



UNIVERSITY  
of HAWAII  
MĀNOA

## LATE TESTIMONY

RL: 2271

SB 2818 SD 2 HD2  
RELATING TO ENVIRONMENTAL PROTECTION

House Committee on Finance  
March 25, 2010  
10 a.m., State Capitol, Conference Room 308

By  
Denise Antolini, William S. Richardson School of Law  
Peter Rappa, Environmental Center  
Karl Kim, Urban and Regional Planning  
Nicole Lowen, Environmental Center  
Scott Glenn, Urban and Regional Planning

Dear Chair Oshiro, Vice Chair Lee, and members of the Committee:

Thank you for this opportunity to testify **in support** of SB2818 SD2 HD2. Our statement on this measure does not represent an institutional position of the University of Hawaii.

SB2818 SD2 HD2 amends HRS chapter 341 to strengthen the Office of Environmental Quality Control (OEQC) and the Environmental Council, two key components of our state environmental review system.

The changes proposed in the original SB2818 were based on the UH Study team's January 1, 2010 "Report to the Legislature on Hawaii's Environmental Review System," a study requested by the Legislature (Act 1, 2008).

Since the introduction of SB2818, the bill has undergone a number of changes and is now focused only on amendments to Chapter 341. Moreover, a diverse stakeholder Working Group was formed by Senator Gabbard, with the support of Representative Morita.

Since February 16, 2010, in a series of nine meetings, which ended on March 22, 2010, the Working Group has made significant progress in finding common ground on improvements to the bill. With the assistance of LRB, the Working Group reached unanimous agreement on a proposed "HD3." That proposed draft is included in the separate testimony of Professor Denise Antolini.

We request that you will favorably consider the proposed HD3 and move the bill with the new amendments to conference.

Thank you for the opportunity to testify.

SB2818 SD2 HD2  
RELATING TO ENVIRONMENTAL PROTECTION

House Committee on Finance  
March 25, 2010  
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By  
Denise Antolini, William S. Richardson School of Law  
Member of the SB2818 Working Group

LATE TESTIMONY

Dear Chair Oshiro, Vice Chair Lee, and members of the Committee:

Thank you for this opportunity to testify **in support** of SB2818 SD2 HD2. My statement on this measure does not represent an institutional position of the Law School or the University of Hawaii.

On behalf of the Working Group formed to recommend improvements to SB2818, I am pleased to include as part of this testimony:

**1. Proposed HD 3, which is unanimously supported by the twelve members of the Working Group.** As a result of six weeks of intensive effort by the Working Group, these comprehensive proposed changes to the bill were finalized by LRB yesterday afternoon for the group and Senator Gabbard.

**2. The Working Group's March 24, 2010 letter to Senator Gabbard summarizing the four major areas of recommended changes to Chapter 341 in Proposed HD3.**

We request that you **favorably consider the Working Group's proposed HD3** and approve this bill, as amended.

Thank you for the opportunity to testify.

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# A BILL FOR AN ACT

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RELATING TO ENVIRONMENTAL PROTECTION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 341, Hawaii Revised Statutes, is  
2 amended to read as follows:

3   " [†]CHAPTER 341 [†]

4   **ENVIRONMENTAL QUALITY CONTROL**

5           [†]§341-1[†] **Findings and purpose.** The legislature finds  
6 that the quality of the environment is as important to the  
7 welfare of the people of Hawaii as is the economy of the State.  
8 The legislature further finds that the determination of an  
9 optimum balance between economic development and environmental  
10 quality deserves the most thoughtful consideration, and that the  
11 maintenance of the optimum quality of the environment deserves  
12 the most intensive care.

13           The legislature finds that the office of environmental  
14 quality control, established pursuant to this chapter, is  
15 intended to provide a centralized, statewide environmental  
16 review service, through which the State's environmental review  
17 system can be effectively managed and administered, and through

1 which agencies, applicants, and the public can coordinate and  
2 contribute to an effective environmental review process.

3 The purpose of this chapter is to stimulate, expand, and  
4 coordinate efforts to determine and maintain the optimum quality  
5 of the environment of the State.

6 **§341-2 Definitions.** As used in this chapter, unless the  
7 context otherwise requires:

8 "Center" means the University of Hawaii environmental  
9 center established in section [+]304A-1551[+].

10 "Council" means the environmental council established in  
11 section 341-3(c).

12 "Director" means the director of the office of  
13 environmental quality control.

14 "Office" means the office of environmental quality control  
15 established in section 341-3(a).

16 "University" means the University of Hawaii.

17 **§341-3 Office of environmental quality control;**  
18 **environmental center; environmental council.** (a) There is  
19 created an office of environmental quality control that shall be  
20 headed by a single executive to be known as the director of the  
21 office of environmental quality control who shall be appointed  
22 by the governor as provided in section 26-34. The director

1 shall be responsible for directing the office in implementing  
2 this chapter and chapter 343. This office and the council shall  
3 implement this chapter and shall be placed within the  
4 ~~[department of health]~~ office of the governor for administrative  
5 purposes. ~~[The office shall perform its duties under chapter~~  
6 ~~343 and shall serve the governor in an advisory capacity on all~~  
7 ~~matters relating to environmental quality control.]~~

8 (b) The environmental center within the University of  
9 Hawaii shall be as established under section ~~[+]~~304A-1551~~[+]~~.

10 (c) There is created an environmental council not to  
11 exceed ~~[fifteen]~~ nine members~~[+]~~ and the director. ~~[Except for~~  
12 ~~the director, members]~~ The council shall include one member from  
13 each county and no more than five at-large members. Members of  
14 the environmental council shall be appointed by the governor as  
15 provided in section 26-34~~[+]~~; provided that three members shall  
16 be appointed from a list of persons nominated by the speaker of  
17 the house of representatives and three members shall be  
18 appointed from a list of persons nominated by the senate  
19 president. The council shall be attached to the ~~[department of~~  
20 ~~health]~~ office of the governor for administrative purposes.  
21 ~~[Except for the director, the]~~ The term of each member shall be  
22 four years; provided that, of the members initially appointed,

1 [~~five~~] three members shall serve for four years, [~~five~~] three  
2 members shall serve for three years, and the remaining [~~four~~]  
3 three members shall serve for two years. Vacancies shall be  
4 filled for the remainder of any unexpired term in the same  
5 manner as original appointments. The director shall be an ex  
6 officio voting member of the council. The council chairperson  
7 shall be elected by the council from among the appointed members  
8 of the council[-], provided that the director shall not serve as  
9 the chairperson.

10 Members shall be appointed to [~~assure~~] ensure a broad and  
11 balanced representation of educational, business, and  
12 [~~environmentally pertinent~~] environmental disciplines and  
13 professions, such as the natural and social sciences, the  
14 humanities, architecture, engineering, environmental consulting,  
15 public health, and planning; educational and research  
16 institutions with environmental competence; agriculture, real  
17 estate, visitor industry, construction, media, and voluntary  
18 community and environmental groups. The members of the council  
19 shall serve without compensation, but shall be reimbursed for  
20 expenses, including travel expenses, incurred in the discharge  
21 of their duties.

1           §341-4 Powers and duties of the director~~[-]~~ and the  
2 office. (a) The director shall have ~~[such]~~ powers delegated by  
3 the governor as ~~[are]~~ necessary to coordinate and, when  
4 requested by the governor, to direct, pursuant to chapter 91,  
5 all state governmental agencies in matters concerning  
6 environmental quality. The director shall also be responsible  
7 for administration and leadership of the office, including but  
8 not limited to performing budgeting and hiring staff in a manner  
9 that ensures adequate funding and staff support for the office  
10 and the council to carry out duties under this chapter and  
11 chapter 343. The director may appoint personnel exempt from  
12 chapters 76 and 89.

13           (b) To further the ~~[objective of subsection (a)],~~  
14 objectives of this chapter and chapter 343, the [director]  
15 office shall:

16           (1) ~~[Direct]~~ In cooperation with the council, direct the  
17 attention of [the university community] state agencies  
18 and the residents of the State [in general] to  
19 [ecological and] environmental problems [through the  
20 center and, respectively, and through public education  
21 programs];



- 1 (2) Conduct research or arrange for ~~[the conduct of]~~  
2 research through contractual relations with the  
3 center, state agencies, or other persons with  
4 competence in ~~[the field of ecology and]~~ issues  
5 relating to environmental quality;
- 6 (3) ~~[Encourage]~~ In cooperation with the council, encourage  
7 public acceptance of proposed legislative and  
8 administrative actions concerning ~~[ecology and]~~  
9 environmental quality, and receive notice of any  
10 private or public complaints concerning ~~[ecology and]~~  
11 environmental quality ~~[through the council];~~
- 12 (4) Recommend programs for long-range implementation of  
13 environmental quality control;
- 14 (5) ~~[Submit direct]~~ In consultation with the council,  
15 submit to the governor ~~[and to the legislature such]~~  
16 legislative bills and administrative policies,  
17 objectives, and actions~~[7]~~ as are necessary to  
18 preserve and enhance the environmental quality of the  
19 State;
- 20 (6) Conduct regular outreach and training for state and  
21 county agencies on the environmental review process  
22 and conduct other public educational programs~~[7 and]~~

