

NEIL ABERCROMBIE
Governor



RUSSELL S. KOKUBUN
Chairperson, Board of Agriculture

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Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
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**TESTIMONY OF RUSSELL S. KOKUBUN
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS
MONDAY, MARCH 25, 2013
9:20 a.m.
Room 211**

**HOUSE BILL NO. 903 HD2 SD1
RELATING TO WATER POLLUTION**

Chairperson Ige and Members of the Committee:

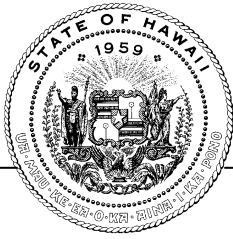
Thank you for the opportunity to testify on House Bill No. 903 HD2 SD1. Our comments are limited to the proposed programs that reduce nonpoint source pollution. The Department of Agriculture (the Department) supports this measure with an amendment.

The Department would like to bring to the committee's attention the definitions of "Waste," "Wastewater," and "Water pollutant." Section 4 of HB 903 SD 1 (pages 17-20) adds ten new definitions. The terms "waste" (page 19, lines 10-13), "wastewater" (page 19, lines 14-16), and "water pollutant" (page 19, lines 17-22) contain references to agricultural matter or agricultural wastes in their respective definitions. The Department is concerned that these references to agricultural matter and wastes may result in inconsistency or conflict with the amendments made in Senate Draft 1 to make farming



operations not affected by the bill's provisions. We recommend these references to agricultural matter and agricultural wastes be deleted from the definitions.

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



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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
SENATE COMMITTEE ON WAYS AND MEANS
Monday, March 25, 2013
9:20 AM
State Capitol, Conference Room 211

in consideration of
HB 903 HD2 SD1
RELATING TO WATER POLLUTION.

Chair Ige, Vice Chair Kidani, and Members of the Senate Committee on Ways and Means.

Administration House Bill 903 HD2 SD1, 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 HD2, SD1
RELATING TO WATER POLLUTION**

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



MARCH 25, 2013

Chair Ige and Members of the Senate Committee on Ways and Means:

I am Sean O'Keefe, testifying on behalf of Alexander & Baldwin, Inc. (A&B) on HB 903 HD2, SD1 "A BILL FOR AN ACT RELATING TO WATER POLLUTION." We respectfully oppose this bill.

While A&B appreciates the significant revisions that have been made to this bill in an effort to accommodate the considerable concerns raised by a wide range of agricultural interests, we continue to have strong objections to the management plan provisions of this bill.

Under the proposed bill, any person (other than those engaged in farming operations) owning a plot of land greater than 10 acres in size may be required to obtain a "management plan approval" (i.e., a permit) for land upon which rain might fall or from which water might flow *regardless of whether the landowner is actually undertaking any activity upon its land*. This is a radical departure from any existing environmental permit program because it seeks to regulate the mere existence of land exposed to rainfall rather than an activity proposed to occur on the land.

The proposed “management plan” requirement contained in this bill is nothing more than a new permit system that will impose a massive regulatory program upon a vast regulated community. Forest lands, golf courses, parks, urban areas, and a wide variety of other land uses are recognized as potential sources of nonpoint source pollution. 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 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 an approach was deemed infeasible as a means of controlling nonpoint source pollution, due to the sheer number and widely disparate nature of nonpoint sources and the inherent challenges in controlling them. Hawaii’s existing 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 outlines appropriate management measures for addressing a variety of nonpoint sources and should continue to guide the Department of Health’s nonpoint source pollution control program. The proposed permit program contained in this bill is inconsistent with this plan and is not an appropriate approach to the control of non-point source pollution.

While the proposed management plan requirement would be triggered only “when the director finds that an area has nonpoint source pollution that is impairing state waters”, the term “area” is not defined and may be broadly interpreted to encompass entire watersheds, coastal segments, or other vast expanses of land. With limited exceptions, any person owning ten acres or more of land (including multiple small parcels totaling ten or more acres) within an undefined “area” may be ordered to develop a management plan. In imposing this management plan requirement, the director is not obligated to consider whether any activities are actually occurring on the land, to make any assessment as to whether or not the person’s land is actually contributing to the water quality impairment identified by the director, or to evaluate whether control of non-point source pollution from such land is even feasible.

The proposal would allow the director to make the management plan “subject to any reasonable conditions”, and to require that any proposed use (including a “use” that involves no activity at all) must be in accord with applicable rules and standards, water quality standards, and “standards of performance” which are not described or defined in the bill. Such standards may presumably include a pollution budget (or “total maximum daily load” (TMDL)) which is typically developed as a goal for returning impaired waters to compliance with state water quality standards but which does not in any way take into consideration whether such a budget can be feasibly or cost-effectively implemented. The bill would also 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. 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).

This bill should be of serious concern for any owner of land within the state’s 800,000 acres of forest reserves and two million acres of conservation lands. Many such 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 considerable challenges – and immense costs - posed by attempting to address these issues even on a very limited basis in these vast areas of the islands. A&B and other private landowners are understandably concerned about the potential escalation of their land management costs as a result of this bill. We are equally concerned that the state, when faced with similar costs to manage non-point source pollution from its vast forested lands, will need to seek additional public funding for its own land management activities as a direct result of this bill.

