

HB-1318

Submitted on: 2/5/2021 1:24:28 PM

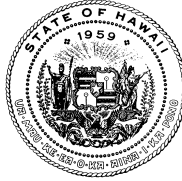
Testimony for EEP on 2/9/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ruta Jordans	Individual	Support	No

Comments:

It appears this bill would make becoming more sustainable a more effective process.

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
RELATING TO SUSTAINABILITY

COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
Representative Nicole E. Lowen, Chair
Representative Lisa Marten, Vice Chair

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

Hearing Date: February 9, 2021
9:00 a.m.

Room Number: 325
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.
- 4 **Purpose and Justification:** Currently, the Office of Environmental Quality Control and the
- 5 Environmental Council are both currently administratively attached to the Department of Health. In its
- 6 essence, this bill would transfer OEQC into a new Sustainability and Environmental Review Division
- 7 within the Office of Planning (attached to the Department of Business, Economic Development and
- 8 Tourism [DBEDT]) and the Environmental Council would be attached to the Office of Planning. The role
- 9 of the Environmental Council would be clarified as "advisory," and their current rule-making authority
- 10 over the environmental review process would be transferred to the Director of the Office of Planning.
- 11 While the name of OEQC would be changed to more appropriately describe its function as
- 12 "environmental review," the role and responsibilities of OEQC appear to be unchanged.

1 OEQC concurs that making this transfer into the Office of Planning is likely to result in greater
2 opportunities for collaboration and possibly cost savings. A noted concern was the need for the program
3 to retain its “neutral” stance on developments so that it could continue to be viewed as an impartial
4 facilitator in the important environmental review process. Given the Office of Planning’s attachment to
5 DBEDT, there exists the possibility that the program might be expected to present a “pro-
6 business/development” perspective that could conflict with its need for neutrality.
7 Thank you for the opportunity to testify.

Testimony of Robin Kaye in SUPPORT of HB1318

This bill HB1318 is an important addition to the tools available to our State for addressing its myriad and complex environmental challenges. It offers a much-needed path for the Environmental Council to maintain, and in fact expand, its essential services to the State of Hawaii. **I support this legislation.**

The Environmental Council has operated under the aegis of the Office of Environmental Quality Control (OEQC), which in turn operates under the administrative auspices of the Department of Health (DOH). It is an all-volunteer council, with its membership representing every island in the State of Hawaii.

The EC has a zero budget, operates without a permanent Director at OEQC, and has no dedicated staff, yet the EC is responsible — by statute — for several specific responsibilities:

- It is required to serve as a liaison between the OEQC Director and the public on matters concerning ecology and environmental quality, which essentially calls for it to be a listener to the community's environmental concerns. That task, to be undertaken effectively, requires the volunteer members to actively solicit information from the public and then bring what they have learned back to the OEQC; all without any funding or dedicated administrative staff.
- Further, the EC is charged with monitoring the progress of state, county, and federal agencies in achieving the State's environmental goals and policies and publishing its findings in an annual report. This calls for reaching out to those agencies for their relevant information, collecting those responses, and then publishing them in a coherent format.

In addition, the EC has two other functions, both extraordinarily challenging:

- Most recently, it was charged with hearing appeals from an applicant who has had its Environmental Impact Statement (EIS) denied. The statute calls for the EC, again an all-volunteer body of lay men and women (no requirement for any legal or judicial backgrounds) to complete the appeal process within 30 days. It did so, despite the recusal of almost a third of its members (for potential conflicts of interest) and the fact that few of the Council members are with judicial and/or legal expertise.

- Second, it has recently spent approximately two and one-half years revising the administrative rules under which Chapter 343's Environmental Assessment and Environmental Impact Statements operate. This process, which included public meetings on every island, was critical, as the rules had not been revised since 1996.

HB1318 offers the potential for significant support of the EC and OEQC by placing them within the recently formed Sustainability and Environmental Review division of the Office of Planning. It appears to be a much more appropriate fit, and with a hoped-for level of financial and administrative support that will enable it to not only fulfill its statutory responsibilities, but to do so in a much more opportunistic and effective manner.

Further, HB1318 would remove the appeal responsibility from the EC — a necessary step to enable the EC to fulfill its other mandated functions.

Please pass this bill.

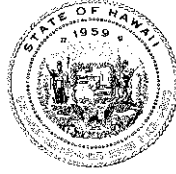
Robin Kaye

Robin Kaye

DAVID Y. IGE
Governor

JOSH B. GREEN
Lieutenant Governor

MIKE MCCARTNEY
Director



LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

DANIEL E. ORODENKER
Executive Officer

BERT SARUWATARI
Planner

SCOTT A.K. DERRICKSON AICP
Planner

RILEY K. HAKODA
Planner/Chief Clerk

FRED A. TALON
Drafting Technician

Statement of
DANIEL ORODENKER
Executive Officer, Land Use Commission
before the
HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION
Tuesday, February 9, 2021
9:00 AM
State Capitol, Conference Room 325
in consideration of
HB 1318
RELATING TO SUSTAINABILITY.

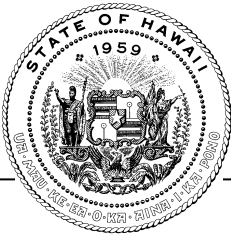
Chair Lowen, Vice Chair Marten, and Members of the House Committee on Energy and Environmental Protection:

The Land Use Commission supports the testimony and position of the Office of Planning which offers comments on HB 1318 and the proposed House Draft 1 contained therein.

The purpose of HB 1318 is to restructure the statewide sustainability branch as the sustainability and environmental review division. The bill transfers the environmental council from the department of health to be established in the office of planning as the environmental advisory council. The measure also transfers the rights, powers, employees, appropriations, and other personal property from the office of environmental quality control to the sustainability and environmental review division. Finally, the bill amends the ability for an applicant to appeal nonacceptance of an environmental impact statement from the environmental council to the environmental advisory council.

