

LATE



LIFE OF THE LAND

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COMMITTEE ON FINANCE

Rep. Marcus Oshiro, Chair

Rep. Marilyn Lee, Vice Chair

Friday, March 30, 2012

5:00 p.m.

Room 308

OPPOSITION to HB 2277 HD1 – ENDANGERED & THREATENED SPECIES

Aloha Chair Oshiro, Vice Chair Lee and Members of the Committee!

My name is Kat Brady and I am the Assistant Executive Director of Life of the Land, Hawai'i's own energy, environmental and community action group advocating for the people and the `aina for over four decades. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

Life of the Land OPPOSES SB 2277 HD 1 that makes permanent the Department of Land and Natural Resources' power to approve habitat conservation plans, safe harbor agreements, and incidental take licenses.

The five-year sunset on DLNR's authority to issue licenses for incidental take, safe harbor agreements and habitat conservation plans has already been extended twice by subsequent Legislatures, yet they have affirmed the need for periodic review of DLNR's performance.

The HD1 lifts the sunset date without providing any alternate checks and balances.

Hawai'i already has the dubious distinction of leading the nation in threatened and endangered species. Denying future generations the opportunity to enjoy what is left of these unique and fragile resources is just wrong and selfish.

The Legislature should bring our state law in line with the federal Endangered Species Act, which has – since its inception in 1973 – encouraged citizens to take action to protect imperiled species.

In these difficult economic times, with government services being cut back, it is vital for the Legislature to encourage Hawai'i's citizens to assist in preventing harm to our imperiled plants and animals. Please think about our keiki – your keiki, your mo`opuna - and those yet to be born before you vote. Your vote today *will* impact their future.

If the committee is unable to amend the bill by either keeping the sunset date in place or providing alternate oversight, then we respectfully request that you HOLD this bill. Mahalo for the opportunity to testify.

"Your descendants shall gather your fruits."

Virgil



Hawaii Farm Bureau
F E D E R A T I O N

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Tuesday, March 30, 2012
5:00 pm
Conference Room 308

House Committee on Finance
Agenda #4

Testimony on SB 2277 SD2 HD1
RELATING TO ENDANGERED AND THREATENED SPECIES

Aloha Chair Oshiro, Vice Chair Lee, and Members of the Committee,

I am Janet Ashman, testifying on behalf of the Hawaii Farm Bureau Federation (HFBF). Organized since 1948, the HFBF is comprised of 1,800 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interests of our diverse agricultural community.

We strongly support this measure, as written in HD1, that removes the July sunset date for continued availability of safe harbor agreements (SHA), habitat conservation plans (HCP), and incidental take licenses under HRS Chapter 195D. Continuation of these programs is essential because they provide a net benefit to endangered species through conservation agreements with landowners, while allowing important activities such as renewable energy projects to take place within the state. These projects are important for providing alternative energy to Hawaii and they also provide a means for some of our ranchers and farmers to stay viable.

We respectfully oppose the insertion of any new citizen suit or contested case provisions. The current law already allows recourse in the case of a bad actor, through specific administrative review and contested case procedures. No citizen suit or contested case provisions are necessary or advisable:

The whole purpose in participating in these extremely expensive and time consuming programs is to protect endangered species. As stated in the statute (HRS 195D-23(f)), the execution of these plans shall "be deemed to be a public purpose and in the public interest, and for the general welfare of the State." Landowners who enter into these agreements are not trying to harm plants or animals but they recognize that their activities may inadvertently disturb or harm the species. SHA and HCP programs provide the only mechanism that will allow for a *potential* "take" of an

endangered species incidental to an otherwise lawful activity. For example, any potential unintentional harm that may result from the construction or operation of a wind power facility.

Under Hawaii's Endangered Species law, HRS 195D, incidental take licenses are only obtainable after a landowner agrees to an HCP that includes specified measures for avoidance, minimization, mitigation, monitoring, and net recovery benefit to the affected species. Development of each of these measures within the HCP involves working with not only DLNR, but also with the US Fish and Wildlife Service, the Endangered Species Recovery Committee, the Board of Land and Natural Resources, the Attorney General, and the public (from whom input is solicited through a public hearing and at least 60 days for review and comment). To obtain approval, the Board must use the best scientific and other reliable data to determine that the activities covered by the plan will be environmentally beneficial.

A plan can only be approved if it will further the purposes of endangered species law by protecting, maintaining, restoring, or enhancing ecosystems, natural communities, or habitats. Furthermore, the plan must increase the likelihood of recovery of the species.

DLNR advises that the development process takes a minimum of one year to develop; however, most, if not all, HCPs take far longer. Very few HCPs have been developed; besides the huge cost and time factors, the process is extremely burdensome on the landowner. The previously proposed citizen suit and contested case provisions would surely add to this burden.

Instead of providing incentives for conservation and stewardship, citizen suit and contested case provisions may be used to punish those whose lands happen to be used as habitat for endangered species and who are trying to do the right thing. Hawaii's farms and ranches are an attraction for many endangered species and we encourage our members to be protective of those species that find those lands a suitable habitat. If our farmers or ranchers want to enter into an HCP, they should be encouraged to do so. They should not be disincentivized by the prospect of having to go through a contested case procedure after having developed a plan acceptable to all the requisite parties because someone does not want a particular project to proceed and uses this provision to stop it. At a time when food and energy sustainability is a priority for Hawaii, we cannot afford to jeopardize the viability of these producers.

HFBF respectfully requests that your committee pass this bill as written in HD1, with an effective date of June 30, 2012, to allow these important programs to continue to be available.

Thank you very much for the opportunity to provide our views on this bill.