



STATE OF HAWAII
DEPARTMENT OF HEALTH
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In reply, please refer to:
File:

**Testimony COMMENTING on SB0773
RELATING TO WATER POLLUTION.**

SENATOR MIKE GABBARD, CHAIR
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT
SENATOR KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY

Hearing Date: 2/22/2023

Room Number: 224

1 **Fiscal Implications:** This measure may significantly impact the priorities identified in the
2 Governor's Executive Budget Request for the Department of Health's (Department)
3 appropriations and personnel priorities if the Department is responsible for enforcement over
4 damages to state lands. Additional resources will be required to prioritize enforcement for
5 agricultural runoff in specific areas.

6 **Department Testimony:** The Department respectfully offers the following comments regarding
7 SB0773.

8 The measure proposes adding a section to Hawaii Revised Statutes (HRS) Chapter 342D,
9 Water Pollution, that subjects large landowners (landowners of 10,000 acres or more) to liability,
10 including fines and damages arising from runoff into state waters or damage of state lands. The
11 proposed measure also directs the Department to prioritize enforcement in rural areas where
12 there are known sources of water pollution. As drafted, the proposed measure places the
13 responsibility to enforce against damages to state lands on the Department. Damage to state
14 lands is generally the obligation of the Department of Land and Natural Resource and authorized
15 by existing legal authority. The Department does support focusing inspection and enforcement
16 resources on areas where there are significant discharges to state waters, particularly where there
17 are sensitive natural resources (i.e., coral reefs, high nearshore water quality, etc.).

1 Consistent with Federal laws, agricultural stormwater discharges are defined in State law
2 as a “nonpoint source.” Water pollution, whether from point or nonpoint sources, are regulated
3 by the Department. Nonpoint sources are addressed in HRS Chapter 342E, while more broadly,
4 wastewater and point source pollution are addressed in HRS Chapter 342D. The Department
5 implements legislative mandates set forth in both HRS Chapters 342D and 342E, through rules
6 adopted under Hawaii Administrative Rules (HAR) Chapters 11-55 and 11-56, respectively.

7 The current laws (statutes and rules) already authorize inspection, enforcement and
8 penalties for situations where agricultural runoff, or other water pollution sources, impact State
9 waters. Under HRS Section 342E-4, landowners and other persons responsible for nonpoint
10 source pollution are liable for fines or penalties of up to \$10,000 per discharge. Discharges that
11 violate prohibitions set forth in HRS Section 342D-50 are subject to up to \$25,000 per day/ per
12 violation. Currently legal authority under HRS Chapters 342D and 342E allow for enforcement
13 against landowners or other legal entities more appropriately held responsible for polluted
14 discharges. However, the proposed measure would limit certain violations to landowners and
15 add enforcement for damages to state *lands* the responsibility of the Department which is
16 inconsistent with the purpose and powers set forth in either HRS Chapter 342D or HRS Chapter
17 342E. The proposed language does not provide additional enforcement authority to address water
18 pollution as currently drafted but does add a requirement for enforcement for damage to state
19 lands which is legally and practically problematic.

20 In requiring the Department to enforce for damage to state lands, the bill would
21 dramatically increase the Department’s scope of duties. In general, damages to state lands falls
22 under the jurisdiction of the Department of Land and Natural Resources, as the owner of the
23 land. As proposed, the measure would require substantial additions to staff and budget to
24 address increases in enforcement scope and also require statutory changes authorizing the
25 Department to address damage to state lands.

26 While the Department is responsible for water pollution from agricultural runoff and does
27 seek to prioritize enforcement in all areas where there are existing reports of runoff and other
28 forms of water pollution, the proposed measure would be better revised to reflect nonpoint
29 source pollution control under HRS Chapter 342E and to remove management of state lands
30 from the Department of Health. In June 2021, the Department adopted rules (HAR, Chapter
31 11-56) for nonpoint source water pollution control and is in the process of establishing positions

1 for a nonpoint source water pollution control program (aka Surface Water Protection Branch).
2 Once the positions are filled, the Department will be able to conduct inspections and
3 enforcement for nonpoint source pollution sources such as those referenced in the proposed bill.

4 Thank you for the opportunity to testify.

5 **Offered Amendments:** Remove references to enforcement for damage to state lands, remove
6 the language potentially limiting enforcement to landowners of 10,000 acres or more, instead,
7 replace “landowners” with “persons”, eliminate minimal parcel size, and provide funding for
8 additional enforcement staff in the Surface Water Protection Branch.



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February 22, 2023

HEARING BEFORE THE
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT
SENATE COMMITTEE ON JUDICIARY

TESTIMONY ON SB 773
RELATING TO WATER POLLUTION

Conference Room 224 & Via Videoconference
1:00 PM

Aloha Chairs Gabbard and Rhoads, Vice Chair Richards and Gabbard, and Members of the Committees:

I am Brian Miyamoto, Executive Director of the Hawai'i Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 farm family members statewide and serves as Hawai'i's voice of agriculture to protect, advocate and advance the social, economic, and educational interests of our diverse agricultural community.

The Hawai'i Farm Bureau respectfully opposes SB 773, which would require farmers and ranchers who produce on large parcels to control all runoff and be liable for damages and fines arising from the runoff from their land.

HFB has the following concerns:

1. The proposed new law will inhibit large-scale agriculture in the State.
2. The bill unfairly applies only to agriculture, not other land users.
3. Is it even possible to distinguish between runoff that originates on the agricultural property from lands above the property.
4. Is it possible, or reasonable, especially with our torrential storms to prevent all runoff.

The success of ranchers and farmers is a key component in the State's goal to double local food production. We would like to ensure that all new laws and regulations are achievable and don't unnecessarily hurt our local producers.

Thank you for the opportunity to testify in opposition to this measure.

CARES

COMMUNITY ADVOCACY RESEARCH EDUCATION SERVICES

SB 773

Aloha Chairs, Vice Chairs & the Committee of JDC & AEN

to

the SENATE
committees
on AEN &
JDC.

The Hawaii
State
Legislature

from

Zhizi Xiong
(Angela
Melody
Young)
Creator

CARES is providing comments for SB 773.

The action that is being described in the purpose section “extreme rain events resulting in polluted water and can carry silt and other debris into coastal waters.” is sediment. However, the measure defines it as “runoff”.

“Sediment” is a word often used in 1.Conservation 2.climate change & sustainability 3. Development. The work of these 3 sectors tend to overlap. Sediment in the conservation sector can describe a "conservation plan" for the control of soil erosion and sediment resulting from a land disturbing activity. Sediment in the climate change sector describes coastal erosion caused by weather which leads to a runoff into the reef and affects biodiversity and the sustainability of our planet, our mother earth. The word “sediment” in the development sector is used when DPP conducts the City’s storm water quality review for the Erosion Control & Sediment Plan to assess developments before they start to build. When developing a land for agricultural, residential or urban use, a soil erosion & sediment review is conducted and the director collects \$250 for the erosion and sediment plan review. Sediment can be natural & manmade. Natural sediment as described by National Geographic is solid material, rocks, minerals, plants & animals. Man-made sediment, HRS §180C-1, usually describes debris resulting from land disturbing activity caused by tilling, clearing, grading, excavating, transporting, and filling of land.

CARES

The "runoff" definition in this measure is vague & ambiguous. To further clarify, CARES thinks it is necessary to define sediment separately or to include sediment in the definition of "runoff" for chapter 342.

Blessings,




ANGELA MELODY YOUNG



CARES

Works cited

1. "Sediment | National Geographic Society." Education.nationalgeographic.org, education.nationalgeographic.org/resource/sediment/.
 2. "[CHAPTER 180C]." Www.capitol.hawaii.gov, www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0180C/HRS_0180C-.htm. Accessed 22 Feb. 2023.
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SB-773

Submitted on: 2/17/2023 5:31:56 PM

Testimony for AEN on 2/22/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Klayton Kubo	Individual	Support	Written Testimony Only

Comments:

Support

SB-773

Submitted on: 2/17/2023 8:44:32 PM

Testimony for AEN on 2/22/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dana Keawe	Individual	Support	Written Testimony Only

Comments:

support

SB-773

Submitted on: 2/18/2023 12:19:51 AM

Testimony for AEN on 2/22/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
B.A. McClintock	Individual	Support	Written Testimony Only

Comments:

Please support this bill. Mahalo.

SB-773

Submitted on: 2/18/2023 8:16:51 PM

Testimony for AEN on 2/22/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Gerard Silva	Individual	Oppose	Written Testimony Only

Comments:

To much Government Control.

SB-773

Submitted on: 2/21/2023 11:51:25 AM

Testimony for AEN on 2/22/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Max Bielawski	Individual	Support	Written Testimony Only

Comments:

I in of support of SB773. It is my personal belief that we should hold individuals, landowners, business owners to be liable of the damages they cause in regards to water pollution. Water is essential to well being of all Hawai'i residents and anyone who dares to pollute water for various commercial or neglectful reasons should be held responsible and liable.