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SB 455
RELATING TO NATIVE HAWAIIAN CULTURAL IMPACT STATEMENTS

Senate Committee on Water, Land, and Hawaiian Affairs

Public Hearing - February 17, 1999
2:00 p.m., Room 225, State Capitol

by
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SB 455 amends Chapter 343, HRS, to provide for consideration of impacts to Native Hawaiian culture, religious beliefs and practices in the environmental review process.

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

Overview
This measure is adapted largely from proposals contained in SB 1218 and HB 1536 that were introduced in the Nineteenth Legislature, and it also includes specific amendments to those measures proposed by the Environmental Center. In addition, SB 455 substantially expands upon prefatory findings of the prior versions, adds new definitions, amends existing definitions, amends existing applicability triggers, and adds a new trigger for uses that may have a direct or indirect effect on Native Hawaiian concerns.
Although the Environmental Center has long maintained that assessment of cultural impacts is required pursuant to strict reading of the existing statute, others in government do not share our views. Hence, it is clear that an explicit statement of statutory intent to provide for comprehensive assessment of impacts to Native Hawaiian cultural, religious, and customary practices and values, embedded in the existing environmental impact assessment (EIA) framework, is needed. By incorporating assessments of these impacts into the EIA procedures, this measure confers an affirmative duty upon all State and County agencies who must review environmental assessments and environmental impact statements, as well as upon agencies, developers and consultants who draft these documents, that they must consider seriously the impacts of a project on Hawaiian cultural practices.

The extent to which these duties need to be spelled out in the statute is not clear. In our opinion, the proposed language is far more than is required to establish an explicit mandate, but perhaps the times require this degree of specification in order to implement the necessary authority. We know from the testimony of those who drafted the original statute and from studies of the origins and implementation of the EIA law that it was always the intent of the creators of this statute to provide for the consideration of impacts on the economic and social welfare of the whole community. Our principal reservations concerning the present measure are that it focuses exclusive attention on native Hawaiian cultural concerns, and in so doing, it obscures the duty of considering all of the other cultures that contribute to our broader social contexts. We prefer a more general statutory language, with specificity applied in the implementing regulatory provisions.

**Findings and Purpose**

This section has been substantially augmented from what was written in SB1218 last year. Although the expanded language is instructive, it seems out of place in statutory law, and we feel that the prior statement was adequate. The desire to substantiate the legislative findings may be equally effectively achieved in a prefatory statement to the Bill.

**Definitions**

The term, "development activity" does not appear anywhere in the statute other than in its definition. Hence, it is not needed. The other three new definitions also would seem more appropriately placed in the rules. We prefer the statutory definition of "native Hawaiian culture" as it appears in SB1218.

The amended definition for "environmental impact statement" similarly seems excessively specific. We suggest the following as an alternative:
"Environmental impact statement" or "statement" means an informational
document prepared in compliance with the rules adopted under section 343-6 and
which discloses the environmental effects of a proposed action, effects of a
proposed action on the economic and social welfare of the community and State,
effects of a proposed action on native Hawaiian cultural, religious, and
subsistence practices, effects of the economic activities arising out of the
proposed action, measures proposed to minimize adverse effects, and alternatives
to the action and their [environmental] effects on the environment and native
Hawaiian cultural, religious, and subsistence practices.

With the inclusion of the suggested definition of "Native Hawaiian culture" we suggest
that the definition of "Finding of no significant impact" be amended as follows:

"Finding of no significant impact" means a determination based on an
environmental assessment that the subject action will not have a significant effect
on the environment or on native Hawaiian culture and the exercise thereof, and,
therefore, will not require the preparation of an environmental impact statement.

Similarly, we prefer the following definition of "significant effect":

"Significant effect" means the sum of effects on the quality of the environment,
including actions that irrevocably commit a natural resource, curtail the range of
beneficial uses of the environment, are contrary to the State's environmental
policies or long-term environmental goals as established by law, affect native
Hawaiian culture or the exercise thereof, or [adversely] affect the economic or
social welfare.

Amendments to Section 343-5

Although we concur with the addition of cultural reference in Section 343-5(a)(1),
we believe the remaining proposed amendments to this section are unnecessary, due to
the prior substantive amendments to the definitions of "significant effect" and
"environmental impact statement". Inclusion of specific attention to native Hawaiian
culture and the exercise thereof in all procedural elements of the EIA process is assured
under the amended definitions. We have particular concerns that inclusion of the
proposed 9th trigger may be broadly interpreted to expand the applicability of Chapter 343
to legislative, regulatory, or administrative actions more appropriately addressed under
Articles XII and XVI of the State Constitution, section 5 of the Admission Act of 1959,
and sections 1-1, 7-1, and 174C-101, HRS. This breadth of application far exceeds the
principal community disclosure and planning intent of Chapter 343.