

STAND. COM. REP. NO. 67

Honolulu, Hawaii
Feb 7, 2011

RE: H.B. No. 402

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Sir:

Your Committee on Energy & Environmental Protection, to which was referred H.B. No. 402 entitled:

"A BILL FOR AN ACT RELATING TO ENVIRONMENTAL IMPACT STATEMENTS, "

begs leave to report as follows:

The purpose of this bill is to protect native Hawaiian traditional and customary rights by, among other things:

- (1) Requiring that environmental assessments (EA) and environmental impact statements (EIS) include cultural impact assessments that assess impacts and effects on native Hawaiian culture;
- (2) Establishing requirements as to what should be contained in the cultural impact assessment;
- (3) Requiring public notification and consultation when preparing a cultural impact assessment;
- (4) Establishing, as a condition precedent to acceptance of an EA or EIS, acceptance of a cultural impact assessment by the Office of Hawaiian Affairs (OHA); and
- (5) Providing a definition of a "cultural impact assessment."



OHA, the Association of Hawaiian Civic Clubs, Aha Kiolo Advisory Committee, and several concerned individuals testified in support of this bill. The Office of Environmental Quality Control (OEQC) of the Department of Health and Department of Land and Natural Resources supported the intent of this measure. The Department of Planning and Permitting of the City and County of Honolulu and NAIOP Hawaii testified in opposition to this bill.

Act 50, Session Laws of Hawaii 2000 (Act 50), amended Hawaii's Environmental Impact Statement Law to require that an EIS assess the effects of a proposed action on the cultural practices of the community and State. Act 50 specifically acknowledged the State's responsibility to protect native Hawaiian cultural practices and the State's past failure to require native Hawaiian cultural impact assessments which has resulted in the loss and destruction of many important cultural resources and has interfered with the exercise of native Hawaiian culture. Ten years later, these issues remain unaddressed. Requirements for assessing cultural impacts do not currently exist within the Hawaii Revised Statutes. As a result vast inconsistencies currently exist in the manner in which cultural impact assessments disclose a project's cultural impact.

Recent incidents regarding cultural impact assessments concerns indicate that disclosure of a project's cultural impact while the project is still in the planning and development stages, makes the most sense. Disclosure of these impacts after a project commences only invites challenges and review, which results in greater costs for the project.

Your Committee notes that many questions and concerns have been raised regarding this measure, particularly its necessity and effectiveness. According to OEQC, a better option to address the concerns raised regarding cultural impact assessments would be to have the affected parties dialogue and petition the State Environmental Council to initiate its statutorily established rulemaking authority to attend to outstanding issues rather than mandating that additional documents be prepared for an EA or EIS. Nevertheless, your Committee finds that this matter is worthy of continued discussion and dialogue.

As affirmed by the record of votes of the members of your Committee on Energy & Environmental Protection that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 402 and recommends that it pass Second Reading



and be referred to the Committees on Hawaiian Affairs and Culture
& the Arts.

Respectfully submitted on
behalf of the members of the
Committee on Energy &
Environmental Protection,

Hermina Morita

HERMINA MORITA, Chair



HSCR 67

State of Hawaii
House of Representatives
The Twenty-sixth Legislature

Record of Votes of the Committee on Energy & Environmental Protection

Bill/Resolution No.: HB 402	Committee Referral: EEP, HAW/CUA, FIN	Date: 2-3-2011		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input checked="" type="checkbox"/> Pass, unamended (as is) <input 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)				
EEP Members	Ayes	Ayes (WR)	Nays	Excused
1. MORITA, Hermina M. (C)	✓			
2. COFFMAN, Denny (VC)	✓			
3. CABANILLA, Rida T.R.				✓
4. CARROLL, Mele				✓
5. CHANG, Jerry L.	✓			
6. CHONG, Pono	✓			
7. HAR, Sharon E.	✓			
8. HERKES, Robert N.				✓
9. ITO, Ken				✓
10. NAKASHIMA, Mark M.	✓			
11. RIVIERE, Gil	✓			
12. THIELEN, Cynthia	✓			
TOTAL (12)	8	0	0	4
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: <u><i>Denny Coffman</i></u>				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO				