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In reply, please refer to:
File:

COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION
S.B. 1295, S.D. 1, RELATING TO GREENHOUSE GAS EMISSION RULES

Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.
Acting Director of Health

March 17, 2011
9:40 a.m.

1 **Department's Position:** The Department of Health opposes and proposes suggestions for this bill.

2 **Fiscal Implications:** To support the Department's Greenhouse Gas (GHG) program, the Department
3 requests that the temporary Engineer V position (90504H) and the temporary Program Specialist IV
4 position (90505H), as provided by Act 162, SLH 2009 and funded by the revolving or special funds, be
5 converted to permanent positions.

6 **Purpose and Justification:** This bill amends Chapter 342B, Part VI, HRS by extending by six months
7 the December 31, 2011 deadline date for the Department to adopt rules to establish GHG emission limits
8 and require statewide GHG emission reporting and verification.

9 While the Department supports the intent to extend the deadline to adopt GHG rules pursuant to
10 Act 234, SLH 2007, a longer extension is needed. We would suggest a four year extension that was
11 previously adopted by this committee. The original deadline was based on the assumption that the GHG
12 Emissions Reduction Task Force (Task Force) would adopt a GHG emission reduction plan that would
13 require the regulatory authority of the Department rules. Instead, the Task Force recommended the
14 adoption of the plan based on the aggressive energy reduction strategies set forth in the Hawaii Clean

1 Energy Initiative (HCEI) of the Department of Business, Economic Development, and Tourism which
2 will more than meet the GHG emissions reduction goal of the Act.

3 During the two and a half years that the Task Force was created and convened, the Department
4 postponed working on any GHG rules while it actively participated as member of the Task Force which
5 concluded with the support and GHG reductions sustained through the HCEI. Although the Task Force
6 never proposed a regulatory scheme, the Department does intend to develop and adopt GHG rules
7 including the permitting and reporting of stationary source GHG emissions, as a first step in regulating
8 and managing Hawaii's contribution to the global GHG emissions. However, a longer extension of the
9 deadline is needed to provide the Department with the flexibility and time to assess the needs of a Hawaii
10 GHG program and to ensure that it does not conflict with but complements the present U.S.
11 Environmental Protection Agency's (EPA) GHG Permit Tailoring Rule and the Mandatory Reporting
12 Rule. An additional six months are not sufficient and the Department asks that this committee considers
13 a four year extension as provided in House Bill 1068, House Draft 1.

14 In this pursuit of developing the GHG rules and program, the Department will require personnel
15 resources to assist in this effort. In 2009, the Department did request for two permanent positions but
16 instead received two temporary, pursuant to Act 162, SLH 2009. Accordingly, the Department requests
17 that the temporary Engineer V position (90504H) and the temporary Program Specialist IV position
18 (90505H) supported by the revolving or special funds be converted to permanent positions. As the GHG
19 program develops, additional positions will be required to support the GHG administrative, monitoring,
20 and enforcement activities.

21 Thank you for the opportunity to testify on this bill.

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Testimony of The Nature Conservancy of Hawai'i
Supporting S.B. 1295 S.D.1 Relating to Greenhouse Gas Emission Rules
House Committee on Energy and Environmental Protection
Thursday, March 17, 2011, 9:40AM, Rm. 325

The Nature Conservancy supports S.B. 1295 S.D. 1. We did not believe, as contemplated by the original version of S.B. 1295, that the requirement for Department of Health (DOH) rules under the State's greenhouse gas emission reduction plan should become entirely discretionary. However, we do support an extension of time for the DOH to adopt rules regarding emission limits and reporting requirements.

While the Greenhouse Gas Emission Reduction Task Force unanimously supported the goals of the Hawai'i Clean Energy Initiative (HCEI), seven of ten members also strongly recommended that there be additional assurances that emission reduction targets are met in the event that some HCEI activities are unrealized. These additional assurances or "backstops" included Department of Health emission regulations.

Please review the Task Force's December 30, 2009 report to the Legislature at DBEDT's website: <http://hawaii.gov/dbedt/info/energy/greenhouse>. You'll see that the members who recommended additional assurances like DOH regulations included the Task Force representatives from DOH and DBEDT.

Also notable is that while the Task Force did not provide the DOH and the Legislature with an actual draft of proposed regulations, the prior Administration only released half of the money appropriated by the Legislature for the Task Force's work. So, the Task Force was a bit hampered in its ability to deliver work products. Finally, the U.S. Congress failed to adopt comprehensive climate change legislation last year and it appears that there will be no such efforts in the current Congress. Indeed, there are efforts now in the Congress to severely limit or eliminate the Environmental Protection Agency's authority to regulate greenhouse gases, which makes it all the more important for states to take responsibility for emission reductions.

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HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

March 17, 2011, 9:40 A.M.
(Testimony is 1 page long)

TESTIMONY IN OPPOSITION TO SB 1295, SD1, WITH PROPOSED AMENDMENTS

Chair Coffinan and Members of the Committee:

The Sierra Club, Hawaii Chapter, with 8000 dues paying members and supporters statewide, *opposes* SB 1295, SD1. While more time may be needed to draft rules, we believe it a mistake to leave the regulation of greenhouse gas emissions upon the discretion of the Department of Health.

Several years ago, this Legislature passed a historic act appropriately committing Hawai'i to reduce its greenhouse gas emissions. This act was *not* a "goal" to reduce greenhouse gases, nor was it a study of our greenhouse gas inventory. It was an enforceable limit and a directive to the Department of Health to implement an action plan to achieve it.

This Legislature correctly observed that we had an urgent need to put in place limits on greenhouse gases now. A limit sends a signal and begins the critical transition today.

Hawai'i's commitment to reduce its greenhouse gas emissions should not be weakened by leaving regulation of the emission limits solely up to the Department of Health's discretion. We suggest this SB 1295, SD1 be amended to strike the "word "may" and to keep the current language of "shall."

Mahalo for the opportunity to testify.



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COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Thursday, March 17, 2011

9:40 am

Room 325

**RELATING TO GREENHOUSE GAS EMISSION RULES
SB 1295 SD1**

Aloha Chair Coffman and Members of the Committee,

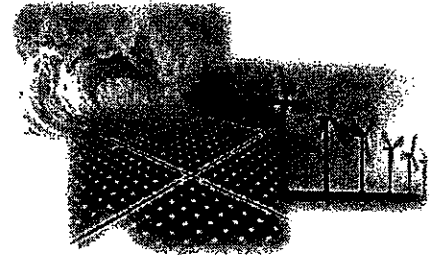
The Hawaii Farm Bureau Federation (HFBF), as the largest non-profit general agriculture organization representing approximately 1,600 farm and ranch family members statewide, **strongly supports SB 1295 SD1**. However, we encourage you to restore the original language of the measure, which would have eliminated rather than merely postponing the deadline for the Department of Health to adopt rules relating to greenhouse gas (GHG) emissions limits.

HFBF agrees with the Department of Health's prior testimony on this measure that the GHG reduction plan and strategy adopted by the GHG Emissions Reduction Task Force will meet the emission reduction goals of Act 234, and that the adoption of new GHG emissions limits by the Department is therefore unnecessary at this time. Based on modeling analyses prepared for the Task Force, real GHG emissions in the State of Hawaii are projected to be more than ten percent below 1990 levels by 2020 under existing approved policies and regulations. **Thus, no new policies, laws, or regulations are necessary in order for Hawaii to achieve the greenhouse gas emissions reduction target of Act 234.**

While the Work Plan supported by the Task Force, if implemented, could achieve further emissions reductions beyond the Act 234 target (to approximately 39 percent below 1990 emissions), these **further reductions are not mandated by Act 234** and therefore **should not be imposed through new regulatory requirements** under the authority of Act 234. HFBF has grave concerns that additional regulatory programs implemented to go beyond the Act 234 target could have severe economic impacts on affected industries, including agriculture and agricultural processing facilities.

Since no new regulatory program is necessary in order to achieve the Act 234 emissions reduction target, HFBF urges that the requirement for the Department of Health to implement such a program be eliminated. We ask that you **pass SB 1295 with amendments to restore the original language of the measure.**

Thank you for the opportunity to offer our comments and for your support of agriculture in Hawaii.



HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

March 17, 2011, 9:40 A.M.

Room 325

(Testimony is 4 pages long)

TESTIMONY OFFERING COMMENTS ON SB 1295 SD1

Acting Chair Coffman and members of the Committee:

The Blue Planet Foundation does not oppose SB 1295 SD1 as currently drafted, but we would prefer that the original law stands. We oppose any effort to repeal the requirement that the Department of Health establish rules to achieve Hawaii's greenhouse gas reduction targets. We believe that such a repeal would be a setback for Hawaii's greenhouse gas (GHG) reduction effort, risk the state failing to achieve the GHG reduction standards, and damage Hawaii's reputation as a policy leader in GHG mitigation efforts.

Blue Planet believes it is in the best interest of the State of Hawai'i to retain the requirement that Hawaii implement rules to achieve the maximum practically and technically feasible and cost-effective reductions in GHG emissions.

The historic Act 234 of 2007 was one of the first laws in the nation to set binding, enforceable caps on a state's climate-changing greenhouse gas emissions. The law, modeled after California's AB 32 of 2006, has three objectives:

1. Identify and inventory all sources of greenhouse gases, including secondary sources and "leakage" (GHG emissions increased outside of the state due to Hawai'i activity). This inventory sets the baseline for 1990 levels and current trajectories.
2. Set a binding cap of 1990 GHG levels—the maximum level of pollution—to be achieved by 2020.
3. Adopt rules to achieve the GHG limits. The law requires that the Department of Health develop rules with stakeholders that enable the various GHG emitting sectors to meet the emissions target. The law directs the State to establish "emissions reduction measures to achieve the maximum practically and technically feasible and cost-

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effective reductions in greenhouse gas emissions..." (emphasis added). The law further specifies that the rules ensure that any GHG emissions reductions are real, permanent, quantifiable, verifiable, and enforceable.

The first two objectives of the law have been accomplished. The final objective is to be completed by December 31 of this year to enable ample time for the rules to achieve their goal of ratcheting down emissions by 2020. Blue Planet believes that this rulemaking requirement should stand for a variety of critical reasons.

Greenhouse gas reduction rules needed as a backstop to energy goals

The predominant rationale that GHG reduction rules are unnecessary suggests that attainment of Hawaii's Clean Energy Initiative (HCEI), including the renewable portfolio standard (RPS) and energy efficiency portfolio standard (EEPS), is sufficient to reduce GHG emissions.

While achievement of the RPS and EEPS targets may result in GHG emissions below 1990 levels in 2020, it is not a certainty. Only the electricity RPS and EEPS have been codified in statute, and achieving those goals will be challenging. Current plans to achieve the RPS largely hinge on the development of large-scale wind projects on neighbor islands (with an interisland cable) and biofuel availability for existing power plants. Hawaii's EEPS is among the most aggressive in the country, and current trends suggest it will be very difficult to meet. Further, the many of transportation objectives in the HCEI plan exist mainly as targets. It is unclear if they will be codified or mandated in any meaningful way.

If Hawaii is serious about achieving its GHG reduction goals, a back-up plan should be in place to ensure that fossil fuel reduction plans stay on track.

Greenhouse gas abatement policies could spur innovation and can work synergistically with energy goals

Rules developed under the existing GHG law could be used to support Hawaii's aggressive energy goals set forth in HCEI. For example, rules could establish fees for carbon pollution which could then be applied to support clean electricity or sustainable transportation projects. The specter of future fines or penalties for failing to achieve sector targets might change utility decision making in investment and interconnection decisions. Sector-based emissions targets could be established by rule to foster efficiency innovation in those sectors, such as ground transportation or solid waste management. Rules could target specific problems (such as vehicle tire pressure), producing programs that have tangible cost-savings and GHG reduction results.

California, which is moving forward with its GHG reduction rulemaking, has identified 69 “scoping plan” measures that it is seeking to implement to achieve its 2020 GHG cap (available online: http://www.arb.ca.gov/cc/scopingplan/sp_measures_implementation_timeline.pdf).

