

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
FINANCE**

**Monday, March 31, 2014
2:00 P.M.
State Capitol, Conference Room 308**

**In consideration of
SENATE BILL 2663, SENATE DRAFT 2, HOUSE DRAFT 1
RELATING TO NATURAL RESOURCES**

Senate Bill 2663, Senate Draft 2, House Draft 1, proposes to revise statutory provisions relating to the regulation of mineral resources under Chapters 171, and 182, Hawaii Revised Statutes (HRS), to include geothermal within the definition of a "renewable energy producer" and to provide clarity, eliminate ambiguities, and incorporate technical, non-substantive changes in accordance with Act 97, Session Laws of Hawaii 2012, and restores geothermal resources development permits issued within the various land use districts. **The Department of Land and Natural Resources (Department) supports PART I** of the bill as it restores home rule authority to the counties and reestablishes a permitting process to issue appropriate land use permits (Geothermal Resources Development Permits) to regulate geothermal development.

Since geothermal resources are currently not classified in Chapter 171, HRS, as a "renewable energy producer", provisions in PART 1 of this bill would provide geothermal resources equity to other renewable energy sources such as wind, solar, hydropower, or biomass. These provisions will assist the Department in working toward meeting the goals of Hawaii's Clean Energy Initiative.

Thank you for the opportunity to testify on this measure.

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

JESSE K. SOUKI
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



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

NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

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Statement of
RICHARD C. LIM
Director

Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON FINANCE

Monday, March 31, 2014
2:00 p.m.

State Capitol, Conference Room 308

in consideration of
SB 2663, SD2, HD1
RELATING TO NATURAL RESOURCES.

Chair Luke, Vice Chairs Johanson and Nishimoto, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) supports SB 2663, SD2, HD1, Part I and respectfully suggests deleting Part II. Part I of this measure includes geothermal within the definition of a renewable energy producer for public land leasing purposes, reauthorizes Counties' Geothermal Resource Permits (GRPs), and clarifies Department of Land and Natural Resources' administration of the State's mineral leasing program. Part II of this measure prohibits hydraulic fracturing and related activities.

DBEDT supports part 1 of this measure as it sees no negative financial impact to the State of Hawaii attributable to the reauthorization of the Counties' GRP processes. Indeed, we anticipate that having the GRPs in place, which stipulate a clear process and timeline for county-level permitting, will encourage geothermal developers and possibly result in additional income to the State from payroll taxes, royalties, and increased economic activity.

DBEDT respectfully suggests amending SB2663, SD2, HD1 by eliminating Part II concerning hydraulic fracturing. While public focus on hydraulic fracturing has been specific to the fossil fuel industry, issues of oil/gas leakage, injection of highly pressurized fluids, etc. do not apply to the only relevant application in Hawaii, geothermal drilling, since fracking is used in areas with hot, dry rock with poor permeability rather than the geological formations found in

Hawaii. Therefore, this measure may create false impressions of unfounded risks to geothermal production in Hawaii.

Furthermore, DBEDT sees potential negative financial impact to the State of Hawaii attributable to the prohibition of hydraulic fracturing. Even if geothermal developers do not intend to use hydraulic fracturing or related techniques, the passage of such a ban could discourage developers and thus possibly result in loss of potential income to the State.

DBEDT defers to the Department of Land and Natural Resources regarding the provisions of this measure impacting the administration of the State's mineral leasing program and geothermal permitting programs.

Thank you for the opportunity to offer these comments in support of SB 2663, SD2, HD1.

DRAFT



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March 29, 2014

To: House Committee on Finance
Rep. Sylvia Luke, Chair
Rep. Scott Y. Nishimoto, Vice Chair
Rep. Aaron Ling Johanson, Vice Chair

Re: Hearing on Monday, March 31, 2014, at 2:00 p.m., Conference Room 308
SB2663 SD2 HD1 § 2 (providing for geothermal permitting)

Aloha Representatives,

Puna Pono Alliance not only supports SB2663 SD2 HD1, but also appreciates the time and hard work the members of the various House Committees have done drafting this amended legislation. From a community stand point we believe SB2663 is a very good bill. However, we notice one technical detail we want to be sure the committee is aware of:

Language in section 2, subsections (f) and (g), displaces the ordinary judicial review procedures that begin with the Circuit Court.

