

# SB2663

Measure Title: RELATING TO NATURAL RESOURCES.

Report Title: BLNR; Mineral Resources; Geothermal Resources

Description:

Requires all penalties, fees, and costs established and collected by the DLNR pursuant to chapter 182, HRS, to be deposited in the special land and development fund. Includes geothermal resources within the definition of a renewable energy producer. Clarifies the permitting procedures for regulators and renewable energy developers considering geothermal development. Requires the use of an area or site within the conservation district for geothermal resources development to be governed by the BLNR. Authorizes certain county authorities to issue geothermal resource permits to allow geothermal resources development in an agricultural, rural, or urban district even if the development is not considered a permissible use under the applicable county zoning ordinances or general plan. Redefines "mining lease" to include lease of the right to conduct mining operations on reserved lands. Reserves all minerals in, on, or under reserved lands to the State. Requires persons wishing to conduct geothermal resources exploration on reserved lands to apply to BLNR for exploration permits. Increases maximum amount of fees for violations of chapter 182, HRS, or any rules adopted pursuant thereto. Authorizes BLNR or its authorized representative to set, charge, and collect administrative fines or bring legal action to recover damages arising from violations of chapter 182, HRS.

Companion:

Package: None

Current Referral: WTL/ENE, WAM

Introducer(s): SOLOMON, DELA CRUZ, KEITH-AGARAN, Baker, Galuteria, Kahele, Nishihara, Wakai

<u>Sort by Date</u>		Status Text
1/17/2014	S	Introduced.
1/21/2014	S	Passed First Reading.
1/21/2014	S	Referred to WTL/ENE/PSM, WAM.
1/31/2014	S	Re-Referred to WTL/ENE, WAM.
2/5/2014	S	The committee(s) on WTL/ENE has scheduled a public hearing on 02-12-14 1:15PM in conference room 225.

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 Senate Committees on  
ENERGY AND ENVIRONMENT  
and  
WATER AND LAND**

**Wednesday, February 12, 2014  
1:15 P.M.  
State Capitol, Conference Room 225**

**In consideration of  
SENATE BILL 2663  
RELATING TO NATURAL RESOURCES**

Senate Bill 2663 proposes to revise statutory provisions relating to the regulation of mineral resources under Chapters 171 and 182, Hawaii Revised Statutes, 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 (SLH) 2012, and restores geothermal resource permits issued by the counties. **The Department of Land and Natural Resources (Department) supports this measure.**

The Department is responsible for the regulation of geothermal resources in the State. Through the issuance of geothermal resource mining leases and regulatory permits, the Department is tasked to manage the resource and its development to protect the health and safety of the public and to ensure the continued viability of this Public Trust Resource for future generations.

Departmental statutes currently do not classify geothermal resources as part of the definition of "renewable energy producer". Adding this designation would provide geothermal resources equity to other renewable energy sources such as wind, solar, hydropower, or biomass.

Statutes pertaining to the regulation and management of mineral resources need updating to provide clarity, reduce ambiguities, and to correlate changes in accordance with Act 97, SLH 2012. These updates will reduce potential delays to geothermal exploration and development. The updates will also facilitate the regulation and management of mineral resources. Such

**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

clarification and update will assist the Department in working toward meeting goals of the Hawaii Clean Energy Initiative.

The Department does not oppose restoring home rule authority through the issuance of geothermal resource permits, as we believe each individual county should maintain its authority to regulate use that occurs within its appropriate land use districts.

The Department also understands that changing the definition of “geothermal resources” may have unintended consequences with regard to direct use applications. As such, the Department will develop administrative rules to clarify this process.

Thank you for the opportunity to testify on this measure.



**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  
**SENATE COMMITTEE ON WATER AND LAND**  
**AND**  
**SENATE COMMITTEE ON ENERGY AND ENVIRONMENT**

Wednesday, February 12, 2014  
1:15 p.m.  
State Capitol, Conference Room 225

in consideration of  
**SB 2663**  
**RELATING TO NATURAL RESOURCES.**

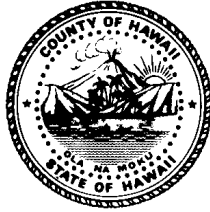
Chairs Solomon and Gabbard, Vice Chairs Galuteria and Ruderman, and Members of the Committees.

The Department of Business, Economic Development, and Tourism (DBEDT) supports SB 2663, which 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.

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.

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

**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 12, 2014

The Honorable Malama Solomon, Chair  
and Members of the Senate Committee on Water and Land

The Honorable Mike Gabbard, Chair  
and Members of Senate Committee on Energy and Environment  
Hawai'i State Capitol, Room 225  
415 South Beretania Street  
Honolulu, Hawai'i 96813

RE: Senate Bill HB 2663, RELATING TO NATURAL RESOURCES

Aloha, Chair Solomon, Chair Gabbard and Committee Members:

Mahalo for this opportunity to express our support of the intent of this bill, which among other things clarifies the permitting procedures for regulators and renewable energy developers considering geothermal development and authorizes certain county authorities to issue geothermal resource permits to allow geothermal resources development in an agricultural, rural, or urban district even if the development is not considered a permissible use under the applicable county zoning ordinances or general plan. As we have said in previous testimony, we support repeal of Act 97.

The county believes oversight of geothermal permits belongs in the county in which such activity takes place. Placing the permitting authority with county government supports home rule and assures that those people most impacted by any geothermal-related activities have a reasonable opportunity to participate in hearings and voice their concerns or support for such projects.

Mahalo for your consideration.

Aloha,

**William P. Kenoi**  
MAYOR

DENNIS "FRESH" ONISHI  
Council Member  
District 3



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**HAWAI'I COUNTY COUNCIL**  
25 Aupuni Street, Hilo, Hawai'i 96720

February 6, 2014

The Honorable Malama Solomon, Chair  
and Members of the Committee on Water and Land

The Honorable Mike Gabbard, Chair  
and Members of the Committee on Energy and Environment

Dear Senator Solomon, Senator Gabbard and Members of the Joint Committee,

Thank you for the opportunity to provide testimony in support of Senate Bill 2663.

This bill restores a section of the law that had been deleted by Act 97 in 2011. It grants the appropriate county planning commission the authority to issue a geothermal resource development permit in agricultural, rural or urban districts where geothermal uses are not allowed under the county's zoning ordinance or general plan.

It spells out the process by which mediation, public hearings and conditional approval of the permit may be granted, and it avoids the lengthy process of a contested case hearing and Circuit Court litigation. This process will restore local government oversight for the residents who will be most affected by a geothermal energy facility.

In Hawai'i County, the members of the Windward Planning Commission and the Leeward Planning Commission live in the communities that will be most directly affected by a decision to grant a geothermal permit and they will have firsthand knowledge of what is best for their neighbors' health and safety.

Please recommend approval of this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis Onishi". The signature is fluid and cursive.

Dennis "Fresh" Onishi  
Hawai'i County Council Member



# LIFE OF THE LAND

P.O. Box 37158, Honolulu, Hawai`i 96837-0158  
Phone: 927-0709; E: [henry.lifeoftheland@gmail.com](mailto:henry.lifeoftheland@gmail.com)

COMMITTEE ON WATER AND LAND  
Senator Malama Solomon, Chair  
Senator Brickwood Galuteria, Vice Chair

COMMITTEE ON ENERGY AND ENVIRONMENT  
Senator Mike Gabbard, Chair  
Senator Russell E. Ruderman, Vice Chair

DATE: Wednesday, February 12, 2014  
TIME: 1:15 p.m.  
PLACE: Conference Room 225

Re: SB 2663 RELATING TO NATURAL RESOURCES PLEASE DEFER

Aloha Chairs Solomon and Gabbard, Vice Chairs Galuteria and Ruderman, and Members of the Committees

Life of the Land is Hawai`i's own energy, environmental and community action group advocating for the people and `aina for four decades. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

SB 2663 states that a county agency may bypass county regulations if it wants to:

“The appropriate county authority may issue a geothermal resource ... to allow geothermal resources development in an agricultural, rural, or urban district if the geothermal resources development is not considered a permissible use under the applicable county zoning ordinances or general plan.”

Then the Bill states that the agency must bypass county regulations if certain conditions are met. These conditions effectively strip the counties of all abilities to stop geothermal mining.

This bill is applicable to all counties since a geothermal developer could be after heat sources for non-electricity generating purposes. Geothermal heat exists wherever the sub-surface ground is warmer than the surface temperature. This definitely includes, but not limited to, Hana, Ulupalakua Ranch, Waimanalo and Waianae.

*“The appropriate county authority **shall** 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; and*

*(3) There are reasonable measures available to mitigate the unreasonable adverse effects or burdens referred to above, which the county authority may prescribe as conditions for the proposed geothermal resources development.*

The desire of the county to zone different lands as they see fit is not a valid reason. Rather, the developer gets to choose. Only immediate neighbors get any say. But as long as mitigation possibilities exist, the county can't block the developer.

**This bill would have the State put domestic and foreign geothermal developers in charge of county zoning regulations.**





# Indigenous Consultants, LLC

Mililani B. Trask, Principal

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[Mililani.trask@gmail.com](mailto:Mililani.trask@gmail.com)



Bill: SB2663

Committees: WTL/ENE, WAM

Hearing Date: Wednesday, February 12<sup>th</sup> 2014

Location: Room 225

Time: 1:15 pm

TESTIMONY IN SUPPORT

Date: February 5<sup>th</sup>, 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 strongly supports this measure because it addresses many areas of the law that need clarification and it restores home rule authority to Counties involved w geothermal development.

## 1. RESTORES HOME RULE TO COUNTY:

This measure restores the procedure for County permitting that was law in our State for over 20 years until it was inadvertently deleted when the Legislature deleted geothermal subzones. On Hawaii Island, the designation of subzones was made in order to accommodate political powers that wanted to have their private land holdings designated for geothermal development. This was done without complete scientific testing and verification that the resource could be safely explored. This action resulted in hundreds of miles of the island (the entire East Rift zone) becoming a geothermal subzone. Everything within the East Rift Zone was considered an area suitable for geothermal exploration & development. This put residential & commercial areas into a subzone along with all parks & schools! The legislature wisely did away with the subzones, but in the process the County permitting procedures were also deleted. This measure restores to the County a HOME RULE process that provides for County hearings, mediation and direct appeal to the ICA



# Indigenous Consultants, LLC

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(Intermediate Court of Appeals) if mediation fails. Geothermal is moving forward & we need a tested & proven process for County permitting.

## 2. STRENGTHENS & CLARIFIES GEOTHERMAL EXPLORATION & MINING PROCEDURES:

IC also supports this Bill because it includes geothermal resources within the definition of a renewable energy producer and clarifies the permitting procedures for regulators and renewable energy developers considering geothermal development. It requires persons wishing to conduct geothermal resources exploration on reserved lands to apply to BLNR for exploration permits, and it redefines "mining lease" to include lease of the right to conduct mining operations on reserved lands. This protects the resources of our State's reserved lands, including all minerals in, on, or under reserved lands to the State. Geothermal is a valuable energy resource of our public trust and it is a 'mineral.'

Please pass this measure:

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Mililani B. Trask, Indigenous Consultants LLC

**Bill: SB2663**

Committees: WTL/ENE, WAM

Hearing Date: February 12<sup>th</sup>, 2014

Location: Room 225

Time: 1:15 pm

Date: February 5<sup>th</sup>, 2014

Aloha Legislators,

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

IDG supports this measure because it provides for a workable & comprehensive scheme of regulation for geothermal resource exploration & development. Geothermal energy development has not been pursued for over 25 years in Hawaii.

Because of this, the procedures & processes in our State have not been updated & need to be streamlined. Important deficiencies in our laws need to be 'clarified' in order to ensure that there is appropriate State oversight for every step of the geothermal assessment & development process.

This measure addresses these State needs. For Example, the Bill makes clear that no exploration can be undertaken without an exploration permit from DLNR. Another critical element of this measure is the inclusion of the County permitting processes that were deleted when subzones were eradicated. County authority needs to be supported and this requires that the initial procedures enacted into law be restored.

HECO has posted an RFP for 50 MWTS on Hawaii Island and it has given notice that it anticipates geothermal development on Maui as well. Passage of this bill will ensure that geothermal development is undertaken in a safe & responsible manner, and it imposes penalties on those who ignore these protections.

Please pass this measure,

Mahalo,



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Pat Brandt, CEO  
Innovations Development Group Inc.



Puna Pono Alliance  
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Kea`au, HI 96749

web: <http://punapono.com>  
email: [info@punapono.com](mailto:info@punapono.com)

February 10, 2014

**To: Senate Committee on Water and Land**

Senator Malama Solomon, Chair  
Senator Brickwood Galuteria, Vice Chair

**Senate Committee on Energy and Environment**

Senator Mike Gabbard, Chair  
Senator Russell E. Ruderman, Vice Chair

**Re:** Hearing on Wednesday, February 12, 2014 at 1:15 p.m. in Conference Room 225

**SB2663** (providing for geothermal permitting, only<sup>1</sup>) – **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:** Four proposed amendments to SB2663, SD1:

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 Senators,

The first geothermal permitting law created by Act 296 in 1983 provided for a *contested case*<sup>2</sup> 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*

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<sup>1</sup> Please note that this testimony addresses only Section 2 of SB2663 – all the other sections of the bill were addressed by these committees in their hearing on February 6, 2014, at 2:45 p.m. with regard to SB2664 (a bill with the same language except for the permitting part.)

<sup>2</sup> 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.<sup>3</sup>

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 SB2663 that would restore only part of the minimal and insufficient streamlined geothermal permitting procedure that was repealed by Act 97. On the other hand, SB3021 (and HB1766) 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 *SB2663 disregards Hawai`i County’s recent assessment report*. Our community supports SB3021 – and *we could support SB2663 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.

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<sup>3</sup> 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.*

SB2663 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. SB2663 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 SB2663. 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 (H<sub>2</sub>S) 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 H<sub>2</sub>S, 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 H<sub>2</sub>S 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.<sup>4</sup>

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.”<sup>5</sup> 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

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<sup>4</sup> “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).

<sup>5</sup> 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.)

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 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 SB2663 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 SB2663 SD1 addressing each of the four objections separately. If SB2663 is appropriately amended, we could support the bill.

Please amend SB2663 pursuant to the proposed amendments. If you are unable to do so, then please do not let SB2663 advance beyond these committees and instead take up, consider and advance SB3021. Thank you for considering these thoughts.

Aloha,



Robert Petricci, President  
Puna Pono Alliance



## Proposed AMENDMENT #1

**TO: Senate Bill No. 2663, S.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. Senate Bill No. 2663, S.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~~

~~receive additional written comments on the unresolved issues raised at the second public hearing from any party. The board shall consider the comments at the second hearing 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; ~~[and~~

~~—————(3) There are reasonable measures available to mitigate the unreasonable adverse effects or burdens referred to above, 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 receive additional written comments on the unresolved issues raised at the second public hearing from any party.]~~

~~[The appropriate county authority shall consider the comments raised at the second hearing 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; [~~and~~

~~(3) There are reasonable measures available to mitigate the unreasonable adverse effects or burdens referred to above, 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: Senate Bill No. 2663, S.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. Senate Bill No. 2663, S.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: Senate Bill No. 2663, S.D. 1**

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

**SECTION 1. Senate Bill No. 2663, S.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: Senate Bill No. 2663, S.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. Senate Bill No. 2663, S.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.



HU'ENA



POWER

Bill #: **SB 2663**

Committees: WTL/ENE, WAM

Hearing Date: February 12<sup>th</sup>, 2014

Time: 1:15 pm

Location: Room 225

Date: February 5<sup>th</sup>, 2014

Testimony in SUPPORT

Aloha Legislators:

Hu'ena Power is a Hawaii based geothermal development company majority owned by Native Hawaiians. The company was created to bring affordable electricity to the ratepayers of Hawaii Island via renewable, clean geothermal energy production utilizing an abundant, indigenous fuel source. Hu'ena Power has worked with industry experts from all over the world to assess both the transmission and generation of electricity here in Hawaii.

Hu'ena power is one of several bidders seeking to be awarded under the RFP posted by HECO for geothermal energy development.

Hu'ena Power supports and appreciates this measure because it provides a clear streamlined process for energy producers to follow when pursuing geothermal exploration &/or development. When development proceeds, energy producers as well as ratepayers need to know that which governmental body (State & County) is involved in the permitting process and what the process is. This Bill clarifies this and imposes fines for those who do not adhere to the law.

