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GOVERNOR OF  
HAWAII



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

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BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
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KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

Testimony of  
SUZANNE D. CASE  
Chairperson

Before the House Committee on  
WATER AND LAND

Tuesday, February 2, 2021  
9:00 AM

State Capitol, Via Video Conference, Conference Room 430

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.



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony Presented Before the  
House Committee on Water & Land  
February 2, 2021 at 9:00 a.m.

By  
Kalbert K. Young  
Vice President for Budget and Finance,  
and  
Carrie K.S. Okinaga  
Vice President for Legal Affairs/University General Counsel  
University of Hawai'i System

### HB 344 – RELATING TO GOVERNMENT

Chair Tarnas, Vice Chair Branco and members of the committee:

Thank you for the opportunity to provide testimony on HB 344.

As proposed, HB 344 amends the Hawai'i Revised Statutes (“HRS”) 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.

The University of Hawai'i supports the intent of HB 344, because it removes some of the duplication, uncertainty, and taxpayer costs related to land use decision-making and development. Given the negative fiscal picture the State is currently experiencing, it is critical now more than ever that the State pursue innovative means of economic development, without sacrificing due process rights and community involvement. For both applicants and opponents, and when government is involved, for the taxpayers, the contested case hearing process has become lengthy and expensive, and exploring new and more efficient ways of mitigating the costs that are associated with the issuance of discretionary permits or approvals is a necessity.

The changes proposed by HB 344 do not come at the expense of less public participation, due process, or judicial oversight. The bill leaves intact the right to participate in the agency decision-making processes under the Sunshine Law (HRS chapter 92) at open public meetings. The bill leaves intact public hearing requirements for certain discretionary permits and approvals (e.g., conservation district use permits or county zone changes) so that the public will have an opportunity to present information and views on the record. And finally, the bill leaves fully intact appeals through the Hawai'i Judiciary. Under HB 344, agencies still have an interest and obligation to ensure decision-making is based on facts, data, and public input applied to legislatively imposed criteria on discretionary permits and approvals.

Thank you for the opportunity to submit testimony on this bill.



P.O. Box 37158, Honolulu, Hawai`i 96837-0158  
Phone: 927-0709 [henry.lifeoftheland@gmail.com](mailto:henry.lifeoftheland@gmail.com)

COMMITTEE ON WATER & LAND

Rep. David A. Tarnas, Chair

Rep. Patrick Pihana Branco, Vice Chair

DATE: Tuesday, February 2, 2021

TIME: 9:00 a.m.

HB 344 RELATING TO GOVERNMENT.

PLEASE HOLD

Aloha Chair Tarnas, Vice Chair Branco, and Members of the Committee

Life of the Land is Hawai`i's own energy, environmental and community action group advocating for the people and `aina for 51 years. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

HB 344 appears to say that if an agency fails to do its job in protecting public trust resources, rather than filing a contested case proceeding, one must hire a lawyer and clog up the courts.

As for those without abundant funds, tough noodles.

Mahalo

Henry Curtis

Executive Director



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January 31, 2021

RE: HB344 RELATING TO GOVERNMENT

Dear Chair Tarnas and the House Committee on Water and Land,

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.

The Kona-Kohala Chamber strongly supports the astronomy industry and are very concerned with 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 (TMT) will create 300 local and specialized construction jobs and once the telescope is complete, employ 140 staff. TMT's commitment is to fill these positions with as many Hawai'i residents as possible and use local businesses for support services.

The astronomy industry on our island also supports 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. Losing the astronomy industry would be more than the loss of the observatories atop Maunakea, it would be the loss of opportunity for Hawai'i's future generations.

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.

Sincerely,

A handwritten signature in black ink that reads "Wendy J. Laros". The signature is written in a cursive, flowing style.

