



The Judiciary, State of Hawai'i

Testimony to the Thirty-First State Legislature, 2021 Regular Session

House Committee on Judiciary and Hawaiian Affairs

Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair

Wednesday, February 10, 2021, 2:00 p.m.
State Capitol, Conference Room 325
VIA VIDEOCONFERENCE

by:

Rodney A. Maile
Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 344, Relating to Government.

Purpose: Provides that the Board of Land and Natural Resources and Commission on Water Resource Management shall not conduct contested case hearings, and counties shall not conduct contested case hearings regarding disputes over land use, but that decisions and disputes may be contested and adjudicated in circuit court.

Judiciary's Position:

The Judiciary respectfully opposes HB344, which, if enacted, would eliminate contested case hearings before the Board of Land and Natural Resources (BLNR), the Commission on Water Resource Management (CWRM), and county commissions on land use, and instead require that disputes over public lands, water rights, and land use be adjudicated in the circuit courts.

If enacted, HB344 would drastically change the role of the circuit courts in HRS chapter 91 proceedings. Circuit courts presently preside over most appeals from contested cases and

review a fully-formed record. Under HB344, circuit courts would become fact finders, requiring an intensive process similar to a bench trial and, in turn, dramatically increasing the trial calendars of circuit court judges. For example, the TMT contested case hearing was heard over a period of 44 days. *See Matter of Conservation District Use Application HA-3568*, 143 Hawai'i 379, 431 P.3d 762 (2018). That is over eight weeks of daily court time for one judge.

Our circuit courts are already experiencing a serious backlog of trial cases due to the coronavirus pandemic. The addition of lengthy and complex trials over water rights, land use, and public lands will cause significant delays in not only these important public matters, but in other civil cases as well. This may be particularly so in our neighbor island circuit courts where judges preside over civil and criminal cases; criminal cases typically have priority over civil cases because of speedy trial concerns. Consequently, if the legislature determines this new process is necessary, it must ensure sufficient resources are provided to the Judiciary to facilitate the prompt processing of these matters.

Respectfully, we disagree that the current process under HRS chapter 91, which allows for judicial review of contested case hearings, is duplicative, creates uncertainty, or adds unnecessary costs.¹ Hearings on contested cases are best suited to agency adjudication rather than resolution in the circuit courts for several reasons. First, agencies have subject matter expertise that guides their decision-making in these often-complex matters. Moreover, as a result of their expertise, the issues are typically narrowed during the agency process, thereby enabling courts to focus on the most heavily disputed aspects of a proceeding.

Second, courts are bound by court rules of procedure and technical rules of evidence when taking testimony on disputed issues of fact. The rules of civil procedure apply in civil actions, which allows for discovery (oral depositions, written interrogatories, production of documents, etc.). Governmental boards and commissions, on the other hand, have more flexibility and may not be as tied to formal and technical evidentiary rules as the courts. This makes the process more efficient and direct for all members of the public who wish to be heard on public matters that come before the BLNR, the CWRM, and the county land use commissions. Moreover, in court, community organizations will have to be represented by an attorney and will not be able to appear through a non-attorney member, as is currently allowed in contested case hearings.

Third, the legislature has also already taken steps to streamline the appeals process for some of the matters affected by HB344 by providing for direct appeals to the supreme court from

¹ According to the Committee on Water & Land Report dated February 5, 2021:

[T]he number and complexity of contested cases has greatly increased over time. This measure seeks to reduce some of the duplication, uncertainty, and costs related to land use decisions specifically for the Board, Commission, and counties[.]

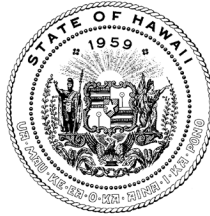
certain agency contested cases.² For those matters, HB344 may ultimately delay the process because direct appeals to the supreme court may only be taken from contested cases, which HB344 would eliminate.

Finally, we note that this bill may raise constitutional questions, such as due process and separation of powers.

Thank you for the opportunity to testify on this measure.

² In particular, HRS § 174C-12.5 provides for direct appeals to the supreme court from contested cases arising under the State Water Code, chapter 174C. And HRS § 183C-9 provides that any contested case under chapter 183C is likewise appealed directly to the supreme court.

DAVID Y. IGE
GOVERNOR OF
HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO 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

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
JUDICIARY & HAWAIIAN AFFAIRS**

**Wednesday, February 10, 2021
2:00 PM**

State Capitol, Via Video Conference, Conference Room 325

**In consideration of
HOUSE BILL 344
RELATING TO GOVERNMENT**

House Bill 344 proposes to amend various sections of the Hawai'i Revised Statutes (HRS) to eliminate the ability of the Board of Land and Natural Resources (Board), the Commission on Water Resource Management (Commission), and the counties to conduct contested case hearings (regarding disputes over land uses only in the case of the counties), and instead direct that action be timely filed in the applicable circuit court. **The Department of Land and Natural Resources (Department) supports this bill offers the following comments, which are limited to proposed amendments to Sections 6E-10.5, 171-6(4), 174C-9 to 12, and 183C-6, HRS.**

The number and/or complexity of contested cases has greatly increased over time. This increase takes up immense time and expense for the Board and Commission to hold contested cases. The efficacy of this burden is unclear especially since important and complex contested cases generally are ultimately referred to the Judiciary anyway. Trying a case in contested case and then again in the Judiciary also delays justice. The Department also notes that establishment of the Environmental Courts has increased the subject matter expertise of the Judiciary.

Allowing contested cases to go directly to the judiciary relieves the Board and Commission of this burden, allowing them to focus on their core mission while at the same time preserving and protecting all parties' rights to due process.

Lastly, the Department notes that Section 174C-9, HRS, currently provides that all proceedings must be conducted in accordance with Chapter 91, HRS. This chapter governs rule-making and

contested case proceedings. The proposed amendment would disallow the conduct of contested case proceedings, which appears to be contradictory. The Department respectfully requests that any amendment to Section 174C-9, HRS, clarify that proceedings before the Commission be conducted in accordance with Chapter 92, HRS, or Chapter 91, HRS if a hearing is required, as follows:

[+]§174C-9[+] Proceedings before the commission concerning water resources. All proceedings before the commission concerning the enforcement or application of any provision of this chapter or any rule adopted pursuant thereto, or the issuance, modification, or revocation of any permit or license under this code by the commission, shall be conducted in accordance with chapter ~~[91.]~~ 92, or chapter 91, if a hearing is required. Hearings regarding particular water resources shall be conducted on the island where those water resources are located.

Thank you for the opportunity to comment on this measure.

HB-344

Submitted on: 2/10/2021 7:36:20 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Suzanne Case	DLNR	Support	No

Comments:

I would like to testify on HB344. Please allow me Zoom access. Thank you.

HB-344

Submitted on: 2/10/2021 7:47:26 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Robert Masuda	DLNR	Support	No

Comments:

I am available for questions. Please allow me Zoom access. Thank you.



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

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Rep. Mark M. Nakashima, Chair
Rep. Scot Z. Matayoshi, Vice Chair

DATE: Wednesday, February 10, 2021
TIME: 2:00 PM

HB 344 RELATING TO GOVERNMENT.

PLEASE KILL THE BILL

Mahalo
Henry Curtis
Executive Director



49 South Hotel Street, Room 314 | Honolulu, HI 96813
www.lwv-hawaii.com | 808.531.7448 | voters@lwv-hawaii.com

COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
WEDNESDAY, 2/10/21, 2 PM, Room No. 325

SB344 RELATING TO GOVERNMENT
Beppie Shapiro, Legislative Committee, League of Women Voters of Hawaii

Chair NAKASHIMA, Vice-Chair MATAYOSHI and Committee Members:

The League of Women Voters of Hawaii opposes this bill, which Provides that the Board of Land and Natural Resources and Commission on Water Resource Management shall not conduct contested case hearings, and counties shall not conduct contested case hearings regarding disputes over land use, but that decisions and disputes may only be contested and adjudicated in circuit court.

The League of Women Voters supports transparent and accountable government.

Some of the most complex and controversial decisions by any government body during the past decade have been those of the BLNR and the Commission on Water Resource Management. Contested case hearings have allowed parties who feel their rights have been violated, and members of organizations which are centrally focused on relevant public policy and practice, to be heard in a relatively open forum.

To remove this forum restricts these hearings to those who can afford attorneys and the court process. The public voice would in most cases never be heard.

Thank you for the opportunity to submit testimony.

HB-344

Submitted on: 2/9/2021 8:22:17 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Laulani Teale	Ho'opae Pono Peace Project	Oppose	No

Comments:

Aloha,

Ho'opae Pono Peace Project strongly opposes this measure, which is frankly genocidal.

it removes the fundamental right of Indigenous Peoples to protect our land and water, and rights to their usage and our access to them, and denies the public voice in matters that pertain directly to public well-being on these fragile islands.

The time for speaking in platitudes and niceties is over. You must understand your responsibility on this overwhelmingly non-Indigenous Committee as the only voice for Hawaiian Affairs in the House of Representatives of the State of Hawaii. You must know that for there to be any justice whatsoever within the State of Hawaii, which is still occupying the illegally-displaced Kingdom of Hawai'i, you must do the right thing. If you do not, you perpetuate settler colonialism and incremental genocide, and this is how you will be remembered in history. Do not do this.

if the voice of Kanaka Maori is removed from State processes, then the only choice remaining to the Indigenous People's connected to those lands will be direct action. If law enforcement is simultaneously militarized to counteract these efforts to protect these lands, there will be increasingly violent confrontations, with escalating brutality. Eventually, there will be war. This is not good for anyone

I am a practitioner of peace. I have worked throughout Hawai'i, as well as in international conflicts. I do not say this lightly. But it is the absolute oia'i'o truth.

Please do not pass this measure.

Mahalo nui loa me ka 'oia'i'o,

Laulani Teale, MPH
Coordinattor, [Ho'opae Pono Peace Project](#)

HB-344

Submitted on: 2/9/2021 10:19:26 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Kealoha Pisciotta	Mauna Kea Anaina Hou and Kai Palaoa	Oppose	No

Comments:

I file the following testimony on behalf of Mauna Kea Anaina Hou and Kai Palaoa in opposition to HB 344 aiming to remove the people's rights to contested case hearings (CCH). I also support the collective statement of the Mauna Kea Aelike/Consensus Building Ohana position below.

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.

