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Environmental Center

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HB 2715 RELATING TO OIL SPILLS

House Committees on Energy and Environmental Protection and Ocean Recreation and Marine Resources

Joint Public Hearing - February 7, 1996
8:30 A.M., Room 312, State Capitol

By

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HB 2715 would amend Chapter 128D HRS to require all tank vessels and oil facilities to cite only Hawaii-based contractors as their prime responder in the event of an oil spill.

Our comments on this measure are compiled from voluntarily submitted opinions of the listed academic sources, and as such, do not constitute an institutional position of the University of Hawaii.

The intent of this measure is to ensure that adequate equipment and personnel are available to provide a timely response to any marine oil spill. Apart from Constitutional restraint of free trade issues related to the Interstate Commerce Clause, the measure presents a number of major legal and practical problems.

1. The definition of a "Hawaii-based" company is unclear. Does that include a mainland concern with a local office with minimal staff, or a local firm associated with one elsewhere? More importantly, would this language preclude obtaining help from outside the state to meet longer-term response needs?

2. Response time is critical, yet this measure does not appear to directly provide for optimizing Hawaii's response capabilities. Under the federal Oil Pollution Act (OPA 90), companies that hold, transport, or refine oil must prepare and maintain an oil spill contingency plan, and this plan must designate responders. Existing Coast Guard regulations require these responders to be on scene within 12 or 24 hours, depending on the volume of traffic in a given port. Hawaii is considered a low-volume port, so the prescribed response time is 24 hours.

Based on extensive review of the oil spill prevention and response capabilities within the state, and programs and plans in place in other states, the UH Sea Grant office and the Environmental Center have concluded that Hawaii should establish prevention and response standards to meet Hawaii's specific needs, and, where necessary, the state should augment the federal statutes. In particular, we have urged that a response time of 12 hours be required, since all oil is transported to the state by ship and the most probable site for a spill (Barbers Point) is so close to the extremely sensitive Waikiki area. We also have recommended that the Department of Health Hazard Evaluation and Emergency Response office have the authority to set regulatory response standards, such as a 12 hour response time, as appropriate to the Hawaii environment. However, it should be noted that if Hawaii sets more stringent standards, the state will have the responsibility to enforce them, as the Coast Guard has a mandate to enforce standards stricter than those imposed by the federal government.

In view of the findings of the SeaGrant/Environmental Center study, we feel that modifying this measure to direct the DOH/EER office to establish oil spill prevention and response standards appropriate to Hawaii would better accomplish the intended improvement in preparedness to both prevent and respond to oil spills.