

STATE OF HAWAII
DEPARTMENT OF HEALTH
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Honolulu, HI 96801-3378
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WRITTEN
TESTIMONY ONLY

**Testimony COMMENTING on SB 2501 SD1
RELATING TO WATER POLLUTION**

SENATOR ROSALYN H. BAKER, CHAIR
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

SENATOR KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY

Hearing Date: 2/21/2020 Room Number: 229

1 The Department of Health (Department) believes that the objectives of SB 2501 SD1 are
2 worthy and supports the intent of the introducers and proponents of the bill. However, the
3 Department respectfully requests this bill be deferred while the Department works to implement
4 the intent in administrative rules.

5 This bill proposes to prohibit issuing permits for continuing discharges of point source
6 pollution into highest quality waters, except temporary construction. The bill also proposes to
7 amend the definition of a variance, to clarify that the Director of Health can issue variances, and
8 to require the applicant to prove entitlement to a variance.

9 **Fiscal Implications:** None

10 **Department Testimony:**

11 The Department believes that the intention and objectives of this bill are worth pursuing.
12 However, more time and public participation is needed and desirable to properly consider the
13 implications and consequences of the proposed amendments. For example, the proposed
14 amendment to HRS §342D-6 to prohibit a permit for continuing discharge of point source
15 pollution into highest quality waters will impact dischargers that currently provide necessary
16 services to residents of Hawaii. The permit referenced in this proposal is the National Pollutant

1 Discharge Elimination System (NPDES) permit, which cannot be issued for periods longer than
2 five years. Highest quality waters refer to state waters designated as Class 1 and/or Class AA.

3 Currently, facilities that discharge intermittently or continuously to Class 1 or Class AA
4 waters include municipal separate storm sewer systems managed or operated by the: Department
5 of Transportation, Highways Division; City and County of Honolulu; and Marine Corps Base
6 Hawaii Kaneohe Bay. Other facilities that currently hold such discharge permits are the Waikiki
7 Aquarium and the Hawaii Institute of Marine Biology. This proposed bill will not allow the
8 current NPDES permit to be renewed for these facilities. These permittees could pursue a
9 variance, but would bear the burden of proving entitlement, which is a different standard than
10 that to obtain an NPDES permit. In certain respects, this is a more burdensome process,
11 particularly compared to a permit renewal application.

12 The Department is currently amending HAR Chapter 11-54, and believes the intent of
13 this bill can be implemented through administrative rules rather than by amending the statutes.
14 The Department is working with the bill's supporters and encourages those supporters to
15 continue working with us to achieve the intended objectives under the proposed bill. The
16 Department believes the rule-making process will allow time for comprehensive consideration of
17 the implications and consequences of any revisions and encourage further input from the public
18 and interested stakeholders.

19 **Offered Amendments:** None

20 Thank you for the opportunity to testify on this measure.

MICHAEL P. VICTORINO
Mayor

ROWENA M. DAGDAG-ANDAYA
Director

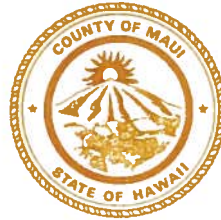
JORDAN MOLINA
Deputy Director

GLEN A. UENO, P.E., L.S.
Development Services Administration

RODRIGO "CHICO" RABARA, P.E.
Engineering Division

JOHN R. SMITH, P.E.
Highways Division

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COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM 434
WAILUKU, MAUI, HAWAII 96793

February 20, 2020

TESTIMONY OF ROWENA M. DAGDAG-ANDAYA
DIRECTOR OF PUBLIC WORKS
COUNTY OF MAUI

BEFORE THE SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION,
AND HEALTH
COMMITTEE ON JUDICIARY

Friday, February 21, 2020, at 10:30 a.m.
Conference Room 229
State Capitol

SB 2501, SD1 RELATING TO WATER POLLUTION

Honorable Rosalyn H. Baker, Chair
Honorable Karl Rhoads, Chair

Thank you for this opportunity to testify in **OPPOSITION** to SB 2501, SD1.

The County of Maui, Department of Public Works strongly opposes due to broad implications on stormwater management and green infrastructure.

I strongly urge you to oppose SB 2501, SD1.

Sincerely,

ROWENA M. DAGDAG-ANDAYA
Director of Public Works

RMDA:jso
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UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Commerce, Consumer Protection, & Health
And

Senate Committee on Judiciary
Friday, February 21, 2020 at 10:30 a.m..

By

Tavia Oshiro, Environmental Compliance Officer
Emma Kennedy, Director
Environmental Health and Safety Office

And

Michael Bruno, PhD
Provost
University of Hawai'i at Mānoa

SB 2501 SD1 – RELATING TO WATER POLLUTION

Chairs Baker and Rhoads, Vice Chairs Chang and Keohokalole, and members of the committees:

The University of Hawai'i (UH) opposes SB 2501 SD1 and offers the following comments:

UH believes that the current definition of “variance” in §342D-1, Hawai'i Revised Statutes (HRS), already provides the Director of the Hawai'i State Department of Health (DOH) with a clear statement of what can be authorized through the variance procedure. The language proposed to be deleted makes the definition less clear. Therefore, the amendment proposed in Section 1 of the bill is unnecessary and should not be adopted.