Aloha and Mahalo,

Kealoha Pisciotta

President Of Mauna Kea Anaina Hou

Founder of Kai Palaoa

Member of the Mauna Kea Aelike/Consensus Building Ohana

HB-344

Submitted on: 2/9/2021 11:15:54 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Ana Kahoopii	halau kahula O Nawahine Noho Pu'ukapu	Oppose	No

Comments:

Chairman Tarnas,

I am writing in OPPOSITION with regards to HB 344. I have read the testimony of the Chair (DLNR) as well as several proponents of the UH and/or the Astronomy Community. So also did I read from the opponents of this bill.

I am speaking for myself and my hula community which has well over 200 haumana/ohana members.

HB 344 is about eliminating the essential process of a contested case in matters involving Land and Water and directs those issues to the Civil Courts. Matters regarding Land and Water are of particular interest and importance to Hawaiians. 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.

I suggest you quickly reacquaint yourselves with the Administrative Procedure Act as well as the Administrative Rulemaking procedures that were made specifically to safeguard the public from abuse of power of agencies and/or seemingly willy-nilly legislation.

HB 344 proposes a major change to the rules that govern administrative agencies of the State. The State Department of Land and Natural Resources is a State agency and therefore is bound to the requirements outlined in the Administrative Procedures Act.

Changes of this magnitude require that agencies follow Administrative Rulemaking Procedures which start with the agency 1)giving public notice of proposed rule changes, 2)opportunities for the Public to respond to the proposed changes, and a 3)public hearing whose outcome may be also challenged.

In the simplest terms, the purpose of a contested case is to provide a hearing to an individual or group of individuals who have been directly impacted in some way by proposed governmental action. As the definition emphasizes, contested case hearings are appropriate when the rights of specific parties are involved.

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 (Hawaii State Bar) 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 a direct impact on the public.

To eliminate land and water from contested cases would unjustly, unfairly impose restrictions from protection outlined in HAR chapter 91. This also gives an unfair advantage to those proposing changes regarding land and water and could lead to unjust enrichment as a result.

We must remember that the purpose of this legislation is about contested cases and not a rallying call for the TMT.

You must remember we voted you into office to represent us, your constituents not pave the way for special interests.

Malama Pono,

Kumu Ana Nawahine-Kahoopii



BEFORE THE HOUSE JUDICIARY AND HAWAIIAN AFFAIRS COMMITTEE

February 10, 2020

HOUSE BILL 344
Relating to Government

Aloha Chair Nakashima, Matayoshi and Members of the Committee,

Ka Lāhui Hawai'i Kōmike Kalai'āina submits the following written testimony in **STRONG OPPOSITION** to House Bill 344 which eliminates conduct contested case hearings for land and water disputes under the Board of Land and Natural Resources, the Counties, and the Water Resource Management Commission.

This bill if passed would remove our right to a Contested Case Hearing, a quasi-judicial process, and everyone's ability to challenge critical land and water use and other government agencies' decisions that negatively affect our environment and 'ohana. Important native land use cases began with a Contested Case Hearing (i.e. PASH, Kapa'akai, etc) and were originally brought by Kanaka Maoli whose rights and interests in the land/water were being threatened eventually finding their way into 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

We also stand behind the testimony of the Mauna Kea Moku Nui 'Aelike/Consensus Building 'Ohana and submits theirs along with ours.

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



REP. MARK M. NAKASHIMA, CHAIR
REP. SCOT Z. MATAYOSHI, VICE CHAIR
HOUSE COMMITTEE ON JUDICIARY

TESTIMONY IN **OPPOSITION** TO HOUSE BILL NO. 344

Wednesday, February 10, 2021, 2:00 p.m.
VIA VIDEOCONFERENCE
Conference Room 325
State Capitol
415 South Beretania Street

Aloha Chair Nakashima, Vice-Chair Matayoshi, and Committee Members,

Earthjustice strongly ***opposes*** House Bill No. 344 and requests that it be held.

First and foremost, the bill's proposal to eliminate contested cases is simply unconstitutional. Fundamental due process under the Hawaii (and US) Constitutions requires agencies to hold a hearing *before* they make a decision that affects individual rights and privileges. Eliminating this right to an agency hearing, and substituting a court action instead—*after* the agency makes its decision—violates constitutional due process.

Second, this bill will spawn inefficiency, confusion, and chaos. The reason that agencies hold contested case proceedings is so that they can apply their expertise to specific cases and develop administrative records for their decisions, which courts then review on appeal under a defined standard of review. Eliminating contested cases will turn court actions into free-for-alls that will only undermine the agencies' authorities and burden the judicial system.

Third, this bill will block access to justice and citizen participation in democracy. The contested case procedures in the Hawaii Administrative Procedures Act (HAPA), HRS chapter 91, were purposefully established to allow a process for agency decisions that is more accessible to the public, including those who may not have legal representation. Eliminating contested cases and requiring citizens to go court instead will shut the doors of justice and democracy to the people.

In sum, because HB 344 is unconstitutional, inefficient, and inimical to access to justice and democratic participation, we urge this Committee to kill the bill. Mahalo nui for this opportunity to testify. Please do not hesitate to contact us with any further questions or for further information.

Isaac H. Moriwake, Esq.

/s/ Isaac Moriwake

Managing Attorney
Earthjustice, Mid-Pacific Office



To: Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice-Chair
Committee on Judiciary & Hawaiian Affairs

From: Maunakea Observatories

Subj: Letter **Supporting** HB344 Relating to Government
Testimony Scheduled for Wednesday, February 10, 2021; 2:00 p.m.; conference room 325

Date: 9 February 2021

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

Through this letter the Maunakea Observatories **support** HB344 which specifies that Board of Land and Natural Resources (BLNR) decisions and disputes pertaining to land use be contested and adjudicated in circuit court and not through contested case hearings.

The current system for contested cases introduces lengthy delays in BLNR decisions, which are often unmanageable for organizations awaiting clarity and resolution in land use questions that impact their future. The uncertainty caused by unresolved decisions negatively impacts forward-planning and undermines the confidence of stakeholders and the public. The Maunakea Observatories are supportive of efforts to improve the timeliness of fair and just resolutions to BLNR land use decisions.

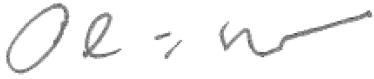
The timeliness concern is pertinent to the observatories in the following way: the current Master Lease for the Mauna Kea Science Reserve expires at the end of 2033, and the timely renewal of this land authorization, reflecting a long-term commitment by the State of Hawai'i to support astronomy, is essential. Everything from facility upgrades to new instrumentation and long-term operations planning depend on timely authorization. Continued support from 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, also depends on timely authorization.

Thank you for the opportunity to provide testimony in support.

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)



February 9, 2021

RE: HB344 RELATING TO GOVERNMENT

Dear Chair Nakashima and the House Committee on Judiciary and Hawaiian Affairs,

The Kona-Kohala Chamber of Commerce **supports HB344** which specifies that the Board of Land and Natural Resources shall not conduct contested case hearings regarding disputes over land use, but that decisions be contested and adjudicated in circuit court.

With nearly 500 members, our chamber exists to provide leadership and advocacy for a successful business environment in West Hawai'i. We believe HB344 has broad implications, potentially helping businesses across the state that are subject to lease renewals.

We also support this measure because of its impact on Hawai'i's astronomy industry and the impending Master Lease renewal. Although the lease expires in 2033, the timeline is condensed due to critical junctures in the sequence of events. This legislation is crucial in creating timely action as the lease renewal may be subject to a contested case and lengthy delays would impede the process.

For Hawai'i Island, the astronomy industry atop Maunakea creates jobs and economic impact as well as educational opportunities that would otherwise not exist. Based on a study conducted by the University of Hawai'i Economic Research Organization, the astronomy sector provides needed economic diversity with a statewide impact of \$167 million. Astronomy activities generate over \$88 million in expenditures, over \$8 million in state taxes and 1,400 jobs statewide. During the construction phase, the Thirty Meter Telescope will create 300 local and specialized construction jobs and once the telescope is complete, employ 140 staff. Additionally, the astronomy industry on our island sustains important educational initiatives and programs to better prepare Hawai'i Island students to master STEM curriculum and to become the workforce for higher paying science and technology jobs in Hawai'i's 21st century economy.

The Kona-Kohala Chamber of Commerce works to strengthen the local economy and promote the well-being of our community. We believe HB344 will enable a timely and effective approach to the existing process that will ultimately provide positive outcomes for our community and our state.

Sincerely,

A handwritten signature in black ink that reads "Wendy J. Laros". The signature is fluid and cursive, with the first name being the most prominent.

Wendy J. Laros
President and CEO
Kona-Kohala Chamber of Commerce



SIERRA CLUB OF HAWAI'I

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

February 10, 2021 2:00 PM

In **OPPOSITION** of **HB344**: Relating to Government

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 **opposes HB344**, which provides that the Board of Land and Natural Resources and Commission on Water Resource Management shall not conduct contested case hearings, and counties shall not conduct contested case hearings regarding disputes over land use, but that decisions and disputes may be contested and adjudicated in circuit court.

HB344 is unconstitutional:

The contested case hearing process is a way to develop a case, with expert testimony, prior to a decision being made by an agency. By eliminating the contested case hearing process entirely, this bill proposes to eliminate any opportunity for citizens to contest decisions or disputes made by an agency, before the agency makes its determination. In doing so, HB344 violates the due process clause of Article I, Section 5 of the Hawai'i Constitution.

The Hawai'i Supreme Court has concluded that constitutional due process mandated a contested case at least six times:

- *Pele Defense Fund v. Puna Geothermal Venture*, 77 Hawai'i 64, 881 P.2d 1210 (1994) (PDF v. PGV)
- *in Re Water Use Permit Applications*, 94 Hawai'i 97, 120 n.15, 9 P.3d 409, 432 n.15 (2000) ("Waiāhole")
- *in re 'Iao Ground Water Mgmt. Area High-Level Source Water Use Permit Applications*, 128 Hawai'i 228, 287 P.3d 129 (2012)
- *Mauna Kea Anaina Hou v. Bd. of Land & Natural Res.*, 136 Hawai'i 376, 363 P.3d 224 (2015),
- *in re Maui Electric*, 141 Hawai'i 249, 408 P.3d 1 (2017);
- *in re Hawai'i Elec. Light Co.*, 145 Hawai'i 1, 445 P.3d 673 (2019).

Traditional and customary practices, protected by Article XII section 7, were the constitutional basis in *'Iao* and *Mauna Kea*. Environmental rights, protected by Article XI section 9, was the constitutional basis in *Maui Electric*, and *Hawai'i Elec.*

HB 344 prevents public participation in the decision making process:

This bill would prevent democratic participation in critical land and water use decisions made by the Board of Land and Natural Resources and the Commission on Water Resources Management. The purpose of a contested case is to provide decision makers with detailed information not included in the staff briefings or Environmental Assessments/Environmental Impact Statements that are pertinent to the case. In a 3-minute testimony, testifiers cannot be expected to provide all the missing details necessary for an agency to make an informed decision. By forcing citizens to go to court, this bill simply blocks public participation and makes representation inaccessible for those who cannot afford it.

