

SB152

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
LAURA H. THIELEN  
Chairperson**

**Before the Senate Committees on  
EDUCATION AND HOUSING  
and  
ENERGY AND ENVIRONMENT**

**Friday, February 6, 2009  
1:15 PM  
State Capitol, Conference Room 225**

**In consideration of  
SENATE BILL 152  
RELATING TO SUSTAINABILITY**

The purpose of Senate Bill 152 is to establish a process by which developers of residential communities may elect to develop sustainable communities in the State and to provide incentives for doing so. The Department of Land and Natural Resources (Department) comments are limited to § -8 relating to water conservation management. While the Department recognizes the importance of developing and implementing water conservation plans and practices, the Department nonetheless has major **concerns** regarding the time limit for permit applications imposed on the Department's Commission on Water Resource Management (Commission). In as much, the Department **offers the following comments.**

The Commission is subject to contested case hearings on various permit applications. In these cases, time limits should not apply. The Department suggests that a provision be added to exempt the maximum time period established pursuant to this section (§ -8) if the Commission is required to conduct a contested case hearing on an application. This is an especially grave concern for contested case hearings where other parties have substantive due process rights that would be negatively affected by the automatic granting provision in this bill. It is the Commission's experience that water disputes are very complicated and fact specific. Fact-finding can be a lengthy process often requiring highly technical and scientific studies on the effect of any proposed project on the water resource. Without additional time, the Commission would be forced to either make decisions on insufficient information and possibly jeopardize the resource or summarily deny the application because it had insufficient information for a decision. Such denials would create added expense in money and time for both the applicant and the Commission.

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

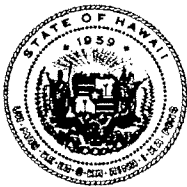
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE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

Given the unique and specialized nature of the work of the Commission and the fact that rights are involved, we respectfully request that the three hundred sixty-day time period requirement of this bill not apply for contested case hearing situations and offer the following amendment to paragraph (c) on page 11 of Senate Bill 152:

(c) Notwithstanding any provision relating to permits under chapter 174C or any other applicable section to the contrary, the commission on water resource management shall expedite the application process for any permit application from a developer of a residential community who has agreed to be subject to this chapter and have three hundred sixty days to review and decide on the permit application. If the three hundred sixty-day time period has expired on a permit application, and no decision has been rendered, and no request for contested case hearing has been filed, the permit shall be deemed approved.

Regarding the development of a water conservation plan, the State Water Code gives authority to the Commission to plan and coordinate programs for the development, conservation, protection, control, and regulation of water resources based upon the best available information, and in cooperation with federal agencies, other state agencies, county or other local governmental organizations, and other public and private agencies created for the utilization and conservation of water. Therefore, the Department recommends that the bill be amended to specify that the determination of feasible conservation programs rests with the Chairperson of the Commission, rather than the Board of Land and Natural Resources. This would clarify agency jurisdictional issues related to water conservation planning.

The Department continues to support the concept of sustainable communities and the reasonable and beneficial use and conservation of our State's water resources. The Department's policy is that water should be put to its best and highest use and advocates the application of non-potable water to meet non-potable water demands. In keeping with this policy, the Department supports the development and use of alternative water supplies, such as recycled wastewater and stormwater reclamation and reuse.



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
File:

SENATE COMMITTEE ON EDUCATION AND HOUSING  
SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

S.B. 152, RELATING TO SUSTAINABILITY

Testimony of Chiyome Leinaala Fukino, M.D.  
Director of Health

February 6, 2009

1 **Department's Position:** The Department of Health (DOH) supports the intent of this bill, but  
2 respectfully opposes it for fiscal reasons and as it pertains to the Wastewater Branch, the Solid Waste  
3 Branch and the Clean Air Branch. We defer to DBEDT and DLNR on other aspects of the bill.  
4 **Fiscal Implications:** We will need at least two (2) full-time civil service positions to carry out the  
5 proposed additional inter-departmental coordination. This measure will affect priorities set forth in the  
6 Executive Budget Proposal, and we ask that it not do so.  
7 **Purpose and Justification:** This bill seeks to promote sustainable residential communities through  
8 coordinated and expedited state agency reviews as incentives to developers to develop such sustainable  
9 communities. This bill proposes to organize an ad hoc development advisory committee composed of  
10 representatives of various state and county agencies and developers to facilitate this coordination. It  
11 specifically names the Wastewater and Solid Waste Programs of the DOH as participants in this process,  
12 and it covers permits related to energy, which may involve the Clean Air Branch.

1 In general, the Department favors streamlined permitting and has made improvements.  
2 However, we foresee substantial work and cannot support new programs without resources or priorities  
3 different from the executive proposed budget, especially in these difficult fiscal times.

4 We believe the bill's specific proposals do not enhance the Department's abilities to achieve the  
5 goal of expedited permits. Both our Wastewater and Solid Waste Programs can, and do, work with  
6 developers and agencies in creating development plans that maximize recycling opportunities for solid  
7 waste, water, and biosolids. We already give priority to processing permit applications for renewable  
8 energy projects, as the Clean Air Branch has done. We seek and invite early consultation with design  
9 professionals to speed later applications.

10 The bill proposes 360-day time limits for the review of permit applications, after which  
11 applications are automatically approved, whether or not they are complete. Both the Wastewater and  
12 Solid Waste Programs already have shorter time limits of 180 days for processing complete permit  
13 applications contained in their administrative rules. Wastewater application review time limits are  
14 contained in Hawaii Administrative Rules (HAR) Ch. 11-62-12(b), while solid waste permit application  
15 review time limits are contained in Ch. 11-58.1-04(c)(3). If this bill passes, we are concerned that  
16 incomplete applications will be automatically approved.

17 Strictly speaking, the Wastewater Program does not have a permit program with respect to  
18 residential developments; it does, however, have a review and approval process in place for wastewater  
19 systems plans. The solid waste program does have a permit program in place. However, it regulates  
20 solid waste management facilities such as landfills, transfer stations, and recycling drop-offs, and not  
21 entities such as residential developments.

22 The Clean Air Branch does have an air permitting process, which is federally delegated. This  
23 bill conflicts with federal requirements that do not allow a permit by default and allow up to 18 months  
24 to process and issue a permit.

1 Thank you for the opportunity to testify on this measure.

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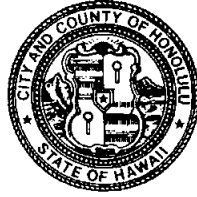
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DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

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MUFI HANNEMANN  
MAYOR



DAVID K. TANOUE  
ACTING DIRECTOR  
ROBERT M. SUMITOMO  
DEPUTY DIRECTOR

February 6, 2009

The Honorable Norman Sakamoto, Chair  
and Members of the Committee on Education  
and Housing

The Honorable Mike Gabbard, Chair  
and Members of the Committee on Energy  
and Environment  
The Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chairs Sakamoto, Gabbard and Members:

**Subject: SENATE BILL No. 152  
Relating to Sustainability**

The Department of Planning and Permitting **has comments on one section** of Senate Bill 152 which would establish incentives for new sustainable communities through negotiation and expedited review by specified state agencies.

We request clarification of subsection -9 (c) which would allow the state land use commission to "amend any existing urban or rural land use designation of land . . . to provide for the open space requirements . . ." We would be opposed to this provision if the intent is that designated open spaces that are already in the rural or urban district, should be reclassified to the conservation district. Urban open spaces, especially those that are part of a residential community are better addressed through county zoning and permitting. We are opposed to a proliferation of conservation lands dotted amongst otherwise urban uses. Subsection -9(b) requires 50% open space, thus changing the land use designation is unnecessary. This is not the intent of the conservation district, nor encourages a streamlined entitlement process. Ironically, rather than creating an incentive for sustainable communities, this may become a disincentive, as it adds another regulatory hurdle to the entitlement process.

If there is another purpose to subsection -9(c), this should be clarified. Otherwise, we ask that this section be deleted from Senate Bill 152

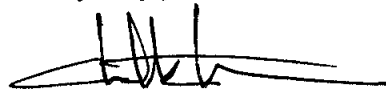
The Honorable Norman Sakamoto, Chair  
and Members of the Committee on Education  
and Housing

The Honorable Mike Gabbard, Chair  
and Members of the Committee on Energy  
and Environment

The Senate  
RE: SB 152  
February 6, 2009  
Page 2

Thank you for this opportunity to comment.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Tanoue', with a long horizontal flourish extending to the right.

David K. Tanoue, Acting Director  
Department of Planning and Permitting

DKT: jmf  
sb152-kst.doc





# Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803  
808.537.9019 hawaii.chapter@sierraclub.org

## SENATE COMMITTEE ON EDUCATION AND HOUSING SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

February 6, 2009, 1:15 P.M.

*(Testimony is 2 pages long)*

### TESTIMONY IN OPPOSITION TO SB 152

Chair Sakamoto, Chair Gabbard, and members of the Committees:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, submits the following testimony in **opposition to SB 152**, establishing sustainable communities in Hawai'i. While we greatly appreciate the intent behind the measure – ostensibly to expedite appropriate and sustainable development in Hawai'i – we fear that the solution offered in this measure may be misguided.

First, it should be noted that nothing prevents developers today from implementing the environmental design attributes described in SB 152. The fact that these standards have not been widely implemented suggests that companies developing in Hawai'i have other interests than Hawai'i's long-term sustainability. Perhaps the environmental features described in SB 152 could simply be mandatory conditions on all future development in the islands going forward.

Second, it has been our experience in tracking developments in Hawai'i that the environmental disclosure and permitting hurdles are lower on the list than obstacles such as financing, land acquisition, water acquisition, and sufficient financial incentives to “do the right thing.” For example, when a large developer was recently asked if it would follow the sustainable communities plan, the response was:

*“In my view, the bill's incentives in terms of expedited permit processing do not appear to be particularly enticing **as most approvals can already be obtained within a one year timeframe.** Moreover, some of the required benchmarks for each category – 50% generation of energy, 75% waste diversion, recycle all wastewater, 50% open space designation –*

may be quite difficult to attain, predict, monitor and enforce, particularly in the preliminary planning stages of development.”

Third, the Sierra Club objects to the “automatic approval” of any permit. In a state that values its communities, environment, and citizens rights, automatic approval is simply poor policy. Permits should be granted on their merits, not by mistake. *No community should suffer because government failed to perform.*

Automatic approvals are completely antithetical to smart, sustainable planning. Consider:

1. What happens when additional information is required by the department or agency and the deadline passes?
2. What happens when there are complex environmental assessments and impact statements that need to be completed pursuant to chapter 343, HRS, and the deadline passes?
3. What happens when a contested case hearing is requested pursuant to chapter 91, HRS, and for any other period for administrative appeals and review and the deadline passes?
4. What happens when health, welfare, or safety concerns (such as compliance with building codes) are not properly addressed in due course? Are we ready to let people die?
5. Is it ever appropriate to automatically approve a permit that will irreparably damage the environment or native Hawaiian rights? Doesn't that violate protections provided by the state constitution?

Finally, the Sierra Club observes SB 152 has no provision to ensure continued compliance. What stops a developer from submitting a sustainable community plan, but then developing something quite contrary? Shouldn't there be some penalty for noncompliance?

Again, we understand and appreciate the intent of SB 152. We submit, however, that automatic approvals will hurt sustainable communities far more than they will help. We hope this Committee will consider amending this bill and simply make the stated requirements mandatory on all development, rather than simply rewarding governmental inefficiency.

Thank you for the opportunity to testify.