



**STATEMENT OF
KEKOA KALUHIWA
FIRST WIND**

BEFORE THE HOUSE COMMITTEE ON WATER, LAND, AND OCEAN RESOURCES

**MONDAY, MARCH 12, 2012
10:10 AM
STATE CAPITOL, CONFERENCE ROOM 325**

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

Aloha Chair Chang, Vice Chair Har and Members of the Senate Committee on Judiciary and Labor. 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 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 12, 2012
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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.



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

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Monday, March 12, 2012
10:10 am
Conference Room 325

House Committee on Water, Land, and Ocean Resources
Testimony on SB 2277
RELATING TO ENDANGERED AND THREATENED SPECIES

Aloha Chair Chang, Vice Chair Har, 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 one part of this measure; the removal of 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.

We oppose the addition of new contested case provisions.

DLNR 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. Landowners that enter into these agreements are not trying to harm plants or animals. The whole purpose in participating in these extremely expensive and time consuming programs is to protect endangered species.

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. 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 proposed contested case provisions will only add to this burden.

Instead of providing incentives for conservation and stewardship, the proposed contested case provisions may be used to punish those whose lands are 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 our 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. 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 this committee pass Section 4 of this bill which deletes the sunset provision for these programs. We also respectfully request that you remove the proposed contested case provisions.

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



Sierra Club Hawai'i Chapter

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

LATE TESTIMONY

HOUSE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES

March 12, 2012, 10:10 A.M.
(Testimony is 2 pages long)

TESTIMONY IN SUPPORT OF SB 2277 (SD2) WITH PROPOSED AMENDMENTS

Aloha Chair Chang and Members of the Committee:

The Sierra Club, Hawaii Chapter, with 10,000 dues paying members and supporters statewide, **supports** SB 2277 (SD2), although we strongly prefer the language that was approved by the business, environmental and governmental stakeholders (pre SD1). Among other things, this measure allows for the continuation of the endangered species incidental take license program.

The current law allowing for safe harbor agreements, habitat conservation plans, and incidental take licenses sunsets this year. Failing to extend the current law jeopardizes a number of ongoing programs, such as several wind facilities, as they will no longer have the authority to “take” an endangered species.

At the same time we address the incidental take program, we should address significant deficiencies in the law that was the basis for “sunsetting” the law. The program was originally tailored on the federal law. 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.

Checks and balances are particularly important to prevent government abuses that would threaten Hawaii's cultural heritage with extinction. Chapter 195D already commands that all "state agencies **shall** use their authority in furtherance of the purposes of this chapter by ... [c]arrying out programs for the protection of threatened and endangered species." H.R.S. § 195D-5(b)(1) (emphasis added). The right for a citizen suit would merely ensure the law is followed.

Mahalo for the opportunity to testify.

LATE TESTIMONY

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 13, 2012

TO: HONORABLE REPRESENTATIVES JERRY CHANG, CHAIR, SHARON HAR, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON WATER, LAND & OCEAN RESOURCES

SUBJECT: **COMMENTS & CONCERNS REGARDING S.B. 2277, SD2. 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)

HEARING

DATE: Monday, March 12, 2012
TIME: 10:10 a.m.
PLACE: Conference Room 325

Dear Chair Chang, Vice Chair Har 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 has some **comments and concerns** regarding S.B. 2277, SD2, Related to Endangered and Threatened Species.

Senate Bill 2277, SD2 proposes to amend Chapter 195D, HRS, to repeal Section 195D-27, which covers administration enforcement of rules, plans, agreements or licenses and add a new section requiring contested case hearings to challenge the issuance of a habitat conservation plan or safe harbour agreement and license. The bill also repeals the sunset date for approval of safe harbour agreements, conservation plans, and incidental take licenses of July 1, 1012 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.

The GCA is gravely concerned about the proposed changes to the statutes to require contested case hearings in Section 1 of the bill. The procedures and time tables laid out in the bill when any party alleges an emergency may result in further litigation and delays to rational planned economic development and construction within the state. We believe the current statutes and rules provide a systematic provision for citizen input, and public review and injunctive relief when deemed necessary. 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. We strongly urge the committee to retain the existing provisions of Section 195D-27 and delete the proposed changes in Section 1, 2 & 3.

Thank you for the opportunity to comment on this measure.

LATE TESTIMONY

har2-Samantha

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 12, 2012 9:21 AM
To: WLOtestimony
Cc: mark.phillipson@syngenta.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: Mark Phillipson
Organization: Individual
E-mail: mark.phillipson@syngenta.com
Submitted on: 3/12/2012

Comments:

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

LATE TESTIMONY

har2-Samantha

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 12, 2012 9:22 AM
To: WLOtestimony
Cc: mark.phillipson@syngenta.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: Mark Phillipson
Organization: Individual
E-mail: mark.phillipson@syngenta.com
Submitted on: 3/12/2012

Comments:

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

har2-Samantha

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 12, 2012 9:02 AM
To: WLOtestimony
Cc: lanipetrie@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: Lani C. Petrie
Organization: Individual
E-mail: lanipetrie@aol.com
Submitted on: 3/12/2012

LATE TESTIMONY

Comments:
I support with the deletion of Citizen's Right to Sue.