter 205 HRS and pursuant to various decisions by the Supreme Court, the majority of Land Use Commission hearings are contested case hearings. Unlike other boards and commissions, contested case hearings are common procedurally with the LUC and the LUC commissioners do not use a hearings officer to decide contested case hearings before it. The Commissioners, acting as a judicial style panel, decide all of the cases coming in front of it. Only on rare occasions (once in the past 10 years) has the Commission utilized a hearings officer.

As drafted, HB 343 would remove the decision-making function from the commissioners and require that all hearings be held before a hearings officer. This is contradictory to established process and the intent of Chapter 205 HRS. While some commissions are not set up or familiar with the contested hearing process, the LUC is well versed in it and is extremely

efficient in how the procedures are handled and costs are well below any charge the DCCA would require reimbursement for.

As such, we would suggest that the language “With the exception of contested case hearings held pursuant to Chapter 205 HRS and” be added to the first sentence of the first paragraph of this measure in Section 1.

Thank you for the opportunity to testify 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 10, 2021  
Rm. 312, 9:30 a.m.  
Videoconference

To: The Honorable Aaron Ling Johanson Chair  
The Honorable Lisa Kitagawa, Vice Chair  
Members of the House Committee on Consumer Protection & Commerce

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

Re: H.B. No. 343

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. 343, if enacted, will require any state agency that does not have hearings officers on its staff to arrange with the department of commerce and consumer affairs to have its contested case hearings heard by hearings officers of the department. The proposed legislation allows the department of commerce and consumer affairs to charge a fee for conducting these hearings.

**The HCRC opposes H.B. No. 343.** The HCRC does not have a hearings officer on staff. However, when cases are set for hearings, a hearings officer is appointed and hired by the Commission on a contract basis. Specific hearings officers are approved, prior to appointment, by the Commission, based on their experience and their expertise in the area of civil rights laws. **The**

**Commission has the statutory authority and power to appoint its hearings officer pursuant to HRS § 368-3(8).**

The discrimination laws (statutes, administrative rules, and caselaw) that are interpreted and applied in HCRC contested cases involve complex analyses and a myriad of elements, proof standards and defenses. Hearings officers in the department of commerce and consumer affairs would not necessarily have the specialized expertise or experience that the Commission seeks in selecting and appointing its hearings officers, as required in HCRC discrimination cases in order to correctly apply the law in conducting contested hearings, rule on substantive motions, and render proposed and final decisions. Elimination of Commission statutory authority to appoint its hearings officer based on expertise and experience in civil rights and anti-discrimination law will undermine the area-specific expertise and consistency of recommended and final decisions in HCRC cases, and could render less complete records on appeal to the courts.

Under the current system, on judicial review when a case is appealed, the courts accord administrative agencies deference in interpretation of their rules, which have force and effect of law, because of agency expertise on the laws within their jurisdiction. That deference will be undermined if the Commission authority to appoint its hearings officers is eliminated and the Commission is required to rely on a pool of hearings examiners with no consideration of expertise and experience relating to the laws administered and enforced by HCRC.

**The HCRC opposes H.B. No. 343.**

Written Comments

DAVID Y. IGE  
GOVERNOR



DR. CHRISTINA M. KISHIMOTO  
SUPERINTENDENT

STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
P.O. BOX 2360  
HONOLULU, HAWAII 96804

**Date:** 02/10/2021

**Time:** 02:00 PM

**Location:** 329 Via Videoconference

**Committee:** House Consumer Protection  
& Commerce

**Department:** Education

**Person Testifying:** Dr. Christina M. Kishimoto, Superintendent of Education

**Title of Bill:** HB 0343 RELATING TO CONTESTED CASES.

**Purpose of Bill:** Requires any state agency that does not have hearings officers on its staff to arrange with the department of commerce and consumer affairs to have its contested case hearings heard by hearings officers of the department. Allows the department of commerce and consumer affairs to charge a fee for conducting these hearings.

**Department's Position:**

The Department of Education (Department) respectfully offers comments on H.B. 343 requiring state agencies without hearing officers to have contested case hearings heard by the Department of Commerce and Consumer Affairs hearing officers.

In adherence to federal law, the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) requires states to have in place an impartial due process hearing system for families to exercise their right to disagree with a school's offer of a free appropriate public education.

At this time, the Department has entered into an agreement with the Office of Dispute Resolution (ODR) to conduct impartial hearings under IDEA. Through this agreement, the Department has established safeguards that are reasonably designed to ensure parties to a due process complaint are afforded their rights to a hearing conducted by a hearing officer that meets the provisions of 34 C.F.R. §300.511(c).

