

COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

Rep. Chris Lee, Chair

Rep. Cynthia Thielen, Vice Chair

COMMITTEE ON WATER AND LAND

Rep. Cindy Evans, Chair

Rep. Nicole E. Lowen, Vice Chair

Thursday February 13, 2014

Conference Room 325

8:40 AM

Testimony in Opposition to HB 1766

Relating to Geothermal Resources

Submitted by:

Donald Thomas

I am a member of the research faculty at the University of Hawaii and have conducted applied and basic research on Hawaii's geology, groundwater, and geothermal systems for more than 40 years. I present the following testimony in opposition to HB1766.

HB 1766 moves to re-implement Geothermal Resource Subzones in Hawaii as a means of restoring county authority over geothermal development permits and allowing geothermal development to occur in a variety of land use zones. I do not believe that reinstating geothermal resource subzones will serve to facilitate further exploration for or development of this renewable energy resource but, instead, will serve to restrict its development in what may not be optimum locations and limit exploration in other areas of the state where the resource may be more appropriately developed.

I served as the Technical Chair of the committee that made the geothermal resource potential assessments that were used in the original designation of Geothermal Subzones. The scientific data relevant to geothermal potential resources available to us at the time was quite limited and that led us to ignore areas of the state that we are only now learning may have significant potential. Once the subzones were designated, further private exploration in other areas of Hawaii, outside of Geothermal Subzones was virtually shut off. Our current data on Hawaii's geothermal resources is still quite limited; a re-designation of Geothermal Resource Subzones will likely result, again, in limiting private interests to only those subzones and, again, abandonment of exploration in areas where resource potential may exist but that has no exploration data. To optimize the development of this resource, Hawaii should be taking

steps to encourage broad exploration rather than restrict efforts to already-recognized resource areas.

I believe that HB2639 would better serve the people of Hawaii in allowing home rule without unduly delaying needed development.

Thank you for this opportunity to offer testimony.

This testimony reflects my views alone and is not an official statement of the University of Hawaii.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the House Committee on
ENERGY & ENVIRONMENTAL PROTECTION

Thursday, February 13, 2014
8:40 A.M.
State Capitol, Conference Room 325

In consideration of
HOUSE BILL 1766
RELATING TO GEOTHERMAL RESOURCES

House Bill 1766 proposes to restore, amend and/or repeal certain statutory provisions relating to geothermal energy production that were repealed or enacted by Act 97, Session Laws of Hawaii (SLH) 2012, establish a permitting process for geothermal resources development, and require the Board of Land and Natural Resources (BLNR) and the counties to implement the recommendations of the 2013 Final Report of the Geothermal Public Health Assessment Study Group prior to issuing permits for future geothermal development. **The Department of Land and Natural Resources (Department) opposes this measure.**

The Legislature, through the passage of Act 97, SLH 2012, eliminated geothermal resource subzone designations. The Department believes that geothermal resource subzones are not necessary as the development of a potential site can be properly authorized through a permitting and review process which includes the following:

- Geothermal resources development cannot take place without the permission and consent of the surface landowner
- An Environmental Impact Statement must be prepared and accepted in accordance with Chapter 343, Hawaii Revised Statutes before any geothermal development can occur
- All applicable regulatory permits or approvals are still required from the appropriate county, state, or federal agencies
- Public hearings are required for the issuance of land use permits

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

ESTHER KIA'AINA
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
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

The elimination of geothermal resources subzones provided geothermal energy equity to other renewable energy sources such as wind, solar, biomass or hydropower which do not require special designated zones for their development.

The Department believes each individual county should have the authority to regulate uses that occur within the urban, rural or agriculture land use districts. Therefore, the Department prefers House Bill 2639 House Draft 1, in lieu of this measure, as it restores home rule authority that was repealed through Act 97, SLH 2012.

This measure also requires the BLNR and each County to create baseline studies and monitoring systems and protocols for the prevention of air, water pollution and excessive noise resulting from geothermal development. Standards already exist regarding noise and certain emissions and the Department defers to the Department of Health regarding the need for these studies and protocols.

Thank you for the opportunity to provide testimony on this measure.



**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
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Statement of
RICHARD C. LIM
Director

Department of Business, Economic Development, and Tourism
before the

HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

Thursday, February 13, 2014

8:40 a.m.

State Capitol, Conference Room 325

in consideration of

HB 1766

RELATING TO GEOTHERMAL RESOURCES.

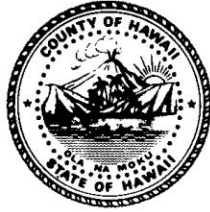
Chair Lee, Vice Chair Thielen, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) offers comments on HB 1766, which amends Act 97, SLH 2012, by re-establishing the geothermal resource subzone and geothermal resources development permitting processes, and repeals certain statutory provisions enacted by Act 97, SLH 2012. We respectfully offer the following comments:

- DBEDT is opposed to reinstating subzones. Restoring the subzone designation process would add a time-consuming, open ended, costly process without a clear expectation of benefits to ratepayers and residents.
- DBEDT supports reauthorizing the Counties' Geothermal Resource Permit authority.
- DBEDT believes it is important to define a distinction between geothermal exploration and geothermal development, as provided for in Act 97, SLH 2012.

Thank you for the opportunity to offer these comments.

William P. Kenoi
Mayor



Walter K.M. Lau
Managing Director

Randall M. Kurohara
Deputy Managing Director

County of Hawai'i Office of the Mayor

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February 13, 2014

The Honorable Chris Lee, Chair
and Members of the House Committee on Energy
& Environmental Protection

The Honorable Cindy Evans, Chair
and Members of House Committee on Water & Land
Hawai'i State Capitol, Room 325
415 South Beretania Street
Honolulu, Hawai'i 96813

RE: House Bill 1766, RELATING TO GEOTHERMAL RESOURCES

Aloha, Chair Lee, Chair Evans and Committee Members:

Mahalo for the opportunity to express our support for the intent of this bill, which restores, amends, and repeals certain statutory provisions relating to geothermal energy production that were repealed or enacted by Act 97, SLH 2012 and requires the BLNR and the counties to implement the recommendations of the 2013 Final Report of the Geothermal Public Health Assessment Study Group prior to issuing permits for future geothermal development. As we have said in previous testimony, we support repeal of Act 97.

The Geothermal Public Health Assessment Study Group volunteered more than 1,500 hours over nine months to this effort and has produced an important piece of work. We are committed to making sure that the recommendations in this study result in action. To date four projects that will operationalize the first round of recommendations of this study have been approved for funding by the Windward Planning Commission

Mahalo for your consideration.

Aloha,

William P. Kenoi
MAYOR

COUNTY COUNCIL

Jay Furfaro, Chair
Mason K. Chock, Sr., Vice Chair
Tim Bynum
Gary L. Hooser
Ross Kagawa
Mel Rapozo
JoAnn A. Yukimura



OFFICE OF THE COUNTY CLERK

Ricky Watanabe, County Clerk
Jade K. Fountain-Tanigawa, Deputy County Clerk

Telephone (808) 241-4188
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Email cokcouncil@kauai.gov

Council Services Division
4396 Rice Street, Suite 209
Lihu'e, Kaua'i, Hawai'i 96766

February 11, 2014

TESTIMONY OF GARY L. HOOSER
COUNCILMEMBER, KAUA'I COUNTY COUNCIL
ON

HB 1766, RELATING TO GEOTHERMAL RESOURCES

House Joint Committee on Energy & Environmental Protection / Water & Land

Thursday, February 13, 2014

8:40 a.m.

Conference Room 325

Dear Chair Lee, Chair Evans, and Committee Members:

Thank you for this opportunity to submit testimony in strong support of HB 1766, relating to geothermal resources. My testimony is submitted in my capacity as the Economic Development (Sustainability / Agriculture / Food / Energy) & Intergovernmental Relations Committee Chair and Councilmember on the Kaua'i County Council.

HB 1766 affects statutory provisions that were repealed or enacted by Act 97, Session Laws of Hawai'i (SLH) 2012, including the restoration of geothermal resource subzones, establishes a permitting process for geothermal resources development, and requires the Board of Land and Natural Resources (BLNR) and the counties to implement the recommendations of the 2013 Final Report of the Geothermal Public Health Assessment Study Group prior to issuance of any permits for future geothermal development. The Report referenced in HB 1766 accurately highlights and validates various public health and safety concerns and makes strong recommendations to address those matters. HB 1766 highlights the importance of weighing the public's health, safety, and welfare with the importance of exploring alternative energy resources, such as geothermal, to secure Hawai'i's energy future.

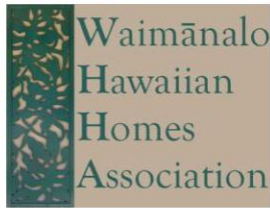
For the reasons stated above, I strongly encourage the House Joint Committee on Energy & Environmental Protection / Water & Land to support this measure. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,

GARY L. HOOSER

Councilmember, Kaua'i County Council

SS:mn



P.O. Box 353, Waimānalo, Hawaii 96795-0353

TESTIMONY *IN STRONG OPPOSITION TO* HB 1766 RELATING TO
GEOHERMAL RESOURCES

HAWAII HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Chris Lee, Chair and Rep. Cynthia Thielen, Vice Chair

HOUSE COMMITTEE ON WATER & LAND

Rep. Cindy Evans, Chair and Rep. Nicole E. Lowen, Vice Chair

COMMITTEE HEARING

Thursday, February 13, 2014
8:40 a.m.; Conference Room 325
Hawaii State Capitol

Honorable Chairs Rep. Lee and Rep. Evans and Vice Chairs Rep. Thielen and Rep. Lowen and Committee Members, Aloha!

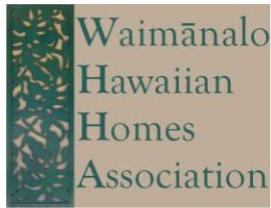
We submit this testimony in *strong opposition to* HB 1766 which restores, amends and appeals certain statutory provisions already enacted for the protection of the citizens of Hawai'i as it relates to geothermal exploration, research and development.

Waimanalo Hawaiian Homes Association (WHHA) has taken on a pioneering initiative towards the use of our natural resources carefully ensuring its reverence, respect and usage is primarily for the betterment of other natural resources chiefly for food production or dry processing.

For this reason, we have consistently endeavored towards the premise of accessing where possible the natural resources available within our homestead trust lands and with permission and consent from the Department of Hawaiian Home Lands (DHHL) those areas which science has provided a means to identify potential resources as generating geothermal renewable energy for use as either a hot-house or food-drying processing center.

WHHA intends to provide strong support for any and all such explorations on Hawaiian home lands on O'ahu and throughout the State in hopes of improving farming and food research and production possibilities.

Paul P. Richards, President • N. Kilauea Wilson, Vice President • Moana Akana, Secretary
• M. Kuulei Laughlin – Treasurer • Roland K. Kealoha, Historian • Roxanne Hanawahine, Director •
Lorraine Higa, Director • Apela Peahi, Director • E. Nickie Hines, Director • Joseph Aipa, Director



P.O. Box 353, Waimānalo, Hawaii 96795-0353

Our concern lies within the underlying context of this bill for some unreasonable purpose(s) which may not fully serve the people of our state and forego the potential and opportunity to further improve the quality of life and standard of living

We humbly ask the committees accept our strong opposition to this bill.

We appreciate the opportunity to submit our testimony and willing to be called upon as needed.

Mahalo nui loa,

A handwritten signature in black ink, appearing to read "Paul P. Richards". The signature is fluid and cursive.

Paul P. Richards
President



Puna Pono Alliance
PO Box 492668
Kea`au, HI 96749

web: <http://punapono.com>
email: info@punapono.com

February 10, 2014

To: House Committee on Energy & Environmental Protection

Rep. Chris Lee, Chair
Rep. Cynthia Thielen, Vice Chair

House Committee on Water & Land

Rep. Cindy Evans, Chair
Rep. Nicole E. Lowen, Vice Chair

Re: Hearing on Thursday, February 13, 2014, at 8:40 a.m. in Conference Room 325 –

HB1766 (providing for geothermal permitting) – **strongly support** and
HB2639 (providing for geothermal permitting, only¹) – **strongly oppose** because:

- * it perpetuates mandatory mediation in geothermal permitting
- * it fails to restore geothermal resource subzones (as repealed by Act 97 in 2012)
- * it fails to assure appropriate geothermal environmental review
- * it ignores Hawai`i County's recent Geothermal Public Health Assessment

Encl: One proposed amendment to HB1766, HD1 (housekeeping) and

Four proposed amendments to HB2639, HD1:

1. to remove mandatory mediation from geothermal permitting
2. to restore the geothermal resource subzones repealed by Act 97, *nunc pro tunc*
3. to assure appropriate geothermal environmental review
4. to include Geothermal Public Health Assessment recommendations

Aloha Representatives,

The first geothermal permitting law created by Act 296 in 1983 provided for a *contested case*² in permit applications. In 1987 Act 378 removed contested case provisions and substituted mandatory mediation (“to provide for a simpler procedure to consider and act on permits for geothermal development” Senate Committee Report 1118.). In 2012, Act 97 repealed *all of*

¹ Please note that this testimony addresses only Section 2 of HB2639.

² Act 296 (1986) said, in relevant part, “[t]he board and/or appropriate county agency shall, upon request, conduct a contested case hearing pursuant to chapter 91 prior to the issuance of a geothermal resource permit....” *Contested case* is defined by HRS § 91-1 as “a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing.”

the laws relating to geothermal permitting and geothermal resource subzones, apparently with an intent of eliminating a so-called ‘go-slow’ approach to geothermal development.³

Early thoughts regarding streamlining geothermal permits to make the process simpler (and easier for developers) weakened the process to the point where it failed to appropriately consider public health and safety. Those thoughts eventually reached the ultimate absurdity of simply wiping out all geothermal regulatory statutes in 2012 by Act 97. Obviously, the resulting vacuum provides for no consideration of public health and safety. Now, for the second year in a row, the Legislature is re-visiting that elimination of laws governing geothermal development. A final step in the unsuccessful efforts to restore geothermal laws in 2013 saw a rare Senate floor amendment that removed mandatory meditation from HB252 (the last bill geothermal still standing in 2013 before it died in a conference committee.)

Before you now is HB2639 that would restore only part of the minimal and insufficient streamlined geothermal permitting procedure that was repealed by Act 97. We strongly oppose HB2639 in its present form. On the other hand, we strongly support HB1766 that would restore improved permitting procedures, including lessons learned from the Geothermal Public Health Assessment Final Report that resulted from a working group funded by the County of Hawai`i. The County’s pro-geothermal mayor has embraced the report and promised to implement its recommendations. Puna is the only community in the State with actual geothermal experience. The report offers some hope that future geothermal development in Hawai`i could come closer to assuring the health and safety of affected communities. It is a misfortune for our optimism that *HB2639 disregards Hawai`i County’s recent assessment report*. Our community’s support for HB1766 *could extend to supporting HB2639 if it is duly amended*.

The report, validating a number of community concerns expressed over the years, states that risks from geothermal energy production and harmful effects require better monitoring and reliable health data. The report includes several valuable recommendations, such as establishing a better toxic emission monitoring system based upon a finding of risks that relate to geothermal energy production’s hazardous chemicals escaping to the air, water, or at surface level. Also, the report recommends evaluation of the effects on drinking water and the near-ocean environment (including baseline studies prior to further geothermal development.) Those recommendations could – after thirty years, finally – better assure the health and safety of affected communities.

³ A draft report, *Senate Energy and Environment Committee Accomplishments* for 2012, said Act 97 “relaxes the restrictions on geothermal development by: requiring geothermal resources exploration and development, as defined in the Act, to be permissible uses in all state land use districts; and repealing provisions relating to geothermal resource subzones ... the provisions that mandated a ‘go-slow’ approach to geothermal energy....”

From the report it can be seen that streamlined geothermal permitting methods first put in place in 1983 and trimmed even further in subsequent years (before being eliminated altogether by Act 97 in 2012) *were not sufficient to prevent community risks and harm*. The County of Hawai'i, as a result of actual experience with geothermal development, has formally recognized the existence of community risks and harm. That reality needs to become part of the discussion of laws pertaining to geothermal exploration and development. A formerly widespread thought that geothermal is inherently clean and safe is no longer reasonably acceptable as a given.

HB2639 reinstates part of the former geothermal permitting law repealed by Act 97, but without restoring geothermal resource subzones and without including an awareness of Hawai'i County's report. The bill perpetuates mandatory mediation as a substitute for contested cases, despite last year's Senate floor amendment to HB252 that rejected such provisions. HB2639 does not address recognized public health and safety concerns and fails to include permitting standards in that regard. New geothermal legislation should not only restore the essential vehicle of geothermal permitting as it existed before Act 97, including reinstatement of the designated geothermal resource subzones. In keeping with last year's Senate floor amendment, mediation requirements should be removed from the HB2639. Permitting standards addressing recognized public health and safety concerns based on the report – and the recommendations of the report – should be included as elements of the new geothermal permitting process.

