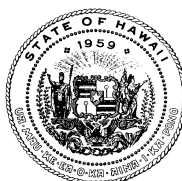


DAVID Y. IGE  
GOVERNOR OF HAWAII



KEITH KAWAOKA  
ACTING DIRECTOR

ELIZABETH A. CHAR, Ph.D.  
DIRECTOR OF HEALTH

**STATE OF HAWAII**  
**OFFICE OF ENVIRONMENTAL QUALITY CONTROL**  
235 SOUTH BERETANIA STREET, SUITE 702  
HONOLULU, HAWAII 96813  
oeqchawaii@doh.hawaii.gov

**Testimony in SUPPORT of HB1318 HD1**  
**RELATING TO SUSTAINABILITY**

COMMITTEE ON AGRICULTURE AND ENVIRONMENT

Senator Mike Gabbard, Chair

Senator Clarence K. Nishihara, Vice Chair

COMMITTEE ON WATER AND LAND

Senator Lorraine R. Inouye, Chair

Senator Gilbert S.C. Keith-Agaran, Vice Chair

COMMITTEE ON GOVERNMENT OPERATIONS

Senator Sharon Y. Moriwaki, Chair

Senator Donovan M. Dela Cruz, Vice Chair

COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

COMMITTEE ON WAYS AND MEANS

Senator Donovan M. Dela Cruz, Chair

Senator Gilbert S.C. Keith-Agaran, Vice Chair

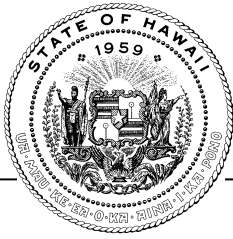
Testimony of Keith Kawaoka  
Acting Director, Office of Environmental Quality Control  
Attached Agency to the Department of Health

Hearing Date: April 5, 2021  
9:30 a.m.

Room Number: 211  
Via Videoconference

- 1 **OEQC's Position:** The Office of Environmental Quality Control (OEQC), an agency attached to the
- 2 Department of Health and which administers Chapter 343, Environmental Impact Statements, Hawai'i
- 3 Revised Statutes (HRS) supports HB1318 HD1.

- 1 **Purpose and Justification:** Currently, the Office of Environmental Quality Control and the
- 2 Environmental Council are both currently administratively attached to the Department of Health. This bill
- 3 would transfer OEQC's functions and duties to the Office of Planning (attached to the Department of
- 4 Business, Economic Development and Tourism [DBEDT]). The Environmental Council would be
- 5 established as the Environmental Advisory Council and be attached to the Office of Planning.
- 6 Thank you for the opportunity to testify.



# OFFICE OF PLANNING STATE OF HAWAII

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846  
Fax: (808) 587-2824  
Web: <http://planning.hawaii.gov/>

DAVID Y. IGE  
GOVERNOR

MARY ALICE EVANS  
DIRECTOR  
OFFICE OF PLANNING

Statement of  
**MARY ALICE EVANS**  
Director, Office of Planning  
before the  
**SENATE COMMITTEES ON:**

**AGRICULTURE AND ENVIRONMENT**  
**WATER AND LAND**  
**GOVERNMENT OPERATIONS**  
**JUDICIARY AND**  
**WAYS AND MEANS**

Monday, April 5, 2021  
9:30 AM  
in consideration of  
**HB 1318, HD 1**  
**RELATING TO SUSTAINABILITY.**

Chairs Gabbard, Inouye, Moriwaki, Rhoads and Dela Cruz, Vice Chairs Nishihara, Keith-Agaran, Dela Cruz, Keohokalole, and Members of the Senate Committees on Agriculture and Environment, Water and Land, Government Operations, Judiciary, and Ways and Means:

The Office of Planning **supports** HB 1318 and appreciates the amendments made in the HD 1.

The Office of Planning (OP) offers the following comments on HB 1318, HD 1. The purpose of HB 1318, HD 1 is to establish the environmental advisory council. The bill transfers the rights, powers, employees, appropriations, and other personal property from the office of environmental quality control to the Office of Planning. The bill also amends the ability for an applicant to appeal nonacceptance of an environmental impact statement from the environmental council.

The Office of Planning understands that the introduction of HB 1318 is in conjunction with HB 1149, both bills serving as the enabling legislation to consolidate various government land use and environmental policy functions of different agencies into a new structure within a modified Office of Planning, to be renamed the "Office of Planning and Sustainable Development" as described in HB 200, HD 1, the House Draft of the State Budget bill.