- 1           that provide information concerning the environmental  
2           review systems and related services provided under  
3           this chapter and chapter 343;
- 4           (7) Offer advice and assistance to private industry,  
5           governmental agencies, non-governmental organizations,  
6           state residents, or other persons upon request[-];
- 7           (8) Obtain advice from the council on any matters  
8           concerning environmental quality;
- 9           (9) With the cooperation of the council, private industry,  
10           governmental agencies, non-governmental organizations,  
11           state residents, and other interested persons in  
12           fulfilling the requirements of this subsection,  
13           conduct annual statewide workshops and publish an  
14           annual state environmental review guidebook or  
15           supplement to assist persons in complying with this  
16           chapter, chapter 343, and rules adopted thereunder;  
17           provided that workshops, guidebooks, and supplements  
18           shall include:
- 19           (A) Assistance for the preparation, processing, and  
20           review of environmental review documents;

- 1            (B) A review of relevant court decisions affecting
- 2            this chapter, chapter 343, and rules adopted
- 3            thereunder;
- 4            (C) A review of amendments to this chapter, chapter
- 5            343, other relevant laws, and rules adopted
- 6            thereunder; and
- 7            (D) Any other information that may facilitate the
- 8            efficient implementation of this chapter, chapter
- 9            343, and rules adopted thereunder;
- 10          (10) Provide advisory opinions to agencies, applicants, and
- 11          the public concerning the environmental review system
- 12          and related services provided under this chapter and
- 13          chapter 343;
- 14          (11) Maintain an effective state environmental review
- 15          process by:
- 16            (A) Reviewing, and updating as necessary, in
- 17            consultation with the council, administrative
- 18            rules adopted pursuant to this chapter and
- 19            chapter 343 no less than every three years; and
- 20            (B) Developing guidance for agencies, applicants, and
- 21            the public that encourages innovative best

1                   practices to ensure greater certainty in the  
2                   statewide environmental review system;  
3       (12) To facilitate agency, applicant, and public  
4                   participation in the state environmental review  
5                   process, the office shall create and maintain an  
6                   effective information technology system, including a  
7                   website and searchable digital archives, that meets  
8                   best practices and allows for efficient, comprehensive  
9                   tracking of environmental review documents relating to  
10                   actions and projects for which environmental documents  
11                   are completed or pending and any related or subsequent  
12                   permits, approvals, updates, and mitigation  
13                   information.

14           (c) The [~~director~~] office, in consultation with the  
15 council, shall adopt rules, pursuant to chapter 91, necessary  
16 for the purposes of implementing this chapter[-] and chapter  
17 343.

18           §341-A Annual report. No later than January 31 of each  
19 year, the director shall submit a report to the governor and the  
20 legislature that analyzes the effectiveness of the State's  
21 environmental review system during the prior year.

1 At the request of the director or the council, state and  
2 county agencies shall provide information to assist in the  
3 preparation of the annual report.

4 **§341-6 [Functions] Duties of the environmental council.**

5 (a) The council shall ~~[serve]~~:

6 (1) Serve the governor in an advisory capacity on all  
7 matters relating to environmental quality;

8 (2) Consult with the office on proposed changes to  
9 statutes, rules, and guidance;

10 (3) Serve as a liaison between the ~~[director]~~ governor and  
11 the general public by soliciting information,  
12 opinions, complaints, recommendations, and advice  
13 concerning ~~ecology and~~ environmental quality through  
14 public hearings or any other means and by publicizing  
15 ~~[such]~~ these matters as requested by the ~~[director]~~  
16 pursuant to ~~section 341-4(b)(3).~~ governor; and

17 (4) Meet at the call of the council chairperson or by a  
18 quorum of council members.

19 ~~[The council may make recommendations concerning ecology~~  
20 ~~and environmental quality to the director and shall meet at the~~  
21 ~~call of the council chairperson or the director upon notifying~~  
22 ~~the council chairperson.]~~

1        (b) The council shall monitor the progress of state,  
2 county, and federal agencies in achieving the State's  
3 environmental goals and policies [~~and~~]. No later than  
4 January 31 of each year, the council, with the assistance of the  
5 director, as necessary, shall make an annual report with  
6 recommendations for improvement to the governor, the  
7 legislature, and the public [~~no later than January 31 of each~~  
8 ~~year. All~~]. At the request of the council, state and county  
9 agencies shall [~~cooperate with the council and~~] provide  
10 information to assist in the preparation of [~~such a~~] the report  
11 [~~by responding to requests for information made by the council~~].  
12 The council may combine its annual report with the annual report  
13 prepared by the director pursuant to section 341-A.