In addition, contested case proceedings bar the decision maker from cutting backroom deals and precludes developers from meeting privately with decision makers. This is critical to ensure public transparency in the decision making process.

HB 344 will cause delays and inefficiencies in our judicial system:

Removing the option of having a contested case will cause huge delays for Hawai'i's already underfunded court and would further clog the court system. A contested case hearing is pre-decision, it follows an appropriate process in which an agency can develop the record which is then subject to judicial review. The court may review the documents, and expert testimony, following the agency decision if there is an appeal. It is completely inappropriate to foreclose testimony prior to a decision and then rely upon the challenger to make a case before a court.

For all of these reasons, we ask the committee to **defer this measure indefinitely**. Thank you for this opportunity to provide testimony in **opposition to HB 344**.



Native Hawaiian LEGAL CORPORATION

1164 Bishop Street, Suite 1205 • Honolulu, Hawai'i 96813
Phone (808) 521-2302 • Fax (808) 537-4268 • www.nativehawaiianlegalcorp.org



HB344

RELATING TO GOVERNMENT

HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

February 10, 2021

2:00 p.m.

Room 325

Aloha e Chair Nakashima, Vice Chair Matayoshi, and members of the Committee,

The Native Hawaiian Legal Corporation (NHLC) offers the following testimony in **OPPOSITION** to HB344, which seeks to amend various sections of the Hawai'i Revised Statutes (HRS) to eliminate the authority of the Board of Land and Natural Resources (Board), the Commission on Water Resource Management (Commission), and the various counties to conduct contested case hearings (for the counties, hearings on land use issues) and instead mandate that citizens file lawsuits in circuit court.

A contested case hearing, by definition, refers to “a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing.” HRS § 91-1. It aids in agency decision-making, gathering facts and data and ensuring that decision-makers have the most complete and relevant information to make a pono decision. It is a legal platform for the average citizen to hold agencies to the legal frameworks that govern decision-making. A contested case hearing is procedural and informational, not a per se challenge of an agency decision, action, or inaction. In other words, it has a definite place in our legal system – separate and apart from court actions – and its absence would be palpable.

By removing the contested case hearing requirements from HRS chapters 171, 174C and 46, House Bill 344 flouts due process, disregards agency procedure and expertise, and improperly and irresponsibly inhibits citizens' access to justice.

First, constitutional due process requires that agencies hold a hearing before decision-making that affects individuals' rights, duties, and privileges. *See* Haw. Const. Art. I §§ 5 and 8. Such rights include Native Hawaiian traditional and customary practices, which are protected by the Hawai'i constitution and state statutes. *See* Haw. Const. Art. 12 § 7. Abolishing the right to a contested case in exchange for an original court action brought only after the agency renders its decision violates constitutional due process. *See, e.g., Flores v. Bd. of Land & Nat. Res.*, 143 Hawai'i 114, 126, 424 P.3d 469, 481 (2018); *Mauna Kea Anaina Hou v. Bd. of Land and Natural Res.*, 136 Hawai'i 376, 390, 363 P.3d 224, 238 (2015). Moreover, the elimination of contested case hearings for citizens disproportionately impacted by Board and Commission administrative decision-making, in particular Native Hawaiians, invites a deprivation of rights

and the taint of disparate treatment that can and should be avoided by the legislature. Simply stated, the proposed amendment spawns grave and presumably unintended unconstitutional consequences.

Contrary to statements made by those in support of this bill, going straight to court does not preserve due process; rather, as discussed below, it erects barriers to justice by requiring attorneys and increasing costs for the average citizen. Moreover, it deprives the agency and its decision-makers the opportunity to make the most informed decisions possible and, by extension, avoid the likelihood of reversal on appeal for decisions that are arbitrary, capricious, or an abuse of their discretion. Contested case hearings provide too much value to get rid of them for the sake of expedience.

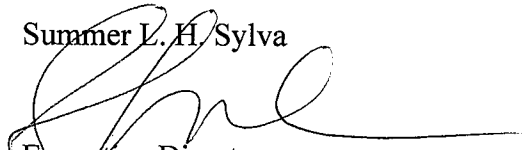
Second, removing contested case hearing requirements erodes the intent and protections afforded all citizens under HRS chapter 91, a law that the legislature and Hawai'i Supreme Court has acknowledged has a place on the books and a law that has created certain procedures governing the conduct of state agencies and that gives all citizens an opportunity to be heard. *See Hawaii Laborer's Training Ctr. V. Agsalud*, 65 Haw. 257, 260, 650 P.2d 574 (1982) (characterizing Chapter 91 as "a remedial statute designed to give citizens a fair opportunity to be heard before the official of the agency who is charged with passing on that case"). The procedure outlined in HRS § 91-9 was intended, among other things, to equip agencies like the Board and Commission, whose decisions directly impact Native Hawaiians and members of the general public who rely on public trust resources the agencies are obligated to manage and protect, with evidence and argument on all issues involved and implicated in their decision-making. The bill undermines the expertise and institutional memory of agencies like the Department and Commission that the court simply does not have. The benefit of contested case hearings before agencies – especially those involving specialized sciences related to land and water resources – is that these experienced decision-making bodies can apply their specialized knowledge and expertise to the various issues in a way that a court of general jurisdiction simply cannot. Courts benefit from a developed administrative record created at the agency level. Courts do not benefit from developing this specific record themselves. What may be more "efficient" for the agency would instead wreak havoc in the courtroom.

Third, eliminating the hearing requirement prioritizes money and means over justice. A contested case hearing is a tool for the average citizen. With less formal evidentiary rules, direct access to agency staff, and the burden on the project proponent (in theory if not always in fact), it is designed to empower an individual in a forum where an attorney, though nice to have, is not an absolute necessity. For a petitioner, the costs should be minimal. The fees and costs associated with filing a complaint in court is another ballgame entirely. Thus, in an attempt to save the state and counties money, HB344 disregards the needs of Hawai'i's people and an essential legal step in their opportunity to be heard on matters affecting their rights and interests in favor of deep-pocket applicants with nothing but time and money on their side.

Over NHLC's almost five-decades long history of advocating for Native Hawaiians, many in the community have availed themselves of this process on issues affecting land and water. Contested case hearings, when conducted properly, are of great value to the public. As such, we cannot think of any good or imperative reason for these amendments.

For all the above stated reasons, NHLC **strongly opposes House Bill No. 344**. Mahalo nui for this opportunity to testify.

Summer L. H. Sylva



Executive Director
Native Hawaiian Legal Corporation

HB-344

Submitted on: 2/9/2021 4:28:37 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Goodwin	Kaua`i Alliance for Peace and Social Justice	Oppose	No

Comments:

Feb 9, 2021

Rep. Mark A Nakashima, Chair

Committee on Judiciary and Hawaiian Affairs

State Capitol

415 S Beretania Street

Honolulu, Hawaii 96813

Dear Rep Nakashima and Committee on Judicial And Hawaiian Affairs.

HB344 is akin to voter suppression laws aimed at establishment of minority rule. It returns the state to an age when powerful interests controlled land and water policy to the exclusion of public participation. Good governance requires the opportunity for every citizen to voice their interests, not just those who can afford costly legal representation.

Contested case administrative hearings are tried and true practice providing complete and relevant information needed for an informed decision. It provides opportunity to cross examine introduced evidence.

Eliminating the citizen's right to a contested hearing is an affront to democracy. We urge yo to reject HB344.

Kip Goodwin for

Kaua`i Alliance for Peace and Social Justice

HB-344

Submitted on: 2/9/2021 6:23:18 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Teresa L Nakama	BIFA	Oppose	No

Comments:

I Teresa L. Nakama strongly oppose HB344. This bill would strip the rights of citizens to peaceful gather which is another bill that would violate our constitutional rights to free speech. I strongly urge our representatives to protect and uphold our Constitution and the Laws that are already in place to protect our rights to free speech.

Mahalo,

Teresa L. Nakama

BIFA

HB-344

Submitted on: 2/9/2021 8:57:11 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Hui o Na Wai Eha	Hui o Na Wai Eha	Oppose	No

Comments:

Hui o NÄ• Wai 'EhÄ• which represents over 50 Native Hawaiian and local farmers and with a membership of 500 within the Wailuku District on Maui, **STRONGLY OPPOSES** HB344.

HB344 proposes to eliminate an important administrative procedure such as Contested Cases. We deem this as unconstitutional. Due process under the Hawai'i and US Constitutions require agencies to hold a hearing before they make a decision that affects individual rights and privileges. Taking away this right to an agency hearing such as the BLNR or CWRM and substituting it with the judicial system instead - after the agency makes its decision - violates constitutional due process.

Second, this bill will spawn inefficiency, confusion and chaos. The reason that agencies hold contested cases is so that they can apply their expertise to specific cases and develop administrative records for their decisions, which courts then review on appeal under a defined standard of review. Our organization has been involved with Contested Case Hearings for almost 20 years with CWRM and while this process may be long and arduous, it is the right process to follow in regards to addressing kuleana water rights issues for Native Hawaiians. Eliminating Contested Cases will turn court actions into free-for-alls that will only undermine the agencies' authorities and overtax the judicial system.

We cannot and will not support a bill that is not only unconstitutional but a measure that undermines years of legal and administrative framework established by agencies that we work closely with.

We urge this committee to kill this terrible bill. Mahalo nui. Please feel free to reach out to us with any questions.

HB-344

Submitted on: 2/10/2021 8:12:31 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
jaerick medeiros-garcia	makahaloa fishing association	Oppose	No

Comments:

We the people deserve the right contested case hearings. What's wrong with you crooked law makers. I oppose your stupid idea HB344

HB-344

Submitted on: 2/8/2021 12:33:53 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Les Iijima	Individual	Oppose	No

Comments:

I OPPOSE THIS BILL.

SEEK TO LIMIT PUBLIC INPUT IN FAVOR OF DEVELOPERS AND MUST NOT PASS THIS BILL OF HB344.

HB-344

Submitted on: 2/8/2021 2:24:05 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Dee Green	Individual	Oppose	No

Comments:

Aloha

i oppose HB344.

Hawaiian culture is place-based and is tied to origin stories. The land holds significant meaning to them. Their customary and traditional ways of relating to land don't fit in the "colonial" way of thinking. As such, they should be given every opportunity to have their legal rights determined in a more "civil" setting like a contested case hearing where all parties can be heard.