Section 2 of the bill amends §342D-6, HRS, by adding a new subsection (a) that includes the terms “continuing discharge,” “highest quality waters,” and “temporary construction.” These terms are not clearly defined and consequently the proposed amendment may result in confusion between regulators and large numbers of current permittees. The committees may wish to review the information in the following United States Environmental Protection Agency link for comparable terminologies.

https://ofmpub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&glossaryName=Drink%20Water%20Tech/Legal%202009

Section 3 of the bill amends §342D-7, HRS, relating to variances, by adding a new subsection (a). The proposed new subsection references rules related to the granting of variances. UH understands that the pertinent DOH administrative rules currently do not address variance procedures, perhaps because the current §342D-7 is already clear

and detailed. However, the proposed new language calling for “proving entitlement” to a variance further complicates the variance process without providing additional guidance. The proposed amendment may therefore serve to make the process more difficult, time-consuming and expensive for all concerned, including DOH.

More generally, it is unclear why the proposed statutory amendments are necessary, and why any concerns that the measure seeks to ameliorate cannot be addressed through other means, such as appropriate permit conditions or modifications to existing rules.

UH believes that if enacted in its present form, SB 2501 SD1 will introduce complications and uncertainties that can adversely impact several University programs. These programs include the Waikīkī Aquarium, the Pacific Bioscience Research Center’s Kewalo Marine Laboratory, the Hawai’i Institute of Marine Biology at Coconut Island, the Hawai’i Undersea Research Laboratory near Makapu’u Point, and the UH Marine Operations at Honolulu Harbor.

For these reasons, the University of Hawai’i respectfully requests that SB 2501 SD1 be deferred. Thank you for the opportunity to provide testimony on this measure.

SB-2501-SD-1

Submitted on: 2/20/2020 10:27:08 AM

Testimony for CPH on 2/21/2020 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Kehano	Testifying for County of Maui - Highways Division	Oppose	No

Comments:

The County of Maui, Highways Division respectfully opposes bill SB 2501, SD1 due to broad implications on stormwater management and compliance. While we haven't had time to review the implications fully, we are concerned about how it would impact our NPDES permit program, which allows certain discharges under the permit provided they don't exceed water quality criteria. This bill would not allow discharges at all without a waiver and seems to circumvent the NPDES permit program.

February 20, 2020

Honorable Rosalyn H. Baker, Chair, Senate Committee on Commerce, Consumer Protection, and Health
Honorable Karl Rhoads, Chair, Senate Committee on Judiciary

Hearing Date: **Friday, February 21, 10:30 a.m., Conference Room 229**

Subject: **OPPOSE – SB 2501, SD1, Relating to Water Pollution**

Hart Crowser is a leading environmental engineering and consulting firm, with 15 employees in Hawai'i. One of our primary business lines is stormwater consulting and environmental permitting. We have provided stormwater permitting and compliance consultation for hundreds of projects in Hawai'i, for industries, construction sites, and government entities. We currently serve as consultants to the County of Maui's MS4 program and to the State DOT-Airports environmental engineering group in addition to other stormwater permitting projects.

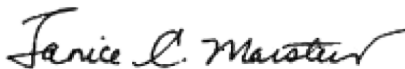
While we appreciate the intent of the bill and the desire of the proponents for a cleaner Kāne'ōhe Bay, we are deeply concerned about the wording of the bill and potential unintended consequences. The bill would seem to circumvent NPDES permit programs mandated by the EPA and administered by the State Department of Health (DOH). The NPDES permit program is designed to allow certain pollutants to be discharged, provided they do not impact water quality. The permit process is rigorous and DOH enforcement is effective. The SD1 provided a carve-out for construction, but there are numerous other classifications of dischargers that operate under NPDES permits (such as for once-through cooling water, municipal MS4 programs, industrial facilities) that would be severely impacted by this bill. The wording of the bill would seem to work around the NPDES process by stating a waiver must be obtained for any pollutant, regardless of whether the discharge meets DOH's water quality criteria or permit limits. The ensuing uncertainty and conflicts would result in delays in numerous projects and programs.

Rather than a broad bill that would upend the NPDES permitting program, we would suggest the proponents work with the DOH and perhaps industry experts to identify the issue and potential solutions and whether it can be addressed within the current permitting system. Because of the potential negative impacts of the bill, we **oppose SB 2501, SD1**.

Please do not hesitate to contact me at 808.371.8504 if you have any questions regarding our testimony.

Sincerely,

HART CROWSER, INC.



