



**COMMENTS OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-FIFTH LEGISLATURE, 2010**

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**LATE**

**ON THE FOLLOWING MEASURE:**

S.B. NO. 2818, RELATING TO ENVIRONMENTAL PROTECTION.

**BEFORE THE:**

SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

**DATE:** Tuesday, February 9, 2010      **TIME:** 2:45 p.m.

**LOCATION:** State Capitol, Room 225

**TESTIFIER(S):** Mark J. Bennett, Attorney General, or  
Edward G. Bohlen, Deputy Attorney General

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Chair Gabbard and Members of the Committee:

The Attorney General opposes this bill and respectfully requests that it be held. The Attorney General suggests instead that a task force be established to analyze the recommendations embodied in the report that will be issued this year by the University of Hawaii Environmental Center, and to consider and address potential problems that the Attorney General and others have identified.

For more than thirty years, environmental impact reviews have been required where a proposed action that is not exempt involves certain specific triggers set forth in the law. Chapter 343, Hawaii Revised Statutes. The bill would adopt a wholly different approach, mandating environmental reviews wherever a proposed action requires "discretionary approval from an agency" and "may have a probable, significant, and adverse environmental effect." While the current system needs reform, this proposal would make things even worse. This set of radical changes could harm both property development and environmental protection in Hawaii.

The three biggest potential problems with the bill, among many, are: (1) it would likely make the environmental review process even more cumbersome; (2) it would hamstring economic

development by requiring unnecessary environmental reviews for even more actions with minimal environmental impact; and (3) it would surely cause uncertainty and lead to litigation over vague key terms. For example, the bill would require, in a new section 343-B, that "an environmental assessment shall be required for actions that require discretionary approval from an agency and that may have a probable, significant and adverse environmental effect." Uncertainty and litigation would result from vague terms such as "discretionary," "probable," "significant," and "adverse" that will be subject to interpretation. The bill also burdens agencies by requiring new monitoring to ensure that their decisions and the conditions they ordered are being carried out. Proposed section 343-C(b).

The University of Hawaii Environmental Center is still working on its final report, which it will not finish until perhaps this summer. It would be unwise to pass this major revision of law before the University of Hawaii Environmental Center has had an opportunity to complete its work, and without extensive input from, and discussion among, various interested parties.

LATE

**NAIOP**

COMMERCIAL REAL ESTATE  
DEVELOPMENT ASSOCIATION  
HAWAII CHAPTER

February 8, 2010

The Honorable Mike Gabbard, Chair, and Members,  
Senate Committee on Energy and Environment

The Honorable Clayton Hee, Chair, and Members,  
Senate Committee on Water, Land, Agriculture

RE: Testimony in Opposition to S.B. 2818, "Relating to Environmental Protection

Deferred Decision Making: 02-09-10 2:45pm in conference room 225

Dear Chairs Gabbard and Hee, and Members of the Committees:

I am submitting this testimony on behalf of the Hawaii Chapter of NAIOP. NAIOP Hawaii is an association of property owners, managers, developers, financial institutions and real estate related professionals who are involved in the areas of commercial and industrial real estate in the State of Hawaii. It is the Hawaii chapter of NAIOP, the Commercial Real Estate Development Association, which the leading national organization for developers, owners and related professionals in office, industrial and mixed-use real estate.

We are opposed to S.B. 2818 for the following general reasons. First, it would subject many government decisions that are presently considered "ministerial" to going through the environmental review process. Second, the review process is substantially expanded beyond what is necessary. Third, the new system will depend upon implementing regulations that will not be subject to Chapter 91 and will be adopted without public input or notice. Fourth, it will change the environmental review process from one of disclosure and information to a discretionary permit-granting process with imposition of additional conditions.

If enacted, the bill would consume huge amounts of agency and private resources, cause extreme delays in getting permitting approved, and engender new litigation over environmental matters. Instead of completely rewriting the environmental review law, we would urge that the Legislature instead focus on addressing the specific problems identified in the Superferry and similar decisions.

We have also reviewed and are in agreement with the testimony submitted by the Chamber of Commerce on February 2, 2010. Thanks you for this opportunity to testify.

Very truly yours,



James K. Mee  
Chair, Legislative Affairs Committee