In addition, it is important to Hu'ena that there is a procedure that includes public hearings and in the event there is a disagreement, a fair process for conflict resolution & court review. The process included for county review includes 2 public hearings, mediation if disagreements arise & an appeal to the State ICA. This protects everyone, developers, consumers & agencies and it also ensures that judicial review is available in the event of a dispute. Hawaii is facing a growing energy crisis that is driving our economic crisis. We must stop exporting capitol (\$5 million USD annually) for fossil fuel and we must expedite renewable energy development while respecting & accommodating conflicts. This measure accomplishes these goals in a fair & equitable manner.

HU'ENA



POWER

Please pass this Bill as drafted,

Aloha,

A handwritten signature in black ink that reads "Roberta Cabral". The signature is fluid and cursive, with a large initial 'R'.

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Roberta Cabral, Huena Power

**Bill #: SB 2663**

Committees: WTL/ENE, WAM

Hearing Date: February 12<sup>th</sup>, 2014

Time: 1:15 pm Location: Room 225

Testimony in Support

Date: February 7<sup>th</sup>, 2014

Our Honorable Legislators, Aloha pumehana kakou,

I am CY Bridges, a Hawaiian practitioner, Kumu Hula. I currently serve as the Director of Protocol for the Polynesian Cultural Center in La'ie where I have been employed for over 45 years. I am also the Cultural Adviser of the Innovations Development Group, which is working to develop Hawaiian geothermal resources for Hawaii's Sustainable Energy Future.

I am fully in SUPPORT OF THIS MEASURE because it will move us forward in our efforts to help make Hawaii less dependent on fossil fuel as well as facilitate the development of Hawaii's indigenous Energy Resources.

We are working to restore the laws that were deleted when geothermal subzones were done away with and this bill helps in achieving that goal. The County needs to be involved in the permitting process and this bill allows for Community hearings, mediation in the event disagreements arise and direct appeal to the State Intermediate Court of Appeal if mediation does not resolve the conflict. It is a fair process that worked for over 20 years.

A delegation of Hawaiians went to the Supreme Court 30 years ago in the effort to protect our native Hawaiian cultural rights to gather and worship and fortunately, we were very successful. Since that time, to my understanding, there has not been a single case where Hawaiians have been denied their native rights to worship or gather as a result of geothermal development, which has been in operation for almost 20 years.

Today, a number of Hawaiians have shared their mana'o, that it's time to develop our Hawaiian Indigenous Energy resources in responsible ways. We can balance our cultural practices with the needs of our communities when we develop our energy resources and the IDG has a model that works.

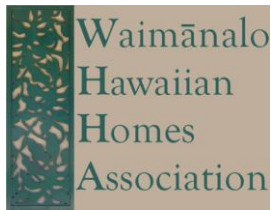
We must address Hawaii's energy & fiscal crisis, and we need this measure to ensure that State & County processes are in place to facilitate this. PLEASE PASS THIS MEASURE.

Mahalo nui loa for the opportunity to share my mana'o,



---

CY Bridges



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

TESTIMONY *IN STRONG SUPPORT TO* SB 2663 RELATING TO  
NATURAL RESOURCES

SENATE COMMITTEE ON WATER AND LAND

Chair, Sen. M. Solomon and Vice Chair Sen. B. Galuteria

SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

Chair, M. Gabbard and Sen. R. E. Ruderman

NOTICE OF HEARING

Wednesday, February 12, 2014

1:15 p.m.

Conference Room 225

Hawaii State Capitol

Chairs Sen. Solomon, Sen. Gabbard and Vice Chairs Sen. Galuteria and Sen. Ruderman and

Committee Members, Aloha!

*We strongly support* SB 2663 relating to the Natural Resources by adding the new section to Chapter 182, Hawaii Revised Statutes with its more specific sections which will oversee the processes needed relative to geothermal activities within the State of Hawai'i.

We appreciate the opportunity to submit this 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 written in a cursive, flowing style.

Paul P. Richards  
President



KAPOLEI  
COMMUNITY  
DEVELOPMENT  
CORPORATION

P.O. Box 700911 Kapolei, HI 96709

Bill: SB2663

Committees: WTL/ENE/WAM

Hearing Date: Wednesday, Feb. 12, 2014

Location: Room 225

Time: 1:15pm

Testimony in Support

Aloha Legislators:

Kapolei Community Development Corporation (KCDC) is a Federal tax exempt organization serving the Kapolei homestead region. Our purpose is to strengthen families and preserve culture. Our intention is to partner with the marketplace in the development of community-based projects. The projects we work on will allow area developers to assist in establishing and sustaining community goals and, therefore, forego dependence on government funding.

Support for SB2663 (Geothermal Development)

KCDC supports SB2663 without amendments. Proposed amendments may have effect of adding additional layers of bureaucracy causing unnecessary delay.

KCDC support recognizes geothermal energy as a mineral and its development as a revenue source for the State. This mineral resource is also located within the Department of Hawaiian Home Lands inventory and its development would produce a new revenue source for the DHHL. In turn, the revenue would promote DHHL's mission of providing homes to native Hawaiians.

Moreover, homesteaders are leading the way with low level geothermal development as an agricultural method which could further food sustainability. Members of Waimanalo Hawaiian Homestead Association won the support of the Neighborhood Board in its work to explore and develop a venue towards geothermal hot-house or food processing center or facility which will help to support food sustainability in farm producing areas.

Mahalo for the opportunity to Support SB2663.