The Land Use Commission understands that the introduction of HB 1318 is in conjunction with HB 1149, in an effort to consolidate various government land use and environmental policy functions of different agencies into a new structure under the Office of Planning which also includes the Land Use Commission. The LUC has had significant discussions with OP regarding these proposed measures and therefore supports its position.

The Land Use Commission appreciates the opportunity to testify on this matter.



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
HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION
Tuesday, February 9, 2021
9:00 AM
State Capitol, Conference Room 325
in consideration of
HB 1318
RELATING TO SUSTAINABILITY.

Chair Lowen, Vice Chair Marten, and Members of the House Committee on Energy and Environmental Protection:

The Office of Planning (OP) offers the following **comments** on HB 1318. The purpose of HB 1318 is to restructure the statewide sustainability branch as the sustainability and environmental review division. The bill transfers the environmental council from the department of health to be established in the office of planning as the environmental advisory council. The measure also transfers the rights, powers, employees, appropriations, and other personal property from the office of environmental quality control to the sustainability and environmental review division. Finally, the bill amends the ability for an applicant to appeal nonacceptance of an environmental impact statement from the environmental council to the environmental advisory council.

The Office of Planning understands that the introduction of HB 1318 is in conjunction with HB 1149, in an effort to consolidate various government land use and environmental policy functions of different agencies into a new structure under the Office of Planning.

While the Office of Planning appreciates the intent of the measure, we propose the attached proposed House Draft 1 for the committee's consideration. In summary, the OP recommends to:

- Add preamble language to explain the legislature's intent to consolidate agencies and align HB 1318 and HB 1149.
- Maintain portions of and renumber Chapter 341 and rename the Chapter's name from "Environmental Quality Control" to "Environmental Advisory Council."
- Apply and transfer the roles and functions of the Office of Environmental Quality Control to the entire Office of Planning.
- Codify the roles and responsibilities of the Environmental Review into HRS §225M-2 (b), the roles and responsibilities of the Office of Planning.

The Office of Planning appreciates the opportunity to provide comments and proposed amendments on HB 1318.

A BILL FOR AN ACT

RELATING TO SUSTAINABILITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that achieving an
2 abundant and sustainable future for Hawaii will require re-
3 envisioning the State's institutional framework to better
4 integrate sustainability principles into the organizational
5 structure of state government, especially in planning, land use,
6 environmental, and economic development programs.

7 Improved collaboration of state agencies is necessary to
8 achieve the State's sustainability and climate goals and
9 statutory targets. The legislature further finds that improved
10 integration of land use planning and environmental policy
11 decision-making will enhance state government agencies' ability
12 to implement climate change adaptation measures to address sea
13 level rise and more frequent and intense storm events, and
14 climate change mitigation measures such as increasing clean
15 energy production and reducing greenhouse gas emissions.

16 Therefore, the legislature finds that it is in the public
17 interest to consolidate various government land use functions of

1 different agencies into a new structure under the office of
2 planning in an effort to place all key decision-making and
3 regulatory responsibility surrounding land use planning and
4 permitting under one structure.

5 The purpose of this Act is to integrate the office of
6 environmental quality control within the office of planning.
7 The legislature notes that a separate Act will integrate the
8 land use commission within a modified office of planning, to be
9 renamed the office of planning and sustainable development.
10 These two Acts will improve the coordination of these related
11 functions so state government can work more efficiently to
12 achieve the State's long-term sustainability and climate change
13 goals for a more abundant future for the people of Hawaii.

14 SECTION 2. Chapter 341, Hawaii Revised Statutes, is
15 amended to read as follows:

16 1. By amending its title to read:

17 **"Chapter 341**

18 **ENVIRONMENTAL [~~QUALITY CONTROL~~] ADVISORY COUNCIL"**

19 2. By adding a new section to be appropriately designated to
20 read as follows:

1 "§341- Environmental advisory council; established. (a)

2 There is created an environmental advisory council not to exceed

3 fifteen members. Members of the environmental advisory council

4 shall be appointed by the governor as provided in section 26-34.

5 The environmental advisory council shall be established within

6 the office of planning for administrative purposes. The term of

7 each member shall be four years; provided that of the members

8 initially appointed five members shall serve for four years,

9 five members shall serve for three years, and the remaining five

10 members shall serve for two years. Vacancies shall be filled

11 for the remainder of any unexpired term in the same manner as

12 original appointments. The environmental advisory council

13 chairperson shall be elected by the council from among the

14 appointed members of the council.

15 (b) Members shall be appointed to ensure a broad and

16 balanced representation of educational, business, and

17 environmentally pertinent disciplines and professions, such as

18 the natural and social sciences, the humanities, architecture,

19 engineering, environmental consulting, public health, and

20 planning; educational and research institutions with

21 environmental competence; agriculture, real estate, visitor

1 industry, construction, and media; and voluntary community and
2 environmental groups. The members of the environmental advisory
3 council shall serve without compensation but shall be reimbursed
4 for actual and necessary expenses, including travel expenses,
5 incurred in the discharge of their duties."

6 3. By amending and renumbering section 341-6, Hawaii Revised
7 Statutes, to read as follows:

8 " ~~§341-6~~ §341- **Functions of the environmental**
9 **advisory council.** The environmental advisory council shall
10 serve as a liaison between the ~~[director]~~ office of planning and
11 the general public by soliciting information, opinions,
12 complaints, recommendations, and advice concerning ecology and
13 environmental quality through public hearings or any other means
14 and by publicizing such matters. The council may make
15 recommendations concerning ecology and environmental quality to
16 the ~~[director]~~ office of planning and shall meet at the call of
17 the council chairperson or the director of the office of
18 planning upon notifying the council chairperson. The
19 environmental advisory council shall monitor the progress of
20 state, county, and federal agencies in achieving the State's
21 environmental goals and policies. ~~[and with the assistance of~~

1 ~~the director shall make an annual report with recommendations~~
2 ~~for improvement to the governor, the legislature, and the public~~
3 ~~no later than January 31 of each year. All state and county~~
4 ~~agencies shall cooperate with the council and assist in the~~
5 ~~preparation of such a report by responding to requests for~~
6 ~~information made by the council. The council may delegate to~~
7 ~~any person such power or authority vested in the council as it~~
8 ~~deems reasonable and proper for the effective administration of~~
9 ~~this section and chapter 343, except the power to make, amend,~~
10 ~~or repeal rules.]"~~

11 SECTION 3. Section 10-41, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) The training required by this part shall apply to
14 members of the land use commission, board of land and natural
15 resources, commission on water resource management,
16 environmental advisory council, board of directors of the
17 agribusiness development corporation, board of agriculture,
18 legacy land conservation commission, natural area reserves
19 system commission, and Hawaii historic places review board."

20 SECTION 4. Section 128D-31, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:

1 "(b) Additionally, within ten days of receiving an
2 application and processing fee, the department shall:

3 (1) Post a sign at the site notifying the public of
4 participation in the voluntary response program, the
5 public's opportunity to comment, and how a copy of the
6 application may be obtained; and

7 (2) Send a brief summary of the application to the office
8 of [~~environmental quality control~~] planning for
9 publication in the office's bulletin along with
10 instructions for obtaining a copy of the application
11 and commenting procedures to the department.

12 The comment period shall run concurrently with and shall not
13 delay the application process."

14 SECTION 5. Section 128E-2, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) The commission shall consist of the following
17 members, who shall be appointed by the governor as provided in
18 section 26-34:

19 (1) The director of health;

20 (2) The chairperson of the board of agriculture;

21 (3) The adjutant general;

- 1 (4) The director of labor and industrial relations;
- 2 (5) The chairperson of the board of land and natural
- 3 resources;
- 4 (6) The director of the office of [~~environmental quality~~
- 5 ~~control~~] planning
- 6 (7) The director of business, economic development, and
- 7 tourism;
- 8 (8) The director of transportation;
- 9 (9) The dean of the University of Hawaii school of public
- 10 health or the dean of the University of Hawaii school
- 11 of medicine, as determined by the governor;
- 12 (10) [~~The director of the environmental center of the~~
- 13 ~~University of Hawaii;~~
- 14 ~~(11)]~~ One representative from each committee designated by
- 15 the mayor of each respective county; and
- 16 [~~(12)]~~ (11) Other persons appointed by the governor to meet
- 17 the minimum requirements of the Emergency Planning and
- 18 Community Right-to-Know Act of 1986."

19 SECTION 6. Section 150A-10, Hawaii Revised Statutes, is
20 amended to read as follows:

1 **"§150A-10 Advisory committee on plants and animals.** There
2 shall be an advisory committee on plants and animals composed of
3 the chairperson of the board or the chairperson's representative
4 who shall be chairperson of the committee, the chairperson of
5 the board of land and natural resources, the director of the
6 office of [~~environmental quality control,~~] planning or their
7 designee, the director of department of health or their
8 designees, and five other members, with expertise in plants,
9 animals, or microorganisms, and who, by virtue of their vocation
10 or avocation, also are thoroughly conversant with modern
11 ecological principles and the variety of problems involved in
12 the adequate protection of our natural resources. The latter
13 five members shall be chosen by the chairperson. The committee
14 shall advise and assist the department in developing or revising
15 laws and regulations to carry out and effectuate the purposes of
16 this chapter and in advising the department in problems relating
17 to the introduction, confinement, or release of plants, animals,
18 and microorganisms.

19 The chairperson may create ad hoc or permanent
20 subcommittees, as needed."

1 SECTION 7. Section 186-3, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) All public hearings required by statute or rules of
4 the department shall be held before any management plan is
5 approved. The management plan shall be available to the public
6 not less than thirty days before approval. Notice of its
7 availability shall be published in the bulletin of the office of
8 [~~environmental quality control~~] planning. The plan shall be
9 reviewed periodically by the board or its employees or
10 authorized agents at intervals of no more than every five years.
11 The review shall determine whether the owner has met the
12 objectives in the management plan. The board may approve or
13 require in consultation with the landowner alteration of the
14 management plan to adapt to current conditions."

15 SECTION 8. Section 195D-4, Hawaii Revised Statutes, is
16 amended as follows:

17 1. By amending subsection (g) to read:

18 "(g) After consultation with the endangered species
19 recovery committee, the board may issue a temporary license as a
20 part of a habitat conservation plan to allow a take otherwise
21 prohibited by subsection (e) if the take is incidental to, and

1 not the purpose of, the carrying out of an otherwise lawful
2 activity; provided that:

3 (1) The applicant, to the maximum extent practicable,
4 shall minimize and mitigate the impacts of the take;

5 (2) The applicant shall guarantee that adequate funding
6 for the plan will be provided;

7 (3) The applicant shall post a bond, provide an
8 irrevocable letter of credit, insurance, or surety
9 bond, or provide other similar financial tools,
10 including depositing a sum of money in the endangered
11 species trust fund created by section 195D-31, or
12 provide other means approved by the board, adequate to
13 ensure monitoring of the species by the State and to
14 ensure that the applicant takes all actions necessary
15 to minimize and mitigate the impacts of the take;

16 (4) The plan shall increase the likelihood that the
17 species will survive and recover;

18 (5) The plan takes into consideration the full range of
19 the species on the island so that cumulative impacts
20 associated with the take can be adequately assessed;

- 1 (6) The measures, if any, required under section 195D-
2 21(b) shall be met, and the department has received
3 any other assurances that may be required so that the
4 plan may be implemented;
- 5 (7) The activity, which is permitted and facilitated by
6 issuing the license to take a species, does not
7 involve the use of submerged lands, mining, or
8 blasting;
- 9 (8) The cumulative impact of the activity, which is
10 permitted and facilitated by the license, provides net
11 environmental benefits; and
- 12 (9) The take is not likely to cause the loss of genetic
13 representation of an affected population of any
14 endangered, threatened, proposed, or candidate plant
15 species.
- 16 Board approval shall require an affirmative vote of not less
17 than two-thirds of the authorized membership of the board after
18 holding a public hearing on the matter on the affected island.
19 The department shall notify the public of a proposed license
20 under this section through publication in the periodic bulletin
21 of the office of [~~environmental quality control~~] planning and

1 make the application and proposed license available for public
2 review and comment for not less than sixty days prior to
3 approval."

4 2. By amending subsection (i) to read:

5 "(i) The department shall work cooperatively with federal
6 agencies in concurrently processing habitat conservation plans,
7 safe harbor agreements, and incidental take licenses pursuant to
8 the Endangered Species Act. After notice in the periodic
9 bulletin of the office of [~~environmental quality control~~]
10 planning and a public hearing on the islands affected, which
11 shall be held jointly with the federal agency, if feasible,
12 whenever a landowner seeks both a federal and a state safe
13 harbor agreement, habitat conservation plan, or incidental take
14 license, the board, by a two-thirds majority vote, may approve
15 the federal agreement, plan, or license without requiring a
16 separate state agreement, plan, or license if the federal
17 agreement, plan, or license satisfies, or is amended to satisfy,
18 all the criteria of this chapter. All state agencies, to the
19 extent feasible, shall work cooperatively to process
20 applications for habitat conservation plans and safe harbor
21 agreements on a consolidated basis including concurrent

1 processing of any state land use permit application that may be
2 required pursuant to chapter 183C or 205, so as to minimize
3 procedural burdens upon the applicant."

4 SECTION 9. Section 195D-21, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) The department may enter into a planning process with
7 any landowner for the purpose of preparing and implementing a
8 habitat conservation plan. An agreement may include multiple
9 landowners. Applications to enter into a planning process shall
10 identify:

- 11 (1) The geographic area encompassed by the plan;
- 12 (2) The ecosystems, natural communities, or habitat types
13 within the plan area that are the focus of the plan;
- 14 (3) The endangered, threatened, proposed, and candidate
15 species known or reasonably expected to occur in the
16 ecosystems, natural communities, or habitat types in
17 the plan area;
- 18 (4) The measures or actions to be undertaken to protect,
19 maintain, restore, or enhance those ecosystems,
20 natural communities, or habitat types within the plan
21 area;

1 (5) A schedule for implementation of the proposed measures
2 and actions; and

3 (6) An adequate funding source to ensure that the proposed
4 measures and actions are undertaken in accordance with
5 the schedule.

6 After a habitat conservation plan is prepared, the board shall
7 notify the public of the proposed habitat conservation plan
8 through the periodic bulletin of the office of [~~environmental~~
9 ~~quality control~~] planning and make the proposed plan and the
10 application available for public review and comment not less
11 than sixty days prior to approval. The notice shall include[~~7~~]
12 but not be limited to[~~7~~] identification of the area encompassed
13 by the plan, the proposed activity, and the ecosystems, natural
14 communities, and habitat types within the plan area. The notice
15 shall solicit public input and relevant data."

16 SECTION 10. Section 195D-22, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) To encourage landowners to voluntarily engage in
19 efforts that benefit endangered, threatened, proposed, and
20 candidate species, except as otherwise provided by law, the
21 board, upon approval by not less than two-thirds of the board's

1 authorized membership, after a public hearing on the island
2 affected, may enter into a safe harbor agreement with one or
3 more landowners to create, restore, or improve habitats or to
4 maintain currently unoccupied habitats that threatened or
5 endangered species can be reasonably expected to use, if the
6 board determines that the cumulative activities, if any,
7 contemplated to be undertaken within the areas covered by the
8 agreement are environmentally beneficial. In the event the
9 board votes to enter into a safe harbor agreement for which the
10 majority of the endangered species recovery committee
11 recommended disapproval, the board may not enter into the safe
12 harbor agreement unless the agreement is approved by a two-
13 thirds majority vote of both houses of the legislature. The
14 board shall notify the public of the proposed safe harbor
15 agreement through the periodic bulletin of the office of
16 [~~environmental quality control~~] planning and make the proposed
17 agreement available for public review and comment not less than
18 sixty days prior to approval."

19 SECTION 11. Section 195D-24, Hawaii Revised Statutes, is
20 amended to read as follows:

1 **"§195D-24 Confidentiality.** All information submitted to
2 the board by a landowner pursuant to section 195D-21 or 195D-22,
3 in the course of preparing a habitat conservation plan or safe
4 harbor agreement for private lands, respectively, shall be kept
5 confidential until notice of the proposed plan or agreement is
6 published in the periodic bulletins of the office of
7 [~~environmental quality control~~] planning. For habitat
8 conservation plans or safe harbor agreements for private lands,
9 the precise location of any threatened or endangered species may
10 remain confidential."

11 SECTION 12. Section 205A-30, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§205A-30 Emergency and minor permits.** Each county
14 authority shall provide specific procedures consistent with this
15 part for the issuance of special management area emergency
16 permits or special management area minor permits, pursuant to
17 the procedural requirements within this part, and judicial
18 review from the grant and denial thereof. The lead agency shall
19 file notice of special management area minor permits in the next
20 available issue of the periodic bulletin of the office of
21 [~~environmental quality control~~] planning."

1 SECTION 13. Section 205A-42, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) The chairperson of the board of land and natural
4 resources shall cause a public notice to be published in the
5 periodic bulletin published by the office of [~~environmental~~
6 ~~quality control~~] planning. All comments to the application for
7 shoreline certification shall be submitted in writing to the
8 state land surveyor no later than fifteen calendar days from the
9 date of the public notice of the application. Notice of
10 application for certification shall be identified by tax map key
11 number, and where applicable, street address and nearest town."

12 SECTION 14. Section 225M-2(b), Hawaii Revised Statutes, is
13 amended to read as follows:

14 "(b) The office of planning shall gather, analyze, and
15 provide information to the governor to assist in the overall
16 analysis and formulation of state policies and strategies to
17 provide central direction and cohesion in the allocation of
18 resources and effectuation of state activities and programs and
19 effectively address current or emerging issues and
20 opportunities. More specifically, the office shall engage in
21 the following activities:

1 (1) State comprehensive planning and program coordination.
2 Formulating and articulating comprehensive statewide goals,
3 objectives, policies, and priorities, and coordinating their
4 implementation through the statewide planning system established
5 in part II of chapter 226;

6 (2) Strategic planning. Identifying and analyzing
7 significant issues, problems, and opportunities confronting the
8 State, and formulating strategies and alternative courses of
9 action in response to identified problems and opportunities by:

10 (A) Providing in-depth policy research, analysis, and
11 recommendations on existing or potential areas of critical state
12 concern;

13 (B) Examining and evaluating the effectiveness of
14 state programs in implementing state policies and priorities;

15 (C) Monitoring through surveys, environmental
16 scanning, and other techniques--current social, economic, and
17 physical conditions and trends; and

18 (D) Developing, in collaboration with affected public
19 or private agencies and organizations, implementation plans and
20 schedules and, where appropriate, assisting in the mobilization
21 of resources to meet identified needs;

1 (3) Planning coordination and cooperation. Facilitating
2 coordinated and cooperative planning and policy development and
3 implementation activities among state agencies and between the
4 state, county, and federal governments, by:

5 (A) Reviewing, assessing, and coordinating, as
6 necessary, major plans, programs, projects, and regulatory
7 activities existing or proposed by state and county agencies;

8 (B) Formulating mechanisms to simplify, streamline, or
9 coordinate interagency development and regulatory processes; and

10 (C) Recognizing the presence of federal defense and
11 security forces and agencies in the State as important state
12 concerns;

13 (4) Statewide planning and geographic information system.
14 Collecting, integrating, analyzing, maintaining, and
15 disseminating various forms of data and information, including
16 geospatial data and information, to further effective state
17 planning, policy analysis and development, and delivery of
18 government services by:

19 (A) Collecting, assembling, organizing, evaluating,
20 and classifying existing geospatial and non-geospatial data and
21 performing necessary basic research, conversions, and

1 integration to provide a common database for governmental
2 planning and geospatial analyses by state agencies;

3 (B) Planning, coordinating, and maintaining a
4 comprehensive, shared statewide planning and geographic
5 information system and associated geospatial database. The
6 office shall be the lead agency responsible for coordinating the
7 maintenance of the multi-agency, statewide planning and
8 geographic information system and coordinating, collecting,
9 integrating, and disseminating geospatial data sets that are
10 used to support a variety of state agency applications and other
11 spatial data analyses to enhance decision-making. The office
12 shall promote and encourage free and open data sharing among and
13 between all government agencies. To ensure the maintenance of a
14 comprehensive, accurate, up-to-date geospatial data resource
15 that can be drawn upon for decision-making related to essential
16 public policy issues such as land use planning, resource
17 management, homeland security, and the overall health, safety,
18 and well-being of Hawaii's citizens, and to avoid redundant data
19 development efforts, state agencies shall provide to the shared
20 system either their respective geospatial databases or, at a
21 minimum, especially in cases of secure or confidential data sets

1 that cannot be shared or must be restricted, metadata describing
2 existing geospatial data. In cases where agencies provide
3 restricted data, the office of planning shall ensure the
4 security of that data; and

5 (C) Maintaining a centralized depository of state and
6 national planning references;

7 (5) Land use planning. Developing and presenting the
8 position of the State in all boundary change petitions and
9 proceedings before the land use commission, assisting state
10 agencies in the development and submittal of petitions for land
11 use district boundary amendments, and conducting periodic
12 reviews of the classification and districting of all lands in
13 the State, as specified in chapter 205;

14 (6) Coastal and ocean policy management, and sea level
15 rise adaptation coordination. Carrying out the lead agency
16 responsibilities for the Hawaii coastal zone management program,
17 as specified in chapter 205A. Also:

18 (A) Developing and maintaining an ocean and coastal
19 resources information, planning, and management system;

20 (B) Further developing and coordinating
21 implementation of the ocean resources management plan; and

1 (C) Formulating ocean policies with respect to the
2 exclusive economic zone, coral reefs, and national marine
3 sanctuaries;

4 (7) Regional planning and studies. Conducting plans and
5 studies to determine:

6 (A) The capability of various regions within the
7 State to support projected increases in both resident
8 populations and visitors;

9 (B) The potential physical, social, economic, and
10 environmental impact on these regions resulting from increases
11 in both resident populations and visitors;

12 (C) The maximum annual visitor carrying capacity for
13 the State by region, county, and island; and

14 (D) The appropriate guidance and management of
15 selected regions and areas of statewide critical concern.

16 The studies in subparagraphs (A) to (C) shall be
17 conducted at appropriate intervals, but not less than once every
18 five years;

19 (8) Regional, national, and international planning.
20 Participating in and ensuring that state plans, policies, and

1 objectives are consistent, to the extent practicable, with
2 regional, national, and international planning efforts;

3 (9) Climate adaptation and sustainability planning and
4 coordination. Conducting plans and studies and preparing
5 reports as follows:

6 (A) Develop, monitor, and evaluate strategic climate
7 adaptation plans and actionable policy recommendations for the
8 State and counties addressing expected statewide climate change
9 impacts identified under chapter 225P and sections 226-108 and
10 226-109; and

11 (B) Provide planning and policy guidance and
12 assistance to state and county agencies regarding climate change
13 and sustainability; and

14 (10) Smart growth and transit-oriented development. Acting
15 as the lead agency to coordinate and advance smart growth and
16 transit-oriented development planning within the State as
17 follows:

18 (A) Identify transit-oriented development
19 opportunities shared between state and county agencies,
20 including relevant initiatives such as the department of