If the House intends to permit standard judicial review for geothermal development, then deleting section 2, subsections (f) and (g) would allow for the customary judicial review process to begin in the Circuit Court rather than skipping that initial phase and jumping directly to the Intermediate Court of Appeals. The usual process of having the Intermediate Court of Appeals hearing after a Circuit Court hearing provides for a more thorough review of the record. Each step is based on the administrative record that is usually designated pursuant to Rule 72(d) of the Hawai`i Rules of Civil Procedure, rather than being pre-specified as in section 2 subsection (g). The language in section 2, subsections (f) and (g), seems to be residue left over from the earlier versions of SB 2663 that required mandatory mediation and prohibited contested cases. Now the legislation may be better without that residual language.

Also, please note that subsection (c)(4) appears to have a superfluous term:

(4) A description of the proposed geothermal resources development, including the potential for health, safety, and nuisance impacts upon surrounding properties; control of potentially impacted surface lands or approval from potentially impacted surface [appropriate] land owners; and establishment of an appropriate buffer zone between the proposed geothermal resources development and abutting land; ...

Also, subsection (e)(8) may need some attention:

(8) There are reasonable measures available to mitigate the adverse effects or burdens referred to in paragraphs (35) and (47), which the board or appropriate authority shall have the authority to prescribe as conditions for the permit; ...

first option: DHHL

It may be of interest to the Committee on Finance to consider the relevance to SB2663 SD2 HD1 of a recent Attorney General's Opinion dated March 17, 2014, regarding *Management and Disposition of Geothermal Resources on DHHL Lands*. The Opinion says, in part, that the Department of Hawaiian Home Lands (DHHL), as opposed to the Board of Land and Natural Resources (BLNR), has authority to manage and dispose of geothermal resources on its lands.

In view of the Attorney General's Opinion, it may be appropriate to add DHHL to the specification of entities that may issue a geothermal resource permit. The following changes would serve that purpose – first, to subsection (b):

(b) No geothermal resources development activity shall be undertaken without a geothermal resources development permit issued pursuant to this section. The use of an area or site for geothermal resources development within a conservation district shall be governed by the board, provided that the use of an area or site for geothermal resources development on lands controlled by the Department of Hawaiian Home Lands shall be governed by the Hawaiian Homes Commission. The appropriate county authority may issue a geothermal resource permit to allow geothermal resources development in an agricultural, rural, or urban district regardless of whether the geothermal resources development is considered a permissible use under the applicable county zoning ordinances or general plan; provided that the appropriate county authority complies with the requirements set forth in this section.

– and second, to final paragraph in section (2):

"Board" means the board of land and natural resources, provided, however, that for lands controlled by the Department of Hawaiian Home Lands the term shall refer to the Hawaiian Homes Commission.

Second option: contested case sequence

Finally, with regard to the restoration of contested cases to proceedings for the issuance of a geothermal resource permit, there are two common possibilities for when a contested case may be held: (1) before the decision to issue a permit and (2) after a decision to issue a permit. If the Finance Committee wishes to specify one possibility, it may do so by choosing to make one of the following two possible amendments. One, to subsection (d), would provide for a contested case before the decision:

The notice shall be published on three separate days in a newspaper of general circulation in the county in which the public hearing is to be held. The first publication shall be not less than twenty days before the date set for the hearing. The notice shall also be mailed to all owners of land within three thousand feet of the proposed geothermal resources development not less than twenty days before the date set for the hearing. Copies of the notice shall be submitted to the department of land and natural resources, department of business, economic development, and tourism, and the planning commission and planning department of the county in which the proposed area is located. [A party submitting testimony may request a contested case hearing pursuant to chapter 91.](#)

Or, alternatively, amending subsection (e) to provide for a contested case after a decision:

Upon request, the board or appropriate county authority shall issue a concise statement of its findings and the principal reasons for its decision to approve or disapprove a permit. [A party submitting testimony may request a contested case hearing pursuant to chapter 91 within sixty days after the decision.](#)

In practical terms, the latter option (having the contested case after the permit decision) would facilitate and assure an expeditious decision consistent with the subsection (e) provision that a decision should be made within six months after a complete application is filed.

Again, we thank the House of Representatives for its previous favorable responses to our proposed amendments, achieving legislation acknowledging the public health and safety issues that have been recognized to affect the Puna community and that will be of benefit in all areas of the State where future geothermal development may occur. We hope you will consider the above comments in the spirit they are offered, that is, as helpful steps to polish the legislation.

Aloha,

House Committee on Finance
March 29, 2014
Page 4

Robert Petricci, President
Puna Pono Alliance

Thomas Lee Travis

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Pahoa, HI 96778

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Sunday, March 30, 2014

Testimony on SB 2663 Before the House Committee on Finance

Chair Luke, Representatives:

I strongly support Senate Bill 2663. Senate Bill 2663 restores County permitting for geothermal plants, restores contested case, and provides a ten-year moratorium on fracking.

Regardless of decisions about the need for geothermal power, the County needs a voice in locating and regulating geothermal plants. The bill provides that and it restores contested case to review of such permitting. Contested case allows citizens to have the same recourse to dispute placement of a geothermal plant as they currently have concerning placement of schools, coffee stands, or small stores.

Finally, the bill places a moratorium on hydraulic fracturing or fracking. Fracking is the process by which permeability through a rock formation is enhanced by high pressure. Although there is no oil and gas in Hawai'i, fracking to enhance development of geothermal resources is a possibility. Experts are calling on geothermal developers to more quickly embrace fracking techniques developed in the oil and gas industry, including horizontal drilling.

Experience in California—where unregulated fracking and acidizing were practiced for many years before the State established a regulatory framework—would indicate that regulation should proceed fracking, not follow it.

Lessons from the Gulf Oil Spill and from lack of regulation in California demonstrate the importance of the State getting ahead of technological processes that may be used. If the state is unwilling or unable to establish a forward-looking regulatory framework with technologically competent regulators, the state should ban the industrial process in question.

Attached is a short description, using a case study, of geothermal fracking, its opportunities and risks.

Thomas Lee Travis

Geothermal Fracking, Hydro Shearing, and Hydraulic Fracturing

Enhanced Geothermal Systems (EGS)

- ❖ A conventional geothermal resource requires hot rock, permeability to allow flow, and water. Conventional geothermal resource sites are difficult to find.... there is one proven site in all of the State of Hawai'i
- ❖ Enhanced Geothermal Systems make geothermal possible at many more sites. Dozens may be possible in the State of Hawai'i
- ❖ According to 2007 MIT study for the National Research Council, EGS plants could produce 15 % of the US electrical power by 2050. To take advantage of this opportunity the study encourages the federal government to invest billions in research and risk mitigation financing for geothermal companies. DOE is executing that recommendation

EGS Technology

- ❖ Enhanced geothermal uses geothermal fracking (sometimes called hydraulic shearing or hydraulic fracturing) to break up the hot rock, or to spread pre-existing cracks, in order to increase its permeability.. After cold water cracks the hot rock, high-pressure water propagates the cracks to create a reservoir in the hot rock.
- ❖ Enhanced geothermal can provide water to the hot rock, if necessary, by bringing the water from the ocean or from nearby water wells. Thus instead of a site that combines permeability, water, and hot rock, EGS allows geothermal development at locations where only hot rock can be found.

