

WRITTEN ONLY

TESTIMONY BY GEORGINA K. KAWAMURA  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE HOUSE COMMITTEE ON JUDICIARY  
ON  
SENATE BILL NO. 2818, S.D. 2, H.D. 1

March 16, 2010

RELATING TO ENVIRONMENTAL PROTECTION

Senate Bill No. 2818, S.D. 2, H.D. 1, changes the composition of the Environmental Council from 15 to 9 members and establishes the Environmental Review Special Fund.

As a matter of general policy, this department does not support the creation of any special fund which does not meet the requirements of Sections 37-52.3 of the Hawaii Revised Statutes. Special funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. The proposed Environmental Review Special Fund does not appear to be self-sustaining.



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March 16, 2010

**Comments and Opposition to SB 2818, SD2, HD1  
Relating to Environmental Protection  
(Major Changes to Chapter 341)**

**House Committee on Judiciary**

**Hearing Date: Tuesday, March 16, 2010 at 2:15 p.m. in CR 325**

Honorable Chair Jon Riki Karamatsu, Vice Chair Ken Ito and Members of the House Committee on Judiciary,

My name is Dave Arakawa, and I am the 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, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF respectfully requests that your House Committees **hold and defer SB 2818, SD2, HD1** to allow the UH Study Team (who drafted a Report for the legislation and the initial legislation), land use experts and professionals, environmental groups, the Senates EIS Working Group and government agencies the opportunity to work on revisions to this bill, relating to revisions to Chapter 341, Hawaii Revised Statutes.

**LURF'S SPECIFIC OBJECTIONS. The changes proposed to Chapter 341 in this bill represent an unprecedented "power grab" and the prospect of increased funding for the Environmental Council (Council) and Environmental Center (Center). LURF objects to some of the specific changes made in SB 2818, SD2, HD1, especially those which increase the power of the Council and Center, and decrease the powers and duties of the Office of Environmental Quality Control (OEQC) and its Director, as follows:**

- **§341-3(a) Oppose stripping the OEQC of its current duties to "serve the governor in an advisory capacity on all matters relating to environmental quality control" and relegating OEQC's duties to those "prescribed to it."** OEQC has operated to the best of its ability in this position, and in the past two years has a number of successful accomplishments – including hosting a major workshop on Chapter 343 and passing two major pieces of legislation which resolved major problems relating to the government

agency processing of environmental review documents and the operations of OEQC. On the other hand, there has been prior testimony at the legislature that the Council has not been effective, and the record will show that the Council did not support the recent legislation to improve the operations of OEQC.

- If these advisory powers are stripped from OEQC, who will assume those duties to advise the Governor? Would those duties be transferred to a Council that has been described as dysfunctional, and who did not actively support the legislation to resolve major issues relating to Chapter 343 reviews?
  - As of this date, the Council does not have a track record of successful accomplishments. The OEQC Director does!
- **§341-3(c) Oppose the reduction of the number of Council members from fifteen (15) to nine (9).** There has been no convincing or overriding justification for this proposal to limit public participation by reducing the number of Council members. The Council operated effectively for many years with fifteen (15) members. Why the change now? Could a new state administration and new appointments make the Council more effective?
  - **§341-3(c) Support the provision requiring at least one Council member from each county.** This would assure the Council of state-wide representation, which is very important, as each island may have unique environmental circumstances.
  - **§341-3(c) Oppose the removal of the OEQC Director as an ex-officio voting member of the Council.** There has been no convincing or overriding justification for this proposal to remove the OEQC Director from the Council. In fact, the current OEQC Director has been the most effective member of the Council!
  - **§341-3(c) Oppose the deletion of list of broad and balanced representation of educational, business, and environmentally pertinent disciplines and professions.** There has been no convincing or overriding justification for this proposal to remove the provision that the Council members may include, but not be limited to “professions such as natural and social sciences, the humanities, architecture, engineering, environmental consulting, public health, and planning; educational and research institutions with environmental competence; agriculture, real estate, visitor industry, construction, media, and voluntary community and environmental groups.”
  - **§341-4(b)(1) Oppose limiting the powers and duties of the OEQC Director to act only “through the Council.”** There has been no convincing or overriding justification for this proposal to limit the operation of the OEQC Director to “through the Council.”
    - **This provision is inconsistent with the provision which allows the Governor to delegate duties to the OEQC Director or to direct state government agencies.** If the Governor delegates duties to the OEQC Director, or directs him/her to direct state governmental agencies in matters concerning environmental quality - - the proposed requirement that the Director work “through the Council,” could give the

