

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
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WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWEISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the House Committee on
HEALTH

Friday, February 22, 2013
9:30 AM
State Capitol, Conference Room

In consideration of
HOUSE BILL 903, HOUSE DRAFT 1
RELATING TO WATER POLLUTION

House Bill 903, House Draft 1 proposes to establish a new account within the Water Pollution Control Revolving Fund and authorizes the Director of Health (DOH) to adopt fees (through rules) to fund water pollution control and management. **The Department of Land and Natural Resources (“DLNR”) strongly supports this Administration measure.**

First, land-based pollution (including sediment run-off and pollution) is a significant and widely recognized threat to Hawai'i's coral reefs that must be directly addressed and actively managed. It is complex, but solvable. The Hawaii Coral Reef Strategy and the National Oceanic and Atmospheric Administration (“NOAA”) Coral Reef Conservation Program identify and rank sediment run-off and pollution as a “priority” threat.

Land-based pollution alters the near shore environment by smothering corals, accelerating growth of native and non-native algae, and disrupting critical ecosystem services. In Hawaii, current and legacy agricultural practices, the development and paving of lands, channelization of streams, and outdated wastewater systems all degrade coral reef ecosystems vital for fishing, tourism, recreation, and Native Hawaiian cultural practices.

In 2002, Hawai'i's reef ecosystems were estimated to contribute more than \$385 million to the state. Without significant reduction in land based runoff and pollution, the value and benefits of these near shore reefs will decline. While Hawaii is beginning to address fishing and recreational impacts to the coral reefs, we have failed to manage or control non-point source land-based pollution either legally or in fact. As a result, coral reef ecosystems, fisheries, and all the life systems and economic values they provide, are at risk.

Second, adequate water quality is essential to protect streams and near-shore waters for the public's interest, to support instream uses and values, aquatic habitat maintenance, traditional and customary rights of native Hawaiians, fishing, ocean recreation, and scenic beauty.

Third, controlling polluted runoff helps prevent contamination of our underground aquifers which provide over 90% of our drinking water.

This bill creates a) a mechanism to bring the disparate public and private parties together, and b) a long needed funding source. It is both a carrot and a stick.

The carrot is federal, state, and county assistance to help landowners design and implement measures to protect their soil and make their land more valuable.

The stick is potential enforcement and penalties for the continued deterioration of our reefs, water quality, topsoil, and fisheries.

The key element needs to be active outreach to help landowners in a cooperative manner and cross-training to enlist their support.

DLNR and the Department of Agriculture (DOA) are critical to this process. DOA, DLNR, and DOH should prioritize and rank order:

1. The worst case lands for sediment runoff and pollution;
2. Lands along and directly upland from the shoreline, and
3. Lands adjacent to streams and gullies that carry topsoil and pollutants to the near shore ocean waters.

Thank you.

NEIL ABERCROMBIE
Governor



RUSSELL S. KOKUBUN
Chairperson, Board of Agriculture

SCOTT E. ENRIGHT
Deputy to the Chairperson

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**TESTIMONY OF RUSSELL S. KOKUBUN
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE HOUSE COMMITTEE ON HEALTH
FRIDAY, FEBRUARY 22, 2013
9:30 a.m.
Room 329**

**HOUSE BILL NO. 903
RELATING TO WATER POLLUTION**

Chairperson Belatti and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 903. Our comments are limited to the proposed programs that reduce nonpoint source pollution. This measure requires that any person (including government agencies), except farming operations of less than ten acres or landowners owning property of less than ten acres, obtain approval from the Department of Health for a management plan prior to discharging any water pollutant into state waters from a nonpoint source. Additionally, this measure authorizes DOH to develop management plans for nonpoint pollution sources, issue plans and charge fees, establish public hearings, and monitor/enforce management plans. The Department of Agriculture has strong reservations regarding this bill, because the proposed amendments may cause economic harm to existing agricultural uses and diminish further investments in agriculture.



