

L A T E

February 2, 2008

Ref: SB 2848 – EIS Study

Chair Menor, Chair Sakamoto, Vice Chair Carroll, Vice Chair Tokuda, and Members of the Committee:

The Environmental Center on two prior occasions has conducted comprehensive studies of the State EIS system (Cox, et al., 1978; Rappa, et al., 1991.) Each of these prior studies was commissioned in response to recognition of the need to reconcile evolving State environmental management needs with the statutory and regulatory frameworks of the EIS system. Each contributed recommendations for amendments in provisions of these frameworks, most of which subsequently were adopted.

In the 17 years that have elapsed since the most recent review of the EIS system, numerous changes have occurred in the theory and practical application of environmental management. Advances in understanding of ecological relationships, growing appreciation of more subtle implications of human impacts on natural systems, and evolving policy formulations within government agencies with environmental management responsibilities have created new challenges for professional environmental managers. These challenges have led to both general and particular shortcomings in the ability of existing EIS procedures to deal adequately with new and continuing development proposals.

Findings of the Hawai'i Supreme Court published on August 31, 2007 illuminated in detail definitive legal standards relating to interpretation of the State's existing EIS law. Subsequent legislative proceedings further underscore the need for a comprehensive approach to evaluate existing law and practices relating to environmental management in Hawai'i. The breadth and scope of public concern regarding environmental planning, policy, and sustainable practices now is comparable to levels that induced the legislature to convene the Temporary Commission on Environmental Planning in 1973, ultimately leading to our EIS law (HRS 343) and our Environmental Policy Act (HRS 344.) No less comprehensive an effort now is warranted, and the findings in Section 1 of SB 2848 reflect this urgency. Anything less than a thorough examination and critique of the State's EIS infrastructure and environmental planning and policy processes would amount to simply tinkering at the margins of what has proven to be the foundation of Hawai'i's future.

I strongly support expedited approval and enactment of this measure, to allow the important work begun by Dr. Doak Cox, Governor Burns, Senator Kenny Brown, and countless others to be carried forward deliberately and comprehensively.

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Feb. 2, 2008

L A T E

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Senate Committees on Energy and Environment, and
Education

Joint Hearing Feb 4, 2008
1:15 p.m. Conference Room 225

S2848 – EIS Study

Dear Chairs Menor and Sakamoto, Vice-Chairs Hooser and Tokuda, and Members:

I write in **SUPPORT** of **SB2848**, which would enable the University of Hawaii to conduct a comprehensive study of Hawaii's EIS system. I regret I cannot attend this hearing personally due to a conflict with my teaching schedule.

The only amendment I request is that the Legislative Reference Bureau replace the State Auditor as the legislative entity that will ensure the study and contract are properly carried out through RCUH at the University.

As the committee knows, a study of Chapter 343 was authorized by the Legislature two sessions ago, but was terminated due to an unfortunate contract problem between the UH Environmental Center and the Department of Health.

The last such review was conducted the Environmental Center in 1991, over 17 years ago. Given almost two decades of judicial, administrative, and practical developments in EIS law, including the recent Hawaii Superferry decision, the need for modernizing Hawaii's 1970s-style EIS law study – to meet global best-practices but also to better reach Hawaii's sustainability goals -- is even greater now than before.

The expertise of UH Manoa's Department of Urban and Regional Planning, as well as the Law School's Environmental Law Program, would be added to the Environmental Center to ensure adequate capacity and a comprehensive, balanced approach.

As the Director of the Environmental Law Program, I would be honored to be a part of the UH Manoa team to conduct this study. We are eager to re-start this important project in collaboration with the multitude of communities in Hawaii that interact with the EIS system.

I hope that your Committees approve the bill.

Thank you.



Sierra Club Hawai'i Chapter

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LATE TESTIMONY

SENATE COMMITTEE ON ENERGY AND ENVIRONMENT SENATE COMMITTEE ON EDUCATION February 4th, 2008, 1:45 P.M.

(Testimony is 1 page long)

TESTIMONY IN SUPPORT OF SB 2848

Chairs Menor and Sakamoto and members of the committees:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, supports SB 2848, providing funds for study to modernize Hawaii's environmental review law. While we believe that Hawaii's environmental review law has served our state well for the past three decades, we support the idea of an objective, thorough analysis of the law and recommendations of how it can be improved to increase the sustainability of the projects it is used to assess.

While a number of measures currently pending before the legislature call for various amendments to Hawaii's three-decade old environmental review law, we believe it is unwise to make any changes to the law until a thorough and objective analysis of the law is complete. This measure would provide needed funding and direction for such a study to be completed.

The eloquent mandate of Chapter 343 is simple: it requires agencies and developers to tell the truth. The intent of our environmental review law is quite clear—to ask tough questions and disclose impacts of actions using state land or money. Please remember: the environmental review law is not about permitting; it is about disclosure. The law requires that environmental, cultural, and socio-economic impacts are fully disclosed so that decision makers can make informed decisions about permitted activities.

Hawaii's Environmental Protection Act was passed over three decades ago by legislators with the foresight to recognize the need for proactive planning to protect communities and increase sustainability. It has served Hawaii's environment and communities well – when it is followed. When a company chooses to ignore the environmental review law, they must go back and comply with its requirements before their proposed project can begin.

The intent behind HRS Chapter 343, Hawaii's Environmental Impact Statement statute ("HEPA"), is clear and broad:

§343-1 Findings and purpose. The legislature finds that the quality of humanity's environment is critical to humanity's well being, that humanity's activities have broad and profound effects upon the interrelations of all components of the environment, and that an environmental review process will integrate the review of environmental concerns with existing planning processes of the State and counties and alert decision makers to significant environmental effects which may result from the implementation

*of certain actions. **The legislature further finds that the process of reviewing environmental effects is desirable because environmental consciousness is enhanced, cooperation and coordination are encouraged, and public participation during the review process benefits all parties involved and society as a whole.** It is the purpose of this chapter to establish a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations.*
(emphasis added)

The lawmakers who enacted HEPA (which was a parallel to the National Environmental Policy Act) had the foresight to provide a mechanism to disclose environmental, economic, and social impacts of government actions. The purpose of the environmental review law was to ensure adequate disclosure of impacts from activities using state funds or land. The law provides for comments from the public and serves as a tool for decision makers to use in selecting the optimal choice for public resources. Public oversight of public resources is essential in a democracy. It provides for checks and balances between government and the public at large. HEPA ensures some form of accountability of our agencies—if they plan to take action that may diminish the quality of life or adversely impact the environment that everyone shares, HEPA discloses those impacts before they occur. Without such a disclosure, the state would blindly take actions without knowing what the future costs or benefits would be. The essence of our environmental review process is used to understand and fix problems *before they occur*.

Hawai'i has had its environmental review law for nearly 30 years. It is a process that has been tested time and time again—and it works. Because of the law, Hawai'i is better planned, cleaner, and more beautiful. We support funding a comprehensive, objective study of Hawai'i's environmental review law through SB 2848 as a means to further improve planning for a sustainable future.

Thank you for the opportunity to testify.