



LAND USE RESEARCH
FOUNDATION OF HAWAII

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March 13, 2013

Senator Mike Gabbard, Chair
Senator Russell E. Ruderman, Vice Chair
Senate Committee on Energy and Environment

Senator Josh Green, Chair
Senator Roslyn H. Baker, Vice Chair
Senate Committee on Health

Comments, Concerns and Opposition to HB 903, 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.)

Thursday, March 14, 2013, 3:10 p.m., in Conference Room 225

The Land Use Research Foundation of Hawaii (LURF) is 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.

While LURF supports the general intent of HB 903, HD1, LURF provides the following comments and concerns in **opposition** to the current form of this bill, and **respectfully recommends that the bill be held this session, to allow the various stakeholders to discuss the issues and reach a consensus.**

There is a serious question as to whether this bill appears to be solely a money-grab to hire more Department of Health ("DOH"), given its concerns and the many concerns expressed by multiple parties; the lack of compliance with the law relating to special and revolving funds; the inconsistent and arbitrary provisions in the bill; the inconsistent provisions ("agriculture is the problem, but agriculture is exempted") and arbitrary provisions (applies to land larger than ten acres? fee exemption for farms for five years?); the fact that portions of the bill are duplicative with measures which are already in place and clearly unnecessary; and the major lack of a collaborative process prior to introduction of the bill.

HB 903. HD2. This bill proposes to establish a separate Water Pollution Control account and authorizes the DOH to prescribe fees to help fund the operations of the Department of Health in managing pollution from nonpoint sources and individual wastewater systems. Among other things, this bill will create new powers for the Director of Health to collect millions of dollar in

fees on farmers, agricultural operators, landowners, and owners of individual wastewater systems. Its effective date is July 1, 2050.

Background.

- **Hawaii Revised Statutes (“HRS”) relating to Special or Revolving Funds.** HB 903, HD2 proposes to establish a separate water pollution control account within the Water Pollution Control Revolving Fund, however, at the present time, this bill does not meet the criteria for establishment and continuance of a Revolving Fund as required by §23-11, HRS and §37-52.4, HRS, which provide as follows:

§23-11 New special or revolving funds. Within five days after the deadline for the introduction of bills in each legislative session, the clerks of each house of the legislature shall transmit, to the legislative auditor for analysis, copies of all legislative bills that were introduced in their respective houses during that session that propose to establish new special or revolving funds.

The criteria to be used by the auditor in analyzing each legislative bill shall include, but not be limited to, the extent to which the fund:

- (1) Serves the purpose for which it is being created; and
- (2) Reflects a ***clear link*** between the benefit sought and changes made upon the users or beneficiaries of the program, ***as opposed to serving primarily as a means to provide the program or users with an automatic means of support which is removed from the normal budget and appropriations process.***

Each analysis shall **set forth the probable effects of the proposed fund and shall also assess alternative forms of funding.**

No later than thirty days prior to the adjournment sine die of each legislative session, the legislative auditor shall submit the analysis of each transmitted legislative bill to each house of the legislature. [L 1990, c 240, §2]

.....

§37-52.4 Criteria for the establishment and continuance of revolving funds. Revolving funds shall only be established pursuant to an act of the legislature. The legislature, in establishing or reviewing a revolving fund to determine whether it should be continued, shall ensure that the revolving fund:

- (1) Serves the purpose for which it was originally established;
- (2) Reflects a ***clear nexus*** between the benefits sought and charges made upon the users or beneficiaries of the program, ***as opposed to serving primarily as a means to provide the program or users with an automatic means of support that is removed from the normal budget and appropriation process;***
- (3) Provides an appropriate means of financing for the program or activity; and
- (4) Demonstrates the capacity to be financially self-sustaining. [L 2002, c 178, pt of §2]

(emphasis added).

- **2012 State Auditor's Report.** In July 2012, the State Auditor filed a report to the Governor and Legislature, entitled "*Study of the Transfer of Non-General Funds to the General Fund*" ("*2012 State Auditor's Report*"). The Introduction section of the *2012 Auditor's Report*, explains as follows:

"In House Concurrent Resolution No. 166, the 2011 Legislature asked the Auditor to look at the appropriateness of transferring non-general funds, including special and revolving funds, to the general fund, determine the source of the moneys, and determine whether the moneys are used for a public purpose. The resolution noted that while some non-general funds are easily defined, and legally transferable to the general fund as a way of providing financial relief to the State, many are difficult to define, thus making transfers problematic. In one instance, the Hawai'i Supreme Court ruled the Legislature violated the Separation of Powers doctrine when it authorized certain transfers of money from an insurance special fund to the general fund. Other issues for the study relate to identification of funds serving as security for revenue bonds and federal requirements for use of federal funds. The Auditor is also asked to propose legislation to implement any recommended transfers of moneys in the funds to the general fund.