In other words, the new law should show concern for the community's experience with geothermal development as studied, analyzed and reported in Hawai'i County's Geothermal Public Health Assessment Final Report. It may be difficult for some proponents of geothermal energy to accommodate the County's report in their views, but it is a responsibility and duty of the Legislature to enact laws in the light of day.

The report recommends a community health study, particularly looking at toxic effects of the hydrogen sulfide (H₂S) emitted by geothermal plants (and many other industrial sources.) If you want an illustration of the strong lobbying that supports disregard of perils associated with chronic exposure to H₂S, please take a look at industry positions as described in the publication by the federal Environmental Protection Agency (EPA) titled *Hydrogen Sulfide; Community Right-to-Know Toxic Chemical Release Reporting* (page 64022 of the Federal Register, Volume 76, No. 200, Monday, October 17, 2011.) It says that the “*EPA has determined that hydrogen sulfide can reasonably be anticipated to cause serious or irreversible chronic human health effects at relatively low doses and thus is considered to have moderately high to high chronic toxicity.*” The main substance of the publication is a chronicle of how H₂S emitting industrial lobbies succeeded in delaying the publication for *eighteen years*, after it was initially proposed by the EPA in 1993.

Geothermal resource subzones were a principal part of the first geothermal permitting laws created by Act 296 in 1983. Those subzones – part of the State's comprehensive zoning

statutes – were designated by the Board of Land and Natural Resources based upon scientific studies that were followed by public hearings. Criteria for establishing the subzones included the presence of geological factors necessary for geothermal development (*i.e.*, hot geothermal brine that could be accessed from the surface to transfer energy to electric generators) and also certain community-related considerations. As a result, potential developers and homeowners were informed that particular, designated locales could be suitable for geothermal development.⁴

Last year, testimony on behalf of the BLNR lamented the costs associated with the effort of recreating geothermal resource subzones. That lament is not unfounded, but it is also not such an obstacle since the work has already been done in designating previously existing subzones. It is therefore appropriate in remedying Act 97 to restore the geothermal resource subzones *nunc pro tunc* (meaning literally *now for then*, to retroactively correct their repeal under Act 97) and simply reinstate them as if they had never been repealed (without additional cost or effort.)

The 2013 legislature passed Act 284 creating Hawai'i Revised Statutes (HRS) Chapter 658H, the Uniform Mediation Act. Mediation is defined in HRS § 658H-2 as “a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a *voluntary agreement* regarding their dispute.”⁵ The legal definition of the term thus seeks to mediate voluntary agreements regarding disputes. Contested case is defined by HRS § 91-1 as “a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing.” A quasi-judicial contested case is intended to formally consider disputes on the basis of due process, evidence

⁴ “HRS § 205-5.1 authorizes the issuance of geothermal resource permits to allow geothermal development activities in geothermal resource subzones established within urban, rural, agricultural, and conservation districts by the Board of Land and Natural Resources in accordance with the procedures set forth in HRS 205-5.2. The purpose of HRS § 205-5.1 and -5.2 is to ‘assist in the location of geothermal resources development in areas of the lowest potential environmental impact.’” *Medeiros v. Hawaii County Planning Comm'n*, 8 Haw. App. 183, 184, 797 P.2d 59, 60 (1990). “[T]he statutory scheme explicitly contemplates the Boards use of its discretion in determining the appropriate boundaries for designation of the geothermal resource subzone.” *Dedman v. Board. of Land & Natural Resources*, 69 Haw. 255, 264, 74 P.2d 28, 34 (1987).

⁵ In written testimony dated March 14, 2013, addressed to the House Committee on Judiciary, the Director of the Center for Alternative Dispute Resolution wrote on behalf of the State Judiciary that a purpose of the Uniform Mediation Act was to “advance the policy that the decision-making authority in the mediation process rests with the parties.” That purpose is not compatible with using mediation as a prelude to a decision that will be made by a third party (in this case the government entity considering a geothermal resources development permit.)

and a reasoned decision. Mandatory mediation (as first required in 1987 in former geothermal permitting laws) is inconsistent with the statutory definition of mediation's purpose as voluntary agreements regarding disputes – especially if mediation is imposed as a substitute for contested case proceedings. Mandatory mediation is not appropriate element for geothermal permitting procedures. That is not to say mediation is entirely inappropriate in geothermal permitting, as HRS § 91-8.5 provides that *as part of a contested case proceeding* the partes may be referred to a mediator to see if some issues can be voluntarily narrowed or resolved. The appropriate use of mediation is an existing part of the statutes governing contested cases.

In sum, this testimony strongly opposes HB2639 because it it perpetuates mandatory mediation in geothermal permitting, it fails to restore geothermal resource subzones (as repealed by Act 97 in 2012), it fails to assure appropriate geothermal environmental review and it ignores Hawai'i County's recent Geothermal Public Health Assessment. In that regard, please consider the four proposed amendments to HB2639 SD1 addressing each of the four objections separately. If HB2639 is appropriately amended, we could support the bill.

Please amend HB2639 pursuant to the proposed amendments. If you are unable to do so, then please do not let HB2639 advance beyond these committees and instead take up, consider and advance amended HB1766.⁶ Thank you for considering these thoughts.

Aloha,



Robert Petricci, President
Puna Pono Alliance

⁶ The enclosed amendment for HB1766 corrects a drafting error.

Proposed AMENDMENT

TO: House Bill 1766, H.D. 1

SECTION 1. House Bill No. 1766, H.D. 1, is amended in Section 2, §205-F(a):

§205-F Designation of areas as geothermal resource subzones; assessment and updates; hearings. (a) ~~[Beginning in 2014, the board shall conduct a county-by-county assessment of areas with geothermal potential for the purpose of designating geothermal resource subzones. The assessment shall be revised or updated at the discretion of the board, but at least once each five years beginning in 2019.]~~ Beginning in 1983, the board of land and natural resources conducted a county-by-county assessment of areas with geothermal potential for the purpose of designating geothermal resource subzones. Those assessments shall be revised or updated at the discretion of the board, but at least once each five years. Any property owner or person with an interest in real property seeking to have an area designated as a geothermal resource subzone may submit a petition for a geothermal resource subzone designation in the form and manner established by rules adopted by the board. An environmental impact statement as defined in section 343-2 shall not be required for the assessment of areas under this section.

Proposed AMENDMENT #1

TO: House Bill 2639, H.D. 1

The purpose of this proposed amendment is to remove mandatory mediation from the geothermal resource development permitting provisions of SB2663, restoring contested cases.

Material to be removed is bracketed and stricken. New material is underscored.

SECTION 1. House Bill 2639, H.D. 1, Section 2 (b) through (f) are amended to read as follows:

SECTION __. Chapter _____, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

(b) If geothermal resources development is proposed within a conservation district in an application containing all required data, the board shall conduct a public hearing. The public hearing shall be held on the island where the geothermal resources development is being proposed and as close as practicable to the area that would be affected by the proposed geothermal resources development, where the legal rights, duties, or privileges of affected parties may be determined. No later than twenty days prior to the hearing, the board shall provide public notice to affected county agencies and owners of land within three thousand feet of the proposed geothermal resources development.~~[, and upon appropriate request for mediation from any party who submitted written comments at the public hearing, the board shall appoint a mediator within fourteen days. The board shall require the parties to participate in mediation. The mediator shall not be a member of the board or its staff. The mediation period shall not extend beyond sixty days after the date mediation starts, except by order of the board. Mediation shall be confined to the issues raised at the public hearing by the party requesting mediation].~~

~~[If there is no mediation agreement on all the issues raised at the public hearing, the board may conduct a second public hearing to receive additional comments related to the unresolved mediation issues. Within ten days after the second public hearing, the board may~~

~~continue to receive additional written comments from any party on the unresolved issues raised at the second public hearing. The board shall consider all such comments before rendering its final decision.]~~ The board shall then determine whether a conservation district use permit shall be granted to authorize the geothermal resources development described in the application. The board ~~[shall]~~ may grant a conservation district use permit if it finds that:

(1) The desired uses would not have unreasonable adverse health, environmental, or socio-economic effects on residents or surrounding property;

(2) The desired uses would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and police and fire protection; ~~[or~~

~~—————(3) There are reasonable measures available to mitigate the unreasonable adverse effects or burdens referred to in paragraphs (1) and (2), which the board shall have the authority to prescribe as conditions for the proposed geothermal resources development.]~~
provided that the board may further prescribe mitigating actions to be taken by the applicant to address any effects or burdens, including the establishment of an appropriate buffer zone between the proposed geothermal resources development and abutting land, as a condition of the permit approval.

