



OFFICE OF ENVIRONMENTAL QUALITY CONTROL

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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

Friday, March 16, 2018
11:01 AM
State Capitol, Conference Room 325

in consideration of
SENATE BILL 2645 SENATE DRAFT 2
RELATING TO THE ENVIRONMENT

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

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

Senate Bill 2645 Senate Draft 2 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 proposal also would exempt the department of agriculture capital improvement projects on state agricultural lands and irrigation water systems. **The OEQC requests that this measure be deferred while the Environmental Council undertakes rulemaking and provides the following comments.**

The Environmental Council (“Council”) promulgates administrative rules for the implementation of Chapter 343, HRS. The Council is currently undergoing rulemaking to update the EIS Rules. Since July 2017, the Council has released four working drafts of rules changes to gain stakeholder and public feedback. On March 6, 2018, the Council voted to request permission for public hearings pursuant to Chapter 91, HRS and Chapter 343, HRS. The OEQC is now pursuing the administrative steps to request the hearings. 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. The draft that the Council voted on 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.



SB2645 SD2
RELATING TO THE ENVIRONMENT
House Committee on Energy and Environmental Protection
House Committee on Water and Land

March 16, 2018

11:01 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on SB2645 SD2, 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 projects are not commenced for a substantial length of time. Ensuring that community members are kept apprised of information related to unimplemented construction projects originally approved a decade prior, will provide a key opportunity to relay environmental and cultural concerns, including newfound concerns based on changed environmental and other conditions associated with such projects.

However, OHA does respectfully recommend that the Committees clarify 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 Committees choose to move this measure forward, OHA respectfully recommends amending this measure by 1) removing its preamble, 2) removing subpart (b) exempting the department of agriculture from exercising due diligence and holding community discussions, and 3) by inserting new language after page 4, line 3, to read as follows:

"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 et. seq.



March 15, 2018

Representative Chris Lee, Chair
Representative Nicole E. Lowen, Vice Chair
Members of the House Committee on Energy &
Environmental Protection

Representative Ryan I. Yamane, Chair
Representative Chris Todd, Vice Chair
Members of the House Committee on Water & Land
Twenty-Ninth Legislature
Regular Session of 2018

RE: **SB 2645, SD2 - Relating to the Environment**
Hearing date: March 16, 2018 at 11:01 am

Aloha Chairs Lee and Yamane, and Members of the Committees on Energy &
Environmental Protections and Water & Land,

Thank you for allowing me to submit testimony on behalf of NAIOP Hawaii in **OPPOSITION** to SB 2645, SD2 - Relating to the Environment. NAIOP Hawaii is the Hawaii chapter of the nation's leading organization for office, industrial, retail, residential and mixed-use real estate. NAIOP Hawaii has over 150 members in the State including local developers, owners, investors, asset managers and other professionals.

SB 2645, SD2 would require development projects that have already obtained an EIS to hold community discussion and feedback sessions and conduct additional due diligence regarding changes in the community if project construction is not commenced within ten years of the date of the EIS acceptance statement. NAIOP Hawaii understands the concerns community members may have with projects that aren't constructed within ten years. An additional EIS public hearing process, however, will further complicate development in Hawaii, increase the difficulty in obtaining financing and likely chill future developer's interest in projects throughout the state.

Obtaining an EIS is already a lengthy process which can add between 18 to 24 months to a project's commencement. Once the EIS is complete, there are numerous other factors determine the project's completion timeline including the availability of financing, interest rates, market demands and the permitting process, many of which our outside the developer's control. In fact, many of Hawaii's residential projects have taken decades to commence construction and causing a shortage of inventory of housing,

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including affordable housing. Adding another public hearing process to the EIS, after approval has already been obtained, will create further uncertainty and increased risk for projects. Not only will this further delay project completion, but the greater the risk will increase the difficulty in obtaining financing and increase the costs attributable to home buyers. With all of the state's efforts to create opportunities for affordable housing, there is no need to increase costs to deliver such projects with unnecessary and duplicative administrative burdens.

SB 2645, SD2 is also unclear on several aspects including:

- The bill fails to properly define terms “due diligence,” “any changes in the community,” “community discussion and feedback sessions” which leads to confusion and fails to provide clear notice to developers.
- The bill does not set forth a process by which “relevant and discovered information” must be shared, or even who determines such information.
- The bill fails to identify if there are any additional recourses community members have if they disagree with the project after the community feedback sessions (especially if all approvals have been received). For example, does a community member have a new private right of action to contest the approved EIS based upon the information shared at the community discussion?
- The bill does not provide direction on how the SB 2645, SD2 requirements intersect with any required supplemental EIS.

Simply put, SB 2645, SD2 will lead to significantly higher costs, delays and loss of opportunity for longer term investment and financing for Hawaii's projects. Accordingly, we strongly urge you to defer SB 2645, SD2.

Mahalo for your consideration,

Francisco Gutierrez
NAIOP Hawaii



**Testimony to the House Committees on Energy & Environmental Protection
and Water and Land
Friday, March 16, 2018 at 11:00 A.M.
Conference Room 325, State Capitol**

RE: SENATE BILL 2645 SD2 RELATING TO THE ENVIRONMENT

Chairs Lee and Yamane, Vice Chairs Lowen and Todd, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **opposes** SB 2645 SD2, 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 Chamber is Hawaii's leading statewide business advocacy organization, representing about 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

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.



Chamber of Commerce HAWAII

The Voice of Business

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 project's 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?

