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HB 45 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Statement for
House Committees
Intergovernmental Relations
Planning, Energy and Environmental Protection
Health
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HB 45 would amend Chapter 26, HRS, by adding a new Department of Environmental Protection and transferring to that new department certain functions and authority from the Departments of Health, Agriculture, and Office of Environmental Quality Control. The statement on this bill does not reflect an institutional position of the University of Hawaii.

The needs for modifications, expansion, or alternatives to existing statutes pertinent to environmental protection have been discussed for the past several years and bills and resolutions related to improving the state's ability to protect our environmental resources have been introduced in previous legislative sessions, most recently HR 109, HD 1, 1984; SCR 115, 1985; and HB 2287, HD 1, 1986. The present bill incorporates many of the recommendations provided during the hearings on these earlier proposals.

General Comments

The provisions of HB 45 can be summarized to reflect three major changes to the current environmental statutes:

1. Establishment of a new Department of Environmental Protection.
2. Transfer of responsibility for pesticide use regulation from the Department of Agriculture to the Department of Environmental Protection.
3. Transfer of certain responsibilities and functions from the Department of Health to the Department of Environmental Protection.

A summary of the specific changes are indicated in the attached table.

In previous years the Environmental Center has provided comments on the strengths and weaknesses of the States environmental protection programs and similarly the advantages and disadvantages of the establishment of a Department of Environmental Protection. The key question seems to be, can the environmental protection needs of the State be better achieved by the creation of a new department of Environmental Protection or by a strengthening of existing departmental responsibilities and enforcement provisions.

We have not attempted in the limited time at our disposal to review HB 45 in detail. However, the following points are offered for your consideration.

1. Facility commitments.

It should be fully recognized that the accomplishment of the goals of environmental protection cite by HB 45 are not likely to be achieved without considerable increase in commitment by the State to improving those capabilities, both personnel and laboratory facilities that will permit adequate planning, coordination, enforcement and response to environmental issues. It is our understanding that a particularly glaring deficiency in the present environmental protection efforts of the State, is the lack of laboratory facilities and trained personnel to carry out the technical measurements required to meet today's chemical analysis techniques.

2. HB 45 will eliminate the Office of Environmental Quality Control and transfer its functions and responsibilities to the new DEP.

In the establishment of OEQC, it was recognized, and wisely so in our opinion, that some form of overall coordinating body was essential to assure that environmental problems, affecting multiple state agencies, could be brought to the attention of the affected agencies so as to aid in decision making. OEQC was established to serve this need. It is not clear if or how the direction to the DEP to coordinate "all state government agencies in matters concerning environmental protection" will be more effective than a similar statement under the present structure.

3. Transfer of the responsibilities for the environmental impact statement system.

Present statutes provide for the appeal by an applicant, to the council, of the non-acceptance of a EIS statement by an agency. This provision and subsequent related steps, would be replaced by directing applicant appeals to the DEP instead of the council. It is likely that this change would have the effect of putting the DEP in the position of referring some of its own EIS - acceptability decisions to itself for recommendations. We suggest that applicant appeals to the council (page 63, lines 1,3 ,5, and 7 be maintained.) If the council is to remain as the body to which an applicant may appeal the non-acceptance of a statement, then the change proposed for 343-6 (4) pg. 65, line 3 should not be made.

Current statues provide for the council, when requested by the applicant or agency, to make a recommendation as to the acceptability of a statement. HB 45 would transfer this advisory role to the department (page 62, line 1). To avoid the department making recommendations on EIS's for which it has responsibility, retention of the advisory role of the council seems more appropriate.

HB 45 would remove the council from judicial proceedings relating to lack of assessment, the determination that a statement is or is not required, or the acceptance of a statement and replace the DEP as the aggrieved party. A conflict seems likely since DEP could be acting on its own determinations.

The establishment of a DEP would have the visual impact of establishing a focus of attention for environmental issues. The Director would provide a centralized spokesperson in dealing with Environmental Problems at both State and Federal levels. The success of such a department over other alternatives within the existing DOH, DOA, and OEQC framework however, will depend not on the reorganization per se but on the support, both financial and administrative, that is provided.

CHANGES INTRODUCED BY HB 45

Sec. of Bill	HRS Chapter amended		Content or effects
	No.	Topic	
2	26	Dept. organization	New Dept. of Env. and structure
3	141-1	Duties	Transfers authority for pesticides, DOA to DEP
4	149A-2	Definitions	Changes defin. pesticide, DOA to DEP
	149A-3	Delegation of duties	Transfers authority for 149A-3, DOA to DEP
	149A-11	Prohibited acts	Minor authority for 149A-3, DOA to DEP
	149A-12	Prohibited acts	Minor authority for 149A-3, DOA to DEP
	149A-19	Determination: rules & regs.; uniformity	Transfers authority, DOA to DEP
	149A-20	Stop sale/removal	Transfers authority, DOA to DEP
	149A-22	Adopt rules in accord w/FIFRA	Transfers, DOA to DEP
	149A-32.5	Cancellation or sus. of pest. use	Authority DEP to act
	149A-35	Cooperation	Author. coop. DEP other agency both fed. & state carry out chapter
	149A-41	Civil penalties	DOA to DEP responsibility
	149A-51	Advisory committee	Adds DEP to membership of pesticide advisory committee
	149A-53	Applicability Chapter 91	Conform with administrative procedures
5	150A-10	Advisory comm. plants & animals	Adds director of DEP to advis. comm. and removes director of OEQC
6	226-53	State policy council	Adds director of DEP to policy council
7	279A-4	Transportation council	Adds director of DEP to policy council
8	340A-1	Definition of "Direction"	Dir. of DEP from DOH
9	340B	Definition of "Director"	Dir. of DEP from DOH
	340B-2	Wastewater treatment class.	Transfers applicable rules for wastewater treatment, DOH to DEP
	340B-4	State board of certification for indiv. wastewater treatments	Transfers placement, DOH to DEP

10	340E-1	Definitions Safe Drinking Water	Transfers DOH to DEP
11	341—	Rules Admin. Proc. 91	Ministerial
	341—	Cooperation	Requires coop. with State & County agencies
	341-2	Definitions Department	Adds DEP
	341	Definitions Director	Deletes OEQC dir. adds DEP
	341	Definitions Office	Deletes OEQC
	341-3 abc	Definition OEQC, EC, Env. Council	Deletes whole sect.
	341-3(?)	Powers & duties DEP	Specifies all respon. DEP
	341-5(a)	Env. Center	Replaces Env. Center in 341-5 (no substantive change)
	341-4	Powers & duties OEQC	Repealed
	341-6	Functions Env. Council	Places Env. Council in DEP for administrative purposes, composition of council no major change from previous
12	342-1	Environmental Quality	Tranfers responsibility to DEP
	342-61	Environmental Quality	Transfers DOH to DEP
13	343-2	EIS's	Transfers respons., OEQC to DEP
	343-2	EIS	Deletes "Office" (OEQC)
	343-3	EIS	Transfers resp. (OEQC) office to dept. DEP
	343-3	EIS	Transfers respon., Council to DEP
	343-6	EIS	Transfers rule making for EIS, Council to DEP
	343-7	EIS Limit of action	Transfers judicial action, Council to Dept.
14	343D-2	Hawaii Env. discl. law	Deletes "Office"
	343D-3	Filin Env. discl. law	Transfer OEQC to DEP
	343D-4	Filing Env. discl. law	Transfer OEQC to DEP
	343-D-5	Filing Env. discl. law	Transfer OEQC to DEP
	343D-6	Filing Env. discl. law	Transfer OEQC to DEP
	343D-7	Filing Env. discl. law	Transfer OEQC to DEP
	343D-8	Filing	Transfers authority, OEQC to DEP

15

Transfers specified rights, DOH TO DEP
DOA to DEP
OEQC to DEP

Transfers positions & employees

16

Transfers equipment

17

Transfers federal aid

18

Reconciliation with others statutes

19

Continuity of rules

20

Editorial explanation

21

Establishes effective date



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SB 260
RELATING TO DEPARTMENT OF ENVIRONMENTAL PROTECTION

Statement for
Senate Committee on
Planning and Environment

Public Hearing - February 11, 1987

SB 260 would create a new Department of Environmental Protection and transfer certain environmentally related functions from the Departments of Agriculture and Health to the new Department of Environmental Protection.

SB 260 is identical to HB 45. The attached statement on HB 45 (presented on February 6, 1987 before the House Committees on Intergovernmental Relations; Planning, Energy and Environmental Protection; and Health) remains applicable to SB 260.

Attachment