

OFFICE OF PLANNING STATE OF HAWAII

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DAVID Y. IGE
GOVERNOR

MARY ALICE EVANS
DIRECTOR
OFFICE OF PLANNING

Statement of
MARY ALICE EVANS
Director, Office of Planning
before the
HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION
Thursday, March 12, 2020
8:30 AM
State Capitol, Conference Room 325

in consideration of
SB 2663, SD2
RELATING TO THE ENVIRONMENTAL IMPACT STATEMENT LAW.

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

The Office of Planning (OP) **opposes** SB 2663, SD2 that would amend § 343-5, Hawaii Revised Statutes, to require the preparation of a supplemental environmental assessment or a supplemental environmental impact statement if the proposed action has not been implemented within fifteen years of the date of a determination of a finding of no significant impact or the acceptance of the environmental impact statement.

The criteria for determining if a supplemental environmental impact statement (EIS) is required is found in Hawaii Administrative Rules § 11-200.1-30 (a) which states in part:

“An EIS that is accepted with respect to a particular action shall satisfy the requirements of this chapter and no supplemental EIS for that proposed action shall be required, to the extent that the action has not changed substantively in size, scope, intensity, use, location, or timing, among other things. If there is any change in any of these characteristics which may have a significant effect, the original EIS that was changed shall no longer be valid because an essentially different action would be under consideration and a supplemental EIS shall be prepared and reviewed as provided by this chapter.”

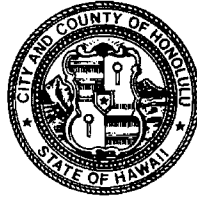
OP finds the current rule provides sufficiently precise criteria for determining the need for a supplemental EIS rather than assigning an arbitrary shelf-life to the original EIS. Large-scale developments or infrastructure projects are often built in phases over decades due to financial or market considerations. Requiring a supplemental EIS if the action is not implemented within fifteen years without considering whether any new or additional significant impacts are likely to exist can add unnecessary costs or delay to the project.

Thank you for this opportunity to testify.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

March 12, 2020

The Honorable Nicole E. Lowen, Chair
and Members of the Committee on Energy
and Environmental Protection
Hawaii House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Lowen and Committee Members:

**Subject: Senate Bill No. 2663, SD2
Relating to Environmental Impact Statement Law**

The Department of Planning and Permitting (DPP) **requests further clarification** on Senate Bill No. 2663, SD2, which would require a supplemental Environmental Assessment (EA) or supplemental Environmental Impact Statement (EIS) after the passage of 15 years from the date of the determination of a Finding of No Significant Impact (FONSI) or the acceptance of an EIS, if the proposed action is not implemented or if it involves a renewable energy project.

While we appreciate that the amended Bill removes the requirement that a project be "completed" within 15 years of a determination in order to avoid further environmental evaluation, it remains unclear what is meant by "not been implemented." This term is vague and could be misinterpreted in a way that negates the intent of this Bill. We agree that for projects that have been outwardly dormant since the acceptance of a FONSI or EIS and have not obtained the necessary pre-development entitlements, such as a state district boundary amendment and/or zone change, the DPP may want an updated evaluation as surrounding conditions and regulations may have changed. But we can do this already if final discretionary permits have not yet been obtained.

However, for projects with entitlements in place, and are proceeding with permitting, site work, or construction, a blanket requirement of a supplemental EA or supplemental EIS would only create additional complexity and costly delays for projects that may be near completion at the end of the 15-year period. For projects such as these, are they considered "implemented?" We would especially have serious concerns on delaying the completion of projects that furthers the City's overall objectives of promoting transit-oriented development and the delivery of affordable housing.

The Honorable Nicole E. Lowen, Chair
and Members of the Committee on Energy
and Environmental Protection
Hawaii House of Representatives
Senate Bill No. 2663, SD2
March 12, 2020
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Lastly, it is unclear as to why the amended Bill exempts renewable energy projects from the 15-year requirement. There is no language as to why it is necessary to effectively prioritize a renewable energy project, in contrast to other types of projects, such as essential public infrastructure, by not requiring its further environmental evaluation, even if there has been no progress for the last 15 years or even longer.

While we are fully supportive of the State's goal to achieve 100 percent renewable energy generation by 2045, it does not negate the need for thorough and timely environmental review and disclosure.

Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathy K. Sokugawa". The signature is fluid and cursive, with the first name "Kathy" being the most prominent.

Kathy K. Sokugawa
Acting Director

DEPARTMENT OF ENVIRONMENTAL SERVICES
CITY AND COUNTY OF HONOLULU

1000 ULUOHIA STREET, SUITE 308, KAPOLEI, HAWAII 96707
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DIRECTOR

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ROSS S. TANIMOTO, P.E.
DEPUTY DIRECTOR

IN REPLY REFER TO:
WAS 20-106

March 10, 2020

The Honorable Nicole E. Lowen, Chair
The Honorable Tina Wildberger, Vice-Chair
and Members of the Committee on Energy & Environmental Protection
House of Representatives
State Capitol, Room 325
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Lowen, Vice-Chair Wildberger, and Members of the Committee on Energy & Environmental Protection:

SUBJECT: SB 2663 SD2 - Relating to the Environmental Impact Statement Law

The Department of Environmental Services (ENV) of the City and County of Honolulu supports the intent of SB 2663 SD2, which requires supplemental environmental assessment or supplemental environmental impact statement after the passage of 15 years from the date of the determination of a finding of no significant impact or the acceptance of the statement, if the proposed action is not implemented.

However, we recommend adding the following paragraph to account for how ENV programs its long-range capital improvement construction projects. This is similar to the approach adopted by other municipalities with similar programs.

"When an accepted environmental assessment or environmental impact statement is programmatic or for a portfolio of projects planned to be implemented over a specific period of time longer than 15 years, then the requirement to prepare a supplemental environmental assessment or supplemental environmental impact statement pursuant to subsection (j) would be based on exceeding that specific period of time and not a 15 year limit."

Thank you for your consideration.

Sincerely,


Lori M.K. Kahikina, P.E.
Director

SB-2663-SD-2

Submitted on: 3/10/2020 3:06:25 PM

Testimony for EEP on 3/12/2020 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Randy Fernley	Coral Fish Hawaii	Support	No

Comments:



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE HOUSE COMMITTEE ON
ENERGY & ENVIRONMENTAL PROTECTION
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 325
THURSDAY, MARCH 12, 2020 AT 8:30 A.M.**

To The Honorable Nicole E. Lowen, Chair;
The Honorable Tina Wildberger, Vice Chair; and
Members of the Committee on Energy & Environmental Protection,

**COMMENTS ON TO SB2663 SD2 RELATING TO
THE ENVIRONMENTAL IMPACT STATEMENT LAW**

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce, with approximately 650 members. I am writing share our comments on SB2663.

We appreciate the changes to the bill that require the supplemental EA/EIS after 15 years if the proposed action is not implemented. This change would be acceptable to us if it is solely dependent upon the developer's actions. However, our concern is if no action is taken because of a state or county requirement that could not be met either because of lack of area infrastructure or additional cost being imposed on the developer that did not make the project pencil out at that time, etc. If there has been no work or movement on a project and no correspondence with state or county government explaining any obstacle they need to overcome, then this would be reasonable.

We appreciate the opportunity to testify on this matter.

Sincerely,

Pamela Tumpap

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Energy and Environmental Protection
Thursday, March 12, 2020 at 8:30 A.M.
Conference Room 325, State Capitol**

**RE: SB 2663 SD2, RELATING TO THE ENVIRONMENTAL IMPACT STATEMENT
LAW**

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

The Chamber of Commerce Hawaii ("The Chamber") **opposes** SB 2663 SD2, which would require a supplemental environmental assessment (EA) or supplemental environmental impact statement (EIS) after the passage of 15 years from the date of the acceptance of the statement or the determination of a finding of no significant impact, if the proposed action is not completed.

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.

The 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 take months or years to complete, depending on the project. Setting up arbitrary timeframes or shelf-lives for EA's and EIS's does not recognize that other market forces, not government processes, have an impact on when and how a project is developed after it has been entitled and approved.

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 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 a simple passage of time.



Chamber *of* Commerce HAWAII

The Voice of Business

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 believe this legislation will undermine this effort.

Thank you for the opportunity to testify in opposition of SB 2663 SD2.

SB-2663-SD-2

Submitted on: 3/9/2020 4:03:16 PM

Testimony for EEP on 3/12/2020 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Cathy Goeggel	Animal Rights Hawai'i	Support	No

Comments:

SB-2663-SD-2

Submitted on: 3/10/2020 8:24:10 PM

Testimony for EEP on 3/12/2020 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jeanelle Miller	Individual	Comments	Yes

Comments:

Dear Chair Lowen, Vice Chair Wildberger, and members of the committee;

I am an ecologist and attorney with a certified specialty in environmental law. I am testifying today as an individual because I have significant concerns about the current version of this bill SB 2663.

I believe a period of years review for environmental assessments and environmental impact statements closes a loophole in Hawaii law and conforms to national standards; However, setting the period at 15 years is grossly inadequate.

Reassessment is necessary because current law only allows review of approved EA and EIS if there is a significant change in the project. This means that only project changes can initiate reassessment and usually that means a public interest group must initiate a litigation to allow a court to determine if the project change was significant. Some of this litigation could be avoided by allowing reassessment after certain period of time between planning and implementation. However, the loophole that period of years review seeks to close isn't about the project planning but rather the changes in science and policy that occur while a project is pending.

Now is not the time to set long timelines for reassessments. Climate change is increasing and changing our environmental needs at an exponential rate. If we only reassess every 15 years we guarantee that we will grandfather in projects that violate current climate science, updated FEMA maps, and coastal zone impacts. We should not be drafting laws that force the impacts of our choices onto our children like this bill will do if it remains at 15 years.

The ninth circuit currently considers reassessment of NEPA EA and EIS necessary at 2 years. This allows all federal public spending to consider most recent climate change predictions and allow the public to weigh in as their own needs in the community change.

HEPA and NEPA are not just burdens on industry, they are necessary tools to allow the public and civil servants to assess the best interests of the environment in perpetuity for the people. Reassessment need not be overly burdensome but complete lack of updates burdens the people by not addressing known externalities.

It is partly because we do not have adequate reassessment procedures that projects like Waimanalo Bay Beach Park, Kahuku Wind Farm, and even Thirty Meter Telescope have come to a head. Science and policy update quickly and there is no reason why development shouldn't take a second look before final implementation when the EA or EIS is no longer in line with science or policy. The environmental policy act process should not grandfather in plans that are detrimental to people and environment given current scientific knowledge.

Additionally, no project type, industry, or plan should be exempted from this process. If there is a concern about the cost of doing business for certain industries or agencies that the State hopes to advance, there are other tools that can be used that do not violate the public's right to process.

I therefore humbly request that if this bill move forward this year, that the reassessment period be changed to two years to conform to the ninth circuit federal standard, and that any exemption from reassessment be removed.

With aloha,

Jeanelle Miller, Esq.

SB-2663-SD-2

Submitted on: 3/11/2020 2:22:24 PM

Testimony for EEP on 3/12/2020 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dale Evans	Individual	Oppose	No

Comments:

I think that setting a mandatory review of EA/EIS studies at 15 years is far out of step with reality. My experience in Waimanalo regarding the City and County of Honolulu's plan to construct a regional sports complex at Waimanalo Bay Beach Park informs my opinion. Almost ten years passed between the EA study and initiation of construction on the project, and much had changed that would have been considered if a shorter review period was in effect. Climate change, sea level rise, FEMA flooding projections, community support, status of other sports facilities in the community, traffic flow through the community, regulations constraining commercial use of parks and beaches, all are changed since the original study. Letting these development plans rest for almost a decade and then permitting them to then emerge like zombies, without mandatory reconsideration, is not wise planning. I suggest that at most a four-year period for mandatory review would be appropriate given the pace of change in the current day and age.

SB-2663-SD-2

Submitted on: 3/12/2020 5:49:20 AM

Testimony for EEP on 3/12/2020 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Malia Marquez	Individual	Oppose	No

Comments:

LATE



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

LATE

ON THE FOLLOWING MEASURE:

S.B. NO. 2663, S.D. 2, RELATING TO THE ENVIRONMENTAL IMPACT STATEMENT LAW.