Additionally, in the SD 2, the legislature specifically exempts any capital improvement projects undertaken by the Department of Agriculture on state-owned agricultural lands and irrigation water systems from the requirements of this measure due to “. . . state funding can be delayed, and that capital improvement projects are frequently complex, taking years for construction to begin even after the environmental impact statement is completed.” We fail to see the distinction between a State DOA CIP project and other State, County CIP and/or private project.

Thank you for the opportunity to testify.

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LATE



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 16, 2018

TO: HONORABLE CHRIS LEE, CHAIR, HONORABLE NICOLE LOWEN VICE CHAIR
AND MEMBERS OF THE HOUSE COMMITTEE ON ENERGY AND
ENVIRONMENTAL PROTECTION

HONORABLE RYAN YAMANE, CHAIR, HONORABLE CHRIS TODD, VICE
CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON WATER AND LAND

SUBJECT: **OPPOSITION TO S.B. 2645, SD2, RELATING TO 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. Exempts department of agriculture capital
improvement projects on state agricultural lands and irrigation water systems.
Takes effect 7/1/2025. (SD2)

Hearing

DATE: Friday, March 16, 2018
TIME: 11:01 a.m.
PLACE: Conference Room 325

Dear Chair Lee, Chair Yamane, Vice Chair Lowen, Vice Chair Todd and Members of the
Committees,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over
hundred 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
and its' 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, SD2, Relating to Environment proposes to require that the developer of a construction
project exercise due diligence with respect to any changes in the community where the project is
planned, in addition to other additional requirements. While the intent of this measure, appears to
attempt to increase oversight of certain construction projects that may have sat dormant after the
initial EIS was filed, the intent would be overshadowed by potential unintended consequences of
such additional requirements on a long standing project. GCA has been actively participating in
the recent administrative rules amendments process by the Environmental Council and
commends the Council for working for the past year on cleaning up language.

S.B. 2645, SD2 is an attempt to reopen the EIS process to new scrutiny, which had originally been relied at initial acceptance by investors and owners in reliance of moving their project forward. It appears that the discussion is focused on whether a project's initial EIS is still valid after a certain number of years. This proposed change could bring affordable housing and other necessary transportation and airports projects to a halt if they are not initiated after the first five years of getting its EIS. Another area of concern is that the final EIS and the date of Substantial Commencement could significantly jeopardize a project, increase costs and risk the loss of financing for a project. A better solution may be to look toward what happened as a result of the *Turtle Bay* Decision, Honolulu's Department of Planning and Permitting implemented a well-documented process to determine whether a project has had any substantial changes to its scope.

GCA respectfully request that any laws amending the EIS law be deferred and instead allow the rulemaking process before the Environmental Council to move forward. It is important to understand how proposals like this measure, SB 2645, will impact current and future proposed public works and privately financed projects.

Thank you for the opportunity to comment.



LATE

**Testimony to the House Committees on Energy & Environmental Protection; and Water & Land
Friday, March 16, 2018
11:01 am
State Capitol, Room 309**

RE: SB 2645 SD2 – Relating to the Environment

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Chairs Lee & Yamane, Vice-Chairs Lowen & Todd, & 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 S.B. 2645 SD 2, 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.

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 project's 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 why this type of legislation is being proposed?

Finally, we find it ironic that in the SD 2, the legislature specifically exempts any capital improvement projects undertaken by the Department of Agriculture on state-owned agricultural lands and irrigation water systems from the requirements of this measure due to ". . . state funding can be delayed, and that capital improvement projects are frequently complex, taking years for construction to begin even after the environmental impact statement is completed."

We fail to see the distinction between a State DOA CIP project and other State, County CIP and/or private project.

BIA-HAWAII is in **strong opposition** to S.B. 2645, SD 2, and requests that the Committees hold this bill.

SB-2645-SD-2

Submitted on: 3/14/2018 4:19:41 PM

Testimony for EEP on 3/16/2018 11:01:00 AM

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

Comments:



March 15, 2018

Representative Chris Lee, Chair
Representative Nicole E. Lowen, Vice Chair
House Committee on Energy & Environmental Protection

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

Comments, Concerns and Strong Opposition to SB 2645, SD2 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. Exempts department of agriculture capital improvement projects on state agricultural lands and irrigation water systems. Takes effect 7/1/2025.)

Friday, March 16, 2018, 11:01 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 **strong opposition to SB 2645, SD2**. LURF believes that this measure was well-intended, and respectfully requests that this bill be **DEFERRED, or HELD by your Committees**, 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, SD2. 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 exempts Department of Agriculture capital improvement projects on state agricultural lands and irrigation water systems. This measure 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. **LURF supports the February 22, 2018 testimony of the Office of Environmental Quality Control, respectfully requesting that the Legislature defer amending Chapter 343, HRS while the Environmental Council is undertaking rulemaking, as changes to the statute may result in the council having to redo or start over its work to date.**
- 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 and mixed-use projects will take more than twenty years to complete (**Mayor Wright Homes, Oahu Community Correctional Center site in Kalihi, Aloha Stadium site, etc.**).

5. **Proposed changes to the existing EIS law imposes vague and ambiguous requirements, and 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. On the other hand, the major vague and ambiguous terms and requirements in this bill are not defined and not commonly understood. It is likely that needed housing and infrastructure projects will be delayed due to 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”***

Understanding the importance of the issues raised by this bill, **LURF respectfully requests that SB 2645, SD2 be DEFERRED, or HELD by your Committees** 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. LURF also notes that **SCR 68 and HCR 233** have been introduced, which request the Environmental Council to submit a report to the Legislature on the revision of Environmental Impact Statement rules, title 11, Chapter 200, Hawaii Administrative Rules.