A decision shall be made by the board within six months of the date a complete application is filed; provided that the time limit may be extended by agreement between the applicant and the board. ~~[The board shall have the exclusive authority to impose reasonable conditions and restrictions upon the proposed use in support of its findings, except to the extent that the department of health and other state and federal agencies have jurisdiction to regulate such activities.]~~

(c) If geothermal resources development is proposed within agricultural, rural, or urban

districts and the proposed activities are not expressly permitted uses pursuant to the applicable county general plan and zoning ordinances, then after receipt of a properly filed and completed application including all required supporting data, the appropriate county authority shall conduct a public hearing. The public hearing shall be held on the island where the geothermal resources development is being proposed and as close as practicable to the area that would be affected by the proposed geothermal resources development, where the legal rights, duties, or privileges of affected parties may be determined. No later than twenty days prior to the hearing, the appropriate county authority shall provide public notice to affected state agencies and owners of land within three thousand feet of the proposed geothermal resources development.~~[Upon appropriate request for mediation from any party who submitted written comments at the public hearing, the appropriate county authority shall appoint a mediator within fourteen days. The appropriate county authority shall require the parties to participate in mediation. The mediator shall not be an employee of any county agency or its staff. The mediation period shall not extend beyond sixty days after mediation starts, except by order of the appropriate county authority. Mediation shall be confined to the issues raised at the public hearing by the party requesting mediation. If there is no mediation agreement on the issues raised during the public hearing, the appropriate county authority may conduct a second public hearing to receive additional comments related to the unresolved mediation issues. Within ten days after the second public hearing, the appropriate county authority may continue to receive additional written comments from any party on the unresolved issues raised at the second public hearing.]~~

~~[The appropriate county authority shall consider all such comments before rendering its final decision.]~~ The appropriate county authority shall then determine whether a geothermal resource permit shall be granted to authorize the geothermal resources development described in

the application. The appropriate county authority [~~shall~~] may grant a geothermal resource permit if it finds that the applicant has demonstrated that:

(1) The desired uses would not have unreasonable adverse health, environmental, or socio-economic effects on residents or surrounding property;

(2) The desired uses would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection; [~~or~~

~~—————(3) There are reasonable measures available to mitigate the unreasonable adverse effects or burdens referred to in paragraphs (1) and (2), which the county authority may prescribe as conditions for the proposed geothermal resources development.]~~

provided that the appropriate county authority may further prescribe mitigating actions to be taken by the applicant to address any effects or burdens, including the establishment of an appropriate buffer zone between the proposed geothermal resources development and abutting land, as a condition of the permit approval.

Unless there is a mutual agreement to extend the proceeding, a decision shall be made on the application by the appropriate county authority within six months of the date a complete application is filed; provided that the time limit may be extended by agreement between the applicant and the appropriate county authority. [~~The appropriate county authority shall have exclusive authority to impose reasonable restrictions and conditions for the geothermal development in support of its findings, except to the extent that the department of health and other federal and state agencies have jurisdiction to regulate such activities.]~~

(d) In addition to the requirements of this part and the powers pursuant to sections 46-1.5 and 46-4, each county may adopt more stringent ordinances regarding geothermal resources

development permits within agricultural, rural, or urban districts.

~~[(d) Requests for mediation shall be received by the board or appropriate county authority within five days after the close of the initial public hearing. Any person submitting an appropriate request for mediation shall be notified by the board or appropriate county authority of the date, time, and place of the mediation conference. The board or county authority shall deposit the notice in the mail to the return address stated on the request for mediation. The notice shall be mailed no later than ten days before the start of the mediation conference. The conference shall be held on the island where the public hearing is held.]~~

~~[(e) Any decision made by an appropriate county authority or the board pursuant to a public hearing or hearings under this section may be appealed directly on the record to the intermediate appellate court for review and shall not be subject to a contested case hearing. Section 91-14 shall apply to judicial reviews, notwithstanding the lack of a contested case hearing on the matter. The appropriate county authority or the board shall provide a court reporter to produce a transcript of the proceedings at all public hearings under this section for purposes of an appeal.]~~

~~[(f) For the purposes of an appeal from a decision from a public hearing, the record shall include:~~

- ~~—— (1) The application for the permit and all accompanying supporting documents, including but not limited to reports, studies, affidavits, statements, and exhibits;~~
- ~~—— (2) Staff recommendations submitted to the members of the agency in consideration of the application;~~
- ~~—— (3) Oral and written public testimony received at the public hearings;~~
- ~~—— (4) Written transcripts of the proceedings at the public hearings;~~

~~——(5) A statement of relevant matters noticed by the agency members at the public hearings;~~

~~——(6) The written decision of the agency issued in connection with the application and public hearings; and~~

~~——(7) Any other documents as may be required by the board or appropriate county authority.]~~

Proposed AMENDMENT #2

TO: House Bill 2639, H.D. 1

The purpose of this proposed amendment is to restore geothermal resource subzones (as repealed by Act 97 in 2012) *nunc pro tunc*.

SECTION 1. House Bill No. 2639, H.D. 1, is amended by adding new Sections to read as follows:

SECTION __. Sections 5, 6, 7 and 8 of Act 97, Session Laws of Hawai'i 2012, designating "geothermal resources exploration" and "geothermal resources development" as permissible uses in all zones of the conservation district and in all districts are repealed.

SECTION __. Geothermal resource subzones previously designated by the board of land and natural resources pursuant to former Hawai'i Revised Statutes § 205-5.2 are reinstated retroactively to April 30, 2011 (the date of repeal of § 205-5.2 by Act 97, SLH 2012) such that there shall be no discontinuity in their existence from after the time they first were designated until the effective date of this Act.

SECTION __. Chapter 205, Hawai'i Revised Statutes, is amended by adding a new part to be appropriately designated and read as follows:

“PART . GEOTHERMAL RESOURCES

“§205-A Definitions. As used in this part, unless the context clearly requires otherwise:

"Board" means the board of land and natural resources.

"Geothermal resources" has the same meaning as in section 182-1.

"Geothermal resources development" has the same meaning as in section 182-1.

§205-B Geothermal Resource Subzones. (a) Geothermal resource subzones may be designated within the urban, rural, agricultural, and conservation land use districts. Only those areas designated as geothermal resource subzones may be utilized for geothermal resources

development activities, in addition to those uses permitted in each land use district under this chapter.

(b) Geothermal resources development may be permitted within urban, rural, agricultural, and conservation land use districts in accordance with this chapter; provided that within the urban, rural, and agricultural land use districts, direct use applications of geothermal resources are permitted both within and outside of areas designated as geothermal resource subzones pursuant to section 205-C if such direct use applications are in conformance with all other applicable state and county land use regulations and this chapter.

(c) The board shall have the responsibility for designating areas as geothermal resource subzones as provided under section 205-C; except that the total area within an agricultural district which is the subject of a geothermal mining lease approved by the board of land and natural resources, any part or all of which area is the subject of a special use permit issued by the county for geothermal development activities, on or before May 25, 1984, is designated as a geothermal resource subzone for the duration of the lease. The designation of geothermal resource subzones shall be governed exclusively by this section and section 205-C, except as provided therein. The board shall adopt, amend, or repeal rules related to its authority to designate and regulate the use of geothermal resource subzones in the manner provided under chapter 91.

(d) The authority of the board to designate geothermal resource subzones shall be an exception to those provisions of this chapter and of section 46-4 authorizing the land use commission and the counties to establish and modify land use districts and to regulate uses therein. The provisions of this section shall not abrogate nor supersede the provisions of chapters 182, 183, and 183C.

§205-C Designation of areas as geothermal resource subzones; assessment and updates; hearings. (a) Beginning in 1983, the board of land and natural resources conducted a county-by-county assessment of areas with geothermal potential for the purpose of designating geothermal resource subzones. Those assessments shall be revised or updated at the discretion of the board, but at least once each five years. Any property owner or person with an interest in real property wishing to have an area designated as a geothermal resource subzone may submit a petition for a geothermal resource subzone designation in the form and manner established by rules and regulations adopted by the board. An environmental impact statement as defined under chapter 343 shall not be required for the assessment of areas under this section.

