



*The Judiciary, State of Hawai'i*

**Testimony to the Thirty-Second Legislature, 2024 Regular Session**

**House Committee on Energy & Environmental Protection**

Representative Nicole E. Lowen, Chair  
Representative Elle Cochran, Vice Chair

**House Committee on Water & Land**

Representative Linda Ichiyama, Chair  
Representative Mahina Poepoe, Vice Chair

Tuesday, February 13, 2024, 9:05 a.m.  
State Capitol, Conference Room 325 & Videoconference

by:

Thomas J. Berger  
Staff Attorney for the Hawai'i Supreme Court

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** House Bill No. 1629, Relating to Renewable Energy.

**Purpose:** Requires contested cases or environmental impact statement cases involving renewable energy, except cases involving incineration, to be appealed from an agency's decision directly to the Hawai'i Supreme Court for final decision. Requires the cases to be prioritized and decided expeditiously.

**Judiciary's Position:**

The Judiciary has strong concerns about this bill as drafted, and submits the following comments for consideration.

First, the bill would likely benefit from a more detailed explanation on the types of contested cases that are entitled to direct appeal to avoid unintended consequences and abuse of a direct appeal process. As drafted House Bill No. 1629 would allow certain direct appeals on contested cases that involve "renewable energy, except cases that involve any form of



incineration.” The Judiciary submits that further specificity to this definition would likely promote judicial efficiency and the efficient resolution of disputes.

Second, House Bill No. 1629 operates to remove certain cases involving environmental impact statements from the jurisdiction of the environmental courts created and established by the legislature in 2014. Instead, under House Bill No. 1629, certain qualifying contested cases could be directly appealed to the Hawai‘i Supreme Court from the agency decision. But the legislature in 2014 by virtue of Act 218 (2014) established the environmental courts to “promote and protect Hawai‘i’s natural environment through consistent and uniform application of environmental laws[.]” See Act 218, § 1 (2014). Consistent with the intent of the legislature set forth in Act 218, the parties and public all benefit from having the environmental court resolve the types of claims covered by House Bill No. 1629 in the first instance.

As a possible solution, the Judiciary would support amendments to House Bill No. 1629 to require: (1) contested cases of the type covered by House Bill No. 1629 to be appealed in the first instance to the environmental court; and, (2) to allow any appeal of the environmental courts’ decisions on these particular types of cases to be filed directly with the Hawai‘i Supreme Court by a certiorari application.

Thank you for the opportunity to testify on this matter.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-SECOND LEGISLATURE, 2024**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1629, RELATING TO RENEWABLE ENERGY.

**BEFORE THE:**

HOUSE COMMITTEES ON ENERGY AND ENVIRONMENTAL PROTECTION  
AND ON WATER AND LAND

**DATE:** Tuesday, February 13, 2024      **TIME:** 9:05 a.m.

**LOCATION:** State Capitol, Room 325 and Videoconference

**TESTIFIER(S):** Anne E. Lopez, Attorney General, or  
Alison S. Kato or Bryan C. Yee, Deputy Attorneys General

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Chairs Lowen and Ichiyama and Members of the Committees:

The Department of the Attorney General provides the following comments on this bill.

The purpose of this bill is to require contested cases or environmental impact statement cases involving renewable energy to be directly appealed from an agency's decision to the Hawai'i Supreme Court. The bill also requires that such cases be prioritized and decided expeditiously.

Section 2 of this bill amends section 91-14, Hawaii Revised Statutes (HRS). Section 91-14(j) contains a provision beginning on page 6, line 17, and ending on page 7, line 2, that does not appear in the current statute. Because the new wording is not underscored, it is not clear whether the added wording was intended to be added to the statute. The new wording provides:

A person aggrieved seeking judicial review of an administrative decision under the Hawaii administrative procedure act must initiate review proceedings within thirty days after service of the final decision and order, as provided in this section; this section does not permit the filing of cross-appeals of agency decisions outside the thirty-day window.

The additional provision does two things: (1) requires judicial review of a contested case to be initiated within thirty days of service of a final decision and order; and (2) prohibits the filing of cross-appeals after thirty days of service of a final decision

and order. Section 91-14(b), HRS,<sup>1</sup> already requires that review proceedings by the Hawai'i Supreme Court be initiated within thirty days, so it is unnecessary to repeat the filing requirement in section 91-14(j). See Hawai'i Rules of Appellate Procedure (HRAP) 4(a). Furthermore, section 91-14(b), through its reference to appeals to the appellate courts, requires cross-appeals to be filed fourteen days after the appeal is served, or within the time prescribed for filing the notice of appeal, whichever is later. See HRAP 4.1(b)(1). Because a cross-appeal can be filed only after an appeal is filed, the added wording in the bill that would prohibit filing of a cross-appeal outside of the thirty-day window could have the effect of denying a cross-appeal to a party in situations where the appeal is not filed until the thirtieth day after service of the final decision or order. Therefore, we recommend deleting the entire additional wording beginning on page 6, line 17, and ending on page 7, line 2.

Thank you for the opportunity to provide comments.

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<sup>1</sup> Section 91-14(b) provides: "Except as otherwise provided herein, proceedings for review shall be instituted in the circuit court or, if applicable, the environmental court, within thirty days after the preliminary ruling or within thirty days after service of the certified copy of the final decision and order of the agency pursuant to rule of court, except where a statute provides for a direct appeal to the supreme court or the intermediate appellate court, subject to chapter 602. In such cases, the appeal shall be treated in the same manner as an appeal from the circuit court to the supreme court or the intermediate appellate court, including payment of the fee prescribed by section 607-5 for filing the notice of appeal (except in cases appealed under sections 11-51 and 40-91). The court in its discretion may permit other interested persons to intervene." (emphasis added)

TESTIMONY OF  
LEODOLOFF R. ASUNCION, JR.  
CHAIR, PUBLIC UTILITIES COMMISSION  
STATE OF HAWAII

TO THE  
HOUSE COMMITTEES ON  
ENERGY AND ENVIRONMENTAL PROTECTION  
AND  
WATER AND LAND

Tuesday, February 13, 2024  
9:05 a.m.

Chairs Lowen and Ichiyama, Vice Chairs Cochran and Poepoe, and Members of the Committees:

**MEASURE:** H.B. No. 1629

**TITLE:** RELATING TO RENEWABLE ENERGY.

**DESCRIPTION:** Requires contested cases or environmental impact statement cases involving renewable energy, except cases involving incineration, to be appealed from an agency's decision directly to the Hawaii Supreme Court for final decision. Requires the cases to be prioritized and decided expeditiously.

**POSITION:**

The Public Utilities Commission ("Commission") offers the following comments for consideration.

**COMMENTS:**

The Commission appreciates the intent of this measure to support increased opportunities for judicial review of environmental considerations that support the efficient permitting of renewable energy projects that seek to reduce the State's climate impact.

The Commission observes that H.B. 1629 provides suggested amendments to HRS §91-14(a) and HRS §343-7. The Commission notes that HRS §269-15.51 already provides that final decision and orders for contested cases before the Commission shall be appealed directly to the supreme court for final decision, and that the court shall give priority to these types of appeals:

“(a) Chapter 91 shall apply to every contested case arising under this chapter except where chapter 91 conflicts with this chapter, in which case this chapter shall apply. Any other law to the contrary notwithstanding, including chapter 91, any contested case under this chapter shall be appealed from a final decision and order or a preliminary ruling that is of the nature defined by section 91-14(a) upon the record directly to the supreme court for final decision. Only a person aggrieved in a contested case proceeding provided for in this chapter may appeal from the final decision and order or preliminary ruling. For the purposes of this section, the term "person aggrieved" includes an agency that is a party to a contested case proceeding before that agency or another agency.

(b) The court shall give priority to contested case appeals of significant statewide importance over all other civil or administrative appeals or matters and shall decide these appeals as expeditiously as possible.”

L 2016, c 48, §§4, 14; am L 2019, c 213, §1

The Commission observes that the proposed amendments to HRS §91-14(a) are similar to existing language provided in HRS §269-15.51 and appear intended to address similar concerns.

If the Committees seek to move this bill forward, the Commission respectfully suggests that the proposed language be refined to refer to “contested cases or environmental impact statement cases involving large-scale energy projects over 20 megawatts (“MW”) in size.” This would ensure that large-scale energy projects that are not renewable would also be covered. This would also help avoid confusion regarding whether cases involving smaller, residential renewable energy systems are implicated, which the Commission believes is outside the scope of this proposed bill and which could pose an undue burden on residential customers.

However, the Commission does not support an exception for cases involving incineration. The Commission notes that recent judicial review of Commission decisions has focused on explicit consideration of greenhouse gas emissions under HRS §269-6(b). Cases involving renewable energy projects that involve incineration are likely to involve higher levels of greenhouse gas emissions than other forms of renewable energy such as wind and solar photovoltaics. The Commission believes that the same opportunities for judicial review of renewable projects involving incineration should be offered as for renewable projects not involving incineration. Further, exempting renewable energy cases involving incineration under this bill may create confusion and inconsistency with HRS §269-15.51, which does not recognize such a distinction.

Accordingly, to better clarify the intent of this measure, the Commission recommends the following amendments to H.B. 1629:

Page 1 – Line 11 to Line 16:

“The purpose of this Act is to:  
(1) Require contested cases or environmental impact statement cases involving ~~renewable~~ large-scale energy projects over 20 megawatts in size, ~~except cases involving incineration~~, to be appealed from an agency’s decision directly to the Hawaii supreme court for final decision; and”

Page 7 – Line 3 to Line 9:

“(k) Notwithstanding this chapter or any other law to the contrary, any contested case under this chapter that involves ~~renewable~~ large-scale energy projects over 20 megawatts in size, ~~except cases that involve any form of incineration~~, shall be appealed from a final decision and order or a preliminary ruling that is of the nature defined by subsection (a) upon the record directly to the supreme court for final decision.

Page 10 – Line 1 to Line 9:

(d) Notwithstanding any other law to the contrary, any case under this chapter that involves ~~renewable~~ large-scale energy projects over 20 megawatts in size, ~~except cases that involve any form of incineration~~, shall be appealed from an agency’s:  
(1) Determination that an environmental impact statement is required for a proposed action; or (2) Acceptance or nonacceptance of an environmental impact statement, directly to the supreme court for final decision.

Thank you for the opportunity to testify on this measure.



Testimony Before the House Committees on Energy and Environmental Protection  
and Water and Land

By David Bissell  
President and Chief Executive Officer  
Kaua'i Island Utility Cooperative  
4463 Pahe'e Street, Suite 1, Lihu'e, Hawai'i, 96766-2000

Tuesday, February 13, 2024; 9:05 am  
Conference Room #325 & Videoconference

**House Bill No. 1629 - RELATING TO RENEWABLE ENERGY**

To the Honorable Chairs Nicole E. Lowen and Linda Ichiyama; Vice Chairs Elle Cochran and Mahina Poepoe; and Members of the Committees:

Kaua'i Island Utility Cooperative (KIUC) is a not-for-profit utility providing electrical service to more than 34,000 commercial and residential members.

**KIUC strongly supports this measure.**

Over the past 10 years, KIUC has significantly increased its renewable generation. In 2010, KIUC's energy mix included 10% renewable. Renewable production now stands at roughly 60%. For the past five years, KIUC has operated the Kaua'i electric grid at 100% renewable for thousands of hours on sunny days. KIUC's renewable mix currently includes biomass, hydropower, utility-scale solar, utility-scale paired with battery energy storage systems, and distributed (rooftop) solar.

