



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P. O. Box 3378  
Honolulu, HI 96801-3378  
doh.testimony@doh.hawaii.gov

**Testimony COMMENTING on HB 2470, HD 1  
RELATION TO ENVIRONMENTAL PROTECTION**

REPRESENTATIVE SYLVIA LUKE, CHAIR  
HOUSE COMMITTEE ON FINANCE

Hearing Date: February 28, 2018  
Time: 1:00 pm

Room Number: 308

1 **Fiscal Implications:** None.

2 **Department Testimony:** The purpose of this bill is to authorize state and county agencies to  
3 adopt rules pertaining to environmental protection, air quality, water supplies, water quality, and  
4 drinking water that are as stringent as, or more stringent than, applicable baseline federal  
5 standards.

6 While the Department supports the intent of guarding against “backsliding” based on the  
7 potential change in philosophy of the U.S. Environmental Protection Agency, its environmental  
8 permitting programs require discretion and flexibility to make changes based on science,  
9 technology, engineering analysis, and objective decision making. The bill should be amended to  
10 preserve DOH’s discretion and flexibility to adopt a standard which is not less stringent than the  
11 baseline federal standard in such circumstances.

12 **Offered Amendments:**

13 Amend Section 2, regarding proposed new §321-, by amending the proposed subsection (b) as  
14 follows:

15 (b) Except as authorized by state law, or as demonstrated through scientific research that  
16 sheds new light on a subject and warrants further discussion and assessment, a state or  
17 county agency shall not amend or revise its rules pertaining to environmental protection  
18 to be less stringent than the baseline federal standards.

19 Amend Section 3, regarding proposed new §342B-, by doing the following:

- 1 1. Remove subsection (b) because it is already covered by subsection (c);
- 2 2. Amend subsection (c) as follows:

3 (c) Except as authorized by state law, or as demonstrated through scientific research that  
4 sheds new light on a subject and warrants further discussion and assessment, a state or  
5 county agency shall not amend or revise its rules pertaining to air quality to be less  
6 stringent than the baseline federal standards.

7 Amend Section 4, regarding proposed new §342D-, by amending the proposed subsections (a)  
8 through (e) as follows:

9 (a) As used in this section, “baseline federal standards” means the authorizations,  
10 policies, objectives, rules, requirements, and standards pertaining to the regulation of  
11 water quality contained in federal laws or federal regulations implementing the federal  
12 laws in existence as of January 1, 2016, or January 1, 2017, whichever is more stringent.

13 (b) To ensure that water quality standards are not diminished as a result of any change in  
14 the federal Clean Water Act, the director shall maintain and enforce all water quality  
15 standards that are at least as stringent as required by the applicable baseline federal  
16 standards, in addition to those required by state law. Nothing in this section shall require  
17 the director to apply the definition of “waters of the United States” contained in title 33  
18 Code of Federal Regulations section 328.3 and title 40 Code of Federal Regulations  
19 section 122.2 as published on June 29, 2015 (80 FR 37053).

20 (c) To the extent that the director has not established a water quality standard or  
21 requirement for which a standard or requirement exists in the baseline federal standards,  
22 the director may adopt the standard or requirement to be at least as stringent as the  
23 baseline federal standards.

24 (d) Except as authorized by state law, or as demonstrated through scientific research that  
25 sheds new light on a subject and warrants further discussion and assessment, a state or  
26 county agency shall not amend or revise its rules pertaining to the regulation of water  
27 quality standards to be less stringent than the baseline federal standards.

1           (e) Except as otherwise provided in state law, a state or county agency may establish  
2           rules pertaining to the regulation of water quality standards that are more stringent than  
3           the baseline federal standards.

4 Amend Section 5, regarding §340E-2, by doing the following:

- 5           1. Amend the first sentence of subsection (a) as follows:

6           The director shall promulgate or adopt and enforce State Primary Drinking Water  
7           Regulations and may promulgatc or adopt and enforce State Secondary Drinking Water  
8           Regulations.

- 9           2. Amend subsection (d) as follows:

10          (d) The director may promulgate or adopt and enforce regulations relating to cross-  
11          connection and backflow prevention control.

- 12          3. Amend the first sentence of subsection (e) to remove the proposed change of  
13          “promulgate” to “adopt” as follows:

14          The director shall promulgate regulations establishing an underground injection control  
15          program.

- 16          4. Amend the first sentence of subsection (h) as follows:

17          Except as authorized by state law, or as demonstrated through scientific research that  
18          sheds new light on a subject and warrants further discussion and assessment, a state or  
19          county agency shall not amend or revise its rules pertaining to the regulation of drinking  
20          water to be less stringent than the baseline federal standards.

21  
22 Thank you for the opportunity to testify on this measure.



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 2470 HD1** Relating to environmental protection

---

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 2470 HD1** to codify in state law the current minimum federal protections for clean water, clean air, and other environmental protections.

Currently, Hawai'i relies heavily on the federal Environmental Protection Agency and federal statutes to protect our environment. More than 100 positions and \$202.4 million at the Hawai'i Department of Health's Environmental Services Division are federal. In addition, the environmental protections that Hawai'i Department of Health (HDOH) is empowered to enforce are fundamentally federal statutes. This includes controls on solid and hazardous waste, underground storage tanks, air pollution, and fresh and ocean water pollution.

Unfortunately, the Trump Administration is targeting many of these environmental protections for mass repeal. Controls on greenhouse gas emissions, policies to mitigate and plan for sea level rise, and protections for streams are just some of environmental protections that have already been repealed by executive order.<sup>1</sup> The Administration has also indicated their plans to weaken or repeal bedrock environmental statutes like the Clean Water Act.<sup>2</sup> Currently, HDOH is preparing for a \$6.2 million cut in federal funds, including all funding for groundwater protections.

---

<sup>1</sup><https://www.usatoday.com/story/news/politics/2017/03/28/the-obama-environmental-regulations-trump-wants-scrap/99729650/>

<sup>2</sup> <http://www.refinery29.com/2017/06/161177/trump-rolls-back-clean-water-act>

To adequately protect the natural and cultural resources of the Hawaiian Islands, it is crucial that the state codify the current minimum federal standards in its own state law. With this independent authority to protect the natural resources crucial to our survival, the state can then set staff and state funding priorities for those areas in greatest need of our attention.

For these reasons, **we strongly urge this committee to pass HB 2470 HD1.**

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

**HB-2470-HD-1**

Submitted on: 2/27/2018 12:52:10 PM

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

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

Comments:

**HB-2470-HD-1**

Submitted on: 2/27/2018 9:02:44 AM

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sherry Pollack	Individual	Support	No

Comments:

**HB-2470-HD-1**

Submitted on: 2/26/2018 12:43:44 PM

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
cheryl	Individual	Support	No

Comments:

I SUPPORT totally. Questions: Who will enforce? As we see with Red Hill and a myriad of other places on our islands that enforcing against the military/US govt. is a challenge. Who determines which water is important ? It seems that the people with the most money, Alexander and Baldwin, TMT/UH, can make decisions about whether the water is important or not? Shouldn't it be the people, the ones who elect you? What plans do you have for educating through the DOE or community on how to best take care of our water sources?

Thank you.



# BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU  
630 SOUTH BERETANIA STREET  
HONOLULU, HI 96843  
www.boardofwatersupply.com



February 28, 2018

KIRK CALDWELL, MAYOR

BRYAN P. ANDAYA, Chair  
KAPUA SPROAT, Vice Chair  
DAVID C. HULIHEE  
KAY C. MATSUI  
RAY C. SOON

ROSS S. SASAMURA, Ex-Officio  
JADE T. BUTAY, Ex-Officio

ERNEST Y. W. LAU, P.E.  
Manager and Chief Engineer

ELLEN E. KITAMURA, P.E.  
Deputy Manager and Chief Engineer *elle*

**LATE**

The Honorable Sylvia Luke, Chair  
and Members  
Committee on Finance  
Hawaii State Capitol, Room 308  
Honolulu, Hawaii 96813

Dear Chair Luke and Members:

Subject: House Bill 2470 House Draft 1: Relating to Environmental Protection

The Honolulu Board of Water Supply (BWS) supports House Bill 2470 House Draft (HD) 1. This bill authorizes environment-related agencies to adopt rules to fill the gaps left by decisions made by the Environmental Protection Agency that could negatively impact the people and environment of Hawaii.

The bill proposes establishing a “baseline federal standard” under Title 19 Hawaii Revised Statutes and provisions under Chapter 321, 342B, 342D, and 340E to allow the adoption of rules that are as, or more stringent than the applicable baseline federal standards in existence as of January 1, 2016 or January 1, 2017, whichever is more stringent.

We support this approach and recommend Chapters 340A, 342L, 342H, 342J and 342P also have the same “baseline federal standard” language as follows. New language underscored.

§342A- Baseline federal standards; state adoption and application.

(a) As used in this section, “baseline federal standards” means the authorizations, policies, objectives, rules, requirements, and standards pertaining to the regulation of solid wastes and contained in federal laws or federal regulations implementing the federal laws in existence as of January 1, 2016, or January 1, 2017, whichever is more stringent.

(b) If the United States Environmental Protection Agency no longer implements the prevention of significant deterioration program in accordance with the applicable baseline federal standards, the director may establish programs and rules that are at least as stringent as the applicable baseline federal standards.

(c) Except as authorized by state law, a state or county agency shall not amend or revise its rules pertaining to solid wastes to be less stringent than the baseline federal standards.

(d) Except as otherwise provided in state law, a state or county agency may establish rules pertaining to solid wastes that are more stringent than the baseline federal standards.”

§342L- Baseline federal standards; state adoption and application.

(a) As used in this section, “baseline federal standards” means the authorizations, policies, objectives, rules, requirements, and standards pertaining to the regulation of underground storage tanks and contained in federal laws or federal regulations implementing the federal laws in existence as of January 1, 2016, or January 1, 2017, whichever is more stringent.

(b) If the United States Environmental Protection Agency no longer implements the prevention of significant deterioration program in accordance with the applicable baseline federal standards, the director may establish programs and rules that are at least as stringent as the applicable baseline federal standards.

(c) Except as authorized by state law, a state or county agency shall not amend or revise its rules pertaining to underground storage tanks to be less stringent than the baseline federal standards.

(d) Except as otherwise provided in state law, a state or county agency may establish rules pertaining to underground storage tanks that are more stringent than the baseline federal standards.”

§342H- Baseline federal standards; state adoption and application.

(a) As used in this section, “baseline federal standards” means the authorizations, policies, objectives, rules, requirements, and standards pertaining to the regulation of solid waste pollution and contained in federal laws or federal regulations implementing the federal laws in existence as of January 1, 2016, or January 1, 2017, whichever is more stringent.

(b) If the United States Environmental Protection Agency no longer implements the prevention of significant deterioration program in accordance with the applicable baseline federal standards, the director may establish programs and rules that are at least as stringent as the applicable baseline federal standards.

(c) Except as authorized by state law, a state or county agency shall not amend or revise its rules pertaining to solid waste pollution to be less stringent than the baseline federal standards.

(d) Except as otherwise provided in state law, a state or county agency may establish rules pertaining to solid waste pollution that are more stringent than the baseline federal standards.”

§342J- Baseline federal standards; state adoption and application.

(a) As used in this section, “baseline federal standards” means the authorizations, policies, objectives, rules, requirements, and standards pertaining to the regulation

of hazardous wastes and contained in federal laws or federal regulations implementing the federal laws in existence as of January 1, 2016, or January 1, 2017, whichever is more stringent.

(b) If the United States Environmental Protection Agency no longer implements the prevention of significant deterioration program in accordance with the applicable baseline federal standards, the director may establish programs and rules that are at least as stringent as the applicable baseline federal standards.

(c) Except as authorized by state law, a state or county agency shall not amend or revise its rules pertaining to hazardous waste to be less stringent than the baseline federal standards.

(d) Except as otherwise provided in state law, a state or county agency may establish rules pertaining to hazardous waste that are more stringent than the baseline federal standards.”

§342P-\_\_\_\_\_ Baseline federal standards; state adoption and application.

(a) As used in this section, “baseline federal standards” means the authorizations, policies, objectives, rules, requirements, and standards pertaining to the regulation of asbestos and lead and contained in federal laws or federal regulations implementing the federal laws in existence as of January 1, 2016, or January 1, 2017, whichever is more stringent.

(b) If the United States Environmental Protection Agency no longer implements the prevention of significant deterioration program in accordance with the applicable baseline federal standards, the director may establish programs and rules that are at least as stringent as the applicable baseline federal standards.

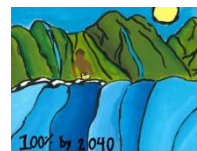
(c) Except as authorized by state law, a state or county agency shall not amend or revise its rules pertaining to asbestos and lead to be less stringent than the baseline federal standards.

(d) Except as otherwise provided in state law, a state or county agency may establish rules pertaining to asbestos and lead that are more stringent than the baseline federal standards.”

Thank you for the opportunity to testify.

Very truly yours,

  
ERNEST Y.W. LAU, P.E.  
Manager and Chief Engineer



**LATE**

**HOUSE COMMITTEE ON FINANCE**

February 28, 2018, 1:00 P.M.

Room 308

(Testimony is 1 page long)

**TESTIMONY IN SUPPORT OF HB 2470 HD1**

Aloha Chair Luke, Vice Chair Cullen, and Committee members:

Blue Planet Foundation **supports** HB 2470 HD1, clarifying that the Hawaii Department of Health can adopt rules that are more stringent than the federal “baseline” environmental protections that have recently been in place, and ensures that rules are not less stringent than the recent federal “baseline” standards. The purpose of this measure is to support an ongoing level of protection for Hawaii’s air, water, drinking water, and other environmental resources—particularly in the event that the federal standards be weakened.

Since taking office last year, President Trump has made rolling back federal regulations a priority. The Trump Administration has or is attempting to weaken many federal environmental safeguards.<sup>1</sup> Many of the regulations targeted by the Trump Administration directly affect Hawaii’s energy sectors, including:

- Limits on toxic discharge from power plants;
- Coal ash discharge regulations;
- Emissions standards for new, modified and reconstructed power plants;
- Emissions rules for power plant start-up and shutdown;
- Permitting process for air-polluting plants;
- Mercury emission limits for power plants; and
- Aircraft emissions standards.

Hawaii residents, businesses, and visitors deserve a baseline standard of environmental protection—regardless of the dramatic rollbacks advocated by the current federal administration. Blue Planet supports HB 2470 HD1 to provide guidance to the Department of Health to offer this baseline environmental protection for Hawaii.

Thank you for the opportunity to testify.

---

<sup>1</sup> "EPA Chief Promises 'Aggressive' Rollback of Regulations," *Scientific American*, February 27, 2017.



**LATE**

P.O. Box 253, Kunia, Hawai'i 96759  
Phone: (808) 848-2074; Fax: (808) 848-1921  
e-mail info@hfbf.org; www.hfbf.org

February 28, 2018

HEARING BEFORE THE  
HOUSE COMMITTEE ON FINANCE

**TESTIMONY ON HB 2470, HD 1**  
RELATING TO ENVIRONMENTAL PROTECTION

Room 308  
1:00 PM

Aloha Chair Luke, Vice Chair Cullen, and Members of the Committee:

I am Randy Cabral, President of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,900 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interests of our diverse agricultural community.

After further review of this very complex issue, HFB continues to **OPPOSE** HB 2470, HD 1 for the following reasons:

1. **It is not necessary.** The state is *already* allowed to adopt environmental laws and regulations that are more strict than existing federal standards **CONSISTENT WITH EXISTING FEDERAL LAWS AND REGULATIONS. This bill would introduce numerous unnecessary complications that could result in the State of Hawaii being in violation of federal laws and regulations and/or subject to litigation.** Without this bill, the state is largely free to adopt its own regulations that would maintain standard as stringent as the proposed baselines, consistent with federal law and applicable court rulings.
2. The bill identifies baseline federal standards as those adopted as of January 1, 2016 or 2017, whichever is stricter. This would invalidate any changes to federal laws to make them less strict, if any, adopted by the Obama administration prior to the Trump inauguration in January 2017. The justification for this bill is the fear that the Trump administration is or will be rolling back environmental standards; however, are we assuming that regulatory decisions made by the Obama EPA are also suspect?
3. In many cases, existing federal laws and regulations are litigated and either overturned by the courts or remanded to EPA for further consideration and/or rulemaking. This bill would result in litigation being brought in the State of Hawaii over issues that have already been decided in court over federal laws/regulations that were determined to be improper or illegal.
4. Some federal laws actually prohibit states from enacting different requirements. For example, under FIFRA, States may not impose any requirements for labeling or packaging that are different from those required by the EPA. See 7 USC section 136v (b), which states: "Such

State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter." In such cases, if the federal requirement is changed in the future then the state is prohibited from adopting requirements that are inconsistent.

5. The bill is based on the absurd assumption that ALL future changes to federal environmental regulations which make them less stringent – whether by the current administration or some future administration – are unjustified and therefore should not/cannot be adopted in Hawaii. **Environmental regulations are regularly modified to streamline them, adopt common-sense revisions, to reflect current science, or to remove requirements that have become obsolete or have been determined to be impracticable to comply with. Such changes would be prohibited by this bill.** As an example, EPA over the years has adopted "Universal Waste" regulations for certain low risk/high volume wastes (such as fluorescent bulbs) that would otherwise be subject to full hazardous waste regulations. These rules made it easier for generators to properly manage these wastes, and likely led to improved waste management even though requirements for these wastes were made less strict.

6. It may be surprising, but due to the complexity of environmental regulations, it may not be clear whether a rule is more, or less stringent. This measure provides no definition or interpretation regarding the term "less stringent" or who will be making the determination regarding whether a regulatory change is "less stringent". Sometimes, rules are simply made better. For example, if an air or water pollution control regulation is changed to replace a numerical emissions or discharge limit with a requirement for a specified level of treatment that would attain the same environmental benefit (without specifying a numerical limit), is the new regulation more stringent or less stringent?

For these reasons, we respectfully request your **opposition** to this measure. Thank you for this opportunity to provide our comments on this important matter.