A&B appreciates that significant revisions have been made to this bill in an effort to accommodate the considerable concerns raised by a wide range of agricultural interests. We note, however, that the enforcement provisions of the proposed Section 342E-B would continue to apply to all persons, including farmers and small landowners. These enforcement provisions provide authority for the director to order “any measures

that may be necessary”, including implementation of a management plan, in the event of any violation of the chapter, however minimal.

A&B believes strongly that the proposed new permit program is unnecessary, unreasonably broad in scope and is an inappropriate means for controlling pollution from nonpoint sources.

Based on the aforementioned, we respectfully request that this bill be revised to delete all provisions other than those relating to the water pollution control revolving fund and operating fees for individual wastewater systems.

Thank you for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: Gqm@biahawaii.org
Subject: Submitted testimony for HB903 on Mar 25, 2013 09:20AM
Date: Monday, March 25, 2013 8:16:44 AM



HB903

Submitted on: 3/25/2013

Testimony for WAM on Mar 25, 2013 09:20AM in Conference Room 211

| Submitted By | Organization | Testifier Position | Present at Hearing |
|----------------|--------------|--------------------|--------------------|
| Gladys Marrone | BIA-Hawaii | Oppose | No |

Comments: Aloha, BIA-Hawaii is opposed to this measure as adequate safeguards are already in place and this will add an additional layer of regulation. Thank you for your consideration.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol website

March 25, 2013

TO: HONORABLE DAVID IGE, CHAIR, HONORABLE MICHELLE KIDANI,
VICE CHAIR AND MEMBERS OF SENATE COMMITTEE ON WAYS AND
MEANS

SUBJECT: **OPPOSITION TO H.B. 903, HD2, SD1 RELATING TO WATER
POLLUTION.** Establishes a separate Water Pollution Control account and
authorizes the Director of Health to prescribe fees to help fund the operations of
the Department of Health in managing pollution from nonpoint sources and
individual wastewater systems. (SD1)

HEARING

DATE: Monday, March 25, 2013
TIME: 9:20 a.m.
PLACE: Conference Room 211



Dear Chair Ige, Vice Chair Kidani and Members of the Committee,

The General Contractors Association (GCA) is an organization comprised of over six hundred (600) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

H.B. 903, HD2, SD1 proposes to authorize the Director of Health additional authorizations to, among other things: (1) charge fees to owners of individual wastewater systems and for nonpoint source pollution management plan applications; (2) Establish within the Water Pollution Control Revolving Fund, a separate water pollution control account for controlling and reducing pollution from point sources, nonpoint sources, and individual wastewater systems; and (3) Require any person or public entity, excluding certain farming operations, or systems supplying agricultural irrigation and certain landowners, to obtain approval from the Director of Health for a management plan prior to discharging any water pollutant into state waters from a nonpoint source or causing or allowing any water pollutant to enter state waters from a nonpoint source.

While GCA supports the protection of all Hawaii's fresh, marine and ground waters, **the GCA cannot support this measure** as it would duplicate protective measures already in place on the state and federal levels, and increase costs and burdens to business and the construction industry as a whole. The GCA respectfully requests that the Committees hold this bill due to its numerous concerns, particularly the additional layer of permitting fees, associated delays associated with land development and construction that appears to be unnecessary and the added undue cost to the construction process.

GCA remains concerned because it remains unclear as to whether the funds collected would serve only to regulate and mitigate pollution from the sewer systems. It appears that the fund collected could be used to fund other Department of Health, Clean Water Branch activities such as construction site inspections and NPDES permit reviews. Although the content of the bill focuses on the effects of the agricultural community, the impact will be more widespread and directly impact the consumers including residents and owners in rural communities that will be mandated to pay additional permitting fees where county sewer hookups are not available. Although the fees generated would go directly to the Clean Water Branch, this bill would also create a significant bureaucracy necessary to manage the permit system.

This legislation could potentially stymie green developments because this type of regulation adds burden to “green” developers who are already doing what is best for the environment by controlling water quality and retaining/detaining water runoff. The requirements to renew management plans every five years are also troublesome because future upstream developments by other parties can impact the performance of facilities that once had adequate management plans in place.

Moreover, the impact on the construction industry will further burden an industry that is already highly regulated by both state and federal guidelines dealing with water pollution. The construction industry must abide by guidelines and practices in place to avoid pollution to various water resources under existing federal and state laws, including but not limited to, the Clean Water Act, the National Pollutant Discharge Elimination System, and the Coastal Zone Management Act. The additional authorizations this bill proposes would allow implementation permits and management plans which will drive up the cost of doing construction, for both private and public projects. Section 342E-A regarding management plans would allow the director to “order in writing that any person . . . file a management plan application for approval by the director prior to discharging any water pollutant . . .” This requirement alone raises grave concerns regarding the added cost, the departments adequacy in processing time and added burden such a written management plan would require.

For these reasons, we respectfully request that the Committee hold this bill. Thank you for this opportunity to present our views on this measure.



From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: maquinger@hawaii.rr.com
Subject: Submitted testimony for HB903 on Mar 25, 2013 09:20AM
Date: Sunday, March 24, 2013 11:00:16 PM

HB903

Submitted on: 3/24/2013

Testimony for WAM on Mar 25, 2013 09:20AM in Conference Room 211

| Submitted By | Organization | Testifier Position | Present at Hearing |
|-----------------|--------------|--------------------|--------------------|
| Mary A. Guinger | Individual | Support | No |

Comments: Water is a basic need for Hawaii. Pollution of water is a primary cause of dead and disease both to humans, animals and land. Safe drinking water defines the government and it's community.

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