

**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

NEIL ABERCROMBIE
GOVERNOR

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DIRECTOR

MARY ALICE EVANS
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Statement of
RICHARD C. LIM
Director
Department of Business, Economic Development, and Tourism
before the
**HOUSE COMMITTEE ON
JUDICIARY**
Tuesday, March 20, 2012
2:00 PM
State Capitol, Conference Room 325

in consideration of
SB2277 SD2, HD1
RELATING TO ENDANGERED AND THREATENED SPECIES.

Chair Keith-Aragon, Vice Chair Rhoads, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) **supports** SB2277 SD2, HD1, which repeals the "sunset" date on the approval of new safe harbor agreements, habitat conservation plans, and incidental take licenses, which are non-exemptions under H.R.S. §195D.

As this is a wildlife issue, we defer to the appropriate agency for comment.

Five existing and proposed wind energy facilities in Hawaii utilize these safe harbor agreements, habitat conservation plans, and incidental take licenses to allow for the legal harming of protected wildlife species during normal facility operations, while ensuring a net benefit to the impacted species.

Thank you for the opportunity to offer these comments on SB2277 SD2, HD1.

Bernard P. Carvalho, Jr.
Mayor



Alfred B. Castillo, Jr.
County Attorney

Gary K. Heu
Managing Director

Amy I. Esaki
First Deputy

OFFICE OF THE COUNTY ATTORNEY

County of Kaua'i, State of Hawai'i

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Testimony of Amy I. Esaki

Before a Hearing of the House Committee on Judiciary
Tuesday, March 20, 2012
2:00 p.m.
House Conference Room 325

Senate Bill 2277 SD2 HD1 Relating to Endangered and Threatened Species

The County of Kaua'i supports SB2277 SD2 HD1 that will allow the Department of Land and Natural Resources (DLNR) to continue to issue SHAs, HCPs, and ITLs by repealing the sunset clause.

It is vital for our County and constituents to have available to them not only the appropriate means and methods to protect listed species, but also the ability to continue to engage in activities that are necessary for the economy and our constituents' well-being. Hawai'i is considered by many to be the endangered species capital of the nation. On the island of Kaua'i alone, forty-eight (48) species were added to the protected list under the Federal Endangered Species Act in 2010. Promoting conservation of so many species while promoting the health, safety, and welfare of our citizens is a very difficult but necessary balance that must be made for both listed species and Kaua'i's citizens.

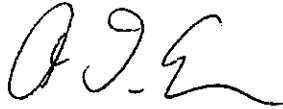
Without HCPs, SHAs, and ITLs, activities such as using lights during certain months and shoeing Nene from eating local crops on Kaua'i would theoretically be illegal under the State Endangered Species Act (SESA) without exception. Citizens and agencies must have a means to comply with the SESA and engage in otherwise legal activities, which may remain illegal without HCPs, SHAs, and ITLs. Furthermore, critical opportunities to provide necessary programs and conservation lands for listed species through funding generated from SHAs, HCPs, and ITLs will be lost if those mechanisms are eliminated. The goal should be to encourage the effects to threatened and endangered species be minimized and mitigated through public outreach and SHAs, HCPs, ITLs.

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Testimony of Amy I. Esaki
Senate Bill No. 2277 SD2 HD1
Page 2

Thank you for considering our testimony on this proposed legislation.

Mahalo,

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



Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803
808.538.6616 hawaii.chapter@sierraclub.org

HOUSE COMMITTEE ON JUDICIARY

March 20, 2012, 2:00 P.M.
(Testimony is 1 page long)

TESTIMONY IN OPPOSITION TO SB 2277 (SD2, HD1)

Aloha Chair Keith-Agaran and Members of the Committee:

The Sierra Club, Hawaii Chapter, with 10,000 dues paying members and supporters statewide, *opposes* SB 2277 (SD2, HD1). As drafted, this measure would eliminate the necessary checks and balances to ensure that Hawaii's endangered and threatened species are not eliminated forever.

We strongly prefer the original language of this measure -- which was approved by the business, environmental and governmental stakeholders -- that eliminated the sunset provision of this law and created a measured citizen suit right. This balanced DLNR's desire to have a permanent program and ensured that when an agency cannot or will not act, other remedies existed to ensure Hawaii's endangered species are protected.

Under the federal Endangered Species Act, citizens already have the right to sue to protect listed fish and wildlife. Citizen suits are an effective tool to ensure that public agencies abide by their agreements and comply with their duty to protect Hawaii's critically imperiled species. Checks and balances are vital to ensure that conservation programs serve their intended purpose: to promote the conservation of listed species.

Amending Chapter 195D to allow citizen suits against public agencies would ensure that Hawaii's nearly 300 endangered and threatened plants receive protection against destructive projects, like animals do under the federal Endangered Species Act. Nearly 30 years of experience with the federal Endangered Species Act's citizen suit provision has demonstrated that citizens use the right to sue responsibly. Suits are relatively rare and are only brought when critically necessary. And, like the lawsuit that sought to protect the *palilia* on the Island of Hawai'i, citizen suits are proven to work when agencies or developers are intransigent.

Mahalo for the opportunity to testify.



Protecting nature. Preserving life.™

The Nature Conservancy of Hawai'i
923 Nu'uuanu Avenue
Honolulu, Hawai'i 96817

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nature.org/hawaii

Testimony of The Nature Conservancy of Hawai'i
Commenting on S.B. 2277 HD1 Relating to Endangered and Threatened Species
House Committee on Judiciary
Tuesday, March 20, 2012, 2:00PM, Room 325

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawaii's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for native species in Hawai'i. Today, we actively manage more than 32,000 acres in 10 nature preserves on Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.

The Nature Conservancy does not take a position on the provisions in earlier drafts of S.B. 2277 that would expand the allowance of citizen suits to enforce provisions of HRS Chapter 195D, habitat conservation plans, safe harbor agreements, or incidental take licenses.