Is Geothermal Fracking Really Fracking? A Lawyer's Point of View

What follows is a quote from Sandra Tvarian Stevens, a Washington D.C. lawyer:

In sum, due to the similarity of the basic fracking process utilized by both natural gas and geothermal companies, the likelihood for comparable claims and lawsuits being asserted against these industries is high, most notably with respect to claims arising out of earthquake damage and well blowouts. While both natural gas and geothermal companies alike face the potential for pollution claims, the kinds of allegations asserted may differ, at least in so far as geothermal companies reportedly rely more on saltwater injection and less on chemical additives in their fracking operations than natural gas companies. (Sandra Tvarian Stevens, August 31, 2011 | Coverage Insights)

A Case Study to Identify Issues with EGS

- ❖ Currently, a premiere EGS project is one at the Newberry Volcano National Monument (NVNM) near Bend, Oregon
- ❖ At this site EGS methods are being used to reinvigorate an existing geothermal resource so that it can make greater power.
- ❖ AltaRock (an EGS company that is exploring opportunities in the State of Hawai'i) will use geothermal fracking to increase the permeability of the resource
- ❖ What follows concerning challenges to geothermal fracking is based on the NVNM project's environmental assessment

What Are the Differences Between Oil/gas and Geothermal Fracking? (Based on the NVNM Project)

- ❖ Most advocates claim geothermal uses fewer and less toxic chemicals, but:
 - ❖ Oil and gas companies use chemicals that are proprietary
 - ❖ AltaRock uses chemicals that are proprietary
- ❖ Some have said that geothermal companies will use salt water rather than fresh water
 - ❖ AltaRock is using normal well water
- ❖ In geothermal fracking, cracking of rock is done by cold water against hot rock, but
 - ❖ Alta Rock uses water at an over pressure of ~ 2000 psi to propagate the cracks throughout the rock. The exact pressure is determined by in-well testing that finds what pressure is needed.

AltaRock's Effort in Oregon--Water Use (Based on the NVNM Project)

- ❖ AltaRock anticipates the fracking effort will use 24,000,000 million gallons of high pressure water over three weeks (24,000,000 gallons) (240 trips of the largest tanker trucks)(a home uses 400 gallons a day)
- ❖ AltaRock anticipates using 124,000,000 gallons of water to support the experimental project over two years (124,000,000 gallons) (1,240 tankers)

AltaRock's Effort in Oregon--Water Contamination (Based on the NVNM Project)

- ❖ Direction of cracks
 - ❖ A network of seismometers is supposed to determine which way and how far the hydraulically induced cracks propagate.
 - ❖ If the cracks propagate toward the fresh water layer risking contamination, it is assumed operations can be stopped with adequate buffer for safety.
- ❖ Blowouts
 - ❖ Wells to insert the fracking water are similar to injection wells at Puna Geothermal Venture (PGV), but overpressure will be higher than PGV's by ~1500 psi.
 - ❖ PGV had a piping failure on an injection well in November 2012. The well pressure at the time of the PGV failure was considerably less than the pressure that will be used for fracking by AltaRock.

AltaRock's Efforts--History of Earthquakes

- ❖ An effort in Basel, Switzerland, was terminated when earthquakes caused \$9M damage. A NY Times investigative report questioned whether AltaRock was forthcoming with data.
- ❖ Germany stopped development on several geothermal plants over concerns with earthquakes
- ❖ A fracking effort at Geysers in California was terminated shortly after problems with Basel became public.
- ❖ Near Middleton, California, a committee mediation process has settled 19 damage claims from small earthquakes.

AltaRock's Effort in Oregon Earthquakes (Based on the NVNM Project)

- ❖ In Oregon, AltaRock will monitor cracks in a nearby dam to ensure they do not worsen as a result of induced earthquakes.
- ❖ In case improbable, but possible earthquakes. start to occur around the NVNM site, AltaRock plans to depressurize the geothermal reservoir by dumping water over a period of days. First the water would be dumped to empty storage tanks specified for that purpose and, if that were insufficient, then there is a contingency to dump the water to the ground

AltaRock's Efforts--Environment and Lifestyle Considerations

- ❖ Other issues that need to be considered include:
 - ❖ Truck and other traffic on narrow roads
 - ❖ Noise to neighbors
 - ❖ Environmental issues with clearing of land for plant development and for water transport

- ❖ Local water shortages or degradation of water quality from “over-use”
- ❖ Unabated or abated release of steam during flow testing (H₂S release)
- ❖ Potential 930 foot steam and chemical plume during flow testing
- ❖ Access to public trails and paths
- ❖ Road building

Hawai'i Legislative Issues for Consideration

- ❖ Before allowing EGS projects the State should consider:
 - ❖ How to protect the environment and water resources
 - ❖ How to estimate, control, and regulate risks of induced seismicity

finance8-Danyl

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 30, 2014 10:12 AM
To: FINTestimony
Cc: bill@puna.us
Subject: Submitted testimony for SB2663 on Mar 31, 2014 14:00PM

SB2663

Submitted on: 3/30/2014

Testimony for FIN on Mar 31, 2014 14:00PM in Conference Room 308

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

Comments: Please delete section 2, subsections (f) and (g) so that ordinary judicial review procedures will apply. Please include the Department of Hawaiian Home Lands (DHHL) in the scope of the bill. Please amend subsection (e) to provide for a contested case after a decision has been made. Thank you for creating this responsible legislation.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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finance1

From: mailinglist@capitol.hawaii.gov
Sent: Friday, March 28, 2014 6:02 PM
To: FINTestimony
Cc: mauibrad@hotmail.com
Subject: *Submitted testimony for SB2663 on Mar 31, 2014 14:00PM*

SB2663

Submitted on: 3/28/2014

Testimony for FIN on Mar 31, 2014 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Brad Parsons	Individual	Oppose	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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finance8-Danyl

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 30, 2014 12:58 PM
To: FINTestimony
Cc: paul@punapono.com
Subject: Submitted testimony for SB2663 on Mar 31, 2014 14:00PM

SB2663

Submitted on: 3/30/2014

Testimony for FIN on Mar 31, 2014 14:00PM in Conference Room 308

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

Comments: Aloha Representatives, I am writing to support passage of SB2663 and to thank the house committees for drafting this bill. I respectfully request that you improve the bill by deleting section 2, subsections (f) and (g) so that ordinary judicial review procedures will apply. Please include the Department of Hawaiian Home Lands (DHHL) in the scope of the bill. Please amend subsection (e) to provide for a contested case after a decision has been made. Thank you for creating this responsible legislation. Paul Kuykendall Paho, Hawaii

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LATE

March 30, 2014

To: House Committee on Finance
Rep. Sylvia Luke, Chair
Rep. Scott Y. Nishimoto, Vice Chair
Rep. Aaron Ling Johanson, Vice Chair

Re: Hearing on Monday, March 31, 2014, at 2:00 p.m., Conference Room 308
SB2663 SD2 HD1 § 2 (providing for geothermal permitting)

Aloha Representatives,

Puna Pono Alliance supports SB2663 SD2 HD1. We appreciate the time and hard work the members of the various House Committees have invested in the bill. From a community stand point we believe SB2663 is a very good bill.

We have some comments and note some technical details we want to be sure the committee is aware of.

(1) Language in section 2, subsections (f) and (g), displaces the ordinary judicial review procedures that begin with the Circuit Court.

If the House intends to permit standard judicial review for geothermal development, then deleting section 2, subsections (f) and (g) would allow for the customary judicial review process to begin in the Circuit Court. This allows a more thorough review of the record than would going directly to the Intermediate Court of Appeals, as the current language in section 2 of SB2663 calls for.