Contested case hearings can:

- Lead to agreements that provide for positive changes
- Allow for administrative changes that are necessary
- Promote major and necessary reforms
- Protect against Administrative agencies from having any overarching power
- Provide an opportunity for the public to provide "their side"
- Allow for open and transparent government
- Provide a chance for individuals to find common ground on disagreements
- Give the public an opportunity to examine the decision making processes
- Allow individuals with greater knowledge to analyze and provide information

Not allowing contested case hearings could:

- Allow for arbitrary decision making or arbitrary use of government power by Administrative agencies
- Promote lack of oversight and lack of transparency
- Force individuals to hire attorneys and use funds to fight possible corruption or negligence of duties in government
- Do away with fundamental fairness in assessing procedural rules in government
- Forego due process in many cases
- Force the court system to be overrun with cases that could be resolved at a lower level
- Provide an opportunity for agencies to overlook protected rights
- Affect individuals to a point of financial/ economic ruin for a mere chance to be heard
- Unjustly deprive individuals the right to protest/speak out against government policies/decisions

Thank you

Dee Green

HB-344

Submitted on: 2/8/2021 5:36:19 PM

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

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

Comments:

Aloha mai kākou,

My name is Bronson Azama, I am a kamaʻāina of the ahupuaʻa of Heʻeia, and I have to express my sentiments of opposition to HB 344 for it is by far a ridiculous ask. The Agencies are responsible for conducting due process. The administrators of these agencies are who is responsible for ensuring that our natural resources are properly managed not the courts!

We should not be expediting issues to an already busy circuit court, but rather strengthen our contested case hearings to ensure that issues do not thereafter proceed to the courts. Oftentimes at least from what I have witnessed time and time again in watching these hearings there seems to be a void understanding of Native Hawaiian and Environmental law, therefore rather than expediting these issues to the court, our state ought to consider hiring experts in such fields to avoid adverse actions from occurring after proceedings and leading to boiling points in our communities.

Please be proactive and not reactive.

Aloha nā ,

Bronson Azama

HB-344

Submitted on: 2/8/2021 6:34:17 PM

Testimony for JHA on 2/10/2021 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 Hb344. I do so as a kuleana land Kia'i and a kuleana land heir/kuleana interest holder and One whom shares public land interest. I oppose this bill for moral and ethical reasons. 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 HB344. 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.

HB-344

Submitted on: 2/9/2021 3:09:16 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Malia Marquez	Individual	Oppose	No

Comments:

I strongly OPPOSE HB344 for these reasons:

1. This bill will remove our right to a Contested Case Hearing, a quasi-judicial process, and everyone's ability to challenge critical land and water use and other government agencies' decisions that negatively affect our environment and 'ohana.
2. Important native land use cases began with a Contested Case Hearing (i.e. PASH, Kapa'akai, etc) and were originally brought by Kanaka Maoli whose rights and interests in the land/water were being threatened eventually finding their way into the Supreme Court of Hawai'i.
3. 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.

I urge you to oppose HB344.

Mahalo for your time on this important matter.

HB-344

Submitted on: 2/9/2021 3:35:19 AM

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

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

Comments:

I oppose this bill

HB-344

Submitted on: 2/9/2021 4:56:08 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Rhonda	Individual	Oppose	No

Comments:

ACTION ALERT! Testimony needed in opposition to House Bill 344. Hearing on Wed, February 10, 2021 at 2 pm before the House Judiciary and Hawaiian Affairs Committee. Go to <https://www.capitol.hawaii.gov> to submit testimony.

Copy and Paste:

1. This bill will remove our right to a Contested Case Hearing, a quasi-judicial process, and everyone's ability to challenge critical land and water use and other government agencies' decisions that negatively affect our environment and 'ohana.
2. Important native land use cases began with a Contested Case Hearing (i.e. PASH, Kapa'akai, etc) and were originally brought by Kanaka Maoli whose rights and interests in the land/water were being threatened eventually finding their way into the Supreme Court of Hawai'i.
3. 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.

HB-344

Submitted on: 2/9/2021 5:12:20 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Steven Thomas	Individual	Oppose	No

Comments:

1. This bill will remove our right to a Contested Case Hearing, a quasi-judicial process, and everyone's ability to challenge critical land and water use and other government agencies' decisions that negatively affect our environment and 'ohana.
2. Important native land use cases began with a Contested Case Hearing (i.e. PASH, Kapa'akai, etc) and were originally brought by Kanaka Maoli whose rights and interests in the land/water were being threatened eventually finding their way into the Supreme Court of Hawai'i.
3. 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.

HB-344

Submitted on: 2/9/2021 6:26:48 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Margaret Leahy Conner	Individual	Oppose	No

Comments:

I oppose this bill. It is unconstitutional and strips citizens of our voice and our right to our day in court.

HB-344

Submitted on: 2/9/2021 8:24:51 AM

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

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

Comments:

Aloha Reps,

Please OPPOSE HB344 as it takes away my right as a kanaka and human being from protecting this Aina from those who wish to destroy, even those in Government who turn a blind eye to what is expected of them and give special interest groups the so called keys to the kingdom. We see what is going on in Hawai'i and it needs to stop.

Natasha Boteilho

HB-344

Submitted on: 2/9/2021 8:26:27 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Matthew Villanueva	Individual	Oppose	No

Comments:

I fervently oppose this bill on the grounds

That;

1. This bill will remove our right to a Contested Case Hearing, a quasi-judicial process, and everyone's ability to challenge critical land and water use and other government agencies' decisions that negatively affect our environment and 'ohana.
2. Important native land use cases began with a Contested Case Hearing (i.e. PASH, Kapa'akai, etc) and were originally brought by Kanaka Maoli whose rights and interests in the land/water were being threatened eventually finding their way into the Supreme Court of Hawai'i.
3. 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.

thank you in advance for protecting our resources!

HB-344

Submitted on: 2/9/2021 8:41:29 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan Dane	Individual	Oppose	No

Comments:

My name is Dylan Dane from Waimanalo.

I am submitting written testimony in opposition of HB344. This seems to be a blatant form of discrimination to Native Hawaiian people in the fact that their only recourse of action against the Board of Land and Natural Resources is a civil suit. Not everyone can afford a lawyer. Your purposely removing the hearing process to prevent a large portion of people from being heard outside of a courtroom. Furthermore this removal of a hearing process ties up the alleged violator with having to pay fines and or comply with actions until said court date if/when civil suit is filed until ruling. At this point in this economy having a civil suit be the only recourse is class discrimination. This process is unjust, and will weigh down an already overloaded judicial system with unnecessary civil suits as well as open the state up to liability with said suits. I do not trust the Board of Land and Natural Resources with having the sound judgment to ensure that its actions will not cause unnecessary strain to the tax payers of Hawaii with their actions in the field. Your basicly telling people "if you dont like what were doing sue us". I really think thats a bad idea and the outcome will not be good for tax payers. in summation HB344 is discriminatory of financial grounds and opens state and tax payers up to more liability, and will add unnecessary strain on judicial system.

HB-344

Submitted on: 2/9/2021 8:46:05 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Kapua Medeiros	Individual	Oppose	No

Comments:

Aloha Committee Chair and Members,

I Oppose HB344 for the following reasons

1. This bill will remove our right to a Contested Case Hearing, a quasi-judicial process, and everyone's ability to challenge critical land and water use and other government agencies' decisions that negatively affect our environment and 'ohana.
2. Important native land use cases began with a Contested Case Hearing (i.e. PASH, Kapa'akai, etc) and were originally brought by Kanaka Maoli whose rights and interests in the land/water were being threatened eventually finding their way into the Supreme Court of Hawai'i.
3. 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.

Mahalo me ka 'O ia i'o,
Kapua Medeiros
808-489-1933
kapua40@gmail.com

HB-344

Submitted on: 2/9/2021 8:55:03 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Lori Halemano	Individual	Oppose	No

Comments:

I oppose House Bill 344 for the following reasons:

1. This bill will remove our right to a Contested Case Hearing, a quasi-judicial process, and everyone's ability to challenge critical land and water use and other government agencies' decisions that negatively affect our environment and 'ohana.
2. Important native land use cases began with a Contested Case Hearing (i.e. PASH, Kapa'akai, etc) and were originally brought by Kanaka Maoli whose rights and interests in the land/water were being threatened eventually finding their way into the Supreme Court of Hawai'i.
3. 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.

HB-344

Submitted on: 2/9/2021 9:06:47 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Daniel Bishop	Individual	Oppose	No

Comments:

My name is Daniel Bisop, a retired Firefighter for Honolulu, and a Taro farmer.

I am in strong opposition of the removal of the ability for disputes over water and land to go through contested case findings/hearings.

I was a participant of water struggles that have been resolved by the Contested Case process (Waiahole & Waikane, Maui East Irrigation co.) and find that without that process, You, our Ledgislators, and the Addministrator who oversee our Public Trust resources, make your decissions based on testimony made by special intrest groups.

The process of a Contestead Case enables testimony of the larger community, those who are intimately affected by the outcome of your decissions, and not just the lobbyists that are paid by the deep pockets that are involved.

If We the People distrust Government, it is for good reason. Taking away this ability to paricipate in decision making will only deepen the mistrust.

Daniel Bishop

HB-344

Submitted on: 2/9/2021 9:07:47 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Diane Ware	Individual	Oppose	No

Comments:

Dear Chair and committee members,

This is a bad bill-it Will gut public participation. Transparency and accountability are my utmost concern.

I urge you to oppose this bill now.

Respectfully,

Diane Ware

99-7815 Kapoha Place Volcano HI 96785

HB-344

Submitted on: 2/9/2021 9:13:58 AM

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

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

Comments:

I strongly oppose this bill for the following reasons.

1. This bill will remove our right to a Contested Case Hearing, a quasi-judicial process, and everyone's ability to challenge critical land and water use and other government agencies' decisions that negatively affect our environment and 'ohana.
2. Important native land use cases began with a Contested Case Hearing (i.e. PASH, Kapa'akai, etc) and were originally brought by Kanaka Maoli whose rights and interests in the land/water were being threatened eventually finding their way into the Supreme Court of Hawai'i.
3. 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.

Mahalo,

Noelani Ahia

HB-344

Submitted on: 2/9/2021 9:53:40 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Flora Obayashi	Individual	Oppose	No

Comments:

TO: House Committee on Judiciary and Hawaiian Affairs

I oppose this bill because it deprives the citizen's right to voice and influence agency decisions before they are rendered. It forces us to retain an attorney, and express our opposition through the courts. I believe this is a violation of my constitutional rights to participate in land use policy decisions. I believe it is wrong to push for expediency in agency decisions at the expense of the citizen's right to participate in democracy. Our State Legislature exists to serve the people and is not an authoritarian oppressive regime yet. It is my hope that we will strengthen democracy not cripple it. Please do not pass this bill.

Flora Obayashi, Resident House District 48, Senate District 23

HB-344

Submitted on: 2/9/2021 10:01:51 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Kaylene Sheldon	Individual	Oppose	No

Comments:

To: The House Judiciary and Hawaiian Affairs Committee,

My name is Kaylene Kauwila Sheldon and I oppose House Bill 344 because this

- 1) bill will remove our right to a Contested Case Hearing, a quasi-judicial process, and everyone's ability to challenge critical land and water use and other government agencies' decisions that negatively affect our environment and 'ohana.
2. Important native land use cases began with a Contested Case Hearing (i.e. PASH, Kapa'akai, etc) and were originally brought by Kanaka Maoli whose rights and interests in the land/water were being threatened eventually finding their way into the Supreme Court of Hawai'i.
3. 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.
4. This bill violates our cultural and oral culture including oral traditions from one of Kamehameha's first known kanawai, "Mamalahoe." The Splintered Paddle law gave our ancestors rights, one of those rights was access and opened up other rights for Nā• kanaka to have a voice. To close or prevent Nā• kanaka from having a hearing or a voice means to eradicate Hawaiian history. Therefore please kill this bill immediately.

Mahalo nā• ,

Kauwila Sheldon

HB-344

Submitted on: 2/9/2021 10:05:28 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
JarraeTehani Manasas	Individual	Oppose	No

Comments:

My name is JarraeTehani Manasas and I strongly oppose HB 344 as a Native and resident of Hawai'i. This bill has the potential to remove our rights to a contested case hearing, a quasi-judicial process and any ability to challenge critical land and water use that will negatively affect our environment and ohana. Mahalo

HB-344

Submitted on: 2/9/2021 10:08:23 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Nanea Lo	Individual	Oppose	No

Comments:

Hello,

My name is Nanea Lo and I'm a Kanaka Maoli and lifelong resident in my ancestral homelands. I'm writing in FULL OPPOSITION of HB344 because of following reasons:

1. This bill will remove our right to a Contested Case Hearing, a quasi-judicial process, and everyone's ability to challenge critical land and water use and other government agencies' decisions that negatively affect our environment and 'ohana.
2. Important native land use cases began with a Contested Case Hearing (i.e. PASH, Kapa'akai, etc) and were originally brought by Kanaka Maoli whose rights and interests in the land/water were being threatened eventually finding their way into the Supreme Court of Hawai'i.
3. 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.

Please oppose this bill.

me ke aloha 'Ä• ina,

Nanea Lo

HB-344

Submitted on: 2/9/2021 10:29:38 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Ramona Hussey	Individual	Oppose	No

Comments:

Committee Members,

I urge you to vote NO against this bill which would take away contested case hearings on BLNR issues. Land use issues are critical to the future of Hawaii. Citizens must be allowed to express their concerns in contested case hearings, and not be forced to wait until the cases are heard in Court. If citizens' right to be heard is of no concern, is there no concern for clogging the already over-burdened Courts? Please vote against HB 344.

HB-344

Submitted on: 2/9/2021 10:38:51 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Paul Hanada	Individual	Oppose	No

Comments:

Please oppose this measure. Not allowing due process is unconstitutional. Thank you.

HB-344

Submitted on: 2/9/2021 10:41:41 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Maile Risch	Individual	Oppose	No

Comments:

I speak on behalf of my community, my peers in the school of Hawaiian knowledge, HawaiinuiĀ• kea and as an ally to the Native Hawaiian community in opposition to bill HB344. The community and especially Native Hawaiians should have the right to challenge water and land usage in Hawai'i. Those who are kama'Ā• ina to the land and are familiar with natural resource management need to be included and pose the necessary questions that make sure our legislature and our leaders are supporting proper use and sustainable use of natural resources. We have to start leaning towards agriculture to strengthen our economy and our community. We have to start using water properly and protecting our water. We have to stop thinking that these resources are infinite. If we keep thinking this way, what will Hawai'i look like in 50 years? Will it be the Hawai'i that tourists want to see? People are nurtured from their environment. We are not separate we are the same. If we deplete the lands resources and beauty we do the same to our people... :(Please allow us the right to intervene, it's critical to ensure our descendents live a good life. Isn't that what we all want, to live a good life? But we have to stay balanced and accountable. What will our children think of us if we did nothing?

HB-344

Submitted on: 2/9/2021 10:41:46 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
sharon	Individual	Oppose	No

Comments:

STOP stealing our rights and freedoms!

HB-344

Submitted on: 2/9/2021 10:52:46 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Kelley Farquhar	Individual	Oppose	No

Comments:

Any after 1893 is a fraud and illegal prolonged occupation by non Polynesian displacing them from their own homelands through Genocide of people lands native resources and is illegal under in-laws articles 1-89 and this and other documents has already sent to homeland security because of dhhl third party contests and conflicts of interest as well as fbi investigation construction company on Oahu native tenants rights of Polynesians are First Nations human rights

HB-344

Submitted on: 2/9/2021 11:13:25 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Claud Sutcliffe	Individual	Oppose	No

Comments:

I strongly oppose HB 344!

claud Sutcliffe, PhD

HB-344

Submitted on: 2/9/2021 12:11:33 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Regina Peterson	Individual	Oppose	No

Comments:

Once again...you choose to change the laws to benefit yourselves and your pocketbooks along with other selfish money driven corporations!!! WHY? When will you people understand that without water and land, we...YOU will not survive!!! STOP giving leeway to these profit driven corporations!!! We, the people have a constitutional right to due process. THIS bill is unconstitutional and does not allow us, the people of this land to have say on matters of importance(OUR LAND AND WATER RESOURCES), unless we have legal representation in courts...What happened to democracy for the people!!! Kill this bill!!! I, WE oppose it indefinitely!!!

HB-344

Submitted on: 2/9/2021 12:21:15 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Deborah Ward	Individual	Oppose	No

Comments:

Aloha, Chair and Committee members,

I strongly oppose passage of HB 344. It sacrifices the opportunity for a member of the public with standing to present expert evidence and testimony for decision-makers to hear, PRIOR to decision-making. This bill would preclude the creation of a record for either the decision-makers or the courts to weigh in determining the outcome.

I have had the opportunity (and have demonstrated standing, pro se) to participate in four contested case hearings. The outcome of three of these cases led to a significant protection of public trust resources that would have otherwise been erroneously depleted. I oppose HB344 because it fails to understand the necessity of creating a record for the court to review.

Part of that review will consider whether, based on the record, the agency decision was arbitrary and capricious. To leave the creation of the record to the court turns the process upside down. There can hardly be judicial review, if there is no record. Nor are the limits of judicial review applicable in the absence of a record. The court would essentially be placed in the position of acting like a legislative body, a violation of the separation of powers.

The process relies upon people at the agency level (and of the affected members of the public) having an opportunity to present their evidence, if they are found to have standing. The initial finding of standing is a matter for the agency to determine. Under the contested case bill, there is no determination by the agency regarding standing because there will be no contested case.

Just as the separation of powers problem raises constitutional issues, there may be serious constitutional issues raised by implementing a governmental administrative process that excludes the right of the public to challenge the outcome of that process. Judicial review of the agency decision that considers the evidence presented by the citizen participant would be denied.

There is also the question of judicial deference. Normally, the courts will assume the validity of an agency decision and only invalidate that decision if the decision is found to

be clearly erroneous, arbitrary and capricious, etc. If this bill were to become law, the court could defer to itself, and recourse would be denied entirely.

Please do not assume that due to COVID fiscal constraints that the state's economic status would be improved by this bill; deprivation of the public's opportunity to participate in contested cases could ultimately lead to deleterious errors the could further damage our economic situation.

Sincerely, Deborah Ward P. O. Box 918 Kurtistown HI 96760

Lanny Sinkin
Attorney at Law (Federal Practice)
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Hilo Hawai'i 96721
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(808) 936-4428
February 9, 2021

Testimony in Opposition to HB 344

To understand the Native Hawaiian/Kingdom position, you need to keep in mind the illegal overthrow of the Kingdom government. There has been a resurgence of academic research and political organizing seeking to correct that historical wrong. Everyone understands that the issue of the Kingdom is raised by the Thirty Meter Telescope proposal and that those opposed to righting that wrong will do whatever they can to frustrate any attempt to restore the nation.

The TMT is per se an assertion of jurisdiction over Kingdom lands, i.e. the Department of Land and Natural Resources (DLNR) could not lease the land for the Thirty Meter Telescope (TMT) to the Thirty Meter Telescope International Observatory (TIO) unless DLNR claimed state ownership of the lands in the first place.

On the opposite side is the continual effort to extinguish any claims by those who descend from the subjects of the Kingdom. The history is not a secret; everyone knows that the Kingdom was illegally overthrown. I trust you have reviewed The Apology Resolution, Public Law 103-150, in which the Congress acknowledges the illegal nature of the overthrow and the seizure of Kingdom lands without permission of the Kingdom or its subjects and without compensation for the seizure. The Federal Government and the State of Hawai'i seek to avoid the obvious remedy of restoration. Instead, they want to choke off any such movement.

So there are bills introduced in the Legislature that represent the views of both sides.

From the Native Hawaiian side, there was a bill introduced that would bar any further development on Mauna Kea. HB 703. The bill was referred to three committees. A public petition gathered signatures urging the Chair of the first committee to have a hearing on the bill. Instead, the Chair denied a hearing and killed the bill.

From the astronomy side, there are bills being pushed to take away any current tools the restoration movement might use to protect the Mauna from further development.

One such tool is the ability of the public to request a contested case when agencies take an action that is opposed. You may know that the contested case addressing the permit for the TMT consisted of 44 days of hearings with 71 witnesses. The hearings were broadcast live over the public television station, so thousands of people had an opportunity to watch and learn.

A bill has been introduced, HB 344, to eliminate the contested case option for key agencies addressing land and water, such as those responsible for making decisions that affect the Mauna. Anyone objecting to an agency action would have to take the agency to court.

Just to emphasize how radical such a bill would be, the whole administrative process/judicial review consists of the agency acting first to create a record and then that record circumscribes what the courts will review.

The court would normally be limited in its review to the record of the proceeding before the agency. There can hardly be judicial review, if there is no record to review. Nor are the limits of judicial review discernable in the absence of a record. The court would essentially be placed in the position of acting like an executive branch body and a quasi-legislative body, a violation of the Constitution's separation of powers.

As a footnote to that problem, the process relies upon people at the agency level having an opportunity to present their evidence, if they are found to have standing. The initial finding of standing is a matter for the agency to determine. Under the contested case bill, there is no determination by the agency regarding standing because there will be no contested case.

The agency record would normally include the testimony of witnesses called by the agency or the challengers. Excluding that part of the process would mean that the challengers would not have the opportunity to cross examine the agency witnesses. Part of that review will consider whether, based on the record, the agency decision was arbitrary and capricious. To leave the creation of the record to the court turns the process upside down.

Just as the separation of powers problem raises constitutional issues, there may be serious constitutional issues raised by implementing a governmental administrative process that excludes the right of the public to challenge the outcome of that process and to have a judicial review of the agency decision that considers the evidence presented by the citizen participant. Three minutes at a public hearing called by the agency can hardly make up for the loss of participation in a contested case.

There is also the question of judicial deference. Normally, the courts will assume the validity of an agency decision and only invalidate that decision, if the decision is found to be clearly erroneous, arbitrary and capricious, etc. Obviously, the court cannot defer to itself or decide for itself whether its reasoning supports its decision.

The Chair who killed the Mauna bill to stop further development passed the contested case bill in his committee. The clear intent of the contested case bill is to prevent the type of challenge mounted to the TMT.

Then there is the recent statement by the Speaker of the House about removing UH from its management position and creating a new entity to manage the Mauna that will include the Kia'i (protectors of the Mauna). While the true intent of that statement has yet to be fully revealed, it is reasonable to consider the intent to be to politically neutralize the Kia'i. If

there is a new entity and the Kia'i are offered a seat at the table, then either the Kia'i are coopted by agreeing to participate in some process that does not acknowledge the fundamental injury of the overthrow or the Kia'i decline to participate and get labelled as unwilling to compromise and, therefore, illegitimate. For the Kia'i, any proposal that does not include no further development is essentially a non-starter.

There is a long history of duplicity and dishonesty that traces to the fundamental understanding that the State government is not a legitimate government because the annexation of the Kingdom was never legally accomplished. The Speaker's statement needs to be taken with a large amount of salt.

A group of telescope operators have filed testimony in support of HB 344 in order to ensure the "timely renewal" of the Mauna Kea lease. As I think you already know, the Master Lease between the Department of Land and Natural Resources and the University of Hawaii, that includes the land where the TMT is proposed, is set to expire in 2033. All the telescope leases on the Mauna are subleases of that Master Lease. So when the Master Lease expires, those leases are scheduled to terminate. By the termination date, the existing telescopes should be decommissioned.

There were two contested cases regarding the TMT. In the first case, the DLNR approved the permit and then held the contested case. The Hawai'i Supreme Court found that to be putting the "cart before the horse" violating the due process rights of those opposing the permit to be heard before a decision was made. The Supreme Court, invalidated the permit, and directed the agency to hold a contested case prior to any final decision on the permit.

In the second case, DLNR approved the permit after the lengthy contested case mentioned above. The Hawai'i Supreme Court approved that decision.

The entire process took more than ten years.

Consider this: Construction of the TMT is expected to take ten years. TMT would have an operating life of at least 50 years. The TMT Board of Directors selected Mauna Kea as the site for the TMT in 2009. BLNR approved the Conservation District Use Permit in 2013.

Now we are at 2021 and the construction has yet to begin. If construction did commence now, the project would not be finished until 2031. With the Master Lease expiring in 2033, it makes no sense that the TMT would be permitted to begin construction of the TMT to be completed only a few years before the Master Lease expired and the TMT sublease terminated UNLESS the BLNR issued the TMT permit with the expectation that the Master Lease would be renewed or some other lease signed to replace it.

That expectation is again putting the cart before the horse. The renewal or replacement of the lease and the implications for the TMT sublease is a matter yet to be determined. Under the current rules, that renewal or replacement would be subject to a contested case.

Having seen what happened with the TMT permit, the telescope promoters are not willing to risk a contested case for the lease renewal or replacement that would delay or prevent a new lease beyond 2033. So they are asking the Legislature to foreclose such a contested case and ensure “timely renewal” of the lease, again assuming that such a renewal is guaranteed despite the absence of any process.

The State of Hawai’i dishonors itself by participating in this blatant power play to eliminate citizen participation in order to benefit a private consortium. Such action is reminiscent of the attempts to fast track the Superferry by avoiding the legal requirements of Hawai’i environmental law and then passing special legislation to allow the Superferry to operate without compliance with the law – a law the Supreme Court struck down as unconstitutional. I trust a similar fate will await HB 344 should the Legislature pass this egregious bill.

HB-344

Submitted on: 2/9/2021 1:11:32 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
MaryAnn Omerod	Individual	Oppose	No

Comments:

I Strongly Oppose House Bill 344 for the following reasons.

1. This bill will remove our right to a Contested Case Hearing, a quasi-judicial process, and everyone's ability to challenge critical land and water use and other government agencies' decisions that negatively affect our environment and 'ohana.
2. Important native land use cases began with a Contested Case Hearing (i.e. PASH, Kapa'akai, etc) and were originally brought by Kanaka Maoli whose rights and interests in the land/water were being threatened eventually finding their way into the Supreme Court of Hawai'i.
3. 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.

HB-344

Submitted on: 2/9/2021 1:13:02 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Patricia Blair	Individual	Oppose	No

Comments:

A bad bill. I oppose!

HB-344

Submitted on: 2/9/2021 1:24:29 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Frederick Reppun	Individual	Oppose	No

Comments:

I strongly oppose this bill. It would severely limit the ability of ordinary people to contest mismanagement of water and land. Compared to the court system, the contested case process is a more direct and efficient way to address disputes, for all parties involved. If passed, this bill would waste taxpayer dollars, delay important management decisions, and, worst of all, insulate from accountability those who would use Hawaii's public trust resources for private gain.

HB-344

Submitted on: 2/9/2021 1:34:31 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Jeff Mcknight	Individual	Oppose	No

Comments:

I oppose this bill because it deprives the community it's voice and influence agency decisions before they are rendered. . We as citizens should have the right to participate in land use policy decisions. It is wrong to push for expediency in agency decisions at the expense of the citizen's right to participate in democracy. Our State Legislature exists to serve the people. This bill further weakens what is supposed to be a democratic process. Mahalo for your consideration.

HB-344

Submitted on: 2/9/2021 1:34:40 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Sandra Herndon	Individual	Oppose	No

Comments:

I am opposed to the very idea of this bill! To try to eliminate the voice of the people in the Legislative area in the matters of life, AS IS WATER!, is to destroy Democracy. To keep the community out of discussions that impact their very existence, is not only wrong, against everything for which the Hawaii Constitution stands. Do not pass House Bill 344!

Mahalo

Sandra Herndon

Kaua`i

HB-344

Submitted on: 2/9/2021 1:56:18 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Ted Bohlen	Individual	Oppose	No

Comments:

I **STRONGLY OPPOSE** eliminating State and county contested case hearings on land disputes. Contested cases are an efficient way to develop the record and air issues on the administrative level, as opposed to having such cases start in court. Please defer this bill!

LATE

Committee on Judiciary & Hawaiian Affairs

RE: HB No. 344

Aloha e Mr. Nakashima, Mr. Matayoshi, a me JHA Committee,

‘O Kamalani Uehara ko‘u inoa. No Maui mai au. ‘Imi i ka wai no ka‘u hana. I am opposed to HB 344 amending various HRS sections so that the BLNR (Board of Land and Natural Resources) and CWRM (Commission on Water Resource Management) will be excused from conducting contested case hearings and instead be instructed to go through circuit court.

It seems incorrect and maybe illegal to remove contested case hearings. If that happens, then it will be very easy for entities with money to get away with taking advantage of the individuals with grievances. How are these state agencies going to make decisions when the people’s complaints aren’t even heard? Why even have BLNR or CWRM if there isn’t the existence of contested cases? We absolutely need accountability in our use of natural resources.

Maybe the issue isn’t where to dump the increasing number of contested cases because these government groups don’t want responsibility of these cases. Maybe the issue is more pro-action needed by these groups who sit on these cases for months and drags it on for years with no response or acknowledgement. That’s how the state can save money. Let’s remember it took 11 years for CWRM to agree that there should be a minimum amount of water at all times in Wailuku, Waikapu, Waihe‘e, and Waiehu streams. If this was thrown in circuit court, there would still be zero water in Waikapu and Wailuku streams, which is what CWRM decided back in 2003. And they would’ve gotten away with it too if not for the contested case, despite the fact it was dragged on for years.

We need contested cases so the actual community members have the chance to fight for what they need. The “lengthy and expensive” complaints that I read in the testimonies of big name organizations are only for themselves. Just look at who is supporting this bill and please ask if they are concerned about anything other than their own money.

E ‘olu‘olu lohe pono,

Kamalani

LATE

HB-344

Submitted on: 2/9/2021 2:00:49 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Leimomi Khan	Individual	Oppose	No

Comments:

Aloha,

I write in strong opposition to HB 344, that would amend Hawai'i Revised Statutes so that the Board of Land and Natural Resources and Commission on Water Resource Management shall not conduct contested case hearings. In addition, the bill amends the HRS so that counties shall not conduct contested case hearings regarding disputes over land use. Instead, decisions and disputes may be contested and adjudicated directly in circuit court.

I believe this bill is premature and lacking clear evidence to support a change in the contested hearing process, except for DLNR's comment that, "The number and/or complexity of contested cases has greatly increased over time. The increase takes up immense time and expense for the Board and Commission to hold contested cases." So, the answer then is, transfer this workload to an already overburdened judiciary (circuit courts.) When major changes like this are proposed, it is usually after some study required by the legislature to explore the issue, for example, to review the processes of the contested case hearings to determine how those processes might be improved upon. OR, in this case, to also include a study on whether the Circuit Courts are equipped to handle the increase in workload and have the resources to conduct contested case hearings. And, a most critical component of such study is to determine the impact on those filing the contested case hearing.

Arguments in favor of this legislation seem to stem from the "lengthy and expensive" contested hearing process and economic impact it has on investors. Yet, shouldn't the primary goal be to best protect the life of the land and public trust resources, and support Hawaii's value of "malama 'aina". Too, the proposal seems to also go against the sound management principal of resolving complaints at the lowest levels with the courts involved only if the issue can't be resolved by those directly impacted.

Besides the above comments, I fully support the testimony that was submitted by Earthjustice who articulates well the reasons for opposing this bill. Please do not pass it.

