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RL:0459A

HB 2667-82, HD 1 RELATING TO NOISE

Statement for
Senate Committee on
Education
Public Hearing - 25 March 1982

By
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Doak C. Cox, Environmental Center

HB 2667 would amend Chapter 342, Hawaii Revised Statutes, so as to exempt school activities from the noise control regulations of the Department of Health. The attached statement on the bill, prepared originally as individual testimony of John C. Burgess of the Department of Mechanical Engineering, has been adopted by the Environmental Center of the University of Hawaii and submitted for review to the Center's Legislative Subcommittee. However, the statement does not reflect an institutional position of the University.

It should be recognized that noise that impacts schools is regulated by the Department of Health under the provisions of HRS Chapter 342. Dr. Burgess considers and we agree, that the control of noise emitted by schools, also, should continue to be regulated by the Department of Health under the same provisions, and not by the Department of Education as proposed in HB 2667, HD 1, and also SB 2825, SD 1. Under the present statutes, the Department has adequate allowance to take the special needs of schools into account in regulating both impacting noise and emitted noise.

JOINT MEETING
HOUSE EDUCATION COMMITTEE
HOUSE COMMITTEE ON ECOLOGY AND ENVIRONMENTAL PROTECTION

8:30 A.M., Friday, March 5, 1982
Hawaii State Capitol, Room 328

This testimony was prepared by Dr. John C. Burgess, Professor of Mechanical Engineering, University of Hawaii at Manoa. Dr. Burgess teaches and conducts research in acoustics and noise control. He is a Fellow of the Acoustical Society of America. He has presented testimony to the Hawaii State Legislature concerning the effects of noise in schools. He was Chairman of the Advisory Committee on Noise Control for Oahu, which developed Public Health Regulations, Chapter 44A, "Vehicular Noise Control for Oahu". The Committee was appointed by the Director Health. The opinions expressed in this testimony are those of the author, and do not imply a position by the University of Hawaii or any of its administrative entities.

H. B. 2667-82 seeks to protect the rights of students, faculty, employees of schools, their guests, and other persons who are allowed to engage in school activities. The rights identified are "participation in extracurricular social and athletic events, as well as instruction in technical trades and music." The bill notes that these activities "may be louder than the allowable levels established by law". The remedy sought by the bill is to exempt from any noise regulation promulgated pursuant to Chapter 342, Hawaii Revised Statutes, all activities of the persons identified above, on any day of the week, and at any time of the day, provided that the events are authorized by the principal or head of the school, and the event takes place on the school's campus. The purpose of the remedy is to enhance the development of students by mitigating what is perceived as unnecessary restriction on their curricular and extracurricular activities imposed by existing noise control regulations.

No teacher, parent, or anyone who remembers what it is like to be young wants to inhibit unnecessarily the development of Hawaii's young people. The problem is that those development activities that create noise can curtail the rights of others. The bill itself states a desire to establish a balance between the conflicting rights of school neighbors for reasonable noise control and the rights of those engaged in school activities which create noise.

The bill goes too far in seeking an absolute prohibition against enforcing any State noise regulation on school activities. If enacted, the bill could allow school activities to make noise

noise than private or other public agencies engaged in the same activities. For example, the bill could allow the use of public address systems operated at any volume at school events while those at public events elsewhere on Oahu would be controlled under existing noise regulations. A rock concert on school grounds could go on all night at peak volume, unless the Department of Education adopts appropriate regulations. Why would the Legislature not, in fairness, consider requests from other agencies and industries for commensurate relief from regulation? Somewhere in here, the public interest gets caught. The public wants to have its bent fenders straightened out, likes musical events under Hawaii's skies, and enjoys the excitement of school athletic events. But the public in the neighborhood of these activities also likes to sleep, to listen to radio, television, and friends, and to relax in their own homes and yards. The purpose of the noise regulations established by the State Department of Health is to find a balance between conflicting rights of parties to make noise and to be protected from it.

Among the parties with these conflicting rights are the students themselves. A student choir trying to practice near a student metal shop could have a discouraging experience. And students in a nearby classroom trying to hear their teacher could also be discouraged by either the choir or the metal shop.

The operative problem is to find a procedure by which the conflicting rights of those concerned are balanced. H. B. 2667 takes the approach of local autonomy. It would make the Department of Education responsible for establishing guidelines and seeking to minimize noise produced by school activities. Although the bill does not specifically mention enforcement, the effect of the bill would probably be to rule out enforcement by health authorities and police officers, as provided in HRS Chapter 342-17. In addition, the bill would abridge the rights of citizens to be heard by making guidelines established by the Department of Education exempt from the provisions of HRS Chapter 91.

In enacting HRS Chapter 342, the Hawaii Statute of Environmental Quality, the Legislature made known its intent that the Director of Health would be responsible for developing and administering all regulations concerning environmental quality, including those relating to excessive noise. H. B. 2667, in transferring responsibility for excessive noise created by school activities from the Director of Health to the Superintendent of Education, is a step away from the earlier legislative intent to place responsibility for environmental quality with a single institution. It is not clear how this will improve the rights of students to engage in normal school-related activities. It seems

less disruptive to the earlier legislative intent, more equal in protection of the rights of all persons, including students, as well as being easier to administer, to recognize the responsibility of the Director of Health to address the problem. This can be done by building on Public Health Regulations, Chapter 44B, "Community Noise Control for Oahu". School activities are already protected by this regulation against noise intrusion from new highways (Sec. 4.2 B). This regulation has language which can be used to support the school activities which are the concern of H. B. 2667. In discussing agricultural or industrial operations, the regulation establishes the principle of precedence: that allowable noise levels are influenced by who was there first (Sec. 2.3). It should not be difficult either to modify Chapter 44B to address the problem identified in H. B. 2667 or to make a new regulation specifically relating to schools. Such a regulation could address not only the rights of students to engage in normal activities on their campuses, but could also address the interactions of school activities among themselves, the effects of outside noise on school activities, the remedial measures for mutual protection of rights, and the means for enforcement.

In closing, I urge that the desirable objectives of H. B. 2667 be embodied in legislation or a resolution which retains those objectives while retaining also the advantages of past legislative and agency actions. Let us build on the foundation we already have.