Each step in the review process is based on the administrative record that is usually designated pursuant to Rule 72(d) of the Hawai'i Rules of Civil Procedure, rather than being pre-specified as in section 2 subsection (g).

The language in section 2, subsections (f) and (g), seems to be residue left over from the earlier versions of SB 2663 that required mandatory mediation and prohibited contested cases. Now the legislation may be better without that residual language.

(2) *Subsection (c)(4) has a superfluous (or misplaced) word:*

(4) A description of the proposed geothermal resources development, including the potential for health, safety, and nuisance impacts upon surrounding properties; control of potentially impacted surface lands or approval from potentially impacted surface [\[appropriate\]](#) land owners; and establishment of an appropriate buffer zone between the proposed geothermal resources development and abutting land; ...

(3) *Subsection (e)(8) needs some attention:*

(8) There are reasonable measures available to mitigate the adverse effects or burdens referred to in paragraphs ([\[3\] 5](#)) and ([\[4\] 7](#)), which the board or appropriate authority shall have the authority to prescribe as conditions for the permit; and

(4) *The recent Department of Hawaiian Home Lands (DHHL) Opinion*

It may be of interest to the Committee on Finance to consider the relevance to SB2663 SD2 HD1 of a recent Attorney General's Opinion dated March 17, 2014, regarding *Management and Disposition of Geothermal Resources on DHHL Lands*. The Opinion says, in part, that the Department of Hawaiian Home Lands (DHHL), as opposed to the Board of Land and Natural Resources (BLNR), has authority to manage and dispose of geothermal resources on its lands.

In view of the Attorney General's Opinion, it may be appropriate to add DHHL to the specification of entities that may issue a geothermal resource permit. The following changes would serve that purpose – first, to subsection (b):

(b) No geothermal resources development activity shall be undertaken without a geothermal resources development permit issued pursuant to this section. The use of an area or site for geothermal resources development within a conservation district shall be governed by the board, [provided that the use of an area or site for geothermal resources development on lands controlled by the Department of Hawaiian Home Lands shall be governed by the Hawaiian Homes Commission](#). The appropriate county authority may issue a geothermal resource permit to allow geothermal resources development in an agricultural, rural, or urban district regardless of whether the geothermal resources development is considered a permissible use under the applicable county zoning ordinances or general plan; provided that the appropriate county authority complies with the requirements set forth in this section.

– and second, to final paragraph in section (2):

"Board" means the board of land and natural resources, provided, however, that for lands controlled by the Department of Hawaiian Home Lands the term shall refer to the Hawaiian Homes Commission.

(5) *Contested cases before or after the permitting decision*

Finally, regarding restoring contested cases to geothermal resource permit proceedings, there are two common occasions when a contested case may be held: (1) before the decision to issue a permit and (2) after a decision to issue a permit. If the Finance Committee wishes to specify the occasion, it may do so by making one of the following two possible amendments.

Amending subsection (d) to provide for a contested case *before* the decision:

The notice shall be published on three separate days in a newspaper of general circulation in the county in which the public hearing is to be held. The first publication shall be not less than twenty days before the date set for the hearing. The notice shall also be mailed to all owners of land within three thousand feet of the proposed geothermal resources development not less than twenty days before the date set for the hearing. Copies of the notice shall be submitted to the department of land and natural resources, department of business, economic development, and tourism, and the planning commission and planning department of the county in which the proposed area is located. A party submitting testimony may request a contested case hearing pursuant to chapter 91.

Alternatively, amending subsection (e) to provide for a contested case *after* a decision:

Upon request, the board or appropriate county authority shall issue a concise statement of its findings and the principal reasons for its decision to approve or disapprove a permit. A party submitting testimony may request a contested case hearing pursuant to chapter 91 within sixty days after the decision.

In practical terms, the latter option (having the contested case after the permit decision) would facilitate and assure an expeditious decision consistent with the subsection (e) provision that a decision should be made within six months after a complete application is filed.

House Committee on Finance
March 30, 2014
Page 4

Again, we thank the House of Representatives for its previous favorable responses to our proposed amendments, achieving legislation acknowledging the public health and safety issues that have been recognized to affect the Puna community and that will be of benefit in all areas of the State where future geothermal development may occur. We hope you will consider the above comments in the spirit they are offered, that is, as helpful information to aid in fine tuning the legislation.

Aloha,

A handwritten signature in black ink, appearing to read 'Robert Petricci', written in a cursive style.

Robert Petricci, President
Puna Pono Alliance

CHRISTOPHER J. YUEN
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March 30, 2014

Testimony re SB2663 SD2 HD1



House Finance Committee

Dear Committee Chair Luke and Members of the House Finance Committee:

This testimony is in support of sec. 2 of SB2663 SD2 HD1.

I was Planning Director of Hawai'i County from Dec. 2000 to Dec. 2008. While I was director, Puna Geothermal Venture applied for and received an amendment to its geothermal resource permit (GRP), which allowed it to expand from 30 MW to 60 MW, so I am familiar with the GRP process.

Sec. 2 of SB2663 SD2 HD1 would restore a county process for permitting geothermal energy development. In the state land use conservation district, permits would be issued by the Board of Land and Natural Resources. In the state land use urban, agricultural and rural districts, the permits would be issued by the county planning commission.

This bill would undo a harmful effect of Act 97, SLH 2012, which took out the county permitting process. Act 97 was an attempt to streamline the process, but there can be too much streamlining. The GRP was a necessary safeguard so that the local planning commission could review the application, hear from the public, decide whether or not it was right for the area, and impose reasonable conditions if it decided to grant the permit. Our laws should require this kind of scrutiny for a major industrial facility like a geothermal power plant in the agricultural or rural district. This is especially true in Hawai'i County, because so many people live in the agricultural district.

The GRP process had also been upheld by Hawai'i courts—Medeiros vs. Hawai'i County Planning Commission, 8 Haw. App. 183, 797 P.2d 59 (1990). On the other hand, Act 97 has created uncertainty about the proper procedure at the county level.

Discussion on this bill at the Senate focused mostly on whether to restore the mediation clause in the original GRP process, or whether to allow contested case hearings. SD2 required mediation, which was the procedure under the old GRP process. Under HD1, you would end up with a contested case hearing, at least if one was requested by an opponent of the project.

There is a technical problem with the way this is handled in HD1 that relates to the question of appeal. HD1 says that "any decision" can be appealed directly to the intermediate court of appeals. This seems to alter the normal process of appeals in Chap. 91, H.R.S., where a party, to appeal, must have participated in a contested case, and must have standing. These basic requirements should be continued, if you are going to have contested case hearings. You shouldn't just let anyone appeal the decision.

I'm not going to take a position on contested case hearings vs. mediation, because last year, a similar bill died because agreement couldn't be reached on this point, and I think it's important that some bill pass restoring the GRP, with mediation or with the contested case. There are a number of other provisions where I prefer SD2 to HD1.

Let me summarize some pros and cons of a formal contested case hearing procedure. In either procedure, mediation or contested case, proponents and opponents can present testimony and written materials on the application, but in the contested case, the opponents would also have the right to cross-examine the witnesses on the other side, which can be valuable for pointing out weaknesses. A contested case results in a decision with more formal findings of fact, which can assist the court reviewing the decision on appeal, and also forces the planning commission to more thoroughly and exactly state the reason for the decision. Finally, if there is no contested case, there are usually time limits on individual public testimony, although in my experience if a testifier has technical or other information the planning commissions often extend the time limits.

On the other hand, contested case hearings tend to be quite slow and take much longer, partially because of cross-examination, and partially because they are lawyer-driven. As a result, it becomes very difficult to actually conduct the contested case in front of the membership of the planning commission or BLNR, who are volunteers and often cannot devote enough time for special hearings. In recent years, it's become very common for such hearings to be delegated to a hearing officer, who prepares a recommended decision for the commission or board. While the commission or board can go against the hearing officer, it's difficult because they did not hear the testimony themselves. The end result is that the decision is actually made by the hearing officer, who is usually an attorney, rather than by a planning commission or BLNR, with a broader membership.

I have a few relatively minor technical points and questions about HD1.

The bill has language referring to "approval from potentially impacted surface appropriate land owners." This language doesn't make much sense as written. It may imply that the geothermal developer needs to obtain approval from "potentially impacted surface...land owners", which is not a reasonable requirement (as opposed to those owners whose land is actually being used).

The bill has a requirement that notice of the public hearing must be mailed to owners within 3000', but does not specify 3000' from what. In Hawai'i County, by contrast, notice regarding special permits must be mailed to those within 500' of the perimeter boundary of the parcel. It would be better to specify where this distance is measured from. It could be the boundaries of the area actually to be used for geothermal development. If 3000' from the perimeter boundary, the distance is excessive.

Thank you for considering my testimony on this bill.

Yours truly,

Chris Yuen



Indigenous Consultants, LLC

Mililani B. Trask, Principal

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Bill #: SB 2663 SD2 HD1 Re: Geothermal Resource Development

Hearing Date: Monday March 31st, 2014

Time: 2:00pm

Room: 308



Needs Amendments- GO BACK TO SB 2663 SD2

March 31, 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 and affordable rates to consumers, including themselves and their communities.

IC supports geothermal development and supports the language in SB 2663 SD2

HOUSE ENERGY AMENDMENTS FAVOR HECO PROFIT MARGIN & ARE AGAINST STATE POLICY

The House Energy Committee under Chris Lee has once again added language to limit geothermal development in order to favor HECO. The HCEI supports geothermal energy development. Geothermal resources and should be used for the production of hydrogen for car fuel, for ammonia for agricultural fertilizer and for steam for hot-house food propagation. HECO does not want this to happen and wants to limit geothermal production to electricity generation for HECO to sell at greatly inflated prices.

HOUSE FINANCE SHOULD USE THE ORIGINAL LANGUAGE IN SB 2663 SD2 in order to avoid the following fiscal ramifications:

#1. FISCAL IMPLICATIONS OF "BUFFER ZONES":

This measure and its accompanying Committee Report authorize the imposition of "Buffer Zones" around geothermal development areas and projects. This means that all abutting lands cannot be used for other purposes. When the County of Hawaii contemplated "buffer zones" (5-10 miles around the development) the landowners of these areas wanted compensation for the value of the lands "taken", they threatened litigation. The County

wisely decided against buffer zones, which are not required in any geothermal development in the USA or in the World.

COST RAMIFICATION: Condemnation costs to be paid by the State

Buffer zones will prevent lands in buffer areas from being developed. This measure will be a State law if passed. This means the State will be responsible for costs relating to the devaluing of buffer lands.

THIS PROBLEM CAN BE AVOIDED BY USING THE LANGUAGE IN SB 2663 SD2.

#2. FISCAL IMPLICATIONS FOR STATE ECONOMY & FOOD COSTS:

Hawaii currently pays the highest electricity rates in the Nation and within our State Hawaii Island pays much higher rates than Maui, Oahu and Kauai.

We export 5 billion a year for fossil fuel and in addition pay the highest cost for food being imported from the US Continent. We need to get Hawaii Island off of imported fuel and on to its own renewable and affordable firm power through geothermal development as provided for in the HCEI.

Conclusion:

The better language is in SB 2663 SD2. It provides for geothermal development processes under DLNR, it restores the County of Hawaii's Home Rule procedure but does not have the negative fiscal implications for the State, DLNR & the County.

Sincerely,

A handwritten signature in black ink, appearing to read "Mililani B. Trask", written over a horizontal line.

Mililani B. Trask,
Indigenous Consultants LLC