- Council the authority to stop, or derail such duties designated by the Governor!
- **A case in point** – as noted above, for the past two years, the OEQC Director has been successful with the legislative process and was instrumental in passing two major laws which resolved critical problems in the environmental review process. The Council did not actively support either legislation. **If the OEQC Director was required to work “through the Council” for the past two years, those major pieces of legislation would not be passed, and the critical problems with the environmental review process would not be resolved!**
  - **If anything, this bill should be revised to require that the Council should be required to work through the OEQC Executive Director!**
- **§341-4(b)(1) Oppose the proposed requirement for OEQC Director to work “in cooperation with” the Center. Again, this requirement would be inconsistent with and frustrate the purposes of the Governor delegating duties to the OEQC Director.**
    - **A case in point** – as noted above, for the past two years, the OEQC Director has been successful with the legislative process and was instrumental in passing two major laws which resolved critical problems in the environmental review process. The Center, on the other hand, actually opposed such legislation! **If the OEQC Director was required to work “in cooperation with the Center” for the past two years, those major pieces of legislation would not be passed, and the critical problems with the environmental review process would not be resolved!**
    - **If the OEQC Director is required to work in cooperation with the Center, would that mean that the Center would require more staff and funding? Yes or no?**
    - **If anything, this bill should be revised to require that the Center is required to work in cooperation with the OEQC Executive Director!**
  - **§341-4(b)(3) Oppose the proposed requirement that the OEQC Director is limited to “through the Council” for any actions encouraging the public acceptance of proposed legislative and administrative actions concerning environmental quality...”** As noted above, If the OEQC Executive Director was required to work “through the Council” for the past two years, those major pieces of legislation would not be passed, and the critical problems with the environmental review process would not be resolved!
  - **§341-4(b)(4) Oppose the proposed requirement that the OEQC Director must recommend to the Council programs for long-range implementation of environmental quality control.** The recent past has shown that the Council has been unable to follow through on major decisions or initiatives. On the other hand, the OEQC Director has been successful.

- **§341-4(b)(5) Oppose the proposed requirement that the OEQC Director must submit to the Council for its review and recommendation to the Governor legislative bills and administrative policies, objectives and actions, as are necessary to preserve and enhance the environmental quality of the State.** As noted above, the recent past has shown that the Council has been unable to follow through on major decisions or initiatives. On the other hand, the OEQC Director has been successful.
  
- **§341-4(b)(8) Oppose the proposed requirement that the OEQC Director must “obtain advice from the Council on any matters concerning environmental quality.”**
  - As noted above, the recent past has shown that the Council has been unable to follow through on major decisions or initiatives concerning environmental quality. On the other hand, the OEQC Director has been successful.
  - If the OEQC and its Director were required to follow the advice from the Council – there would have been no environmental legislation for the past two years, and the environmental review problems facing the State would not have been resolved.
  - The council is made up on citizen volunteers. The OEQC staff and its Director are trained and qualified to perform their work concerning environmental quality.
  
- **§341-4(b)(9) Oppose the proposed requirement that the OEQC Director must “perform budgeting and hiring in a manner that ensures adequate funding and staff support for the Council to carry out its duties under this chapter and Chapter 343.”**
  - How much will all of this cost? Is there a report by the Council or Center regarding how much additional staff and additional funding it will need “to carry out its new duties under Chapter 341 and Chapter 343?” Will there be further requirements this session to amend Chapter 343? This number needs to be determined before the legislation can move forward. as it could have a major financial impact.
  - Is this bill just a means of increasing the staffing a budget for the Council and Center?
  - What if the Department of Health (DOH), legislature or Governor limits the funding or disbursements to the Council? The OEQC could be found to violate this law, and could be terminated, through no fault of his/her own.
  - Does any other department or office in the State of Hawaii include similar statutory requirements?
  - As noted above, the recent past has shown that the Council has been unable to follow through on major decisions or initiatives. On the other hand, the OEQC Director has been successful. This bill should be revised to provide that the Council is required to support the funding and adequate staff support for OEQC to carry out its duties!

- **§341-A and §341-6(b) Support the proposed requirement for an Annual Report. Oppose the new power of the Council to request state and county agencies to provide information.** The OEQC and its Director have the authority and relationships to make such information requests. There is no justification to award such powers to the Council.
- **§341-6(1) and (2) Oppose increase in powers and duties of the Council. These sections represent a “blatant power grab” by the Council.** For the reasons stated above, we oppose the unjustified new and increased powers and duties of the Council. While the Council has been effective in prior years, the most recent Councils have not shown that they can responsibly complete tasks and despite numerous opportunities, have not supported major legislation, policies or procedures to improve the environmental review process.
- **SECTION 2. Oppose the extension of terms of all members of the Council through June 2012. The new governor should have the right to appoint new members of the Council as their terms expire.** There has been no convincing or overriding justification for this proposal.