14        (c) The council may delegate to any person [~~such~~] the  
15 power or authority vested in the council as it deems reasonable  
16 and proper for the effective administration of this section and  
17 chapter 343 [~~, except the power to make, amend, or repeal rules~~].

18        **§341-B Environmental review special fund; use of funds.**

19        (a) There is established in the state treasury the  
20 environmental review special fund, into which shall be  
21 deposited:

- 1        (1) All filing fees and other administrative fees
- 2                collected by the office;
- 3        (2) Moneys collected pursuant to section 341-D;
- 4        (2) All accrued interest from the special fund; and
- 5        (3) Moneys appropriated to the special fund by the
- 6                legislature.

7        (b) Moneys in the environmental review special fund shall  
8 not supplant the office budget base and shall be used to:

- 9        (1) Fund the activities of the office and the council in
- 10                fulfillment of their duties pursuant to this chapter
- 11                and chapter 343, including administrative and office
- 12                expenses and servicing of agency documents relating to
- 13                the environmental review process for capital
- 14                improvement projects;
- 15        (2) Support outreach, training, education, and research
- 16                programs pursuant to section 341-4; and
- 17        (3) Modernize technology, maintain technology systems, and
- 18                develop technology training programs within the limits
- 19                established by section 341-D.

20        §341-C Fees. The office, in consultation with the  
21 council, shall adopt rules pursuant to chapter 91 to establish

1 any fees necessary for the administration and management of the  
2 office and the council.

3 §341-D Temporary environmental review modernization  
4 moneys. (a) Between July 1, 2011, and June 30, 2016, 0.1 per  
5 cent of all state fund appropriations for capital improvements  
6 to be supported by general obligation bonds shall be transferred  
7 to the environmental review special fund. The 0.1 per cent  
8 amount, which is included in all capital improvement  
9 appropriations, shall be calculated at the time the  
10 appropriation bills are signed into law. The moneys shall be  
11 transferred into the environmental review special fund upon  
12 availability of moneys from the appropriations. Each agency  
13 receiving capital improvement appropriations shall calculate the  
14 0.1 per cent amount and transfer the moneys into the  
15 environmental review special fund.

16 (b) The comptroller and the director shall track amounts  
17 due from each agency under the 0.1 per cent requirement as  
18 provided in subsection (a). In addition, the comptroller shall:

19 (1) Provide each agency receiving capital improvement  
20 appropriations with information regarding items that  
21 shall be included and excluded from the 0.1 per cent  
22 amount;



1       (2) Ensure that each agency calculates its 0.1 per cent  
2       amount correctly; and

3       (3) Ensure that each agency transfers the correct amount  
4       to the environmental review special fund in a timely  
5       manner.

6       (c) No later than July 1, 2011, the office, in  
7       consultation with the council, shall adopt rules pursuant to  
8       chapter 91 to establish temporary environmental review  
9       modernization fees, to be collected, in addition to any other  
10       administrative fees pursuant to section 341-C, from applicants  
11       other than state agencies for publication of environmental  
12       review documents in the bulletin pursuant to section 343-3(d).

13       Temporary environmental review modernization fees shall not  
14       exceed:

- 15       (1) \$1,500 for a draft environmental assessment;
- 16       (2) \$1,000 for a final environmental assessment;
- 17       (3) \$500 for an environmental impact statement publication  
18       notice;
- 19       (4) \$4,000 for a draft environmental impact statement;
- 20       (5) \$3,000 for a final environmental impact statement;
- 21       (6) \$500 for any supplemental environmental assessment;
- 22       and

1        (7) \$1,000 for any supplemental environmental impact  
2                    statement.

3        (d) The total amount of transfers made pursuant to  
4 subsection (a) shall not exceed \$1,250,000, between July 1,  
5 2011, and June 30, 2016. The total amount of temporary  
6 environmental review modernization fees collected pursuant to  
7 subsection (c) shall not exceed \$1,250,000 between July 1, 2011,  
8 and June 30, 2016. If these amounts are exceeded, then the  
9 collection of those respective moneys shall be discontinued.

10        (e) Moneys collected pursuant to this section shall be  
11 used by the office solely for the purposes of:

12        (1) Modernizing and updating its technology used to meet  
13 the requirements of this chapter and chapter 343;

14        (2) Creating and providing training programs for its  
15 updated technologies; and

16        (3) Maintaining its technology systems.