After consultation and review of HB 1318, HD 1 with the Office of Planning's Deputy Attorney General, we recommend the senate committees consider making the following housekeeping amendment as follows shown in **bold** below on page 37, line 9, in section 19 of HB 1318, HD 1:

"SECTION 19. Section 343-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) After consultation with the affected agencies, the ~~[council]~~ office of planning shall adopt, amend, or repeal necessary rules for the purposes of this chapter in accordance with chapter 91 including[,] but not limited to[,] rules that shall:

(1) Prescribe the procedures whereby a group of proposed actions may be treated by a single environmental assessment or statement;

(2) Establish procedures whereby specific types of actions, because they will probably have minimal or no significant effects on the environment, are declared exempt from the preparation of an environmental assessment;

(3) Prescribe procedures for the preparation of an environmental assessment;

(4) Prescribe the contents of an environmental assessment;

(5) Prescribe procedures for informing the public of determinations that a statement is either required or not required, for informing the public of the availability of draft environmental impact statements for review and comments, and for informing the public of the acceptance or nonacceptance of the final environmental statement;

(6) Prescribe the contents of an environmental impact statement;

(7) Prescribe procedures for the submission, distribution, review, acceptance or nonacceptance, and withdrawal of an environmental impact statement; **and**

(8) Establish criteria to determine whether an environmental impact statement is acceptable or not. ~~;~~ **and**

~~-(9) Prescribe procedures to appeal the nonacceptance of an environmental impact statement to the environmental advisory council.]"~~

The aforementioned language is considered a housekeeping amendment to this measure, since the intent of HB 1318, HD 1, eliminates the ability to appeal the nonacceptance of a final statement to the environmental council and rewrites the environmental council to become an environmental advisory council. For these reasons, we suggest that that paragraph 9 in subsection 343-6(a) of HB 1318, HD 1, be deleted.

Mahalo for the opportunity provide testimony on HB 1318, HD 1.



# STATE ENVIRONMENTAL COUNCIL

DEPARTMENT OF HEALTH, STATE OF HAWAII  
235 South Beretania Street, Suite 702, Honolulu, HI 96813

Phone: (808) 586-4185  
Email: oeqchawaii@doh.hawaii.gov

David Y. Ige  
Governor

Chairperson  
Puananionaona Thoene

Vice Chair  
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Dawn Heger-Nordlom  
Maka'ala Ka'aumoana  
Keith Kawaoka (*Ex Officio*)  
I. Robin Kaye  
Theresita Kinnaman  
Robert Parsons  
Ron Terry  
Michael Tulang  
N. Mahina Tuteur

Testimony of  
**PUANANIONAONA P. THOENE, Chair**  
**and**  
**I. ROBIN KAYE, Member**  
on behalf of the Environmental Council

before the  
**SENATE COMMITTEES ON AGRICULTURE AND ENVIRONMENT; WATER AND LAND;  
GOVERNMENT OPERATIONS, JUDICIARY; AND WAYS AND MEANS**

Monday, April 5, 2021  
9:30 AM via Videoconference

in SUPPORT of and providing COMMENTS on  
**HOUSE BILL 1318**  
**RELATING TO SUSTAINABILITY**

At its meeting on January 5, 2021, the Environmental Council voted to request two changes to HRS Chapters 341 and 343 related to certain roles that the Council currently holds: (1) the statutory requirement to prepare an annual report by January 31<sup>st</sup> of each year; and (2) hearing appeals from applicant actions where an environmental impact statement (EIS) was not accepted by the accepting authority. House Bill (HB) 1318 HD1 reflects both of those changes, and the Environmental Council offers its support of this bill. Additionally, HB 1318: (1) proposes to restructure the state sustainability branch as the sustainability and environmental review division (SERD); (2) transfers the Environmental Council (Council) from the Department of Health (DOH) to the Office of Planning (OP) as an environmental advisory council (EAC); and (3) transfers the Office of Environmental Quality Control (OEQC) to the SERD.

The Council generally supports the intent of the bill to restructure and consolidate departments dealing with sustainability, land use planning, and environmental quality and protection in an effort to ensure that policies and actions are coordinated. The Council is in strong support of the deletion of the requirement that a nonacceptance of an applicant EIS be appealed to the EAC, but notes that Section 19 of HB 1318 HD1 still includes a reference which indicates that such appeals would be directed to the EAC under this bill and conflicts with the intent of the bill to delete this requirement. Therefore, subsection 9 of Section 19 of this bill, which would amend HRS § 343-6(9) stating "Prescribe procedures to appeal the nonacceptance of an environmental impact statement to the environmental advisory council," should be deleted in its entirety.

With respect to appeals to the Council, this role is actually not in HRS § 341-6, but instead originates from HRS § 343-5(e). Little is known about the legislative intent in enacting this provision; it is, however, rarely utilized by applicants. In fact, over the last 30 years, there has been only one instance this past summer where an applicant appealed the nonacceptance of an EIS to the Council. (It is said that there was another appeal considered some years back, however, the parties settled the matter and the appeals process was never completed.) HRS § 343-5(e) sets forth a 30-day deadline in which the Council must complete the appeal and decision-making with written findings of fact, conclusions of law, and decision and order. Through the Council's procedural rules, this must be done through a Chapter 91 contested case hearing. The 30-day deadline is an unrealistic time frame for the Council to complete this process, particularly given that the Council does not have its own dedicated staff (OEQC assists us) and has no budget. After going through this process last year, the Council began discussing whether appeals of this nature are properly a role for the Council to serve and we have concluded that it makes sense to delete the portion of HRS § 343-5(e) that provides for such appeals to the Council.

