

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of  
WILLIAM J. AILA, JR.  
Chairperson**

**Before the House Committee on  
FINANCE**

**Friday, April 01, 2011  
2:00 PM  
State Capitol, Conference Room 308**

**In consideration of  
SENATE BILL 699, SENATE DRAFT 2, HOUSE DRAFT 1  
RELATING TO THE OFFICE OF ENVIRONMENTAL QUALITY CONTROL**

Senate Bill 699, Senate Draft 1, House Draft 1 proposes to establish filing fees to help fund operations of the Office of Environmental Quality Control (OEQC) and creates a special fund.

The Department of Land and Natural Resources (Department) recognizes the needs of OEQC to establish appropriate fees to cover the cost of services. However, the Department supports this move as long as the size of the fees are appropriate. We have concerns with budgetary impacts on the Department and our small landowner and non-profit partners engaging in conservation projects that do not generate monetary profits and that support public benefits. Costs in the ballpark of \$500 for an environmental assessment (EA) and \$1,000 for an environmental impact statement (EIS) seem appropriate for small projects. The way the bill is currently written, it would also have no exemption for any government sponsored projects, even small projects, because government agencies would exceed the revenue or number of employees' thresholds. Regarding thresholds for exemptions from filing fees under §341-B(c), the Department suggests an exemption be provided for projects that do not exceed \$500,000 and applicants annual revenue does not exceed \$1,000,000.

In assessing the amount of the filing fee, take into consideration that many other agencies are also passing on permit processing fees for the Administrative work that they do to develop, review and issue permits. For instance, the Department is in the process of adopting fees for Conservation District Use permits, which also require an EA or EIS, which range in costs from \$250 for small projects, up to \$2,500 for complex projects that could require weeks and months of staff time.

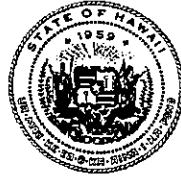
WILLIAM J. AILA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
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STATE PARKS

NEIL ABERCROMBIE  
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GARY L. HOOSER  
INTERIM DIRECTOR

**STATE OF HAWAII**  
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**HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION**

**SB699, SD2, HD1, RELATING TO THE OFFICE OF ENVIRONMENTAL  
QUALITY CONTROL**

**Testimony of Gary Hooser  
Interim Director of the Office of Environmental Quality Control**

**April 1, 2011**

1 **Office's Position:** The Office of Environmental Quality Control strongly supports SB699, SD2,  
2 HD1, as its number one priority bill. We also suggest amendments to further clarify language in  
3 the measure.

4 **Fiscal Implications:** The proposed fees will establish a special fund via filing fees that will be  
5 utilized to improve OEQC's implementation and compliance with Chapter 343, and Chapter 341,  
6 Hawaii Revised Statutes.

7 **Purpose and Justification:** OEQC's mandate under Chapter 341, HRS, includes managing the  
8 environmental assessment and environmental impact statement process, providing education and  
9 outreach about the Chapter 343 process to stakeholders around the state, publishing as required  
10 by law, an "Annual Report on Hawaii's Environment," and being the public's voice for the  
11 environment, that includes legislative advocacy, education and a complaint repository. There is  
12 also a need to eliminate the backlog of exemption list reviews and rule amendments that now  
13 exist. The proposed fees will provide needed funding to hire an administrative program  
14 specialist, a planner, and other support to the Environmental Council, upgrade existing systems,

1 and modernize technology to improve OEQC services and ensure quality of the State's  
2 environmental review process.

3 We would like to offer the following language as proposed amendments. On page 4,  
4 please amend line 8 by inserting the amount of 500,000 after the \$ sign and amend line 10 by  
5 inserting the amount of 1,000,000 after the \$ sign. These figures were on the original draft of  
6 this measure and we strongly believe that they are fair and reasonable exclusions from the fees.

7 In addition, we would like to request SB699 to be further amended by inserting "direct  
8 appropriation language" that would allow the OEQC to immediately utilize any funds generated  
9 or the inclusion of an appropriate "new special fund line item" in HB200 that would authorize  
10 the temporary hiring of two positions (one administrative support and one planner) and a special  
11 fund ceiling of \$300,000.

12 And finally, we respectfully request that this measure be effective immediately upon the  
13 governor's approval instead of July 1, 2050.

