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Lt. Governor



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SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER
Deputy to the Chairperson

**TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE HOUSE COMMITTEES ON ENERGY & ENVIRONMENTAL PROTECTION
AND WATER & LAND**

**FEBRUARY 14, 2018
11:00 A.M.
CONFERENCE ROOM 325**

**HOUSE BILL NO. 2298
RELATING TO THE ENVIRONMENT**

Chairperson Lee, Chairperson Yamane and Members of the Committees:

Thank for the opportunity to testify on House Bill No. 2298 relating to the environment. This bill requires developers to hold community discussion and feedback sessions whenever a construction project does not commence within five years of acceptance of an environmental impact statement (EIS). The Department offers comments on this measure.

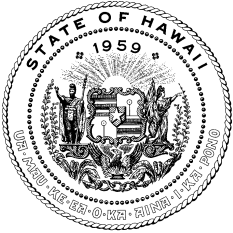
The HDOA is responsible for capital improvement projects on state-owned agricultural lands and irrigation water systems. As a state agency, the HDOA's ability to proceed on projects depends on funding availability and appropriations. In the event that funding is not received for a given project within this five year window, once funding is received, the onset of construction may be further delayed due to this new requirement. Additionally, capital improvement projects are often complicated, with various design considerations, permits, and approval requirements. In such cases, even though a project is being actively pursued, construction may not begin for several years after the EIS is completed. We foresee this being a potential issue with reservoir construction and its permitting process.

Lastly, the bill is intended to avoid triggering a costly supplemental EIS. However, the proposed change makes it unclear if this process categorically exempts a project from a supplemental EIS if the only issue is the passage of time and the scope of the project has not changed.

The development of an EIS is a comprehensive process, with wide dissemination and an associated public review period. The HDOA respectfully recommends consideration that an EIS remain valid for the duration that project work is ongoing. The Department also notes that the Environmental Council, with the support of the Office of Environmental Quality Control (OEQC), is updating the administrative rules for Chapter 343. We defer to the OEQC on the provisions in the measure related to Chapter 343.

Thank you for the opportunity to testify on this measure.





OFFICE OF ENVIRONMENTAL QUALITY CONTROL

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DAVID Y. IGE
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SCOTT GLENN
DIRECTOR

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Testimony of
SCOTT GLENN, Director

before the
HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION
and the
HOUSE COMMITTEE ON WATER AND LAND

Wednesday, February 14, 2018
11:00 AM
State Capitol, Conference Room 325

in consideration of
HOUSE BILL 2298
RELATING TO THE ENVIRONMENT

Chair Lee, Vice Chair Lowen, and Members of the House Committee on Energy and Environmental Protection, and

Chair Yamane, Vice Chair Todd, and Members of the House Committee on Water and Land,

The Office of Environmental Quality Control (OEQC) administers Chapter 343, Environmental Impact Statements (EIS), Hawai'i Revised Statutes (HRS). The purpose of the EIS law is to "establish a system of environmental review which ensures that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations" (HRS § 343-1). Additionally, the OEQC serves "the Governor in an advisory capacity on all matters relating to environmental quality control," as directed in HRS § 341-3.

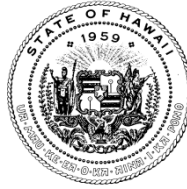
House Bill 2298 proposes to require, for any proposed action involving construction for which an EIS has been accepted by an agency but for which construction has not commenced within five years of acceptance of the statement, the developer of the construction project to exercise due diligence with respect to any changes in the community where the project is planned and requires developers to hold community discussion and feedback sessions to discuss relevant and new concerns regarding the project.

The Environmental Council ("Council") promulgates administrative rules for the implementation of Chapter 343, HRS. The Council is currently undergoing rulemaking to update Hawai'i Administrative Rules (HAR) Chapter 11-200, Environmental Impact Statements. Since July 2017, the Council has released three working drafts of rules changes to gain stakeholder and public feedback. The Council is currently preparing a fourth draft due by February 20, 2018.

In its drafts, the Council has examined various alternatives to supplemental EISs. After the release of its third working draft, stakeholders recommended that the Council adopt some version of the “green sheet” that the City and County of Honolulu Department of Planning and Permitting (DPP) created following the *Unite Here! Local 5 v. The City and County of Honolulu* decision. The “green sheet” is DPP’s internal tracking method for a proposed action’s compliance with Chapter 343, HRS, including for supplemental EISs.

The Council is currently preparing language to incorporate a tool like the “green sheet” into its next draft. While the Council is undertaking rulemaking, we respectfully request that the Legislature defer making amendments to Chapter 343, HRS. Changes to the statute may result in the Council having to redo or start over its work to date.

Thank you for the opportunity to testify on this measure.