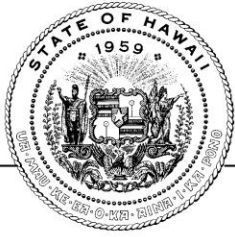
The term "Management plans" is only generally defined in the proposed measure, and the Department of Agriculture is concerned that farmers may face new, possibly costly, practices, prohibitions, and modifications to current practices. Present DOH nonpoint pollution management programs rely on education and voluntary non-regulatory compliance to achieve its purposes. Farmers may have difficulty adjusting from a voluntary compliance program to a punitive program that requires submissions of management plans and assesses fees and/or penalties for non-compliance.

This measure should be coordinated with county and federal programs that may have related responsibilities, programs, and rules with requirements for nonpoint pollution control plans. Examples include Natural Resources Conservation Service and Soil and Water Conservation District conservation plans and county-issued grading and grubbing permits, respectively.

Finally, the Department of Agriculture has strong concerns on this measure because accurate detection/enforcement of nonpoint pollution is challenging to do in practice. Constant monitoring at all points of a stream is necessary to achieve fair and accurate pollutant readings and to accurately attribute violations. Additionally, farmers have no control over weather and flash flood events that may cause runoff to contain pesticides that were obtained and applied in full compliance with the law.

Moving forward, the Department of Agriculture understands and appreciates the need to protect streams from nonpoint pollutants; however, the Department of Agriculture has strong reservations to this measure due to the concerns outlined above.

Thank you, again, for the opportunity to testify on this measure.



**OFFICE OF PLANNING
STATE OF HAWAII**

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NEIL ABERCROMBIE
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Statement of
JESSE K. SOUKI
Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON HEALTH
Friday, February 22, 2013
9:30 AM
State Capitol, Conference Room 329

in consideration of
HB 903 HD1
RELATING TO WATER POLLUTION

Chair Belatti, Vice Chair Morikawa, and Members of the House Committee on Health.

Administration Bill House Bill 903 HD1, Relating to Water Pollution, proposes to improve the state's ability to control and reduce water pollution from nonpoint sources and individual wastewater systems.

The Office of Planning (OP) supports the Administration bill. OP, through its Coastal Zone Management (CZM) Program, and the Department of Health (DOH), have been seeking full approval from the National Oceanic and Atmospheric Administration and Environmental Protection Agency of a Coastal Nonpoint Pollution Control Program (CNPCP), which is required of approved CZM programs nationwide pursuant to Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA). The bill provides DOH with much needed resources to address water pollution from nonpoint sources and individual wastewater systems. The improved ability to control and reduce water pollution in Hawaii, will in turn contribute towards gaining full approval of the CNPCP.

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

**HB 903 HD1
RELATING TO WATER POLLUTION**

**SEAN O'KEEFE
DIRECTOR – ENVIRONMENTAL AFFAIRS
ALEXANDER & BALDWIN, INC.**

FEBRUARY 22, 2013

Chair Belatti and Members of the House Committee on Health:

I am Sean O'Keefe, testifying on behalf of Alexander & Baldwin, Inc. (A&B) on HB 903 HD1, "A BILL FOR AN ACT RELATING TO WATER POLLUTION." We respectfully oppose this bill.

The proposed "management plan" requirement contained in this bill is in reality nothing more than a permit system and will impose a massive new regulatory program upon a vast regulated community which would include virtually every farm or plot of land greater than 10 acres in size and every human activity on that land upon which rain might fall or from which water might flow. In addition, the bill would further increase the work load of a Department of Health which, according to the bill, already has insufficient resources to manage its existing programs.

