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GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the Senate Committee on
WATER, LAND, & HOUSING**

**Tuesday, February 15, 2011
1:15 PM
State Capitol, Conference Room 225**

**In consideration of
SENATE BILL 1311
RELATING TO FEES FOR HABITAT CONSERVATION PLANS**

The Department of Land and Natural Resources (Department) strongly supports Senate Bill 1311, an Administration bill, to authorize the collection of fees to cover the technical assistance program costs associated with developing, reviewing, and monitoring habitat conservation plans; and provisions for the adoption of rules to establish such fees.

Hawaii is the Endangered Species Capital of the Nation with 380 listed threatened and endangered species and many more that are candidates or species of concern. As such, Hawaii needs the flexibility within its state law to work cooperatively with its federal counterparts, private landowners and other government agencies to deal with the complexities of the endangered species situation in Hawaii and find the proactive, workable solutions that can protect and conserve our endangered species while allowing for acceptable resource use activities and sound development.

Under both State and Federal endangered species law, the incidental take of threatened and endangered species may be allowed if the applicant obtains state and federal approval of a habitat conservation plan that identifies and implements measures to avoid, minimize, mitigate, and monitor take of affected species, and that will increase the likelihood of recovery of the endangered or threatened species that are the focus of the plan. Under Chapter 195D, Hawaii Revised Statutes, the Department is responsible for evaluating, processing, and approving habitat conservation plans and incidental take licenses (ITL) and may establish a technical assistance program for landowners for that purpose. Most applicants request extensive assistance and the number of applications for ITLs and requests for assistance related to habitat conservation plans has increased significantly in recent years involving infrastructure and energy develop projects.

WILLIAM J. AILA, JR.
INTERIM CHAIRPERSON
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LAND
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The Department is currently providing required annual reviews for four approved habitat conservation plans, and is also reviewing applications for 13 habitat conservation plans. Each habitat conservation plan requires an average of 300 staff hours per year. There is currently no budgeted position within the department to address this need for technical assistance. This bill would authorize the adoption of rules for establishing a procedure to collect fees from applicants to cover the department's costs to implement the technical assistance program. Establishing these fees would enable the Department to better service the needs of applicants, and more efficiently process habitat conservation plans.

The Department notes a drafting error in this measure. SECTION 3, lines 10 -13 on page 3 should read:

"(d) The department may establish a habitat conservation technical assistance program to assist landowners in developing, reviewing, or monitoring habitat conservation plans by providing technical assistance.



SENATOR DONOVAN M. DELA CRUZ, CHAIR
SENATOR MALAMA SOLOMON, VICE CHAIR
SENATE COMMITTEE ON WATER, LAND, AND HOUSING

TESTIMONY RE: SENATE BILL NO. 1311
RELATING TO FEES FOR HABITAT CONSERVATION PLANS

February 15, 2011, 1:15 p.m.
Conference Room 225

Good afternoon Chair Dela Cruz, Vice-Chair Solomon, and members of the committee:

My name is David Lane Henkin, and I am an attorney with Earthjustice. We appreciate the opportunity to offer this testimony in support of Senate Bill No. 1311, which would help provide the Department of Land and Natural Resources (DLNR) with the funding it needs to ensure that habitat conservation plans (HCPs) approved pursuant to HRS chapter 195D adequately protect Hawai'i's critically imperiled native plants and animals, preserving these irreplaceable public trust resources for future generations.

When the Legislature amended chapter 195D over a decade ago to allow for incidental "take" (i.e., injury and death) of imperiled species, it wisely insisted that, before any take authorization could issue, an HCP would have to be developed and approved to ensure that the harm to imperiled species would be minimized and mitigated and that the overall effect of the approved activities would confer a net benefit on the affected species. Satisfying these mandates often requires considerable scientific and other technical expertise. Accordingly, the Legislature authorized DLNR to establish a technical assistance program to help private parties develop their HCPs.

Over the years, more and more landowners in Hawai'i have sought to bring their existing operations into compliance with chapter 195D, while others have sought to ensure that new undertakings would, from their inception, afford imperiled species with the required protection. These developments further the public's interest in preserving our natural heritage for future generations and, thus, are most welcome. Providing technical assistance for these new HCP initiatives has, however, imposed a heavy burden on DLNR, which already lacks adequate funds to carry out its mission.

SB 1311 would promote the public interest by providing DLNR with vital resources to help landowners comply with chapter 195D's command to protect imperiled species. Moreover, by ensuring adequate staffing for DLNR's technical assistance program, it would help expedite the processing of incidental take applications.

For the foregoing reasons, we respectfully urge you to pass SB 1311. Thank you again for the opportunity to offer this testimony.