



The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Judiciary and Labor

The Honorable Clayton Hee, Chair

The Honorable Maile S. L. Shimabukuro, Vice Chair

Thursday, February 20, 2014, 10:30 a.m.

State Capitol, Conference Room 016

By

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Bill No. and Title: Senate Bill No. 632, Senate Draft 1, Relating to the Environmental Courts.

Purpose: Establishes environmental courts as divisions within the circuit court to hear all proceedings, including chapter 91, Hawaii Revised Statutes, proceedings arising from certain environmental laws. Requires the Judiciary to report to the Legislature on the total number of environmental-related cases filed in the last five years. Effective 1/1/2015. (SD1)

Judiciary's Position:

The Judiciary offers the following comments.

Senate Bill No. 632, Senate Draft 1 would establish within each circuit an environmental court with separate rules, based upon the belief that “environmental disputes are currently dealt with in a variety of courts” and “[T]his organizational structure inadvertently promotes inconsistent application of the wide variety of environmental laws.” In addition to establishing an environmental court in each circuit, Section 6 of SB 632, SD 1 requires the judiciary to conduct a study to determine the number of environmental-related cases within the past five years and to report findings to the legislature not less than 20 days prior to the regular session of 2015.



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The Judiciary understands the intent of wanting courts to develop expertise and consistency in environmental cases. We believe, however, that the judiciary already has in place processes to ensure consistency in all cases, including cases brought pursuant to the statutory provisions listed in section 7 of Senate Bill 632, SD1.

At present, all agency appeals to the circuit court, including agency appeals covering environmental issues, are assigned regularly to one designated judge in the first judicial circuit and are rotated among the civil judges in the second, third, and fifth judicial circuits, and are handled in due course. Furthermore, if any party in an environmental case is dissatisfied with the outcome in the circuit courts, that party has a remedy by way of appeal to the Intermediate Court of Appeals and then to the Supreme Court. This appellate process insures consistent application of environmental laws for the trial courts are bound to follow the appellate court decisions.

We recognize that other jurisdictions have established environmental courts after increases in environmental violations, housing/safety code violations, and/or an increase of abandoned residences or littered properties. We do not believe the same issues are present in Hawai'i. However, if the legislature identifies particular areas of concern, it would be beneficial if the bill could be narrowed to focus on those areas as a pilot program. We further suggest that an environmental calendar be considered in place of an environmental court. Considering this alternative takes into account the present workload of our sitting judges and the reality that the addition of an environmental court may require expenditures for additional court staff. Having an environmental calendar, rather than an environmental court, would allow a judge assigned to the calendar to hear other types of cases during those periods when there are no environmental cases.

We make this suggestion based on our preliminary survey of cases based on the sections of HRS cited in Senate Bill 632, SD1. *See* Attachment. The total number of such cases filed in district and circuit courts from 2001 through 2013 is 53. The total number of cases is slightly higher, 67, if cases filed before 2000 are included. We note that there are some categories of cases, such as violations of Hawai'i Administrative Rules provisions relating to conservation and resource protection, which may not be reflected in this list.

Although the judiciary believes the present system is adequate in addressing the concerns expressed in this measure, we are always open to discussion and we welcome any questions regarding these matters.

Thank you for the opportunity to comment on Senate Bill No. 632, Senate Draft 1.

Attachment

Environmental Law Cases in District and Circuit Court Criminal Caseload FY 2011 through FY 2013¹

Violations	Filed Before 2000	Filed Between 2001 and 2010	Filed Between 2011 and 2013 ¹	Grand Total
HRS 128D - Environmental Response Law				0
HRS 339-4(a)(2) - Litter outside of receptacle	13	3	27	43
HRS 339D - Electronic Waste				0
HRS 340A - Solid Waste				0
HRS 340E - Safe Drinking Water				0
HRS 342B-45 - Air Pollution			7	7
HRS 342B-49(b) - Air Pollution, false statement in records or rendering inaccurate device		1		1
HRS 342C - Ozone Layer Protection				0
HRS 342D-33(1) - Knowing violation of Water Pollution Statutes		5	1	6
HRS 342E - Nonpoint Source Pollution				0
HRS 342F-9(a) - Noise Pollution			1	1
HRS 342G - Integrated Solid Waste Management				0
HRS 342H-30 - Solid Waste Pollution		2		2
HRS 342H-37(a)(1) - Unauthorized disposal ten or more cubic yards - felony		2		2
HRS 342H-39(a)(1) - Solid Waste Pollution-petty misdm, unauth. disposal			1	1
HRS 342I - Special Waste Recycling				0
HRS 342J-9(c)(1) - Hazardous Waste		1		1
HRS 342J-9(c)(2) - Hazardous Waste		1		1
HRS 342J-9(c)(3) - Hazardous Waste			1	1
HRS 342L - Underground Storage Tanks				0
HRS 342P-23 - Violation of laws, permit or variance relating to asbestos, lead	1			1
HRS 343 - Environmental Impact Statements				0
HRS 508C - Uniform Environmental Covenants Act				0
Grand Total	14	15	38	67

¹District Court: FY2011 to FY2013; Circuit Court FY 2011 to 2nd quarter FY 2014

Notes: All cases were in the first and third circuits

Cases that were closed prior to FY2011 are not included in these numbers

11 cases were in Circuit Court; 12 were filed 2008 or before; 1 was filed in September 2012

56 cases were in District Court; 18 were filed prior to FY2011; 38 have been filed since October, 2010

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