If the goal is to decrease our reliance on imported fossil fuel and increase self-sufficiency, adopting innovative and broad rules to reduce carbon dioxide emissions will help achieve it.

Rules adopted could go further than the target in law

Hawaii’s GHG reduction law requires that the Department of health adopt rules that achieve the “maximum practically and technically feasible and cost-effective reductions in greenhouse gas emissions.” This legislative direction gives the Director the flexibility to be innovative and explore the canvas of cost-effective solutions to maximize the reduction of Hawaii’s carbon footprint. The 1990 levels of emissions are not an end point; rather, they are a point on a spectrum. Hawai’i should endeavor to reduce GHG to the greatest extent possible (that is practical and cost-effective), and the current law requires that.

Further, rules can examine GHG sources and solutions outside of the energy sector. For example, the waste management sector (including wastewater treatment facilities), where methane emissions are a concern, will not be addressed by Hawaii’s GHG law if rules are not developed. Innovative rules could be established that support positive solutions in agriculture and waste management as well, such as reforestation credits, or support for soil solutions such as biochar.

In 2008, as part of HCEI, the international consulting group McKinsey and company identified dozens of cost-effective approaches to abating carbon in Hawai’i. This could serve as a template for developing rules to ratchet down Hawaii’s GHG emissions.

A “wait and see” approach could fail

Senate Bill 1295 suggests that GHG action at the Federal level could affect the state’s approach. It is unclear if the EPA will be successful at implementing GHG reduction policy, and if they are, if it will be incompatible with the state’s rules. Moreover, Hawai’i can adopt rules that contemplate Federal action and be flexible in their implementation.

California—which passed a GHG law a year prior to Hawaii’s law—is proceeding with their rulemaking process. California met their 2010 deadline to put in place a framework for rules governing carbon abatement. In fact, an oil and gas industry-led effort to repeal California’s GHG law failed last year. Other states, including New Jersey and Massachusetts, are proceeding with GHG policy in the absence of federal action.

Greenhouse gas reduction rules are needed now more than ever

Hawai'i is ground zero for impacts of climate change. Our islands face dramatic loss of beaches and shoreline with sea level rise, extreme changes to agriculture due to shifting precipitation patterns, and loss of marine life (and shoreline protection) from ocean acidification.

Since Hawaii's greenhouse gas law passed in 2007, many of the predicted impacts of human-caused climate change are occurring much faster than anybody expected—particularly ice melt. Last year tied for the hottest year in recorded history, and extreme weather events—consistent with climate change models—are increasing globally.

Hawai'i can and must be a leader in GHG reduction. It is critical that we retain a framework for rules to reduce GHG emissions statewide.

The fact that these rules are due in less than 11 months is no excuse for inaction. The Department of Health has been aware of this deadline for over 3.5 years. Because most of the blame for the inaction falls on the previous Administration, Blue Planet would be open to extending the deadline for the rules by no more than six months, as SB 1295 SD1 allows.

Thank you for the opportunity to testify.

HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Denny Coffman, Acting Chair

Thursday, March 17, 2011

9:40 am

Room 325

**RELATING TO GREENHOUSE GAS EMISSION RULES
SB 1295 SD1**

Chair Coffman and Members of the Committee,

My name is Gary J. North and I although I served as a member of the Greenhouse Gas Emissions Reduction Task Force representing the maritime industry, I am testifying today as a private citizen in **strong support of SB 1295, with suggested amendments.**

Given that several organizations who were represented on the Task Force have already testified against this measure, I felt it appropriate to provide my perspective on this measure to your committee in order to help foster informed decision-making.

I concur with the Department of Health's strong support of this bill *in its original form*, which would have removed the date for adopting greenhouse gas (GHG) rules in furtherance of achieving the statewide GHG emissions limit established in Act 234, Session Laws of Hawaii 2007. As DOH correctly stated in their previous testimony on this measure, the GHG reduction plan and strategy adopted by the Task Force meet the GHG reduction goals of Act 234, and the adoption of GHG emissions limits by the Department is therefore unnecessary at this time.

