

# SB 717

## RELATING TO ENVIRONMENTAL MITIGATION.

Requires DLNR to establish an environmental mitigation program and to enact rules to allow landowners within the State to establish conservation and mitigation banks for purposes of conserving habitat for fish, wildlife, and plants

WTL/ENE, WAM

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of  
WILLIAM J. AILA, JR.  
Chairperson**

**Before the Senate Committees on  
WATER AND LAND  
&  
ENERGY AND ENVIRONMENT**

**Tuesday, January 29, 2013  
3:30 PM  
State Capitol, Room 225**

**In consideration of  
SENATE BILL 717  
RELATING TO ENVIRONMENTAL MITIGATION**

Senate Bill 717 proposes to require the Department of Land and Natural Resources (Department) to establish an environmental mitigation program and to enact rules to allow landowners within the State to establish conservation and mitigation banks for purposes of conserving habitat for fish, wildlife, and plants. While appreciating the intent, the Department respectfully opposes this bill and provides the following comments.

Pursuant to Chapter 195D, Hawaii Revised Statutes, the Department is authorized to establish conservation rental agreements, habitat banking, and direct payments, related to the incidental take program. The Department fully supports partnerships with landowners to aid in the goal of recovery of threatened and endangered species, and is currently pursuing many such opportunities. The Department is required to manage threatened and endangered species based on the best available scientific and other reliable data, and notes that for many species there is not yet sufficient information required to responsibly establish mitigation banks. Given that the biological recovery needs for some species are not well established, the Department is concerned that this measure could have the unintended consequences of placing threatened and endangered species at further risk of extinction if mitigation banks established for those species are not effective.

In addition, pursuant to Chapter 195D, the State's Endangered Species Recovery Committee provides recommendations to the Board of Land and Natural Resources during the decision-making process of management actions affecting threatened and endangered species. The

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CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

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**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 finds that this bill is unnecessary as there is already a statutory provision and process for mitigation banks and the Department is currently pursuing such opportunities for species for which ecological recovery data are available. Therefore the Department suggests that enacting rules is not currently necessary and thus respectfully opposes this bill.

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**Subject:** \*Submitted testimony for SB717 on Jan 29, 2013 14:15PM\*  
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**SB717**

Submitted on: 1/24/2013

Testimony for WTL/ENE on Jan 29, 2013 14:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Davlantes	Individual	Support	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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SENATE COMMITTEE ON WATER AND LAND  
SENATE COMMITTEEN ON ENERGY AND ENVIRONMENT

January 29, 2013, 2:15 P.M., Conference Room 225

**TESTIMONY IN SUPPORT WITH AMENDMENTS TO SB 717**

Aloha Chair Solomon, Chair Gabbard, Vice Chair Shimabukuro, Vice Chair Ruderman and Members of the Committee:

I co-authored a US Fish & Wildlife Service approved Adaptive Management Plan for the Saipan Upland Mitigation Bank in the Commonwealth of the Northern Mariana Islands (CNMI) and subsequently presented at two National Mitigation Banking Conferences on the topic. Mitigation banks, including wetland, stream, and conservation mitigation banks, have been successfully used in more than a dozen States throughout the nation. For over twenty years, the Army Corps and US Environmental Protection Agency have authorized and regulated mitigation banks. As of January 2010, there are more than 950 approved mitigation banks, restoring and protecting over 960,000 acres of wetlands, streams, and associated upland habitat according to the National Mitigation Banking Association.

Yet here in Hawaii, we approach species, wetland, and beach conservation on an ad-hoc, place-by-place approach that is neither integrated, nor properly monitored in some cases which can lead to failure. In contrast, mitigation banks are heavily regulated and held to high environmental monitoring, reporting, and compliance requirements. They can be very effective when ecological function is monitored. Equally important is that they can be privately-owned and serve to internalize the external costs of environmental impacts. A privately-owned mitigation bank has financial incentive to increase and enhance populations of protected species and their habitat; expand, restore and improve wetland functions; and facilitate healthier beaches and coral reefs. The more of these natural assets they create, the more credits they can sell.

I strongly support the intent of the present bill but recommend revisions to the language and its directives. Encouraging the Department of Land and Natural Resources (DLNR) to develop regulations with the participation and collaboration of a specific set of knowledgeable stakeholders would be an effective way to enact mitigation banking. While I cannot speak for them, native wildlife and environmental organizations such as the Hawaii Audubon Society and the Sierra Club, as well as large landowners, should be consulted, if not included, in the development of mitigation banking rules and strategies. A limited focus group comprised of their representatives may help this type of environmental mitigation option become a successful reality in Hawaii.

Mitigation Banks are one option of many for reducing or off-setting environmental damages. With proper oversight and monitoring, they have served Florida, California, Georgia, Louisiana, Virginia and the CNMI as an alternative, more efficient means, of protecting the natural environment while internalizing the external costs of development. A list of banks can be viewed at <http://us.speciesbanking.com/pages/dynamic/banks.search.php>

Please encourage the development of rules and regulations empowering mitigation and conservation banking as a viable option in Hawaii. Please assist the DLNR with this task by soliciting the input of organizations and/or individuals with expertise in the subject matter. To that end, I would be glad to contribute to DLNR's efforts.

Thank you for your consideration!

Mahalo!

A handwritten signature in blue ink, appearing to read 'Thorne Abbott', with a stylized flourish at the end.

Thorne Abbott

*Speaking on my own behalf as a resident of Maui and Oahu and as an environmental professional.*