1 health's healthy Hawaii initiative and the Hawaii clean energy
2 initiative;

3 (B) Refine the definition of "transit-oriented
4 development" in the context of Hawaii, while recognizing the
5 potential for smart growth development patterns in all
6 locations;

7 (C) Clarify state goals for transit-oriented
8 development and smart growth that support the principles of the
9 Hawaii State Planning Act by preserving non-urbanized land,
10 improving worker access to jobs, and reducing fuel consumption;

11 (D) Target transit-oriented development areas for
12 significant increase in affordable housing and rental units;

13 (E) Conduct outreach to state agencies to help
14 educate state employees about the ways they can support and
15 benefit from transit-oriented development and the State's smart
16 growth goals;

17 (F) Publicize coordinated state efforts that support
18 smart growth, walkable neighborhoods, and transit-oriented
19 development;

20 (G) Review state land use decision-making processes
21 to identify ways to make transit-oriented development a higher

1 priority and facilitate better and more proactive leadership in
2 creating walkable communities and employment districts, even if
3 transit will only be provided at a later date; and

4 (H) Approve all state agencies' development plans for
5 parcels along the rail transit corridor. For the purposes of
6 this subparagraph, "development plans" means conceptual land use
7 plans that identify the location and planned uses within a
8 defined area.

9 (11) Environmental Review. Perform duties set forth under
10 chapter 343 and serve the governor in an advisory capacity on
11 all matters relating to environmental review and shall have such
12 powers delegated by the governor as are necessary to coordinate
13 and, when requested by the governor, direct pursuant to chapter
14 91 all state governmental agencies in matters concerning
15 environmental quality control. Also:

16 (A) Advise and assist private industries, government
17 departments and agencies, and other persons on the requirements
18 of chapter 343;

19 (B) Conduct public education programs on environmental
20 quality control; and

1 (C) The office shall adopt rules in accordance with
2 chapter 91 necessary to implement this paragraph."

3 SECTION 15. Section 225P-4, Hawaii Revised Statutes, is
4 amended by amending subsection (c) to read as follows:

5 "(c) The membership of the greenhouse gas sequestration
6 task force shall be as follows:

7 (1) The director of the office of planning or the
8 director's designee, who shall serve as chairperson;

9 (2) The chairperson of the board of agriculture or the
10 chairperson's designee;

11 (3) The chairperson of the board of land and natural
12 resources or the chairperson's designee;

13 (4) The director of transportation or the director's
14 designee;

15 (5) The deputy director of the department of health's
16 environmental health administration or the deputy
17 director's designee;

18 (6) The [~~director of the office of environmental quality~~
19 ~~control or the director's designee~~] state
20 sustainability coordinator;

- 1 (7) The director of the environmental law program at the
2 University of Hawaii at Manoa William S. Richardson
3 school of law;
- 4 (8) The administrator of the division of forestry and
5 wildlife within the department of land and natural
6 resources or the administrator's designee;
- 7 (9) One member who is also a member of the climate change
8 mitigation and adaptation commission;
- 9 (10) One researcher from the college of tropical
10 agriculture and human resources at the University of
11 Hawaii at Manoa;
- 12 (11) One extension agent from the college of tropical
13 agriculture and human resources at the University of
14 Hawaii at Manoa;
- 15 (12) Four members, one each to be appointed by the
16 respective mayors of the city and county of Honolulu,
17 and the counties of Hawaii, Kauai, and Maui; and
- 18 (13) Four members to be jointly selected and invited to
19 participate by the president of the senate and the
20 speaker of the house of representatives, of which two
21 members shall be selected from an environmental

1 nonprofit organization, and two members shall be
2 selected from an agricultural or ranching association.

3 Task force members may recommend to the task force
4 additional members with appropriate specialized expertise,
5 subject to approval by the chairperson."

6 SECTION 16. Section 279A-4, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§279A-4 Statewide transportation council; establishment.**

9 To assist and advise the state department of transportation in
10 the development of the statewide transportation plan there is
11 hereby established a statewide transportation council consisting
12 of [~~fourteen~~] thirteen members. The members of the council
13 shall be the directors of the state department of
14 transportation, the state department of business, economic
15 development, and tourism, the state department of health, [~~the~~
16 ~~state office of environmental quality control,~~] and the office
17 of planning, the chairperson of the board of agriculture, the
18 planning directors of each of the four counties, and the
19 transportation directors of each of the four counties. The
20 members may be represented at council meetings by their
21 designated alternates. The director of the state department of

1 transportation shall submit recommendations to the council for
2 additional ex officio[+], [+] nonvoting members who, upon the
3 majority vote of the council, shall be invited to serve.

4 The department of transportation shall furnish staff
5 support to the council; such staff may be exempt from chapter
6 76. The director of transportation shall be the chairperson of
7 the council. All decisions of the council shall be by majority
8 vote unless otherwise provided."

9 SECTION 17. Section 343-2, Hawaii Revised Statutes, is
10 amended as follows:

11 1. By amending the definition of "council" to read:

12 ""Council" means the environmental advisory council."

13 2. By amending the definition of "office".

14 ""Office" means the office of [~~environmental quality~~
15 ~~control~~] planning."

16 SECTION 18. Section 343-5, Hawaii Revised Statutes, is
17 amended as follows:

18 1. By amending subsection (e) to read:

19 "(e) Whenever an applicant proposes an action specified by
20 subsection (a) that requires approval of an agency and that is
21 not a specific type of action declared exempt under section 343-

1 6, the agency initially receiving and agreeing to process the
2 request for approval shall require the applicant to prepare an
3 environmental assessment of the proposed action at the earliest
4 practicable time to determine whether an environmental impact
5 statement shall be required; provided that if the agency
6 determines, through its judgment and experience, that an
7 environmental impact statement is likely to be required, the
8 agency may authorize the applicant to choose not to prepare an
9 environmental assessment and instead prepare an environmental
10 impact statement that begins with the preparation of an
11 environmental impact statement preparation notice as provided by
12 rules. The final approving agency for the request for approval
13 is not required to be the accepting authority.

14 For environmental assessments for which a finding of no
15 significant impact is anticipated:

16 (1) A draft environmental assessment shall be made
17 available for public review and comment for a period
18 of thirty days;

19 (2) The office shall inform the public of the availability
20 of the draft environmental assessment for public
21 review and comment pursuant to section 343-3; and

1 (3) The applicant shall respond in writing to comments
2 received during the review and the applicant shall
3 prepare a final environmental assessment to determine
4 whether an environmental impact statement shall be
5 required. A statement shall be required if the agency
6 finds that the proposed action may have a significant
7 effect on the environment. The agency shall file
8 notice of the agency's determination with the office,
9 which, in turn, shall publish the agency's
10 determination for the public's information pursuant to
11 section 343-3.

12 The draft and final statements, if required, shall be
13 prepared by the applicant, who shall file these statements with
14 the office.

15 The draft statement shall be made available for public
16 review and comment through the office for a period of forty-five
17 days. The office shall inform the public of the availability of
18 the draft statement for public review and comment pursuant to
19 section 343-3.

20 The applicant shall respond in writing to comments received
21 during the review and prepare a final statement. The office,

1 when requested by the applicant or agency, may make a
2 recommendation as to the acceptability of the final statement.

3 The authority to accept a final statement shall rest with
4 the agency initially receiving and agreeing to process the
5 request for approval. The final decision-making body or
6 approving agency for the request for approval is not required to
7 be the accepting authority. The planning department for the
8 county in which the proposed action will occur shall be a
9 permissible accepting authority for the final statement.

10 Acceptance of a required final statement shall be a
11 condition precedent to approval of the request and commencement
12 of the proposed action. Upon acceptance or nonacceptance of the
13 final statement, the agency shall file notice of the
14 determination with the office. The office, in turn, shall
15 publish the determination of acceptance or nonacceptance of the
16 final statement pursuant to section 343-3.

17 The agency receiving the request, within thirty days of
18 receipt of the final statement, shall notify the applicant and
19 the office of the acceptance or nonacceptance of the final
20 statement. The final statement shall be deemed to be accepted
21 if the agency fails to accept or not accept the final statement

1 within thirty days after receipt of the final statement;
2 provided that the thirty-day period may be extended at the
3 request of the applicant for a period not to exceed fifteen
4 days.

5 In any acceptance or nonacceptance, the agency shall
6 provide the applicant with the specific findings and reasons for
7 its determination. ~~[An applicant, within sixty days after
8 nonacceptance of a final statement by an agency, may appeal the
9 nonacceptance to the environmental council, which, within thirty
10 days of receipt of the appeal, shall notify the applicant of the
11 council's determination. In any affirmation or reversal of an
12 appealed nonacceptance, the council shall provide the applicant
13 and agency with specific findings and reasons for its
14 determination. The agency shall abide by the council's
15 decision.]"~~

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

18 "(a) After consultation with the affected agencies, the
19 ~~[council]~~ office of planning shall adopt, amend, or repeal
20 necessary rules for the purposes of this chapter in accordance

1 with chapter 91 including[7] but not limited to[7] rules that
2 shall:

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

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

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

13 (4) Prescribe the contents of an environmental assessment;

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

- 1 (6) Prescribe the contents of an environmental impact
2 statement;
- 3 (7) Prescribe procedures for the submission, distribution,
4 review, acceptance or nonacceptance, and withdrawal of
5 an environmental impact statement;
- 6 (8) Establish criteria to determine whether an
7 environmental impact statement is acceptable or not;
8 and
- 9 (9) Prescribe procedures to appeal the nonacceptance of an
10 environmental impact statement to the environmental
11 advisory council."

12 SECTION 20. Section 343-7, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "(a) Any judicial proceeding, the subject of which is the
15 lack of assessment required under section 343-5, shall be
16 initiated within one hundred twenty days of the agency's
17 decision to carry out or approve the action, or, if a proposed
18 action is undertaken without a formal determination by the
19 agency that a statement is or is not required, a judicial
20 proceeding shall be instituted within one hundred twenty days
21 after the proposed action is started. The council or office,

1 any agency responsible for approval of the action, or the
2 applicant shall be adjudged an aggrieved party for the purposes
3 of bringing judicial action under this subsection. Others, by
4 environmental court action, may be adjudged aggrieved.

5 (b) Any judicial proceeding, the subject of which is the
6 determination that a statement is required for a proposed
7 action, shall be initiated within sixty days after the public
8 has been informed of such determination pursuant to section 343-
9 3. Any judicial proceeding, the subject of which is the
10 determination that a statement is not required for a proposed
11 action, shall be initiated within thirty days after the public
12 has been informed of such determination pursuant to section 343-
13 3. The council or the applicant shall be adjudged an aggrieved
14 party for the purposes of bringing judicial action under this
15 subsection. Others, by environmental court action, may be
16 adjudged aggrieved.

17 (c) Any judicial proceeding, the subject of which is the
18 acceptance or nonacceptance of an environmental impact statement
19 required under section 343-5, shall be initiated within sixty
20 days after the public has been informed pursuant to section 343-
21 3 of the acceptance of such statement. [~~The council shall be~~

1 ~~adjudged an aggrieved party for the purpose of bringing judicial~~
2 ~~action under this subsection.]~~ Affected agencies and persons
3 who provided written comment to such statement during the
4 designated review period shall be adjudged aggrieved parties for
5 the purpose of bringing judicial action under this subsection;
6 provided that for aggrieved parties, the contestable issues
7 shall be limited to issues identified and discussed in the
8 written comment~~[-]~~, and for applicants, the contestable issues
9 shall be limited to those issues identified by the accepting
10 authority as the basis for nonacceptance of the statement."

11 SECTION 21. Section 501-33, Hawaii Revised Statutes, is
12 amended by amending subsection (b) to read as follows:

13 "[+] (b) [+] The applicant shall supply the office of
14 ~~[environmental quality control]~~ planning with notice of the
15 application, for publication in the office's periodic bulletin
16 in compliance with section 343-3(c)(4). The application shall
17 not be approved unless the office of ~~[environmental quality~~
18 ~~control]~~ planning has published notice in the office's periodic
19 bulletin."

20 SECTION 22. Section 669-1, Hawaii Revised Statutes, is
21 amended by amending subsection (e) to read as follows:

1 "(e) Action may be brought by any person to quiet title to
2 land by accretion; provided that no action shall be brought by
3 any person other than the State to quiet title to land accreted
4 along the ocean after May 20, 2003, except that a private
5 property owner whose eroded land has been restored by accretion
6 may also bring such an action for the restored portion. The
7 person bringing the action shall prove by a preponderance of the
8 evidence that the accretion is natural and permanent and that
9 the land accreted before or on May 20, 2003. The person
10 bringing the action shall supply the office of [~~environmental~~
11 ~~quality control~~] planning with notice of the action for
12 publication in the office's periodic bulletin in compliance with
13 section 343-3(c)(4). The quiet title action shall not be
14 decided by the court unless the office of [~~environmental quality~~
15 ~~control~~] planning has properly published notice of the action in
16 the office's periodic bulletin.

17 As used in this section, "permanent" means that the
18 accretion has been in existence for at least twenty years. The
19 accreted portion of land shall be considered within the
20 conservation district. Land accreted after May 20, 2003, shall

1 be public land except as otherwise provided in this section.

2 Prohibited uses are governed by section 183-45."

3 SECTION 23. Subpart G of part IV of chapter 304A, Hawaii
4 Revised Statutes, is repealed.

5 SECTION 24. Sections 341-2, 341-3, and 341-4 Hawaii
6 Revised Statutes, are repealed.

7 SECTION 25. All rights, powers, functions, and duties of
8 the office of environmental quality control are transferred to
9 the office of planning.

10 SECTION 26. All individuals currently employed at the
11 office of environmental quality control are transferred to the
12 office of planning.

13 Each employee impacted by this Act who occupies a civil
14 service position shall retain their civil service status,
15 whether permanent or temporary. Each employee shall be
16 transferred without loss of salary, seniority (except as
17 prescribed by applicable collective bargaining agreements),
18 retention points, prior service credit, any vacation and sick
19 leave credits previously earned, and other rights, benefits, and
20 privileges, in accordance with state personnel laws and this
21 Act; provided that the employees possess the minimum

1 qualifications and public employment requirements for the class
2 or position to which transferred or appointed, as applicable;
3 provided further that subsequent changes in status may be made
4 pursuant to applicable civil service and compensation laws.

5 Any employee who, prior to this Act, is exempt from civil
6 service may retain the employee's exempt status after the
7 transfer in this Act, but shall not be appointed to a civil
8 service position as a consequence of this Act. Any exempt
9 employee that is transferred by this Act shall not suffer any
10 loss of prior service credit, vacation or sick leave credits
11 previously earned, or other employee benefits or privileges as a
12 consequence of this Act; provided that the employees possess
13 legal and public employment requirements for the position to
14 which transferred or appointed, as applicable; provided further
15 that subsequent changes in status may be made pursuant to
16 applicable employment and compensation laws. The director of
17 the office of planning may prescribe the duties and
18 qualifications of these employees and fix their salaries without
19 regard to chapter 76, Hawaii Revised Statutes.

20 SECTION 27. All appropriations, records, equipment,
21 machines, files, supplies, contracts, books, papers, documents,

1 maps, and other personal property heretofore made, used,
2 acquired, or held by the office of environmental quality control
3 relating to the functions transferred to the office of planning
4 shall be transferred with the functions to which they relate.

5 SECTION 28. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 29. This Act shall take effect upon its approval.

Report Title:

Environmental Review; Office of Environmental Quality Control;
Office of Planning; Environmental Advisory Council;
Establishment

Description:

Reorganizes and integrates the office of environmental quality control within the office of planning. Transfers the environmental council from the department of health to be established in the office of planning as the environmental advisory council. Transfers the rights, powers, employees, appropriations, and other personal property from the office of environmental quality control to the office of planning. Amends the ability for an applicant to appeal nonacceptance of an environmental impact statement from the environmental council to the environmental advisory council.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

Puananionaona Patria Thoene

onaona.thoene@gmail.com

Tuesday, February 9, 2021

9:00 am

via videoconference

Testimony of Puananionaona P. Thoene before
the **HOUSE COMMITTEE ON ENERGY &
ENVIRONMENTAL PROTECTION**

providing **COMMENTS** on
HOUSE BILL (HB) 1318
RELATING TO SUSTAINABILITY

February 8, 2021

Aloha e Chair Lowen, Vice Chair Marten, and Members of the House Committee on Energy & Environmental Protection,

I offer the following comments on HB 1318, which: (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); (3) transfers the Office of Environmental Quality Control (OEQC) to the SERD; and (4) amends Hawai'i Revised Statutes (HRS) Chapter 343 which requires an applicant to appeal a nonacceptance of an environmental impact statement (EIS) to the Council, to transfer those rights to the EAC.

I am the current Chair of the Environmental Council, however, I submit these comments on HB 1318 in my individual capacity. I generally support the intent of the bill to restructure and consolidate departments dealing with sustainability, land use, and environmental quality and protection in an effort to ensure that policies and actions are coordinated. Consistent with the Council's testimony on Senate Bill (SB), I support the deletion of the requirement a nonacceptance of an applicant EIS be appealed to the EAC, but note that Section 19 of HB 1318 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.

The Council's reasons for supporting the deletion of the requirement for appeals of a nonacceptance of applicant EISs are as follows:

This role of the Council 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 formally initiated.) 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.

Mahalo for the opportunity to testify on this measure and for your consideration.