From a fairness standpoint, it is unclear what the legislature intended with this provision. It makes sense that an applicant contesting the nonacceptance of its EIS would have the same mechanism of challenge as someone contesting the acceptance of an EIS, which is provided for under HRS § 343-7(c) through an action to the Circuit Court. The court does not have a deadline in reviewing such matters. Because the Council's rules require that appeals be handled as Chapter 91 contested case hearings, it is unrealistic to complete that process in 30 days.

Furthermore, the makeup of the Council is set forth by HRS § 341-6 and is intended to include a broad demographic of folks, but particularly those who have experience with Chapter 343 documents as well as community and environmental groups that would likely have taken formal positions on matters that would be before the Council. For example, because of this, three Council members recused themselves in the last appeal, and there was a motion to recuse two additional members. The recusal issue will be present in any appeal to the Council simply by the nature of who sits on the Council.

Because the Council does not handle applicant appeals on a regular basis, the Council is not currently proficient in doing so, as a court would be. Even though there has only been one instance of applicant appeals to the Council, given the increased litigation the state has seen with respect to environmental matters, it is anticipated that more of these appeals could come to the Council. Dealing with such matters on a regular basis could subsume the Council's time at the expense of the Council's other roles set forth in HRS § 341-6.

Finally, there is a question about whether or not the Council is in the best position to determine such appeals. While the Council is responsible for promulgating the administrative rules under HRS Chapter 343, the determination about the sufficiency of an EIS properly lies with the technical experts at the relevant agencies reviewing these documents. The Council is certainly poised on process questions, however, whether or

not a specific scientific study, for example, is sufficient for purposes of granting a permit based on an EIS is properly within the accepting authority's wheelhouse.


Regarding the annual report, the Council does not have a budget of its own. The annual report takes a great effort to complete. As you know, the Council members are volunteers. In past years, certain Council members funded the production of the annual report out of pocket. The Council has also been fortunate to have community members volunteer their time to complete the annual report. It is unknown how many people read the annual report and whether or not it is serving the function that it should and being helpful to the legislature, as it appears intended to be. Given the great effort put into producing the annual report each year, if it is not useful to those for whom it is produced, the Council believes that it should not be held to the requirement to produce one, as the Council's efforts could be better spent on its other roles, such as community outreach and developing guidance on the environmental impact statement rules. This is not to say that the Council would not produce an annual report or newsletter on its own, but eliminating the statutory requirement that an annual report be done by January 31<sup>st</sup> of each year would clearly alleviate this burden.

One additional component of HB 1318 that the Council supports as well is a clean-up of language in HRS Chapters 341 and 343 that would result in deleting references to the University of Hawaii Environmental Center. While the Center served a great role, it has not been funded for many years.

The Council very much appreciates the Legislature taking the time to address the concerns discussed above through the introduction of this bill and the Committees setting this bill for hearing. Thank you for the opportunity to provide testimony on HB 1318.



Puananiona Thoene  
Chair  
Environmental Council



Robin Kaye  
Chair  
Legislative Committee

Douglas Meller  
2615 Aaliamanu Place  
Honolulu, HI 96813  
dougasmeller@gmail.com

TESTIMONY OPPOSING HB 1318, HD1  
RELATING TO SUSTAINABILITY

Monday, April 5, 2021, 9:30 am, State Capitol Room 211  
Senate Committee on Agriculture and Environment  
Senate Committee on Water and Land  
Senate Committee on Government Operations  
Senate Committee on Judiciary  
Senate Committee on Ways and Means

I oppose HB 1318, HD1 because Section 19 of this bill would amend Sec. 343-6, Hawaii Revised Statutes, to authorize the Office of Planning (OP) to adopt rules which determine which actions do not require an environmental assessment (EA). My specific concern is that OP cares much more about expediting development than about appropriate reforms and streamlining of Chapter 343, Hawaii Revised Statutes.

Chapter 343 currently is “triggered” whenever:

- a private person submits a permit application for a proposed private action;
- either the application requires a discretionary approval or a discretionary agency recommendation is required prior to approval of the application (county ordinances or rules commonly require discretionary agency recommendations prior to county action on applications for general plan amendments, zone changes, and subdivisions); and
- the proposed private action will require some kind of improvement within the right-of-way of a state or county highway.

In effect, although Chapter 343 can be “triggered” by permit applications for private actions which require improvements within the highway right-of-way, Chapter 343 may not be “triggered” for the same permit applications for the same private actions if no “use” of the highway right-of-way is required. This obviously makes no sense. Unfortunately, OP supports permit streamlining rather than appropriate reforms. During the current legislative session, when testifying on SB 1055 and HB 901, OP has publicly taken the position that Chapter 343 should be amended in a manner which would exempt most private applications for state land use district boundary amendments, state special use permits, county zoning changes, and county special management area use permits. I believe this would be a mistake. I also believe it would be a mistake to authorize OP to adopt rules with the same effect as enactment of SB 1055 or HB 901.

Thank you for the opportunity to submit testimony.