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



To: Representative David A. Tarnas, Chair  
Representative Patrick Pihana Branco, Vice-Chair  
Committee on Water and Land

From: Maunakea Observatories

Subj: Letter **Supporting** HB344 Relating to Government  
Testimony Scheduled for Tuesday, February 2, 2021; 9:00 a.m.; conference room 430

Date: 1 February 2021

Aloha Chair Tarnas, Vice Chair Branco and Members of the Committee,

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


The Maunakea Observatories strongly support public input to decisions about the use of public lands, while also supporting timely land use decisions by the State. This legislation is crucial for the Maunakea Observatories given that future land authorization for the Maunakea Science Reserve (MKSR) may be subject to a contested case, introducing lengthy delays in the land authorization process. The current Master Lease for the MKSR expires at the end of 2033 and the timely renewal of this land authorization, reflecting a long-term commitment on the part of the State of Hawai'i to support astronomy, is essential. Everything from facility upgrades to new instrumentation and long-term operations planning requires the State's commitment to enable Maunakea Observatories' operations beyond the 2033 expiration of the current Master Lease. The numerous international federal funding agencies and research institutions which sponsor the Maunakea Observatories, including the US National Science Foundation, Canadian National Research Council, NASA, MEXT of Japan, and universities have collectively invested billions of dollars over the 50+ year history of the Maunakea Observatories, most of which has been injected directly into Hawai'i's economy. It is in the interests of the State, Federal sponsors, Maunakea Observatories, and broader community to have timely and complete resolution of land use decisions that may arise in the MKSR land authorization.

Mahalo,



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Director Doug Simons, Canada-France-Hawaii Telescope



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



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Director John Rayner, NASA Infrared Telescope Facility



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Director Michitoshi Yoshida, Subaru Telescope



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



# Hawai'i Island Chamber of Commerce

LATE

1321 Kino'ole Street  
Hilo, Hawai'i 96720  
Phone: (808) 935-7178  
Fax: (808) 961-4435  
E-mail: [admin@hicc.biz](mailto:admin@hicc.biz)  
[www.hicc.biz](http://www.hicc.biz)

**Executive Officer**  
Miles Yoshioka

February 1, 2021

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Kurt Williams  
Garth Yamanaka

To: Representative David A. Tarnas, Chair  
Representative Patrick Pihana Branco, Vice-Chair  
Members of the Committee on Water and Land

Re: Letter Supporting HB344 Relating to Government

Aloha Chair Tarnas, Vice Chair Branco and Members of the Committee,

The Hawai'i Island Chamber of Commerce, formed in 1898 by the business community of the Island of Hawai'i has continued to be a dedicated supporter of the scientific and particularly astronomical enterprises on Maunakea.

We would like to express our support for HB344 which specifies that Board of Land and Natural Resources decisions and disputes pertaining to land use be contested and adjudicated in circuit court and not through contested case hearings.

This bill will reform the contested case process, help streamline it or replace it with a judicial process. There will be a more economic/business benefit by reaching a more timely decisions on land use decisions.

HB344 is one of many important steps needed to ensure a bright future for Hawai'i astronomy and the economic benefits that the industry brings to Hawaii Island.

Sincerely,

Miles Yoshioka, Executive Officer



LATE

**HB-344**

Submitted on: 2/1/2021 8:08:49 PM

Testimony for WAL on 2/2/2021 9:00:00 AM

| Submitted By   | Organization | Testifier Position | Present at Hearing |
|----------------|--------------|--------------------|--------------------|
| Isaac Moriwake | Earthjustice | Oppose             | No                 |

Comments:

Aloha, Earthjustice strongly opposes this bill 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.

Because this bill is unconstitutional, inefficient, and inimical to access to justice and democratic participation, we urge this Committee to kill the bill.

Mahalo,

Isaac Moriwake, Managing Attorney, Earthjustice Mid-Pacific Office

**HB-344**

Submitted on: 2/1/2021 8:59:13 AM

Testimony for WAL on 2/2/2021 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Roberta Chu         | Individual          | Support                   | No                        |

## Comments:

I am a Hilo resident and retired Commercial Banking Manager of Bank of Hawaii responsible for commercial lending for over 20+ years. I am in support of this bill because contested cases hold up land use decisions across the state which create unpredictability in projects that could deter investors. The economic impact of potentially numerous contested cases has the probability of making investment in Hawaii non-existent. The constested case option should be left to the court system.

Respectfully submitted,

Roberta Chu