17        SECTION 2. Notwithstanding the original terms of  
18 appointment of the members of the environmental council, the  
19 terms of all members of the environmental council serving as of  
20 the effective date of this Act shall be extended through June  
21 30, 2012. The members shall continue in their appointment until  
22 the nine members of the environmental council, not including the

1 director, are appointed or re-appointed in accordance with  
2 section 341-3, Hawaii Revised Statutes, as amended by this Act.

3 SECTION 3. All rules, policies, procedures, orders,  
4 guidelines, and other material adopted, issued, or developed by  
5 the office of environmental quality control or the environmental  
6 council, respectively, within the department of health to  
7 implement provisions of the Hawaii Revised Statutes shall remain  
8 in full force and effect until amended or repealed by the office  
9 of environmental quality control or the environmental council,  
10 respectively, within the office of the governor.

11 SECTION 4. All appropriations, records, equipment,  
12 machines, files, supplies, contracts, books, papers, documents,  
13 maps, and other personal property heretofore made, used,  
14 acquired, or held by the office of environmental quality control  
15 or the environmental council within the department of health  
16 relating to the functions transferred to the office of the  
17 governor shall be transferred with the functions to which they  
18 relate.

19 SECTION 5. All rights, powers, functions, and duties of  
20 the office of environmental quality control or the environmental  
21 council within the department of health are transferred to the

1 office of environmental quality control or the environmental  
2 council within the office of the governor.

3 All officers and employees whose functions are transferred  
4 by this Act shall be transferred with their functions and shall  
5 continue to perform their regular duties upon their transfer,  
6 subject to the state personnel laws and this Act.

7 No officer or employee of the State having tenure shall  
8 suffer any loss of salary, seniority, prior service credit,  
9 vacation, sick leave, or other employee benefit or privilege as  
10 a consequence of this Act, and the officer or employee may be  
11 transferred or appointed to a civil service position without the  
12 necessity of examination; provided that the officer or employee  
13 possesses the minimum qualifications for the position to which  
14 transferred or appointed; and provided that subsequent changes  
15 in status may be made pursuant to applicable civil service and  
16 compensation laws.

17 An officer or employee of the State who does not have  
18 tenure and who may be transferred or appointed to a civil  
19 service position as a consequence of this Act shall become a  
20 civil service employee without the loss of salary, seniority,  
21 prior service credit, vacation, sick leave, or other employee  
22 benefits or privileges and without the necessity of examination;

1 provided that the officer or employee possesses the minimum  
2 qualifications for the position to which transferred or  
3 appointed.

4 If an office or position held by an officer or employee  
5 having tenure is abolished, the officer or employee shall not  
6 thereby be separated from public employment, but shall remain in  
7 the employment of the State with the same pay and classification  
8 and shall be transferred to some other office or position for  
9 which the officer or employee is eligible under the personnel  
10 laws of the State as determined by the head of the department or  
11 the governor.

12 SECTION 6. In codifying the new sections added by section  
13 1 of this Act, the revisor of statutes shall substitute  
14 appropriate section numbers for the letters used in designating  
15 the new sections in this Act.

16 SECTION 7. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 8. This Act shall take effect on July 1, 2010.

**Report Title:**

Environmental Protection

**Description:**

Transfers the office of environmental quality control and the environmental council to the office of the governor for administrative purposes. Reduces the appointed membership of the environmental council from 15 to 9. Clarifies the duties of the office, director, and environmental council. Establishes the environmental review special fund. Establishes temporary environmental review modernization fees and capital improvement transfers effective through from 7/1/11 to 6/30/16 to fund technology modernization.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

March 24, 2010

Senator Mike Gabbard  
Chair, Senate Committee on Energy and Environment  
Hawaii State Capitol, Room 201  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: Proposed Amendments to H.R.S. Chapter 341

Dear Senator Gabbard:

Thank you for providing us the privilege of participating in the "SB2818 Working Group," formed under the auspices of the Senate Energy and Environment Committee on February 12, 2010 (SSCR2333) and charged with the responsibility "to develop further recommendations" for improving SB2818 SD1, which proposed significant changes to Hawaii's environmental review system, specifically H.R.S. Chapters 341 and 343.

As your Committee Report indicated, "the working group may not achieve consensus on each aspect of the environmental review process, but [we] hope that each member of the group will work in a spirit of compromise to seek a middle ground." We also appreciate that Representative Mina Morita, Chair of the House Energy and Environmental Protection Committee, joined you at our first meeting to encourage us to find common ground on these important and complex policy issues.