We do support the provision of the bill that would repeal the July 1, 2012 cut-off for issuance of new habitat conservation plans, safe harbor agreements, or incidental take licenses. Safe harbor agreements, habitat conservation plans, and incidental take licenses are valuable and welcome tools for the State's ongoing conservation efforts. These tools provide a safe and flexible framework for landowners to move ahead with land-use projects, while providing protection for endangered or threatened species through plans that result in an overall net gain in the recovery of the species.

Thank you for the opportunity to testify.

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Hawaii Cattlemen's Council, Inc.

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HOUSE COMMITTEE ON JUDICIARY

Tuesday March 20, 2012 2:00 p.m. Room 325

SB 2277 SD 2, HD 1 RELATING TO ENDANGERED AND THREATENED SPECIES

Makes permanent the Department of Land and Natural Resources' power to approve habitat conservation plans, safe harbor agreements, and incidental take licenses. Effective July 1, 2050. (SB2277 HD1)

Chair Keith-Agaran, Vice Chair Rhoads and Members of the Committee:

My name is Alan Gottlieb, and I am a rancher and the Government Affairs Chair for the Hawaii Cattlemen's Council. The Hawaii Cattlemen's Council, Inc. (HCC) is the Statewide umbrella organization comprised of the five county level Cattlemen's Associations. Our 130+ member ranchers represent over 60,000 head of beef cows; more than 75% of all the beef cows in the State. Ranchers are the stewards of approximately 25% of the State's total land mass.

The Hawaii Cattlemen's Council strongly supports removing the sunset date from Safe Harbor Agreements as contained in SB 2277 SD2, HD 1.

HD 1 wisely removed contested case proceedings from the bill, the removal of which we strongly support.

Safe Harbor Agreements are becoming increasingly necessary to do good things, and they ensure compliance with the Endangered Species laws. However, there are many in our society, for one reason or another, who want to block a project and will use whatever procedures are available to do so. The use of a contested case procedure may kill a project just by delaying it so that it is no longer economically feasible. The cost of a habitat conservation plan is already beyond the reach of most farmers and ranchers and it will be even more costly if they have to go through a contested case hearing.

Thank you for giving me the opportunity to testify on this very important issue.



CONSERVATION COUNCIL FOR HAWAII

Testimony Submitted to the House Committee on Judiciary

Hearing: Tuesday, February 20, 2012 2:00 pm
Conference Room 325

In Opposition to SB 2277 SD 2 HD 1 Relating to Endangered and Threatened Species

Aloha. The Conservation Council for Hawai'i opposes SB 2277 SD 2 HD 1, which would remove vital protections for Hawai'i's endangered and threatened plants and animals. We oppose the current version of the bill for the following reasons.

Oversight is critical to ensure that DLNR acts responsibly in issuing licenses to kill and injure endangered species. Accordingly, the Legislature should either keep the sunset date in place or provide alternate oversight, so that future generations can continue to enjoy our unique native flora and fauna.

Proven, effective alternatives to legislative oversight exist. 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.

Particularly in these difficult economic times, with government services being cut back, it is vital for the Legislature to encourage Hawai'i's citizenry to assist in preventing harm to our imperiled plants and animals.

In 1997, when the Legislature amended the state's endangered species law to allow for the incidental "take" (killing, harming, wounding, and harassing) of endangered and threatened species through safe harbor agreements and habitat conservation plans, it recognized the importance of keeping close tabs on activities that, if improperly managed, could drive Hawai'i's critically imperiled native plants and animals to extinction. Accordingly, the initial legislation established a five-year sunset on the Department of Land and Natural Resources' authority to issue incidental take licenses, safe harbor agreements, and habitat conservation plans. While the Legislature has twice extended the sunset date, it has affirmed the need for periodic review of DLNR's performance and consistently rejected requests to remove the sunset date altogether. House Draft 1 of SB 2277 would lift the sunset date, without providing any alternate checks and balances.

Mahalo nui loa for the opportunity to testify. Please oppose SB 2277 SD 2 HD 1.

Sincerely,

Marjorie Ziegler



Hawai'i's Voice for Wildlife – *Ko Leo Hawai'i no na holoholona lohiu*

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Directors: Lida Pigott Burney * Koalani Kaulukukui * Robin Kaye
Executive Director: Marjorie Ziegler



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COMMITTEE ON WATER, LAND, AND HOUSING

Rep. Gil Keith-Agaran, Chair
Rep. Karl Rhoads, Vice Chair
Tuesday, March 20, 2012
2:00 p.m.
Room 325

OPPOSITION to HB 2277 HD1 – ENDANGERED & THREATENED SPECIES

Aloha Chair Keith-Agaran, Vice Chair Rhoads 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 `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.

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

Life of the Land OPPOSES this measure.

When the Legislature amended the endangered species law in 1997 to allow incidental take – the killing or wounding of endangered species – by creating safe harbors and habitat conservation plans, they do so in recognition of the importance of these precious resources to Hawai'i. The 1997 Legislature's action was based on the fact that if we don't protect these unique resources, they will be lost forever.

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 would lift the sunset date without providing any alternate checks and balances. Hawai'i already has the dubious distinction of being the endangered species

it has affirmed the need for periodic review of DLNR's performance and consistently rejected requests to remove the sunset date altogether. House Draft 1 of SB 2277 would lift 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 and denying future generations of 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 and those yet to be born.

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.



EARTHJUSTICE

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES
NORTHWEST ROCKY MOUNTAIN WASHINGTON, DC INTERNATIONAL

REPRESENTATIVE GILBERT S.C. KEITH-AGARAN, CHAIR
REPRESENTATIVE KARL RHOADS, VICE-CHAIR
HOUSE COMMITTEE ON JUDICIARY

TESTIMONY RE: SENATE BILL NO. 2277, S.D. 2, H.D. 1
RELATING TO ENDANGERED AND THREATENED SPECIES

March 20, 2012, 2:00 p.m.
Conference Room 325

Good afternoon Chair Keith-Agaran, Vice-Chair Rhoads, 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 opposition to the current version of Senate Bill No. 2277, which lacks the necessary safeguards to ensure adequate protection of Hawai'i's critically imperiled native plants and animals.

