

SB2645

Measure Title: RELATING TO THE ENVIRONMENT.

Report Title: Environmental Impact Statement; Delayed Construction;
Community Discussion and Feedback Sessions

Description: 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 ten 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. Takes effect 7/1/2025. (SD1)

Companion: [HB2298](#)

Package: None

Current Referral: AEN/WTL, CPH

Introducer(s): BAKER, Galuteria

DAVID Y. IGE
Governor

DOUGLAS S. CHIN
Lt. Governor



SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
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**TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE SENATE COMMITTEE ON CONSUMER PROTECTION & HEALTH

**FEBRUARY 22, 2018
10:00 A.M.
CONFERENCE ROOM 229**

**SENATE BILL NO. 2645 SD1
RELATING TO THE ENVIRONMENT**

Chairperson Baker and Members of the Committee:

Thank for the opportunity to testify on Senate Bill No. 2645 SD1 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 with the following concerns.

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.



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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 22, 2018

TO: HONORABLE ROSALYN BAKER, CHAIR, HONORABLE JILL TOKUDA, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION AND HEALTH

SUBJECT: **OPPOSITION TO S.B. 2645, SD1 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 ten 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. Takes effect 7/1/2025. (SD1)

DECISION MAKING ONLY

DATE: Thursday, February 22, 2018
TIME: 10:00 AM
PLACE: Capitol Room 229

Dear Chair Rosalyn Baker and Vice Chair Jill Tokuda and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

S.B. 2645, SD1, Relating to the Environment proposes to mandate that any construction project that has already been subject to an accepted environmental impact statement (EIS) and has not commenced within ten years of the EIS being accepted - exercise due diligence and inform the community of the status of the project. While it appears that this proposal may be to address a recent project that may have had a delayed commencement and may have changed slightly from its original plan, it appears that this proposal may chill any future developer's interest in any project, and could also interfere with ongoing administrative rulemaking that the Environmental Council is undertaking to address issues such as what this measure is attempting to address.

The Environmental Council has been undergoing a significant administrative rules overhaul that is now on its fourth draft. Due to the intense discussion among environmental council members and the public on topics including updates to an EIS, public input and process, and agency oversight it would be prudent to await the Council's suggested rule changes before proposing such a measure that may have significant unintended consequences. Due to the amount of resources that are required for any major construction project - this measure could create uncertainty in the market that could, among other things, negatively impact financing, availability of affordable housing projects, and confidence in the market.

Thank you for allowing us to share our opposition to this proposal.



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**Testimony to the Senate Committee on Commerce, Consumer
Protection & Health
Wednesday, February 21, 2018
10:00 am
State Capitol, Room 229**

RE: SB 2645 SD1 – Relating to the Environment

Chair Baker, Vice-Chair Tokuda, & members of the Committee:

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 S.B. 2645 SD 1, 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 ten 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.

We understand that the bill was amended at the prior Committee hearing to extend the time period for the review from five to ten years. Extension of the time period in this case does not address the underlying problem with this bill of creating uncertainty and risk for future projects in Hawaii.

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.

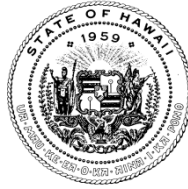
The bill defines changes in the community as follows:

“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 S.B. 2645, SD 1, and appreciate the opportunity to provide our comments on this matter.



Testimony by:
JADE T. BUTAY
INTERIM DIRECTOR

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

IN REPLY REFER TO:

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February 22, 2018
10:00 a.m.
State Capitol, Room 229

S.B. 2645, S.D. 1
RELATING TO THE ENVIRONMENT

Senate Committee on Commerce, Consumer Protection, and Health

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 ten (10) 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 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. Further, development timelines are quite long as DOT is regularly required to do extensive permitting and property acquisition following the completion of an EIS. Development may be further delayed if the final EIS is challenged, or when the developer is forced into litigation as a result of a formal complaint. In light of the lengthy process to do project development and construction, the requirement to conduct additional community discussions and feedback sessions may only 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. A supplemental EIS is usually needed when an action has changed substantively in size, scope, intensity, use, location or timing, among other things and/or if there is any change in any of these characteristics which may have a significant effect 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 discussion or feedback sessions despite no significant change in the project or effect of a project.

Furthermore, in doing a supplemental EIS, the DOT regularly conducts public notification, 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.

Finally, the DOT suggests deferring this bill as the Department 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 Hawaii Administrative Rules (HAR) Chapter 11-200, Environmental Impact Statement (EIS) Rules. Some of the updates being considered is in regards to supplemental EIS and the supplemental EIS process and may address the concerns mentioned in the bill.

Thank you for the opportunity to provide testimony.



LAND USE RESEARCH
FOUNDATION OF HAWAII

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February 21, 2018

Senator Rosalyn H. Baker, Chair
Senator Jill N. Tokuda, Vice Chair
Senate Committee on Commerce,
Consumer Protection and Health

Comments, Concerns and Opposition to SB 2645, SD1 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 ten 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. Takes effect 7/1/2025.)

Thursday, February 22, 2018, 10:00 a.m., in Conference Room 229

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. LURF believes that this measure was well-intended, and respectfully requests that this bill be **DEFERRED, or HELD by this Committee**, in order to allow the current Environmental Council's Environmental Impact Statement (EIS) rule-making process to proceed; and to allow communication and collaboration by stakeholders familiar with and involved in, the EIS process, including, but not limited to government agencies, the public, private landowners and developers, legal experts and other interested parties to review and address the issues that might have given rise to this bill.

SB 2645, SD1. 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 ten 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. This bill takes effect on July 1, 2025.

LURF's Position. While appearing to be well-meaning, the proposed bill is unnecessary, premature, arbitrary and capricious, unjustified and could lead to unintended negative consequences of delaying or stopping sorely needed rental and housing and projects. 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.** Projects are required to file supplemental EIS/EA if the original project has substantially changed. Since the Turtle Bay case, the Office of Environmental Control (OEQC), the Environmental Council, State agencies, the counties and developers have worked together and established a system for review and evaluation by government agencies and the public regarding whether a supplemental EIS is warranted. There have been no complaints or legal action relating to the current government agency review and public review process. **The current process established and understood by the OEQC is working – this bill is unnecessary.**
- 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 issue of 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. 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 ten-year "shelf-life" for an EIS/EA would thus be justified.** The current system of determining whether a supplemental EIS/EA is warranted – is working. **There is no reason to change it.**

4. **Ten-year “shelf life” is arbitrary, capricious and lacks any nexus:**
There is no justification for the ten-year “shelf life” for an EIS. The ten-year time period is arbitrary, capricious and has no nexus or basis in the reality of actual timetables for major housing developments.
The Supreme Court did not recommend a ten-year time period in its opinion in *Unite Here! Local 5 v. The City and County of Honolulu (“Turtle Bay case”)*. Due to financing, infrastructure, the market and absorption, major housing developments take longer than ten years - **Mililani** took forty years to complete, **Kakaako** is still developing housing over the past thirty years, and **Kapolei** will take more than thirty years to be fully completed. Also, the redevelopment of **Iwilei and Kapalama and other transit-oriented development** along the rail line will take much longer than twenty years to complete. Major State, county and private rental and for-sale housing projects will take more than twenty years to complete (**Mayor Wright, Ho’opili and Koa Ridge**).

5. **Changes the existing EIS law and imposes vague and ambiguous requirements will be the focus of legal challenges and lawsuits:**
Currently, the government agencies, developers and anti-development organizations understand the EIS law and the requirements. None of the major terms and requirements in this bill are defined. It is likely that there will be legal disputes over the following terms:
 - ✓ ***“exercise due diligence”***
 - ✓ ***“any changes in the community where the project is planned”***
 - ✓ ***“population changes”***
 - ✓ ***“changes in traffic flow”***
 - ✓ ***“compatibility with land use plans”***
 - ✓ ***“secondary effects on the community”***
 - ✓ ***“visual blight”***
 - ✓ ***“community discussion”***
 - ✓ ***“feedback sessions”***
 - ✓ ***“share relevant and new information surrounding the project”***
 - ✓ ***“social, environmental, and economic concerns”***
 - ✓ ***“shall be shared with the community”***

6. **Unintended consequences:** The lawsuits and legal challenges relating to the many vague and ambiguous requirements of this bill will result in delays of needed housing projects.

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 to proceed; and to allow communication and collaboration by stakeholders familiar with and involved in, the EIS process, including, but not limited to government agencies, the public, private landowners and developers, legal experts and other interested parties to review and address the issues that might have given rise to this bill.



SB2645 SD1
RELATING TO THE ENVIRONMENT

Senate Committee on Commerce, Consumer Protection, and Health

February 22, 2018

10:00 a.m.

Room 229

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment will recommend that the Board of Trustees **COMMENT** on SB2645 SD1, which would amend Chapter 343, Hawai'i Revised Statutes (HRS), to require developers to exercise due diligence and hold community discussions and feedback sessions on construction projects that have not commenced within ten years after their environmental impact statement (EIS) statements were accepted.

OHA appreciates this measure's recognition of a need for construction project developers to exercise due diligence and to share information with community members about projects with potentially significant environmental impacts, particularly when substantial time has passed since such projects were originally approved. Ensuring that community members are kept apprised of information related to unimplemented construction projects originally approved a decade ago or earlier, will provide a key opportunity to relay environmental and cultural concerns, including newfound concerns based on changed environmental and other conditions associated with the project..

However, OHA does respectfully recommend that the Committee ensure that this measure's due diligence and community discussion requirements should not replace or mitigate the need for a supplemental environmental impact statement (SEIS) when one would be otherwise required, regardless of how long a construction project may be delayed. **An SEIS is a critical means of ensuring that any new potential significant environmental impacts are properly accounted for in the eventual execution of an action, particularly when such impacts may be based on changes to project size, scope, location, timing, or other key characteristics of the action.** This not only helps to avoid or minimize unnecessary environmental and cultural impacts, but also allows for critical levels of community participation and feedback on actions that may result in such impacts.