The Department looks forward to more details relating to implementation, the capacity to adjudicate IDEA hearings within the federal timelines, the capacity to adjudicate

hearings with multiple witnesses, training for the hearing officers on IDEA issues, Family Educational Rights and Privacy Act (FERPA), data collection for reporting to the Office of Special Programs, United States Department of Education, and costs to the Department. Additionally, Section 34 C.F.R. §§300.507 through 300.518 and Hawaii Administrative Rules §§8-60-61 through 8-60-72 outlines a specific hearing process that is not identically aligned with Hawaii Revised Statutes Chapter 91.

Thank you for the opportunity to provide comments on this measure.

The Hawai'i State Department of Education is committed to delivering on our promises to students, providing an equitable, excellent, and innovative learning environment in every school to engage and elevate our communities. This is achieved through targeted work around three impact strategies: school design, student voice, and teacher collaboration. Detailed information is available at [www.hawaiipublicschools.org](http://www.hawaiipublicschools.org).



**HAWAII COMMUNITY  
DEVELOPMENT AUTHORITY**

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Web site: <http://dbedt.hawaii.gov/hcda/>

DAVID Y. IGE  
GOVERNOR

JOHN WHALEN  
CHAIR

DEEPAK NEUPANE, P.E., AIA  
EXECUTIVE DIRECTOR

Statement of  
**DEEPAK NEUPANE, P.E., AIA**  
**Executive Director**  
Hawaii Community Development Authority  
before the

**HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE**

Wednesday, February 10, 2021

2:00 PM

State Capitol, Conference Room 329

In consideration of  
**HB 343**  
**RELATING TO CONTESTED CASES.**

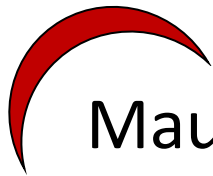
Chair Johanson, Vice Chair Kitagawa and members of the Committee. The Hawaii Community Development Authority (HCDA) offers **comments on HB 343** that requires any state agency that does not have a hearings officer, to arrange with the Department of Commerce and Consumer Affairs (DCCA) to have its contested case hearings heard by DCCA's Office of Administrative Hearings.

The HCDA board typically conducts its contested case hearings. However, Hawaii Administrative Rules (HAR) §15-219-26 allows the HCDA to appoint a hearings officer pursuant to section 92-16, Hawaii Revised Statutes.

HCDA's concern is that after arranging to work with a DCCA hearings officer, the other party may object as the hearings officer is an employee of the State of Hawaii, and a state agency may have imposed fines and penalties involved in the matter. HCDA's second concern is that if DCCA is the only option for state agencies, it may create a back log. HCDA suggests allowing the DCCA to suggest the use of outside hearings officers to accommodate state agencies in a timely manner.

HCDA has successfully worked with DCCA in the past and we appreciated their professionalism and timeliness.

Thank you for the opportunity to testify.



# Maunakea Observatories

To: Representative Aaron Ling Johanson, Chair  
Representative Lisa Kitagawa, Vice-Chair  
Committee on Consumer Protection & Commerce

From: Maunakea Observatories

Subj: HB 343 Relating to Contested Cases – In Support  
Wednesday, February 10, 2021; 2:00 p.m.; conference room 329; via videoconference

Date: 9 February 2021

Aloha Chair Johanson, Vice Chair Kitagawa and Members of the Committee,

Through this letter, the Maunakea Observatories express their strong **support** for HB 343, which requires any state agency that does not have hearings officers on its staff to arrange with the department of commerce and consumer affairs to have its contested case hearings heard by hearings officers of the department, and allows the department of commerce and consumer affairs to charge a fee for conducting these hearings.

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. As we've seen in the recent years, simply selecting a qualified hearings officer for contested case proceedings has often become an increasingly charged and arduous process. H.B. 343 would optimize and streamline this process by providing a bench of available and seasoned hearings officers with a deep understanding of contested case hearing procedures, experience developing a record, and recommendations for action and ensuring due process for all parties involved.

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.

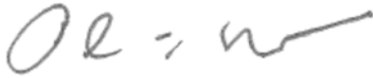
Mahalo,





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Director Doug Simons, Canada-France-Hawaii Telescope



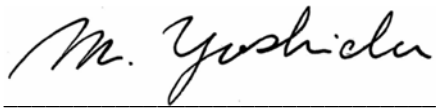
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Director Paul Ho, James Clerk Maxwell Telescope (East Asian Observatory)



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Director John Rayner, NASA Infrared Telescope Facility



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Director Michitoshi Yoshida, Subaru Telescope



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

**HB-343**

Submitted on: 2/9/2021 3:54:02 PM

Testimony for CPC on 2/10/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Robin Wurtzel	Hawai`i Civil Rights Commission	Oppose	No

Comments:

I am available for comments

# KA LAHUI HAWAII'

## KOMIKE KALAI'ĀINA

BEFORE THE HOUSE CONSUMER PROTECTION AND COMMERCE COMMITTEE

February 10, 2021

HOUSE BILL 343  
Relating to Contested Cases

Aloha Chair Johanson, Vice Chair Kitagawa, and Members of the Committee,

Ka Lāhui Hawai'i Kōmike Kalai'āina submits the following written testimony in OPPOSITION to House Bill 343 allows the Department of Commerce and Consumer Affairs to conduct contested case hearings for land and water disputes and to charge a fee for conducting these contested cases hearings from agencies.

