

Honolulu, Hawaii

April 5, 2012

RE: S.B. No. 755
S.D. 2
H.D. 3

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

Sir:

Your Committee on Finance, to which was referred S.B. No. 755, S.D. 2, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO ECONOMIC DEVELOPMENT,"

begs leave to report as follows:

The purpose of this measure is to promote economic development by temporarily removing regulatory restrictions to the expeditious construction of certain state and county projects. Specifically, this measure:

- (1) Temporarily exempts airport structures and improvements from the special management area permit and shoreline setback variance requirements when the structures and improvements are necessary to comply with Federal Aviation Administration regulations;
- (2) Temporarily authorizes the Department of Land and Natural Resources and the Department of Transportation, with the approval of the Governor, to exempt department projects from the special management area permit and shoreline setback variance requirements;
- (3) Exempts all work involving submerged lands used for state commercial harbor purposes from any permit and site plan review requirements for lands in the conservation district; and



- (4) Temporarily authorizes a more streamlined process for exempting state and county projects from the environmental review process of Chapter 343, Hawaii Revised Statutes (HRS), and reduces the deadline for challenging the lack of an environmental assessment for a state or county project.

The Department of Transportation, Land Use Research Foundation of Hawaii, General Contractors Association of Hawaii, Hawaii Laborers-Employers Cooperation and Education Trust, Pacific Resource Partnership, and several concerned individuals testified in support of this measure. The Office of Environmental Quality Control, Environmental Council, Office of Hawaiian Affairs, Sierra Club of Hawaii, Life of the Land, Hawaii Audubon Society, Kaka'ako Makai Community Planning Advisory Council, Outdoor Circle, Hui Ho'okipa Network, Aloha Analytics, and several individuals opposed this measure. The Department of Land and Natural Resources; the Office of Planning of the Department of Business, Economic Development, and Tourism; the Environmental Center of the University of Hawaii at Manoa; The Chamber of Commerce of Hawaii; the Building Industry Association of Hawaii; the Oahu Council of the Association of Hawaiian Civic Clubs; and a few individuals commented on this measure.

Your Committee notes that each part of this measure creates different mechanisms by which to reduce redundancies in state government while continuing to provide safeguards that protect the environment and address impacts on historic and cultural resources. Accordingly, your Committee addresses each part separately.

PART II

The purpose of Part II of this measure is to temporarily exempt airport structures and improvements from the special management area (SMA) permit and shoreline setback variance (SSV) requirements when the structures and improvements are necessary to comply with Federal Aviation Administration (FAA) regulations.

Your Committee notes that the SMA and SSV fall under Chapter 205A, HRS, which is administered by the Office of Planning (OP) of the Department of Business, Economic Development, and Tourism. Accordingly, your Committee highlights the testimony of the OP, which supports Part II of this measure for the following reasons:

SB755 HD3 HSCR FIN HMS 2012-3384



- (1) FAA permits and licenses are identified on the National Oceanic and Atmospheric Administration (NOAA) approved list of Federal Licenses and Permits Subject to Federal Consistency Certification in accordance with 15 C.F.R. 930.53. The FAA permits and licenses for construction and operation of airports are subject to Hawaii Coastal Zone Management (CZM) Program federal consistency review;
- (2) The requirements of the National Environmental Policy Act (NEPA) and Environmental Impact Statements (EIS) Chapter 343, HRS, apply to structures and improvements relating to airports. As the lead agency of the Hawaii CZM Program, OP will continue to review and comment on NEPA and EIS documents in that regard; and
- (3) Section 3 of this measure, which amends section 261-4, HRS, provides the Department of Transportation with sufficient authority to plan, design, and construct airports, subject to Hawaii CZM Program federal consistency review **without sacrificing special controls on developments within an area along the shoreline to avoid permanent loss of valuable costal resources.**
(emphasis added)

Notwithstanding the unequivocal support by the OP for Part II, your Committee finds that a multitude of additional environmental laws and regulations that are more thorough, onerous, and rigorous will continue to be required, even if airport structures and improvements are temporarily exempted from SMA and SSV requirements. Specifically, your Committee finds that the environmental laws may include, but are not limited to:

- (1) Federal Clean Water Act and Clean Air Act requirements as administered by the State Department of Health, i.e. section 401 (water quality certification);
- (2) Federal Water Pollution Control Act;
- (3) All requirements, rules, and regulations of the Army Corps of Engineers, including section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act;



- (4) Federal Comprehensive Environmental Response, Compensation and Liability Act (CERLA);
- (5) Federal Endangered Species Act;
- (6) Federal Fish and Wildlife Coordination Act;
- (7) National Environmental Policy Act;
- (8) All requirements, rules, and regulations of the Environmental Protection Agency;
- (9) Federal Aviation Administration Regulations;
- (10) Federal National Historic Preservation Act;
- (11) Federal Marine Protection, Research and Sanctuaries Act;
- (12) Federal Pollution Prevention Act; and
- (13) All other state or local regulatory requirements that include but are not limited to Chapters 6E, 46, 174C, 342B, 342D, 342E, and 342F, HRS, and the preparation of a cultural impact assessment as required under Chapter 343, HRS.

Therefore, your Committee finds that notwithstanding the exemption from SMA and SSV, both federal and state permits will still apply, ensuring that the proper environmental reviews occur.

PART III

Your Committee notes that the purpose of this part is to temporarily authorize the heads of the Department of Land and Natural Resources and the Department of Transportation, with the governor's approval, to exempt their department projects from the SMA permit and SSV requirements.

Your Committee notes that notwithstanding the exemptions from SMA and SSV in this part, the actions shall be subject to:

- (1) Environmental impact statement laws, codified in Chapter 343, HRS;



- (2) Consultation with the Office of Conservation and Coastal Lands (OCCL); and
- (3) Consultation with OP.

Your Committee further notes that OCCL is charged with regulating activity in conservation districts and along the shoreline and must review projects against various criteria, including compatibility with surrounding land uses.

Your Committee finds that a multitude of additional environmental laws and regulations will continue to be required, even if projects falling under the jurisdiction of the Department of Transportation and the Department of Land and Natural Resources are temporarily exempted from SMA and SSV. Specifically, your Committee finds the following laws that will address impacts to the environment, cultural, and historic resources to include, but not be limited to:

- (1) Federal Clean Water Act and Clean Air Act requirements as administered by the State Department of Health, i.e. section 401 (water quality certification);
- (2) Federal Water Pollution Control Act;
- (3) All requirements, rules, and regulations of the Army Corps of Engineers, including section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act;
- (4) Federal Comprehensive Environmental Response, Compensation and Liability Act (CERLA);
- (5) Federal Endangered Species Act;
- (6) Federal Fish and Wildlife Coordination Act;
- (7) National Environmental Policy Act;
- (8) All requirements, rules, and regulations of the Environmental Protection Agency;
- (9) Federal Aviation Administration Regulations;
- (10) Federal National Historic Preservation Act;



- (11) Federal Marine Protection, Research and Sanctuaries Act;
- (12) Federal Pollution Prevention Act; and
- (13) All other state or local regulatory requirements that include but are not limited to Chapters 6E, 46, 174C, 342B, 342D, 342E, and 342F, HRS, and the preparation of a cultural impact assessment as required under Chapter 343, HRS.

Finally, your Committee highlights that section 343-5(f), HRS, explicitly states:

Whenever an action is subject to both the National Environmental Policy Act of 1969 (Public Law 91-190) and the requirements of this chapter, the office and agencies shall cooperate with federal agencies to the fullest extent possible to reduce duplication between federal and state requirements. Such cooperation, to the fullest extent possible, shall include joint environmental impact statements with concurrent public review and processing at both levels of government. Where federal law has environmental impact statement requirements in addition to but not in conflict with this chapter, the office and agencies shall cooperate in fulfilling these requirements so that one document shall comply with all applicable laws.

The legislative history of section 343-5(f), HRS, states, "S.B. No. 1591, H.D.1 [enacted as Act 197, Session Laws of Hawaii 1979] also makes substantive amendments to **reduce the duplication of effort which occurs at the State, County and Federal levels of government when the environmental review requirements of both the National Environmental Policy Act and chapter 343 apply to the same project.** Under the provisions of this bill, State and County agencies are required to cooperate to the fullest extent possible with Federal agencies **in order to expedite the review process.**" (emphasis added)

Your Committee highlights that based upon the legislative history of section 343-5(f), HRS, the Legislature recognized there would be redundancy and duplication between the federal, state, and county environmental review process and to the extent there



was overlap, state and county reviews could be waived to expedite the review process. The legislative history clearly justifies the exemptions from Chapter 343, HRS, in Part III of this measure.

PART IV

Your Committee finds that the purpose of Part IV of this measure is to exempt all work involving submerged lands used for state commercial harbor purposes from any permit and site plan review requirements for lands in the conservation district.

Your Committee emphasizes that the type of work which would be conducted falls under the commercial harbors only and includes work such as underwater pier work, maintenance cleaning, and dredging of harbors to accommodate larger ships or barges. To protect the submerged lands in the conservation district area, your Committee finds that numerous federal safeguards contain more rigorous and thorough review and exceed what is required under the permit and site plan approvals for submerged lands in the conservation district within the Department of Transportation's commercial harbors system.

These federal safeguards include, but are not limited to:

- (1) Federal Clean Water Act and Clean Air Act requirements as administered by the State Department of Health, i.e. section 401 (water quality certification);
- (2) Federal Water Pollution Control Act;
- (3) All requirements, rules, and regulations of the Army Corps of Engineers, including section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act;
- (4) Federal Comprehensive Environmental Response, Compensation and Liability Act (CERLA);
- (5) Federal Endangered Species Act;
- (6) Federal Fish and Wildlife Coordination Act;
- (7) National Environmental Policy Act;



- (8) All requirements, rules, and regulations of the Environmental Protection Agency;
- (9) Federal Aviation Administration Regulations;
- (10) Federal National Historic Preservation Act;
- (11) Federal Marine Protection, Research and Sanctuaries Act;
- (12) Federal Pollution Prevention Act; and
- (13) All other state or local regulatory requirements that include but are not limited to Chapters 6E, 46, 174C, 342B, 342D, 342E, and 342F, HRS, and the preparation of a cultural impact assessment as required under Chapter 343, HRS.

Your Committee emphasizes that when the Department of Transportation conducts work on submerged lands, section 404 of the Army Corps of Engineers is implicated and requires a 404 permit for fill work. The 404 permit further triggers the National Environmental Policy Act requirement.

PART V

Your Committee finds that the purpose of Part V is to temporarily authorize a more streamlined process for exempting state projects from the environmental review process of Chapter 343, HRS. Your Committee emphasizes that this part does not statutorily expand the types of state projects that are exempt under the existing provisions of Chapter 343, HRS, or pertinent implementing rules.

Your Committee finds that the Governor, with the assistance of public officers and employees, may prepare a list of state projects that are exempt under Chapter 343, HRS. To ensure public participation notwithstanding the exemption from Chapter 343, HRS, at the Governor's request, the appropriate office shall provide public notice of the list of exemptions and any amendments through the periodic bulletin prescribed in section 343-3, HRS. In addition, the list of exempted state projects established by the Governor shall be repealed on June 30, 2015; provided that the Governor may extend the exemption for any projects identified on the list for which construction has commenced but not concluded by June 30, 2015, after the repeal of this part. Your Committee



emphasizes that the exemption in this part is not perpetual, but will be extended only to accommodate completion of projects commenced before June 30, 2015.

Finally, your Committee highlights that section 343-5(f), HRS, explicitly states:

Whenever an action is subject to both the National Environmental Policy Act of 1969 (Public Law 91-190) and the requirements of this chapter, the office and agencies shall cooperate with federal agencies to the fullest extent possible to reduce duplication between federal and state requirements. Such cooperation, to the fullest extent possible, shall include joint environmental impact statements with concurrent public review and processing at both levels of government. Where federal law has environmental impact statement requirements in addition to but not in conflict with this chapter, the office and agencies shall cooperate in fulfilling these requirements so that one document shall comply with all applicable laws.

Accordingly, so long as NEPA and the Hawaii Environmental Policy Act do not conflict, this part comports with section 343-5(f), HRS.

Your Committee has amended this measure by:

- (1) Deleting the provision authorizing the Department of Transportation, with the Governor's approval, to exempt any state project from the special management area permit requirements and the shoreline setback requirements of Chapter 205A, HRS;
- (2) Temporarily authorizing a more streamlined process for exempting only state projects from the environmental review process of Chapter 343, HRS;
- (3) Authorizing the Governor to consult with public officers and employees deemed appropriate by the Governor when establishing the list of state projects exempt from the need to prepare an environmental assessment due to their

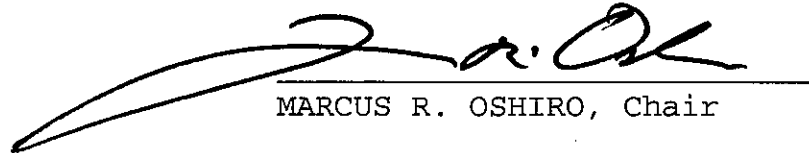


likely minimal or no significant effects on the environment;

- (4) Deleting the requirement that any judicial proceeding concerning an agency's action regarding the lack of an environmental assessment be initiated within 60 days of the agency's decision to carry out the action or determination that an environmental assessment is not required; and
- (5) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 755, S.D. 2, H.D. 2, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 755, S.D. 2, H.D. 3.

Respectfully submitted on
behalf of the members of the
Committee on Finance,



MARCUS R. OSHIRO, Chair