Testimony by:
JADE T. BUTAY
INTERIM DIRECTOR

Deputy Directors
ROY CATALANI
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
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Wednesday, February 14, 2018
11:00 a.m.
State Capitol, Room 325

H.B. 2298
RELATING TO THE ENVIRONMENT

House Committee on Energy and Environmental Protection and Water and Land

The Department of Transportation (DOT) has **comments** regarding this bill which requires developers to hold community discussion and feedback sessions whenever a construction project does not commence within five years of acceptance of an environmental impact statement (EIS).

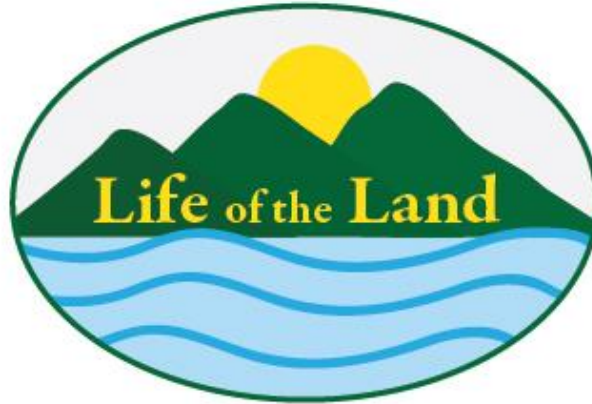
The bill is not clear on whether the term "developer" applies to State and other governmental agencies or only private developers. If the term is meant to apply to State agencies, the DOT has concerns as many of our projects require extensive permitting and property acquisition following the completion of an EIS that often takes longer than five years. The bill is also silent on situations where the final EIS is challenged, or when the developer is forced into litigation as a result of a formal complaint. In addition, the DOT often is not able to construct all of the improvements proposed in the EIS under one construction project due to limitations in funding. A requirement to conduct these community discussions and feedback session will add cost and serve to delay project delivery.

Additionally, the bill has extensive discussion regarding the supplemental EIS, however, the proposed language does not specifically remove the requirement of a supplemental EIS. In doing a supplemental EIS, the DOT regularly conducts public outreach and communication. It is unclear if this bill requires discussion and feedback sessions in addition to the public meetings conducted as part of our supplemental EIS process.

Furthermore, a supplemental EIS is required when there is a significant change in the criteria included in an EIS such as the discovery of an endangered species in the project site. This bill proposes to require the community discussion and feedback sessions based on a period of time and not on the significance of any change. As such, this bill could require a community meeting despite no significant change in the community.

Finally, the DOT notes that the Environmental Council (which includes the Director of the Office of Environmental Quality Control as an ex officio voting member) is currently going through an update of the Hawai'i Administrative Rules (HAR) Chapter 11-200, Environmental Impact Statement (EIS) Rules. The DOT suggests that this bill be deferred until the OEQC completes its update process as the revisions to these Administrative Rules may address the concerns mentioned in this bill.

Thank you for the opportunity to provide testimony.



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COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Chris Lee, Chair

Rep. Nicole E. Lowen, Vice Chair

COMMITTEE ON WATER & LAND

Rep. Ryan I. Yamane, Chair

Rep. Chris Todd, Vice Chair

Wednesday, February 14, 2018

11:00 a.m.

Conference Room 325

HB 2298 RELATING TO THE ENVIRONMENT.

PLEASE HOLD

Aloha Chairs Lee and Yamane, Vice Chairs Lowen and Todd, 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 47 years. 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.

The preamble states, "the legislature concludes that establishment of an explicit time frame of validity for an environmental impact statement..." but no where does it address this issue.

Instead it states that talking to the community can keep an EIS from becoming stale. Thus, a 30-year-old EIS that ignores new scientific information on climate change, sea level rise, oxybenzone contamination, alien species control, etc., is still valid if the proponent holds community meetings, shares info, and records feedback.

Mahalo,
Henry Curtis,
Executive Director

HB-2298

Submitted on: 2/10/2018 10:22:49 PM

Testimony for EEP on 2/14/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Erica Scott	Cuddle Party	Support	No

Comments:



AMERICANS FOR DEMOCRATIC ACTION

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Karin Gill, Secretary	Chuck Huxel	Doug Pyle		

February 12, 2018

TO: Honorable Chairs Lee and Yamane Members of the EEP & WAL Committees

RE: HB 2298 Relating to the Environment

Opposition for hearing on Feb. 14

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We oppose HB 2298 as it would give an out for old Environmental Impact Statements to avoid being updated. The preamble states, "the legislature concludes that establishment of an explicit time frame of validity for an environmental impact statement..." but nowhere does it address this issue. Instead it states that talking to the community can keep an EIS from becoming stale. Thus, a 30-year-old EIS that ignores new scientific information on climate change, sea level rise, oxybenzone contamination, alien species control, etc., is still valid if the proponent holds community meetings, shares info, and records feedback.

Thank you for your consideration.

