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Testimony of the Public Utilities Commission

To the
House Committee on
Energy & Environmental Protection

January 28, 2025
9:00 a.m.

Chair Lowen, Vice Chair Perruso, and Members of the Committee:

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

Position:

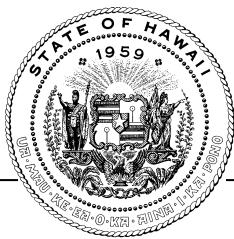
The Public Utilities Commission ("Commission") offers the following comments for consideration.

Comments:

The Commission appreciates the intent of this measure to expedite the permitting process for renewable project 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 believes that permitting the direct appeal of any Commission final decision and order on a contested case before the Commission involving renewable energy projects over twenty megawatts in size to the Supreme Court may reduce the time these renewable projects take to become operational. This reduction in time would accelerate the State's progress towards its clean energy goals.

Thank you for the opportunity to testify on this measure.



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

JOSH GREEN, M.D.
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Statement of
MARY ALICE EVANS, Director

before the
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
Tuesday, January 28, 2025, 9:00AM
State Capitol, Conference Room 325

in consideration of
HB 366
RELATING TO RENEWABLE ENERGY.

Chair Representative Lowen, Vice Chair Representative Perruso, and Members of the House Committee on Energy & Environmental Protection.

The Office of Planning and Sustainable Development (OPSD) offers the following comments on HB 366, which seeks to expedite the permitting process for certain clean energy projects over twenty megawatts in size. Amongst other provisions, HB 366 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 proposed amendment identifies two 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, or (2) agency acceptance or nonacceptance of an environmental assessment or an environmental impact statement.

We wish to point out that environmental assessments (EAs), unlike environmental impact statements (EISs), are not formally accepted or nonaccepted. Instead, to “affirm” an EA, an agency determines that a Finding of No Significant Impact (FONSI) is appropriate; or in a situation where an agency believes a significant adverse impact is likely, then the agency determines that an EIS must be prepared.

Accordingly, the proposed language in clause (2) speaking to the appeal of an agency “acceptance” of an EA would confuse and not address any realistic scenarios. As an alternative, we suggest amending lines 3 and 4 on page 10 of the bill to strike the proposed language “an environmental assessment or” from clause (2) and adding a new subsequent clause (3) “Determination of a Finding of No Significant Impact.”

The case of appealing the “nonacceptance” of an EA is adequately addressed by clause (1) speaking to agency determinations that an EIS is required for the proposed action.

Thank you for the opportunity to testify on this measure.



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COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

DATE: Tuesday, January 28, 2025

TIME: 9:00 AM

Conference Room 325

Re: HB 366 Renewable Energy

COMMENTS

Aloha Chair Lowen, Vice Chair Perruso, 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 55 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.

Appeals of Public Utilities Commission contested case proceedings:

HB 366 Amending HRS §91-14	Public Utilities Commission HRS §269-15.51
Notwithstanding this chapter or any other law to the contrary	Any other law to the contrary notwithstanding
Renewable energy excluding incineration	All fuels including incineration
20 megawatts or larger	Any size
Directly to supreme court	Directly to supreme court

Mahalo for considering this testimony

Henry Curtis

Executive Director

HB-366

Submitted on: 1/26/2025 3:41:09 PM

Testimony for EEP on 1/28/2025 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Ted Bohlen	Climate Protectors Hawaii	Support	Written Testimony Only

Comments:

This bill is in the public interest because it is needed to avoid litigation delays in providing electricity from renewable power sources.

Please pass it!!

Climate Protectors Hawaii (by Ted Bohlen)



Testimony Before the House Committee on Energy and Environmental Protection

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

Tuesday, January 28, 2025; 9:00 am
Conference Room #325 & Videoconference

House Bill No. 366 - RELATING TO RENEWABLE ENERGY

To the Honorable Chair Nicole E. Lowen, Vice Chair Amy A. Perruso, 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 Energy and Environmental Protection
From: Sherry Pollack, 350Hawaii.org
Date: Tuesday, January 28, 2025, 9am

In opposition to HB366

Aloha Chair Lowen, Vice Chair Perruso, and Energy and Environmental Protection 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** 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 would require the cases to be prioritized and decided expeditiously.

HB366 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 TO THE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

9:00 AM, January 28, 2025

Conference Room 325 & Via Videoconference

HB 366

Chair Lowen, Vice Chair Perruso and Members of the Committee,

Hawaii Clean Power Alliance (HCPA) respectfully **opposes HB 366**, which 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.

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.

HB366 is contrary to a swift transition to clean energy and will result in delaying the State's goal of achieving one hundred per cent renewable energy by 2045. This measure imposes penalties on arbitrary renewable technologies and arbitrary sizes of projects. In an era of high uncertainty of supportive federal renewable energy policies, Hawaii cannot afford to make it more difficult to bring renewable energy on line, which will only perpetuate fossil fuels. This bill predetermines winners and losers. The Public Utilities Commission is authorized to make those critical decisions utilizing criteria such as lifecycle greenhouse gas emissions and current statutes provide for fair and equal treatment of due process.

Fossil fuel generation is what the State has been attempting to reduce and replace using all sources of renewable energy generation. Reliability and resiliency require a diversified portfolio of renewable resources.

Recently, Hawaiian Electric Company awarded fifteen renewable projects to be developed. Five of those projects have already terminated. Importantly, several awarded on every Island were selected to build out approximately 680 MW of always available generation using biofuels, (16,389 MW hours of renewable energy generation) which can replace existing fossil fuel oil generation. This will result in biofuel generation being the largest single source of renewable energy on Hawaiian Electric's grids, creating high paying short- and long-term jobs and developing a new agriculture industry. This measure will potentially delay these resources from replacing fossil fuel.

We respectfully ask the committees to defer HB 366.