



LAND USE RESEARCH
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The Honorable Senator Norman Sakamoto, Chair, and Members
Committee on Education
The Honorable Senator Ron Menor, Chair, and Members
Committee on Energy and the Environment
State Senate, Conference Room 225
Honolulu, Hawaii 96813

**Subject: Senate Bill No. S.B. No. 2848 Relating to the Environment
(UH Study regarding EIS process)**

Dear Chairs Sakamoto and Menor and Committee Members:

My name is David Arakawa, Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable and rational land use planning, legislation and regulations affecting common problems in Hawaii.

LURF supports the concept and intent of S.B., No. 2848, but is opposed to the Bill's current form. LURF would support a comprehensive study of the State's environmental review process, if conducted by the Office of the Auditor ("Auditor"), the Office of Environmental Quality Control ("OEQC"), or the Legislative Reference Bureau ("LRB"); that the contract be awarded based on a competitive request for proposal process, that the study's scope be consistent with administrative laws, rules and regulations; and that the majority of the interdisciplinary team is composed of practitioners with substantial experience and expertise in preparing environmental impact statements ("EIS") and environmental assessments.

S.B. No. 2848. This bill provides an appropriation of \$300,000 to the auditor and directs the auditor to execute a contract with the University of Hawaii ("UH") to conduct a study on the State's environmental review process. The proposed bill also includes:

- The intent of this Act is to revive the 2006 appropriation to the UH Environmental Center to perform a comprehensive review of the State's environmental impact statement process under chapter 343, Hawaii Revised Statutes, provide it stronger support, and to focus it more specifically on developing a strategy for modernizing Hawaii's environmental review system;
- The study shall include a process to obtain input on the recommendations from representative stakeholders;

- To ensure that a comprehensive review is conducted, the UH, through its Research Corporation, shall establish an interdisciplinary team of faculty, researchers and students from the UH Department of Urban and Regional Planning, the Environmental Center and the Environmental Program at the William S. Richardson School of Law, among other technical experts in the field of environmental management and planning.....

Problems with the 2006-2007 UH Study. LURF was one of the 343 stakeholders who participated in the original 2006-2007 review, which was awarded by direct contract to the UH Environmental Center and resulted in a very disappointing process. LURF recommends the review be conducted in a fair and unbiased manner by the Auditor, OEQC or LRB, and not via a direct contract with the UH. The original intent of the study was well-intended, however, the composition of the interdisciplinary team resulted in a somewhat one-sided initial review of Hawaii's EIS process:

- A majority of the 2006-2007 interdisciplinary team was not truly interdisciplinary – it lacked practitioners and did not have substantial experience and expertise in preparing an EIS, or environmental assessment;
- Although the law defines an EIS as a “disclosure” document, a number of the 2006-2007 team started the review process with the initial position that the EIS process should change to allow the EIS reviewers to direct the desired alternatives and to impose requirements and conditions similar to ministerial and discretionary permit approvals;
- Many of the discussions and recommendations of the 2006-2007 team were based on their individual philosophies and beliefs, and not related to the framework of administrative laws, policies and processes of existing administrative and environmental laws; and
- There was no opportunity to add practitioners with substantial experience and expertise in preparing EIS’ and environmental assessments to the interdisciplinary team.

Immediate legislation is also needed to address the unintended consequences of recent litigation. While LURF supports a comprehensive review of Chapter 343, it also recognizes that legislation is needed this session to address the unintended consequences of recent court decisions which have expanded the situations where an environmental assessment is required beyond those originally intended by the legislature. Under the current interpretation, an environmental assessment could be required for minor access improvements, easements and utility projects which touch a state or county right of way. There are several Senate bills proposed (S.B. No. 2037 or S.B. 2808), which exempt existing public streets, roads, highways, trails or bikeways from the applicability of the EIS law under certain circumstances.

Conclusion. LURF appreciates the opportunity to express our views on this matter and while we support the intent of this bill, we urge you and your committee **not to pass this measure in its current form.** Instead, we would recommend: the study be conducted under the supervision of the Auditor, OEQC or LRB; that the contract be awarded based on a competitive request for proposal process; that the scope study be consistent with administrative laws, rules and regulations; and that the majority of the interdisciplinary team be composed of practitioners with substantial experience and expertise in preparing environmental impact statements (“EIS”) and environmental assessments.

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