HB 157
RELATING TO THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

Statement for
House Committees on
Energy and Environmental Protection
Health
Intergovernmental Relations and International Affairs
Labor and Public Employment
Public Hearing - February 7, 1990

Statement by
Jacquelin Miller, Environmental Center
John Harrison, Environmental Center
Kem Lowry, Urban and Regional Planning
Charles Lamoureux, Botany and Academic Affairs
Carolyn Cook, Environmental Center

HB 157 recognizes the need for greater attention and more effective response to environmental issues affecting the state of Hawaii. To meet this need, the bill proposes to establish a new Department of Environmental Protection (DEP) and to transfer selected functions from the existing Departments of Health, Agriculture, and the Office of Environmental Quality Control to the new Department of Environmental Protection.

Our statement on this bill represents an institutional position of the University of Hawaii and the Environmental Center.

HB 157 is a companion bill to SB 9 and HB 983. The bill closely resembles numerous earlier legislative proposals submitted in 1985, 1986, 1987, and 1989. In each case, the rationale for creation of a new Department of the Environment is much the same. Concern is voiced that, regardless of the well-meaning and competence of the existing administrative directives, the magnitude of environmental issues confronting the state are increasing with increased population and development pressure. To quote from our 1989 statement,
It is apparent that present mechanisms to address Hawaii's environmental problems have not produced significant changes in the underlying causes of the State's environmental management inadequacies.

Furthermore, while reorganization is not likely to immediately solve all the problems,

A dedicated, functional environmental agency would assure that environmental concerns are not subsidiary to the primary mission of a parent agency in which the environmental managers are housed.

Therefore, in light of the continuously recognized long-term and on-going environmental management and coordination problems that come before the state, the development of a single agency with overall responsibility for environmental management, as is proposed by HB 157, would seem a logical choice.

We note that this act would take effect on July 1, 1993 thus allowing a 1 year interim organizational period for compliance. This should assure an orderly transfer of the programs and responsibilities that will be affected by this act.

The following comments with regard to specific language or omissions in HB 157 are provided for your consideration.

Page 4, line 13 through page 6, line 10

Transfer of responsibility for the designation of environmentally-related illness or injury would appear to be more appropriately kept under the jurisdiction of the Department of Health (DOH). Because this section deals with reports of illness and epidemiology, we suggest that the reports to the DOH should be made available to DEP, however responsibility for the section should remain in DOH.

Page 6, lines 2, 17, 18

The rationale for excluding noise pollution and litter control from the jurisdiction of DEP is not clear. We suggest that these exclusions be deleted.

Page 7, lines 7-22 and page 8, lines 1-2

This paragraph (26-) is extremely significant and provides a cornerstone for the DEP. It is likely that a preponderance of the environmental problems that have occurred over the past 10-15 years of rapid growth in the State of Hawaii could have been avoided or ameliorated to a significant degree if a more formal structure had been in place for the coordination of planning, regulation, conflict resolution and consensus building.
Page 9, line 11

Adds the DEP to the list of principal state departments.

Page 16, lines 20-22

We note that HB 157 would provide for a number of deputies to administer programs within various departments including four within the Department of Health. There appears to be no provision for a deputy with the new Department of Environmental Protection. Is this intentional or an oversight?

Page 20, lines 13-14

HB 95-1 sets a fine for maliciously destroying or defacing any legal notice, court order, etc. put up by the Department of Health. The proposed amendment would add the Department of Environmental Protection.

Question...why shouldn't this statute apply to all official government notices...not just the DOH and DEP?

Page 20, line 18 through page 24, line 11

Housekeeping changes.

Page 24, line 16 through page 29, line 14

These amendments transfer authority for the Hawaii Pesticides Law from the Department of Agriculture to the new Department of Environmental Protection. Because of the high potential for modifications to the environment through the use of pesticides, a transfer of administration to the new DEP may be appropriate. It should be pointed out that not all pesticide use is related to agricultural use, thus there is no particular advantage to having its management under that department.

Page 29, line 22 through page 30, line 1

The director of the DEP would be added to the Advisory committee on Plants and Animals under this amendment.

Page 30, lines 17-22 through page 35, line 9
Page 35, line 12 through page 36, line 12

These amendments would transfer authority for the state water quality plan from the department of health to the DEP and incorporate the director of DEP in the policy council created under the Hawaii State Planning Act. The Director of DEP would also serve on the transportation council of the state Department of Transportation. Water quality issues are the appropriate purview of the DEP. Water quantity may be better administered by the DLNR Division of Water and Land Development.

Page 36, line 15 through page 43, line 10

Housekeeping.
This would delete the authority of the DOH to make rules governing asbestos use.

This amendment would transfer authority for mandatory certification of operating personnel in wastewater treatment plants from the DOH to the DEP. The rationale for this transfer is not clear.

This section amends HRS 341 to reflect that authority for HRS 341 would lie with the DEP and would delete reference to the Office (and Director) of Environmental Quality Control. The bill then proceeds to list the powers and duties of the DEP (pages 47-52). For the most part these are all reasonable directives. However, we do call some inconsistencies and possible omissions to your attention.

Item 7, page 50. References recycling and disposal including litter and debris. Yet on page 6, line 17, litter control is expressly deleted. We urge that litter control and management be included under the responsibilities of DEP.

Item 9, page 50. Specific Environmental Impact Statement review functions are not prescribed under Chapter 343. In fact, the management authority for HRS 343 is not specifically designated. We believe this is a significant omission in the bill as presently drafted. We urge that Item 9 be amended to reflect the need for DEP to have responsibility for HRS 343.

Items 10 and 11. Under the present language of 341-4 b (1) and (2) (see page 53), the Director of OEQC is directed to work with the Environmental Center, as well as other agencies or persons with competence, in environmental educational programs and through contractual relations in the conduct of environmental research. We should mention that it is this specific language, citing the Environmental Center, that has led to most of the environmental research projects undertaken by the Center in response to agency or legislative requests. The new language in Items 10 and 11 does not include direct reference to the Environmental Center.

Deletes reference to the Office of Environmental Quality Control as its functions are absorbed into the DEP.
Page 54, lines 21-22 through page 56, lines 1-21

Replaces language previously deleted in parts of Section 17 of HB 157 with like language as to the functions of the environmental council.

Page 57, lines 3-22

This section transfers the regulation of asbestos and asbestos-related occupations to the new DEP. It is not clear why only asbestos related occupational health is being transferred. What about other occupational health sections? It would seem that occupational health issues should remain in the DOH unless specific rationale for their transfer is given.

Page 58, lines 21-22 and page 61, lines 1-14

These amendments replace references to the office of environmental quality control and environmental council with the DEP. It removes the council from status as an aggrieved party.

Page 61, lines 17 through page 64, line 4

The rationale for the attachment of this chapter to HRS 343 is unclear. It appears to have little (no?) environmental relevance.

Page 64, lines 7 through page 68, line 12

Includes various housekeeping changes and adds wilful violations of regulations or rules of the DEP to the list of actions that may affect licensing of contractors.