14 We appreciate the initiative provided by SB699, SD2, HD1, and look forward to its  
15 passage.

16 Thank you very much.

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PETER B. CARLISLE  
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DEPUTY DIRECTOR



March 31, 2011

The Honorable Marcus R. Oshiro, Chair  
and Members  
Committee on Finance  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Oshiro and Members:

Subject: Senate Bill No. 699, SD2, HD1 Relating to the Office of Environmental Quality Control

The Department of Design and Construction (DDC) respectfully **opposes** SB699, SD2, HD1, which proposes to impose very substantial fees for filing environmental review documents, including environmental assessments, environmental impact statements, preparation notices, and supplemental documents, with the Office of Environmental Quality Control (OEQC). The bill does not exempt county or State agencies from payment of these filing fees.

The OEQC's function is essentially to act as an information clearinghouse. In this role, the OEQC's responsibilities are very narrowly defined and the costs for operating should be relatively small. Suggested reforms for the OEQC in recent years have not proposed significant expansion of the OEQC's role as an information clearinghouse.

The collection of the proposed filing fees from county and State agencies would severely burden those agencies required to publish many environmental review documents on a regular basis as a function of their operations. The imposition of significant filing fees could motivate State and county agencies (including DDC) to make more liberal use of their exemption privileges to avoid the filing costs. This might not be in the best public interest.

Filing of environmental review documents should not be confused with review of plans and other construction-related documents submitted in support of applications for permits and approvals administered by county agencies and certain State agencies other than the OEQC. Significant staff time and specialized skills are required to adequately analyze and process these submittals. In contrast, the OEQC staff is not required to make any technical decisions or recommendations relating to the actions described in the environmental review documents that are filed by the OEQC. Only on rare occasions does the OEQC have a role in interpreting and applying the laws and regulations relating to the environmental review process as it applies to a particular proposed action. Even in that function, the OEQC's legal role and powers are very

The Honorable Marcus R. Oshiro, Chair  
and Members  
Committee on Finance  
March 31, 2011  
Page 2

limited. Most of OEQC's processing of environmental review documents is routine and should not generate significant operating costs.

County and other State agencies in Hawai'i face budgetary constraints similar to those faced by the OEQC. The imposition of substantial OEQC filing fees to be collected from other government agencies is neither necessary nor justified. For the reasons indicated herein, DDC respectfully **opposes** SB699 SD2.

Thank you for the opportunity to testify.

Very truly yours,

*for*   
Collins Lam, P.E.  
Director

CDL:WB:hm



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April 1, 2011

Representative Marcus R. Oshiro, Chair and Representative Marilyn B. Lee, Vice Chair  
House Committee on Finance

**Opposition and Comments to SB 699, SD2, HD1 Relating to the Office of Environmental Control** (Establishes arbitrary interim OEQC filing fees and creates a special fund for OEQC)

**Friday, April 1, 2011 at 2:00 p.m. in CR 308**

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 believes that this bill is well-intended and supports the concept of increased funding for the Office of Environmental Quality Control (OEQC), reasonable and justifiable fees based on a transparent process with public input, and the concept of an Environmental Review Special Fund (ERSF). Regrettably, however, LURF must **strongly oppose SB 699, SD2, HD1**, which proposes to set a very dangerous state precedent, by establishing **arbitrary interim OEQC filing fees** which will **increase the costs of state, county and private development projects and economic development; without transparency, public input and without going through the administrative rule-making process**; creates **arbitrary exemptions** from those filing fees; creates an ERSF to receive the fees; and establishes uses relating to the ERSF. Instead of imposing arbitrary fees this year, LURF respectfully urges the Legislature to consider the following:

- Establish a Working Group of representatives of the State and county agencies, OEQC, and other stakeholders in the environmental review process to review, discuss and make recommendations regarding OEQC filing fees and the ERSF;
- If it is determined that OEQC fees are justified, allow the State Department of Health(DOH) and OEQC to follow the rule-making process to set OEQC fees; and
- For FY 2011, increase in OEQC's budget, by approximately \$206,000;

**SB 699, SD2, HD1**. This bill proposes to establish arbitrary interim OEQC fees to be imposed on the State, counties and select private companies to help fund OEQC activities; hire adequate non-union staff (exempt from Chapters 76 Hawaii's Civil Service law and Chapter 89 Collective Bargaining in Public Employment law); support outreach, training, education and research; modernize and maintain technology systems; and develop technology training.