Based on this charge and with a spirit of cooperation, the twelve members of the Working Group have invested substantial time and energy over the past six weeks, in a series of nine half-day meetings and many subgroup meetings, to arrive at a set of comprehensive amendments that can be supported across diverse stakeholder groups. With the invaluable support of your office, particularly Carlton Saito, and the professional assistance of facilitator Lily Bloom Domingo, the Working Group discussions have been spirited and candid, yet collaborative and constructive.

We are pleased to report that the Working Group reached unanimous agreement on recommendations regarding improvements to Chapter 341, focusing on how to strengthen the key components of effective "governance" of our state environmental review system: the Office of Environmental Quality Control (OEQC) and the State Environmental Council (EC).

With the expert assistance of the Legislative Reference Bureau, we have produced a recommended redraft of SB2818's proposed amendments of Chapter 341 – Proposed HD3 -- for the consideration of your committee and the other House and Senate Committees that are involved in reviewing these issues. The Working Group's four major areas of recommended changes to Chapter 341 are as follows:

1. Strengthen OEQC

341-1: The Role of OEQC

Clarify that OEQC shall provide a "centralized, statewide environmental review service, through which the State's environmental review system can be effectively managed and

administered and through which agencies, applicants, and the public can coordinate and contribute to an effective environmental review process.”

341-3(a): The Authority and Administrative Placement of OEQC

Strengthen the authority of the Director of OEQC by providing that the Director is responsible for directing OEQC in implementing Chapters 341 and 343, and responsible for administration and leadership of OEQC, including budgeting and hiring staff in a manner that ensures adequate funding and staff support for OEQC and the EC to carry out their duties.

Move OEQC/EC from the State Department of Health to an independent position within the Office of the Governor. Provide for the standard transfer of functions, authority, and personnel (Sections 3, 4 & 5.)

2. 341-3(a): Modernize the Functions of OEQC, Emphasizing Duties to:

Conduct regular outreach and training for state and county agencies on the environmental review process and conduct other public educational programs concerning the state environmental review system and related services provided by OEQC.

Offer advice and assistance to private industry, governmental agencies, non-governmental organizations, state residents, and others; provide advisory opinions to agencies, applicants, and the public concerning the environmental review system and related services.

Conduct annual statewide workshops and publish an annual guidebook to assist persons in complying with chapter 341, 343, and the administrative rules.

Maintain an effective state environmental review process by:

- (A) Ensuring that the administrative rules for chapter 341 and 343 are reviewed or updated as necessary no less than every three years; and
- (B) Developing guidance for agencies, applicants, and the public that encourages innovative best practices to ensure greater certainty in the statewide environmental review system.

Create and maintain an effective information technology system, including a website and searchable digital archives that meet best practices and allow for efficient, comprehensive tracking of environmental review documents relating to actions and projects for which environmental documents are completed or pending, and any related or subsequent permits, approvals, updates, and mitigation information.

Adopt rules, in consultation with the EC, to implement Chapters 341 and 343, effectively shifting the primary rulemaking responsibility from the EC to OEQC but continuing the EC's policymaking role and involvement in the rules process.

Prepare and submit an annual report, with the cooperation of state and county agencies, to the Governor and Legislature that analyzes the effectiveness of the State's environmental review system during the prior year. (341-A Annual Report.) This report may incorporate the EC's current annual report.



3. 341-3(c): Streamline the Environmental Council; Ensure Close Coordination with OEQC

Provide that the Environmental Council (EC) shall be consulted by the Director in carrying out her various duties, including education, legislative recommendations, and proposed changes to statutes, rules, and guidance.

Reduce the membership of the EC from 15 to 9 appointed members plus the OEQC Director; provide that the Director of OEQC continues to serve as an ex officio voting member of the EC but shall not serve as the Chairperson of the EC.

Ensure appointed membership includes one member from each of [the four] counties and no more than five at-large members; members would continue to be appointed by the Governor, but with three appointed from a list provided by the Speaker of the House and three from a list provided by the President of the Senate.

Serve the Governor in an advisory capacity on matters related to environmental quality; serve as a liaison between the Governor and the general public; attach the EC to the office of the Governor, for administrative purposes.

Continue to ensure that the EC members come from a broad and balanced representation of the diverse sectors of those interested in the environmental review process; continue the current members of EC through June 30, 2012 and until the nine appointed members of the new EC are appointed or re-appointed. (Section 2 of the bill.)