In 1997, when the Legislature amended H.R.S. Chapter 195D to allow for the incidental "take" (killing, harming, wounding, and harassing) of endangered and threatened species through safe harbor agreements (SHAs) and habitat conservation plans (HCPs), it recognized the importance of keeping close tabs on activities that, if improperly managed, could drive Hawai'i's critically imperiled native plants and animals to extinction. Accordingly, the initial legislation established a five-year sunset on the Department of Land and Natural Resources' (DLNR's) authority to issue incidental take licenses, SHAs and HCPs. While the Legislature has twice extended the sunset date, it has affirmed the need for periodic review of DLNR's performance and consistently rejected requests to remove the sunset date altogether.

House Draft 1 of SB 2277 would lift the sunset date, without providing any alternate checks and balances. Earthjustice respectfully submits that oversight is critical to ensure that DLNR acts responsibly in issuing licenses to kill and injure endangered species. The Legislature should either keep the sunset date in place or provide alternate oversight, so that future generations can continue to enjoy our unique native flora and fauna, which are irreplaceable public trust resources.

Proven, effective alternatives to legislative oversight exist. At the outset of this session, the Department of Land and Natural Resources, the Attorney General's office, the conservation community, and many members of the regulated community reached a historic agreement, reflected in the original version of SB 2277, to adopt such safeguards, bringing chapter 195D in line with the federal Endangered Species Act, which has – since its inception in 1973 – encouraged citizens to take action to protect imperiled species. See 16 U.S.C. § 1540(g).

In enacting the federal Endangered Species Act, Congress recognized that, whether due to budgetary limitations or lack of political will, government wildlife agencies alone could not

be relied on to ensure adequate protection of imperiled species. Accordingly, Congress encouraged citizens to supplement government enforcement through actions seeking prospective injunctive relief that would prevent future harm to endangered and threatened species (i.e., court orders to ensure people follow the law, not to impose penalties).

If the committee would like to lift the sunset date, we respectfully urge it to adopt the attached proposed House Draft 2, which incorporates the consensus citizen suit language developed by Earthjustice, the Department of Land and Natural Resources and the Attorney General's office. Particularly in these difficult economic times, with government services being cut back, it is vital for the Legislature to encourage Hawai'i's citizenry to assist in preventing harm to our imperiled plants and animals.

This is particularly important to the more than 300 federally listed endangered and threatened plants in Hawai'i, which are the building blocks of our native ecosystems and constitute over 80% of Hawai'i's endangered and threatened species and nearly 25% of all listed species in the entire United States. While the federal ESA prohibits "take" (i.e., killing and injuring) of listed fish and wildlife, it largely entrusts to state law the protection of endangered and threatened plants. Chapter 195D's protections for plants may look good on paper, but, without effective enforcement, they do nothing to preserve these unique public trust resources for future generations.

The proposed HD 2 would further improve Chapter 195D by deleting HRS § 195D-27's administrative enforcement procedures. While the Legislature's adoption of HRS § 195D-27 in 1997 may have been well-intentioned, the procedures it establishes were poorly conceived. Consequently, these provisions impose burdens on DLNR, concerned citizens and the regulated industry, with no offsetting benefit for imperiled species to justify the costs. Keeping HRS § 195D-27 on the books serves only to create the illusion of a meaningful process for citizens to raise concerns about threats to listed species. The statute is better without it.

For the foregoing reasons, we respectfully urge you either to hold SB 2277 SD 2, HD 1, or to adopt the attached amendments as House Draft 2.

Thank you again for the opportunity to offer this testimony.

RELATING TO ENDANGERED AND THREATENED SPECIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 195D-27, Hawaii Revised Statutes, is repealed.

~~["§195D-27 Administrative enforcement of rules, plans, agreements, or licenses. (a) Any person may petition the chairperson to appoint a hearings officer to hear a request to enjoin any person, including the State and any other government agency, alleged to be in violation of this chapter, including any rule adopted pursuant to this chapter, habitat conservation plan, safe harbor agreement, or incidental take license, or to require the State to take action to enforce this chapter, including any rule adopted pursuant to this chapter or any term of a habitat conservation plan, safe harbor agreement, or incidental take license.~~

~~—— (b) Upon receipt of a petition, the chairperson shall make a diligent effort to resolve the subject matter of the petition and, if appropriate, to cause the noncomplying or other responsible party to comply with the habitat conservation plan, safe harbor agreement, or incidental take license. If the chairperson is unable to resolve the subject matter of the petition within a period of time deemed reasonable under the circumstances, but in no event more than ninety days; or if the~~

~~petitioner is not satisfied with the chairperson's resolution of the subject matter, then the chairperson shall appoint a hearings officer to hear the petition. The hearings officer shall commence a contested case hearing in accordance with chapter 91 and, within thirty days of the completion of the hearing, grant in whole or in part, or deny the petition.~~

~~—— (c) Nothing in this section shall grant any authority whatsoever upon a hearings officer to assess monetary damages or criminal penalties against any party found to be in violation of this chapter, however, the hearings officer shall issue findings of fact and, if appropriate, an order directing the party found to be in violation to take specific action to comply with this chapter.~~

~~—— (d) Any person who believes that a violation of a habitat conservation plan, safe harbor agreement, or incidental take license has occurred, is occurring, or is likely to occur, may petition the chairperson for an immediate hearing. The petition shall be accompanied by an affidavit alleging:~~

~~—— (1) Specific facts showing that the continued existence of an endangered or threatened species is likely to be jeopardized unless the alleged violation is immediately enjoined; and~~

~~—— (2) The efforts that have been made to notify the landowner of the alleged violation.~~

