



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-SECOND LEGISLATURE, 2024**

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**ON THE FOLLOWING MEASURE:**  
H.B. NO. 2798, RELATING TO ENERGY.

**BEFORE THE:**  
HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

**DATE:** Thursday, February 1, 2024      **TIME:** 9:30 a.m.

**LOCATION:** State Capitol, Room 325 and Videoconference

**TESTIFIER(S):** Anne E. Lopez, Attorney General, or  
Alison S. Kato or Bryan C. Yee, Deputy Attorneys General

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Chair Lowen and Members of the Committee:

The Department of the Attorney General provides the following comments on this bill.

This bill expands the definition of "power-generating facility" in section 343-2, Hawaii Revised Statutes (HRS), to include combustion electricity-generating facilities other than fossil-fueled. This change would result in the requirement of an environmental assessment for actions that propose such facilities.

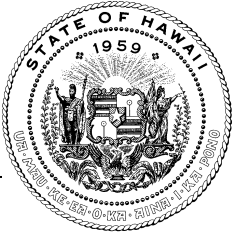
Section 1 of this bill discusses the purpose of the bill and includes references to "environmental impact assessment requirements" on page 1, lines 3-4 and 7, and page 2, line 2. The terms "environmental assessment" and "environmental impact statement" are distinct terms under chapter 343, HRS. The term "environmental impact assessment" does not exist as a legal term.

There is another bill, Senate Bill No. 2372, that is identical to House Bill No. 2798 except for the preamble in section 1 of both bills. Senate Bill No. 2372 does not contain the above problematic term, so we recommend substituting section 1 of Senate Bill No. 2372 for section 1 of House Bill No. 2798.

Alternatively, each instance of the term "environmental impact assessment" may be revised as follows:

- Page 1, lines 3-4 – deletion of the words "impact assessment"
- Page 1, line 7 – deletion of the words "impact assessment"
- Page 2, line 2 – deletion of the word "impact"

Thank you for the opportunity to testify.



# HAWAII STATE ENERGY OFFICE STATE OF HAWAII

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Testimony of  
**MARK B. GLICK, Chief Energy Officer**

before the  
**HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION**

Thursday, February 1, 2024  
9:30 AM  
State Capitol, Conference Room 325 and Videoconference

Providing Comments on  
**HB 2798**

**RELATING TO ENERGY.**

Chair Lowen, Vice Chair Cochran, and Members of the Committee, the Hawai'i State Energy Office (HSEO) offers comments on HB 2798 that changes the definition of "power-generating facility" for the purposes of environmental impact assessments to include new combustion electricity-generating facilities operating beginning January 1, 2024, that were not previously operational and includes power-generating facilities that are converting from one source of energy to another source, where the new source requires combustion and the electrical output rating of the converted facility exceeds 5.0 megawatts.

HSEO is concerned that this measure would place an undue burden on power plant operations, repairs, or maintenance projects associated with existing structures, facilities, and equipment, some of which may currently be declared exempt from the environmental assessment or environmental impact in Hawai'i. HSEO is further concerned there could be unintended consequences from imposing this type of requirement without studying which units, or plans, might be affected, under what conditions, and what the impacts might be on reliability, resilience, and cost.

Many combustion electricity generation systems are designed intentionally to be adjustable and to be able to use a variety of fuels in case of fuel supply, cost issues, or

other factors, including contractual obligations. This measure could interfere with dual fuel strategies, especially those that replace fuel oil and petroleum-based diesel with lower-cost, cleaner, and locally-produced alternatives, potentially including renewable fuels, renewable natural gas, hydrogen, electrofuels, or ammonia. The impact that a new requirement such as this might have on those efforts should be considered, especially if the new requirements are not determined to materially contribute to the stated objective of the legislation (to continue protection of the State's natural resources and overall public health).

HSEO also notes that the bill lacks key definitions, such as what would constitute a "conversion" from one source of energy to another source, or how broadly the term "source" would be interpreted (for example, if replacing one liquid fuel with another liquid fuel would be considered changing the source of energy; likewise if one blend of gaseous fuel were replaced with another blend of gaseous fuel, or one type of solid fuel with another).