4. Provide Critical Support for Modernizing OEQC through A Special Fund and Temporary Fees

341-B: Creation of the Environmental Review Special Fund

- (a) Establishes the environmental review special fund, for deposit of:
- (1) filing fees and other administrative fees collected by OEQC;
  - (2) moneys collected pursuant to proposed in 341-D;
  - (2) all accrued interest from the special fund; and
  - (3) moneys appropriated to the special fund by the legislature.
- (b) The special fund shall not supplant the OEQC budget and shall be used to:
- (1) fund the activities of OEQC and the EC, including administrative and office expenses and servicing of agency documents related to capital improvement projects;
  - (2) support outreach, training, education, and research programs; and
  - (3) modernize technology, maintain technology systems, and develop training programs.

341-C. OEQC Authority for Fees

Requires OEQC, in consultation with the EC, to adopt administrative rules to establish any fees necessary for the administration and management of OEQC and the EC.

341-D. Temporary Environmental Review Modernization Moneys

(a)-(b) Provides that, for a five-year period beginning July 1, 2011, 0.1 per cent of all state appropriations for CIP supported by general obligation bonds be used to support the environmental review special fund. (d) The total amount of transfers over the five-year-period may not to exceed \$1,250,000 (so, on average, \$250,000 per year from the CIP fee is anticipated).

(c) Creates, through rulemaking, a temporary environmental review modernization fee to be collected from county agencies and private applicants based on publication in the OEQC bulletin of certain environmental review documents, with fees capped at:

- (1) \$1500 for a draft environmental assessment (EA);
- (2) \$1000 for a final EA;
- (3) \$500 for an environmental impact statement (EIS) preparation notice (EISPN);
- (4) \$4000 for a draft EIS;
- (5) \$3000 for a final EIS;
- (6) \$500 for any supplemental EA; and
- (7) \$1000 for any supplemental EIS.

(d) The total amount of these temporary fees collected over the five years are not to exceed \$1,250,000 (so, on average, \$250,000 per year from the document fee is anticipated); once this amount is reached, the collection of fees is discontinued.

Because of the urgent need for strengthening OEQC and the EC, the Working Group recommends an effective date of July 1, 2010 for these changes to Chapter 341.

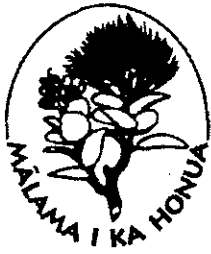
Thank you for the opportunity to provide you with these important recommendations for amending Chapter 341. We look forward to continuing to work with you and the Legislature on these proposed amendments.

Sincerely,

The Members of the SB2818 Working Group:

Dean Uchida, Building Industry Association  
Peter Rappa, UH Study Team  
Kathy Kealoha, Director, OEQC  
Robert Harris, Sierra Club, Hawaii Chapter  
Mark Fox, The Nature Conservancy of Hawaii  
David Arakawa, Land Use Research Foundation

Lee Sichter, Belt Collins  
Karl Kim, UH Study Team  
David Henkin, Earthjustice  
Gail Grabowsky, Chair, EC  
David Atkin, Member EC & Planner  
Denise Antolini, UH Study Team



# Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803  
808.538.6616 hawaii.chapter@sierraclub.org

## LATE TESTIMONY

### HOUSE COMMITTEE ON FINANCE

March 25, 2010, 10:00 A.M.  
(Testimony is 1 page long)

### TESTIMONY IN SUPPORT OF SB 2818 (SD2, Proposed HD3) WITH A PROPOSED AMENDMENT

Aloha Chairs Oshiro and Members of the Committee:

The Hawai'i Chapter of the Sierra Club *supports* the proposed HD3 of SB 2818, which was drafted by a 12 member working group in order to address recent problems with the environmental council and administration of the environmental review process.

This document originated from a University of Hawai'i review of Hawai'i's environmental review process, which included over a hundred individual interviews and comparisons of our law to more current systems. In order to resolve concerns by a wide-range of groups, a working group of twelve stakeholders was formed (including most of the groups that had raised concerns with the University's draft). This diverse group met nine times, not including various subgroup meetings, and unanimously agreed to the recommendations proposed in the proposed HD3.

The Environmental Council and, to a lesser extent, the Office of Environmental Quality Control has been paralyzed by a well-documented lack of funding and administrative support (see attached). **This creates a direct drag on business because the environmental review process is delayed by (1) slow staff response time, (2) an inability to update rules based on new circumstances, and (3) a failure to properly advice on large environmental projects.** Numerous groups, such as the Nature Conservancy and the Department of Transportation, have complained about exorbitant costs created because of the inability to update exemption lists as is envisioned in Chapter 343.

As with any good document, some improvements could be made. We suggest *amending* line 17, page 15, to include a new subsection (f) to state: "If rules are not adopted by July 1, 2011, the maximum fee rate stated in section (c) shall automatically be imposed until such time rules are adopted." This resolves concerns that this or a future administration may be tardy in adopting new rules and ensures the Office of Environmental Quality Control would be funded on a going forward basis.

Mahalo for this opportunity to provide testimony.

Tuesday, June 02, 2009

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# 3 state Environmental Council members quit

By Audrey McAvoy  
Associated Press

POSTED: 01:30 a.m. HST, Jun 02, 2009

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Three members of the state Environmental Council have quietly resigned in recent weeks, alleging the governor ignored their work.

In separate resignation letters, they also accuse the state of failing to provide the panel with the funds, staff and equipment they need to hold meetings and otherwise function.

The council, which has 15 members appointed by the governor, helps the state make sure its rules governing environmental impact statements are in line with state law.

Gov. Linda Lingle's office has made no public statement on the resignations and referred questions to Kathy Kealoha, director of the Office of Environmental Quality Control.

Kealoha, whose position gives her a seat on the council, acknowledged there have been communication problems but denied the governor ignored the council's work. She said the administration has responded to the council's proposals.

The council has the power to suggest changes to rules governing the preparation of environmental impact statements and assessments but no power to enforce them. It also reviews criteria under which environmental studies do not need to be done and discusses exemptions with state departments.

Robert A. King, past council chairman and president of Kahului-based Pacific Biodiesel, said he had a responsibility to step down because the council was unable to accomplish what it is required to do.

"I cannot perform my duties due to a lack of support by the administration," King wrote in his letter to Lingle dated April 7. "Frustration has led me to resign my position."

The low-key council was last in the news in 2007, when it passed a resolution saying the state should conduct an environmental impact statement for the Hawaii Superferry. This opinion came in February, six months before the state Supreme Court arrived at a similar conclusion and forced the high-speed interisland ferry service to suspend operations.

King said inadequate funding and staffing inside the state bureaucracy were among the issues preventing the council from being able to its job.

But most seriously, King said, the Governor's Office ignored the council's proposals to revise the state's rules for environmental impact statements. The revisions were the result of "several years and hundreds of hours" of work by the council and state employees.

Kealoha said the rule changes were submitted to the Governor's Office a few months before Kealoha took office in February 2008.

She said the Governor's Office received the rule changes and responded in a timely

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manner, but she said she has been unable to find any documentation to show that it did.

Part of the problem, Kealoha said, is that all communication between the council and the Governor's Office must go through the Department of Health. "I just don't know where the breakdown in communication back to the council was," Kealoha said.

Two other council members who resigned last month said the council was unable to gather the data it needed last year to prepare an annual report because of inadequate staff. They are David Byland, director of design and sustainability at Honolulu-based Architects Hawaii Ltd., and Wade Lord, chairman of the board for the Kauai Visitors Bureau and a vice president at CB Richard Ellis in Lihue.

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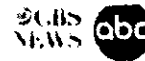


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# Environmental Council defers further work

## Members want more resources from the state to conduct meetings

By Associated Press

POSTED: 01:30 a.m. HST, Sep 28, 2009

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The state's Environmental Council has suspended all further meetings until the state provides it with a staffer to take minutes and resources for Neighbor Island members to participate.



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Council Chairwoman Gail Grabowsky, a Chaminade University professor, wrote the state Department of Health last month saying the council wouldn't reconvene until "the conditions to conduct a successful council meeting have been met."

The decision comes four months after the previous chairman, Pacific Biodiesel President Robert A. King, quit, saying a lack of state support was preventing the council from accomplishing what it was required to do under state law.

Two other council members resigned shortly after King, also in protest.

The council, which has 15 volunteer,

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unpaid members appointed by the governor, helps the state make sure its rules governing environmental impact statements are in line with state law. It also reviews criteria under which environmental studies don't need to be done and discusses exemptions with state departments.

The normally low-profile council briefly stepped into the spotlight in 2007, when it passed a resolution saying the state should conduct an environmental impact statement for the Superferry. Six months after the council's Superferry recommendation, the state Supreme Court arrived at a similar conclusion.

Grabowsky's Aug. 17 letter to Laurence Lau, the Department of Health's deputy director, said no staffer has been available to take meeting minutes for months at a time. So far this year, minutes for just two meetings -- one in January and another in April -- are posted online.

Lau said he's looking into the council's requests.

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# LATE TESTIMONY

WRITTEN ONLY

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

March 25, 2010

## RELATING TO ENVIRONMENTAL PROTECTION

Senate Bill No. 2818, S.D. 2, H.D. 2, 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.