~~If the chairperson finds that there exists good cause for a hearing, then a hearings officer shall be appointed who shall conduct a hearing forthwith, and in any event within forty-eight hours after the filing of the petition. If the hearings officer determines that there is a substantial likelihood that the continued existence of an endangered or threatened species will be jeopardized unless the violation is immediately enjoined, then the hearings officer shall order temporary injunctive relief, which shall expire upon such terms as the hearings officer determines."]~~

SECTION 2. Section 195D-32, Hawaii Revised Statutes, is amended to read as follows:

"~~[+]§195D-32[+]~~ **Citizen suits.** (a) Except as provided in subsection (b), any person, acting as a private attorney general, may commence a civil suit on the person's behalf:

- (1) Against any person, including any state or county agency or instrumentality, who ~~[that]~~ is alleged to be in violation of section 195D-4(e) or any rule adopted pursuant to sections 195D-4(e), (f), (g) or (j) ~~[the terms of, or [fails] to fulfill the obligations imposed and agreed to under any habitat conservation plan or safe harbor agreement and accompanying license for public lands as authorized under sections 195D-21 and 195D-22]; or~~

(2) Against the department or board, where there is alleged a failure of the department or board to perform any act or duty required under a habitat conservation plan or safe harbor agreement and accompanying license ~~[issued for public lands]~~.

(b) The circuit courts shall have jurisdiction to enforce ~~[this section]~~ section 195D-4(e) and any rule adopted pursuant to sections 195D-4(e), (f), (g) or (j), or to order the department or board to perform any act or duty required under ~~[this section,]~~ a habitat conservation plan or safe harbor agreement and accompanying license, provided that:

(1) No action may be commenced under subsection (a)(1) —
(A) less than sixty days after written notice of the alleged violation has been given to the department, and to the person [state or county agency or instrumentality] alleged to be in violation[—of this section], except that the action may be brought immediately after the notification in the case of an emergency posing a significant risk to the well-being of any species of fish, wildlife, or plant; or [and]
(B) if the department has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or the State to redress the violation.

(2) No action may be commenced under subsection (a)(2) less than sixty days after written notice of the alleged violation has been given to the department, except that the action may be brought immediately after the notification in the case of an emergency posing a significant risk to the well-being of any species of fish or wildlife, or plant.

(3) No action may be brought against an officer or employee of any state or county agency or instrumentality in his or her individual capacity if the officer or employee is acting within the scope of his or her official duties; in such a case, an action may be brought against the officer or employee only in his or her official capacity.

(c) Any suit brought pursuant to this section may be brought in the judicial circuit [~~where~~] in which the alleged violation occurred or is occurring. In any suit brought pursuant to this section, where the State is not a party, the attorney general, at the request of the department, may intervene on behalf of the State as a matter of right.

(d) The court, in issuing any final order in any suit brought pursuant to this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any

prevailing party, whenever the court determines such award is appropriate.

~~[(d)]~~ (e) The injunctive relief provided by this section shall not restrict any right that any person or class of persons may have under any other law, including common law, to seek enforcement of any standard or limitation or to seek any other relief, including relief against any instrumentality or agency of the State.

SECTION 3. Act 380, Session Laws of Hawaii 1997, as amended by Act 3, Session Laws of Hawaii 2001, and by Act 90, Session Laws of Hawaii 2006, is amended by amending section 13 to read as follows:

"SECTION 13. This Act shall take effect upon its approval [~~;~~ ~~provided that no new safe harbor agreements, habitat conservation plans, or incidental take licenses issued pursuant to section 195D-4, 195D-21, or 195D-22, Hawaii Revised Statutes, shall be approved or issued subsequent to July 1, 2012~~]."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval; provided that section 3 of this Act shall take effect on June 30, 2012.



Committee on Judiciary
Hearing
Tuesday, March 20, 2012, 2:00 p.m.
Conference Room 325
Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair

Testimony on SB2277, SD2, HD1, Relating to Endangered and Threatened Species

Dear Chair Keith-Agaran and Members of the Committee:

My testimony is in **STRONG SUPPORT** of SB2277, SD2, HD1. My name is Lynn McCrory and I am the President of PAHIO Development, Inc. We are a locally owned and operated time share development company on the island of Kauai.

We have been a part of the Kauai Seabird Habitat Conservation Plan/Program since inception (3 plus years). This program is an island wide HCP for the Newell's Shearwaters. I am also a former member of the Board of Land & Natural Resources representing Kauai. It is very important to have Habitat Conservation Plans, Safe Harbor Agreements, and Incidental Take Permits issued which provide mitigation measures to increase the populations of endangered or threatened species offsetting new or current issues that could harm a species. This bill, as now written, provides the mechanism for these programs to continue rather than have a sunset period. These programs are Hawaii's match to the Federal programs which are also required.

Any expansion of checks and balances should be fully discussed between the State, and the partners both within the environmental community and the broader Hawaii community. While one meeting was held in November 2011, what was discussed as a possibility was not what was drafted. This resulted in an initial and secondary bill that could not be supported by the broader Hawaii community.

We humbly ask for your consideration to **SUPPORT** SB2277, SD2, HD1 as written. Mahalo!

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn P. McCrory".

Lynn P. McCrory
President



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www.hfbf.org

Tuesday, March 20, 2012
2:00 pm
Conference Room 325

House Committee on Judiciary

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

Aloha Chair Keith-Agaran, Vice Chair Rhoads, 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, unintentional harm 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.

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

Testimony to the House Committee on Judiciary
Tuesday, March 20, 2012
2:00 p.m.
State Capitol - Conference Room No. 325

RE: S.B. 2277 HD1, RELATING TO ENDANGERED AND THREATENED SPECIES

Chair Keith-Agaran, Vice Chair Rhoads, and members of the committee:

I am Gladys Marrone, Director of Government Relations for the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the BIA-Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-HAWAII provides the following comments on S.B. 2277 HD1, which proposes to:

1. Make permanent the Department of Land and Natural Resources' power to approve habitat conservation plans, safe harbor agreements, and incidental take licenses.

The BIA of Hawaii opposed section 1 in the original version of the bill which would have amended Chapter 195D-32 to expand the existing provisions for citizen lawsuits by allowing citizen lawsuits against any person on any lands.