(b) The board's assessment of each potential geothermal resource subzone area shall examine factors to include, but not be limited to:

- (1) The area's potential for the production of geothermal energy;
- (2) The prospects for the utilization of geothermal energy in the area;
- (3) The geologic hazards that potential geothermal projects would encounter;
- (4) Cultural, social and environmental impacts of the proposed geothermal resources development, including the potential for health, safety and nuisance impacts on surrounding land;
- (5) The compatibility of geothermal development and potential related industries with present uses of surrounding land and those uses permitted under the general plan or land use policies of the county in which the area is located;
- (6) The potential economic benefits to be derived from geothermal development and potential related industries; and
- (7) The compatibility of geothermal development and potential related industries

with the uses permitted under chapter 183C and section 205-2, where the area falls within a conservation district.

In addition, the board shall consider, if applicable, objectives, policies, and guidelines set forth in part I of chapter 205A, and chapter 226.

(c) Methods for assessing the factors in subsection (b) shall be left to the discretion of the board and may be based on currently available public information.

(d) After the board has completed a county-by-county assessment of all areas with geothermal potential or after any subsequent update or review, the board shall compare all areas showing geothermal potential within each county, and shall propose areas for potential designation as geothermal resource subzones based upon a preliminary finding that the areas are those sites which best demonstrate an acceptable balance between the factors set forth in subsection (b). When a proposal is made, the board shall conduct public hearings as follows:

- (1) Hearings shall be held at locations which are in close proximity to those areas proposed for designation. A public notice of hearing, including a description of the proposed areas, an invitation for public comment, and a statement of the date, time, and place where persons may be heard shall be given and mailed no less than twenty days before the hearing. The notice shall be given on three separate days statewide and in the county in which the hearing is to be held. Copies of the notice shall be mailed to the department of business, economic development, and tourism, to the planning commission and planning department of the county in which the proposed areas are located, and to all owners of record of real estate within, and within one thousand feet of, the area being proposed for designation as a geothermal resource subzone. The notification shall be mailed to the owners

and addresses as shown on the current real property tax rolls at the county real property tax office. Upon that action, the requirement for notification of owners of land is completed. For the purposes of this subsection, notice to one co-owner shall be sufficient notice to all co-owners;

- (2) The hearing shall be held before the board, and the authority to conduct hearings shall not be delegated to any agent or representative of the board. All persons and agencies shall be afforded the opportunity to submit data, views, and arguments either orally or in writing. The department of business, economic development, and tourism and the county planning department shall be permitted to appear at every hearing and make recommendations concerning each proposal by the board; and
- (3) At the close of the hearing, the board may designate areas as geothermal resource subzones or announce the date on which it will render its decision. The board may designate areas as geothermal resource subzones only upon finding that the areas are those sites which best demonstrate an acceptable balance between the factors set forth in subsection (b). Upon request, the board shall issue a concise statement of its findings and the principal reasons for its decision to designate a particular area.

(e) The designation of any geothermal resource subzone may be withdrawn by the board of land and natural resources after proceedings conducted pursuant to chapter 91. The board shall withdraw a designation only upon finding by a preponderance of the evidence that the area is no longer suited for designation; provided that the designation shall not be withdrawn for areas in which active exploration, development, production or distribution of electrical energy from

geothermal sources or direct use applications of geothermal resources are taking place.

(f) This section shall not apply to any active exploration, development or production of electrical energy from geothermal sources or direct use applications of geothermal resources taking place on June 14, 1983, provided that this section shall apply to any expansion of such activities.

§205-D Exploratory wells. Any exploratory well drilled for scientific purposes or to determine the economic viability of a geothermal resource, may be permitted outside of a designated geothermal resource subzone, regardless of land use classification, provided that the activity is limited to exploration only. All applicable state and county permits shall be required to drill such exploratory wells which shall not be exempt from the requirements of the environmental impact statement law, chapter 343.”

Proposed AMENDMENT #3

TO: House Bill 2639, H.D. 1

The purpose of this proposed amendment is to assure appropriate environmental review in geothermal permitting proceedings.

SECTION 1. House Bill No. 2639, H.D. 1, is amended by adding a new Section to read as follows:

SECTION __. Chapter 205, Hawai`i Revised Statutes, is amended by adding a new section to read as follows:

“§ 205-A Geothermal environmental review. (a) To ensure that prospective geothermal resources development activity will have minimal detrimental impacts, any application to obtain a geothermal resources development permit from any government entity shall be accompanied by an appropriate environmental review document providing, at a minimum, in addition to the requirements of Chapter 333 and related regulations, the following:

- (1) An assessment of any potential geologic hazards relating to geothermal production or use in the proposed area;
- (2) An assessment of any environmental, cultural or social impacts within the proposed area;
- (3) An assessment of the compatibility of development and utilization of geothermal resources with other allowed uses within the proposed area or site and within the surrounding area;
- (4) A description of the proposed geothermal resources development, including the potential for health, safety and nuisance impacts upon surrounding properties and establishment of an appropriate buffer zone between the proposed geothermal resources development and abutting land;
- (5) an assessment of whether the potential benefits to be derived from the

proposed geothermal resources development and potential related industries in the area are in the interests of the resident population, the county involved and the State; and

(6) An assessment of the potential for geothermal resources development in the proposed area and the known or likely prospect for utilization of new electrical energy production in the area.

Proposed AMENDMENT #4

TO: House Bill 2639, H.D. 1

The purpose of this proposed amendment is to include recommendations of the Hawai'i County-funded Geothermal Public Health Assessment in geothermal permitting.

SECTION 1. House Bill No. 2639, H.D. 1, is amended by adding new Sections to read as follows:

SECTION __. Chapter 205, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

SECTION __. The legislature finds that geothermal resource development can affect public health, safety and well-being, as shown by the Geothermal Public Health Assessment Study Group's *Final Report, Geothermal Public Health Assessment* funded by the County of Hawai'i and completed in 2013. The Report developed a set of recommendations about the priorities and preferred methods for future scientific and monitoring studies that will assist government authorities in making informed decisions that protect the long-term health of the neighboring communities that surround geothermal energy development on Hawaii Island. The Report provides specific recommendations that include the use of baseline studies to establish the magnitude of potential health effects from geothermal resources development. The Report recommends that the county should require future geothermal developers to fund and assure baseline studies prior to development. The Report also refers to the prevention of air and water pollution and excessive noise resulting from geothermal development and says that related monitoring systems and protocols must be competent. The legislature finds that establishing competent monitoring systems pursuant to the recommendations of the Report would help protect the health and welfare of citizens. Further, geothermal development may affect water wells downstream from the development area as well as the coastal basal brackish groundwater and the ocean near the geothermal plant. By establishing a baseline using the methodology from

the final report recommendations, future water studies can more easily establish the environmental impact from geothermal development.

The purpose of this part is to protect communities located in the vicinity of geothermal resources development by requiring the board of land and natural resources and each county to:

(1) Implement, as applicable, the recommendations of the 2013 final report of the geothermal public health assessment study group, including the creation of baseline studies as well as competent monitoring resources and protocols, prior to issuing new geothermal resources development permits under this Act; and

(2) Ensure that permitted noise for geothermal resources development does not exceed levels that are appropriate in view of nearby residential properties and zoning.

SECTION __. The board of land and natural resources and each county shall:

(1) To the extent applicable, implement the specific recommendations of the geothermal public health assessment study group as set forth in part V of its final Report dated September 9, 2013; and

(2) Establish limits on permitted noise levels for geothermal resources development activities to ensure that noise levels are appropriate for residential properties and residential zoning located in or near the area where the activity will occur.

No geothermal resources development permit shall be issued under this Act until the board or the pertinent county, as the case may be, has fully complied with this section.



Indigenous Consultants, LLC

Mililani B. Trask, Principal

P.O.Box 6377 ❖ Hilo, HI 96720

Mililani.trask@gmail.com



Bill #: HB 1766

Committees: ENE/WL

Hearing Date: Thursday Feb. 13th 2014

Time: 8:40am

Room: 325

TESTIMONY IN OPPOSITION

February 10th, 2014

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 that 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.

IC opposes this measure & supports HB 2639 instead.

HB 1766 (aka the Harry Kim Bill) is a Bill that seeks to repeal ACT 97 in order to restore geothermal subzones and create a new process the goal of which is to prevent geothermal development by requiring lengthily contested case procedures if conflict arises, followed by protracted litigation.

SUBZONES:

Years ago, when private parties decided to develop geothermal energy; a political agreement was made to designate 'subzones' or areas for geo-development. The determination was supposed to be based on scientific data from test bores, but there was no money to actually test the entire island. Instead data from wells and other sources as used and an agreement reached to focus on the EAST RIFT ZONE because preliminary data indicated the resource was strongest in the EAST RIFT.

