

Honolulu, Hawaii

FEB 12 2010

RE: S.B. No. 2818
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2010
State of Hawaii

Madam:

Your Committees on Energy and Environment and Water, Land, Agriculture, and Hawaiian Affairs, to which was referred S.B. No. 2818 entitled:

"A BILL FOR AN ACT RELATING TO ENVIRONMENTAL PROTECTION,"

beg leave to report as follows:

The purpose of this measure is to improve the environmental review process in the State to create a more streamlined, transparent, and consistent process.

Specifically, this measure:

- (1) Transfers the Office of Environmental Quality Control and the Environmental Council from the Department of Health to the Department of Land and Natural Resources;
- (2) Reduces the membership of the Environmental Council from fifteen members to seven;
- (3) Establishes the Environmental Review Special Fund; and
- (4) Revises the environmental assessment and environmental impact statement process.

Testimony in support of this measure was submitted by one organization and one organization supports the intent. Three organizations submitted comments. Testimony in opposition was submitted by three state agencies, two county agencies, seven



organizations, and one individual. Written testimony presented to the Committees may be reviewed on the Legislature's website.

For nearly forty years, Hawaii's environmental review system has served the State well by ensuring public disclosure of environmental impacts before agencies make decisions to approve programs and projects. However, in recent years, Hawaii's system of environmental review has drifted from the original goal of informing agency decision-making about potential impacts. The system has become inefficient, focusing too much on low-impact projects, exemptions, and litigation, rather than on large projects, the quality of analysis, and early public participation.

In response to these concerns, the Legislature in Act 1, Session Laws of Hawaii 2008, requested a full examination of Hawaii's environmental review system, which had not been done since 1991. This measure incorporates the recommendations of the University of Hawaii Environmental Review Study.

Hawaii's "trigger" and "exempt" approach is now considered archaic compared to the more efficient "discretionary approval" approach used in many other states and the focus on "major" actions under well-accepted federal law. The diverse group of stakeholders of the current system, of whom more than 170 participated in this study, has different views about the specific problem and solutions, yet there is a shared sense that the system is in need of change.

The study proposed that Hawaii update, refocus, and streamline its environmental review system by replacing the current "project trigger" screen, which encourages late review and eleventh hour public participation, with a new "earliest discretionary approval" screen to encourage early review and public participation. Under this measure, environmental review will apply to major government actions and to private actions tied to an agency discretionary approval process. To increase predictability, agencies will maintain public lists of major discretionary actions that require review and those ministerial actions that do not.

Your Committees find that this measure requires additional scrutiny and review, and hope that the stakeholders will continue to work toward the effort of an improved system of environmental review. Your Committees have invited the University of Hawaii study team, the Director of the Office of Environmental Quality



Control, the Chair of the Environmental Council, a member of the Environmental Council with a background in planning, and representatives of the Building Industry Association - Hawaii, Sierra Club Hawaii Chapter, the Land Use Research Foundation, Earthjustice, Belt Collins, and the Nature Conservancy to participate in a working group to develop further recommendations. Your Committees recognize that the working group may not achieve consensus on each aspect of the environmental review process, but hope that each member of the group will work in a spirit of compromise to seek a middle ground.

Your Committees have amended this measure by:

- (1) Removing the transfer provisions for the Office of Environmental Quality Control and the Environmental Council to move to the Department of Land and Natural Resources, and leaving the Office and Council under the Department of Health;
- (2) Increasing the membership of the Environmental Council from seven to nine members;
- (3) Including a session law to clarify that present members of the Environmental Council shall serve through June 30, 2012, or until new members are appointed and confirmed;
- (4) Clarifying when an environmental assessment shall be required;
- (5) Clarifying that the mitigation monitoring report is a disclosure document that requires the approving agency to report on permit mitigation monitoring five and ten years after the completion of the record of decision;
- (6) Adding a definition of "significant adverse environmental effect" for clarity;
- (7) Increasing the number of years that an environmental assessment or environmental impact statement is valid from seven to ten years;
- (8) Changing the effective date to July 1, 2010 for the amendments to chapter 341 and section 343-6, Hawaii



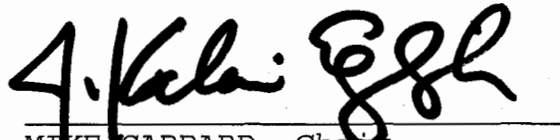
Revised Statues, and keeping the effective date for the remaining amendments to chapter 343 at July 1, 2012; and

- (9) Making technical, nonsubstantive changes for the purposes of style, clarity, and consistency.

As affirmed by the records of votes of the members of your Committees on Energy and Environment and Water, Land, Agriculture, and Hawaiian Affairs that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2818, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2818, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on behalf of the members of the Committees on Energy and Environment and Water, Land, Agriculture, and Hawaiian Affairs,

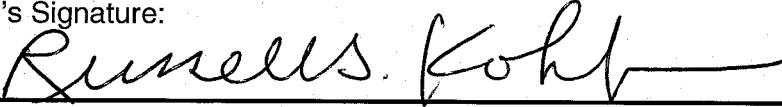

CLAYTON HEE, Chair

for 
MIKE GABBARD, Chair



The Senate
Twenty-Fifth Legislature
State of Hawaii

Record of Votes
Committee on Water, Land, Agriculture and Hawaiian Affairs
WTL

Bill / Resolution No.:* SB 2818	Committee Referral: ENE/WTL, WAM	Date: 2/10/10		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<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	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	/			
TOKUDA, Jill N. (VC)				/
BUNDA, Robert	/			
FUKUNAGA, Carol				/
KOKUBUN, Russell S.	/			
TAKAMINE, Dwight Y.				/
HEMMINGS, Fred	/			
TOTAL	4			3
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	

*Only one measure per Record of Votes