HSEO defers to the appropriate agencies regarding controls, permits, and safeguards that are in place, or not in place, for the operation of such facilities. HSEO also defers to the appropriate agencies regarding whether the proposed change to the law would contribute to the stated objective of the legislation (protection of the State's natural resources and overall public health, from page 1, lines 14-15).

Thank you for the opportunity to testify.

TESTIMONY OF  
LEODOLOFF R. ASUNCION, JR.  
CHAIR, PUBLIC UTILITIES COMMISSION  
STATE OF HAWAII

TO THE  
HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

February 1, 2024  
9:30 a.m.

Chair Lowen, Vice Chair Cochran, and Members of the Committee:

**MEASURE:** H.B. No. 2798

**TITLE:** RELATING TO ENERGY.

**DESCRIPTION:** Clarifies the definition of “power-generating facility” for the purposes of environmental impact assessments to include new combustion electricity-generating facilities operating beginning January 1, 2024, that were not previously operational. Includes power—generating facilities that are converting from one source of energy to another source, where the new source requires combustion and the electrical output rating of the converted facility exceeds 5.0 megawatts.

**POSITION:**

The Public Utilities Commission (“Commission”) offers the following comments for consideration.

**COMMENTS:**

The Commission appreciates the intent of this measure to require environmental impact assessments for new combustion electricity-generating facilities.

The Commission observes that environmental impact assessments are an important component of ensuring that resources generating electricity across the State contribute to a healthy and clean environment. Additionally, the Commission anticipates that more power purchase agreements for new firm generation including new biofuel contracts and fuel conversion projects will come before the Commission as we continue along the transition to a 100% renewable energy future. Environmental impact assessments, which often times address impacts outside of the Commission’s purview, are an important factor

within the Commission's review of power purchase agreements for projects, but can contribute to additional review and processing time and costs for the project, particularly because the Commission may sometimes need to decide on project's power purchase agreement before an environmental impact assessment can be completed. Therefore, it will be important to ensure timely completion of such assessments and clear coordination amongst affected government agencies and stakeholders.

Thank you for the opportunity to testify on this measure.



**Hawaiian  
Electric**

**TESTIMONY BEFORE THE HOUSE COMMITTEE ON  
ENERGY & ENVIRONMENTAL PROTECTION**

**HB 2798**

**Relating to Energy**

Thursday, February 1, 2024  
9:30 am, Agenda Item #4  
State Capitol, Conference Room 325

Grant Imamura  
Director, Generation Project Development Dept.  
Hawaiian Electric

Chair Lowen, Vice Chair Cochran, and Members of the Committee,

My name is Grant Imamura and as Director of the Generation Project Development Department I am testifying on behalf of Hawaiian Electric **in opposition** to certain provisions of HB 2798, Relating to Energy and in particular changes to Chapter 343 the Hawaii Environmental Policy Act. Hawaiian Electric understands the importance of environmental protection laws and Chapter 343, as such oversight is necessary and important to protect our natural resources. As a company, we do our best to not only meet expectations for environmental protection but exceed them,

As you may know, environmental Review under Chapter 343 for applicants is initiated when two triggers are present. The first is triggered by a discretionary approval by a governmental entity as defined under the statute. Discretionary approvals that the Company commonly obtains under Chapter 343 are approvals of leases and Special Management or Conservation District Permits. The second trigger under the statute generally involve the use of state land but there are also other specific statutory triggers,

one of which is a Power Generating Facility which is currently defined as a fossil fuel fired plant greater than 5 megawatts or an expansion of a plant above 5 megawatts.

This bill is proposing to revise that definition with little basis. This bill would essentially expand the original intent of the law to include all combustion plants not just fossil fuel plants. More significantly to Hawaiian Electric, the bill additionally adds a provision that would include the conversion of an electricity generating facility from one source of energy to another, where the new source requires combustion with a rating that exceeds 5 megawatts.

We are very concerned with the bill's overreach and oppose the provision as written regarding the conversion from one source of energy to another where the new source requires combustion. We believe that the language here is overly broad and ambiguous as to the term "source of energy" and are concerned that, when read broadly it could encompass the replacement of fossil fuels with renewable fuels. This will directly impact projects that Hawaiian Electric will be encountering as it moves forward toward the State's renewable energy goals. A number of our facilities are projected to be converted from fossil fuels to renewable biofuels in the near future in the effort to reach the State's renewable portfolio 2045 goals. Similarly, as environmental regulations continue to develop there is always risk of being required to switch fuels for air permit compliance. We are concerned that this language will add time consuming compliance with Chapter 343, result in additional expense to rate payers, and would not be a productive effort as it would constitute a duplicative review. The impacts of changing fuel would already be evaluated under air permit modifications and since other aspects of a chapter 343 review will be unchanged, the efforts under this rule change will be duplicative and unnecessary.

We believe that this requirement is duplicative and unnecessary because for energy source changes at generating stations, the Hawaii State Department of Health Air Permit application process reviews the changes and air-related environmental impacts. Any changes to the source of energy are included and reviewed in the Air permit review for approval. It seems like a duplicative process that is not required.

We are also concerned that other fuel switches that are required by exigent circumstances, if coupled with a discretionary approval, as defined under Chapter 343, could require Chapter 343 compliance as well. Exigent circumstances such as natural disasters, regulatory changes, and market changes could require fuel switches to maintain generation capacity.

In summary, we oppose this provision and would request that it be stricken or that the section and the definition of source of energy be clarified such that it does not encompass the situation described above.

For all of these reasons, Hawaiian Electric opposes HB 2798. Thank you for this opportunity to testify.





**Testimony to the Committees on Energy & Environmental Protection  
February 1, 2024, 9:30 AM  
VIA Video Conference & Conference Room 325, Hawaii State Capitol**

**HB 2798**

Chair Lowen, Vice Chair Cochran, and members of the committee,

Hawaii Clean Power Alliance (HCPA) **opposes** HB 2798, which clarifies the definition of "power-generating facility" for the purposes of environmental impact assessments to include new combustion electricity-generating facilities operating beginning January 1, 2024, that were not previously operational. Includes power-generating facilities that are converting from one source of energy to another source, where the new source requires combustion, and the electrical output rating of the converted facility exceeds 5.0 megawatts.

Hawaii Clean Power Alliance is a nonprofit alliance organized to advance and sustain the development of clean energy in Hawaii. Our goal is to support the state's policy goal of 100 percent renewable energy by 2045. We advocate for utility-scale renewable energy, which is critical to meeting the state's clean energy and carbon reduction goals.

Current permitting of renewable energy projects require rigorous reviews by agencies and the community. Renewable energy facilities are subject to extensive and wide-reaching permitting requirements addressing everything from archeological, cultural, biological, water, shoreline, community, endangered species, and many more environmental impacts. Additionally extensive community outreach is required, and community benefits are developed and implanted by the developer. Developers are put through an extensive and thorough permitting vetting before the project is even allowed, much less open and operational.

With the recent blackouts occurring on multiple islands due to the instability of the old electric generating units, it is evident that the state must embrace and encourage all varieties of clean, renewable technologies, especially ones that replace the fossil fuel power generators.

When the state required fossil fueled generators to comply with §343.2, it was a conscious decision to recognize the issues and policies associated with these systems. Requiring clean renewable energy projects to adhere to the same environmental rigors of fossil fuels is a step in the wrong direction adding costs that will be directly reflected in the rates to ratepayers and will definitely delay delivering these projects onto the grid when they are desperately needed.

Because renewable energy projects are already subject to rigorous permitting requirements, many agencies and the community will have the opportunity to be involved in the process. At times, the project will be found to have "findings of no significant impacts," therefore allowing the project development to continue. At other times, it may be found to have impacts and further reviews including an EA or EIS may be required. However, the impacts of the project determine that rather than a blanket mandatory requirement. Additionally, requiring automatic compliance the §343 will add significant time delays sometimes more than two years, because permits, such as ones by the counties, will cannot be

processed concurrently, but must wait for the EIS to be completed. This could delay projects by two or more years.

In December, Hawaiian Electric Companies announced five significant firm renewable energy projects on Oahu and the Big Island, providing important reliability, resiliency, energy security, national security and decarbonization benefits. Three will allow current fossil fueled generators to be replaced by renewable biofuels. Two are greenfield developments, providing increased generation to add a significant amount of energy to stabilize the grid to allow for more solar rooftop, increased electric vehicles and resilience. These projects have already provided a binding price to Hawaiian Electric, which will be passed on to ratepayers, as well as committed to a guaranteed operational date (GCOD), taking current laws, permitting reviews into effect. To impose this bill may impose significant costs and time delays to these projects to the detriment of delivering these important projects.