JANICE C. MARSTERS, PHD

Managing Principal, Hawai'i

LATE



Hawaii's Thousand Friends

300 Kuulei Road Unit A #281 *Kailua HI 96734* Phone/Fax 808-262-0682 E-mail htf3000@gmail.com

February 20, 2020

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair
Committee Members

SB 2805, SD1
RELATING TO THE OFFICE OF PLANNING

Hawaii's Thousand Friends, a non-profit organization dedicated to ensuring that growth is reasonable and responsible and that planning and land use decisions protect natural and cultural resources and human health and are implemented in conformity with the law, supports SB 2805, SD1 that requires the Office of Planning to prepare a comprehensive renewable energy siting plan.

As demonstrated by the surprise to many and negative impacts to Kahuku residents and their community by the proposed and then installed wind turbines a comprehensive land use plan that identifies lands suitable for alternative energy and a vigorous public involvement component is long over due.

The creation of a renewable energy-siting plan with public, state and county agencies involvement and input will add predictability and minimize disruption of future renewable energy projects.

Creating a comprehensive state wide alternative energy siting-plan will take time but if extensive public input is sought, their voices heard and opinions genuinely valued the time and hard work would be worth it. Residents will have ownership over what happens in their community and the trend of being blind sighted will end.

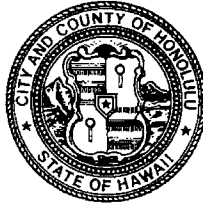
We urge you pass SB 2805, SD1 out of committee so that the future of alternative energy can be achieved together.

DEPARTMENT OF FACILITY MAINTENANCE
CITY AND COUNTY OF HONOLULU

1000 Ulu'ohia Street, Suite 215, Kapolei, Hawaii 96707
Phone: (808) 768-3343 • Fax: (808) 768-3381
Website: www.honolulu.gov

LATE

KIRK CALDWELL
MAYOR



ROSS S. SASAMURA, P.E.
DIRECTOR AND CHIEF ENGINEER

EDUARDO P. MANGLALLAN
DEPUTY DIRECTOR

IN REPLY REFER TO:
SWQ 20-058

To: Senator Mike Gabbard, Chair
Senate Committee on Agriculture and Environment
Senator Kaial'i Kahele, Chair
Senate Committee on Water and Land

Re: Testimony In Opposition to SB2501, SD1 Relating to Water Pollution

Hearing Date: February 21, 2020
Hearing Time: 10:30 a.m.
Room Number: 229

Fiscal Implications: This measure will impact the City and County of Honolulu's (City) Storm Water Management Program Plan. Projects and funds will be directed to programs that benefit the public and the environment (e.g. addressing needed infrastructure repairs and installation of water quality improvements, and programs in watersheds with established Total Maximum Daily Loads) instead of towards proving entitlement to a variance.

City Testimony: The City respectfully opposes SB2501, SD1. The purpose of the National Pollutant Discharge Elimination System (NPDES) permitting program is to issue permits for discharges of pollutants into a water body. While the City's Storm Water Management Program's primary purpose is to manage and prevent polluted runoff, the purpose of the Municipal Separate Storm Sewer System (MS4) is to prevent flooding and divert rainwater off of the streets and into a water body. The MS4 not only benefits the public from potential floods and flood damages but it also benefits the environment as flood waters tend to carry higher levels of pollutants. Not allowing a permit will force the City to apply for a variance to comply with the proposed rules. This will cause further delays to permit issuance and places onerous requirements to prove entitlement to a variance when the City is already regulated by the State Department of Health under its MS4 permit no. HI S000002 and is complying with the permit's terms and conditions.

Senator Mike Gabbard, Chair
Senate Committee on Agriculture and Environment
Senator Kaial'i Kahele, Chair
Senate Committee on Water and Land
Page 2

Offered Amendments: We recommend that this bill exempt the City's NPDES permit holders since these permits are sufficiently protective of water quality.

20 FEB 2020

Date



Ross S. Sasamura, P.E.

for Director and Chief Engineer

Department of Facility Maintenance

cc: State of Hawaii, Department of Health - Clean Water Branch

SB-2501-SD-1

Submitted on: 2/20/2020 12:23:32 AM

Testimony for CPH on 2/21/2020 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Sharlene Chun Lum	Individual	Support	No

Comments:

SB-2501-SD-1

Submitted on: 2/19/2020 6:22:06 PM

Testimony for CPH on 2/21/2020 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michelle Matson	Individual	Support	No

Comments:

SB-2501-SD-1

Submitted on: 2/19/2020 7:30:38 PM

Testimony for CPH on 2/21/2020 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Quinn	Individual	Support	No

Comments:

Dear Honorable Committee Members:

Please support SB2501. Reducing the discharge of polluted water will help to protect Hawaii's fragile marine ecosystem, which is also under assault by various other factors.

Thank you for the opportunity to present my testimony.

Andrea Quinn

Kihei, Maui