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**TO THE HOUSE COMMITTEE ON
ENERGY AND ENVIRONMENTAL PROTECTION**

**TWENTY-NINTH LEGISLATURE
Regular Session of 2018**

**Tuesday, February 6, 2018
8:30 A.M.**

**TESTIMONY OF DEAN NISHINA, EXECUTIVE DIRECTOR, DIVISION OF
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS, TO THE HONORABLE CHRIS LEE, CHAIR,
AND MEMBERS OF THE COMMITTEE**

HOUSE BILL NO. 2120 – RELATING TO WIND ENERGY FACILITIES.

DESCRIPTION:

This measure requires a wind energy facility owner, the owner of the land, or the Department of Land and Natural Resources to be responsible for facility decommissioning and provides for recovery of costs.

POSITION:

The Division of Consumer Advocacy (“Consumer Advocate”) supports this bill.

COMMENTS:

The Consumer Advocate believes that anticipating and providing for the responsible decommissioning of generating facilities, such as wind turbines, is important for the communities hosting the State’s wind energy farms, and therefore may be key to the acceptance and sustainable integration of this renewable resource into the State’s energy generation mix as it pushes towards 100% renewable energy in the electrical sector. In particular, the Consumer Advocate supports this bill’s proposal to place

House Bill No. 2120
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responsibility for the decommissioning on the facility owner, which will lend weight to the Consumer Advocate's efforts to include the necessary language in contracts between a utility company and independent power producers that makes clear that the facility owner will be responsible to return the site to its original condition.

Thank you for this opportunity to testify.

DAVID Y. IGE
GOVERNOR OF HAWAII



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

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
ENERGY & ENVIRONMENTAL PROTECTION**

**Tuesday, February 6, 2018
8:30 AM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 2120
RELATING TO WIND ENERGY FACILITIES**

House Bill 2120 proposes to require a wind energy facility owner, the owner of the land, or the Department of Land and Natural Resources to be responsible for facility decommissioning and provides for recovery of costs. **The Department of Land and Natural Resources (Department) opposes this bill.**

This measure would impose significant burdens on the Department in terms of financial and staffing resources. If the private land owner fails to decommission a wind energy facility in compliance with this bill, then the Department may condemn the land to decommission the facility. In condemnation proceedings, the condemning agency must pay fair market value for the land acquired. As wind energy facilities are usually located on large areas of land, it is likely that the cost of land would be significant, regardless of its zoning. The Department does not have the funds to acquire lands that are not a priority for its mission of resource protection. Additionally, when the Department seeks to acquire land, it conducts due diligence that could incur significant costs. Title reports, appraisal, land surveys and environmental hazard studies may cost as much as \$500,000 or higher considering the large size and remote location of much of the lands at issue.

Although the bill provides for the Department to recover its costs from the private owner and operator, there is always the risk that the private parties would not have the financial resources to pay any judgement. As both this and the condemnation would be legal proceedings, there would be significant burdens on the staff of both the Department and the Attorney General.

The Department is not the appropriate agency to take on this responsibility. The Counties already have legal authority to condemn property. Also, the Counties could use their permitting authority

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

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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

to require decommissioning bonds as a condition of granting necessary construction permits. The Department does not issue construction permits for renewable energy development and only has the ability to require decommissioning bonds on wind energy facilities located on state lands as a condition of granting a lease or easement. Requiring a decommissioning bond at the permitting approval phase would alleviate the need for this measure.

Commercial wind farms built in the last ten years have decommissioning bonds in place. An alternative would be to require decommissioning bonds for all wind farms, but the Counties are the more appropriate authority to carry out this law using their existing permitting authority. Given that there is no nexus between wind energy facilities (especially those located on private land) and the Department's regulatory authority, it is not appropriate to impose the decommissioning responsibility upon the Department.

Finally the proposed Section -2(b)(2) of the bill, which requires decommissioning to include "Restoring disturbed earth to substantially the same physical condition as existed prior to the commencement of construction of the wind energy facility by the owner, including grading and reseeded" does not provide for sufficient remediation of the area. Rather, any decommissioning should require revegetating the area with appropriate native plants rather than merely reseeded.

Thank you for the opportunity to comment on this measure.

HB-2120

Submitted on: 1/31/2018 3:55:10 PM

Testimony for EEP on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Robin Kaye		Support	No

Comments:

This is an important bill. Wind developers need to be required to return the land they use to its previous condition. Often, that would entail significant funding; this bill assures that such funding be in place. Hawaii had this protection in an earlier piece of legislation, now repealed. It is important, therefore, to restore these protections into law now.

HB-2120

Submitted on: 2/3/2018 5:51:22 AM

Testimony for EEP on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kat Culina		Support	No

Comments:

HB-2120

Submitted on: 2/3/2018 4:48:16 PM

Testimony for EEP on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Hawaiian Civic Club of Honolulu	Support	No

Comments:

HB-2120

Submitted on: 2/5/2018 6:25:41 AM

Testimony for EEP on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Joan Gannon	West Hawaii CHC	Support	No

Comments:

I Joan Gannon, Chairperson of the protect Marine Life Committee for Hawaii Island Democratic Party, support HB2120

HB-2120

Submitted on: 2/5/2018 12:45:45 PM

Testimony for EEP on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl		Comments	No

Comments:

and based on our experiences with the telescopes, should have a viable plan for decommissioning and disposal in place at the time of permit given. It should already be known how it will be done rather than waiting until the deadline to determine.