**LURF’S GENERAL OBJECTIONS.** LURF also generally objects to the **SB 2818, SD2 HD1 and recommends deferral**, based on, among other things, the following:

- **“Don’t need to fix’ something that ain’t broken.”** Although the UH Study Team was tasked with ‘modernizing’ Chapter 343, it remains to be proven that something is wrong with the existing system which justifies the wholesale overhaul that is now being recommended. Chapter 343 has been in effect over 30 years, and there has been no major environmental disaster relating to the requirements regarding EIS’ and EAs.
- **Another new layer of government approvals with new redundant and excessive laws, rules, regulations, policies and procedures would be created.**
- **Implementation of Bill 2818, SD2, HD1 could increase government costs and personnel.** The proposed changes would increase the number of government employees, and result in additional and unnecessary costs for government and businesses.
- As a result of the **additional and new requirements in Bill 2818, SD2, HD1 the number of potential plaintiffs and questionable lawsuits could escalate.**
- **The recommendations in the UH Report are inconsistent with the purpose of SCR 132 (2009), which established the Construction Industry Task Force**, which has made its recommendations and proposed legislation to enable the state to stimulate the economy and achieve effective economic recovery.
- **The UH Report is “not pau yet” – if it is:”not pau yet,” the Legislature should defer adopting any laws which call for a major overhaul of**



**Chapter 343.** The report provides that “The study will continue through the summer of 2010, when the study team will prepare a final report to the Legislature discussing the results of the 2010 session regarding the statutory recommendations in this report, outlining additional proposed changes to the statutes, specifying further recommended changes to the administrative rules, suggesting agency guidance documents, and reviewing in more detail changes to Chapter 344.” This statement on page 3 of the Report, sounds like the UH Report is not pau yet.

**BACKGROUND.** The proposed legislation is a result of the Report to the Legislature on Hawaii’s Environmental Review System and a proposed “omnibus” bill, which was prepared pursuant to Act 1, Session Laws of Hawaii 2008 for the Legislative Reference Bureau, by a team of professors, researchers and students, from the University of Hawaii’s Department of Urban and Regional Planning (DURP), the Environmental Center and the Environmental Law Program of the William S. Richardson School of Law. We understand that while the team members should be commended for their hard work, this UH process lacked any expertise and or substantive experience in preparing Environmental Assessments (EA) or Environmental Impact Statements (EIS) and also lacked any expertise and responsibility for major land utilization activities and planning and permitting a major development or project through the State and County permitting process.

#### **MAJOR CONCERNS**

- **EIS Study process lacked the benefit of professional qualifications, experience and expertise.** The UH EIS Study Team did not include anyone who had the qualifications or experience to prepare an EA or EIS for a major project, or anyone who has taken a project or development through the State and county land use entitlement process. Based on the information provided in their Report, it appears that substantive input was also lacking from major stakeholder groups, including large property owners, the counties, the military (a major player in land use), the EPA, Hawaii land use attorneys and entitlement specialists, various professionals at the UH Schools of Engineering, Architecture, Tropical Agriculture, etc. and all of the counties. The apparent lack of input from these expert groups, combined with the inexperience of the UH EIS Study Team renders the Report deficient. We would recommend that the Legislature authorize a further study prepared by and including major input from qualified and experienced stakeholders.
- **Bias of the UH EIS Report.** The UH Report appears favorable to the arguments and issues raised by the opponents of development, while disparaging, demeaning and deriding the comments and suggestions made by professionals who prepare EAs and EIS and are subject to ethical standards. The land use professionals and those who prepare EAs and EIS’ have noted that the UH EIS Report includes a general distrust for the work of State and county departments and permitting agencies to protect the environment. The UH Study Team also took sides with the Sierra Club and other plaintiffs in the ongoing Supreme Court Appeal of the Kuilima EIS.

**LURF's RECOMMENDATIONS.** We commend the hard work of the UH team, however, based on the fact that the UH EIS Study process lacked the benefit of professional qualifications, experience and expertise in land use planning and permitting and expertise in the preparation of EAs and EIS', the bias of the Report, the admission that it is incomplete, and the need for a further study by experienced professionals, we would respectfully recommend that;

- **That the provisions which LURF has opposed above, be deleted from SB 2818, SD1, HD1.**
- Legislation could be adopted this session regarding issues where there is general agreement; and the study team, land use professionals, the Senate EIS Working Group and the government agencies can work together to provide proposed revisions to bills;
- The parties can work together to identify issues that require further study and input. LURF volunteers to continue work on such issues in Working Groups that involve all stakeholders, perhaps request an independent, objective umbrella organization to facilitate the further discussions and prepare a report to the legislation for next year (under legislative auditor or LRB)

**CONCLUSION.** Based on the above, we respectfully request that your Committees defer this bill and allow the various stakeholders and the Senate EIS Working Group to work together on legislation. Thank you for the opportunity to express our **opposition** to SB 2818, SD2, HD1.