



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-EIGHTH LEGISLATURE, 2016**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1581, H.D. 2, S.D. 1, RELATING TO JUDICIAL PROCEEDINGS.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY AND LABOR

**DATE:** Thursday, March 31, 2016

**TIME:** 9:30 a.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S): WRITTEN TESTIMONY ONLY.**

(For more information, contact Linda L.W. Chow,  
Deputy Attorney General, at 587-2988)

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Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General has the following comments on this bill:

The primary purpose of this bill is to provide a direct appeal to the Hawaii Supreme Court from contested case hearings in certain instances. Specifically, the bill would affect appeals of contested cases arising under the State Water Code, chapter 174C, Hawaii Revised Statutes (HRS); the conservation district, chapter 183C, HRS; the Land Use Commission, chapter 205, HRS; the Public Utilities Commission, chapter 269, HRS; and from the Hawaii Community Development Authority (HCDA), chapter 206E, HRS.

Of the chapters that would be affected by this bill, we believe the provisions relating to the conservation district under chapter 183C, HRS, are too broad and would send many cases to the Hawaii Supreme Court that would not otherwise be considered by it.

The Department of Land and Natural Resources estimates that this year it may issue up to 150 notices of violation for shoreline vegetation encroachment and between 20 and 30 for other types of violations or cases. All of these violations have the potential to become contested cases that would be appealed directly to the Supreme Court if this bill passes in its current form. Many of these cases would not meet the current requirements for transfer to, or further review by, the Supreme Court, the criteria for which are contained in sections 602-58 and 59, HRS.<sup>1</sup>

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<sup>1</sup> The Supreme Court may accept a case for transfer from the Intermediate Court of Appeals if the case involves a question of imperative or fundamental public importance; where an appeal from a decision of any court or agency when appeals are allowed by law invalidating an amendment to the state Constitution or determining a state statute, county ordinance, or agency rule to be invalid on the grounds that it was invalidly enacted or is unconstitutional,

We respectfully suggest that the cases that are most appropriate to be allowed to be directly appealed to the Supreme Court are those cases that rise to the same level of importance as the criteria contained in sections 602-58 and 59, HRS. We suggest amending section 2 to limit the cases arising under chapter 183C, HRS, to those cases that are of “significant statewide importance.”

Thank you for the opportunity to present this testimony.

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on its face or as applied, under either the constitution of the State or the United States; a sentence of life imprisonment without the possibility of parole; the case involves a question of first impression or a novel legal question; or the case involves issues upon which there is inconsistency in the decisions of the Intermediate Court of Appeals or of the Supreme Court. Section 602-58, HRS. In addition the Supreme Court may grant an application for a writ of certiorari where there are grave errors of law or fact or obvious inconsistencies in the decision of the Intermediate Court of Appeals with that of the Supreme Court, federal decisions, or its own decision, and the magnitude of those errors or inconsistencies dictating the need for further appeal. Section 602-59, HRS.

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Testimony to the Senate Committee on Judiciary and Labor  
Thursday, March 31, 2016  
9:30 a.m.  
State Capitol - Conference Room 016

**RE: H.B. 1581 H.D. 2 S.D. 1: Relating to Judicial Review.**

Dear Chair Keith-Agaran, Vice-Chair Shimabukuro, and members of the Committee:

My name is Gladys Marrone, Chief Executive Officer for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

BIA-Hawaii **supports the intent** of H.B 1581 H.D. 2 S.D. 1, which proposes to require contested case hearings of the Land Use Commission, Hawaii Community Development Authority, Commission on Water Resource Management, Public Utilities Commission, and those involving conservation districts to be appealed directly to the Supreme Court.

The proposed bill would substantially reduce the time required to resolve disputes on agency actions requiring quasi-judicial, contested case hearings by removing the lower courts from the appeal process. Reducing the number of decisions and appeals on an already cumbersome land use entitlement process would improve the predictability and certainty, and also reduce the risk currently associated with Hawaii's land use entitlement process.

Thank you for the opportunity to express our views on this matter.