The proposed arbitrary interim fee schedule, for state and county agencies and certain select organizations are as follows:

- 1) \$1,500 for a draft environmental assessment;
- 2) \$1,000 for a final environmental assessment;
- 3) \$500 for an environmental impact statement preparation notice;
- 4) \$4,000 for a draft environmental impact statement;
- 5) \$3,000 for a final environmental impact statement;
- 6) \$500 for other significant addendum to a final environmental assessment;
- 7) \$500 for a final environmental assessment or supplemental environmental statement preparation notice;
- 8) \$2,000 for a supplemental draft environmental impact statement; and
- 9) \$1,000 for any supplemental final environmental impact statement.

The bill also proposes an arbitrary waiver of the interim OEQC fees if an applicant can demonstrate that the cost of the proposed action is below an undisclosed amount, applicant's annual revenue is less than an undisclosed amount, and if the applicant has fewer than ten employees.

**No Public Involvement or Transparency in SB 699 Arbitrary OEQC Fees**. The arbitrary interim OEQC fees set by this bill did not comply with Hawaii Revised Statutes Chapter 91 and did not involve a public process with input of all the stakeholders, especially the state and county agencies and those select organizations that would be burdened by the arbitrary fees. It will be interesting to see whether this bill will be supported by individuals and groups who claim to act in the public interest and demand public involvement and transparency in public decision-making. Nevertheless, the following are some questions which we believe should be answered before OEQC filing fees and ERSF is established.

- Who determined the fees, exemptions and uses of the funds?
- What specific facts and empirical data were considered in determining the setting of the fees, exemptions and uses for the funds?
- What were the assumptions and analysis that went into the setting of the fees, exemptions and use of funds?
- Was there meaningful public notice and consultation with stakeholders in the environmental review process, such as State and county agencies, professional firms and trade organizations which prepare environmental review documents, landowners, developers and others who will be required to pay the fees;
- Can be ERSF be "raided" by the State Administration to balance its budget? If the funds are raided, does that mean that the proposed "uses" of the ERSF will not be fulfilled?

**LURF's Position.** LURF believes that this bill is well-intended and supports increased funding for OEQC and the concept and purposes of the ERSF. However, LURF **opposes SB 699, SD2, HD1** based on what appears to be the arbitrary interim fee schedule for review of environmental documents, the arbitrary criteria for waiver of fees, and the lack of transparency and stakeholder input in setting the arbitrary interim fees and waiver criteria. LURF's objections are summarized as follows:

- The proposed OEQC fees are waiver standards clearly arbitrary, and were created without stakeholder input of those select organizations that would be burdened by paying the arbitrary fees;
- The proposed arbitrary OEQC filing fees which will increase the costs of state, county and private development projects and economic development;

- The arbitrary fees proposed by SB 690 SD2, HD1 are inconsistent with the Chapter 91 administrative process of establishing fees for services, which will assure public hearings, public input, experts' advice and transparency;
- We respectfully recommend that the issue of fees, waivers and the use of funding be addressed by a Working Group of representatives of the State and county agencies, OEQC, professional firms and trade organizations which prepare environmental review documents, landowners, developers and other stakeholders in the environmental review process to review, discuss and make recommendations regarding filing fees and the ERSF;
- Instead of imposing arbitrary OEQC filing fees via a statute, OEQC and DOH should follow the Chapter 91 administrative process of establishing fees for services, which will assure public input, experts' advice and transparency.
- Instead of imposing arbitrary fees this year, the Legislature should consider an increase in OEQC's budget. We understand that OEQC has calculated its additional funding needs to be approximately \$206,000;
- LURF is willing to cooperate with OEQC and the introducers of SB 699, SD2, HD1 to work toward a reasonable fee schedule, exemption categories, reduced fee list, and priorities for use of ERSP funds that will assist OEQC in its mission.

**CONCLUSION.** Based on the foregoing reasons, LURF is in **opposition SB 699, SD2, HD1** and we respectfully request that this **Committee hold this bill until a Working Group can be formed to provide recommendations relating to OEQC fees and the ERSF.** Also, instead of imposing arbitrary interim OEQC fees this year, the legislature could consider an increase in OEQC's budget of approximately \$206,000, based on OEQC's calculations and request.

We greatly appreciate the opportunity to present our testimony regarding this matter.



## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 30, 2011 2:12 PM  
**To:** FINTestimony  
**Cc:** palmtree7@earthlink.net  
**Subject:** Testimony for SB699 on 4/1/2011 2:00:00 PM

Testimony for FIN 4/1/2011 2:00:00 PM SB699

Conference room: 308  
Testifier position: support  
Testifier will be present: No  
Submitted by: jAnice palma-glennie  
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Submitted on: 3/30/2011

Comments: