

Honolulu, Hawaii

FEB 17 2012

RE: S.B. No. 2277

S.D. 1

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

Sir:

Your Committees on Energy and Environment and Water, Land, and Housing, to which was referred S.B. No. 2277 entitled:

"A BILL FOR AN ACT RELATING TO ENDANGERED AND THREATENED SPECIES,"

beg leave to report as follows:

The purpose and intent of this measure is to:

- (1) Authorize citizen suits to enforce habitat conservation plans or safe harbor agreements and accompanying licenses; and
- (2) Repeal the prohibition on the approval of the issuance of new safe harbor agreements, habitat conservation plans, and incidental take licenses after July 1, 2012.

Your Committees received testimony in support of this measure from the Department of Land and Natural Resources, University of Hawaii Environmental Center, Earthjustice, Life of the Land, Conservation Council for Hawai'i, Sierra Club, First Wind, and ten individuals. Your Committees received comments on this measure from The Pacific Resource Partnership, Land Use Research Foundation of Hawaii, Hawaii Farm Bureau Federation, and The Nature Conservancy.

Your Committees find habitat conservation plans and safe harbor agreements to be necessary to the recovery of the State's threatened and endangered species. Species that have benefited



from habitat conservation plans and safe harbor agreements include the nene, montane-nesting seabirds, and the Hawaiian hoary bat. Eight habitat conservation plans and six safe harbor agreements have been issued under state law, and the Department of Land and Natural Resources anticipates finalizing ten new habitat conservation plans and three safe harbor agreements in the near future.

While your Committees recognize the need to enforce habitat conservation plans and safe harbor agreements, your Committees find that the negative impacts of citizen suits outweigh the benefits. A more promising enforcement mechanism is the contested case hearing provided under chapter 91, Hawaii Revised Statutes. Emergency situations that pose a significant risk to the well-being of any species of fish, wildlife, or plant also warrant the creation of an additional administrative remedy.

Your Committees have amended this measure by:

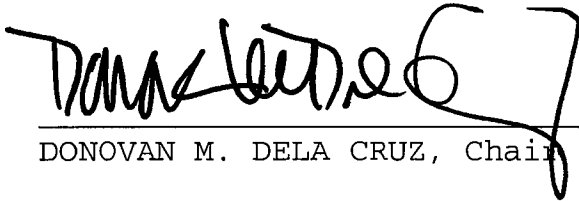
- (1) Replacing the language that amended section 195D-32, Hawaii Revised Statutes, relating to citizen suits with language that establishes a new section in chapter 195D, Hawaii Revised Statutes, which:
 - (A) Requires that a challenge to the approval of a habitat conservation plan or safe harbor agreement and accompanying license be through a contested case hearing rather than an original court action;
 - (B) Authorizes petitions to the Board of Land and Natural Resources for an emergency stay order in cases in which an emergency poses a significant risk to the well-being of any species of fish, wildlife, or plant; and
 - (C) Authorizes additional, specified remedies for a person aggrieved by an administrative decision of the Board of Land and Natural Resources;
- (2) Adding a definition of the term "chairperson";
- (3) Repealing section 195D-27, Hawaii Revised Statutes, which pertained to the administrative enforcement of rules, habitat conservation plans, safe harbor agreements, and incidental take licenses; and

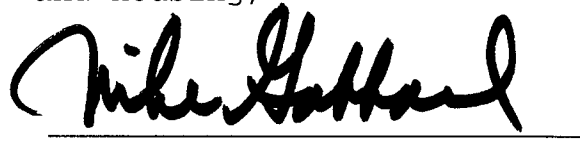


- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the records of votes of the members of your Committees on Energy and Environment and Water, Land, and Housing that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2277, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2277, S.D. 1, and be referred to the Committee on Judiciary and Labor.

Respectfully submitted on
behalf of the members of the
Committees on Energy and
Environment and Water, Land,
and Housing,


DONOVAN M. DELA CRUZ, Chair


MIKE GABBARD, Chair



