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## Hawaii Senate Bill Sidesteps Public Input

By Chad Blair CONNECT | 04/11/2013

The same withering criticism that surfaced about a number of controversial development bills in the 2012 [Hawaii Legislature](#) has been raised about a single measure this session.

"Dirty," "unconstitutional," "gut and replace," "shortcut exemptions" and "no public input" are some of the descriptions directed at [House Bill 252](#), which has a critical vote Thursday.

As [first drafted](#), HB 252 (introduced by Big Island Rep. Faye Hanohano) asked the Native Hawaiian Roll Commission to give annual updates to lawmakers and called for amending the definition of "qualified Native Hawaiian" to include those who meet "expanded" ancestry requirements.



Flickr: trailblazer

But now there is a proposed second section that includes language from a separate controversial bill that could open agricultural and rural districts to geothermal development.

The new section incorporates the language of [House Bill 932](#), which concerns permitting for geothermal projects.

HB 932, which passed the Hawaii House of Representatives, stalled in the state Senate last month. But it lives anew in HB 252.

If it passes and heads to conference committee, the public will not be able to testify directly on the measure. That upsets some senators who say the amended bill bypasses due process and ignores public participation.

"In my opinion the voice of the community was ignored," said Democrat Russell Ruderman, whose Big Island district includes Puna Geothermal Venture. "This is a continuing of a longstanding trend, where the impact of the community is disenfranchised."

### 'Transparent And Accountable'

The original HB 252 calls for allowing people who meet requirements of [Kamehameha Schools](#) or of any Hawaiian registry program of the [Office of Hawaiian Affairs](#) to qualify for the roll commission, which was [created in 2011](#) to identify members for a future Hawaiian government.

But the added geothermal section runs more than 7,000 words — 10 times the length of the original bill.

HB 252 was amended by the Senate Tourism and Hawaiian Affairs Committee April 1 to establish county geothermal permitting, mediation and regulatory standards.

Geothermal developments could happen in rural, urban and agricultural districts, according to the proposed Senate Draft 2, even if it's currently not allowed under county zoning laws or plans.

Put another way, the bill appears to allow counties to bypass their own rules when it comes to geothermal.

Senate Majority Leader [Brickwood Galuteria](#), who also chairs Tourism and Hawaiian Affairs, said he understood that the public might be frustrated about having limited input.

"But we were backed up into a deadline in committee," he said. "And we didn't post [the proposed amendment] either because it was not a 'gut and replace.' We've added to the bill."

(At least one critic calls the change a "cut and paste" job.)

Galuteria said the Senate gave the bill a "defective date" of 2050 — a common legislative procedure — "to allow the bill to move into conference committee and for people to get to their legislators and weigh in that way."



Still, the Senate's maneuvering has raise red flags.

Just a month ago, Kim, who is in her first term as president, said the Senate was moving legislation to "reform and improve government, making it more transparent and accountable."

Sen. [Malama Solomon](#), meanwhile, has been the target along with [Donovan Dela Cruz](#) of critics like North Shore activist Choon James, who [accuse the lawmakers](#) of "mischief" and "cloak and dagger" games regarding legislation to repeal the [Public Land Development Corporation](#).

The PLDC-repeal measure, [House Bill 1133](#), passed the Senate unanimously Tuesday and awaits either House acceptance of Senate amendments or heads to

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conference committee.

But HB 252 has raised concerns among many of the same renewable-energy, pro-environment, controlled-growth activists that rallied last year to defeat legislation they argued skirted the law and was harmful to Hawaii.

"Considering that geothermal resources are found on all islands, and the sneaky way Part II was inserted in this bill at the last minute, and without public input, HB 252 HD1 SD1 must be opposed," warned Donna Wong, executive director of Hawaii's Thousands Friends, in an email blast to supporters.

"SD1" refers to the first Senate draft of the bill, now largely contained in an SD2.

Henry Curtis, executive director of Life of the Land, said the SD2 is unconstitutional, citing Article III, Section 14: "Each law shall embrace but one subject."

Curtis, who also spoke out about the bill on HPR's "The Conversation" Wednesday morning, told supports in an email that the amended bill represents "two diverse subjects in one bill."

But Galuteria rejected the charge that HB 252 was unconstitutional.

"There is no violation," he said. "We made sure the title in and of itself was broad enough to embrace more than one piece. Other bills do that. This is titled 'related to government.' That's as broad as you can get."

Galuteria also said the SD2 incorporates the recommendations of a floor amendment introduced Tuesday by Ruderman that eliminates the "mediation" clause.

"That gives back the home rule," said Galuteria, referring to county control of zoning and other ordinances.

### 'Public Confidence'

But others say the amending of HB 252 remains troubling.

Carmille Lim, executive director of Common Cause Hawaii, is urging the Senate president to remove HB 252 from Thursday's Senate agenda and to take "whatever action is necessary to remove the amendment, before allowing a vote on the bill."

Lim told Kim that, at the beginning of this legislative session, Common Cause Hawaii and 13 other organizations asked her "to rein in various abuses of the legislative process by promulgating new rules that would increase transparency and public confidence in the legislature."

"Based on results, we can assume that did not happen," Lim wrote. "The current attempt to by-pass the public (and also perhaps legislators), is but one of several high-handed actions by various Senate committees. We had counted on your leadership to change the tone of the Senate. We continue to hope that you will live up to these expectations."

In addition to his frustration about preventing due process and public input, Ruderman said there is actually a better geothermal permitting bill before lawmakers.

House Bill 106, also sponsored by Hanohano and two other Big Island lawmakers, attracted the support of most testifiers, said Ruderman, "but was killed in committee because Malama wanted HB 932 instead. Now we see 932 inserted into some other bill."

HB 106, which cleared the House, was deferred by three Senate committees March 21. One of them was Water and Land, chaired by Solomon and with Ruderman and Dela Cruz as members.

#### DISCUSSION: What do you think the Senate should do with this bill?

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Discussion

17 comments

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Bart Dame · Top Commenter

Brickwood's response to Henry Curtis's observation that the State Constitution prohibits two unrelated subjects in a single bill is a misreading. Yes, the title of the bill was written so broadly that it could satisfy the requirement that the subject of a bill not conflict with the title. But it does not comply with the requirement a bill "...shall embrace but one subject."

If Brickwood's ultra-elastic reasoning were acceptable, the constitutional requirement can be evaded by simply titling all bills, "Relating to Government." Clearly, that is absurd.

If Brick thinks he can evade the Constitution so easily, maybe he can also apply his wizardry to the Senate's own rules. Rule 54, Section 2 says:

"(2) The fundamental purpose of any amendment to a bill shall be germane to the fundamental purpose of the bill."

Not sure how the geothermal permitting process is germane to the purpose of the original bill. Except, of course, because Tuto Pele is the mother of all Hawaiians.

(Sorry, Brick).

Reply · Like · 9 · April 11, 2013 at 1:20pm



Choon James · Top Commenter · Real Estate Broker at Owner

Unfortunately, some live by the brutal "end justifies the means" route.

As citizens, we deem it toxic to good governance and democracy when basic due process, transparency, public engagement, and private property rights are suppressed and subverted as means to achieve the goals.

No one is against alternative energy options or any other good ideas. However, where is the fair play accorded to the public? I submit that even a kindergartener can explain what is fair and what is not. <http://www.youtube.com/watch?v=QZLPHTCK3KY>

Reply · Like ·  4 · April 14, 2013 at 11:15pm



**Richard Bidleman** · ★ Top Commenter · UC Berkeley

Richard Ha has a vested interest in seeing geothermal expansion. Puna does have the lowest per capita income in all of Hawaii. Bring more geothermal is not going to solve the problem.

Bear in mind, the current geothermal plant is in the most hazardous lava zone on the Island. The head of the Hawaii Volcano Observatory has said when (not if) there is an eruption, it will affect everyone who is dependent upon geothermal generated electricity.

Reply · Like ·  2 · April 11, 2013 at 11:32am



**Chad Blair** · ★ Top Commenter · Works at Honolulu Civil Beat

Richard, thanks for this helpful information, too.

Reply · Like ·  1 · April 11, 2013 at 11:36am



**Common Cause Hawaii**

As we understand it, informational hearings are held to benefit and inform the legislature, not the public. Legislators invite people with experience or expertise to hold a presentation. While the briefings are open to the public, no testimony is accepted. An informational briefing is not an adequate substitute for a public hearing.

Reply · Like ·  1 · April 11, 2013 at 3:38pm



**Jim Shon** · ★ Top Commenter · Director at Hawai'i Educational Policy Center

Actually, there is nothing to prohibit the Conference Committee from holding a hearing, or for the Senate Committee to hold an impromptu "public information hearing" on the topic to allow the public to address the amendments.

Reply · Like ·  2 · April 11, 2013 at 9:33am



**Chad Blair** · ★ Top Commenter · Works at Honolulu Civil Beat

Well, that would be refreshing!

Reply · Like ·  2 · April 11, 2013 at 11:09am



**Common Cause Hawaii**

As we understand it, informational hearings are held to benefit and inform the legislature, not the public. Legislators invite people with experience or expertise to hold a presentation. While the briefings are open to the public, no testimony is accepted. An informational briefing is not an adequate substitute for a public hearing.

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**Jim Shon** · ★ Top Commenter · Director at Hawai'i Educational Policy Center

It is not what it is usually held for, it is the flexibility that is inherent in the legislature to create opportunities for input outside of the formal rules or schedule. They hold town meetings. They hold informal meetings all the time with constituencies. To accept the formal rules as the parameters of the possibilities is to give up too easily. There is a Kupuna Caucus that meets all the time with legislators to heard input. There is a Keiki Caucus. If there is a will there is a way.

Reply · Like ·  2 · April 11, 2013 at 8:43pm



**Richard Ha** · ★ Top Commenter · Works at Hamakua Springs Country Farms

In Iceland they kept an old oil fired plant in standby in case lava covered the geothermal plant. They pointed it out to me as we drove by.

Reply · Like ·  2 · April 11, 2013 at 11:53am



**Richard Ha** · ★ Top Commenter · Works at Hamakua Springs Country Farms

I have no vested interest in geothermal other than trying to lower rates. Tried to lower rates via Ku'oko'a a while ago. But, that is not active now. Am still trying to lower electricity rates. The effects on the people have been largely ignored.

Reply · Like ·  1 · April 11, 2013 at 11:50am



**Richard Ha** · ★ Top Commenter · Works at Hamakua Springs Country Farms

The Big Island Community Coalition supported both HB106 and HB932 during the session because both bills addressed county home rule. But, both bills died and now the only vehicle to bring back county home rule is HB252. Sen Ruderkmann has been an anti geothermal activist for more than 20 years. He would like to see a contested case hearing for dispute resolution. Others would like to see a mediation process where there is process and time certain. Pahoehoe school complex has the highest number of participants in the free/reduced school lunch program in the state. 89% of the students are in the program. The Big Island electricity rates have been 25% higher than Oahu's for as long as anyone can remember. That higher electricity bill takes away from keiki education. Yet, education is the best predictor of family income. Geothermal is half the cost of oil for generating electricity. And, because the Big Island will be over the "hot spot" for 500,000 to a million years, the cost will be stable, unlike oil which will rise to who knows how high. The BICC advocates for low cost electricity to the rubbah slippah folks. So, we support the bill that brings back county home rule with a mediation process

Reply · Like · April 11, 2013 at 10:59am



**Chad Blair** · ★ Top Commenter · Works at Honolulu Civil Beat

Richard, thanks for the helpful information.

Reply · Like ·  1 · April 11, 2013 at 11:16am



**Richard Ha** · ★ Top Commenter · Works at Hamakua Springs Country Farms

Say Hello to Sophie for me. I'm happy to help Chad!

Reply · Like · April 11, 2013 at 2:13pm



**Michael Greenough** · ★ Top Commenter



Of course the pro-GeoTherm folks want mediation. It has no teeth as has been shown as such by the multiple mediation agreements that have been completely ignored by PGV in the past - determination and implementation of the best available control technology, the establishment/implementation of a geothermal asset fund, and the development of an emergency response plan. These were agreed to by PGV in order to get their permitting, yet were openly ignored.

History in this country, and in particular in Hawai'i, is riddled with corporations getting away with ignoring their responsibilities (whether legally mandated or voluntarily agreed upon) to the communities in which they do business. By keeping the option for contested case hearings, the public will have at least an outside chance of holding the corporations to their word when they conveniently fail to do so.

Mediation is nothing more than a tool to circumvent due process. Besides, what does PGV and other parties interested in the development of GeoTherm fear from going through an established legal court appeal process should the need for such become necessary?

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**Patricia Blair** · Top Commenter · University of Nebraska-Lincoln

It appears that a public information hearing is the next step, Conference Committee.

Reply · Like · April 11, 2013 at 3:14pm

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