

OFFICE OF PLANNING STATE OF HAWAII

DAVID Y. IGE
GOVERNOR

MARY ALICE EVANS
DIRECTOR
OFFICE OF PLANNING

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Statement of
MARY ALICE EVANS
Director, Office of Planning
before the
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT
Wednesday, February 5, 2020
1:30 PM
State Capitol, Conference Room 224

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

Chair Gabbard, Vice Chair Ruderman, and Members of the Senate Committee on Agriculture and Environment.

The Office of Planning (OP) offers **comments** on SB 2663 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 is not completed within fifteen years of the date of a determination of a finding of no significant impact or the acceptance of the environmental impact statement.

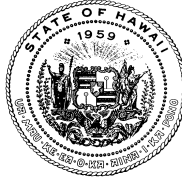
The criteria for determining if a supplemental environmental impact statement (EIS) is required is found in Hawaii Administrative Rules (HAR) § 11-200.1-30 (a) which states in part:

“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 completed 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 the opportunity to testify.

DAVID Y. IGE
GOVERNOR OF HAWAII



KEITH KAWAOKA
ACTING DIRECTOR

BRUCE S. ANDERSON, Ph.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
OFFICE OF ENVIRONMENTAL QUALITY CONTROL
235 SOUTH BERETANIA STREET, SUITE 702
HONOLULU, HAWAII 96813
oeqchawaii@doh.hawaii.gov

Testimony COMMENTING on SB2663
RELATING TO THE ENVIRONMENTAL IMPACT STATEMENT LAW

COMMITTEE ON AGRICULTURE AND ENVIRONMENT
SENATOR MIKE GABBARD, CHAIR
SENATOR RUSSELL E. RUDERMAN, VICE CHAIR

Testimony of Keith Kawaoka
Acting Director, Office of Environmental Quality Control
Attached Agency to the Department of Health

Hearing Date: February 5, 2020
1:30 p.m.

Room Number: 224

- 1 **OEQC's Position:** The Office of Environmental Quality Control (OEQC), an attached agency to the
- 2 Department of Health which administers Chapter 343, Environmental Impact Statements, Hawai'i
- 3 Revised Statutes (HRS) appreciates the intent but has some concerns about this bill. OEQC believes the
- 4 recently approved new administrative rules already establish the various criteria under which
- 5 supplemental or additional review is necessary and appropriate, so no change to the statute is required at
- 6 this time. OEQC is not opposed to the housekeeping aspect of the bill correcting the references to the
- 7 National and Hawaii registers of historic places.
- 8 **Purpose and Justification:** Primarily, the bill would amend section 343-5, HRS, to require the
- 9 preparation of a supplemental environmental assessment (EA) or a supplemental environmental impact
- 10 statement (EIS) if the proposed action is not completed within fifteen years of the date of a determination
- 11 of a finding of no significant impact (FONSI) based on a final EA or the acceptance of an EIS.
- 12 Presently, the criteria for determining if a supplemental EIS is required is found in Hawai'i
- 13 Administrative Rules (HAR), Chapter 11-200.1-30 (a) which states in part:

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

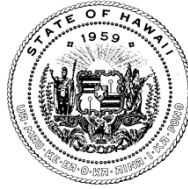
8 Additionally, while the rules intentionally do not provide for a “Supplemental EA,” HAR Chapter 11-
9 200.1-11 explicitly provides for the situation where an action has already received a FONSI, and allows a
10 proposing or approving agency to make the determination that additional environmental review is
11 warranted. The agency has the discretion to require another EA, or can determine that an EIS or
12 Exemption is more appropriate.

13 Without resorting solely to an arbitrary amount of time (15 years) as this bill proposes, the current rule
14 provides sufficiently precise criteria for determining the need for a supplemental environmental review,
15 based on a number of potentially relevant characteristics.

16 Large-scale developments or infrastructure projects are often built in phases over decades due to financial
17 or market considerations. Requiring a supplemental EIS if the action is not completed within fifteen
18 years without considering whether any new or additional significant impacts are actually likely to exist
19 can add unnecessary costs or delay to the project.

20 Finally, the proposed bill appears to be internally contradictory in that while newly proposed language for
21 paragraphs section 343-5(j) (1) and (2) asserts that supplemental EAs or EISs shall be required, the newly
22 proposed language for paragraph section 343-5(k) (2) provides that the relevant action could be
23 determined to be exempt from the requirement to prepare an EA.

24 Thank you for the opportunity to testify.



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 5, 2020
1:30 p.m.
State Capitol, Room 224

S.B. 2663
RELATING TO RELATING TO THE ENVIRONMENTAL IMPACT STATEMENT LAW

Senate Committee on Agriculture and Environment

The Department of Transportation (DOT) offers **comments** on S.B 2663. This measure requires a supplemental environmental assessment or supplemental environmental impact statement 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.

