

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

NEIL ABERCROMBIE  
GOVERNOR

RICHARD C. LIM  
DIRECTOR

MARY ALICE EVANS  
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804  
Web site: www.hawaii.gov/dbedt

Telephone: (808) 586-2355  
Fax: (808) 586-2377

**REVISED**

Statement of  
**RICHARD C. LIM**  
Director  
Department of Business, Economic Development, and Tourism  
before the  
**HOUSE COMMITTEE ON  
WATER, LAND, & OCEAN RESOURCES**

Monday, March 12, 2012  
10:10 AM  
State Capitol, Conference Room 325

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

Chair Chang, Vice Chair Har, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) **offers comments on SB2277 SD2**, which repeals the “sunset” date on the approval of new safe harbor agreements, habitat conservation plans, and incidental take licenses under H.R.S. §195D.

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

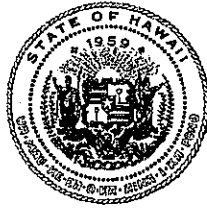
Given the administrative enforcement mechanisms currently in place, DEBDT cautions against the addition of any new enforcement provisions that remove decision-making authority from the agency with expertise in wildlife conservation.

Five existing and proposed wind energy facilities in Hawaii utilize these tools to allow for the legal harming of protected wildlife species during normal facility operations while providing a net benefit to the affected species. If the “sunset” date of July 1, 2012 is not

repealed, there will be no method to obtain a permit or license to harm endangered species, subjecting facility operators to penalty for violating endangered species laws.

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

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI  
FIRST DEPUTY

WILLIAM M. TAM  
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  
KAROO LAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Testimony of  
WILLIAM J. AILA, JR.  
Chairperson

Before the House Committee on  
WATER, LAND & OCEAN RESOURCES

Monday, March 12, 2012  
10:10 AM  
State Capitol, Conference Room 325

In consideration of  
SENATE BILL 2277, SENATE DRAFT 2  
RELATING TO ENDANGERED AND THREATENED SPECIES

Senate Bill 2277, Senate Draft 2, proposes to: 1) Establish a new administrative procedure and remedy for challenges to approval of a habitat conservation plan or safe harbor agreement and accompanying license, and 2) Remove the sunset date on approval of issuance of new safe harbor agreements, habitat conservation plans, and incidental take licenses after July 1, 2012. The Department of Land and Natural Resources (Department) strongly supports this bill.

Hawaii is the endangered species capitol of the nation with 385 listed threatened and endangered species and many more which are candidates or species of concern. As such, Hawaii needs the flexibility within its State Endangered Species Act (ESA) to work cooperatively with its federal counterparts, private landowners and other government agencies towards proactive solutions that can protect our threatened and endangered species while allowing for acceptable resource use activities.

In 1997, the Legislature expanded recovery options under 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 threatened and endangered species. In addition, the Legislature inserted a five-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 five years (through July 1, 2007), and Act 90 of the 2006 Legislative Session extended the provision for another five years (through July 1, 2012).

Should the habitat conservation plan and safe harbor agreement provisions sunset, the State ESA would lose the flexibility to protect threatened and endangered species while allowing for acceptable resource use activities.

To date, nine habitat conservation plans and six safe harbor agreements have been approved under the State ESA. The Department is currently finalizing an additional ten habitat conservation plans and three safe harbor agreements. Habitat conservation plans and safe harbor agreements are proving to be invaluable tools in the process of recovering the State's threatened and endangered species with projects including: establishment of new populations of nene on Maui and Molokai, predator control to protect waterbirds at Oahu's wetlands, surveys to document population trends for the Hawaiian hoary bat, predator control to protect montane-nesting seabirds, and landscape-scale forest restoration to benefit endangered bats and seabirds. Habitat conservation plans and safe harbor agreements have committed millions of dollars toward the recovery of threatened and endangered species in Hawaii, and habitat conservation plans provide a net recovery benefit for the affected species which would not otherwise be realized if the those sections of the State ESA are allowed to sunset.

With the expanding development of broad partnerships to protect threatened and endangered species and their habitats, it is imperative that these provisions within the State ESA be made permanent by removing the sunset date. This would provide a clear message that the Legislature is committed to maintaining proactive and responsible solutions to conserve Hawaii's threatened and endangered species.

