

Honolulu, Hawaii

MAR - 3 2006

RE: S.B. No. 2345
S.D. 1

Honorable Robert Bunda
President of the Senate
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committees on Energy, Environment, and International Affairs and Judiciary and Hawaiian Affairs, to which was referred S.B. No. 2345 entitled:

"A BILL FOR AN ACT RELATING TO THE UNIFORM ENVIRONMENTAL COVENANTS ACT,"

beg leave to report as follows:

The purpose of this measure is to provide for environmental covenants for contaminated property to assure long-term compliance with requirements needed to protect the public and environment when complete removal of contaminants is not feasible, practical, or necessary.

The Hawaii Commission to Promote Uniform Legislation submitted testimony in support of this measure. The Department of Health testified in support of the measure with amendments. The Land Use Research Foundation of Hawaii and three individuals submitted testimony in opposition. The Hawaiian Electric Company, Hawaii Electric Light Co., and Maui Electric Co. submitted comments.

The Department of Health testified that there is a growing reliance on practical, cost-effective, risk-based site remedies that allow some contamination to remain on property if public health and the environment are adequately protected. Land use restrictions, mandated environmental monitoring requirements, and common engineering management tools are designed to control the potential environmental risk of contamination and protect human



health. These measures should be reflected on the land records as a valid real property servitude so they can be effectively monitored and enforced over time. This enables previously contaminated property that may otherwise remain vacant, blighted, and unproductive, to return to the stream of commerce.

Your Committees find that this measure establishes a process for creating and tracking environmental covenants and provides enforcement authority to assure that owners of contaminated property observe the required management controls placed on the property by the Department of Health.

Upon further consideration, your Committees amended this measure by:

- (1) Changing any reference to "a municipality or other unit of local government" to "a county";
- (2) Clarifying that the agency shall determine the person who shall be required to provide a copy of an environmental covenant under section -7;
- (3) Designating the holder as the party responsible for providing a copy of the final recorded covenant and other required documents to the Department of Health;
- (4) Clarifying that a holder may not assign the holder's interest without the consent of the other parties specified in subsection -9(a);
- (5) Deleting the administrative enforcement and penalty provisions in sections 11.1 through 11.5 of the measure; and
- (6) Making technical, non-substantive amendments for clarity and style.


Your Committees considered testimony from the Hawaiian Electric Company that the measure as written may affect the normal operation and maintenance of public utilities and other providers of essential public services that historically have located facilities on real property but have no recorded interest in the property, and its proposed amendment to remedy this. However, your Committees question whether its proposed amendment circumvents the rights of property owners by creating an interest



that the public utilities or other providers currently do not have or may not be entitled to in the real property.

As affirmed by the records of votes of the members of your Committees on Energy, Environment, and International Affairs and Judiciary and Hawaiian Affairs that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2345, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2345, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on behalf of the members of the Committees on Energy, Environment, and International Affairs and Judiciary and Hawaiian Affairs,



COLLEEN HANABUSA, Chair

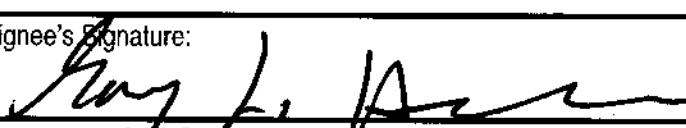


J. KALANI ENGLISH, Chair



The Senate
Twenty-Third Legislature
State of Hawaii


Record of Votes of the
Committee on Energy, Environment and International Affairs
(Bills and Resolutions)

Measure:* SB 2345	Committee Referral: EIA/JHW	Date: March 1, 2006		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is to: <input type="checkbox"/> Pass, unamended (2312) <input checked="" type="checkbox"/> Pass, with amendments (2311) <input type="checkbox"/> Hold (2310) <input type="checkbox"/> Recommit (2313)				
Members	Ayes	Ayes(WR)	Nays	Excused
ENGLISH, J. Kalani (C)	✓			
KOKUBUN, Russell S. (VC)	✓			
HANABUSA, Colleen	✓			
HOOSER, Gary L.	✓			
HEMMINGS, Fred				✓
TOTAL	4			1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Do not list more than one measure per Record of Votes.

The Senate
 Twenty-Third Legislature
 State of Hawaii

Record of Votes of the
 Committee on Judiciary and Hawaiian Affairs
 (Bills and Resolutions)

Measure:* SB 2345	Committee Referral: EIA/JHW	Date: 3/1/06		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is to: <input type="checkbox"/> Pass, unamended (2312) <input checked="" type="checkbox"/> Pass, with amendments (2311) <input type="checkbox"/> Hold (2310) <input type="checkbox"/> Recommit (2313)				
Members	Ayes	Ayes(WR)	Nays	Excused
HANABUSA, Colleen (C)	✓			
HEE, Clayton (VC)				✓
CHUN OAKLAND, Suzanne	✓			
ENGLISH, J. Kalani	✓			
IHARA, Jr., Les	✓			
WHALEN, Paul				✓
TOTAL	4	0	0	2
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Do not list more than one measure per Record of Votes.