Some DOT projects may take many years to complete. Project construction could be on phases as funding becomes available. The DOT offers **amended text** to Section 343-5 (j) proposed by S.B. 2663. The revised text is provided below and includes deletion of the strikethrough text, such that this bill, and if passed, the subsequent amended HRS will not trigger supplemental environmental assessment or supplemental environmental impact statement when action is being implemented.

Section 343-5 (j) Notwithstanding anything in this chapter to the contrary, if an action has not been implemented ~~or completed~~ within fifteen years of the date of:

Thank you for the opportunity to provide testimony.

DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU

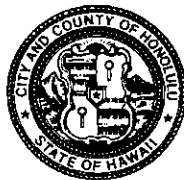
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KIRK CALDWELL
MAYOR



MARK YONAMINE, P.E.
DIRECTOR

HAKU MILLES, P.E.
DEPUTY DIRECTOR

January 31, 2020

The Honorable Mike Gabbard, Chair
The Honorable Russell E. Ruderman, Vice-Chair
and Members of the Committee on Agriculture and Environment
Senate
State Capitol, Room 224
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Gabbard, Vice-Chair Ruderman, and Members:

SUBJECT: Senate Bill No. 2663
Relating to the Environmental Impact Statement Law

The Department of Design and Construction (DDC) respectfully **opposes** Senate Bill No. 2663 in its current form. The bill requires preparation and processing of a supplemental environmental assessment (EA) or environmental impact statement (EIS) if the subject action has not been implemented or completed within fifteen years of the date of determining a finding of no significant impact for an EA or the date of EIS acceptance.

DDC plans, designs, and constructs projects that span more than 15 years. An example would be a new major park such as Central Oahu Regional Park, for which an overall master plan was developed and an EIS was prepared. It was intended that full build out of the park would take more than 15 years. Having to do a supplemental EIS for projects such as this would result in a significant delay and a significant added cost.

DDC requests that the bill be amended to exempt long-term programmed and/or master-planned projects from the 15-year time limit for implementing or completing a project.

Based on the above considerations, DDC respectfully **opposes** Senate Bill No. 2663 in its current form.

The Honorable Mike Gabbard, Chair
and Members of the Committee on
Agriculture and Environment
January 31, 2020
Page 2

Thank you for the opportunity to express our opposition to this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Yonamine".

Mark Yonamine, P.E.
Director

DEPARTMENT OF ENVIRONMENTAL SERVICES
CITY AND COUNTY OF HONOLULU

1000 ULUOHIA STREET, SUITE 308, KAPOLEI, HAWAII 96707
TELEPHONE: (808) 768-3486 • FAX: (808) 768-3487 • WEBSITE: <http://envhonolulu.org>

KIRK CALDWELL
MAYOR



LORI M.K. KAHIKINA, P.E.
DIRECTOR

TIMOTHY A. HOUGHTON
DEPUTY DIRECTOR

ROSS S. TANIMOTO, P.E.
DEPUTY DIRECTOR

IN REPLY REFER TO:
WAS 20-33

February 3, 2020

The Honorable Mike Gabbard, Chair
The Honorable Russell E. Ruderman, Vice-Chair
and Members of the Committee on Agriculture
Senate
State Capitol, Room 224
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Gabbard, Vice-Chair Ruderman, and Members of the Committee on
Agriculture:

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

The Department of Environmental Services (ENV) of the City and County of Honolulu has significant concerns with SB 2663, requiring a supplemental environmental assessment or supplemental environmental impact statement 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, and offers the following comments.

ENV wastewater projects are typically completed in well under 15 years of the EIS acceptance date. An exception would be when circumstances due to changing regulations, construction challenges, and other issues that are beyond our control, such as natural disasters or strikes, cause a significant delay. We propose modifying the language in this bill to exempt projects, where on-site work has already substantially begun, from having to perform a second or supplemental EIS in the event the project is not completed within 15 years of the acceptance of the initial EIS or the determination of no significant environmental impact. Requiring a new EIS after on-site work has already begun is impractical, could result in project delays, and would lead to significant increases in project cost.

We also 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.

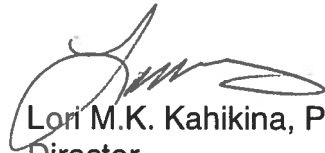
“When an accepted environmental assessment or environmental impact statement is programmatic or for a portfolio of projects planned to be

The Honorable Mike Gabbard, Chair
The Honorable Russell E. Ruderman, Vice-Chair
and Members of the Committee on Agriculture
Senate
February 3, 2020
Page 2

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,

A handwritten signature in black ink, appearing to read "Lori M.K. Kahikina". The signature is stylized with a large initial "L" and a long horizontal stroke extending to the right.

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

Council Chair
Alice L. Lee

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Riki Hokama
Kelly Takaya King
Michael J. Molina
Tamara Paltin
Shane M. Sinenci
Yuki Lei K. Sugimura



Director of Council Services
Traci N. T. Fujita, Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

February 4, 2020

TO: The Honorable Mike Gabbard, Chair
Senate Committee on Agriculture and Environment

FROM: Tamara Paltin, Councilmember for West Maui
Maui County Council

SUBJECT: **HEARING OF February 5, 2020; SUPPORT OF SB 2663,
RELATING TO RELATING TO THE ENVIRONMENTAL IMPACT
STATEMENT LAW**

Thank you for the opportunity to testify in **SUPPORT** of this important measure. The purpose of this bill requires a supplemental environmental assessment or supplemental environmental impact statement 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 Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this support in my capacity as an individual member of the Maui County Council.

I offer testimony in support of this measure for the following reasons:

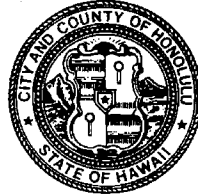
1. Our environment is constantly changing, therefore, an EIS from 15 years ago may not reflect the current environmental status of a project area.
2. New technologies, reporting techniques, and data may be available to supplement the previous EIS and may uncover impacts that were not cited in the original EIS.
3. 15 years is a considerable amount of time to ensure a proposed action is completed, outside of that time frame, information on the project should be resubmitted to take into account potential changes to the environment, law, community plans, etc.

Thank you, once again, for the opportunity to testify and for your consideration.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

February 5, 2020

The Honorable Mike Gabbard, Chair
and Members of the Committee on Agriculture and Environment
Hawaii State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Gabbard and Committee Members:

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

The Department of Planning and Permitting (DPP) **offers comments** on Senate Bill No. 2663, which would require a supplemental Environmental Assessment (EA) or supplemental Environmental Impact Statement (EIS) after the passage of 15 years from the date of acceptance of the statement or determination a Finding of No Significant Impact (FONSI) or the acceptance of an EIS, if the subject project is not implemented or completed.

The Bill is unclear as to why the period of 15 years has been chosen for a project's further environmental evaluation, and what is meant by "not been implemented" and "completed?" These terms are 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. 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.

Thank you for this opportunity to comment.

Very truly yours,

A handwritten signature in black ink that reads "Kathy K. Sokugawa".

Kathy K. Sokugawa
Acting Director

SB-2663

Submitted on: 1/28/2020 3:42:50 PM

Testimony for AEN on 2/5/2020 1:30:00 PM

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

Comments:

This is just common sense!



**Testimony to the Senate Committee on Agriculture and Environment
Wednesday, February 5, 2020 at 1:30 P.M.
Conference Room 224, State Capitol**

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

Chair Gabbard, Vice Chair Ruderman, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **opposes** SB 2663, 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.



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

LATE

**HEARING BEFORE THE SENATE COMMITTEE ON
AGRICULTURE & ENVIRONMENT
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 224
WEDNESDAY, FEBRUARY 5, 2020 AT 1:30 P.M.**

To The Honorable Mike Gabbard, Chair;
The Honorable Russell E. Ruderman, Vice Chair; and
Members of the Committee on Agriculture & Environment,

**TESTIMONY IN OPPOSITION TO SB2663 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 opposition to SB2663.

The Maui Chamber of Commerce opposes SB2663 to require a supplemental environmental assessment (EA) or environmental impact statement (EIS) after the passage of 15 years from the date of the acceptance of the statement or determination of a finding of no significant impact, if the proposed action is not completed. Completing an EA or EIS is difficult, time consuming and expensive and many developers, including those building affordable housing and rentals, have to go through the process. However, sometimes projects are delayed due to county and state infrastructure requirements or modifications imposed by other reviews (this is often the case for projects that are delayed to this extent), and not by any fault of the developer. The time and cost it would take for the same project to go through the process again is extremely high and another impediment to the process. It would raise the cost of the development and those costs get passed down. As affordable housing and rentals are one of our top priorities, this bill could hamper these desperately needed projects.

Therefore, we oppose this bill and ask that it be deferred. 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.

SB-2663

Submitted on: 1/27/2020 8:16:24 PM

Testimony for AEN on 2/5/2020 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments:

SB-2663

Submitted on: 2/3/2020 6:08:38 PM

Testimony for AEN on 2/5/2020 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Quinn	Individual	Support	No

Comments:

Dear Honorable Committee Members:

Please support SB2663 in order to protect Hawaii's fragile ecosystem.

Thank you for the opportunity to present my testimony.

Andrea Quinn

Kihei, HI

SB-2663

Submitted on: 2/3/2020 11:52:04 PM

Testimony for AEN on 2/5/2020 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Azuma Chrupalyk	Individual	Support	No

Comments: