SB 3003

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

WILLIAM M. TAM DEPUTY DIRECTOR - WATER

AQUATE RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES EMPORCEMENT
ENGINEERING
FORESTRY AND WILLDLIFE
HISTORIC PRESERVATION
KAIROOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of WILLIAM J. AILA, JR. Chairperson

Before the Senate Committees on
ENERGY AND ENVIRONMENT
and
PUBLIC SAFETY, GOVERNMENT OPERATIONS AND MILITARY AFFAIRS
and
WATER, LAND AND HOUSING

Tuesday, February 7, 2012 2:15 P.M. State Capitol, Conference Room 225

In consideration of SENATE BILL 3003 RELATING TO GEOTHERMAL RESOURCES

Senate Bill 3003 differentiates between "geothermal resources exploration" and "geothermal resources development" for the purposes of mining leases and exploration permits; designates "geothermal resources exploration" and "geothermal resources development" as permitted uses in all state land use districts and conservation district zones; repeals geothermal resource subzone provisions under state land use law; and exempts geothermal resources exploration and issuing of leases and permits from an environmental assessment or environmental impact statement. The Department of Land and Natural Resources (Department) strongly supports this measure.

The Department is tasked with the management of geothermal resources and its development to protect the health and safety of the public and to ensure continued viability of the resource. Geothermal resources development in Hawaii is a priority and has contributed to energy diversification in the State. Geothermal energy has been proven as a viable component to meet the State's renewable energy goals and reduce the dependence on imported fossil fuels.

This measure would streamline the existing regulatory process to assist developers in reducing their cost, risk, and time needed to explore for geothermal resources. Facilitating exploration

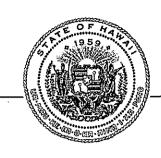
will lead to expanded production which is consistent with our energy goals and will benefit the environment and the rate payers in the State of Hawaii.

The Department recommends clarifying language in Part II, SECTION 2 to define "lease" to include either a mining lease issued in accordance with Sections 182-4 and 182-5, Hawaii Revised Statutes (HRS) or a surface lease issued in accordance with Section 171-13, HRS. We request the revision of proposed language on page 2, lines 12-14 to read: "§182- No environmental assessment or environmental impact statement required for geothermal resources exploration, or issuance of mining or surface leases on State or reserved lands for purposes of conducting geothermal resources exploration."

Geothermal resources exploration would allow testing and analysis to determine the economic viability of a geothermal resource and must occur prior to the commencement of any development activities. The Department believes that no anticipated significant impacts will result from exploration activities and sufficient safeguards and mitigation requirements exist within current rules, regulations and permitting conditions to ensure protection of the environment, public health and safety, and the resource. This bill will not eliminate the consultation process and the public will maintain their right and ample opportunity to provide input throughout various stages of the development process.

The Department believes Senate Bill 3003 strikes a balance to advance geothermal exploration without significantly impacting the environment or compromising the public input process.

Thank you for the opportunity to comment.



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

NEIL ABERCROMBIA GOVERNO

RICHARD C. LIN

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

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Statement of RICHARD C. LIM Director

Department of Business, Economic Development, and Tourism before the

SENATE COMMITTEES ON ENERGY AND ENVIRONMENT, WATER, LAND, AND HOUSING, AND PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS

Tuesday, February 7, 2012 2:15 PM State Capitol, Conference Room 225

in consideration of SB 3003 RELATING TO GEOTHERMAL RESOURCES

Chairs Gabbard, Dela Cruz, and Espero; Vice Chairs English, Solomon, and Kidani; and Members of the Committees.

The Department of Business, Economic Development, and Tourism (DBEDT) supports SB 3003 and defers to the Department of Land and Natural Resources (DLNR) on the specifics of the bill. DLNR is the agency directly affected by the provisions of this bill. SB3003 amends Chapters 182, 183C, 343 and 205 with regard to geothermal resources exploration.

DBEDT would like to offer these comments in support of SB 3003. This bill encompasses several measures which will significantly reduce major regulatory barriers to geothermal exploration. These barriers cost state agencies, landowners and geothermal developers both time and money.

Presently, exploration is a major "risk" to geothermal developers since a significant amount of effort is required to determine if a geothermal resource is likely to be found in a particular location and since most exploration activities do not result in the identification of a commercially viable resource. Reducing this risk will encourage geothermal exploration and increase the likelihood that geothermal will increase its contribution to Hawaii's renewable energy portfolio. The State can reduce developers' risk by taking actions such as those described in HB 2690; another way to reduce risk is to engage in publicly-funded geothermal exploration, as the University of Hawaii plans to do.

The measures suggested in SB 3003 can take years off the present process which regulates the exploration of geothermal resources. Furthermore, the amendments suggested by SB 3003 do not reduce protections to landowners, the environment, or the general public.

Thank you for the opportunity to offer these comments in support of SB 3003.

STATE OF HAWAI'I

OFFICE OF ENVIRONMENTAL QUALITY CONTROL

235 S BERETANIA ST. SUITE 702 HONOLULU, HAWAI'I 96813 Tel. (808) 586-4185 Fax. (808) 586-4186 Email: oeqc@doh.hawaii.gov

Committee on Energy and Environment Committee on Public Safety, Government Operations, and Military Affairs Committee on Water, Land and Housing

SB3003, RELATING TO GEOTHERMAL RESOURCES

Testimony of Gary Hooser Director of the Office of Environmental Quality Control

February 7, 2012

Ţ	Office's Position: OPPOSED
2	Fiscal Implications: NONE
3	Purpose and Justification: SB3003 Proposes exempting geothermal resources exploration
4	from environmental review under Chapter 343, HRS.
5	The OEQC opposes SB3003 as it circumvents the fundamental intent of Chapter 343
6	which is to base decisions on probable or expected impacts of specific actions in specific set of
7	circumstances rather than broad classes of "one size fits all" actions that govern all situations
8	regardless of circumstances.
9	In addition, existing law under Chapter 343 already allows for the easy exemption for
10	those projects which are minor in nature or for other reasons are expected to have no or
11	negligible impacts on the environment.
12	Plus, there exists a process under existing law via the Environmental Council that
13	evaluate exemption requests, the DLNR has submitted a request for consideration before the

1 Council and this process should be allowed to proceed.

Chapter 343 in essence merely requires someone, a physical person in some position of authority, to look at the project and determine if there are in fact significant impacts and if not it can be exempted, but if there are impacts then to disclose those impacts and suggest mitigation. It forces an agency to be accountable and to look closely at decisions effecting sensitive areas and sometimes irreplaceable natural resources. Exemptions put into place by statute eliminate the requirement for accountability and allow important decisions impacting the environment and other important public interests to be made behind the shield and shadow of a statutory requirement.

For example it may be perfectly logical to exempt from environmental review geothermal exploration that involve non-invasive techniques, and for areas that have already been urbanized or perhaps "plowed under", or otherwise obviously would have no significant environmental impacts. However conducting the similar activity in an area where endangered species, burials or perhaps other factors present – might warrant a closer look and an environmental assessment to determine impacts.

While "geothermal resources exploration" as defined seems relatively unobtrusive, the location in which this exploration is conducted is a factor, ingress and egress to those locations may be a consideration, and the total scale of the exploration and operation are factors, just to name a few considerations.

The plethora of other possible factors is such an important consideration that all exemptions and the current approved exemption process under Chapter 343 and Chapter 11-200, Hawaii Administrative Rules, include a caveat that states "All exemptions under the classes in this section are inapplicable when the cumulative impact of planned successive actions in the

on the environment may be significant in a particularly sensitive environment."

Finally, the OEQC is concerned that this measure requesting a statutory exemption

circumvents the established process that requires by law the Environmental Council to review

and approve exemption requests such as this. The DLNR has recently requested that exemptions

targeting geothermal activities be placed on the agenda of the Environmental Councils

same place, over time, is significant, or when an action that is normally insignificant in its impact

8 The Environmental Council is fully engaged in fulfilling its duties, there is no back-log on

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exemption requests at the present time, this is a public and fully sun-shined process, and we ask

Exemption Committee and the Council will be reviewing the DLNR request on February 16.

that this process be honored and allowed to run its course.\

Thank you.