Sincerely,

John Bickel
President



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**Testimony to the House Committees on Energy & the Environment; and
Water & Land
Wednesday, February 14, 2018
11:00 AM
State Capitol, Conference Room 325**

RE: HB 2298 – Relating to the Environment

Chairs Lee and Yamane, Vice Chairs Lowen and Todd, and members of the committees:

My name is Gladys Quinto-Marrone, CEO of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-HAWAII is in **strong opposition** to H.B. 2298 which would require, for any proposed action involving construction for which an environmental impact statement has been accepted by an agency but for which construction has not commenced within five years of acceptance of the statement, the developer of the construction project to exercise due diligence with respect to any changes in the community where the project is planned and requires developers to hold community discussion and feedback sessions to discuss relevant and new concerns regarding the project.

The Environmental Impact Statement (EIS) process usually takes between 18 to 24 months, but could vary depending on the complexity of the project. The EIS is usually used to secure some type of government entitlement or permit which could months or years to complete, depending on the project.

Finally, market conditions dictate the pace at which a project can proceed based on at a minimum, the following:

- Availability of financing;
- Interest rates;
- Market conditions for the product type being developed.

The development of a project is a complex, linear process that is influenced by many factors outside of the control of the developer.

The bill defines changes in the community as follows: "Any changes in the community where the project is planned, including but not limited to community population changes, zoning changes, compatibility with land use plans, and secondary effects on the community, such as changes in traffic flow or visual blight."

The current law requires the developer to update the project, including doing another EIS if the "Project" changes. Once approved, it would be unrealistic to subject the project to additional public review based on arbitrary changes in the community. These changes should have been considered during the projects entitlement process.



These types of bills create uncertainty and unnecessary risk for projects in Hawaii, and would seriously impact the success of redevelopment along the Honolulu Transit corridor. With the State owning approximately 2,000 acres along the transit corridor, and its desire to maximize the number of affordable rental units on its lands, we question the why this type of legislation is being proposed.

BIA-HAWAII is in **strong opposition** to H.B. 2298, and appreciate the opportunity to provide our comments on this matter.

LATE



February 14, 2018

Representative Chris Lee, Chair
Representative Nicole Lowen, Vice Chair
House Committee on Energy and Environmental Protection

Representative Ryan I. Yamane, Chair
Representative Chris Todd, Vice Chair
House Committee on Water & Land

Comments, Concerns and Opposition to HB 2298, Relating to the Environment (Requires, for any proposed action involving construction for which an environmental impact statement has been accepted by an agency but for which construction has not commenced within five years of acceptance of the statement, the developer of the construction project to exercise due diligence with respect to any changes in the community where the project is planned and requires developers to hold community discussion and feedback sessions to discuss relevant and new concerns regarding the project.)

Wednesday, February 14, 2018, 11:00 a.m., in Conference Room 325

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF appreciates the opportunity to provide comments, concerns and **opposition** to this bill.

HB 2298. This measure requires, for any proposed action involving construction for which an environmental impact statement has been accepted by an agency but for which construction has not commenced within five years of acceptance of the statement, the developer of the construction project to exercise due diligence with respect to any changes in the community where the project is planned and requires developers to hold community discussion and feedback sessions to discuss relevant and new concerns regarding the project.

LURF's Position. The proposed bill is unnecessary, premature, arbitrary and capricious and unjustified. LURF opposes this measure, based on, among other things, the following:

- 1. Unnecessary: The current system of environmental review of dated EIS' and the need for supplemental EIS' is working.** Since the Turtle Bay case, the Office of Environmental Control and the counties have established a system for review of EIS' by public agencies and the public. Projects are required to file supplemental EIS/EA if the original project has substantially changed. There have been no complaints or legal action relating to the current government agency review and public review process.
- 2. Premature: The State Environmental Council is currently involved in the rule-making process to amend the environmental rules relating to EIS/EA.** Among other issues, the staleness and updated relevant information relating to EIS/EAs are being reviewed, discussed and addressed in the Environmental Council's rule-making process. LURF understands that in a few months, the proposed draft rules will be finalized and the Environmental Council will be holding public meetings in each county to receive public input, after which, revisions may be made to the proposed rules.
- 3. Arbitrary and capricious: The five-year time period is arbitrary and capricious; the Supreme Court did not recommend a five-year time period in its opinion in *Unite Here! Local 5 v. The City and County of Honolulu* ("Turtle Bay case").**
- 4. Unjustified: No facts have been presented that the current process or the ongoing Environmental Council rule-making process is flawed or problematic, and that a five-year "shelf-life" for an EIS/EA would thus be justified.**

Understanding the importance of the issues raised by this bill, **LURF respectfully requests that this bill be deferred, or held by this Committee** to allow the Environmental Council's rule-making process, with input from stakeholders, including, but not limited to government agencies, the public, private landowners, legal experts and other interested parties to review the issues that might have given rise to this bill.

HB-2298

Submitted on: 2/11/2018 9:49:00 PM

Testimony for EEP on 2/14/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Cory Harden		Oppose	No

Comments:

Aloha legislators,

Just talking story isn't enough to update a obsolete EIS. EISs should have explicit expiry dates.

mahalo,

Cory Harden, Hilo