

STAND. COM. REP. NO.

1568

Honolulu, Hawaii

APR 09 2021

RE: H.B. No. 1318  
H.D. 1  
S.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Thirty-First State Legislature  
Regular Session of 2021  
State of Hawaii

Sir:

Your Committees on Agriculture and Environment, Water and Land, Government Operations, Judiciary, and Ways and Means, to which was referred H.B. No. 1318, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO SUSTAINABILITY,"

beg leave to report as follows:

The purpose and intent of this measure is to:

- (1) Establish the Environmental Advisory Council with the composition, functions, and duties similar to the Environmental Council under sections 341-6 and 343-6, Hawaii Revised Statutes and;
- (2) Transfer the rights, powers, employees, appropriations, and other personal property from the Office of Environmental Quality Control to the Office of Planning; and
- (3) Amend the ability for an applicant to appeal nonacceptance of an environmental impact statement from the Environmental Council to the Environmental Advisory Council.

Your Committees received testimony in support of this measure from the State Environmental Council, Office of Planning, and



Office of Environmental Quality Control. Your Committees received testimony in opposition to this measure from one individual.

Your Committees find that achieving an abundant and sustainable future for Hawaii will require re-envisioning the State's institutional framework to better integrate sustainability principles into the organizational structure of state government, especially in planning, land use, environmental, and economic development programs. Further, it is in the public interest to transfer the Office of Environmental Quality Control and the Environmental Council to the Office of Planning to improve the coordination of these related planning functions to allow state government to work more efficiently to achieve the State's long-term environmental quality goals for a more abundant future for the people of Hawaii.

Your Committees find that the statutory duty of the Environmental Council is to monitor the progress of the state, county, and federal agencies in achieving the State's environmental goals and policies. The Environmental Council consists of up to fifteen members that are appointed to ensure a broad and balanced representation of environmental protection and sustainable development. The fifteen-member makeup of the Environmental Council is optimal to ensure a holistic approach to balance environmental protection and sustainable development. Further, your Committees note that the Environmental Council recently updated title 11, chapter 200, Hawaii Administrative Rules, relating to environmental impact statements. In the process of updating the administrative rules, it was found that the current membership from various backgrounds contributed to lively, productive discussions to comprehensively change rules. Therefore, your Committees find that reducing the number of members on the Environmental Council could risk the loss of important perspectives on matters concerning ecological and environmental quality. In addition, your Committees find that the Environmental Council consists of five subcommittees. To properly task these subcommittees, the Environmental Council suggested that the membership of the Council remain at fifteen members.

Your Committees note concerns that members of the Environmental Council that are appointed should ensure that the optimal quality of the environment is maintained through a balanced representation of environmentally pertinent interests,



such as natural and social sciences, educational and research institutions with environmental competence, sustainable business practices, land conservation and stewardship, pollution prevention, and waste reduction.

Your Committees further find that the Environmental Council does not have its own budget and relies on volunteers to complete its annual report. While your Committees note the testimony of the State Environmental Council that it should not be held to the requirement to produce an annual report if it no longer serves its intended purpose and seeks to spend its efforts in other roles, such as community outreach and developing guidance on rules regarding environmental impact statements, your Committees find that the Office of Planning must prepare an annual report for the Legislature and therefore can include the Environmental Council's report as a part of their annual submission.

Additionally, your Committees find that under section 343-5(e), Hawaii Revised Statutes, appeals for a non-acceptance determination on its final environmental impact statement can be appealed directly to the Environmental Council. The Environmental Council testified that it is not proficient to function as a quasi-judicial body due to a lack of resources, equipment, and staffing, and because determination of the sufficiency of an environmental impact statement properly lies with technical experts at relevant agencies reviewing these documents. While the Environmental Council is responsible for promulgating the administrative rules under chapter 343, Hawaii Revised Statutes, the determination of the sufficiency of an environmental impact statement properly lies with the technical experts at the relevant agencies in reviewing those documents.

Although your Committees have heard concerns as to whether applicants can properly exhaust administrative remedies if non-acceptance of final environmental impact statements are directly appealed to the Environmental Court, because the determination of findings of fact and conclusions of law lie with the accepting agency tasked with reviewing technical documents, these applicants can affirmatively exhaust these remedies. Further, your Committees find that the current process of appealing nonacceptance of final environmental impact statements creates a differing standard of review for applicants who utilize this



process before appealing their case to the Environmental Court, leading to potential due process issues.