We respectfully ask the committee to defer this bill.

Comments before  
February 1, 2024 House Committee on Energy and  
Environmental Protection Hearing

**SUPPORTING**  
**House Bill 2798**

Relating to Environmental Assessments for Power  
Generating Facilities

Mike Ewall, Esq.  
Founder & Director  
Energy Justice Network  
215-436-9511  
mike@energyjustice.net  
[www.EnergyJustice.net](http://www.EnergyJustice.net)

Aloha Honorable Committee members. Energy Justice Network is a national organization supporting grassroots groups working to transition their communities from polluting and harmful energy and waste management practices to clean energy and zero waste solutions. In Hawai'i, we've been working with residents who first sought our support in 2015. Since mid-2022, we have supported residents in forming the Hawai'i Clean Power Task Force and Kokua na Aina to address numerous energy and waste issues in the state.

We ask for your support for House Bill 2798 which we call the **Equal Application of Environmental Assessment Requirements Act**.

State law already requires environmental assessments for new or expanding power generating facilities that have a capacity greater than 5 megawatts (MW), but only if they're considered to be fossil fueled (powered by coal, oil or gas). This bill would recognize that there are environmental impacts of other types of fuels that may not be classified as fossil fuels, and that some power plants may be seeking to switch to different fuels that have not been analyzed in an environmental assessment.

Burning fossil fuels for power is polluting and harms community health as well as our local and global environments. However, burning "biomass" or waste is even worse for the climate and is often as bad or worse than fossil fuels by other measures of emissions. Extraction of resources and disposal of wastes are just differently harmful, but can still be quite significant.

Biomass burning releases 50% more carbon dioxide (CO<sub>2</sub>) than burning coal, per unit of energy.<sup>1</sup> Trash incineration is 65% worse than coal by the same measure. This is based on robust EPA data on facilities throughout the nation.<sup>2</sup> Other pollutants, such as mercury and hydrochloric acid from trash burning, have been found to be emitted at far higher amounts than coal burning as well. Extraction of trees for biomass, and disposal of ash are other impacts that should be considered.

While much of the energy value in trash comes from burning oil-based plastics, which are fossil fuels, trash burning is not categorized as a fossil fuel, and would currently be exempt from doing an environmental assessment.

Considering the significance of this loophole, allowing fuels more polluting than any fossil fuel to escape the requirement for an environmental assessment, this bill levels the playing field and ensures that assessments will be applied, regardless of what type of fuel is burned.

Mahalo nui loa for your support for this important bill.

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<sup>1</sup> <https://www.energyjustice.net/files/biomass/climate.pdf>

<sup>2</sup> <https://www.energyjustice.net/incineration/worsethancoal>

**HB-2798**

Submitted on: 1/31/2024 9:29:04 AM

Testimony for EEP on 2/1/2024 9:30:00 AM

| <b>Submitted By</b> | <b>Organization</b>       | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------------|---------------------------|---------------------------|
| Ted Bohlen          | Climate Protectors Hawaii | Support                   | Written Testimony<br>Only |

Comments:

All new or fuel-switching combustion power plants over 5MW should have to have an environmental assessment and consideration of greenhouse gas emissions.

Please pass this bill.

**HB-2798**

Submitted on: 1/31/2024 9:34:07 AM

Testimony for EEP on 2/1/2024 9:30:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Lisa Hallett        | Kokua na Aina       | Support                   | Written Testimony Only |

Comments:

Mahalo Chair and EEP Committee for taking our testimony.

Kokua na Aina is in strong support of the measure to equalize the application of environmental assessment requirements.

Please pass this no nonsense bill!

Mahalo nui loa,

Lisa Hallett

**HB-2798**

Submitted on: 1/31/2024 10:52:46 AM

Testimony for EEP on 2/1/2024 9:30:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| David Hunt          | Individual          | Support                   | Written Testimony Only |

Comments:

Please support House Bill 2798, the "Equal Application of Environmental Assessment Requirements Act."