LATE

HB-344

Submitted on: 2/9/2021 2:34:14 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Elizabeth Hansen	Individual	Oppose	No

Comments:

This bill's proposal to eliminate contested cases is not appropriate. Fundamental due process under the Hawaii (and US) Constitutions requires agencies to hold a hearing **before** they make a decision that affects individual rights and privileges. Eliminating this right to an agency hearing, and substituting a court action instead -- **after** the agency makes its decision -- violates constitutional due process.

Please oppose this bill.

Mahalo,

Elizabeth Hansen

Hakalau HI 96710

LATE

HB-344

Submitted on: 2/9/2021 2:41:42 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Christopher Boscole	Individual	Oppose	No

Comments:

Oppose HB 344. A bad bill that strips the public's right to immediate due process by directly contesting cases with the agencies involved.

LATE

HB-344

Submitted on: 2/9/2021 2:50:41 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Wailani	Individual	Oppose	No

Comments:

Aloha, my name is Wailani Stoner I am a KĀ• naka mother from NĀ• hiku Maui, and I oppose HB344. This bill is unconstitutional and does no justice in helping the environment, land or the people of Hawai'i, especially KĀ• naka Maoli. It seems as to only protect the foreign investors and big corporations who aim to exploit our islands and culture for their own monetary gain. How are we to defend these precious and necessary needs of survival if we are constantly being silenced? What does the future of our keiki look like when the rivers run dry and the land is so poisoned we are unable to grow food? We, as an illegally occupied nation, have the right to challenge any and all threats to our environments and 'Ohana.

LATE

HB-344

Submitted on: 2/9/2021 2:52:26 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Pua Case	Individual	Oppose	No

Comments:

1. This bill will remove our right to a Contested Case Hearing, a quasi-judicial process, and everyone's ability to challenge critical land and water use and other government agencies' decisions that negatively affect our environment and 'ohana.
2. Important native land use cases began with a Contested Case Hearing (i.e. PASH, Kapa'akai, etc) and were originally brought by Kanaka Maoli whose rights and interests in the land/water were being threatened eventually finding their way into the Supreme Court of Hawai'i.
3. 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.

mahalo.

LATE

HB-344

Submitted on: 2/9/2021 2:52:52 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Marie Alohalani Brown	Individual	Oppose	No

Comments:

1. This bill will remove our right to a Contested Case Hearing, a quasi-judicial process, and everyone's ability to challenge critical land and water use and other government agencies' decisions that negatively affect our environment and 'ohana.
2. Important native land use cases began with a Contested Case Hearing (i.e. PASH, Kapa'akai, etc) and were originally brought by Kanaka Maoli whose rights and interests in the land/water were being threatened eventually finding their way into the Supreme Court of Hawai'i.
3. 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.

HB-344

Submitted on: 2/9/2021 3:11:12 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara L. George	Individual	Oppose	No

Comments:

OPPOSE

HB-344

Submitted on: 2/9/2021 3:17:08 PM

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

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

Comments:

I strongly oppose HB 344. HB344 is authoritairn and strips the public's right to a contested case from county zoning and our land and water agencies. Agencies do not always follow the law. Contested cases are necessary to ensure decisions are made on the facts of the case. I strongly oppose HB 344.

HB-344

Submitted on: 2/9/2021 3:17:16 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Rodger Hansen	Individual	Oppose	No

Comments:

Please oppose this bill!

This bill's proposal to eliminate contested cases is not appropriate. Fundamental due process under the Hawaii (and US) Constitutions requires agencies to hold a hearing **before** they make a decision that affects individual rights and privileges. Eliminating this right to an agency hearing, and substituting a court action instead -- **after** the agency makes its decision -- violates constitutional due process.

Mahalo,

Rodger Hansen, Hakalau HI

HB-344

Submitted on: 2/9/2021 3:40:43 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Tony Radmilovich	Individual	Oppose	No

Comments:

Bad idea. Please opose this bill.

HB-344

Submitted on: 2/9/2021 4:04:29 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Tanja Miller	Individual	Oppose	No

Comments:

This is a bad bill that strips the public's right to a contested case from county zoning and our land and water agencies

HB-344

Submitted on: 2/9/2021 4:06:02 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Simone Ray	Individual	Oppose	No

Comments:

I oppose this bill. I believe that it is important that we have and especially Hawaiians have a say in the proper management of natural resources! 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.

HB-344

Submitted on: 2/9/2021 6:48:16 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Dyson Chee	Individual	Oppose	No

Comments:

Thank you for the opportunity to testify in opposition to HB344.

HB-344

Submitted on: 2/9/2021 7:13:24 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Sharron Gonzalez	Individual	Oppose	No

Comments:

1. This bill will remove our right to a Contested Case Hearing, a quasi-judicial process, and everyone's ability to challenge critical land and water use and other government agencies' decisions that negatively affect our environment and 'ohana.

2. Important native land use cases began with a Contested Case Hearing (i.e. PASH, Kapa'akai, etc) and were originally brought by Kanaka Maoli whose rights and interests in the land/water were being threatened eventually finding their way into the Supreme Court of Hawai'i.

3. 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.

I strongly oppose this bill. Mahalo for your time.

Sharron Gonzalez

Hilo Hawaii

HB-344

Submitted on: 2/9/2021 9:30:21 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Michal Fentin Stover	Individual	Oppose	No

Comments:

I oppose HB344 because it prevents members of the public from having their voices heard on contested DNLR and water resource management issues as well as county land use disputes without engaging in costly litigation. This bill prevents such matters from being resolved by more informal means than litigation.

Thank you.

HB-344

Submitted on: 2/9/2021 9:41:36 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Jileen Russell	Individual	Oppose	No

Comments:

I feel that this bill is taking away our rights as residents and business owners in the State of Hawaii. A Bill like this will set a precedent that actions and decisions can be made without consulting the community and residents of Hawaii, I feel that this is wrong especially concerning water and land management of State and County lands. The water belongs to us all and the DLNR has not the funding or the staffing or the knowledge to operate as sole authority over such resources.

HB-344

Submitted on: 2/9/2021 9:44:13 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Avi Okin	Individual	Oppose	No

Comments:

HB344 seems to be one of those bills that are written to keep us citizens out of the loop when big business, developers and other monied entities want to get permits and other favors from our government. Therefore, I think this bill needs to be rejected.

HB-344

Submitted on: 2/9/2021 10:06:28 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Kapulei Flores	Individual	Oppose	No

Comments:

Aloha,

I am a concerned Kanaka Maoli that is trying to look out for the land and water rights of Hawai'i. The native people of these lands have said how important it is to preserve and properly take care of the land and water here because these are the resources that support all of us. Yet the government, different agencies, and companies have not had the water and lands best interest in mind when they make a lot of land decisions in Hawai'i. This is why the Native Hawaiians and local people of Hawai'i have the right to protect the land and water by calling out any mismanagement of land and water rights. This bill not only strips away rights from all the people of Hawai'i, but it also gives a green light to completely misuse and manage our natural resources during global warming and a pandemic. This bill takes away the checks and balances in things that are in place to make sure all is being done in a good way that is beneficial for the people and the land without being harmful. This will take away accountability, free speech, and our rights as well as land and water rights. If you want to actually look out for and take care of Hawai'i, the people, the land, and the water, you wouldnt continue to make it harder to protect our only resources.

Mahalo

HB-344

Submitted on: 2/9/2021 11:05:52 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Sunny Unga	Individual	Oppose	No

Comments:

I strongly oppose HB344. The contested case hearing procedure allows for greater public participation and an opportunity for the public to address legitimate concerns without having to go through expensive court litigation. Eliminating this process is dangerous because it will grant too much decision making power to the BLNR board. The contested case hearing process allows for the public to have their concerns be contemplated, considered, and investigated further and as a result ensuring that the decisions being made by the BLNR board are consistent with their mission to “enhance, protect, conserve and manage Hawaii’s unique and limited natural, cultural and historic resources held in public trust.”

HB-344

Submitted on: 2/9/2021 11:08:51 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Meredith Buck	Individual	Oppose	No

Comments:

I strongly oppose HB344 which aims to eliminate the public's right to contested cases from county zoning and land & water agencies. Contested case hearings are a vital way for the public to be heard in land use issues. Taking this away puts profit over people by silencing voices of dissent where development and other land use issues are concerned. Please do not pass HB344.

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

FROM: Candace Fujikane, UH English Professor

RE: Opposition to HB344, "Relating to Government"

DATE: February 8, 2021

Aloha mai kākou,

My name is Candace Fujikane, I'm an English professor at the University of Hawai'i, and I teach classes on land and water legislation and struggles in Hawai'i. I strongly oppose HB344, "Relating to Government."

This proposal to do away with the contested case hearing process came up in 2018 in HB1565, and that bill was soundly defeated precisely because it proposes to extinguish the right of the people to contested case hearings, a quasi-judicial process that allows ordinary citizens to challenge decisions made by the Board and Land and Natural Resources' and Commission on Water Resource Management to approve harmful land and water use permits. Without contested case hearings, which are designed to enable citizens to have their objections on record and to use this record on appeal in a court a law, citizens would not be able participate in these decisions made on the part of these agencies. To force adjudication to take place in the courts is cost prohibitive to citizens who do not have access to those kinds of financial resources.

The fact that the governor of the State of Hawai'i nominates and appoints the members of these decision-making bodies makes this process one that is subject to the political vagaries of the day. We have seen under the Trump administration how precarious such appointments can be, and contested case hearings provide an important process of checks and balances to those precarities.

Contested case hearings are an invaluable component for participatory government that values the rights of citizens. The Hawai'i State Constitution states in Article XII, Section 7: "The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. [Add Const Con 1978 and election Nov 7, 1978]." The protection of these rights is made possible by contested case hearings that have resulted in landmark decisions in the PASH and Kapa'akai cases, cases that have protected lands and resources so that Kanaka Maoli can continue to steward lands in a way restores their abundance.

Please do not take the voices of the people away from them. Oppose HB344.

Chair Mark Nakashima
Vice Chair Scot Matayoshi

House Committee on Judiciary & Hawaiian Affairs

Thursday, February 10, 2021
2:00 PM

TESTIMONY IN STRONG OPPOSITION TO HB344 RELATING TO GOVERNMENT

Aloha Chair Nakashima, Vice Chair Matayoshi, Members of the House Committee on Judiciary & Hawaiian Affairs,

My name is Jun Shin, I am a Junior at the University of Hawai‘i at Mānoa and currently serve as an at-large board member for the Young Progressives Demanding Action. I am testifying today as an individual in **STRONG OPPOSITION** to **HB344**, Relating to Government.

Contested case hearings allow for a public that is usually only able to give verbal or written testimony to participate in decision making that affects their community in a quasi-judicial setting. Citizens are able to introduce the testimony of expert witnesses, cross-examine witnesses, and rebut when necessary. This measure would remove this legal right to use contested case hearings to hold the Board of Land & Natural Resources and Commission on Water Resource Management accountable for harmful land and water use permits.

It is just not right that the legislature would use a session where community members are not able to gather at the Capitol to speak to their representatives in order to pass this legislation, this is not good government and lacks transparency. By making adjudications happen in courts, you are limiting participation to those who can afford it. Corporate and development interests may find it inconvenient, but communities who have been wronged deserve to be heard. They have the right to have equal standing in these hearings in order to fight against the loss of water or bad development that threatens their rights and livelihoods.

Please **HOLD HB344**. Stand with the community and fulfill your legal responsibilities to the Public Trust Doctrine.

Mahalo for the opportunity to testify,

Jun Shin,
1561 Kanunu Street
Honolulu, HI 96814
Cell: 808-255-6663
Email: junshinbusiness729@gmail.com

HB-344

Submitted on: 2/10/2021 5:33:36 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
M. Llanes	Individual	Oppose	No

Comments:

The public has a right to contested case hearings because when requested there usually is valid reason for the hearing. This is just another way of catering to "big money" and denying citizens their basic rights. And definitely acts against the Hawaiian people. Please stop behaving like the previous presidential administration and stop these senseless bills. Do the pono thing.

Mahalo

HB-344

Submitted on: 2/10/2021 7:30:40 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Juanita Brown Kawamoto	Individual	Oppose	No

Comments:

Aloha,

I am writing in strong opposition to HB344.

HB-344

Submitted on: 2/10/2021 7:38:06 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
David Hunt	Individual	Oppose	No

Comments:

Seeking to eliminate effected individuals' ability to request a contested case hearing is an arrogant, anti-democratic assault on individual rights. SHAME on those pushing this nonsense!!

HB-344

Submitted on: 2/10/2021 7:53:44 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Yulia Muzychenko	Individual	Oppose	No

Comments:

Please oppose this bill

HB-344

Submitted on: 2/10/2021 8:06:33 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Joe Wilson	Individual	Oppose	No

Comments:

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS:

I strongly oppose this attempt to strip away the public's right to a contested case from county zoning and our land and water agencies and resent the effort to force concerned citizens to use the courts to force public agencies to fulfill their obligations.

Sincerely,

Joe Wilson

Waiale'e / north shore O'ahu

HB-344

Submitted on: 2/10/2021 8:20:19 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Sherri Thal	Individual	Oppose	No

Comments:

This bill is bad for anyone who needs to contest a case concerning our public resources and is unable/cannot afford to hire a lawyer. It will also clog up our court system. Please vote NO on HB344

Mahalo,

Sherri Thal, Kea'au, HI 96749

HB-344

Submitted on: 2/10/2021 8:28:43 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Joe P. Moss	Individual	Oppose	No

Comments:

I am against this bill. A contested case hearing is essential to enable citizens to preserve and protect their rights when dealing with governmental agencies. Otherwise, arbitrary and sometimes even personally or politically motivated decisions by agency personnel can happen. Citizens need a right to a contested case.

Joe Moss

HB-344

Submitted on: 2/10/2021 8:31:19 AM

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

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

Comments:

Please make decisions on how your family will be protected in this as well. If you continuously desecrate the Aina and your intentions are to silence the care takers of this Aina, you will have nothing. Our right to speak and protect will never end. The desecration and development and silencing must stop. And still we rise. Malama Pono. Power is to the people.

HB-344

Submitted on: 2/10/2021 8:31:49 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Phaethon Keeney	Individual	Oppose	No

Comments:

Please OPPOSE HB344. Taking away the public's right to due process thru removal of the contested case procedure exposes public trust resources to manhandling and abuse by private entities who do not have the public interest in mind. Such maneuvering is unconstitutional and will likely be challenged, meanwhile tarnishing Hawaii's reputation in protection of public trust resources.

Please OPPOSE HB344.

Mahalo, Phaethon Keeney

Honokaa Hawaii 96727

HB-344

Submitted on: 2/10/2021 9:01:28 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Nana-Honua Manuel	Individual	Oppose	No

Comments:

Please remember your oath, be pono, represent the people and perform your trust responsibility to the general public. Contested case hearings provide an avenue for the general public to participate without having to have legal representation. Please do not pass this bill in order to benefit corporate convenience. As you know, Democracy is cumbersome and time consuming but that is Democracy.

HB-344

Submitted on: 2/10/2021 9:02:03 AM

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

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

Comments:

I strongly oppose HB 344, for many reasons

HB-344

Submitted on: 2/10/2021 9:34:14 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Tom Aitken	Individual	Oppose	No

Comments:

It is disingenuous and ludicrous for developers to claim the limiting the contested hearing system for land-use would streamline the process and still provide adequate input from grassroots individuals and organizations concerning land-use. I urge you two strongly oppose this blatant land grab. Thank you.

HB-344

Submitted on: 2/10/2021 9:36:43 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Leah K. Yagin	Individual	Oppose	No

Comments:

My name is Leah Yagin, and I am from Southern California. Whether residing in Hawaii or another state, we stand in solidarity to protect the rights of decision-making for the lands to the people who know them best. This bill will remove the people's rights to a Contested Case Hearing, a quasi-judicial process, and everyone's ability to challenge critical land and water use and other government agencies' decisions that negatively affect the environment and families. Important native land use cases began with a Contested Case Hearing (i.e. PASH, Kapa'akai, etc.) and were originally brought by Kanaka Maoli whose rights and interests in the landwater were being threatened eventually finding their way into 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.

HB-344

Submitted on: 2/10/2021 9:44:50 AM

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

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

Comments:

OPPOSE

Contested cases are the way that people can actually address issues. Without them as a vehicle for justice, it will be only the corporations, military that will be able to participate. Enough is enough.

HB-344

Submitted on: 2/10/2021 9:45:33 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
James Long	Individual	Oppose	No

Comments:

HB344 is honestly, bad policy. It smells totalitarian. To remove the public's ability and right to a contest case from county zoning is just wrong. And, why only from land and water agencies?

Please do not allow this bill to pass.

Thank you,

James
Long
Na'alehu

HB-344

Submitted on: 2/10/2021 10:27:26 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Maluhia Kapena Stoner	Individual	Oppose	No

Comments:

The BLNR Along with other resource related government agencies and/or departments have forever disregarded the opinions of the general population to satisfy corporate entities. Case hearings are the only chance for the common population to express their opinions. The desires of private corporations have always been placed far above the demands of the majority population by the State of Hawaii and it's departments. The State of Hawaii has again proven through the attempted passing of this unconstitutional bill, that they have no regard for the will of the people. I demand that the State of Hawaii and all its departments take further action in the opposite direction. I demand that you not only continue allowing case hearings, but also that you implement more action toward guaranteeing that what the majority population wants becomes the main priority of the State of Hawaii and other United States government agencies and/or department's operating in the State of Hawaii. There are hundreds if not thousands of accounts of illegal activity that have occurred and continue to occur between private entities and departments operating under command of the State of Hawaii. The Hawaiian people will no longer tolerate the continued exploitation of our resources from foreign entities. Foreign entities include the State of Hawaii, as they have proven again that they hold the interests of private foreign entities and/or individuals far above the demands of the majority population. I demand that the State of Hawaii and all other foreign entities and/or individuals currently within the boundaries of the State of Hawaii cease any and all operations that involve the disturbance and/or removal of any and all natural resources. This system is designed against the common people, it is designed so that we the majority have to account for the physical and non-physical obstacles deliberately placed in-between us and the "authorities". Diplomacy and politics fail when voices are disregarded, the majority population will legally take back what is ours if it is not given back to us.

HB-344

Submitted on: 2/10/2021 10:50:15 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Cindy Evans	Individual	Oppose	No

Comments:

Oppose.

HB-344

Submitted on: 2/10/2021 11:21:25 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Maria Walker	Individual	Oppose	No

Comments:

Aloha to the Committee on Judiciary and Hawaiian Affairs,

I am writing to ask that you vote against HB344. I believe that it is vitally important to have an avenue for the public to bring contested cases to court in disputes with our state land and water agencies and county zoning officials. It is critical to a democratic government that it is held accountable to the public for the decisions it makes and actions it takes.

Sadly, in the past there have been many instances of various state and county governmental agencies acting to support businesses and corporations at the expense of our natural resources and the well being of our people. Our state governemental agencies are charged with carrying out and upholding the public trust; this is done in service to Hawai'i and her residents and to no other entity. Please ask yourselves: is voting against the ability of your constiutents to have the right to court proceedings in these instances contributing to their freedom and agency, or to their ability to determine what happens to precious natural resources and land in their communities? I think you will realize it is not, and I hope you remember that the public trust is just that- the people are placing their trust in you to actively protect their rights, and the rights of Hawai'i's natural resources.

Thank you for hearing my testimony,

Maria Walker

1728 Hulu Rd.

Kapa'a, HI 96746

HB-344

Submitted on: 2/10/2021 11:49:05 AM

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

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

Comments:

Oppose.

HB-344

Submitted on: 2/10/2021 12:16:09 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Ivy Iaea-McIntosh	Individual	Oppose	No

Comments:

I oppose!

HB-344

Submitted on: 2/10/2021 12:20:05 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Chassidy Reis-Moniz	Individual	Oppose	No

Comments:

I strongly oppose*

HB-344

Submitted on: 2/10/2021 12:22:40 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Charmaine Nee	Individual	Oppose	No

Comments:

I oppose

HB-344

Submitted on: 2/10/2021 12:36:22 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Jade Moss	Individual	Oppose	No

Comments:

Aloha members of Judiciary and Hawaii Affairs Committee,

Please oppose this measure. Contested cases have proven a necessary step to protecting the environment including Hawaiian cultural practices and endangered species, protecting our public trusts such as water, and to challenge developments that don't truly address affordable housing.

Mahalo for considering this testimony.

Jade Moss

Lihue

HB-344

Submitted on: 2/10/2021 2:13:20 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Johanna Stone	Individual	Oppose	No

Comments:

Aloha nui mai nā• kā• kou. ‘O wau nā• kā“ia ‘o Kapā• maika‘i Stone, eia nā• au ke waiho aku nei i ku‘u wahi leo KĀ‘Ā’ no kā“ia pila nei. No ka mea:

We have the right to contest cases regarding county zoning and our land and water agencies. Why anyone would want to try to take this away only seems like they are afraid of opposition to a CLEARLY unpopular and inappropriate rezoning or issue regarding land and water agencies.