For purposes of this study, we limited our focus to the appropriateness of using special and revolving funds as a means of financing particular programs and directing moneys accumulated in these types of funds to the general fund to address budget shortfalls in a sluggish economy."

- **A Pattern of Lack of Clear Nexus and Lack of Clear Links for Special Funds and Revolving Funds - Recommendations of the State Auditor's 2012 Report to Repeal Two DOH Special Funds.** The *2012 State Auditor's Report* also referred to the legal criteria in §37-52.3, HRS and §37-52.3, HRS, when it identified six special and revolving funds which should be repealed, including LCF and NARF, because they do not meet the criteria for continuance, as there was no "clear nexus" between the benefits sought and charges made upon the program users and beneficiaries, or there was no "clear link" between the program and the sources of revenues.

The final recommendation of the *2012 State Auditor's Report* was to eliminate certain funds for failing to meet the "clear nexus" or "clear link" criteria for continuance of Special Funds and Revolving Funds, including:

- ✓ **Emergency Medical Services Special Fund, Department of Health**, which is used for the State's *comprehensive emergency medical services for all of Hawaii's population*, however, *there is no "clear link" with its main funding sources*, which consist of a portion of vehicle registration fees and tobacco taxes.
- ✓ **Mental Health and Substance Abuse Special Fund, Department of Health**, which supports a program that *provides broad population-wide benefits* and draws most of its funding from the general fund; hence, the State Auditor maintained that because it provides broad, population-wide benefits, all of its funding should come from the State General Fund.

- ✓ **Land Conservation Fund, Department of Land and Natural Resources**, which is funded from 10 percent of state real property conveyance tax receipts, but beneficiaries are state residents and visitors as a whole, not just individuals and companies who pay conveyance taxes; and
- ✓ **Natural Area Reserve Fund, Department of Land and Natural Resources**, which provides broad benefits to state residents and visitors as a whole, but has a very narrow “automatic funding base” from the conveyance tax paid on real estate transactions by individuals and companies.

There appears to be a reoccurring pattern of DOH and DLNR using “health” or the “environment” as an excuse to impose unfair and illegal fees on specific individuals and companies, to support their worthy departmental programs, when the funding for those worthy programs should be funded by all of Hawaii’s residents, businesses and visitors.

LURF’s Position. While LURF supports of the bill’s broad intent to improve the State’s ability to manage and reduce nonpoint source and individual wastewater system pollution, this bill appears to just be a vague and overbroad scheme or ruse, whose main purpose is to increase Department of Health (DOH) funding through a questionable permit program and fees, without first clearly identifying the facts, issues and process; and without first working collaboratively with those who will be affected.

LURF must **oppose** this measure, based on, among other things, the following:

1. **HB 903, HD2 is Premature, With No Facts or Information to Justify the Establishment of the Proposed Fee Program and a Separate Water Pollution Control Account within the Water Pollution Control Revolving Fund**
 - The first page of the bill includes three accusations and findings that agriculture is causing nonpoint stormwater runoff discharges which cause water pollution to Hawaii’s fresh, marine, and ground waters – but the bill also exempts farming! operations as defined in Section 165-2, HRS, of less than ten acres; and exempts such farming operations from any fees for five years. What is the factual or scientific basis for the determination for exclusion of farms of less than ten acres? Exclusion of fees for five years?
 - Other than the general reference to agriculture, landowners and owners of individual wastewater systems, there is no specific identification regarding the pollution areas or other specific parties to be targeted with fees and the new regulations and management plans
 - The bill does not specify how much money is needed for DOH staff; and does not explain why these funds cannot be appropriated from the General Fund.
 - The scope of the program is not sufficiently described.
 - There is no financial information or justification on the fees to be charged.
 - There is no information regarding the sources of projected revenue, including alternative sources of revenue, which is required by Hawaii law.
 - No facts or information regarding any evaluation of performance standards to be established by DOH.
 - No facts or information proving that the fee program is an “appropriate means of financing for the program or activity,” as required by Hawaii law.

- No facts proving that the fee program “can demonstrate the capacity to be self-sustaining,” as required by Hawaii law.

2. HB 903, HD2 is Adds Unnecessary Regulations and the New Fees Are Not Necessary to Achieve its Stated Purposes.

- According to the Hawaii Farm Bureau Federation (“Hawaii Farm Bureau”), the regulations and fees proposed in HB 903 are not necessary to achieve the bill’s stated purpose;
- Runoff from farms and ranches is already regulated under current DOH water quality standards regulations which were implemented in 2012.
- Mechanisms for enforcement already exist.