The Department supports the provisions in the bill to provide an additional layer of protection for endangered and threatened species through the establishment of administrative procedures to challenge the approval of any habitat conservation plan or safe harbor agreement. These and provisions to allow citizen suits, which was in the original version of this bill, were developed in collaboration with members of the environmental community to explore additional approaches to provide citizen oversight and expanded checks and balances under the State ESA.

The Department supports the passage of Senate Bill 2277, Senate Draft 2, which removes the sunset date on the approval of new safe harbor agreements, habitat conservation plans, and incidental take licenses, and also includes expanded checks and balances under the State ESA.

**BIA-HAWAII**  
BUILDING INDUSTRY ASSOCIATION

Testimony to the House Committee on Water, Land & Ocean Resources  
Monday, March 12, 2012  
10:10 a.m.  
State Capitol - Conference Room No. 325

**RE: S.B. 2277 SD2 RELATING TO ENDANGERED AND THREATENED SPECIES**

Chair Chang, Vice Chair Har, 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 Building Industry Association of 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 SD2 which proposes to:

1. Require persons challenging a conservation plan, safe harbor agreement, or accompanying license to bring a contested case hearing before the board of land and natural resources pursuant to chapter 91, Hawaii Revised Statutes; and,
2. Repeal the prohibition on approval of issuance of new safe harbor agreements, habitat conservation plans, and incidental take licenses after July 1, 2012.

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.



Testimony to the House Committee on Water, Land & Ocean Resources  
Monday, March 12, 2012  
10:10 a.m.  
State Capitol - Conference Room No. 325

**RE: SENATE BILL NO. 2277 SD2 RELATING TO ENDANGERED AND THREATENED SPECIES**

Chair Chang, Vice Chair Har, and members of the committees:

The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber of Commerce of Hawaii provides the following comments on S.B. 2277 SD2 which proposes to:

1. Require persons challenging a conservation plan, safe harbor agreement, or accompanying license to bring a contested case hearing before the board of land and natural resources pursuant to chapter 91, Hawaii Revised Statutes; and,
2. Repeal the prohibition on approval of issuance of new safe harbor agreements, habitat conservation plans, and incidental take licenses after July 1, 2012.

The Chamber of Commerce 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 Chamber of Commerce of Hawaii **strongly supports section 4** of the bill 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.





## **Hawaii Cattlemen's Council, Inc.**

P O Box 437199 Kamuela HI 96743

Phone (808) 885-5599 • Fax (808) 887-1607

e-mail: [HCattlemens@hawaii.rr.com](mailto:HCattlemens@hawaii.rr.com)

### **COMMITTEE ON WATER, LAND, & OCEAN RESOURCES**

Monday March 12, 2012 10:10 a.m. Room 325

#### **SB 2277 SD 2 RELATING TO ENDANGERED AND THREATENED SPECIES**

Requires persons challenging a conservation plan, safe harbor agreement, or accompanying license to bring a contested case hearing before the board of land and natural resources pursuant to chapter 91, Hawaii Revised Statutes. Repeals provision on administrative enforcement of rules, habitat conservation plans, safe harbor agreements, and incidental take licenses. Repeals the prohibition on approval of issuance of new safe harbor agreements, habitat conservation plans, and incidental take licenses after July 1, 2012. Effective 7/1/2050. (SD2)

Chair Chang, Vice Chair Har 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, but we oppose allowing contested case hearings against those who have or seek to create new Safe Harbor Agreements.

We all agree that protecting endangered species is the right thing to do, and it is of course, the law. However, the pendulum has swung so far, that it sometimes makes it impossible for people to do other good things, like grow food for the rest of the population, or create energy projects to lessen our dependence on foreign oil. 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 by 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.

**Please remove the sunset date from the safe harbor agreement laws, but please DO NOT allow for contested case hearings.**

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

**har2-Samantha**

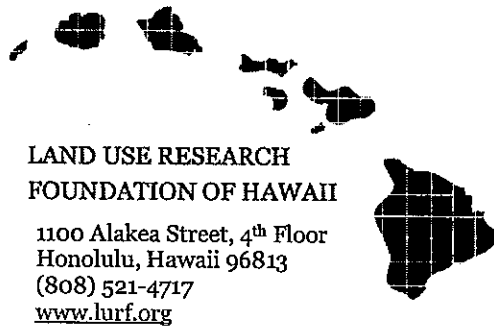
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**From:** mailinglist@capitol.hawaii.gov  
**Content:** Sunday, March 11, 2012 5:57 PM  
**Subject:** WLOtestimony  
**Cc:** trkahua@aol.com  
**Subject:** Testimony for SB2277 on 3/12/2012 10:10:00 AM

Testimony for WLO 3/12/2012 10:10:00 AM SB2277

Conference room: 325  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Herbert M "Tim" Richards III DVM  
Organization: Kahua Ranch Ltd  
E-mail: [trkahua@aol.com](mailto:trkahua@aol.com)  
Submitted on: 3/11/2012

Comments:  
SUPPORT removal of sunset clause, but OPPOSE contested case or citizen suit provisions.



March 9, 2012

Representative Jerry L. Chang, Chair  
Representative Sharon E. Har, Vice Chair  
House Committee on Water, Land, and Ocean Resources

**Comments and Concerns Relating to SB 2277, S.D. 2 – Conservation of Wildlife; Contested Case Hearing. (Repeals provision on administrative enforcement of rules, habitat conservation plans, safe harbor agreements, and incidental take licenses. Requires challenges to be brought by newly-created, “special” type of contested case hearing before the board of land and natural resources pursuant to chapter 91, Hawaii Revised Statutes. Repeals the prohibition on approval of issuance of new safe harbor agreements, habitat conservation plans, and incidental take licenses after July 1, 2012.)**

**Monday, March 12, 2012, 10:10 a.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 comments and concerns relating to this bill.

**SB 2277, S.D. 2.** This bill repeals the provision on administrative enforcement of rules, habitat conservation plans (“HCPs”), safe harbor agreements (“SHAs”), and incidental take licenses (“ITLs”), and requires persons challenging a HCP, SHA, or accompanying license to bring a newly-created, “special” type of contested case hearing before the board of natural resources (“BLNR”) pursuant to chapter 91, Hawaii Revised Statutes (“HRS”). This bill also proposes to repeal the section of the law which prohibits the approval of issuance of SHAs, HCPs, or ITLs after July 1, 2012.

**LURF’s Position.** While LURF **strongly supports Section 4** of SB 2277, S.D. 2, which would continue to induce compliance with conservation measures by repealing the law which currently restricts the Department of Land and Natural Resources (“DLNR”) from approving SHAs, HCPs and ITLs after July 1, 2012, LURF **strongly opposes Section 1** of this bill, which requires persons challenging the approval of a HCP or SHA, or the issuance of an accompanying license, to bring a newly-created, “special,” type of contested case hearing, which affords said persons different and additional remedies, and review procedures which are unwarranted and unnecessary given the existing means of enforcement.

Sections 2 (adding a new definition of the word "Chairperson") and Section 3 (deleting the current administrative enforcement provisions which allow for expeditious resolution of complaints or concerns) of the bill, are only necessitated due to the newly-created, "special" contested case process being proposed. LURF therefore respectfully requests that **Sections 1, 2, and 3 be deleted from SB 2277, S.D. 2.**

➤ **Strong Support for Section 4 of the Bill; SHAs, HCPs and ITLs Should be Retained.**

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.

➤ **Strong Opposition to Section 1 of the Bill; Newly-Created, "Special" Contested Case Provisions are Unnecessary.**

Notwithstanding its strong support of Section 4 of the bill, LURF **strongly urges that proposed Sections 1, 2, and 3, proposing and relating to a newly-created, "special" type of contested case hearing to specifically challenge HCPs, SHAs, or the issuance of an accompanying license, be deleted from the proposed measure.** LURF believes there is no basis for the inclusion of such a "special" option, and points to the fact that SB 2277, S.D. 2 fails to include any purpose section justifying inclusion of such a newly-created, additional contested case hearing provision.

Pursuant to current Hawaii law, DLNR is responsible for enforcing SHAs, HCPs and ITLs, including pursuing citizen complaints, injunctions and lawsuits. Moreover, existing laws provide more than ample opportunities for citizens to bring petitions to enforce conservation statutes, HCPs and SHAs, including the following:

- **Immediate Hearing on Citizen Petition and for Injunctive Relief.** Any person who believes that a violation of an HCP, SHA or ITL has occurred, is occurring, or is likely to occur may petition the DLNR Chairperson (“Chairperson”) for an immediate hearing, which shall be heard within 48 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. HRS §195D-27(d).
- **Citizen Petition for Injunctive Relief to DLNR Chairperson.** 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 Chapter 195-D (this Chapter), including any rule adopted pursuant to this Chapter, HCP, SHA, or ITL, or to require the State to take action to enforce this Chapter, or any term of the HCP, SHA, or ITL. HRS §195D-27(a).
- **Chairperson Action to Resolve Citizen Petition.** 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 non-complying or other responsible party to comply with the HCP, SHA, or ITL. HRS §195D-27(b).
- **Chapter 91 Contested Case Hearing on Citizen Petition.** If the Chairperson is unable to resolve the Citizen petition within ninety (90) days or if the citizen 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 HRS Chapter 91 and, within thirty (30) days of the completion of the hearing, grant in whole or in part, or deny the petition. HRS §195D-27(b).
- **Citizen Suits Against any State or County Agency, DLNR or BLNR.** Any person, acting as a private attorney general, may commence a civil suit on the person’s behalf against any state or county agency or instrumentality that is alleged to be in violation of the terms of, or fails to fulfill the obligations imposed and agreed to under any HCP, SHA and accompanying license for public lands, pursuant to HRS §195D-32(a)(1); and against the DLNR or BLNR, where there is an alleged a failure of DLNR or BLNR to perform any act or duty required under an HCP, SHA, and accompanying license for public lands, pursuant to HRS §195D-32(a)(2).

LURF believes that certain parties will use the newly-created, “special” contested case provisions to impede, delay, or stop projects as has currently been experienced on the federal level. LURF understands that the Natural Resources Committee of the U.S. House of Representatives has recently undertaken a review of the Federal Endangered Species Act (“ESA”) and has concluded that excessive litigation under the ESA threatens species recovery, job creation, and economic growth. In the view of many, one of the greatest obstacles to the success of the ESA is the way that it has become a tool for excessive litigation. As of December 2011, Interior Department agencies were dealing with a combined total of 180 pending ESA-related lawsuits, and the U.S. Fish and Wildlife Service was spending so much of its listing

budget on litigation and responding to petitions that it had almost no money left to devote to placing new species under federal protection.

Litigation is re-directing scarce resources intended to be used for species protection into plaintiff's coffers, where it can be used to perpetuate the cycle of litigation. The citizen suit provisions of the ESA are so lenient as to encourage and foster ESA lawsuits, regardless of their merit. The "cost recovery" provision often results in enormous costs to public and private parties, sometimes with no benefit to any species and no proof of any violation of the Act.

LURF believes that the current Hawaii law and processes thereunder already provide more than sufficient public review, reports, and administrative enforcement of rules, plans agreements or licenses, as well as opportunity for challenges and citizen lawsuits, including injunctive relief against DLNR and any state or county agency. It is therefore LURF's position that it is unnecessary to incorporate new and "special" contested case hearing provisions into HRS Chapter 195D specific to HCPs and SHAs. Such legislation would only encourage legal challenge and litigation, resulting in adverse effects in Hawaii similar to those being experienced on the federal level. We therefore strongly urge that Sections 1, 2 and 3 be deleted from this bill.

Thank you for the opportunity to provide comments and concerns relating to this measure.



Committee on Water, Land & Ocean Resources  
Hearing  
Monday, March 12, 2012, 10:10 a.m.  
Conference Room 325  
Representative Jerry Chang, Chair  
Representative Sharon E. Har, Vice Chair

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

Dear Chair Chang and Members of the Committee:

My testimony is both in **STRONG SUPPORT** to section 4, and **STRONG OPPOSITION** to section 1, 2, and 3. 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 HCP's, SHA's, and ITL's issued which provide mitigation measures to increase the populations of endangered or threatened species offsetting new or current issues that could harm a species. Section 4 provides for this mechanism to continue rather than be a sunset clause. These programs are Hawaii's match to the Federal programs which are also required.

We have contested case procedures in place and we have petition procedures. We do not need to add another form of contested case as is being proposed by Section 1. Section 2 is not needed if Section 1 is removed. Section 3 which is deleting the enforcement provisions which allow for expeditious resolution of complaints is needed and should not be deleted. Slowing down the process is not what you want to do when there is an issue to be resolved.

I humbly ask for your consideration to **SUPPORT** Section 4, and **OPPOSE** sections 1, 2, and 3. Mahalo!

Sincerely,

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

Lynn P. McCrory  
President