Accordingly, should the Committee choose to move this measure forward, OHA respectfully recommends amending this measure by 1) removing its preamble, and 2) by amending and adding new language beginning on page 4, line 3:

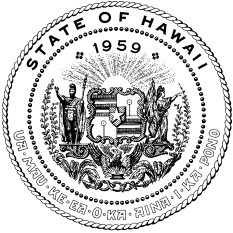
"constructed;

Provided that this section shall not be construed to excuse any project from supplemental statements as may be required due to changes in project size, scope,

location, intensity, use, and timing; to increases in the intensity of a project's environmental impacts; due to the failure to implement mitigation measures originally planned; or due to new circumstances or evidence that have brought to light different or likely increased environmental impacts not previously dealt with."¹

Mahalo nui loa for the opportunity to testify on this measure.

¹ See Haw. Admin. Rules §§11-200-26 `



OFFICE OF ENVIRONMENTAL QUALITY CONTROL

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DAVID Y. IGE
GOVERNOR

SCOTT GLENN
DIRECTOR

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Testimony of
SCOTT GLENN, Director

before the
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Thursday, February 22, 2018
10:00 AM
State Capitol, Conference Room 229

in consideration of
**SENATE BILL 2645 SENATE DRAFT 1
RELATING TO THE ENVIRONMENT**

Chair Baker, Vice Chair Tokuda, and Members of the Senate Committee on Commerce, Consumer Protection, and Health,

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 Section 341-3, HRS.

Senate Bill 2645 Senate Draft 1 proposes to 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 ten 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 Chapter 11-200, Environmental Impact Statements, Hawai'i Administrative Rules (HAR). Since July 2017, the Council has released three working drafts of rules changes to gain stakeholder and public feedback. The Council released its fourth working draft (Version 0.4) on February 20, 2018.

The next step for the Council is to meet and vote on working draft version 0.4 as the document to take to public hearing. Following approval of the draft by the Council, the Council will hold public hearings pursuant to Chapter 91 and Chapter 343, HRS. For more information on the Council's rules update, including process, timeline, and working drafts, please visit:

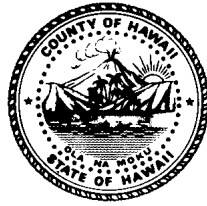
<http://health.hawaii.gov/oeqc/rules-update/>.

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. Version 0.4 incorporates aspects of DPP’s Green Sheet. Following rulemaking, the OEQC will issue guidance on the new rules, including on supplemental EISs.

While the Council is undertaking rulemaking, we respectfully request that the Legislature defer amending 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.

Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

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February 22, 2018

Testimony by
MICHAEL YEE
Director, County of Hawai'i Planning Department
before the
COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH
Thursday, February 22, 2018, 10:00 AM
State Capitol, Conference Room 229
in consideration of
SB 2645, SD1
Relating to the Environment

Thank you for providing our department with the opportunity to speak to SB 2654, SD1, relating to amendments to Chapter 343, Hawai'i Revised Statutes.

We do have concerns regarding the use of arbitrary timeframes assigned to the validity of an Environmental Impact Statement (EIS) when we see so many projects requiring more than five or ten years to commence construction. After completion of an EIS, requisite land use approvals, permitting and subsequent design and financing requires a lot of time to secure and implement.

We feel a better approach is to ensure that an approved EIS includes adequate assessment of potential impacts based on anticipated environmental conditions both present and future, along with proper forecasting protocols to anticipate future growth patterns and its associated demands upon resources, both infrastructural and environmental, over the anticipated development timeframe of the given project.

Thank you for considering our comments



KŪKULU KE EA A KANALOA
KAHO'OLAWE ISLAND RESERVE COMMISSION

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CARMEN HULU LINDSEY

Michael K. Nāho'opi'i
Executive Director

Testimony of
MICHAEL K. NĀHO'OPTI
Executive Director

Before the Senate Committee on

COMMERCE, CONSUMER PROTECTION AND HEALTH

Thursday, February 23, 2018
10:00 AM
State Capitol, Conference Room 229

In consideration of
SENATE BILL 2645 SENATE DRAFT 1
RELATING TO THE ENVIRONMENT

Senate Bill 2645 SD 1 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 ten 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 Kaho'olawe Island Reserve Commission (KIRC) opposes this proposal.

A 2002 Executive Order set aside an 8.6 acres property in Kihei, Maui for the KIRC to build its future Education and Operations Center. Presently, the KIRC has built a boathouse, base yard, native plant nursery and traditional *hale* as the first phase of using the site for KIRC operations and educational programs. The building of the KIRC Education and Operation Center is a key factor in KIRC developing financial self-sufficiency and sustainability through developing revenues at the Kihei facility to help fund the restoration and management of the Kaho'olawe Island Reserve.

An EIS was completed in 2003 and it has taken until 2017 to be secure funding to start the design and planning phase for the full project. We are anticipating to complete the entitlements and designs this year and submit additional funding requests to start construction in the next biennium budget.

The KIRC is currently following the Office of Environmental Quality Control (OEQC) administrative rules for implementation of Chapter 343, HRS. Adoption of this measure will

make the process unclear regarding if the supplemental EIS is necessary if no other conditions or scope has significantly change other than time.