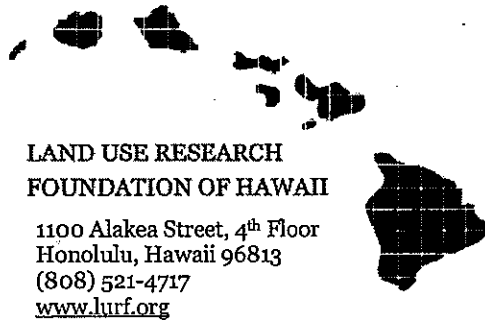


# LATE TESTIMONY



March 19, 2012

Representative Robert N. Herkes, Chair  
Representative Ryan I. Yamane, Vice Chair  
House Committee on Consumer Protection & Commerce

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

**Support of SB 2785, S.D.2, HD1 Relating to Interisland Electric Transmission Cable Systems (Establishes a regulatory structure for the installation and implementation of an interisland high voltage electric transmission cable system and for the construction of on-island transmission infrastructure.)**

**Monday, March 19, 2012, 2:00 p.m., in 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 strongly supports SB 2785, S.D. 2, HD1 and encourages the legislature and the State to continue to work with the electric utility companies and other major stakeholders with respect to matters relating to the interisland electric transmission cable.

**SB 2785, S.D. 2, HD1.** This bill establishes a "regulatory structure" for the installation and implementation of an interisland high voltage undersea electric transmission cable system and for the construction of on-island transmission infrastructure. This measure does not approve any particular renewable energy project; and nothing in this measure is intended to require the construction of any interisland cable from any particular island. Also, we believe that this measure is consistent with, and does not violate the terms of the Hawaiian Organic Act which was passed by the United States Congress ("Congress") in 1900 (Organic Act") or the Admissions Act, which was passed by Congress in 1959.

**LURF's Position.** Hawaii has an abundance of natural resources which could be used to create alternative energy – the sun, wind, waves, geothermal, etc. Given these natural resources, and being an island state, the State of Hawaii has had a long-standing objective of attaining energy independence from imported fossil fuels. The connection of Hawaii's islands via undersea high-voltage electric transmission cable systems is essential to achieve Hawaii's energy and economic objectives. It would also provide the islands with increased energy security and system efficiencies by enabling the islands to provide each other with backup electrical power.

The purpose of this bill is to establish the “regulatory structure” under which interisland undersea electric transmission cables can be developed, financed and constructed on commercially reasonable terms. Establishing such a structure should reduce the costs of financing such projects, and will hopefully limit the impacts on rate payers. While this measure does not guarantee that an interisland cable system will be built; it attempts to ensure the predictability and certainty of the regulatory process in the event that a system is built.

In prior hearings, a Representative claimed that this measure violated Section 55, of the Hawaiian Organic Act (“Organic Act”), which was enacted by the United States (U.S.) Congress on April 30, 1900 to establish a Territorial government for the Territory of Hawaii. We understand that there is no merit to said claim, based on the following:

- **The terms of the Organic Act, referred to a “special or exclusive...franchise,” and does not apply to a certificate of public convenience and necessity.** Section 55 of the Organic Act states in part that: “The legislature shall not grant to any corporation, association, or individual any special or exclusive privilege, immunity, or franchise without the approval of Congress....”
- **SB 2785, S.D. 2, HD1 does not establish any “exclusive franchise.”** A noted above, it merely establishes a “regulatory structure”; and would allow the Hawaii Public Utilities Commission (“PUC”) to grant a certificate of public convenience and necessity (“CPCN”) to a company constructing such a cable.
- **A CPCN is not a “franchise.”** The Supreme Court of the Territory of Hawaii has held that “a certificate of public convenience and necessity is not a franchise as that term is employed in the inhibition of Section 55 of the Organic Act.” *See, Territory of Hawaii v. Fung*, 34 Haw. 52 (1936).
- **The terms of the Organic Act, the Admissions Act and Hawaii State Constitution allow the State to repeal or amend laws imposed by the Hawaiian Organic Act or other Territorial laws.**
  - Section 6 of the Organic Act (1900) states in relevant part, “That the laws of Hawaii not inconsistent with the Constitution or laws of the United States or the provisions of this Act shall continue in force, subject to repeal or amendment by the legislature of Hawaii or the Congress of the United States.”
  - Section 15 of the Admission Act (1959), which established Hawaii’s statehood in 1959, states in relevant part: “All Territorial laws in force in the Territory of Hawaii at the time of its admission into the Union shall continue in force in the State of Hawaii, except as modified or changed by this Act or by the constitution of the State, and shall be subject to repeal or amendment by the Legislature of the State of Hawaii....”
  - Hawaii State Constitution (1959), Art. XVIII, Section 9 Continuity of Laws, also provides: “All laws in force at the time amendments to this constitution take effect that are not inconsistent with the constitution as amended shall remain in force, *mutatis mutatis*, until they expire.....or are amended or repealed by the legislature.”

Based on the above, LURF is in **strong support of SB 2785, S.D. 2, HD1.**

Thank you for the opportunity to present testimony regarding this matter.