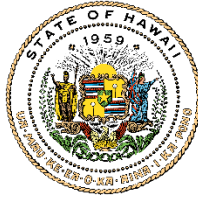


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621
HONOLULU, HAWAII 96809

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

RYAN K.P. KANAKA'OLE
FIRST DEPUTY

DEAN D. UYENO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
DAWN N. S. CHANG
Chairperson

Before the Senate Committee on
JUDICIARY

Thursday, February 15, 2024
9:30 AM
State Capitol, Conference Room 016 & Videoconference

In consideration of
SENATE BILL 3159
RELATING TO CONTESTED CASES

Senate Bill 3159 proposes to clarify that a contested case hearing is not required when a tribunal has already issued a final decision and order in a substantially similar contested case proceeding that was not appealed, or where a court of last resort has already issued a final decision on the proceeding or on other substantially similar matters. **The Department of Land and Natural Resources (Department) supports this Administration measure.**

This bill would prevent the exploitation of the contested case process, while also protecting due process of a party seeking a contested case for a matter that has not previously been adjudicated. The bill utilizes the same well-established criteria for the preclusion of relitigating issues in our courts and applies them to the administrative contested case process. Requiring agencies to hold multiple contested case hearings on matters that are substantially similar impedes agencies from acting to address critical issues and is unduly burdensome on agency staff and financial resources. Additionally, having multiple contested cases on substantially similar matters could lead to conflicting decisions and greater legal ambiguity. Finally, a party that believes they have been erroneously denied a contested case can still appeal such denial to the appropriate court.

Thank you for the opportunity to testify on this measure.



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

COMMITTEE ON JUDICIARY
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

DATE: Thursday, February 15, 2024
TIME: 9:30 AM
PLACE: Conference Room 016 & Videoconference

SB 3159 Relating to Contested Cases

Comments. Proposed Amendment

Aloha Chair Rhoads, Vice Chair Gabbard, and members of the Committee.

Life of the Land, Hawai`i's own energy, environmental and community action group advocating for the people and `aina for 54 years. Life of the Land's 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.

A contested case hearing **MAY** be denied when a requesting party alleges or raises a cause of action, claim, controversy, issue, fact, or substantive law that is identical or substantially similar to another administrative matter that has been finally adjudicated.

To avoid governments playing favorites, MAY should be SHALL

Kauai Island Utility Cooperative acquired Citizens Utilities Company's Kauai Electric Division in two substantially similar sequential proceedings. (PUC Docket No. 2000-0108, 2002-0060)

HELCO filed two substantially similar sequential proceedings to acquire tree-based electricity from Hu Honua (PUC Docket No. 2012-0212, 2017-0122)

Henry Curtis
Executive Director