SD2 requires a challenge be done thru the Chapter 91 HAR contested case hearing process. While we support this change, as Chapter 91 proceedings are usually allowed for agency actions, we question the language contained in Section 1 part (b) of the current bill which states:

"In any contested case challenging the approval of a habitat conservation plan or safe harbor agreement and the issuance of an accompanying license, any party alleging an emergency posing a significant risk to the well-being of any species of fish, wildlife, or plant may petition for an emergency stay of the habitat conservation plan or safe harbor agreement and accompanying license. If the board has not yet made a determination of entitlement to a contested case hearing, any person alleging an emergency posing a significant risk to the well-being of any species of fish, wildlife, or plant who has requested a contested case to challenge the approval of a habitat conservation plan or safe harbor agreement and accompanying license may petition for an emergency stay. **The chairperson or hearings officer, if one has been selected, shall conduct a hearing and render a decision on the petition for emergency stay within forty-eight hours after the filing of the petition.**

It is not clear from the information provided, why this section is necessary because, as we understand the process, no action is being taken while the Board is considering the approval of a habitat conservation plan or safe harbor agreement and the issuance of an accompanying license. If no action is being taken during the contested case hearing process, we believe this section may not be necessary. Also, a 48 hour response time would appear to be unreasonable and essentially put the matter back into the Circuit Court as provided for in Section (c).

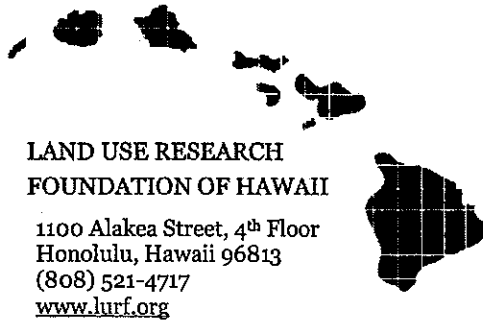
We do not understand why section 1 of the bill is necessary as there does not appear to be any existing problem with the Department of Land and Natural Resources mis-managing or not pursuing violations of Chapter 195D HRS. As such, we do not believe that allowing for more litigation is the answer at this time. Without a clear understanding of what Section 1 of the bill is attempting to address, BIA is **opposed to Section 1** as drafted.

The BIA of Hawaii **strongly supports section 4** of the bill which makes permanent the Department of Land and Natural Resources' ability to enter into and issue new safe harbor agreements, habitat conservation plans, and incidental take licenses by removing the sunset date of July 1, 2012.

We understand that these processes were established first in 1997 by the Legislature to expand recovery options in the State ESA by establishing a process for the preparation and implementation of habitat conservation plans and safe harbor agreements, while providing for additional incentives to private landowners to conserve endangered species. In addition, the Legislature inserted a 5-year sunset date (June 1, 2002) for the approval of habitat conservation plans and safe harbor agreements. Subsequently, Act 3 of the 2001 Legislative Session extended the sunset provision another 5 years (through July 1, 2007), and Act 90 of the 2006 Legislative Session extended the provision for another 5 years (through July 1, 2012).

We understand that the processes developed in 1997 have had a successful track record and, thus, we fully support the proposed modifications in Section 2 of the bill.

Thank you for this opportunity to express our views.



LAND USE RESEARCH
FOUNDATION OF HAWAII

1100 Alakea Street, 4th Floor
Honolulu, Hawaii 96813
(808) 521-4717
www.lurf.org

March 16, 2012

Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair
House Committee on Judiciary

Support of SB 2277, S.D. 2, H.D. 1 – Conservation of Wildlife. (Makes permanent the Department of Land and Natural Resources' power to approve habitat conservation plans, safe harbor agreements, and incidental take licenses.)

Tuesday, March 20, 2012, 2:00 p.m., in House Conference Room 325.

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF appreciates the opportunity to provide testimony in support of this bill.

SB 2277, S.D. 2, H.D. 1. This bill makes permanent the Department of Land and Natural Resources' ("DLNR's") power to approve habitat conservation plans, safe harbor agreements, and incidental take licenses.

LURF's Position. LURF strongly supports SB 2277, S.D. 2, H.D. 1, which would continue to induce compliance with conservation measures by repealing the law which currently restricts the DLNR from approving habitat conservation plans ("HCPs"), safe harbor agreements ("SHAs"), and incidental take licenses ("ITLs") after July 1, 2012.

HRS §195D-30 provides that all SHAs, HCPs, ITLs and subsequent actions authorized under those plans, agreements and licenses shall be designed to result in an overall net gain in the recovery of Hawaii's threatened and endangered species. HRS Chapter 195D currently provides for criteria and the process for approval of SHAs, HCPs and ITLs, however, the law does not allow any new SHAs, HCPs or ITLs after July 1, 2012.

Provisions allowing SHAs were included in the Endangered Species Act ("ESA") and in HRS Chapter 195D as a means of encouraging landowners to voluntarily engage in efforts that benefit endangered, threatened, proposed, and candidate species and to undertake conservation efforts on their land in support of the recovery of endangered species. Pursuant to HRS §195D-22, SHAs allow landowners to agree with the State to create, restore, or improve habitats or to maintain currently unoccupied habitats that threatened or endangered species can be reasonably expected to use. Without these provisions, some landowners may have a strong *disincentive* to undertake endangered species recovery efforts or other activities that could

attract endangered species to their land due to the threat of increased liability under these laws for any harm to endangered species that may occur.

Provisions allowing HCPs and ITLs were included in both the Endangered Species Act and HRS Chapter 195D as a means of allowing proposed activities with the potential to impact endangered species to proceed, provided that measures be taken to ensure an overall benefit to the species (for example, by setting aside habitat for the species outside of the project area). Absent these provisions, important economic activities, including renewable energy projects, would be impossible, and existing land uses which attract endangered species would also be severely impacted.

