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LEGISLATIVE REFERENCE BUREAU
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State Capitol, Room 446
415 S. Beretania Street
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Written Comments

HB2026 HD1 RELATING TO THE ENVIRONMENT

Charlotte A. Carter-Yamauchi, Director
Legislative Reference Bureau

Presented to the House Committee on Finance

Wednesday, February 28, 2018, 1:00 p.m.
Conference Room 308

Chair Luke and Members of the Committee:

Good afternoon Chair Luke and members of the Committee, my name is Charlotte Carter-Yamauchi and I am the Director of the Legislative Reference Bureau. Thank you for providing the opportunity to submit written comments on H.B. No. 2026, H.D. 1, Relating to the Environment.

The purpose of this measure is to require the Legislative Reference Bureau to:

- (1) Update its 1985 study "The Feasibility of Environmental Reorganization for Hawaii" and assess the feasibility of implementing the findings and recommendations of the 1992 Department of Environmental Protection Task Force;
- (2) Appropriate \$150,000 to the Bureau for the study and authorize the Bureau to execute a contract, exempt from Chapter 103D, Hawaii Revised Statutes, for the services of another entity to perform any related services that may be required pursuant to this measure; and
- (3) Submit the updated study to the Legislature no later than twenty days prior to the convening of the 2020 Regular Session.

The Bureau takes no position on this measure, but submits the following comments for your consideration.

While, as a general matter, the Bureau sees no obstacle to updating its 1985 study, "The Feasibility of Environmental Reorganization for Hawaii," the Bureau notes that the study contained many findings and recommendations that would need to be revisited and updated. In addition, there are considerable new concepts that will need to be addressed. In the thirty-two years since the publication of the 1985 study, there have been numerous changes to Hawaii's policy goals, environmental laws, and administrative structures, not to mention changes to federal environmental protection laws, rules, and regulations. These all would need to be identified and evaluated to determine their relevance and role in the context of a reorganized environmental administrative structure. Considerable attention would also need to be paid to crafting recommendations for implementing any proposed organizational changes.

Furthermore, as the Committee is well aware, the environmental challenges faced by Hawaii have grown significantly since 1985. In addition to the ongoing concerns of the last century, Hawaii's current and future environmental policymakers and regulators must now consider strategies to:

- Mitigate the impacts of climate change and sea level rise;
- Continue the widespread adoption of clean energy resources to meet the State's clean energy goals;
- Address decaying wastewater infrastructure;
- Prevent the introduction and spread of invasive species; and
- Address the environmental strains of population growth in Hawaii.

A study of environmental regulatory reorganization would need to consider how the restructured administrative body would coordinate efforts to implement the diverse and wide-ranging policies related to these issues.

The Bureau would also point out that, given the breadth and diversity of issues to be examined, outside expertise will be able to present a more thorough and developed analysis. In the past, the Legislative Reference Bureau has contracted with the University of Hawaii to prepare such specialized studies. For example, in 2008, the Bureau contracted with the University to prepare a study recommending updates to the State's environmental impact statement laws (Section 10 of Act 1, Session Laws of Hawaii 2008). The product was a well-developed analysis that considered input from all stakeholders and which recommended multiple options for revising the State's environmental impact statement process. In that instance, two years were allowed for the preparation of the study and report. The Bureau provided considerable assistance to the study team with drafting the proposed amendments to statutory language. Furthermore, in 2008, Act 1 appropriated \$300,000 for that particular contracted study. Being that this review will likely be far more expansive than the study requested in 2008, it is unclear what the cost for this comprehensive study will be, especially when adjusted to 2018 dollars. Consequently, it is doubtful that the \$150,000 appropriated amount will be sufficient for the study envisioned under this measure.

In summary, if the Committee decides to recommend passage of this measure, the Bureau requests that a sufficient amount be appropriated to cover the costs of the study envisioned under this measure.

If the measure is amended to address the concerns noted above, the Bureau believes that the services requested under this measure are manageable and that the Bureau will be able to provide the services in the time allotted; provided that the Bureau can find a contractor willing to undertake the study for the sum appropriated.

Thank you again for your consideration.

DAVID Y. IGE
GOVERNOR



SARAH ALLEN
ADMINISTRATOR
MARA SMITH
ASSISTANT ADMINISTRATOR

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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
FINANCE
FEBRUARY 28, 2018 1:00 PM

HOUSE BILL 2026, HD1
RELATING TO THE ENVIRONMENT

Chair Luke, Vice Chair Cullen and members of the committee, thank you for the opportunity to submit testimony on House Bill 2026, HD1. The State Procurement Office supports the intent of the bill but opposes the exemption language on page 4, Section 2, lines 12 to 14 set forth below.

“Any contract for services executed pursuant to this Act shall be exempt from Chapter 103D, Hawaii Revised Statutes;”

Contracts for services to update the study and assess the feasibility of implementing findings and recommendations of the environmental protection task force should be accomplished through a best value request for proposals (RFP) where desired attributes and competencies can be defined in weighted evaluation criteria and minimum standards required. Best value is defined as the outcome of any procurement that ensures customer needs are met in the most effective, timely, and economical manner. Finding the best value, then, should be the ultimate goal of every procurement. Further, full and open competition assists the state in pricing analysis and ensures transparency. Should the services not be procured, the agency should conduct in-depth cost analysis for negotiation purposes and to ensure the total price paid using taxpayers' monies are fair and reasonable.

The Hawaii Public Procurement Code (code) is the single source of public procurement policy to be applied equally and uniformly, while providing fairness, open competition, a

level playing field, government disclosure and transparency in the procurement and contracting process vital to good government.

Public procurement's primary objective is to provide everyone equal opportunity to compete for government contracts, to prevent favoritism, collusion, or fraud in awarding of contracts. To legislate that any one entity should be exempt from compliance with both HRS chapter 103D and 103F conveys a sense of disproportionate equality in the law's application.

Exemptions to the code mean that all procurements made with taxpayer monies will not have the same oversight, accountability and transparency requirements mandated by those procurements processes provided in the code. It means that there is no requirement for due diligence, proper planning or consideration of protections for the state in contract terms and conditions, nor are there any set requirements to conduct cost and price analysis and market research or post-award contract management. As such, Agencies can choose whether to compete any procurement or go directly to one contractor. As a result, leveraging economies of scale and cost savings efficiencies found in the consistent application of the procurement code are lost. It also means Agencies are not required to adhere to the code's procurement integrity laws.

The National Association of State Procurement Officials state: "Businesses suffer when there is inconsistency in procurement laws and regulations. Complex, arcane procurement rules of numerous jurisdictions discourage competition by raising the costs to businesses to understand and comply with these different rules. Higher costs are recovered through the prices offered by a smaller pool of competitors, resulting in unnecessarily inflated costs to state and local governments."

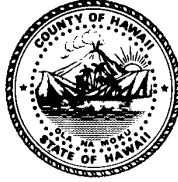
When public bodies, are removed from the state's procurement code it results in the harm described above. As these entities create their own procurement rules, businesses are forced to track their various practices. Moreover, a public body often can no longer achieve the benefits of aggregation by using another public body's contract because different state laws and regulations may apply to the various public bodies making compliance more difficult.

Each year new procurement laws are applied to state agencies causing state agency contracts to become more complex and costly, while other public bodies, such as agencies with strong legislative influence, are exempted. Relieving some public bodies from some laws by exempting or excluding them from compliance with a common set of legal requirements creates an imbalance wherein the competitive environment becomes different among the various jurisdictions and the entire procurement process becomes less efficient and costlier for the state and vendors.

Thank you.

Harry Kim
Mayor

Wilfred M. Okabe
Managing Director



William A. Kucharski
Director

Diane A. Noda
Deputy Director

County of Hawai'i

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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February 26, 2018

Rep. Sylvia Luke, Chair
Committee on Finance
State of Hawai'i House of Representatives
Hawai'i State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

Re: **Support for HB2026 HD1 (Relating to Environment)**

Date: February 28, 2018 (Friday)

Time: 1:00 p.m.

Dear Chairperson Luke and Members of the Committee on Finance:

The County of Hawaii (COH) supported HB 2026 and it adds its support to HB 2026 HD1.

The County of Hawaii, Department of Environmental Management (DEM) believes that it is time for a unified, prominently ensconced environmental organization within the State of Hawaii organizational structure to be created. The consolidation of environmental protection, management and control functions within the State of Hawaii government by creating an independent Environmental Department is thereby supported.

Thank you for your consideration of this testimony.

A handwritten signature in black ink, appearing to read "W. A. Kucharski".

Sincerely,

William A. Kucharski, Director, Department Environmental Management, COH



SIERRA CLUB OF HAWAI'I
MĀLAMA I KA HONUA. *Cherish the Earth.*

HOUSE COMMITTEE ON FINANCE

Wednesday, February 28, 2018 1:00PM Conference Room 308

In SUPPORT of HB 2026 HD1 Relating to the Environment

Aloha Chair Luke, Vice Chair Cullen, and members of the Committee,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i, a member of the Common Good Coalition, **strongly supports HB 2026 HD1**, directing the Legislative Reference Bureau (LRB) to study the reorganization of certain state agencies into an agency for the environment.

Good ideas always resurface, as is the case for this one to establish an agency focused on environmental protection. In 1976, LRB published possible frameworks for the Government Reorganization Commission to consider. While the report noted that environmental protect was an “emerging concern of government that might well be institutionalized with a single department embracing these programs.”¹

In 1985, LRB published “The Feasibility of Environmental Reorganization for Hawai'i.” This report identified many problems with the current structure including failure to prioritize environmental policies, lack of statewide planning and coordination, and inadequate funding resources. The report concluded that:

a separate department should eventually be established, not because of coordination needs, but because the State must place greater emphasis on pollution control programs to be prepared for contamination problems of the future. ... A new department should help to develop this approach by bringing together the necessary expertise to examine problems from a total environmental perspective.²

¹ “State Executive Branch: Government Reorganization Commission,” Legislative Reference Bureau, JK9340-O7-H38 (1976), addendum 1, page 3.

² “The Feasibility of Environmental Reorganization for Hawaii,” Legislative Reference Bureau, Report No. 1 (1985) page 80-81.

In 1996, the Office of the Governor published “Restructuring State Government Services: Findings and Recommendations” in response to Act 297, SLH 1996. This report analyzed an overall reorganization of all state agencies for efficiency and effectiveness. Even in this report not focused on environmental concerns, the report authors identified the need to “restructure the State’s role in environmental protection and resource conservation and stewardship.”³

Most of the factors informing the various recommendations to centralize environmental protection efforts into one agency over the last 40 years remain true today, if only more intense. The challenges of the climate crisis and instability at the federal level executive branch makes the case for a re-alignment of agency mission and task to protect our environment all the more urgent.

For these reasons, **we strongly urge this committee to pass HB 2026 HD1.**

Thank you for the opportunity to submit testimony on this important issue.

Marti Townsend
Chapter Director

³ “Restructuring State Government Services: Findings and Recommendations,” Office of the Governor, Act 297, SLH 1996, page 4-4.

HB-2026-HD-1

Submitted on: 2/27/2018 12:48:51 PM

Testimony for FIN on 2/28/2018 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	OCC Legislative Priorities Committee, Democratic Party of Hawai'i	Support	No

Comments:



LATE

February 28, 2018

Representative Sylvia J. Luke, Chair
Representative Ty J.K. Cullen, Vice Chair
House Committee on Finance

Comments, Concerns and Opposition to HB 2026, HD1, Relating to the Environment (Requires LRB to update its 1985 study on environmental reorganization for Hawaii and assess the feasibility of implementing the findings and recommendations of the 1991 Department of Environmental Protection Task Force. Makes an appropriation.)

Wednesday, February 28, 2018, 1:00 p.m., in Conference Room 308

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. LURF's mission 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 appreciates the opportunity to provide **comments, concerns and opposition to HB 2026, HD1**, based on, among other things, the following:

- **This measure is premature, at the present time, the Environmental Council is in the process of making amendments to the State Environmental Impact Statement rules.** If this study is to proceed, it should be after the 2018 EIS Rules amendments.
- **Any contract by the Legislative Reference Bureau (LRB) must comply with the State Procurement Code.** The last time LRB hired a consultant to do study relating to an update of the State's environmental impact statement (EIS) laws (Section 10 of Act 1, Session Laws of Hawaii 2008), the consultant had its team had no first-hand experience with the use of EIS' for development projects and no experience in the government permitting processes for major developments. In the late 1990's the City and County of Honolulu reorganized its departments, with the same goals in mind. Most people would agree that the City's reorganization created more problems than it solved. If this study proceeds, the minimum qualification for the contract should include extensive experience in the EIS the process, environmental protection, planning and permitting, government reorganization, construction and development.

- **There should be a two-year deadline for completion of the study, perhaps with a status update report due before the 2019 Legislative Session.** Much has changed since 1985, and one year is an unrealistic deadline for the proposed study.
- **Instead of updating the 1985 Study, a new task force of experts and experienced stakeholders should be formed to consider additional facts and issues which have arisen since 1985.**

Understanding the importance of the environmental organizational issues raised by HB 2026,HD1, **LURF respectfully requests that this bill be deferred, or held by this Committee** to allow stakeholders, including, but not limited to EIS practitioners, government agencies, private developers, legal experts, legislators, other interested parties and the public to work together to come to a consensus regarding the bill's purposes and unintended consequences, as well as more meaningful and useful scope for such a study of possible environmental reorganization for Hawaii.

Thank you for the opportunity to provide **comments and concerns and opposition** relating to the current form of this proposed measure.

Please feel free to contact David Arakawa, LURF Executive Director, if there are any questions.