Hawaii Will Achieve The GHG Emissions Reduction Goal Of Act 234 Under Existing, Approved Legislative Requirements

Throughout 2008 and 2009, the Task Force worked to develop proposed emission reduction Work Plans designed to achieve the goal of Act 234 (i.e., to reduce annual GHG emissions to 1990 levels by 2020). In order to evaluate each of these Work Plans, the Task Force first had to establish a "Reference Projection" of what state GHG emissions would be in the year 2020 if *no new actions* were to be taken to reduce GHG emissions. The Task Force found that under a "business as usual" condition, which was to consider the numerous laws and policies already in place to reduce future energy use and emissions in the state, **GHG emissions included in the state target would fall to approximately four percent below 1990 levels by 2020.** That is, the emissions reduction goal of Act 234 is projected to be achieved under existing, approved legislative requirements without the benefit of further laws or regulations.

It is important to note that under Act 234, GHG emissions from aviation are not included in the GHG emissions reduction target because the Act specifically exempts emissions from airplanes from the statewide emissions limit. Nevertheless, like other sources within the state, GHG emissions from the aviation sector have shown a downward trend which has been predicted to continue. Thus, when emissions from the aviation sector are factored in, the Reference Projection predicts that **real GHG emissions in the state would fall to approximately ten percent below 1990 levels by 2020.** Again, this projection assumes *no new laws or regulations* would be implemented beyond those already in place.

Under A True “Business As Usual” Scenario, GHG Emissions Would Decrease By Substantially More Than Is Predicted By The Reference Projection

Although the Reference Projection was used as a baseline to evaluate the various proposed Work Plans for achieving the goals of Act 234; it did not represent a true “business as usual” scenario because certain legislative requirements enacted and signed into law in 2009 were specifically excluded from the Reference Projection; the GHG emissions reductions anticipated to be achieved through this “existing legislation” were therefore not included in the Reference Projection modeling. Had these existing legislative requirements been considered, the decline in GHG emissions anticipated to occur under a true “business as usual” scenario would have been more than four times higher than what was actually attributed to the Reference Projection.

The Recommended Work Plan Would Achieve GHG Emissions Far In Excess of What Is Required Under Act 234

In its December 2009 report to the Legislature, the Task Force recommended implementation of a Work Plan that incorporated the Hawaii Clean Energy Initiative with additional proposed policies (referred to in the report as Work Plan 1, or HCEI+). This Work Plan, if fully implemented, was projected to result in a decrease in targeted GHG emissions to 38.7 percent below 1990 levels by the year 2020. While such a goal is certainly laudable and was supported by the Task Force, this is not a goal that is *mandated* by Act 234. The imposition of new regulatory requirements (specifically, the adoption of rules by the Department of Health) under the authority of Act 234 in order to achieve emissions reductions that go beyond what the Legislature established in Act 234 is clearly unwarranted. Existing authorities already in place are projected to be more than adequate to meet the emissions reduction target of Act 234, and should be relied upon to do so.

Imposition Of A State Greenhouse Gas Reporting Rule Is Premature and Redundant

In addition to adopting rules establishing GHG emission limits, the Department of Health is required under Act 234 to establish GHG emissions monitoring and reporting requirements. U.S. EPA is currently in the process of implementing just such a system at the federal level. Originally proposed in April 2009, the Mandatory Reporting of Greenhouse Gases Rule was finalized in October 2009 and requires covered facilities to submit their initial reports by March 31, 2011. Since the rule was finalized, EPA has undertaken at least nine separate rulemakings making modifications or clarifications to the rule, and is currently planning to extend the initial reporting deadline due to delays in developing the reporting infrastructure necessary in order for facilities to comply. It would certainly appear premature to require the Department of Health to implement its own potentially duplicative reporting requirements while EPA continues to struggle with finalizing its own reporting program. It is therefore certainly appropriate to allow the Department of Health to delay development of GHG reporting program until the federal reporting system has been fully developed and implemented.

In light of the foregoing, I strongly urge you to amend this measure to restore the original language removing the deadline date for adopting GHG rules, and to **pass this measure with that amendment.**

Thank you for the opportunity to provide testimony on this bill.

Gary J North

Gary J. North