Even with this accelerated progress, achieving the State of Hawai'i renewable portfolio standard (RPS) mandate of 100% renewable by the year 2045 will be a difficult task. KIUC will need to develop numerous renewable projects over the next twenty years in order to stay compliant with established RPS goals leading up to and including reaching 100% by 2045. These projects will require a wide array of permits and approvals from regulatory bodies: processes that can be extremely costly and lengthy.

It is not unexpected that legal challenges to agency decision-making will occur. KIUC believes in order to avoid the possibility that lengthy legal challenges will delay or possibly kill important and viable renewable energy projects, an expedited process for resolving such challenges should be enacted. By sending contested cases directly to the supreme court for final decision, and giving these cases priority for dispensation, this bill would reduce the likelihood that renewable projects would be cancelled due to lengthy legal challenges.



To be effective in providing an expedited process of resolution for renewable energy projects specified in the bill, KIUC believes that the bill apply to legal challenges and/or contested cases related to any decision involving Chapter 343 compliance. The following amendment is proposed for Page 10, lines 7-8:

(2) Acceptance or nonacceptance of an environmental assessment or an environmental impact statement,

Mahalo for your consideration.

**HB-1629**

Submitted on: 2/9/2024 11:49:34 PM

Testimony for EEP on 2/13/2024 9:05:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Ted Bohlen	Climate Protectors Hawaii	Support	Written Testimony Only

Comments:

Support!



**Testimony to the Committee on Energy and Environmental Protection  
Committee on Water & Land  
Conference Room 325 & Via Videoconference  
February 13, 2024, 9:05 AM  
HB 1629**

Hawaii Clean Power Alliance (HCPA) **opposes HB 1629**, which seeks to amend and carve-out an arbitrary exception to two very important statutes, HRS 91-14 and HRS 343-7, that already universally apply to “any person” and “any judicial proceeding”, respectfully, purportedly in the name of “achiev[ing] the State’s goal of one hundred per cent renewable energy by the year 2045.” These two statutes SHOULD NOT be amended as they already apply to decisions involving renewable energy given that they apply universally to ALL decisions as outlined in the respective statutes.

While the purported purpose is to accelerate renewable energy, this bill misconstrues and inappropriately attempts to carve out an exception to all renewable energy by inserting an arbitrary exception for “cases that involve any form of incineration.” This is not only CONTRARY to accelerating more renewable energy (especially since the vast majority of renewable energy currently planned for Oahu, for example, will involve firm generation from biofuels, which requires the combustion and incineration of organic liquid molecules made from bio crops or waste cooking oil), but is also contrary to due process and equal protection under the law regarding the ability to appeal decisions directly to the Hawaii Supreme Court.

Hawaii Clean Power Alliance is a nonprofit alliance organized to advance and sustain the development of clean energy in Hawaii. Our goal is to support the state’s policy goal of 100 percent renewable energy by 2045. We advocate for utility-scale renewable energy, which is critical to meeting the state’s clean energy and carbon reduction goals.

Fossil fuel generation is the main source of energy that the state is trying to reduce and replace, which will require all available sources of renewable energy generation. Reliability and resiliency require a diversified portfolio of renewable resources, including intermittent (e.g., solar and wind) AND always available (e.g. biofuel) generation. History has shown that while intermittent resources are important, “always available” generation is needed to reduce black outs, as well as improve safety and national security. The enemy is fossil fuels, not renewable energy involving combustion or incineration, such as biofuels.

In December 2023, Hawaiian Electric awarded proposals to build out approximately 680 MW (16,389 MW hours of renewable energy generation) of firm, flexible, always available generation using renewable biofuels, intended to replace existing fossil fuel oil generation. This results in biofuel generation being the largest single source of renewable energy in MWh on Hawaiian Electric’s grid creating high paying short- and long-term jobs. It would take the equivalent of roughly six times the amount (2700 MW) of intermittent energy.

We respectfully ask the committees to defer this measure.