Of particular concern, the bill would impose yet another costly layer of unnecessary regulation upon Hawaii's farmers and ranchers, many of whom already support and/or participate in non-regulatory water pollution prevention programs through their local Soil and Water Conservation Districts. According to agricultural census data from the United States Department of Agriculture, the average size of a farm in Hawaii is 148 acres, and more than 35 percent of Hawaii's farms are larger than 10 acres in

size. Thus, a significant percentage of Hawaii's 7,500 farms, and more than 98 percent of its 1.1 million farm acres, will be severely impacted by this bill. This new permit requirement for farmers would be piled on top of an existing water pollution control permit requirement that went into effect scant months ago and which many farmers are struggling to understand and comply with. This proposed new permit program is unnecessary, unreasonably broad in scope and is an inappropriate means for controlling pollution from nonpoint sources.

The proposed bill would amend Chapter 342E, HRS to require any person (with limited exceptions) to submit an application for approval of a management plan and obtain management plan approval prior to discharging any water pollutant into state waters from a nonpoint source. The proposal would allow the director to make the plan "subject to any reasonable conditions", would provide authority for the director to deny an application for issuance of a "management plan", or to suspend or revoke approval, would require public notice of each application, and would provide authority to issue a cease and desist order against "activities" that violate the proposed provisions.

The proposed "management plan" program amounts to a massive new permitting program that would impose permitting requirements on virtually any activity which occurs on land and which could result in polluted runoff. Everything from farms to forest lands, golf courses to parks, urban areas to marinas, and a wide variety of land uses in between are recognized as potential sources of nonpoint source pollution.

This bill is also a serious concern for A&B as an owner of land within the state's 800,000 acres of forest reserves and two million acres of conservation lands. Many landowners, including A&B, already participate in watershed partnerships intended to

address invasive species, feral ungulates, and other contributors to soil erosion and nonpoint source pollution in these areas. All participants in such partnerships are keenly aware of the immense challenges, and associated expense, posed by attempting to address these issues even on a very limited basis in these vast areas of the islands. Under this proposal, even land upon which no active use is currently taking place (e.g., fallow agricultural land, conservation land, forest reserves – all of which are potential sources of nonpoint source pollution) would be subject to the permit requirement. It is unclear what action landowners would be required to “cease and desist” in the event that they are unable to obtain approval for a “management plan” on land that is not being put to any use but which is nevertheless a potential source of polluted runoff (e.g., due to landslides, forestland runoff, the presence of ungulates, and other natural sources of water pollutants).

In developing schemes for regulating point and nonpoint source pollution under the Clean Water Act, Congress recognized that there are fundamental differences between point and nonpoint source pollution which warrant fundamentally different approaches to controlling them. While a permit system (the National Pollutant Discharge Elimination System (NPDES)) was developed and implemented to control pollutant discharges from “point sources” (i.e., sources which discharge pollutants to waterways through a pipe or similar conveyance), such a program was deemed inappropriate and infeasible as a means of controlling nonpoint source pollution, due to the sheer number and widely disparate nature of nonpoint sources. Instead, alternate approaches for controlling these sources have been developed.

Hawaii's Implementation Plan for Polluted Runoff Control, prepared under the authorities of the Coastal Zone Management Act and the Clean Water Act, provides the blueprint for controlling nonpoint source pollution within the state of Hawaii. This plan was developed over several years through a cooperative process involving public participation by a wide range of stakeholders, including state, federal and county government, agriculture, citizen's and environmental groups, and many others. The plan has guided the Department of Health's nonpoint source pollution control program for more than a decade, and outlines appropriate management measures for addressing a variety of nonpoint sources. With respect to agriculture, the plan calls for the state to "focus on the development of a voluntary, non-regulatory program and a back-up authority for agricultural operations and lands". According to the plan, "the State seeks to develop a non-regulatory program, called the Pollution Prevention Plan (PPP) program, that builds upon the success of conservation plans currently prepared by operators (and) approved by Soil and Water Conservation Districts (SWCD's)". Similar non-regulatory approaches are identified for various other nonpoint source pollution sources, including forestry. Approaches to nonpoint source pollution control developed through extensive public participation should not be tossed aside in favor of a hastily composed and strictly regulatory approach that is both inappropriate and infeasible for this purpose.

With respect to the proposed fees for individual wastewater systems, we note that the U.S. Environmental Protection Agency does not consider a properly designed, constructed, and maintained, septic system to be a significant source of water pollution. In fact, EPA often touts the replacement of cesspools with septic systems or the

rehabilitation of failed septic systems as a “nonpoint source success story”, and has funded such projects with money specifically designated for nonpoint source pollution control. It is unreasonable to impose fees on all individual wastewater systems for the pollution that a limited number of systems might “place in the public’s surface waters and groundwater” when in fact many individual wastewater systems are very well controlled and are not significantly contributing to surface or ground water pollution in the state. Moreover, while it is true that owners of individual wastewater systems do not pay sewer fees, the initial cost of installing an individual wastewater system can be substantial, and ongoing maintenance costs are also incurred by septic system owners. Any savings realized on sewer fees may therefore be offset by the costs of installing and properly operating a septic system.

Based on the aforementioned, we respectfully request that this bill be held in Committee. Thank you for the opportunity to testify.

morikawa2 - Shaun

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 20, 2013 7:32 PM
To: HLTtestimony
Cc: ari@styrophobia.com
Subject: Submitted testimony for HB903 on Feb 22, 2013 09:30AM

HB903

Submitted on: 2/20/2013

Testimony for HLT on Feb 22, 2013 09:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Ari Patz	Individual	Support	No

Comments: Our waters are precious, this bill will help ensure that they stay that way. Our waste is something that we need to manage as best we can, it is not something that we should easily compromise on. Please protect our aina, it belongs to the future generations too and they can not testify; it is up to you do do what is best for them. Mahalo, Ari Patz

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 20, 2013 12:53 PM
To: HLTtestimony
Cc: davidlhenkin@yahoo.com
Subject: *Submitted testimony for HB903 on Feb 22, 2013 09:30AM*

HB903

Submitted on: 2/20/2013

Testimony for HLT on Feb 22, 2013 09:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
David Henkin	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 20, 2013 12:27 PM
To: HLTtestimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for HB903 on Feb 22, 2013 09:30AM*

HB903

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Testimony for HLT on Feb 22, 2013 09:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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Marguerite Harden
2100 Date Street, #1205
Honolulu, HI 96826

February 20, 2013

Hawaii State Capitol
Honolulu, HI 96813

To Whom It May Concern,

I am writing in support of House Bill (HB) 903 in relation to water pollution. Since moving to Hawaii over four years ago, I have been surprised with how much runoff and pollution is impacting our fragile coastal and marine environment, and having worked in the environmental field, how little the State does in mitigating these non-point solutions. I firmly believe this Bill is a necessary step in taking control of sources that greatly contribute to the pollution in our oceans.

This Bill establishes a necessary Water Pollution Control account and authorizes the Director of Health to prescribe fees to help fund operations of the Hawaii State Department of Health (DOH) in managing pollution from nonpoint sources and individual wastewater systems.

Please support HB 903 in your hearing on this Friday, and please do what you can to have this important legislation pass this session.

Aloha,
Marguerite

morikawa2 - Shaun

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 20, 2013 12:59 PM
To: HLTtestimony
Cc: mz@conservehi.org
Subject: *Submitted testimony for HB903 on Feb 22, 2013 09:30AM*

HB903

Submitted on: 2/20/2013

Testimony for HLT on Feb 22, 2013 09:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Marjorie Ziegler		Support	No

Comments:

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To: HLTtestimony
Cc: tabraham08@gmail.com
Subject: *Submitted testimony for HB903 on Feb 22, 2013 09:30AM*

HB903

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Testimony for HLT on Feb 22, 2013 09:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Troy Abraham	Individual	Support	No

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To: HLTtestimony
Cc: wybart4@gmail.com
Subject: *Submitted testimony for HB903 on Feb 22, 2013 09:30AM*

HB903

Submitted on: 2/21/2013

Testimony for HLT on Feb 22, 2013 09:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Wyatt Bartlett	Individual	Support	No

Comments:

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