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February 7, 2012

Senate Committee on Energy and the Environment

Senate Committee on Public Safety, Government Operations & Military Affairs

Senate Committee on Water, Land and Housing

Hawaii State Legislature

235 South Beretania Street

Honolulu, HI 96813

RE: Written Testimony in opposition to SB 3003 Relating to Geothermal Resources

Aloha Chairs Gabbard, Espero and Dela Cruz and Members of the Committees:

I am Mary Steiner writing on behalf of the Environmental Council in opposition to the above referenced bill.

One of the stated purposes of Senate Bill 3003 is to exempt geothermal resources exploration from environmental assessment and environmental impact statement requirements.

Chapter 343, HRS, includes a process whereby agencies can submit proposed exemption lists to the Environmental Council for concurrence. In fact, the Department of Land and Natural Resources is scheduled to meet with the Council's Sub-Committee on Exemptions at its February 16 meeting to discuss updating the DLNR exemption list to include exemptions for geothermal energy. The procedure requires project proponents review and analyze what impacts a project might have. Should the decision be made that its environmental impacts are minor then it should be exempted through the system that is in place. We believe the legislature should allow the process to work rather than require the exemption statutorily.

For this reason we respectfully request you delete this section of SB 3003. Thank you for accepting our testimony.

Mary Steiner

Chair, Environmental Council

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February 06, 2011 RL: 2278

HB 3003 RELATING TO GEOTHERMAL RESOURCES

Senate Committee on Energy and Environment
Senate Committee on Public Safety, Government Operations, and Military Affairs
Senate Committee on Water, Land, and Housing
Public Hearing – Tuesday, February 07, 2012
2:15 a.m., State Capitol, Conference Room 225

By David Penn, Environmental Center COMMENTS ONLY

Dear Chair Gabbard, Chair Espero, Chair Dela Cruz, Vice Chair English, Vice Chair Kidani, Vice Chair Solomon, and committee members,

The Environmental Center is surprised that this sweeping legislative proposal does not reference any research findings or policy analyses that explain why it might be useful to exempt geothermal resource exploration and development from the existing processes for land use designation and environmental review. Without a clearly stated rationale for the proposal or against the status quo, the task of assessing why and how the existing system of geothermal resource regulation should be changed, if at all, will take longer than the time allotted for submitting this testimony.

In 1983, the legislative intent for creating a process to designate geothermal resource subzones was "to provide a policy that will assist in the location of geothermal resources development in areas of the lowest potential environmental impact." Act 296, § 1. However, the methods for assessing the factors that must be examined for each potential subzone were "left to the discretion of the board and may be based on currently available public information." Hawaii Revised Statutes (HRS) § 205-5.1(c). These factors include compatibility with "uses permitted under the general plan or land use policies of the county"; "the potential economic benefits to be derived from geothermal development potential"; and compatibility with conservation district uses. HRS § 205-5.1(b)(5)-(7). Therefore, it seems that there may be ample room within the existing legal framework for the Board of Land and Natural Resources to continue designating subzones based on the analysis of trade-offs between social benefits and environmental impacts.

Under HRS § 343, the site-specific exploration, development, and production of electrical energy within designated subzones must be reviewed to "alert decsionmakers to significant environmental effects which may result from the implementation of certain actions." HRS § 343-1. SB 3033, which would exempt geothermal exploration from the requirement to prepare an environmental assessment, when applicable, appears to stand for propositions that (1)

2500 Dole Street, Krauss Annex 19 Honolulu, Hawai'i 96822 Telephone: (808) 956-7361 Fax: (808) 956-3980 An Equal Opportunity/Affirmative Action Institution RL: 2278 Page 2

legislators are already alert to the significant environmental effects which may result from any particular exploration activity, and (2) the legislature finds that all geothermal exploration activities are not likely to have a "significant effect" on the environment. Such findings would appear to circumvent the established Chapter 343 process for determining "significant effect," and this circumvention could be unwarranted absent a body of scientific evidence that supports the proposed legislative finding of "no significant effect" for all geothermal exploration leases. If the legislature is interested in developing such a body of evidence, the Environmental Center may be able to assist.

Thank you for considering our testimony on this proposed legislation. Please note that our testimony is advisory only and should not be construed to represent an official institutional position of the University of Hawaii.



Date: Tuesday, February 7, 2012

Time: 2:15 pm

Place: Conference Room 225

Committees: Senate - ENE / WLH / PGM

Re: SB 3003 - Relating to Geothermal Resources - Testimony in Strong Support

Aloha Senators,

The Innovations Development Group (IDG) is a Hawaii based renewable energy Development Corporation owned by Native Hawaiians. It was created to facilitate the development of renewable energy resources of native people, and in summer 2011 presented its development model to legislators of the Energy & Land Committees.

The IDG strongly supports this measure.

This measure differentiates between "geothermal resources exploration" and "geothermal resources development" for purposes of mining leases and exploration permits. It designates "geothermal resources exploration" and "geothermal resources development" as permitted uses in all state land use districts and conservation district zones and repeals geothermal resource subzone provisions under state land use law. In addition, it exempts geothermal resources exploration from environmental assessment and environmental impact statement requirement while ensuring that geothermal resource development conforms to all requirements of Chapter 343.

This bill is badly needed in order to facilitate the immediate exploration of the States geothermal public trust assets in light of the energy & fiscal crisis Hawaii is facing. Exploration for energy is not the same thing as <u>development</u> of energy for production.

Thirty years ago, Hawaii's statutes anticipated that the Sate of Hawaii would expend millions of dollars testing the viability of our geothermal resources so that the State could then determine which lands were suitable for geothermal development, and thereafter designate these areas as 'geothermal sub-zones' for private sector development.

Today, we know that geothermal resources are not explored or developed in this manner, (ie. with the State picking up the cost for exploration and sub-zone designation in order to facilitate development of the resources by private parties.)

Today, industry practice requires that the private sector undertake exploration in order to determine whether development is feasible, and if the data indicates it is, our Hawaii

statutes favor public/private partnerships working together to develop firm power for an energy secure future for our State. Exploration is a business expense for the private sector, but it may not lead to development.

This measure brings State policy in line with industry practice and ensures that exploration will be undertaken, and critical data needed for geothermal resource assessment will be provided to the State, without the State being required to pay for the cost of exploration. It also ensures that all categories of State public trust lands (land use & conservation districts) are available for exploration & data assessment without designating these lands for development. This approach allows the State the State trustee to obtain data needed to locate & assess its geothermal resources, thereby fulfilling its fiduciary obligation to inventory its geothermal renewable energy assets before any geothermal development is approved or undertaken.

Most importantly, this measure does not allow any exemption from Chapter 343 for geothermal <u>development</u>. The clear language of the Bill allows an exemption only for exploration. <u>Any activity that would result in development or production of electricity is still squarely under the provisions of chapter 343.</u>

We support the recommended changes suggested by the DLNR, specifically,

"The Department recommends clarifying language in Part II, SECTION 2 to define "lease" to include either a mining lease issued in accordance with Sections 182-4 and 182-5, Hawaii Revised Statutes (HRS) or a surface lease issued in accordance with Section 171-13, HRS. We request the revision of proposed language on page 2, lines 12-14 to read: "§182-No environmental assessment or environmental impact statement required for geothermal resources exploration, or issuance of mining or surface leases on State or reserved lands for purposes of conducting geothermal resources exploration."

Passage of this measure is critical if Hawaii is to address the current energy & fiscal crisis in an expedient and responsible way.

Kind Regards,

Patricia K. Brandt CEO, IDG

Vatrice K. Brandt



Date: Thursday Feb 7, 2012, 2:15pm

Place: Conference Room 225

Committees: Senate ENE/WLH/PGM

Companion: HB 2690

Testimony in Strong Support of SB 3003 - Relating to Geothermal Resources

Aloha Legislators,

Indigenous Consultants (IC) is a Hawaii based, indigenous LLC owned and operated by Native Hawaiians. It was created to assist indigenous peoples in developing their renewable energy resources in ways tat are: Culturally appropriate, environmentally green and sustainable, socially responsible and economically equitable and affordable. For several years the IC has worked with Innovations Development Group in New Zealand and indigenous Maori developing geothermal resources, which are trust assets of Maori Land Trusts. In addition, the IC has acted as a consultant to other indigenous people in Hawaii and Asia who are addressing development of their trust renewable energy resources in ways that; directly benefit their people, bring in revenues, create small business opportunities and ensure fair & affordable rates to consumers, including themselves and their communities.

This measure differentiates between "geothermal resources exploration" and "geothermal resources development" for purposes of mining leases and exploration permits. It designates "geothermal resources exploration" and "geothermal resources development" as permitted uses in all state land use districts and conservation district zones and repeals geothermal resource subzone provisions under state land use law. In addition, it exempts geothermal resources exploration from environmental assessment and environmental impact statement requirement while ensuring that geothermal resource development conforms to all requirements of Chapter 343.

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Today, industry practice requires that the private sector undertake exploration in order to determine whether development is feasible, and if the data indicates it is, our Hawaii statutes favor public/private partnerships working together to develop firm power for an energy secure future for our State. Exploration is a business expense for the private sector, but it may not lead to development.

This measure brings State policy in line with industry practice and ensures that exploration will be undertaken, and critical data needed for geothermal resource assessment will be provided to the State, without the State being required to pay for the cost of exploration. It also ensures that all categories of State public trust lands (land use & conservation districts) are available for exploration & data assessment without designating these lands for development. This approach allows the State the State trustee to obtain data needed to locate & assess its geothermal resources, thereby fulfilling its fiduciary obligation to inventory its geothermal renewable energy assets before any geothermal development is approved or undertaken.

Most importantly, this measure does not allow any exemption from Chapter 343 for geothermal <u>development</u>. The clear language of the Bill allows an exemption only for exploration. <u>Any activity that would result in development or production of electricity is still squarely under the provisions of chapter 343.</u>

We support the recommended changes suggested by the DLNR, specifically,

"The Department recommends clarifying language in Part II, SECTION 2 to define "lease" to include either a mining lease issued in accordance with Sections 182-4 and 182-5, Hawaii Revised Statutes (HRS) or a surface lease issued in accordance with Section 171-13, HRS. We request the revision of proposed language on page 2, lines 12-14 to read: "§182-No environmental assessment or environmental impact statement required for geothermal resources exploration, or issuance of mining or surface leases on State or reserved lands for purposes of conducting geothermal resources exploration."

Passage of this measure is critical if Hawaii is to address the current energy & fiscal crisis in an expedient and responsible way.

Regards,

Mililani B. Trask



SENATE COMMITTEE ON ENERGY AND ENVIRONMENT SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS SENATE COMMITTEE ON WATER, LAND, AND HOUSING

February 7, 2012, 2:15 P.M. (Testimony is 1 page long)

TESTIMONY IN OPPOSITION TO SB 3003

Aloha Chairs Gabbard, Espero, Dela Cruz, and Members of the Committee:

The Sierra Club, Hawai'i Chapter, with 9,000 dues paying members and supporters statewide, *opposes* SB 3003. This bill fails to learn the lesson of our past geothermal efforts by attempting to reduce public engagement -- exempting geothermal slim wells from any environmental review -- rather than trying to build community consensus. Further, it creates confusion by adding ambiguous language to Hawai'i's land use law.

Environmental Review

The eloquent mandate of Chapter 343 is simple: it requires agencies and developers to tell the truth. The intent of our environmental review law is quite clear—to ask tough questions and disclose impacts of actions using state land or money. The law requires that environmental, cultural, and socio-economic impacts are fully disclosed so that decision makers can make informed decisions about permitted activities.

Chapter 343 also gives the public a voice and an opportunity to be heard.

The proposed bill is unnecessary, because a process exists to deal with minor projects. While the Sierra Club is sympathetic to those who are concerned about the potential for complete environmental reviews being required on projects with little real impact, the law already wisely provides for an exemption process. If a triggered project is truly minor, then it would be excluded via categorical exemption.

DLNR just recently approached the Environmental Council and requested an exemption for slim wells. This process should be allowed to proceed.

Ambiguous Language:

Aside from eliminating environmental review, it is unclear what this bill accomplishes. Geothermal is already allowed under a conservation district use permit on conservation lands. See H.A.R. §13-5-22 (P-12) (D-1) (recognizing geothermal use, noting it shall minimize impacts to natural, cultural, and recreational resources and that it shall be expedited in the application review and decision-making process). And urban/rural classifications usually do not require an explicit grant of authority to authorize particular uses, creating an issue of consistency. If this bill were to pass, would we have to authorize all other types of uses as well?

Further it is unclear what a "permitted use" means. Does geothermal require a permit or is it allowed as a matter of right on all land? Perhaps the word "authorized" should be used instead? For example:

Notwithstanding this section or any other law to the contrary, geothermal resources exploration and geothermal resources development, as defined under section 182-1, [shall be permitted] <u>may be authorized</u> uses in all zones of the conservation district.

Mahalo for the opportunity to testify.



Testimony of C. Mike Kido External Affairs The Pacific Resource Partnership

Senate Committee on Energy and Environment Senator Mike Gabbard, Chair Senator J. Kalani English, Vice Chair

Senate Committee on Water Land and Housing Senator Donovan M. Dela Cruz, Chair Senator Malama Solomon, Vice Chair

Senate Committee on Public Safety, Government Operations and Military Affairs
Senator Will Espero, Chair
Senator Michelle N. Kidani, Vice Chair

SB 3003 – Relating to Geothermal Resources Tuesday, February 7, 2012 2:15 pm Conference Room 225

Aloha Chair Gabbard, Chair Dela Cruz and Chair Espero, Vice Chair English, Vice Chair Solomon, Vice Chair Kidani and Members of these three Committees:

My name is C. Mike Kido, External Affairs of the Pacific Resource Partnership (PRP), a labor-management consortium representing over 240 signatory contractors and the Hawaii Carpenters Union.

SB 3003 moves the state closer to its goal of energy independence by streamlining the geothermal exploration process in all the state land use districts and conservation district zones. Appropriate environmental reviews would be conducted should the explorations prove promising and an entity wishes to take the next step in geothermal resources development.

We respectfully ask for your support on SB 3003. Thank you for the opportunity to share our views with you.

Testimony for ENE/WLH/PGM 2/7/2012 2:15:00 PM SB3003

Conference room: 225

Testifier position: Oppose Testifier will be present: No Submitted by: Wynnie Hee Organization: Individual

E-mail: anthuriumz@hotmail.com

Submitted on: 2/6/2012

Comments:

No, don't make exemptions for geothermal " exploring" -- doesn't make sense, from point of view of environment, just makes dollars for " explorers. "

Testimony for ENE/WLH/PGM 2/7/2012 2:15:00 PM SB3003

Conference room: 225

Testifier position: Support Testifier will be present: Yes Submitted by: Al Lardizabal

Organization: Hawaii Laborers' Union

E-mail: <u>Lardizabal@local368.org</u> Submitted on: 2/7/2012

Comments:

Testimony for ENE/WLH/PGM 2/7/2012 2:15:00 PM SB3003

Conference room: 225

Testifier position: Oppose Testifier will be present: No Submitted by: Michele Nihipali

Organization: Individual

E-mail: nihipalim001@hawaii.rr.com

Submitted on: 2/6/2012

Comments:

SB3003 would subvert the "requirement that environmental, cultural, and socio-economic impacts are fully disclosed so that decision makers can make informed decisions about permitted activities." I oppose this bill that eliminates EIS requirements for geothermal wells.