BEFORE THE:

HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

DATE: Thursday, March 12, 2020 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Clare E. Connors, Attorney General, or
William F. Cooper, Deputy Attorney General

Chair Lowen and Members of the Committee:

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

In section 1 of this measure, on page 13, line 14, the bill provides “if an action other than one involving a renewable energy project has not been implemented within fifteen years of the date of . . .” (emphasis added).

It is unclear what the word “implemented” means or how that provision would be determined. To avoid confusion and a possible legal challenge, we recommend that the committee define the word “implemented” by adding a definition to section 343-2, Hawaii Revised Statutes, that sets forth the intended meaning of the term in this context.

Thank you for the opportunity to provide testimony.

LATE



March 12, 2020

Representative Nicole E. Lowen, Chair
Representative Tina Wildberger, Vice Chair
House Committee on Energy & Environmental Protection

Comments, Concerns and Opposition to SB 2663, SD2, RELATING TO ENVIRONMENTAL IMPACT STATEMENT LAW (Requires a supplemental environmental assessment or supplemental environmental impact statement after the passage of 15 years from the date of the determination of a finding of no significant impact or the acceptance of the statement, if the proposed action is not implemented. Exempts actions involving a renewable energy project from this requirement. Effective 7/1/2050. [SD2])

EEP Hearing: Thursday, March 12, 2020, 8:30 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 utility companies. 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 SB 2663, SD2.

SB 2663, SD2. This measure requires a supplemental environmental assessment (SEA) or supplemental environmental impact statement (SEIS) after the passage of an arbitrary time period of 15 years from the date of the acceptance of the Environmental Impact Statement (EIS) or the determination of a finding of no significant impact, if the proposed action is not implemented. It also exempts actions involving a renewable energy project from this requirement.

LURF's Position. The proposed bill is unnecessary, premature, arbitrary and not justified. LURF **opposes** this measure, based on, among other things, the following:

1. **Unnecessary:** Currently, the criteria for determining if a SEIS or SEA is required is very detailed and based on facts and science, which is more fair, reasonable and justifiable than an arbitrary 15-year limit. The criteria for an SEIS is provided in Hawaii Administrative Rules (HAR) § 11-200.1-30 (a), which states:

“An EIS that is accepted with respect to a particular action shall satisfy the requirements of this chapter and no supplemental EIS for that proposed action shall be required, to the extent that the action has not changed substantively in size, scope, intensity, use, location, or timing, among other things. If there is any change in any of these characteristics which may have a significant effect, the original EIS that was changed shall no longer be valid because an essentially different action would be under consideration and a supplemental EIS shall be prepared and reviewed as provided by this chapter.”

2. **Unnecessary:** The current system of environmental review of whether an SEIS should be required - - is working. Since the Turtle Bay case, the Office of Environmental Quality Control and the counties have established a system for review and determination of whether a SEIS or SEA is required that involves the Applicant, the State or county permitting agencies, OEQC, and the public notice and review. An example is the process used by the City and County of Honolulu: (a) Projects are required to prepare a report for the county regarding any changes in the project or environment using the criteria in HAR § 11-200.1-30 (a); (b) the county permitting agency reviews the report and project file to determine whether a SEIS or SEA is required and makes a determination; (c) the county agency forwards the original Applicant report, and the county determination to the OEQC (SEIS determination packet); and (c) the OEQC prints the determination in the OEQC bulletin so the public will be advised. Over the past several years, there have been no complaints or legal action relating to the current government agency review and public review process.
3. **Premature:** The State Environmental Council has recently amended the State’s environmental rules relating to EIS/EA, which address ongoing environmental issues relating to projects. The Legislature should allow time for these rules to work.
4. **Arbitrary:** The fifteen-year time limit appears to be arbitrary, and not based on facts or science.
5. **Unintended consequences to large-scale or multi-phased projects.** This bill could have negative impacts on large-scale developments or infrastructure projects which are often built in phases over decades due to financial or market considerations. As several government agencies have testified, arbitrarily requiring an SEIS or SEA after fifteen years without any consideration of any new or additional significant impacts are likely to exist can add unnecessary costs, delay and litigation for need housing and infrastructure projects.
6. **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 fifteen-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.**