State law already requires environmental assessments for new or expanding power generating facilities greater than 5 megawatts (MW). However, this is ONLY if they are fossil fueled.

HB2798 would correct an inappropriate, gaping loophole regarding environmental impacts of other types of fuels that may not be "classified as fossil fuels" - but in reality ARE.

HB2798 also addresses a legitimate concern wherein some power plants may be seeking to switch to different fuels that have not been analyzed in an environmental assessment.

Burning fossil fuels for power is polluting and harms community health as well as our local and global environments.

Burning "biomass" or waste is most often as bad or worse than fossil fuels by other measures of emissions.

Biomass burning releases 50% more carbon dioxide (CO2) than burning coal, per unit of energy.

Trash incineration is 65% worse than coal by the same measure. This is based on EPA data on facilities throughout the nation.

Other pollutants: mercury and hydrochloric acid from trash burning, have been found to be emitted at far higher amounts than coal burning.

Extraction of trees for biomass, and disposal of ash are other impacts that should be considered.

Much of the energy value in trash comes from burning PETROLEUM-BASED PLASTICS, which ARE fossil fuels, YET, trash burning is not categorized as a fossil fuel, and would currently be exempt from doing an environmental assessment.

I trust that you agree - Allowing fuels more polluting than any fossil fuel to escape the requirement for an environmental assessment is simply unacceptable.

HB2798 will correctly close this dangerous loophole and will help to protect public health now and into our currently uncertain future.

I respectfully ask for your support of HB2798.

**HB-2798**

Submitted on: 1/31/2024 12:51:01 PM

Testimony for EEP on 2/1/2024 9:30:00 AM

| Submitted By   | Organization | Testifier Position | Testify                |
|----------------|--------------|--------------------|------------------------|
| Mark A. Koppel | Individual   | Support            | Written Testimony Only |

Comments:

Aloha Honorable Committeemembers:

My name is Mark Koppel, PO Box 283, Hakalau HI 96710

I am writing in strong support of HB2798.

Key Point: Burning anything, BioMass included, is Burning. It produces CO<sub>2</sub>, and pollution, contributing to climate change. IT CANNOT BE OFFSET BY SOME FANCIFUL "PLAN" OF REPLANTING TREES, WHICH WILL NEVER HAPPEN, AND WON'T WORK ANYWAY BECAUSE TREES DON'T ABSORB CO<sub>2</sub> FOR AT LEAST 10-30 YEARS.

**No honest politician could possibly object to this bill.**

State law already requires environmental assessments for new or expanding power generating facilities greater than 5 megawatts (MW). However, this is ONLY if they are fossil fueled.

HB2798 would correct an inappropriate, gaping loophole regarding environmental impacts of other types of fuels that may not be "classified as fossil fuels" - but in reality ARE.

HB2798 also addresses a legitimate concern wherein some power plants may be seeking to switch to different fuels that have not been analyzed in an environmental assessment.

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Burning "biomass" or waste is most often as bad or worse than fossil fuels by other measures of emissions.

Biomass burning releases 50% more carbon dioxide (CO<sub>2</sub>) than burning coal, per unit of energy.

Trash incineration is 65% worse than coal by the same measure. This is based on EPA data on facilities throughout the nation.



All these "plans" are brought to our state by CONTINENTAL BILLIONAIRES AND INVESTMENT FUNDS FOR THE SOLE PURPOSE OF MAKING MONEY. They don't care about Hawaii at all.

Other pollutants: mercury and hydrochloric acid from trash burning, have been found to be emitted at far higher amounts than coal burning.

Extraction of trees for biomass, and disposal of ash are other impacts that should be considered.

Much of the energy value in trash comes from burning PETROLEUM-BASED PLASTICS, which ARE fossil fuels, YET, trash burning is not categorized as a fossil fuel, and would currently be exempt from doing an environmental assessment.

I trust that you agree - Allowing fuels more polluting than any fossil fuel to escape the requirement for an environmental assessment is simply unacceptable

HB2798 will correctly close this dangerous loophole and will help to protect public health now and into our currently uncertain future.

I ask for your support of HB2798.

Mahalo

Mark Koppel

Umauma