This bill if passed it would have our Contested Case Hearing, a quasi-judicial process, heard by an agency who is not versed in Water and Land laws, rights and policies. Furthermore, the Department of Commerce and Consumer Affairs is not charged with the protection of our environment, lands, water, and threatened and endangered species. Allowing the Department of Commerce and Consumer Affairs to conduct contested case hearing for water and land issues would cripple the process.

We also hope that if passed this measure does not allow any charges for the Contested Case hearings trickle down to public who utilize this important process to bring public concerns forward.

Me ka oiai'o,

M. Healani Sonoda-Pale  
Public Affairs Officer, Ka Lāhui Hawai'i Kōmike Kalai'āina

# **We the undersigned are opposed to HB 344 aiming to remove the people's rights to contested case hearings (CCH).**

This bill is a bold attempt by lawmakers to remove the people of Hawai'i's ability to challenge critical land use and or water use and other government agencies' decisions that negatively impact them and/or the general public. It is an attempt by lawmakers to remove critical due process rights afforded to Native Hawaiians and the general public. This law presents more constitutional rights challenges than it solves. For example, CCH are for the protection of the citizens of Hawai'i and providing the people a way to challenge agency actions that negatively impact them.

The CCH process is the only Peoples process for any and all government agencies actions that exists.

It is a Peoples process because it a quasi-judicial process that allows regular people to contest, present evidence and to cross examine agencies' witnesses and/or to build the record of impacts to them as interested parties and to inform government agencies about decisions that may be adverse to Native Hawaiians and the General public.

Without a CCH process there is no way for decisions makers to understand the full impacts of their decision and/or for decisions makers to actually make an informed decision based on the facts of the impacts for any and all government decision and/or actions.

CCH are considered a Peoples process also because no one needs to be a lawyer or to hire a lawyer to participate in an administrative Contested Case Hearing. Pushing the executive branch process into the courts violates the constitutional requirement of Separation of Powers.

Therefore, Contested Case Hearings should not be construed as a threat to the system. To the contrary, they are meant to help the administration make informed decisions and to understand how their decisions may affect the greater public.

Without Contested Case Hearings, no decision could actually be challenged or go through judicial review because there would be no record to review or to appeal out of an administrative hearing.

Most, if not all, seminal land use cases began with a Contested Case Hearing (i.e. PASH, Kapa'akai etc) and were originally brought by regular citizens whose Rights and Interest in the land/water were being threatened. Many CCH have found their way all the way into the highest court of the land-the Supreme Court Of Hawai'i.

With no Contested Case Hearings there is no due process, no record to appeal into a court of law thus making this proposed law unconstitutional on its face. We do not consent to the passage of this law and we are adamantly opposed to HB 344.

**MAUNA KEA MOKU NUI**

**'AELIKE/CONSENSUS BUILDING 'OHANA**

**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
House Committee on Consumer Protection & Commerce  
Wednesday, February 10, 2021  
2:00 p.m.  
State Capitol, Conference Room 329**

**On the following measure:  
H.B. 343, RELATING TO CONTESTED CASES**

Chair Johanson and Members of the Committee:

My name is Craig Uyehara, and I am the Senior Hearings Officer of the Department of Commerce and Consumer Affairs' (DCCA or Department) Office of Administrative Hearings (OAH). The Department offers comments on this bill.

The purposes of this bill are to: (1) require state agencies that do not have hearings officers on its staff to arrange with the DCCA to have its contested case hearings conducted by DCCA hearings officers; and (2) allow the DCCA to charge a fee for conducting these hearings.

The OAH is currently responsible for conducting all of the contested case hearings<sup>1</sup> arising from the various DCCA divisions. Since 1994, the OAH has also had the responsibility, under Hawaii Revised Statutes (HRS) chapter 103D, of conducting the administrative hearings to review denials of procurement protests stemming from all agencies of the State and the four counties. Pursuant to HRS chapters 671 and 672B, the OAH is also charged with the administration of the Medical Inquiry and Conciliation Panels and the Design Claims Conciliation Panels. In addition to this extensive caseload, the OAH is legally required to meet strict legal deadlines<sup>2</sup> in many of these

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<sup>1</sup> These cases include: professional licensing violations; violations of the Uniform Securities Act; denials of personal injury protection insurance benefits; applications for professional licenses; citations for unlicensed activity; disputes over trademarks, trade names, and business names; violations of the Hawaii Post-Secondary Education Authorization Program; and requests for declaratory rulings. In addition, the OAH hears all contested cases arising from the Employees Retirement System (ERS) and Hawaii Employer-Union Health Benefits Trust Fund (EUTF).

<sup>2</sup> For instance, under HRS chapter 103D, the OAH is required to conduct and complete the often-times complex and contentious hearing and issue its final decision within 45 days. Decisions regarding denials of disability retirement benefits must be issued within 60 days, while certain actions brought under the Insurance Code and the Uniform Securities Act require that the hearing commence within 15 days.

cases. All of these responsibilities fall upon the OAH's staff of 5 hearings officers, 1 legal secretary, and 3 legal clerks.

With the OAH's limited resources and current caseload and obligations, the Department has concerns about the potential negative impacts of taking on additional types of contested cases at this time. Any significant increase in the number of hearings could jeopardize the OAH's ability to meet its statutorily imposed deadlines and prevent it from achieving its mission of conducting hearings promptly and rendering timely, consistent, thorough, and well-reasoned decisions.

Moreover, the OAH already regularly considers other agencies' requests to hear their contested cases. Over the years, a number of agencies have asked the OAH to conduct the hearings for their contested cases. Each of these requests is considered in terms of the nature of the cases involved and the time required to complete these cases, along with the OAH's available resources and current obligations. As a result of this analysis, some of these requests have been granted, including requests from the ERS, EUTF, Public Utilities Commission, Hawaii Community Development Authority, and Department of Education, while others have not due to the OAH's limited available resources and the time commitment that would be required to address those cases competently. Thus, regardless of this bill, the OAH will continue to consider such requests and address each request on a case-by-case basis. While the OAH remains open and willing to assist other agencies whenever possible, it must ensure that it remains fully capable of meeting its primary responsibilities and intended purpose.

For these reasons, the Department believes this bill is unnecessary. At a minimum, the Department would recommend that a study be conducted to determine the: potential interest and need of other state agencies in having their cases heard by the DCCA; number, time limitations, and nature of the cases involved; and feasibility of having the Department conduct these hearings with its present staff, limited resources and ongoing obligations. The study would also assist the Department in determining to what extent additional staff positions and other resources will be needed to manage the likely increase in contested case hearings.

Thank you for the opportunity to testify on this bill.

**HB-343**

Submitted on: 2/10/2021 12:06:58 PM

Testimony for CPC on 2/10/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jennifer Noelani Ahia	Individual	Oppose	No

Comments:

I strongly oppose this bill.

**HB-343**

Submitted on: 2/10/2021 12:12:38 PM

Testimony for CPC on 2/10/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rhonda	Individual	Oppose	No

Comments:

I oppose HB343 we should not have to pay a fee.



**HB-343**

Submitted on: 2/10/2021 12:18:06 PM

Testimony for CPC on 2/10/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
cheryl B.	Individual	Oppose	No

Comments:

OPPOSE

Should not have to pay for contested cases.

**HB-343**

Submitted on: 2/10/2021 12:18:38 PM

Testimony for CPC on 2/10/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ivy McIntosh	Individual	Oppose	No

Comments:

I oppose!

**HB-343**

Submitted on: 2/10/2021 12:18:55 PM

Testimony for CPC on 2/10/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Chassidy Reis-Moniz	Individual	Oppose	No

Comments:

I STRONGLY OPPOSE HB343. Mahalo.

**HB-343**

Submitted on: 2/10/2021 12:19:46 PM

Testimony for CPC on 2/10/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
maxine kahaulelio	Individual	Oppose	No

Comments:

I oppose

**HB-343**

Submitted on: 2/10/2021 12:22:57 PM

Testimony for CPC on 2/10/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nana-Honua Manuel	Individual	Oppose	No

Comments:

Please

**HB-343**

Submitted on: 2/10/2021 12:23:48 PM

Testimony for CPC on 2/10/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Charmaine Nee	Individual	Oppose	No

Comments:

I oppose

**HB-343**

Submitted on: 2/10/2021 12:53:21 PM

Testimony for CPC on 2/10/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
MaryAnn Omerod	Individual	Oppose	No

Comments:

I Strongly Oppose allowing the department of commerce and consumer affairs to charge a fee for conducting Contested Case hearings.