



**STATE OF HAWAI'I
OFFICE OF PLANNING
& SUSTAINABLE DEVELOPMENT**

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Statement of
MARY ALICE EVANS, Director

before the
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

Wednesday, February 12, 2025, 2:00 PM
State Capitol, Conference Room 325

in consideration of
HB 366 HD 1
RELATING TO RENEWABLE ENERGY.

Chair Representative Tarnas, Vice Chair Representative Poepoe, and Members of the House Committee on Judiciary and Hawaiian Affairs.

The Office of Planning and Sustainable Development (OPSD) appreciates the incorporation of our previous comments by the Committee on Energy and Environmental Protection into the present House Draft 1 of HB 366.

HB 366 HD1 seeks to expedite the permitting process for certain clean energy projects over twenty megawatts in size. Amongst other provisions, this bill amends HRS Chapter 343, Environmental Impact Statements, by adding a new paragraph (d) to Section 7 on judicial review involving renewable energy projects over twenty megawatts in size (except in cases that involve any form of incineration).

The amendment identifies three scenarios under which relevant cases shall be appealed directly to the supreme court for prompt and final decision: (1) agency determinations that an environmental impact statement is required for a proposed action, (2) agency acceptance or nonacceptance of an environmental impact statement, or 3) agency determination of a finding of no significant impact for an environmental assessment.

We have no further comment on the bill at this time. Thank you for the opportunity to testify on this measure.

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



STATE OF HAWAII
PUBLIC UTILITIES COMMISSION
465 S. KING STREET, #103
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Testimony of the Public Utilities Commission

To the
House Committee on
Judiciary & Hawaiian Affairs

February 12, 2025
2:00 p.m.

Chair Tarnas, Vice Chair Poepoe, and Members of the Committee:

Measure: H.B. No. 366, H.D. 1
Title: RELATING TO RENEWABLE ENERGY.

Position:

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

Comments:

The Commission appreciates the intent of this measure to expedite the permitting process for renewable projects by requiring that contested cases, environmental assessment cases, or environmental impact statement cases involving renewable energy projects over twenty megawatts in size, except cases that involve any form of incineration, be appealed from an agency's decision directly to the Hawai'i Supreme Court for final decision.

The Commission observes that H.B. 366, HD1 provides suggested amendments to HRS §91-14 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.

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. To better clarify the intent of this measure, the Commission recommends the following amendments:

Page 6 – Line 17 to Page 7 - Line 2:

"(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 twenty 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 9 – Line 13 to Line 20:

"(d) Notwithstanding any other law to the contrary, any case under this chapter that involves ~~renewable~~ large-scale energy projects over twenty 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;

Thank you for the opportunity to testify on this measure.



The Judiciary, State of Hawai‘i

Testimony to the Thirty-Third Legislature, 2025 Regular Session

House Committee on Judiciary & Hawaiian Affairs

Representative David A. Tarnas, Chair
Representative Mahina Poepoe, Vice Chair

Wednesday, February 12, 2025, 2:00 p.m.
State Capitol, Conference Room 325 & Videoconference

by:

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

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 366, H.D. 1, Relating to Renewable Energy.

Purpose: Requires contested cases, environmental assessment cases, or environmental impact statement cases involving renewable energy projects over twenty megawatts in size, except cases that involve any form of 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 respectfully opposes this bill as drafted and requests the measure be held, or in the alternative be amended to provide for any appeal covered by House Bill No. 366 to be filed in the environmental court.

House Bill No. 366, H.D. 1 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 this measure certain qualifying contested cases could be directly appealed to the Hawai‘i Supreme Court from the agency. This measure wholly undermines the intent of the legislature in creating the environmental courts:



The preamble to Act 218 (2014) establishing the environmental courts provides:

The legislature finds that environmental disputes are currently dealt with in a variety of courts. This organizational structure inadvertently promotes inconsistent application of the wide variety of environmental laws.

The legislature also finds that the continued maintenance and improvement of Hawaii's environment requires constant vigilance and continued stewardship to ensure its lasting beauty, cleanliness, uniqueness, and the stability of its natural systems, all of which enhance the mental and physical well-being of Hawaii's people.

The legislature further finds that Hawaii's natural resources are compromised every day resulting in numerous violations of the law. An environmental court will better ensure that the State upholds its constitutional obligation to protect the public trust for the benefit of all beneficiaries.

The purpose of this Act is to promote and protect Hawaii's natural environment through consistent and uniform application of environmental laws by establishing environmental courts.

See Act 218, § 1 (2014).

Consistent with the intent of the legislature set forth in Act 218, the parties and public benefit from having the environmental court resolve, in the first instance, an agency appeal of the type covered by House Bill No. 366, H.D. 1. The types of contested cases covered by House Bill No. 366, i.e., a challenge related to environmental impact statements, are generally fact intensive. The legislature by virtue of Act 218 previously decided to funnel complex environmental cases to a specialized trial court. As the legislature indicated in Act 218, having a specialized environmental court to resolve environmental disputes would operate "to promote and protect Hawaii's natural environment through consistent and uniform application of environmental laws".

Second, expedited appellate review of a final decision by the environmental court is currently available under Hawai'i Revised Statutes (HRS) § 602-58, "Application for transfer to the supreme court." Under that law an appeal can be transferred to the supreme court to allow for an expedited resolution where it presents "a question of imperative or fundamental public importance," among other grounds. As such, the environmental court should be the first court to evaluate a challenge of the type contemplated by House Bill No. 366 with that party then having the right to seek transfer of the subsequent appeal to the supreme court under HRS § 602-58.



House Bill No. 366, H.D. 1, Relating to Renewable Energy
House Committee on Judiciary & Hawaiian Affairs
Wednesday, February 12, 2025
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The Judiciary appreciates the commitment of the Hawai'i State Legislature to our specialty courts and respectfully requests the committee hold this measure as it undermines Act 218, or in the alternative that it be amended to provide for any appeal covered by House Bill No. 366 to be filed in the environmental court.

Thank you for the opportunity to testify on this matter.



Testimony Before the House Committee on Judiciary & Hawaiian Affairs

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

Wednesday, February 12, 2025; 2:00 pm
Conference Room #325 & Videoconference

House Bill No. 366 HD 1 - RELATING TO RENEWABLE ENERGY

To the Honorable Chair David A. Tarnas, Vice Chair Mahina Poepoe, and Members of the Committee:

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 50%. 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.

Mahalo for your consideration.



To: The House Committee on Judiciary & Hawaiian Affairs (JHA)
From: Sherry Pollack, 350Hawaii.org
Date: Wednesday, February 12, 2025, 2pm

In opposition to HB366 HD1

Aloha Chair Tarnas, Vice Chair Poepoe, and Judiciary & Hawaiian Affairs Committee members,

I am Co-Founder of the Hawaii chapter of 350.org, the largest international organization dedicated to fighting climate change. 350Hawaii.org **opposes HB366 HD1** that would require contested cases, environmental assessment cases, or environmental impact statement cases involving renewable energy projects over twenty megawatts in size, except cases that involve any form of incineration, to be appealed from an agency's decision directly to the Hawai'i Supreme Court for final decision. This measure further requires the cases to be prioritized and decided expeditiously.

HB366 HD1 is the same misguided measure, HB1629, proposed in the 2024 legislative session. This is an excerpt of the testimony from Thomas J. Berger, Staff Attorney for the Hawai'i Supreme Court, regarding that measure:

"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."

Moreover, if passed, this measure would likely result in serious negative consequences as the number of potential issues and cases the Supreme Court would have to take on would significantly grow, including PUC decisions, BLNR and CWRM decisions. This will undoubtedly create a serious backlog and anyone else who wants expeditious Supreme Court review, including environmental and public trust cases not involving renewables, may be impacted. **A better solution would be to properly resource the regulatory agencies so they stop taking shortcuts and prevent controversies from arising in the first place.**

The Supreme Court is already managing an impossible workload. Wait times for appeals are significant as is. Adding this would be counterproductive to the goal of timely administration of justice, and not a very pono way to move to our clean energy future.

We urge the Committee to **HOLD** this misguided measure.

Mahalo for the opportunity to testify.

Sherry Pollack
Co-Founder, 350Hawaii.org



**TESTIMONY BEFORE THE HOUSE COMMITTEE ON
JUDICIARY & HAWAIIAN AFFAIRS**

**HB 366 HD1
Relating to Renewable Energy**

Wednesday, February 12, 2025
2:00 PM
State Capitol, Conference Room 325

Greg Shimokawa
Director of Renewable Acquisition
Hawaiian Electric

Dear Chair Tarnas, Vice Chair Poepoe, and Members of the Committee,

My name is Greg Shimokawa and I am testifying on behalf of Hawaiian Electric in support of the intent of HB 366 HD1, Relating to Renewable Energy, with comments.

This bill requires appeals of agency decisions for contested cases, environmental assessment cases, or environmental impact statement cases involving renewable energy projects over twenty megawatts in size, except cases that involve any form of incineration, to be appealed directly to the Hawai'i Supreme Court for final decision. The bill requires such cases to be prioritized and decided expeditiously.

Hawaiian Electric is supportive of efforts to move renewable energy projects through permitting and related processes as expeditiously as possible. We recognize that this bill may help mitigate long-term delays for renewable projects and help achieve renewable energy goals. We note that it is not clear how the bill is intended to interact with HRS § 269-15.51s. For example, HRS § 269-15.51 already requires that an appeal of a decision in any contested case under HRS chapter 269 be made directly to the Hawai'i Supreme Court, and without regard to project size or fuel type. The bill should be amended to provide greater clarity on how it would coexist with existing law.

Accordingly, Hawaiian Electric supports the intent of HB 366 HD1 with comments. Thank you for this opportunity to testify.

HB-366-HD-1

Submitted on: 2/10/2025 11:56:23 PM

Testimony for JHA on 2/12/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ted Bohlen	Individual	Support	Written Testimony Only

Comments:

I SUPPORT!

Puananionaona Patria Thoene

onaona.thoene@gmail.com

Wednesday, February 12, 2025

Testimony of Puananionaona P. Thoene before the
**HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN
AFFAIRS**

2:00 pm
Conference Room 325 &
videoconference

testimony providing **COMMENTS** on
HOUSE BILL (HB) 366 (HD 1)
RELATING TO RENEWABLE ENERGY

February 11, 2025

Aloha e Chair Tarnas, Vice Chair Poepoe, and Members of the House Committee on
Judiciary & Hawaiian Affairs,

I am a partner at Carlsmith Ball LLP, whose practice focuses on land use, environmental and corporate work. I am also a former Chairperson of the State Environmental Advisory Council, but submit the following comments on House Bill 366 HD1 (HB 366) in my individual capacity.

As drafted, HB 366 proposes, among other amendments, to add a new subsection (d) to Hawai'i Revised Statutes (HRS) § 343-7 which would allow for certain challenges to approving agency or accepting authority decisions on environmental assessments (EAs) and environmental impact statements (EISs) related to renewable energy projects over twenty megawatts to be *appealed* directly to the Hawai'i Supreme Court rather than following the existing process. I am supportive of the initiative to expedite the judicial review with respect to renewable energy projects in support of the State's initiative to reduce its climate impact, but I am concerned that the language of the proposed HRS § 343-7(d) confuses the existing process to challenge EAs and EIS and will unintentionally result in causing additional delay.

The proposed addition of HRS § 343-7(d) unintentionally implicates that HRS Chapter 343 decisions may be challenged via a contested case proceeding by using agency appeal language that appears to be taken from the agency appeal context of HRS Chapter 91, while HRS § 343-7 already provides for a very specific right of action to challenge agency decisions under HRS Chapter 343. It is noted that the specific challenge rights provided in HRS § 343-7 are declaratory actions filed in the Environmental Court (Circuit Court), not an agency appeal of a contested case proceeding. The language in HRS § 343-7(d) should mirror the existing language in HRS § 343-7 rather than HRS Chapter 91.

The Committee should be careful not to unintentionally expand the standing rights already provided for in HRS § 343-7. The proposed subsection (d) would allow "any person aggrieved" to "appeal" the agency's decision on an EA or EIS, however, HRS § 343-7(c) currently limits challenges on an accepting authority's decision to accept an EIS to those who submitted comments on the draft EIS during the statutory review period and those challenges are further limited to the issues that the commentor identified in his or her comments on the draft EIS. In the case that an accepting authority does not accept the EIS, the contestable issues are limited to those identified by the accepting authority as the basis for the agency not accepting the EIS.

Likewise, HRS § 343-7(b) identifies the applicant as the aggrieved party who may challenge the agency's decision to require an applicant to proceed with an EIS rather than issuing a finding of no significant impact (FONSI); it is only by leave of the Environmental Court that others may be adjudged aggrieved.

Lastly, the definition of "person" in proposed HRS § 343-7(d) should be deleted to avoid a conflict with the existing definition of "person" HRS § 343-2.

For these reasons, the language proposed in Section 3 of HB 366 should be revised as indicated below, with additions in **bold** and underlined text and deletions indicated in [brackets], **bold** and strikethrough:

(d) Notwithstanding any other law to the contrary, any case under this chapter that involves renewable energy projects over twenty megawatts in size, except cases that involve any form of incineration, shall be ~~appealed~~ **initiated** from an agency's:

(1) Determination that an environmental impact statement is required for a proposed action;

(2) Acceptance or nonacceptance of an environmental impact statement; or

(3) Determination of a finding of no significant impact for an environmental assessment,

directly ~~to~~ **in** the supreme court for final decision. **For subsections (d)(1) and (d)(3), ~~only~~ a person or agency aggrieved as provided in subsection (b) ~~in~~ ~~the case~~ may ~~appeal~~ challenge the agency's ~~decision,~~ determination. For subsection(d)(2), only a person or agency aggrieved as provided in subsection (c) may challenge the agency's acceptance, or nonacceptance. The court shall give priority to these cases over all other civil or administrative appeals or matters and shall decide these ~~appeals~~ **challenges** as expeditiously as possible. ~~For the purposes of this subsection, "person" includes an agency.~~**

The proposed amendments above assume that the Hawai'i Supreme Court has the ability to exercise original jurisdiction over HRS Chapter 343 challenges. The Committee should consult with the Hawai'i Supreme Court prior to advancing HB 366.

Mahalo for the opportunity to testify on this measure and for your consideration of the proposed amendments above.