The political powers were Environmentalists, the Bishop Estate, the Greenwell family & Papa Lyman. Bishop Estate & Greenwells' owned Mauna Hualalai, although the data indicated Hualalai did NOT have resources powerful enough for electricity production,

Hualalai was designated a 'zone' for political reasons. Harry Kim supported this, and it got him elected with help from the Bishop Estate, Greenwells' and HECO.

The designation of geothermal subzones was accomplished by drawing circles on a map at the DLNR office in Honolulu. Hundreds of miles of Hawaii Island were circled and thousands of acres were identified for geo-development. Every residence, school, park & public facility in the East Rift Zone was included. Commercial and business areas and even evacuation routes became 'geo-development areas. No effort as ever made to determine if science justified these designations.

The Legislature was correct in doing away with the subzones. TODAY WE KNOW THAT GEOTHERMAL DEVELOPMENT AREAS ARE APPROVED FOLLOWING EXPLORATION AND SURFACE & SUBSURFACE TESTING THAT VERIFIES THAT THE RESOURCE IS PRESENT AND CAN BE SAFELY DEVELOPED. ONCE THIS IS ESTABLISHED GEO-DEVELOPMENT PROJECT ARE APPROVED LIMITED TO THE FOOTPRINT OF THE PROJECT.

COUNTY HOME RULE:

The County of Hawaii had a HOME RULE process for geothermal permitting for 26 years. It worked, it provided for public hearings, conflict resolution, mediation and if mediation failed, the process provided for immediate and direct appeal to the State Intermediate Court of Appeals. It was a simple procedure the goal of which was to facilitate energy production on Hawaii Island. The County process was tied to the sub-zone designation and when subzones were deleted from the law, the County Home rule process was also deleted.

HB 1766 is creating a new process for County permitting.

They do not want a fair process to expedite energy development, rather they want a lengthily process that will be costly and drag on for years through contested case hearings and protracted litigation. (The Maunakea contested case took 6 years.) The goal of the process in this measure to stop geo-development by causing lengthily delays while costs rise, to drive the project under.

THIS IS NOT IN THE PUBLIC INTEREST AND DOES NOT FACILITATE THE HCEI.

HB 2639 is a better Bill that restores the old procedure and provides for mediation as well as Court Appeal.

HEALTH REPORTS:

This measure wants to stop geo-development until the BLNR and Counties implement the recommendations in the 2013 Geothermal Public Health Assessment Study Group is completed. This measure prevents the BLNR and Counties from issuing geo permits until all the recommendations are completed.

The Health Assessment Study Group was not comprised of Health professionals with a background in this area. (Only 1 person had any health experience.) Several of the Group

members had conflicts of interest, had filed litigation & received cash payments to settle claims WITHOUT PROOF OF HE CLAIM. Convicted drug grower Bob Petricci, admitted to receiving “tens of thousands” of dollars and being on the County waiting list for “relocation” and compensation valued at 130% the value of his home! Petricci was not the only Group member with no Health background and substantial conflict of interest.

The first Health Study Report that went out for public input revealed that there was no reason for any Health studies. That Report found the following:

1. Puna’s public health profile is unclear (p.34),
2. That the majority of people living in Puna or “84.2% of Puna’s population report themselves to be in good health, (p.35);
3. That there were “health effects” from exposures early in the development of geothermal (before 1993),but
4. “After1993, the Study Group is uncertain about whether there have been health effects..”.
5. The report found that... “Since 1991, no health study has identified any health effects that can be attributed to geothermal development or operation...”.
6. The Report reviewed“240 health related testimonies attributing causes to PGV most were found to be second-hand reports...” (p.37) .

Despite these findings, the Report concludes (Finding 3, page 39) that “Risks from geothermal energy production in Puna exist..”.

The Report then recommended that dozens of studies be undertaken by numerous groups including the JABSOM, USGS etc. These parties were not part of the study nor have they agreed to fund and conduct these studies.

It is interesting to note that the two Health studies that have been conducted by State and Federal HEALTH professionals found that the claims of ill health from geothermal development in Puna could not be substantiated. See Health Survey Bogus, Jan 12, 1997, Hawaii Tribune Herald, regarding State DOH Director Bruce Andersons finding that the health survey was “skewed” and advice from an ‘expert’ at the US Center for Disease Control that the survey was “biased”.

The U.S. Department of Health and Human Services Agency for Toxic Substances and Disease Registry also conducted a Health Assessment in Puna in 1997. Their findings were:

“(1) The concentrations of hydrogen sulfide detected in air at monitoring stations in residential areas near the Puna Geothermal Venture do not pose a public health hazard.

(2) The HDOH emergency level of 1,000 ppb hydrogen sulfide for evacuation in the event of an unplanned release is protective of pubic health.”

See: HEALTH CONSULTATION PUNA GEOTHERMAL VENTURE
PAHOA (PUNA DISTRICT), HAWAII COUNTY, HAWAII CERCLIS NO.

HID984469536, December 22, 1997 by Kenneth G. Orloff, Ph.D., Senior Toxicologist

CONCLUSION:

This Bill, like the 'Fracking' Bill, was introduced to stop and delay geothermal development. It is a bad faith measure that should be killed. HB 2639 is a better bill.

A handwritten signature in black ink, reading "Mililani B. Trask". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mililani B. Trask
Indigenous Consultants, LLC

HB1766

Submitted on: 2/8/2014

Testimony for EEP on Feb 13, 2014 08:40AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Katarina Culina	Individual	Support	No

Comments: Dear Committee Chair, Vice Chair and Members, Please support HB1766. It provides community's protection from streamlined geothermal development and takes into consideration public health and safety concerns that are clearly presented in 2013 Geothermal Public Health Assessment Study Group Report, funded by the County of Hawaii and endorsed by Mayor Billy Kenoi. Furthermore, it supports restoration of geothermal subzones, improves permitting process and allows contested case proceedings. Mahalo, Katarina Culina P.o. box 2142 Pahoia, HI 96778

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HB1766

Submitted on: 2/9/2014

Testimony for EEP on Feb 13, 2014 08:40AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Kris wilhelmsen	Individual	Support	No

Comments: Dears Sirs and Madams, I am writing to urge your strong support of HB 1766. I feel that the people of the Puna District have spoken loudly against existing and future geothermal development within and adjacent to their communities, and on the island at large. However, until geothermal development is halted we must have a well-informed regulatory framework in place to safeguard the people and the environment from the very real potential of disaster. The 2013 Final Report of the Geothermal Public Health Assessment Study Group is one such piece of informed research upon which these regulations should be based. Geothermal subzones located away from densely populated areas are necessary as is a permitting process that addresses all potential impacts to natural and cultural resources. HB 1766 is a good start and I strongly urge you to support it. Respectfully, Kris Wilhelmsen 13-1283 Malama St. Pahoia, HI 96778

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HB1766

Submitted on: 2/9/2014

Testimony for EEP on Feb 13, 2014 08:40AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Theodore Banta	Individual	Support	No

Comments: I am in strong support of HB1766 (Repeal Act 97)

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HB1766

Submitted on: 2/9/2014

Testimony for EEP on Feb 13, 2014 08:40AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
joy cash	Individual	Support	No

Comments:

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HB1766

Submitted on: 2/10/2014

Testimony for EEP on Feb 13, 2014 08:40AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Rosanoff	Individual	Support	No

Comments: I know you will do your best for the Big Island and the entire state of Hawaii by making sure that HB1766 gets a full hearing and brought to the full House this State Legislature Session. By repealing Act 97, this bill will restore the geothermal subzones and reopen the proper process for our State's geothermal development. Please bring this important bill forward. We on the Big Island are counting on you. I strongly support HB1766. Best, Andrea Rosanoff Pahoa, HI 96778 965-7061

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HB1766

Submitted on: 2/10/2014

Testimony for EEP on Feb 13, 2014 08:40AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Paul Kuykendall	Individual	Support	No

Comments: I strongly support this bill which would restore the regulatory and community involvement in decision making for geothermal development. Please support this bill.

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HB1766

Submitted on: 2/10/2014

Testimony for EEP on Feb 13, 2014 08:40AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Robert ortman	Individual	Support	No

Comments: I support HB 1766. This is a much stronger bill than HB 2639. Act 97 needs to be repealed.