Your Committees have amended this measure by:

- (1) Requiring the Office of Planning to include the Environmental Council's annual report and recommendations in the Office of Planning's annual report to the Legislature;
- (2) Restoring section 341-2, Hawaii Revised Statutes, and amending the definitions of "council", "director", and "office"; and repealing the definitions of "center" and "university";
- (3) Providing that the Office of Planning shall consult with affected agencies and the Environmental Advisory Council prior to adopting, amending, or repealing necessary rules;
- (4) Repealing language that requires rules promulgated by the Office of Planning to prescribe procedures to appeal the nonacceptance of an environmental impact statement to the Environmental Council;
- (5) Providing that all rules and other material adopted or developed by the Department Of Health, Environmental Council, or the Office of Environmental Quality Control to implement provisions of the Hawaii Revised Statutes that are reenacted or made applicable to the Office of Planning by this measure shall remain in full force and effect until amended or repealed by the Office of Planning pursuant to chapter 91, Hawaii Revised Statutes;
- (6) Amending section 1 to reflect its amended purpose; and
- (7) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the records of votes of the members of your Committees on Agriculture and Environment, Water and Land, Government Operations, Judiciary, and Ways and Means that are



attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 1318, H.D. 1, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 1318, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.

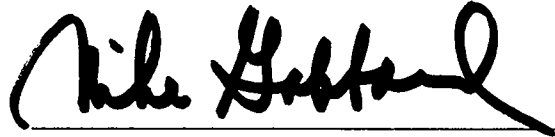
Respectfully submitted on behalf of the members of the Committees on Agriculture and Environment, Water and Land, Government Operations, Judiciary, and Ways and Means,

  
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LORRAINE R. INOUE, Chair

  
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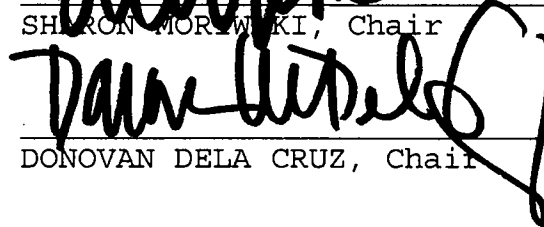
KARL RHOADS, Chair

  
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MIKE GABBARD, Chair

  
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SHARON MORIWAKI, Chair


  
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DONOVAN DELA CRUZ, Chair



The Senate  
 Thirty-First Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Agriculture and Environment**  
**AEN**

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 1318 HD1	AEN/WTL/GVO/JDC/WAM	04/05/2021		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
GABBARD, Mike (C)	✓			
NISHIHARA, Clarence K. (VC)	✓			
ACASIO, Laura		✓		
RHOADS, Karl				✓
FEVELLA, Kurt		✓		
<b>TOTAL</b>	2	2		1
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original	Yellow	Pink	Goldenrod	
File with Committee Report	Clerk's Office	Drafting Agency	Committee File Copy	

\*Only one measure per Record of Votes







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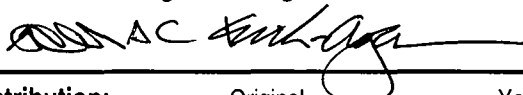
**Record of Votes**  
**Committee on Judiciary**  
**JDC**

Bill / Resolution No.:* <b>HB 1318, HD1</b>	Committee Referral: <b>AEN   WTL   GVO   JDC   WAM</b>	Date: <b>4/5/2021</b>		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
RHOADS, Karl (C)	✓			
KEOHOKALOLE, Jarrett (VC)				✓
ACASIO, Laura		✓		
GABBARD, Mike	✓			
KIM, Donna Mercado	✓			
LEE, Chris	✓			
FEVELLA, Kurt		✓		
<b>TOTAL</b>	<b>4</b>	<b>2</b>	<b>0</b>	<b>1</b>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <div style="text-align: center; font-family: cursive; font-size: 1.2em;">Karl Rhoads</div>				
<b>Distribution:</b> Original                      Yellow                      Pink                      Goldenrod File with Committee Report    Clerk's Office            Drafting Agency        Committee File Copy				

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Thirty-First Legislature  
State of Hawai'i

**Record of Votes**  
**Committee on Ways and Means**  
**WAM**

Bill / Resolution No.:*	Committee Referral:	Date:		
<i>HB 1318, HD 1</i>	<i>AEN/WTL/GVO/JDC/WAM</i>	<i>4/5/21</i>		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
DELA CRUZ, Donovan M. (C)	X			
KEITH-AGARAN, Gilbert S.C. (VC)	X			
ENGLISH, J. Kalani	X			
INOUYE, Lorraine R.	X			
KANUHA, Dru Mamo	X			
KIDANI, Michelle N.	.			X
MORIWAKI, Sharon Y.	X			
SHIMABUKURO, Maile S.L.				X
TANIGUCHI, Brian T.				X
WAKAI, Glenn	X			
FEVELLA, Kurt		X		
<b>TOTAL</b>	<b>7</b>	<b>1</b>		<b>3</b>
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original	Yellow	Pink	Goldenrod	
File with Committee Report	Clerk's Office	Drafting Agency	Committee File Copy	

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