SHAs, HCPs and ITLs provide a net benefit to endangered species and to the State by encouraging conservation efforts while allowing for important economic development in Hawaii. They are an essential component of our State endangered species law; a crucial and successful tool in achieving an overall net gain in the recovery of Hawaii's threatened and endangered species; and should be retained.

Thank you for the opportunity to provide testimony in support of this measure.



**STATEMENT OF
KEKOA KALUHIWA
FIRST WIND**

BEFORE THE HOUSE COMMITTEE ON JUDICIARY

**TUESDAY, MARCH 20, 2012
2:00 PM
STATE CAPITOL, CONFERENCE ROOM 325**

**IN CONSIDERATION OF
S.B. 2277 SD2 HD1
RELATING TO ENDANGERED AND THREATENED SPECIES**

Aloha Chair Keith-Agaran, Vice Chair Rhoads and members of the House Committee on Judiciary. My name is Kekoa Kaluhiwa and I am the Director of External Affairs for First Wind.

I humbly request that you **support** S.B. 2277 SD2 HD1 which removes the “sunset” date on the use of new safe harbor agreements, habitat conservation plans, and incidental take licenses as recovery options for conserving and protecting Hawai‘i’s endangered and threatened species.

As background, First Wind owns and operates Hawai‘i’s two largest utility scale wind energy projects, the 30 MW Kaheawa Wind Power on Maui, and the 30 MW Kahuku Wind Power on O‘ahu. In addition, we are currently constructing a 21 MW project on Maui and a 69 MW project on O‘ahu.

In developing these clean, renewable energy projects, First Wind is pleased to support the goals set forth by the Hawai‘i Clean Energy Initiative. We also take serious consideration of the potential impacts our projects have on Hawai‘i’s threatened and endangered species. As far as First Wind is aware, Kaheawa Wind Power was the first wind energy facility in the United States to include a Habitat Conservation Plan (HCP). As mindful and respectful stewards of Hawai‘i’s natural resources, we are proud of the “net benefit” provided to native wildlife which may be affected by our wind projects. Without a doubt, an HCP is requisite for all our Hawai‘i projects.

Kekoa Kaluhiwa
First Wind
March 20, 2012
Page 2 of 2

First Wind believes that removing the sunset clause would be a clear message from the Legislature that the State of Hawai'i is serious about caring for its endangered species and about companies that want to do business in Hawai'i needing to take responsibility for the affects their projects may have on those species. It would also support the Department of Land and Natural Resources' ability to more effectively serve its mission in protecting Hawai'i's natural resources.

Mahalo for this opportunity to express First Wind's support of S.B. 2277 SD2 HD1.

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 20, 2012

TO: HONORABLE REPRESENTATIVES GILBERT KEITH-AGARAN, CHAIR,
KARL RHOADS, VICE CHAIR AND MEMBERS OF THE HOUSE
COMMITTEE ON JUDICIARY

SUBJECT: **SUPPORT OF S.B. 2277, SD2, HD1, RELATING TO ENDANGERED AND
THREATENED SPECIES.** Makes permanent the Department of Land and
Natural Resources' power to approve habitat conservation plans, safe harbor
agreements, and incidental take licenses. Effective July 1, 2050. (SB2277 HD1)

HEARING

DATE: Tuesday, March 20, 2012
TIME: 2:00 p.m.
PLACE: Conference Room 325

Dear Chair Keith-Agaran, Vice Chair Rhoads and Members of the Committee:

The General Contractors Association (GCA) is an organization comprised of over six hundred (600) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is celebrating its 80th anniversary this year; GCA remains the largest construction association in the State of Hawaii whose mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest. GCA supports S.B. 2277, SD2, HD1, Related to Endangered and Threatened Species.

Senate Bill 2277, SD2, HD1 proposes to amend Chapter 195D, HRS, to repeal Section 195D-27, which covers administration enforcement of rules, plans, agreements or licenses. The bill also repeals the sunset date for approval of safe harbor agreements, conservation plans, and incidental take licenses of July 1, 2012 established by Act 90 SLH, 2006.

The GCA supports the proposed repeal of the sunset date enacted in Act 90, SLH, 2006. We believe that this provision enacted in 2006 regarding administrative enforcement of habitat conservation plans, safe harbour agreements, and incidental take licenses has worked to encourage conservation of natural resources and protection of wildlife, native plants and fish and at the same time encourage a rational, balanced economic development in Hawaii. We believe that this approach works, and has been beneficial to all parties concerned.

For these reasons, GCA supports this bill and requests that this Committee pass the measure.

Thank you for the opportunity to comment on this measure.

Testimony for SB2277 on 3/20/2012 2:00:00 PM

Testimony for SB2277 on 3/20/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, March 20, 2012 8:15 AM

To: JUDtestimony

Cc: Lardizabal@local368.org

Testimony for JUD 3/20/2012 2:00:00 PM SB2277

Conference room: 325
Testifier position: Support
Testifier will be present: No
Submitted by: Al lardizabal
Organization: Hawaii Laborers' Union
E-mail: Lardizabal@local368.org
Submitted on: 3/20/2012

Comments:

March 20, 2012

Chair Keith-Agaran; Vice Chair Rhoads and members of the Committee: The Hawaii Laborers' Unions supports SB2277 SD2, HD1 Threatened and Endangered Species as written herein. We believe that there is existing contested case hearing process which provide opportunities for citizens to use during legal challenges and that the BLNR has the power and authority to enforce the law. No further amendments are needed accept to change the effective date to July 1, 2012.

Mahalo

Al Lardizabal
Government Relations

KIEFER & GARNEAU LLC
A Limited Liability Law Company

Richard Kiefer

Greg Garneau

Direct Dial (808) 871-9716
Email: greggarneau@hawaii.rr.com

March 19, 2012

COMMITTEE ON JUDICIARY
Date: Tuesday, March 20, 2012
Time: 2:00 PM
Location: Conference Room 325

Submission of written testimony relating to:

SB 2277 SD 2 HD1

RELATING TO ENDANGERED AND THREATENED SPECIES

Makes permanent the Department of Land and Natural Resources' power to approve habitat conservation plans, safe harbor agreements, and incidental take licenses. Effective July 1, 2050.

Dear Chair Gilbert S.C. Keith-Agaran, Vice Chair Karl Rhoads and Members of the Committee on Judiciary:

My name is Greg Garneau. I am an attorney in private practice on Maui where I represent landowners who are engaged in farming and ranching on their agricultural land. As one would expect, these past few years have been difficult ones for farmers and cattlemen as production costs have risen during a period of economic downturn. Out of necessity, landowners have had to consider other ways to generate income from the land that do not interfere, or have minimal impact upon, core agricultural pursuits. The development of renewable energy projects, supported by both the Hawaii state and federal governments, promises to supplement the income of landowners while allowing farmers and ranchers to continue their work.

Therefore, I offer the following testimony for your Committee's consideration during your deliberations on SB 2277 SD2 HD1.

First, I support removing the sunset date and making permanent the Department of Land and Natural Resources' (DLNR) power to approve habitat conservation plans, safe harbor agreements, and incidental take licenses under HRS Chapter 195D. DLNR's authority in this regard is vital as it strikes a balance between two very important public goals – (1) the protection of endangered species via conservation agreements with landowners and (2) the development of renewable energy projects that benefit landowners (as described above), reduce pollution from fossil fuel energy production, and increase our state's self-sufficiency.

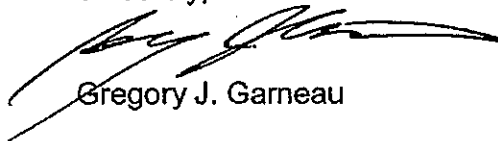
Testimony SB 2277 SD2
Judiciary Committee
March 19, 2012
Page 2 of 2

Second, I urge your Committee to not make any substantive amendments to HRS Chapter 195D at this time. Amending the process for entering into safe harbor agreements, developing habitat conservation plans, and obtaining incidental take licenses raises complicated issues which should be considered carefully and separately from the extension of DLNR authority. The process is already a lengthy one that involves several state and federal agencies as well as participation by the public. It is also an expensive process for the landowner to complete. The inclusion of a new, contested case procedure will certainly add to these costs, delay beneficial renewable energy projects, and increase the likelihood that future projects will be abandoned or rejected from the outset.

Therefore, I respectfully request that your Committee extend DLNR's authority to approve habitat conservation plans, safe harbor agreements, and incidental take licenses. I also respectfully request that you remove the proposed contested case provisions from the draft bill.

Thank you for your kind consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory J. Garneau", written over a horizontal line.

Gregory J. Garneau

STUART H. COLEMAN * 2121 ALGARROBA ST., #1107 * HONOLULU, HI 96826

March 19, 2012

Committee Chairs & Members of JUD

RE: Strong Opposition to SB2277-SD2 HD1 – Relating to Endangered & Threatened Species

Hearing on Tue, Mar. 20 , State Capitol, Conf. Rm. 325, 2:00pm.

Dear Chair, Vice Chair and Committee Members,

My name is Stuart Coleman, and I am an environmental consultant, teacher and writer living in the McCully area. I'm writing today to express my strong opposition to SB2277. Hawaii is already the extinction capitol of the world, and we need to do all that we can to make sure we don't lose even more of our endangered indigenous species.

Tourism is the engine of our economy, and more and more of our visitors are concerned about the vanishing native wildlife in Hawaii and want more experiences in nature. Urban resorts like Waikiki are becoming more common so we need to emphasize eco-tourism.

Oversight is critical to ensure that DLNR acts responsibly in issuing licenses to kill and injure endangered species. Accordingly, the Legislature should either keep the sunset date in place or provide alternate oversight, so that future generations can continue to enjoy our unique native flora and fauna.

Instead of promoting massive developments, we should be protecting the environment and wildlife that make Hawaii unique. Proven, effective alternatives to legislative oversight exist. 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.

During these difficult economic times, with government services being cut back, it is vital for the Legislature to encourage Hawai'i's citizenry to assist in preventing harm to our imperiled plants and animals. Mahalo for your consideration.

Aloha, Stuart

Testimony for SB2277 on 3/20/2012 2:00:00 PM

Testimony for SB2277 on 3/20/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, March 19, 2012 8:47 AM

To: JUDtestimony

Cc: clk5356@gmail.com

Testimony for JUD 3/20/2012 2:00:00 PM SB2277

Conference room: 325

Testifier position: Oppose

Testifier will be present: No

Submitted by: Carolyn L Knoll

Organization: Individual

E-mail: clk5356@gmail.com

Submitted on: 3/19/2012

Comments:

Oversight is critical to ensure that DLNR acts responsibly in issuing licenses to kill and injure endangered species. Accordingly, the Legislature should either keep the sunset date in place or provide alternate oversight, so that future generations can continue to enjoy our unique native flora and fauna.

Proven, effective alternatives to legislative oversight exist. 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.

Particularly in these difficult economic times, with government services being cut back, it is vital for the Legislature to encourage Hawai'i's citizenry to assist in preventing harm to our imperiled plants and animals.

Testimony for SB2277 on 3/20/2012 2:00:00 PM

Testimony for SB2277 on 3/20/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, March 19, 2012 8:50 AM

To: JUDtestimony

Cc: bisaki@gmail.com

Testimony for JUD 3/20/2012 2:00:00 PM SB2277

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: Bianca Isaki
Organization: Individual
E-mail: bisaki@gmail.com
Submitted on: 3/19/2012

Comments:

Aloha Senators,

Please oppose SB 2277.

Oversight is critical to ensure that DLNR acts responsibly in issuing licenses to kill and injure endangered species. Accordingly, the Legislature should either keep the sunset date in place or provide alternate oversight, so that future generations can continue to enjoy our unique native flora and fauna.

Proven, effective alternatives to legislative oversight exist. 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.

