



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2818, S.D. 1, RELATING TO ENVIRONMENTAL PROTECTION.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Monday, February 22, 2010 **TIME:** 10:10 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): WRITTEN COMMENTS ONLY. For more information, call Edward G. Bohlen, Deputy Attorney General, at 587-3050.

Chair Kim 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 as amended would continue to require an environmental assessment for a "use of state or county land or funds," limiting that trigger to "major" uses. The bill, however, would add a trigger for "[t]he issuance to a person of a major discretionary approval, such as a zoning approval or a permit by one or more agencies." While the current system needs reform, this proposal would make things even worse. This bill's large 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 such as "major" and "discretionary" that will be subject to interpretation.

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.

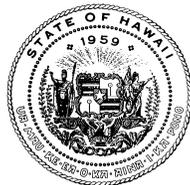
TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
SENATE BILL NO. 2818, S.D. 1

February 22, 2010

RELATING TO ENVIRONMENTAL PROTECTION

Senate Bill No. 2818, S.D. 1, changes the composition of the Environmental Council from 15 to 9 members; establishes the Environmental Review Special Fund, and revises the Environmental Assessment and Environmental Impact Statement process to create a more streamlined, transparent, and consistent process.

As a matter of general policy, this department does not support the creation of any special or revolving fund which does not meet the requirements of Sections 37-52.3 of the Hawaii Revised Statutes. Special or revolving funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. It is difficult to determine whether the fund will be self-sustaining.



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

SENATE COMMITTEE ON WAYS AND MEANS
SB2818, RELATING TO ENVIRONMENTAL PROTECTION

Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health

February 22, 2010
10:10 A.M.

1 **Department's Position:** We respectfully oppose this measure and ask that it be held for further review.

2 **Fiscal Implications:** Unquantified.

3 **Purpose and Justification:** The bill proposes major changes to the environmental review system,
4 primarily of HRS chapter 343.

5 The department has serious concerns that the bill is overly broad and most, if not all, of our
6 permits, approvals, grants, and loans will be covered by the new environmental review process. Rather
7 than streamlining the process, such broadening will severely strain our limited resources and hamper our
8 ability to perform our core functions of protecting public health and the environment.

9 Clearly, many areas in the University of Hawaii, Environmental Center's yet to be finalized
10 report deserve a thorough review and discussion amongst the many interested and affected parties before
11 a major revision of law is enacted. We prefer that there be more time for all affected parties to review
12 the UH's report after it is finalized, to better understand the likely effects of the widespread changes
13 being proposed, and to discuss the proposals.

14 Thank you for this opportunity to testify.



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SB 2818 SD 1
RELATING TO ENVIRONMENTAL PROTECTION

Senate Committee on Ways and Means
Public Hearing – February 22, 2010
10:10 a.m., State Capitol, Conference Room 211

By
Peter Rappa, Environmental Center
Karl Kim, Urban and Regional Planning
Nicole Lowen, Environmental Center
Scott Glenn, Urbans and Regional Planning

SB 2818 SD 1 reduces the membership of the environmental council from 15 to 9; establishes the environmental review special fund; revises the environmental assessment and environmental impact statement process to create a more streamlined, transparent, and consistent process. Our statement on this measure does not represent an institutional position of the University of Hawaii.

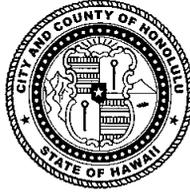
A team of researchers including the authors of this testimony undertook a study of the state's environmental review system pursuant to Act 1, 2008. Based on an extensive stakeholder process, the study assesses the system's effectiveness and proposes a comprehensive set of specific recommendations for statutory amendments to H.R.S. Chapters 341 and 343. SB 2818 is based on the recommendations of the study included in the team's report to the legislature.

After the initial hearing on SB 2818 on February 2, 2010, Senator Gabbard, Chair of the Committee of Energy and Environment, convened a task force to work on a bill that would garner support from the environmental and development communities. The principals of the UH study team are part of the working group, as are representatives of the environmental and development communities, the Environmental Council, and the Office of Environmental Quality Control. The task force has been meeting since February 16th and has been making positive progress. We ask the Committee on Ways and Means to allow this bill to move forward.