Shirley S. Swinney  
President, KCDC



**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WTLTestimony](#)  
**Cc:** [MSMatson@hawaii.rr.com](mailto:MSMatson@hawaii.rr.com)  
**Subject:** Submitted testimony for SB2663 on Feb 12, 2014 13:15PM  
**Date:** Monday, February 10, 2014 4:56:49 PM

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michelle Matson	Individual	Oppose	Yes

Comments: I strongly oppose SB 2663. Pass SB 3021 or replace the contents of SB 2663 with the contents of SB 3021.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**CHRISTOPHER J. YUEN**  
**ATTORNEY AT LAW**

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Feb. 10, 2014

Testimony re SB2663

Senate Committees on Water and Land, and Energy and Environment

Dear Committee Chairs Sen. Solomon and Sen. Gabbard and members of the Committees:

This testimony is in support of sec. 2 of SB2663, with a suggested amendment. Sec. 2 of SB2663 would essentially restore the geothermal resource permit (GRP) process which existed prior to Act 97, SLH 2012. Under the old GRP process, the county planning commission would determine whether or not a geothermal power plant could be built in the agricultural or rural districts. (In urban districts, it would depend upon the specific county zoning, but it is unlikely that such a plant would be built in an urban district because of the location of geothermal resources.)

Act 97 was an attempt to streamline the process by repealing the GRP, 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.

I would suggest one amendment, to this sentence in SB2663 that was not in the original GRP process: “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.”

It's not clear what this sentence is supposed to do. One interpretation would be that the planning commission could not impose conditions that were more stringent than those of state or federal agencies. For example, the conditions couldn't require noise levels quieter than DOH rules. This wouldn't be a good idea.

Such rules are usually meant to apply across-the-board and are sometimes not adequate for a local situation. For example, the DOH noise rules for agricultural districts allow noise levels of 70 dBA day and night. This is very noisy—the residential standards are 55 dBA days and 45 dBA nights. The GRP for Puna Geothermal Venture has a noise condition that is much quieter than would be allowed under DOH rules, because it is near many homes. That's reasonable: the company's original application stated that it could operate within the kinds of limits eventually



set by the planning commission. It will be even harder to win community acceptance for geothermal facilities if the specific needs of the neighboring area can't be protected in the permit process.

Or the sentence may be intended only to allow the planning commission to impose conditions, but not to override other state and federal regulations. This would be fine, and could easily be accomplished by deleting the word "exclusive", and deleting the clause beginning with the word "except."

Thank you for considering my testimony on this bill.

Yours truly,

Chris Yuen

I am testifying in opposition to SB 2663 particularly the revisions to Chapter 205 addressing geothermal resource permits. Specific problems with SB 2663 include:

(1) The wording of Section (a) is confusing, but suggests that the Board of Land and Natural Resources (the Board) can override county zoning ordinances. County ordinances are usually in place for good reasons. To have these ordinances overruled by an appointed Board with no particular set of qualifications, knowledge, or understanding of local practices is un-democratic and contrary to the best interests of the affected populace. In general, such a Board should only rule on subjects in which it has at least a modicum of expertise, such rulings should only rarely conflict with county ordinances, and when in conflict with such ordinances only to further protect health, safety, and the environment.

(2) Sections (b) and (c) require mediation focused only on issues raised at a public hearing, with the Board rendering final judgment based on the following criteria:

- no unreasonable health, environmental, or socio-economic effects
- no unreasonable burden on roads, police, etc.
- reasonable measures to mitigate unreasonable adverse effects.

This section has many problems. First, it would deny redress through contested case hearings, thereby depriving litigants the opportunity to settle legal issues. Second, who defines what is "reasonable/unreasonable?" It would appear that the Board would ultimately make such a determination, not the home owner subject to detonations, pile driver-like hammering day and night during drilling operations, and exposure to windborne toxins and/or land and water contamination. A home owner's definition of what is "reasonable" might differ considerably from that of Honolulu-based Board members selected on the basis of political standing rather than scientific expertise or local knowledge and experience. It is unreasonable for such a board to these determinations. Such a board should recognize its lack of expertise in these matters and defer to a panel of subject matter experts, to include members from the effected community. Finally, SB2663 makes no mention of and does not address widely recognized health, safety, and monitoring concerns presented in the 2013 Adler Report. This sort of mistake illustrates the need for the participation of local subject matter experts in decision-making.

Due to its multiple deficiencies, SB 2663 must be rejected in its current form.

Harry Kim  
471 Ho`okina Place  
Hilo, Hawaii 96720

**February 10, 2014**

**Testimony to:**

**Senate Committee on Water and Land**

Senator Malama Solomon, Chair  
Senator Brickwood Galuteria, Vice Chair

**Senate Committee on Energy and Environment**

Senator Mike Gabbard, Chair  
Senator Russell E. Ruderman, Vice Chair

**Wednesday, February 12, 2014 at 1:15 p.m. in Conference Room 225**

**In consideration of SB2663**

**RELATING TO NATURAL RESOURCES**

**Position: Strong opposition (or support with amendments)**

I ask for your support for amendments to SB2663 as proposed by the Puna Pono Alliance. If the bill cannot be so amended then I ask that you not pass it out of your committees.<sup>1</sup>

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

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<sup>1</sup> This testimony addresses only Section 2 of SB2663 (the other sections of the bill were addressed by these committees in their hearing on February 6, 2014, with regard to SB2664.)

geological requirement with the lowest potential for adverse impacts. The second of the proposed amendments 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 impacts on people and our fragile environment, it must be done right, with sensitivity to health, environmental, social, and cultural concerns. An amended SB2663 could be a step 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*

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.

