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TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEES ON ENERGY AND ENVIRONMENTAL
PROTECTION, WATER, LAND, AND OCEAN RESOURCES, AND ECONOMIC
REVITALIZATION, BUSINESS, AND MILITARY AFFAIRS
ON
SENATE BILL NO. 2818, S.D. 2

March 9, 2010

RELATING TO ENVIRONMENTAL PROTECTION

Senate Bill No. 2818, S.D. 2, changes the composition of the Environmental Council from 15 to 9 members; establishes the Environmental Review Special Fund, and revises the Environmental Assessment and Environmental Impact Statement process to create a more streamlined, transparent, and consistent process.

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. It is difficult to determine whether the fund will be self-sustaining.



Hawai'i Island Chamber of Commerce

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Bill No. hicc.biz SB2818

March 8, 2010

Date 3/9
9/11
Time _____

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To: Honorable Senator Donna Mercado Kim, Chair
Senator Shan Tsutsui, Vice-Chair;
and Members of the Committee on Ways and Means

From: Mike Gleason, President-Elect & Government Affairs Committee Chair
Hawai'i Island Chamber of Commerce

Subject: SB 2818, SD 1 Relating to Environmental Protection

Please accept these comments from the Hawai'i Island Chamber of Commerce. HICC represents both large and small businesses on Hawai'i Island. Our mission is to help businesses and promote Hawai'i Island. We provide leadership and advocacy for the business community and promote the economic well-being of the community as a whole. My name is Mike Gleason, President-Elect and the Chair of the Government Affairs Committee.

HICC respectfully requests that this Committee to hold and defer this bill to allow the considerable time and effort that will be necessary for the members of the different businesses, agencies, organizations, and individuals who will be affected by this sweeping legislation the opportunity to improve it.

The proposed legislation is a result of the Report to the Legislature on Hawai'i'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. Act 1 of the 2008 State Legislature directed the University of Hawai'i EIS Study Team to, among other things, examine the effectiveness of the current EIS system. We have the following objections to both the bill and the process:

- The substantial changes to Chapter 343 in sum will significantly raise costs for applicants (both private and agency) and agency processors by dramatically broadening the scope of coverage to include many more projects, most of them minor. There would be no way to process these



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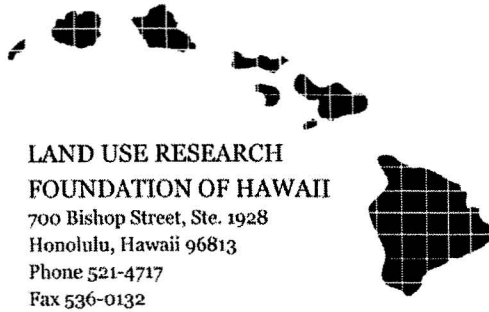
EAS without substantially increasing the number of government employees at many county and state agencies.

- We see little evidence that there are fundamental flaws in the existing system justifying such a wholesale change. Most disturbing is the lack of any nexus to an actual deficiency (i.e., it is a solution in search of a problem) and complete apathy about the high cost to homeowners, agencies and businesses who will now need an EIS and the agencies who will now need to process EISs under much more burdensome rules.
- There has been absolutely no study of the broad negative implications of the proposal, which was just presented to the public and Legislature in late December.
- We are concerned about the narrow backgrounds of the group who prepared the legislation, none of whom appear to have expertise and or substantive experience in the planning preparing or processing Chapter 343 documents beyond the academic and theoretical arena. Their lack of familiarity has imbued many aspects of the bill with troubling flaws.

We share many of the concerns and support the February 22, 2010 testimony of the Land Use Research Foundation of Hawai'i that we understand have been previously shared with your committee. We concur particularly with their recommendations that:

- Legislation could be adopted this session regarding issues where there is general agreement; and the study team and land use professionals can work together to provide proposed revisions to bills;
- The parties can work together to identify issues that require further study and input; volunteer to continue work on those issues in Working Groups that involve all stakeholders, perhaps request an independent, objective umbrella organization to facilitate the discussions and prepare a report to the legislation for next year

Thank you for the opportunity to express our **opposition** to SB 2818, SD 1.



LAND USE RESEARCH
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Bill No. SB 2818

Date 3/9

Time 1046

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Via: <http://www.capitol.hawaii.gov/email/testimony>

Type 1 2

March 9, 2010

**Comments and Opposition to SB 2818, SD2
Relating to Environmental Protection
(Major Changes to Chapter 343)**

Honorable Chair Hermina Morita, Vice Chair Denny Coffman and Members of the House Committee on Energy & Environmental Protection; Honorable Chair Ken Ito, Vice-Chair Sharon Har and House Committee Members of Water, Land & Ocean Resources; Honorable Chair Angus McKelvey, Vice Chair Isaac Choy and Members of the House Committee on Economic Revitalization, Business & Military Affairs,

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, 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 343, Hawaii Revised Statutes. LURF also objects to some of the changes made between the original version, SB 2818, SD1 and SB 2818, SD2.**

SB 2818, SD2. This proposed bill includes substantial changes to Chapter 343, including, but not limited to the following: reducing the membership of the Council from 15 to 9; strips many of powers and duties of the OEQC director and places those powers in the Council, establishes the Environmental Review Special Fund; proposes major changes in the Environmental Assessment (EA) and Environmental Impact Statement (EIS) process. The bill will also call for more government processes, expenses and personnel.

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.

LURF'S Objections. LURF objects to the **SB 2818, SD2 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 would 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 **hundreds of additional and new requirements in Bill 2818, SD2 the number of potential plaintiffs and questionable lawsuits would 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.

Major Concern: 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.

The UH Recommendations and Bill 2818, SD2 attempt to change the EIS from a “Disclosure Document” to another government permit or approval. Attempts to change the EAs and EIS’ from a disclosure document to another government permit include, but are not limited to proposed requirements to include EIS mitigation measures as conditions in grants, permits or other approvals, requiring a record of decision to enforce the mitigation measures disclosed in the EIS, and continued government monitoring of EIS compliance and shelf-life.

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 in the ongoing Supreme Court Appeal of the Kuilima EIS.

LURF’s Recommendation. 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;

- 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; volunteer to continue work on those issues in Working Groups that involve all stakeholders, perhaps request an independent, objective umbrella organization to facilitate the discussions and prepare a report to the legislation for next year (under legislative auditor or LRB) ; and

General Agreement on some issues. We believe that “general agreement” can be reached on some issues, including, but not limited to the following:

- Exemptions for the use of land for utilities or rights of way
- Procedures to respond to “comment bombing”
- Allowing project to proceed directly with an EIS, without doing an EA first
- Requiring all environmental assessments and impact statements to be posted on the OEQC website

Issues subject to misinterpretation, confusion, delays and possible litigation, which require more work and clarification. There are some issues that may have some merit, but would require more professional input, discussion and clarification with stakeholders before adopted as law.

- Definition of “Discretionary” vs. “Ministerial” permit triggers
- Definitions of permit, project, action, phasing, primary and secondary and cumulative impacts
- Definition of “Significant Effects”
- Expansion of “energy consumption” effect to include “substantial quantities of greenhouse gases”
- Expansion of “hazard” effects to include erosion caused by climate change during the lifetime of the project (should government be doing this too?)
- Standards and procedures for the requirement of a Supplemental EIS

Disagreement on other issues. There are some issues that may remain irresolvable, including, but not limited to the following:

- 10-Year Shelf Life of EA or EIS - Most major private and public projects cannot be finished in 10 years. What will happen in 10 years? Will the project be required to change? This will cause havoc with project financing!
- Allows the Council to adopt “Interim Rules “(until 2014) without Chapter 91 public review and comment. What about transparency and public involvement?
- Expanding judicial appeal rights to include the lack of a supplemental EA or EIS
- Granting “Aggrieved Party” status (to allow lawsuits) to any party who provides a written comment to the EIS or EA.
- Reducing the authority of OEQC and its Executive Director
- Increasing the Authority of the Environmental Council
- Establishment of a new Environmental Review Special Fund
- New fees for filing, publication and other administrative services
- Use of Record of Decisions to constitute a “contract” with government (when there are other existing processes and required documents that document decision making and monitoring of projects).
- Requires agencies to “monitor” to ensure that their “decisions” with respect to the EIS are carried-out and implemented by the lead agency (EIS’ are disclosure documents, not permit approvals with conditions).

- Requirement to include mitigation measures (as identified in EIS) on grants, permits or other approvals (EIS' are disclosure documents, not permit approvals with conditions).

CONCLUSION. Based n 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.**