Thank you for the opportunity to comment on this bill.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
TELEPHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honolulu.dpp.org • CITY WEB SITE: www.honolulu.gov



MUFI HANNEMANN
MAYOR

DAVID K. TANQUE
DIRECTOR
ROBERT M. SUMITOMO
DEPUTY DIRECTOR

February 19, 2010

The Honorable Donna M. Kim, Chair
and Members of the Committee on Ways and Means
The State Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Kim and Members:

**Subject: SENATE BILL No. 2818, SD 1
Relating to Environmental Protection**

The Department of Planning and Permitting (DPP) **opposes** Senate Bill No. 2818, SD 1. We feel that the proposed changes will increase uncertainty in the entitlement process and will require increases in public and private resources at an especially difficult economic time. Furthermore, the ten-year expiration date for Environmental Assessments (EAs) and Environmental Impact Statements (EISs) is unjustified.

The stated purpose of the proposed revision to the bill is to improve the environmental review process in the State to create a more streamlined, transparent, and consistent process. We believe the result will be the opposite. Pursuant to proposed Section 343-5(a), the proposed triggers for EAs are a *major* use of state lands and funds, or a *major* discretionary approval by an agency. The lack of clarity inherent in these triggers will lead to an unpredictable process, dampening any economic recovery. The current system may be decades old and could use some minor improvements, but it is well understood, and the triggers for environmental reviews are clear.

Placing a deadline on the validity of an EA or EIS (as proposed in Section 343-6(a)(14)(B)) will fundamentally change the nature of what an environmental document is supposed to do. Changing the deadline from the earlier-proposed seven to ten years does not alleviate this concern

- The EA or EIS is supposed to provide decision makers with the best possible information about projected impacts and possible mitigations **available at the time of decision** so that they make the best informed decision. After the decision, there is no need to update the EIS or EA, since the decision has been made; and, once made, an owner or operator is legally vested.

The Honorable Donna M. Kim, Chair
and Members of the Committee on Ways and Means
The State Senate
Senate Bill No. 2818, SD1
February 22, 2010
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- Revocation of an entitlement requires due process as a matter of law. Typically, revocation of an entitlement requires a vote by the decision makers, at which time a new or supplemental EIS/EA could be required. This leads to tremendous uncertainty for projects.

A land use decision is not a temporary one, nor should it be short-term in nature. Commitments from both the public and private sectors are based on the constancy of these decisions which often involves a long time to achieve build-out due to financial and other constraints, dependence on the actions of others, and unforeseen challenges. Therefore, a specified duration for the validity of an EIS or EA is unjustified given the complexity and range of proposed actions; one size does not fit all.

In summary, Chapters 341 and 343, HRS may benefit from minor changes and updates, but this bill goes much further than improvement, and represents a profound change in the project entitlement process.

Therefore, please file Senate Bill No. 2818, SD 1.

Thank you for this opportunity to comment.

Very truly yours,


to David K. Tanoue, Director
Department of Planning and Permitting

DTK:jmf
sb2818sd1-ks.doc

**SB 2818, SD1
RELATING TO ENVIRONMENTAL PROTECTION**

**SEAN O'KEEFE
DIRECTOR – ENVIRONMENTAL AFFAIRS
ALEXANDER & BALDWIN, INC.**

FEBRUARY 22, 2010

Chair Kim and Members of the Senate Committee on Ways and Means:

I am Sean O'Keefe, testifying on behalf of Alexander & Baldwin, Inc. (A&B) on SB 2818, SD1, "A BILL FOR AN ACT RELATING TO ENVIRONMENTAL PROTECTION." We respectfully oppose this bill.

Under the existing Hawaii Revised Statutes (HRS) Chapter 343, Environmental Impact Statements, a proposed action which meets any of thirteen "triggers" requires an environmental assessment (EA), unless exempted, to determine whether the proposed action may have a significant effect on the environment such that an environmental impact statement must be prepared. Implementing regulations under Hawaii Administrative Rules (HAR) Chapter 11-200 establish the criteria to be used in determining whether impacts are "significant".

This bill would substantially overhaul the State's existing environmental review process, by, among other things, eliminating the existing two-tiered screening process and mandating that any action requiring a "major discretionary approval" from an agency would, unless specifically exempted by the agency, require an environmental assessment. (The term "major" is not defined in the bill, so it is unclear what discretionary approvals, if any, are excluded by the use of this modifier.) By eliminating

the existing trigger screen, this revision will result in a huge and we believe unnecessary increase in the number of actions requiring environmental review – particularly while the new and greatly expanded exemption lists that will be required are being developed – overwhelming the system and paralyzing economic activity.

In establishing the original environmental review triggers contained in HRS Chapter 343, and in revising those triggers from time to time as it deemed necessary, the Legislature has sought to ensure that major projects with the potential for significant environmental impacts would be subject to the environmental review process. We believe that the proposed revision would cast an enormously larger net, resulting in significant “by-catch” of projects with relatively minor impacts that the existing trigger system, coupled with the judicious application of exemptions, has been largely successful in preventing. While we recognize that the proposed bill includes provisions for agency exemptions, we anticipate that the sheer number of exemptions that would become necessary to address the myriad of discretionary approvals with limited environmental impacts will dwarf the existing exemption lists and may prove to be unwieldy, increasing the likelihood of specific exemptions being subjected to legal challenges. We respectfully request that the existing “trigger” system under HRS Chapter 343 be retained and that the Legislature continue to review and revise these triggers as experience dictates (for example, to clarify the applicability of environmental review requirements to utility or right-of-way connections).

A&B would also like to express our concern regarding the proposal to allow the adoption of interim rules to implement the provisions of this bill. As proposed, implementing regulations would be adopted with no public notice, without opportunity for

public comment, and without the approval of the Governor, in direct contravention of HRS Chapter 91, Administrative Procedure. More importantly, we view this provision to be wholly inconsistent with the spirit and purpose of HRS Chapter 343, which is intended to encourage transparency and public participation.

A&B believes strongly that the complete overhaul of the environmental review system proposed in this bill is unwarranted. We believe that the major provisions of this bill will create confusion and uncertainty among both agencies and applicants regarding when environmental review is required, result in an immediate, enormous and unnecessary increase in the number of environmental assessments and environmental impact statements required to be prepared, and result in little if any environmental benefit.

Based on the aforementioned, we respectfully request that this bill be held in Committee. Thank you for the opportunity to testify.

Testimony of The Nature Conservancy of Hawai'i
Commenting on S.B. 2818 SD1 Relating to Environmental Protection
Committee on Ways & Means
Monday, February 22, 2010, 10:10AM, Room 211

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawaii's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for native species in Hawai'i. Today, we actively manage more than 32,000 acres in 11 nature preserves on O'ahu, Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.

The Nature Conservancy supports the intent of S.B. 2818 SD1, particularly the effort to streamline the environmental review process.

Conservation work that protects, preserves, or enhances the environment, land, and natural resources is often caught up in the same time consuming and expensive environmental review process as projects that have negative impacts on the environment. While it is appropriate that higher protection is afforded to lands with conservation value, e.g., lands in the State conservation district, it often comes at a stroke too broad that does not distinguish between constructing residential homes versus engaging in conservation work to protect native forests or control invasive species. Conservation actions have to go through the same expensive level of review for environmental impacts as development.

Environmental review for the TNC's conservation work has been a significant burden:

- o Each EA takes 6-12 months;
- o Each EA takes ~1 FTE (part of 2-4 people's time);
- o Each EA costs \$100,000-\$200,000;
- o TNC has done 15 EAs in last 15 years;
- o Five of our preserves have had two EAs each;
- o One preserve is getting its third EA for conservation work.

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