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HB1766

Submitted on: 2/9/2014

Testimony for EEP on Feb 13, 2014 08:40AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Susan Bambara	Individual	Support	No

Comments: I support this bill. Mahalo

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HB1766

Submitted on: 2/9/2014

Testimony for EEP on Feb 13, 2014 08:40AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Christopher Biltoft	Individual	Support	No

Comments: In general, HB1766 is good in that it restores status quo ante prior to Act 97, to include geothermal resource subzones. A major weakness of the whole review process is who determines what is "reasonable/unreasonable." If the Board making such decisions was staffed with subject matter experts rather than political appointees, more informed (and hopefully better) decisions could be made.

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HB1766

Submitted on: 2/9/2014

Testimony for EEP on Feb 13, 2014 08:40AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
James Hedgecock	Individual	Support	No

Comments:

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HB1766

Submitted on: 2/9/2014

Testimony for EEP on Feb 13, 2014 08:40AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Leslie Wingate	Individual	Support	No

Comments: We deserve to have the health study honored

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HB1766

Submitted on: 2/10/2014

Testimony for EEP on Feb 13, 2014 08:40AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Lyn Howe	Individual	Support	No

Comments:

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HB1766

Submitted on: 2/10/2014

Testimony for EEP on Feb 13, 2014 08:40AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Vicki Vierra	Individual	Support	No

Comments: I strongly support HB1766. Act 97 itself should be abolished in it's entirety, but HB1766 goes some distance toward rectifying the wrongs that Act 97 has done to the people of Hawaii. Geothermal has proven to be a dirty and obnoxious neighbor. An idyllic Pacific island such as ours is not the place to site hideous industrial monstrosities. The State and County have both been remiss in their responsibilities to the health and well-being of the residents here. The long-overdue health assessment study, providing it can be done fairly, is at least a step in the right direction.

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HB1766

Submitted on: 2/10/2014

Testimony for EEP on Feb 13, 2014 08:40AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Norris Thomlinson	Individual	Support	No

Comments: Act 97 was a terrible blow to local self-governance, and I fully supported Harry Kim's efforts to get it repealed. I was disappointed that he wasn't successful last year, but am excited that bill SB3021 will tackle this important issue again this year. Please pass this bill!

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HB1766

Submitted on: 2/9/2014

Testimony for EEP on Feb 13, 2014 08:40AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Bill Smith	Individual	Support	No

Comments: Strongly support because it removes mandatory mediation from geothermal permitting (allowing contested cases); restores the geothermal resource subzones repealed by Act 97; assures appropriate geothermal permitting standards and environmental review; and includes Hawai'i County's Geothermal Public Health Assessment recommendations.

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Harry Kim
471 Ho`okina Place
Hilo, Hawaii 96720

February 10, 2014

Testimony to:

House Committee on Energy & Environmental Protection

Rep. Chris Lee, Chair
Rep. Cynthia Thielen, Vice Chair

House Committee on Water & Land

Rep. Cindy Evans, Chair
Rep. Nicole E. Lowen, Vice Chair

Thursday, February 13, 2014, 8:40 a.m., Conference Room 325

In consideration of

**HB1766, RELATING TO GEOTHERMAL RESOURCES and
HB2639, HD1, RELATING TO GEOTHERMAL RESOURCE DEVELOPMENT**

Position: HB1766, strong support; HB2639, oppose (or support with amendments)

I ask for your support for HB1766 (with an amendment proposed by Puna Pono Alliance) and the four proposed Puna Pono Alliance amendments to HB2639, HD1. If HB2639, HD1, cannot be so amended then I ask that you not pass it out of your committees.¹

I believe geothermal subzones are an important concept and should be restored. Under the law that was repealed by Act 97, the board of land and natural resources had conducted a county-by-county assessment beginning in 1983, examining areas with the potential for development as designated geothermal resource subzones. The board assessed geological factors that are necessary for geothermal development. After the assessment, the board held public hearings in areas proposed for designation based on preliminary findings that the areas demonstrated an acceptable balance between both the potential for geothermal development and community impact.

As a result of those efforts and procedures, the designated geothermal resource subzones gave developers and homeowners notice of locales that could be suitable for geothermal development. Geology allows geothermal development only in areas with the necessary subsurface heat and water. The subzones allowed development in areas balancing that

¹ This testimony addresses only Section 2 of HB2639.

geological requirement with the lowest potential for adverse impacts. The second of the proposed amendments to HB2639, HD1, restores geothermal resource subzones as they were before their repeal in 2012 by Act 97, without any further effort or cost.

I believe that a review of the records of Act 97 will clearly show that the only identified purpose of the sponsors and supporters of Act 97 was to expedite geothermal development and remove all barriers.

While geothermal energy may prove to be a part of Hawaii's energy future, because of potential negative impact on people and our fragile environment, it must be done right, with sensitivity to health, environmental, social, and cultural concerns. HB1766 and the amended HB2639, HD1, could be steps toward restoring balance between development for energy needs and respect for people's lifestyle, the environment, health, cultural concerns, and home rule for the counties.

Much Aloha,
Harry Kim

HB1766

Submitted on: 2/10/2014

Testimony for EEP on Feb 13, 2014 08:40AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Nicki Conti	Individual	Support	No

Comments:

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HB1766

Submitted on: 2/11/2014

Testimony for EEP on Feb 13, 2014 08:40AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Pua Kamaoa	Individual	Support	No

Comments:

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HB1766

Submitted on: 2/11/2014

Testimony for EEP on Feb 13, 2014 08:40AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Allan Reaves	Individual	Support	No

Comments: Act 97 was not in the public's best interest.

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Support of SB2940
Support of HB2359
Support of HB1766/Repeal 97

Oppose HB2639/HD1
Oppose SB2663
Oppose HB1584

Helene Love 982-6433
Helene Love 982-6433

Helene Love 982-6433
Helene Love 982-6433
Helene Love 982-6422

NO TO FRACKING IN HAWAII (don't let Big \$\$ decide—this is our home; our world). When you push this paperwork around, give special numbers, sign and file, be sure you are doing what is right for our environment and don't accept corporation lies—seek the truth and keep Hawaii, Hawaii. Just because governments sign papers doesn't make any of it law to me; we all are responsible for each other and our lands on earth. We know we have plenty of sun to work with.

Are the risks worth the gains? *Fracking* has too many risks and our small land mass and weak rift zones won't handle the *fracking* impacts. *Fracking* uses more intensity, chemicals, and there's greater risks to water and land. And don't ruin the Big Island for the sake of power for other islands.

Has Big Island ever had beginning to end “Standards of Operating Procedures” with input from professionals from all fields, even when **drilling** straight down into a volcano on Zone 1, yet alone, *fracking*. Even today, after hundreds of thousands of *fracking* sites around the world, there are still unforgivable mistakes made to environments and humans and **drilling** in Hawaii will be “hits and misses” that no scientist can predict on our porous hot lands. Check Pele lately?????!!!!

All the risks with **any type** of drillings should be identified, first, with “what if plans” in place!!! What can go wrong during earthquakes, eruptions, or blowouts? Who's responsible?

The *corporate fracking industry* lies to property owners, drills more holes and closer to homes than told, drills *under* private properties, destroys the land and entire towns, rivers, lakes, fish, livestock, soils for planting, water, air, and forces generations of family-owned property owners out of town, (while having to pay for and deal with major health issues caused by *fracking*).

Corps don't care about lives being destroyed. *Fracking* in Hawaii won't be any different. Look how long Puna residents have been trying to protect their mental and physical health and their proudly-owned properties, while having no laws in place. Again, *fracking* corps. run our gov. and changed the environmental laws to suit their toxic money, even to the point of talking BLM to give up millions of acres of Federally protected lands to this, presumably, “safe renewable energy.”

When was the last time the water/aquifers and soil was checked for all contaminants at existing PGV? Do so now, before any new drilling may take place.

Who's responsible for the total “clean-up/over-sight” of the existing PGV plant—when? If PUC/HELCO insists on drilling, can the existing plant be up-graded with more MW enhancement, instead of more drill sites having to take place? **Drilling** or *fracking* in the wrong place or too close to any existing fractures may cause much bigger impacts than anybody can predict.

No *fracking* for electricity; no *fracking* or **drillings** for electricity used by other islands. Elect. for B.I. only.

The *fracking* process includes hundreds of toxic chemicals; some chemicals new and unknown to science.

Fracking won't keep Hawaii's land, water, aquifers unaffected; **no matter what type of drilling**, there are toxins involved.

Know all chemicals used and being brought into Hawaii for any type of geothermal methods.

No *fracking* or **drilling** that involves drilling underneath others properties

Drilling company finances (up-front) a fund to be used for any damages incurred to area and our roads. Safe *fracking* methods proposed by President Obama are not safe and they either lied to the public or

were being lied to while mainland drill sites were put in at an “unimaginable” alarming speed. Hawaii has no *fracking-trained* engineers/environmentalists and didn't even have their own hydrogen-sulfide meters to protect the citizens forced to live with this worry.

What pre-planning has been completed for the six geothermal contracts sitting with HELCO; shouldn't this be categorized as “Industrial,” versus residential, agriculture, and recreational? What will the drilling method be, certainly no newly disguised “proprietary” *fracking* name.

There can be no *fracking or drilling* involving the collection of any other earth elements.

City and County departments should receive monies from fracking company for water used, disposal of any environmental toxins (even tho' we know there won't be any), tearing down and cleaning site after use, payment for lawyers needed by residents if issues occur.

Drill in specific “Industrial Site” area far away from any housing areas; no more drilling in Puna (how about at the military PTA site, instead of preparing for killing wars). Better yet, contractors can pour their money and invent sun and wind energy at PTA and show a new positive direction for military use.

HB1766

Submitted on: 2/11/2014

Testimony for EEP on Feb 13, 2014 08:40AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Henry Curtis	Life of the Land	Support	Yes

Comments:

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HB1766

Submitted on: 2/11/2014

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Submitted By	Organization	Testifier Position	Present at Hearing
penny s	Individual	Support	No

Comments:

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HB1766

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Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Kirbin	Individual	Support	No

Comments:

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HB1766

Submitted on: 2/11/2014

Testimony for EEP on Feb 13, 2014 08:40AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Barb Cuttance	Individual	Support	No

Comments: HB1766 - RELATING TO GEOTHERMAL RESOURCES. Thank you for hearing HB1766. I strongly support this very good bill. I live in Puna and understand the impact ACT 97, the removal of contested cases, the removal of sub zones and the removal of County Permitting has done to this area and the people here. Act 97 did three things. Act 97 did away with geothermal sub zones. This specifically removed the requirement for consideration of social, environment, and economic before a geothermal plant could be built in that community. Such a legal framework for evaluation is in the citizens best interest. Act 97 did away with county permitting procedures and specifically authorized geothermal development in any land use area, with only Department of Land and Natural Resources (DLNR) approval required. In effect, this removed the legal requirement for hearings in a community before a geothermal plant (a major industrial facility) is placed in that community. Placement of a new country store, a school, or a small chicken farm require more community input. The consequence of removing land use restrictions and county permitting procedures also gives the State authority to bypass and negate all county and community planning. Mediation has been specifically required for all community disagreement with the State concerning placement and permitting of geothermal plants. land use. This requirement about twenty years ago during a time of community unrest over the future of geothermal development in lower Puna. In other decisions made by State Departments and Agencies, those questioning the decisions made have a right to contested case hearings. Those raising important issues about the placement and permitting of a geothermal plant should have the same access to contested case procedures that are available to all others. I do not want to see other places in Hawaii have to go through what the people here have gone through. Please pass this very important bill. Barbara Cuttance 14/266 Papaya Farms Road, Pahoia, HI 96778

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HB1766

Submitted on: 2/11/2014

Testimony for EEP on Feb 13, 2014 08:40AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
tj simms	Individual	Support	No

Comments:

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Testimony in support for HB 1766, Committee on Energy and Environmental Protection. WAL, Feb. 12, 2014

My name is Mary DeVincent, I am a registered voter in Hawaii and I strongly support HB 1766 to repeal Act 97 and restore community input and county control

I feel it is imperative to have community input in the placement and permitting of a geothermal plant as we have in other land use decisions. Public input is required for new development of stores, schools, and farms so why should it not be required for development of geothermal plants that can be dangerous to those living in the area of a plant.

I humbly request the Committee members to support and pass HB 1766 to protect the environment and the people of Hawaii. Thank you.

HB1766

Submitted on: 2/11/2014

Testimony for EEP on Feb 13, 2014 08:40AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Suzanne Wakelin	Individual	Support	No

Comments: STRONG SUPPORT This Bill is necessary to restore county permitting and reestablish a legal framework for considering placement of a geothermal plant. Restoration of contested case will provide communities the same rights in determining placement of a geothermal plant as they have in other land use decisions. Mandatory mediation is a contradiction in terms and has been shown to not work as a solution to this issue. All of the recommendations of the 2013 Final Report of the Geothermal Public Health Assessment Study Group need to be implemented prior to issuing permits for future geothermal development. Mahalo.

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Thomas Lee Travis

RR 2 Box 3317

Pahoa, Hi 96778

email: ttravis12@mac.com

mobile: (757) 639-7364

February 10, 2014

Testimony on HB 1766 for Hearing on February 13, 2014

To: House Committees on Energy and Environmental Protection and Water and Land

I strongly support HB 1766. I urge you to stop HB 2639 and pass HB 1776 from committee.

As a member of the Mayor of Hawaii's Geothermal Public Health Assessment Working Group, I am keenly aware that much of the controversy concerning geothermal development in lower Puna has occurred because the placement procedures for the geothermal plant (a major industrial facility) have sorely disenfranchised the community. In short those procedures ignored community planning, paid little attention to concerns over economic impact, ignored cultural objections, were silent as to potential health effects, and left the community feeling powerless over its future direction.

HB 2663 is wrong-headed because:

- It perpetuates mandatory mediation in geothermal permitting, depriving the community of contested case, a process that can be used if one disagrees with the placement of a small school, but not placement of a geothermal plant.
- It fails to assure appropriate geothermal community review, providing for no mandatory consideration of economic, social, cultural, health, and community planning concerns
- It ignores Hawaii County's recent Geothermal Public Health Assessment, a document that recommends actions that most appropriately should be done as part of the permitting process.

Please support HB 1766, a bill preferable to HB 2639.

/S/ Thomas L Travis

BIG ISLAND COMMUNITY COALITION



STEERING COMMITTEE

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KA'IU KIMURA

ROBERT LINDSEY

H.M. "MONTY" RICHARDS

KUMU LEHUA VEINCENT

BILL WALTER

Aloha Chair Lee and Chair Evans,

The Big Island Community Coalition (BICC) <http://www.bigislandcommunitycoalition.com> strongly opposes HB1766, but supports HB2639.

There are adequate safety provisions in HB2639. It is a matter of risk assessment.

On the mainland, the people own the mineral rights. This gave land owners incentive to pursue shale oil and gas projects on their land. That is why there are thousands of oil and gas wells around Dallas and Ft Worth. And, that is why the shale oil and gas boom proceeded so rapidly.

In Hawaii, mineral rights are owned by the state. There is little individual incentive to support geothermal projects.

One of the greatest risks Hawaii faces is the danger of rising electricity rates. We are more dependent on oil for our electricity than most places in the world. Folks on fixed incomes are especially vulnerable -- kupuna, single mothers, the working homeless, etc.

The average shale oil/gas well is 90+ percent depleted in five years. This is based on analysis of 16,000 wells. This is clearly not sustainable and cannot continue at its present rate and affordability for very long--five to ten years max. Time is not on our side.

The Pahoehoe School complex, which is close to the geothermal site, has the highest percent participation in the free/reduced school lunch program in the ENTIRE state. Eighty-nine percent of the students participate in the free/reduced school lunch program. Participation is based on family income.

HB1766 anticipates contested case hearings for its dispute resolution. HB 1766 can be dragged on and on for those who want to kill geothermal. These provisions result in unneeded delays. The rate payer will pay for any inefficiency. This bill requires geothermal sub zones. This is not needed; there are adequate checks and balances via the provision in HB2639, which we prefer.

I went to the Phillipines to visit geothermal operations there. We visited a geothermal plant that was located on the slopes of a volcano that last erupted 100,000 years ago. By contrast, Mauna Kea last erupted 4,000 years ago. We should not add cost to a potential developer to find what out what most of us already know-- there is heat under Mauna Kea. What happens if the developer that funds the development of a new geothermal resource zone designation and loses the bid? No one would voluntarily spend money for a project someone else could win.

Defeat HB1766. Approve HB2639.

Richard Ha

Chairman
Big Island Community Coalition

LATE

HB1766

Submitted on: 2/12/2014

Testimony for EEP on Feb 13, 2014 08:40AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Carol A. VanCamp	Japanese Chamber of Commerce & Industry	Oppose	No

Comments: This bill will delay geothermal development and continue high electrical rates on our island.

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