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SB 2390 RELATING TO ENVIRONMENTAL ASSESSMENTS

Senate Committee on
Health and Environment

Public Hearing - February 24, 1998
1:30 P.M., Room 225, State Capitol

By
John T. Harrison, Environmental Center
Thomas Hawley, Environmental Center
Jacquelin Miller, Environmental Center
Peter Rappa, Sea Grant

SB 2390 would amend Chapter 343-5, HRS, to require the Office of Environmental Quality Control (OEQC), to determine whether an environmental impact statement (EIS), should be prepared.

Our testimony on this measure does not constitute an institutional position of the University of Hawaii.

Although the intent of this measure appears laudable, we are not sure the problem it seeks to solve is an especially large one. In general, we have found that agencies or project applicants know when an EIS must be prepared or are amenable to guidance from OEQC to this effect.

We are also concerned about the exclusion of agency expertise in making EIS determinations. State agencies are the accepting authorities for applicant environmental impact statements precisely because they possess the most relevant knowledge regarding projects within their purview. As a result, they are frequently in the best position to determine the acceptability of an EIS. We suggest that this procedure is also largely successful and does not in principle require modification at this time. Furthermore, we note that case law at the federal level emphasizes deference to agency discretion in analogous determinations under the National Environmental Policy Act (NEPA).

In our 1991 review of the State's EIS system (*The Hawaii State Environmental Impact Statement System: Review and Recommended Improvements*), we suggested that the EIS determination process might benefit from a provision for alternative dispute resolution (ADR). Under this procedure, members of the public would be able to contest an agency determination

while avoiding costly litigation. We suggest that this option be given further consideration as a more appropriate means of providing outside review of agency determinations. In the meantime, we call attention to existing provisions contained in Chapter 343-7, HRS, which allow for public judicial appeals of EIS acceptability within 60 days of an agency determination. By allowing the public to contest EIS determinations, these provisions seem to already provide the neutral safeguard which this measure seeks.

Finally, it seems imprudent to implement this measure without providing for increased staffing and resources at OEQC. Without additional support, we believe OEQC would be hard pressed to handle the additional workload this measure would create, thus compromising their ability to make adequate determinations. While we firmly believe that OEQC should be allowed to express their opinion, we suggest that the final decision should rest with the permit granting agency as they are ultimately the users of information presented in the EIS.