

STAND. COM. REP. NO.

522

Honolulu, Hawaii

FEB 20, 2009

RE: H.B. No. 834

H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Sir:

Your Committees on Energy & Environmental Protection and Water, Land, & Ocean Resources, to which was referred H.B. No. 834 entitled:

"A BILL FOR AN ACT RELATING TO WATER QUALITY STANDARDS,"

beg leave to report as follows:

The purpose of this bill is to revise the State's water quality standards for bacteria in marine recreational waters and for two toxic pollutants, chlordane and dieldrin, to conform to federal standards consistent with the recommendations of the Department of Health and the United States Environmental Protection Agency.

Specifically, this bill updates the water quality standards for chlordane and dieldrin to conform to current national criteria recommended by the Environmental Protection Agency. This bill also sets limits for enterococcus content in samples taken in coastal recreation waters.

Your Committees received testimony in support of this measure from the Department of Health, the Mayor and Deputy Director of the Department of Environmental Services of the City and County of Honolulu, and the Director and one researcher of the University of Hawaii Water Resources Research Center. Testimony in opposition was received from the Office of Hawaiian Affairs, Sierra Club, and Hawaii's Thousand Friends. One concerned individual submitted comments.

HB834 HD1 HSCR LRB 09-2189-1.doc



Your Committees find that the Department of Health has acknowledged that the State's water quality standards need to be updated. The existing water quality standards for toxic pollutants are based on outdated Environmental Protection Agency criteria from nearly thirty years ago. In addition, the Department of Health studied and proposed amendments to the enterococcus standards that are reflected in this bill, as noted in the executive summary of the proposed amendments to chapter 11-54, Hawaii Administrative Rules, relating to water quality standards, dated April 11, 2005. The Hawaii chapters of the Sierra Club and the Surf Rider Foundation supported these 2005 proposed rule amendments.

The water quality standards for toxic pollutants are numeric values for pollutant concentrations in ambient waters considered to be protective of human health. These criteria are based solely on data and scientific judgments on the relationship between pollutant concentrations and environmental and human health effects.

Federal law requires that the Environmental Protection Agency periodically revise criteria for water quality to accurately reflect the latest scientific knowledge about the kind and extent of identifiable effects on human health from the presence of pollutants in any body of water. In accordance with the Federal Register announcement on November 3, 2000, the Environmental Protection Agency announced the availability of final revisions to the Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000) ("2000 Human Health Methodology"). These revisions were prompted by the many significant scientific advances that had occurred during the past twenty years in such key areas as cancer and non-cancer risk assessments, exposure assessments, and bioaccumulation assessments. Based on these scientific improvements, the Environmental Protection Agency released updated ambient water quality criteria in National Recommended Water Quality Criteria: 2002, which continue to be in effect. Federal regulations specifically allow states to adopt such numeric criteria.

When developing the numeric standards for toxic pollutants in 1990, the Department of Health derived its standards from the Guidelines and Methodology published by the Environmental Protection Agency in November 1980. However, the Department has not updated its toxic standards since then.



The Department of Health testified in support of adopting the current Environmental Protection Agency recommended criteria for toxic pollutants, with a limited exception for certain metals. The Department testified that these federally recommended toxic pollutant criteria provide substantial and sufficient public health protection and are developed with nationwide resources and expertise that cannot be matched at the state level.

Your Committees find that the rationale for these amended standards, which have been publicly posted and available since 2005, remain valid for the adoption of the proposed revised enterococcus standards.

Your Committees find that legislative action is necessary, however, because although the Department of Health has acknowledged its obligation to review and modify the state water quality standards every three years and that such a review is overdue, the Department testified that it will not be able to adopt the updated standards in the near future and that legislative action would be more expedient. Your Committees further find that the water quality standards for the indicator organism enterococcus have been pending since 2005. Moreover, the delay in updating and correcting these existing outdated water quality standards has adverse consequences for the residents of the City and County of Honolulu, as the City continues to be held, in litigation and by the Environmental Protection Agency, to standards that may no longer be appropriate.

Because water quality standards that are based on the best available science and data are of utmost importance to the State, your Committees recommend certain amendments to facilitate ongoing discussions between the Department of Health and interested and affected parties on how best to proceed and ensure the protection of the health, safety, and welfare of the public. Therefore, your Committees have changed the effective date to January 1, 2050, to facilitate further discussion.

Accordingly, your Committees have amended this bill by:

- (1) Adding clarifying language to the purpose clause and the effective date sections concerning the effect of state review and adoption of state water quality standards and federal approval;
- (2) Deleting the chlordane and dieldrin standards and replacing them with criteria for all priority and non-



priority pollutants and providing that, when there is no nationally recommended criterion promulgated for a priority or non-priority pollutant, relevant provisions in chapter 11-54, Hawaii Administrative Rules, relating to that pollutant shall not be repealed or deemed inconsistent and shall remain in effect;

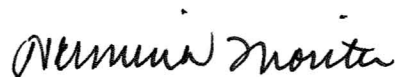
- (3) Adding a provision that, at locations where samples are taken less frequently than five samples for each twenty-five to thirty days, no single sample shall exceed the single sample maximum nor shall the geometric mean of these samples taken during the twenty-five to thirty-day period exceed thirty-five colony forming units per one hundred milliliters;
- (4) Changing the effective date from upon approval to January 1, 2050; and
- (5) Making technical, nonsubstantive amendments for purposes of clarity and style.

As affirmed by the records of votes of the members of your Committees on Energy & Environmental Protection and Water, Land, & Ocean Resources that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 834, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 834, H.D. 1, and be referred to the Committee on Finance.

Respectfully submitted on
behalf of the members of the
Committees on Energy &
Environmental Protection and
Water, Land, & Ocean Resources,



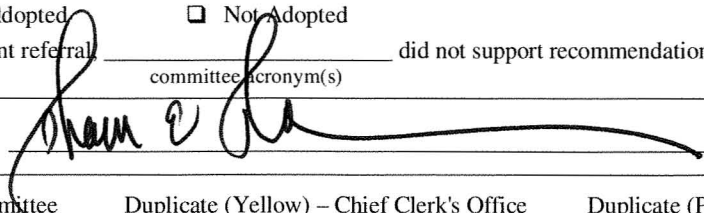
KEN ITO, Chair



HERMINA MORITA, Chair



Record of Votes of the Committee on Water, Land, & Ocean Resources

Bill/Resolution No.: HB 834	Committee Referral: EEP/WLO, FIN	Date: 2/19/09		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
WLO Members	Ayes	Ayes (WR)	Nays	Excused
1. ITO, Ken (C)	✓			
2. HAR, Sharon E. (VC)	✓			
3. CABANILLA, Rida				✓
4. CHANG, Jerry L.	✓			
5. CHONG, Pono	✓			
6. COFFMAN, Denny	✓			
7. HERKES, Robert N.	✓			
8. LEE, Chris	✓			
9. LUKE, Sylvia	✓			
10. MORITA, Hermina M.	✓			
11. SAGUM, Roland D., III	✓			
12. CHING, Corinne W.L.				✓
13. THIELEN, Cynthia			✓	
TOTAL (13)	10		1	2
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral _____ did not support recommendation. committee acronym(s)				
Vice Chair's or designee's signature: 				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO				