



University of Hawaii at Manoa

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HB 1817 SD 2 (proposed)
RELATING TO THE ENVIRONMENT

Senate Committee on
Agriculture and Environmental Protection

Public Hearing - April 2, 1992
1:00 PM; Room 305 SOT

By
John T. Harrison, Environmental Center
M. Casey Jarman, Richardson School of Law

This proposed measure would establish liability limits under the state's emergency response law (Chapter 128-D, HRS) for interisland petroleum barges subject to the federal Oil Pollution Act of 1990 (OPA). Imposed liability limits are identical to those established under OPA, except that exclusion of limits due to gross negligence as provided under OPA is not included in the state law.

Our statement on this bill does not constitute an institutional position of the University of Hawaii.

The intent of this proposed legislation is unclear. If designed to alleviate the supposedly onerous liability burden placed upon the oil industry, the bill would appear ineffective, since liability imposed under the OPA applies and is even more stringent. If intended to relieve the potential for double recovery, the bill is unnecessary, since double recovery already is excluded under section 128D-6 (i). In addition, if the legislative intent is to avert "an approaching threat to essential public services and the state's economy", we note that under Chapter 125, the governor is authorized powers under an emergency to make available "commodities necessary to the public health, safety, or welfare, or to insure the availability of commodities required to maintain commerce..."

Thus, the only conceivable purpose that this measure would serve is political, as a response to an intrinsically political move by the industry. Our suggestion is that, on the whole, such reactionary provisions constitute bad public policy.