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**Date:** Tuesday, February 11, 2014 1:39:48 PM

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**SB2663**

Submitted on: 2/11/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Koohan Paik	Individual	Oppose	No

Comments:

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**SB2663**

Submitted on: 2/11/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Norris Thomlinson	Individual	Oppose	No

Comments: I oppose this bill unless and until it incorporates the amendments being submitted by Senator Ruderman, restoring contested case, restoring county permitting, restoring geothermal sub-zones, and implementing the recommendations of the Adler Report. Please include those amendments, or do not pass this bill.  
Mahalo!

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## **TESTIMONY ON SENATE BILL 2663 RELATING TO NATURAL RESOURCES**

February 12, 2014  
Room 225

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Dear Senator Solomon and Members of the Senate Committee on Water and Land:

Forgive me that I am not able to appear before you in person but please accept my written testimony on those certain portions of SB 2663 that deal with mediation. I take no position on other aspects of the bill, nor on the further development of geothermal energy resources in Hawaii. My sole interest in this testimony is the effective application of good dispute resolution processes that help prevent, manage, or resolve unnecessary conflict.

### **Background**

As you know, I have worked as a mediator for many years both with the ADR office at the State of Hawaii Judiciary, as Executive Director of The Hawaii Justice Foundation, as CEO of The Keystone Center in Colorado and Washington DC, and in private practice. I continue to work as a planner and mediator, primarily on public policy challenges dealing with energy, health, public health, and public finances.

I believe strongly that mediation, especially mediation processes that focus on “joint fact-finding,” are one of the keys to resolving important public policy issues that

divide our communities. Fundamentally, mediation is “assisted negotiation.” It is not a formal evidentiary procedure but rather a pathway towards agreement which in matters of policy and politics, is the coin of the realm. Consensus, and more accurately “consent”, is what helps you as elected leaders lead and which can assist decision-makers narrow differences of opinion when difficult choices are at hand.

Most recently, and at Mayor Billy Kenoi’s request, I was retained to organize and facilitate a geothermal public health study. The group that was assembled did hard work and Mayor Kenoi’s office is now implementing many of the Study Group’s recommendations. In the past, I was also involved with some of the early mediations on PGV’s permit conditions. I am now working, among other things, to help stakeholders and rights-holders resolve challenging matters over feral animals on Kauai, USFWS’s proposed designation of 18,000-acres of North Kona as critical habitat for three newly listed dry-land plants, and issues pertaining to marine conservation in Hawaii’s near-shore waters.

### **Mediation as a “Compliment”**

Unlike arbitration, mediation is, at the end of the day, an “assisted” negotiation process. It works for many matters, but it is not a panacea. In the occasional trainings and workshops I do, I constantly remind people that mediation is always a “complement” to our system of justice and not a “substitute” for time-tested processes in our judicial, legislative and executive branches. That is also how state and federal courts see it. Judicial systems everywhere have robustly incorporated mediation to help streamline dockets, narrow contested issues, save time and money, and reduce or at least cut down on some of the unnecessary friction in litigation. No court anywhere has substituted mediation for the evidentiary and due process procedures that occur at trial. It is always “complimentary,” not “in exchange for.”

I laud the use of mediation for energy, health, and natural resource conflicts and encourage public officials to find ways to bring parties to the table. However, I oppose the wholesale substitution of mediation for evidentiary hearings such as contested case proceedings. Mediation must remain as a “complement” to our systems of rule making, not as an alternative to it.

I would, over the coming year, be most happy to help you and your colleagues to improve the use of mediation for geothermal disputes so that greater success can be achieved. I am convinced there are better ways to do mediation for cantankerous public policy problems. Regardless, I believe contested case procedures should be reinstated for the disputes that will inevitably arise as State of Hawaii searches for stronger energy solutions. Those procedures can also be streamlined in ways that still allow for due process.

Respectfully submitted,

*PETER S. ADLER, PhD*

*Thomas Lee Travis*

**RR 2 Box 3317**

**Pahoa, Hi 96778**

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mobile: (757) 639-7364

February 10, 2014

**Testimony on SB 2663**

**To: Senate Committees on Water and Land and Committee on Energy and Environment**

I strongly oppose SB 2663.

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.

SB 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.

If four amendments proposed by Puna Pono Alliance are included, I would support this bill. Those amendments:

- Remove mandatory mediation from geothermal permitting
- Restore the geothermal resource subzones repealed by Act 97
- Assure appropriate geothermal environmental review
- Include Geothermal Public Health Assessment recommendations

/S/ Thomas L Travis

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**SB2663**

Submitted on: 2/8/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Katarina Culina	Individual	Oppose	No

Comments: Dear Committee Chair, Vice Chair and Members, Please oppose SB2663. It takes away community's protection from streamlined geothermal development and disregards 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 support mediation instead of contested case proceedings. Mahalo, Katarina Culina P.o. box 2142 Paho, HI 96778

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**SB2663**

Submitted on: 2/6/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez	Individual	Oppose	No

Comments:

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**SB2663**

Submitted on: 2/9/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brad Parsons	Individual	Oppose	No

Comments:

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**SB2663**

Submitted on: 2/9/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Caroline Kong	Individual	Oppose	No

Comments: Strips 'Home Rule' on Geothermal: "Authorizes certain county authorities to issue geothermal resource permits to allow geothermal resources development in an agricultural, rural, or urban district even if the development is not considered a permissible use under the applicable county zoning ordinances or general plan. Redefines "mining lease" to include lease of the right to conduct mining operations on reserved lands... To put it politely: MAHALO BUT NOOOOOOOOOOOO WAY!!!  
Respectfully, Caroline Kong

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**SB2663**

Submitted on: 2/9/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Susan Bambara	Individual	Oppose	No

Comments: Please do not pass this, yet another attempt to circumvent the land rights of the people for profiteers. NO NO NO, please do not pass this graft bill - I, as a citizen of this state ask you to oppose this bill and any other attempt to give away land rights to exploit them. Thank you for REPRESENTING the voice of the PEOPLE and NOT SPECIAL INTERESTS. PLEASE DO NOT Redefine "mining lease" to include lease of the right to conduct mining operations on reserved lands. NO. Eternity will be the judge of us. Mahalo and blessings to those who hear the call to keep our islands pristine and the JEWEL of the pacific for the World to look to and not to exploit and destroy.

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**SB2663**

Submitted on: 2/9/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
sherrian witt	Individual	Oppose	No

Comments:

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**SB2663**

Submitted on: 2/9/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
joy cash	Individual	Oppose	No

Comments: Kindly do right for people of Hawaii in opposing this bill.

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**SB2663**

Submitted on: 2/9/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Benjamin Cohn	Individual	Oppose	No

Comments: This measure i oppose because of the potential air and ground pollution that geothermal plants cause and especially in residential areas as this bill allows. kids can get sick and cause a nightmare situation in the community

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**SB2663**

Submitted on: 2/9/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Julie Chen	Paradise Action Womens Alliance	Oppose	No

Comments:

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**SB2663**

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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
fred hofer	Individual	Oppose	No

Comments:

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**SB2663**

Submitted on: 2/9/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Theodore Banta	Individual	Oppose	No

Comments: I am in opposition to SB2663 (Senator Malama Solomon's permitting bill) until it incorporates amendments that will be submitted by Bob Petricci and supported by Senator Ruderman. These amendments will make SB2663 accomplish our goals of restoring contested case, restoring county permitting, restoring geothermal sub-zones, and implementing the recommendations of the Geothermal Public Health Assessment Report (the Adler Report).

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**SB2663**

Submitted on: 2/9/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
David Dinner	Individual	Oppose	No

Comments:

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**SB2663**

Submitted on: 2/9/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Leslie Wingate	Individual	Oppose	No

Comments: This bill has no regard for community concerns

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**SB2663**

Submitted on: 2/9/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
James Hedgecock	Individual	Oppose	No

Comments:

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**SB2663**

Submitted on: 2/9/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Bill Smith	Individual	Oppose	No

Comments: 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; and it ignores Hawai'i County's recent Geothermal Public Health Assessment.

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**SB2663**

Submitted on: 2/9/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Felicia Cowden	Individual	Oppose	No

Comments: Fracking is reckless and a poor choice.

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**SB2663**

Submitted on: 2/9/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Paul A. komara, Jr.	Individual	Oppose	No

Comments: Once again I see the attempts by outside interest to usurp County Home Rule. I oppose Bill 2663 in any and all of its forms. State agencies have no right to control County development. Hawaii County has banned fracking.

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**SB2663**

Submitted on: 2/9/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ken Burch	Individual	Oppose	No

Comments:

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lisa Hallett	Individual	Oppose	No

Comments: Aloha State WTL Committee Members, I strongly oppose this bill. Community plans must be respected. As should the public health. Geothermal developments do not belong in urban areas or on our precious agricultural lands. Permits cannot be handed out without public/community input and approval. Thank you for allowing me to testify. Please oppose this bill. Mahalo, Todd Andrews, Lisa Hallett, Jessica Andrews

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Carlton York	Individual	Oppose	No

Comments:

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Erika Schneider	Individual	Oppose	No

Comments: Aloha, Please oppose SB2663. There are so many things wrong with this bill, I don't even know where to begin! Let's start with: 1. Relating to " Authorizes certain county authorities to issue geothermal resource permits to allow geothermal resources development in an agricultural, rural, or urban district even if the development is not considered a permissible use under the applicable county zoning ordinances or general plan." ---- Why on earth would we want to do that? If the land is not zoned for geothermal development, especially if it is in urban or agricultural areas, it makes no sense to allow development! 'Rural' is also vague, because many small towns on our island could be considered 'rural' and yet would not want geothermal in their back yard. If geothermal development is an option, then the proper applications for zoning changes of the property, along with EIS and other proper channels should be followed. We allowed the Agribusiness Development Corporation to let in huge agro-chemical corporations to experiment on Kauai State lands with no EIS and a fast-track approval process, and look what has happened! Residents are sick, and now the island is struggling to get even basic rights like buffer zones. Please do not weaken the zoning process so that geothermal can go in willy-nilly where the development corporations feel like it regardless of community or zoning! 2. Regarding: "Redefines "mining lease" to include lease of the right to conduct mining operations on reserved lands." Mining should not be happening on reserved lands. Those minerals / water / gas / geothermal - belongs to the Hawaiian People, not the State. That land is to be held in trust, not ravished, fracked, drilled, mined and exhausted of resources. Please do not fast-track development of reserved lands for mining, fracking and geothermal. I realize lobbyists are pushing you to approve this bill, because there is a lot of money to be made by the companies taking every valuable resource left on the land. I am asking you to please think about the people, and the future generations to come that will inherit that land. Will you leave them a legacy of rich, fertile reserved lands as promised, or will you sell everything of value off in leases to mining developers from international conglomerates? Please do not pass SB2663. Mahalo.

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
derek brewer	Eco Hostel Hawaii	Oppose	No

Comments: Aloha, I oppose the bill do the meaning and authority that this passage creates. "Authorizes certain county authorities to issue geothermal resource permits to allow geothermal resources development in an agricultural, rural, or urban district even if the development is not considered a permissible use under the applicable county zoning ordinances or general plan. " This redefines "mining lease" to include lease of the right to conduct mining operations on reserved lands. I do not support Geo Thermal control being taken out of our Islands control. Thanks, Derek Brewer

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Deborah Davis	Individual	Oppose	No

Comments:

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
jw nalda	Individual	Oppose	No

Comments: We are opposed to this bill.

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Katalin Koda	Individual	Oppose	No

Comments:

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Robert ortman	Individual	Oppose	No

Comments: I oppose Sen. Solomon's SB2663 as it is written. However, with the amendments proposed by Sen. Ruderman it would be acceptable.

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Margaret Maupin	Individual	Oppose	No

Comments:

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Andrea Rosanoff	Individual	Comments Only	No

Comments: At this time I cannot support SB2663. This bill is not adequate as it needs to have restored to it proper contested case, geothermal subzones and the implementation of the Adler Report. We in Puna have been living with this geothermal situation for a very long time, and we know what legislation is really needed here. Please do not let SB2663 pass on the the rest of the legislature without first amending it appropriately. Sincerely, Andrea Rosanoff Pahoa, HI 96778 808-965-7061

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Geoffrey Shaw	Individual	Oppose	No

Comments: We have to move forward into the 21st century which will feature a decentralized electric grid

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Paul Kuykendall	Individual	Oppose	No

Comments: I oppose this poorly written bill and request that you oppose it as well since it will allow geothermal development to expand with little or poor regulation. Please oppose this bill.

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Steve Hirakami	Individual	Oppose	No

Comments: What has proven to be a bad neighbor to residences and farmlands is now appropriate in conservation land? Do we read this as conservation or exploitation. We need to approach this in the exact opposite manner. We need to restore the right of the respective counties to be involved in the permitting process. We need to restore the contested case process rather than false (forced) mediation. We certainly need to pay attention to citizens' rights when it comes to health and safety as evidenced by the Geothermal Health Study work group.

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lyn Howe	Individual	Oppose	No

Comments: I oppose this bill until it incorporates amendments that will be submitted by Bob Petricci and supported by Senator Ruderman. Thank you

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Allan Reaves	Individual	Oppose	No

Comments: Geothermal development would ruin the quality of life of nearby residents. It is NOT clean energy. Homes and businesses in Hawaii should be using solar energy instead, eliminating the need for more power lines. Legislators should support the people not the power companies.

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Vicki Vierra	Individual	Oppose	No

Comments: I strongly oppose SB2663. It seems to ignore the needs of those who lived near geothermal operations and can best inform how to proceed, i.e. restoring contested case, restoring county permitting, restoring geothermal sub-zones, and implementing the recommendations of the Geothermal Public Health Assessment Report (the Adler Report).

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Gina Franchini	Individual	Oppose	No

Comments: I oppose this bill unless it incorporates amendments that will restoring contested case, restore county permitting, restore geothermal sub-zones, and implement the recommendations of the Geothermal Public Health Assessment Report (the Adler Report).

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Barbara Barry	Individual	Oppose	No

Comments: This is horrible Bill. No to Fracking anywhere, anytime on these Sacred Islands. Pollution of everything goes hand in hand with Geothermal fracking. What a completely ignorant idea. Especially on islands in the middle of the Pacific Ocean! Protect these Sacred Islands for the next 100 generations like your ancestors did for you! Makes me ill that you would even consider this Bill! Thanks, Barbara Barry

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nicki Conti	Individual	Oppose	No

Comments: I oppose this bill only until such time as it incorporates amendments that will be submitted by Bob Petricci and supported by Senator Russell Ruderman.  
Thank you

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Shannon Rudolph	Individual	Oppose	No

Comments: Strongly Oppose. Hands off our county rights to control our land use. Did some one not get the memo, last year? Please knock it off, it's not funny any more. The FURTHER you live from the geothermal facility - the better it sounds. Nearby residents are not happy with it because there have been too many problems, plus, it's a health hazard. Not to mention it being a dinosaur technology being pushed by dinosaurs. Mahalo.

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dana G. Moss	Individual	Oppose	No

Comments:

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mary Regina Miller	Individual	Oppose	No

Comments: No such measure should be approved. The dangers FAR out-way the potential benefits.

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
joy cash	Individual	Oppose	No

Comments:

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sandra	Individual	Oppose	No

Comments:

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Avi Okin	Individual	Oppose	No

Comments: Local control, not just state, is needed. This bill removes our local rights, which is wrong.

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**SB2663**

Submitted on: 2/10/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Avi Okin	Individual	Oppose	No

Comments: This is a land grab bill, poorly written, and would turn public reserved lands into public disasters. Mining is a dirty process, and mining companies have never in the past been respectful of the land and the people who live on and around it.

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**SB2663**

Submitted on: 2/11/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
alicia morrier	Individual	Oppose	No

Comments:

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**SB2663**

Submitted on: 2/11/2014

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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Robert Freitas Jr.	Individual	Oppose	No

Comments: I oppose this bill!!!

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**SB2663**

Submitted on: 2/11/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
penny s	Individual	Oppose	No

Comments:

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**SB2663**

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Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
tj simms	Individual	Oppose	No

Comments:

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**SB2663**

Submitted on: 2/11/2014

Testimony for WTL/ENE on Feb 12, 2014 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lisa Kirbin	Individual	Oppose	No

Comments:

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**SB2663**

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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Pua Kamaoa	Individual	Oppose	No

Comments:

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