Particularly in these difficult economic times, with government services being cut back, it is vital for the Legislature to encourage Hawai'i's citizenry to assist in preventing harm to our imperiled plants and animals.

Sincerely,

Bianca Kai Isaki, Ph.D.

Testimony for SB2277 on 3/20/2012 2:00:00 PM

Testimony for SB2277 on 3/20/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, March 19, 2012 10:05 AM

To: JUDtestimony

Cc: palmtree7@earthlink.net

Testimony for JUD 3/20/2012 2:00:00 PM SB2277

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: janice palma-glenie
Organization: Individual
E-mail: palmtree7@earthlink.net
Submitted on: 3/19/2012

Comments:

Aloha,
This is not the time to stop protecting natural native treasures.

Hawai'i has always been known for strong environmental protection laws but lax oversight and enforcement. This bill is critical to insuring that DLNR acts responsibly in issuing licenses to kill and injure endangered species (which seems like an oxymoronic thing to allow anyway).

The Legislature needs to bring our state law in line with the federal Endangered Species Act. That Act has encouraged citizens to take action to protect imperiled species rather than to discourage citizens and government agencies to allow the decimation of our fragile ecosystem.

Hawai'i is already the Endangered Species Capital of the World. Great for our state's sales pitch.

And is this a Democratic legislative body or Republican? Long past time to show the difference.

Mahalo.

Testimony for SB2277 on 3/20/2012 2:00:00 PM

Testimony for SB2277 on 3/20/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, March 19, 2012 10:06 AM

To: JUDtestimony

Cc: tookie49_2004@yahoo.com

Testimony for JUD 3/20/2012 2:00:00 PM SB2277

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: daniel kanahele
Organization: Individual
E-mail: tookie49_2004@yahoo.com
Submitted on: 3/19/2012

Comments:

Please opposed SB2277 on the grounds that it weakens important checks and balances for the protection of endangered species.

Keep the sunset clause because it requires a periodic review of the effectiveness of DLNR oversight with regards of endangered species protection or provide for an alternative plan for oversight.

Citizens right to sue should remain in place. This is consistent with the federal endangered species act which encourages citizens to take action to protect imperiled species. The DLNR is chronically underfunded. During these difficult economic times we see more and more government services being cut back to the detriment of our environment and the species that depended on critical habitats for their very existence. If there was ever a time when more citizen involvement was needed in stewarding our natural resources, it is now!!! Passing this bill would be one step backward into the dark ages of endangered species oversight and protection and another nail in the coffin for those species on the brink of vanishing from these lands forever.

Testimony for SB2277 on 3/20/2012 2:00:00 PM

Testimony for SB2277 on 3/20/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, March 19, 2012 12:36 PM

To: JUDtestimony

Cc: ndavlantes@aol.com

Testimony for JUD 3/20/2012 2:00:00 PM SB2277

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: Nancy Davlantes
Organization: Individual
E-mail: ndavlantes@aol.com
Submitted on: 3/19/2012

Comments:

I oppose this bill because I believe it would remove vital protections for Hawaii's endangered and threatened plants and animals. Until now, the Legislature has affirmed the need for periodic review of DLNR's performance in terms of the issuance of incidental take licenses and has consistently rejected requests to remove the sunset date rather than extending it only after proper review.

The HD1 version of this bill would lift the sunset date altogether without providing any other means of checks and balances.

Some type of oversight is critical to ensure that DLNR acts responsibly in issuing licenses to kill and injure endangered species, so either the sunset date should remain in place or some alternative form of oversight should be established. Proven, effective alternatives to legislative oversight exist. The Legislature should bring our state law in line with the federal Endangered Species Act, which since 1973 has encouraged citizens to take action to protect imperiled species.

Especially now, with government services being cut back, it is vital for the Legislature to encourage Hawai'i's citizenry to assist in preventing harm to our imperiled plants and animals.

Thank you for the opportunity to submit testimony.

Testimony for SB2277 on 3/20/2012 2:00:00 PM

Testimony for SB2277 on 3/20/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, March 19, 2012 11:25 AM

To: JUDtestimony

Cc: brilana@gmail.com

Testimony for JUD 3/20/2012 2:00:00 PM SB2277

Conference room: 325

Testifier position: Oppose

Testifier will be present: No

Submitted by: Brilana Silva

Organization: Individual

E-mail: brilana@gmail.com

Submitted on: 3/19/2012

Comments:

Testimony for SB2277 on 3/20/2012 2:00:00 PM

Testimony for SB2277 on 3/20/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, March 19, 2012 8:23 AM

To: JUDtestimony

Cc: rkaye@mdi.net

Testimony for JUD 3/20/2012 2:00:00 PM SB2277

Conference room: 325

Testifier position: Oppose

Testifier will be present: No

Submitted by: Robin Kaye

Organization: Individual

E-mail: rkaye@mdi.net

Submitted on: 3/19/2012

Comments:

Please hold this bill

From: Charlie Jencks [mailto:charliej@pacificrimland.com]
Sent: Tuesday, March 20, 2012 6:59 AM
To: Rep. Gilbert Keith-Agaran
Subject: JUD Hearing on SB 2277

In recent months I have met personally with Maui Representatives and Senators to discuss our efforts in working with DLNR/DOFAW on the review and approval of Habitat Conservation Plan and an Incidental Take License for the Honua`ula project here in south Maui. In early March I asked our Representatives to not support changes to the current state legislation proposed by Senators Gabbard and Shimabukuro and those provisions did not survive. The existing process controlled by DLNR was retained providing more than ample opportunity for the public to legally contest HCP/ITL agreements. This process is already tough enough for anyone involved in developing and processing these plans and increasing the uncertainty and potential delay not only increases the risk for landowners, including the government, but also puts at risk the ability to provide timely funding for projects both public and private.

Once again I ask that in the upcoming JUD hearing on SB 2277, SD2, HD1, you pass the bill out un-amended and not add anything substantive to the bill.

Thank you for your continued good work and support on this issue

CJ

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