



The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Ways and Means

Senator Donovan M. Dela Cruz, Chair

Senator Gilbert S. C. Keith-Agaran, Vice Chair

Wednesday, April 3, 2019 10:20 AM

State Capitol, Conference Room 211

by

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WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1261, House Draft 1, Senate Draft 1 Relating to Judicial Proceedings.

Purpose: Makes permanent the requirement that decisions in contested case hearings of the Commission on Water Resource Management, Land Use Commission, Public Utilities Commission, Hawaii Community Development Authority, and those involving conservation districts be appealed directly to the Supreme Court, with certain exceptions. Takes effect on June 30, 2019. (SD1)

Judiciary's Position:

In 2016, the legislature enacted Act 48, which allowed certain agency appeals to be filed directly with the Supreme Court, bypassing the circuit courts (including the environmental courts), and the Intermediate Court of Appeals. In accordance with requirements set forth in Act 48 of 2016, on December 20, 2018, the Judiciary submitted to the legislature A Report on Judicial Proceedings setting forth its findings and recommendations regarding the direct appeals (JC11).

With regard to House Bill No. 1261, House Draft 1, Senate Draft 1, the Judiciary offers the following comments and suggested amendments. The Judiciary respectfully recommends that the appellate jurisdiction of the environmental courts be restored for some of the appeals subject to the Act 48 of 2016. The legislature established the environmental courts in 2014 to promote and protect Hawai‘i’s natural environment through consistent and uniform application



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of environmental laws. Accordingly, specialized environmental courts were established in each judicial circuit. Restoring the jurisdiction of the environmental courts will ensure fulfillment of the goals envisioned by the establishment of the environmental courts.

If jurisdiction of the environmental courts is restored, the agency appeals that are the subject of Act 48 of 2016, except those from the State Water Commission, the Public Utilities Commission, and the Hawai'i Community Development Authority, would proceed first to the environmental courts. The Judiciary recommends that if any parties to the cases decided by the environmental courts wish to then seek further appellate review, that those appeals be filed directly with the Supreme Court, bypassing the Intermediate Court of Appeals.

The specialized environmental courts sitting as appellate courts should be able to more quickly address an initial appeal, and after the initial appeal, a further appeal to the Supreme Court may not be required. Proceeding in this manner should also have the advantage of providing a more complete record and focusing and limiting the issues brought to the Supreme Court, which should expedite the Supreme Court's final disposition. If the Judiciary's proposal is adopted, appeals from matters before the State Water Commission, the Public Utilities Commission, and the Hawai'i Community Development Authority would proceed directly to the Supreme Court.

Thank you for the opportunity to comment on this measure.