3. HB 903, HD2 is Not a Result of a Collaborative Process with Stakeholders and is NOT Supported by Stakeholders in the Agricultural Industry, Large Landowners, and all of the Residents with Individual Wastewater Systems.

- This bill will have a substantial impact on agriculture and large landowners, however, prior to the introduction of the bill, DOH did not actively involve the major stakeholders and parties that would be impacted;
- This bill did not involve a collaborative process with a broad range of agricultural stakeholders, and came as a complete surprise to many of the large agricultural land owners in the State.
- This bill, therefore does not have the support of Hawaii’s agricultural industry.
- The DOA, Hawaii Farm Bureau Federation and the State’s large agricultural stakeholders all have not testified in support of this measure.

Conclusion. While supportive of the general intent of HB 903, HD1, LURF must nevertheless oppose this bill at this time, given its concerns and the many concerns expressed by multiple parties; the lack of compliance with the law relating to special and revolving funds; the inconsistent and arbitrary provisions in the bill; the fact that portions of the bill are duplicative with measures which are already in place and clearly unnecessary; and the major lack of a collaborative process prior to introduction of the bill. **LURF respectfully recommends that the bill be held this session, to allow the various stakeholders to discuss the issues and reach a consensus. LURF and its members are willing to work with DOH on this legislation during the interim.**

Thank you for the opportunity to present comments, concerns in **opposition** to this measure.

LATE



Hawaii's Agricultural Partnership

HB 903

4 Ag Hawaii opposes HB 903

It is important to understand that the Hawaii's ranchers were among some of the first environmentalists. These families strive to produce food and fiber for their families; communities and State, while also serving as environmental stewards.

To increase their burden with incremental and onerous regulations that are not needed is detrimental to the State's goal of helping agriculture. Perhaps an alternate solution is to increase the funding for the Soil and Water Conservation Districts that partner with the NRCS in developing sound soil and water plans.

4 Ag Hawaii is a non-profit 501(c) (3) corporation established as a public-private partnership focused on goals that include: promoting the agricultural economic welfare of Hawai'i and its counties; conducting agricultural economic; educational & media programs, and fostering statewide interest for responsible agricultural economic development of our islands.

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

LATE

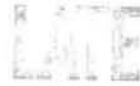
HB903

Submitted on: 3/14/2013

Testimony for ENE/HTH on Mar 14, 2013 15:10PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
John F. Metzler	Mahukona Ranch	Oppose	No

Comments: Dear Madams and Sirs, We oppose this bill and request that you vote against its passage. Hawaii's farmers and ranchers are good stewards of the land, but are in no position to control mother nature. I submit that the State government will also never control or contain mother nature and the effects of her actions. Rain will fall and water will gather, regardless of what any bureaucracy says or does. The farms and ranches in this state are constantly barraged by more and more federal and state regulations and rules. These are expensive and time consuming endeavors, which also increase the cost of our goods and services and have the added downside effect of increasing taxes at all levels! Please end the government's seeming assault on our agricultural businesses and ratchet back the endless march of regulations, rules, fines and needless record keeping. Thank you.



HB903

Submitted on: 3/14/2013

Testimony for ENE/HTH on Mar 14, 2013 15:10PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Brendan Balthazar	Maui Cattlemens Assn	Oppose	No

Comments: This is reticulated and I hope those hearing this bill will have common sense. We ranchers are good stewards of the land and the last thing we want is pollution. However we can't control mother nature. If water runs through out property and digs up some of the soil along with manure and carries that to another property, it would subject us to health department regulations and fines. Don't we have enough laws that make it difficult to conduct an Agg operation?

HB903

Submitted on: 3/18/2013

Testimony for ENE/HTH on Mar 19, 2013 15:15PM in Conference Room 225



Submitted By	Organization	Testifier Position	Present at Hearing
Sarah McLane	Maui Nui Marine Resource Council	Support	No

Comments: This bill is important because it would enable DOH to address the largest source of water pollution in Hawaii--storm runoff. Runoff pollutes streams, groundwater, the ocean and coral reefs. In Hawaii, sewage from cesspools is also a source of pollution. DOH would focus on working with those in areas with impaired waters causing the most sediment runoff.

LATE

HB903

Submitted on: 3/18/2013

Testimony for ENE/HTH on Mar 19, 2013 15:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Brilana Troublefield	Individual	Support	No

Comments:

HB903

Submitted on: 3/18/2013

Testimony for ENE/HTH on Mar 19, 2013 15:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Mike moran	Individual	Support	No

Comments: Please support the bill and not allow it to be diluted by more ammendments. Let us protect our natural resources and stop pollution

HB903

Submitted on: 3/18/2013

Testimony for ENE/HTH on Mar 19, 2013 15:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
janice palma-glenie	Individual	Support	No

Comments: This bill would do tremendous good for protecting our aquifers and coastline. Please support this bill. Mahalo.

SENATE COMMITTEES ON ENERGY & ENVIRONMENT AND HEALTH

March 19th, 2013, 3:15 P.M.

TESTIMONY IN SUPPORT OF HB 903

LATE

Aloha Chair Gabbard, Chair Green and Members of the Committees,

Hawai'i has more days of beach closings than any other state in the nation. Contaminated runoff pollution of our marine waters poses a risk to bathers, especially our keiki, not to mention the damage it does to our groundwater, our coral reefs and our image with tourists. Non-point source pollution is one of the last great, unmet environmental challenges facing our state. We need to give the Department of Health the power to address this issue and you should not allow Big Ag to bully you into denying the department that authority.

The biggest source of water pollution is storm runoff, particularly the pollutants from farms and outdated rural cesspools, The Department of Health is trying to tackle both issues and they need your help to do so.

For this reason I am writing to urge you, in the strongest possible terms, to pass HB903. This bill would not affect the two thirds of our farmers who have fewer than 10 acres. The only landowners who would be affected are the owners of the huge estates, who control 98% of our farmlands. These people have deep pockets and a large responsibility. That responsibility is also enshrined in Article XI of our constitution which confers on you the power and responsibility to address this issue.

Please do not kowtow to Big Ag's lobbyists. Please protect the people. Please

vote for HB903.

Mahalo

Anthony Aalto

HB903

Submitted on: 3/17/2013

Testimony for ENE/HTH on Mar 19, 2013 15:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Valerie Sisneros	Individual	Oppose	No

Comments: PLEASE OPPOSE THIS BILL.

LATE

HB903

Submitted on: 3/17/2013

Testimony for ENE/HTH on Mar 19, 2013 15:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
janice palma-glenie	Individual	Support	No

Comments: Aloha, As a small agricultural business and spending a lot of time in the ocean, we are aware of the need for this bill. This bill is important because it would enable DOH to address the largest source of water pollution in Hawaii--storm runoff. Runoff pollutes streams, groundwater, the ocean and coral reefs Farms are a principal source of runoff pollution (soil, fertilizer, and pesticides) In Hawaii, sewage from cesspools is also a source of pollution. Larger farm owners, who control 98% of the farm land in Hawaii, oppose the bill as burdensome, but most farms would not be affected. As long as the state doesn't mandate all small homes and farms to switch over to septic or county mains, we feel this mandate is fair and would eliminate more damaging cesspools. The bill would apparently not apply to small farmers (under ten acres), who make up 64% of farms in Hawaii. This bill would encourage DOH to focus on areas with impaired waters and the sources of that impairment. mahalo for supporting this critical legislation.

HB903

Submitted on: 3/17/2013

Testimony for ENE/HTH on Mar 19, 2013 15:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Carolyn Knoll	Individual	Support	No

Comments: Very important bill!!

HB903

Submitted on: 3/17/2013

Testimony for ENE/HTH on Mar 19, 2013 15:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Robin Knox	Individual	Support	No

Comments: I support this bill. I am an environmental professional with 30 years experience in Clean Water regulation (working in 20 states and the Caribbean, including Hawaii). This law is well founded in existing federal and state authority and adds much needed funding to support the work.

LATE

HB903

Submitted on: 3/17/2013

Testimony for ENE/HTH on Mar 19, 2013 15:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
charles ice	Individual	Support	No

Comments: While it seems unfortunate to burden IWS owners with funding this proposal, the intent of this bill is a great positive step forward to better control agricultural runoff and inadequate (unfunded) forest management. Please put it in place to begin the process of establishing better control and finally begin to close the gap of adequate land management.

LATE

HB903

Submitted on: 3/17/2013

Testimony for ENE/HTH on Mar 19, 2013 15:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Wynnie Hee	Individual	Support	No

Comments: Please pass this bill to help STOP polluted runoff from killing Hawaii's fragile marine resources. Farms are a principal source of runoff pollution from soil, fertilizer, and pesticides. But don't worry about burdening small farmers. The bill would NOT apply to small farms under ten acres that make up 64% of farms in Hawaii and only use 2% of the farm land. The Larger farmers, who control 98% of the farm land in Hawaii, can afford to take on this "burden" as good citizens conscientiously would. Sewage from cesspools is also a source of pollution. Please PASS HB903 to enable DOH to address the largest source of water pollution in Hawaii--storm runoff-- that pollutes streams, groundwater, the ocean and and kills our coral reefs.