SB 603 recognizes the need for greater attention and more effective response to environmental issues affecting the state of Hawaii than are being offered under the present comprehensive administration by the Department of Health. The bill proposes the establishment of a new Department of Environmental Protection to include certain existing functions and responsibilities of the present departments of Health, Agriculture, and the Office of Environmental Quality Control.

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

SB 603 is an almost verbatim reintroduction of SB 9 and HB 157 from the 1991 Legislature. For the most part, our testimony is taken from the statement we provided in review of SB 9. However, we note that, in the interval since SB 9 was deliberated, there has been a major effort, through the Governor’s Task Force on Creation of a
Department of Environmental Protection, to examine alternative departmental structures and implementation schedules. In general, we concur with the findings of the Task Force, although we stress that the need for such a department is paramount, and there should be a concerted effort to identify funding for its implementation as soon as possible. However, we are cognizant of the fiscal straits of the state at the present time, and it may be that the new department will have to be deferred. At the very least, we suggest that the present legislature establish a timetable for the allocation of sufficient funds to proceed with the organization and establishment of the new department.

We also note that reorganization of the Federal Council of Environmental Quality announced last night by the Clinton administration directly parallels our proposal for a Governor's Advisory Council combining the existing Environmental Council with the Office of Environmental Quality Control.

Our review of the present bill has identified only three substantive changes from the prior version we commented on in 1991. First, we note that the addition of the DEP to Section 95-1, HRS, relating to penalties for defacing public notices has been removed. This change appears inconsequential. Second, the policy council previously established in Section 226-53, HRS, no longer is included. While we see some value to the diversity of input provided by this policy council, we also recognize the need for policy consolidation in the Governor's Office. Hence, we concur with this deletion.

The third major change in the present bill concerns the absorption by the DEP of existing functions and responsibilities of the Office of State Planning's Coastal Zone Management Program. To the degree that the CZM program is left more or less intact, we concur with the proposed change.

The remainder of our testimony recapitulates major points of our prior comments on SB 9 in 1991.

Background and Rationale for Department of Environmental Protection

Widespread concern has been repeatedly expressed over the past 3 years that the scope of the responsibilities of the Department of Health, particularly those relating directly to human health, precludes comprehensive management attention to environmental issues. Furthermore, the magnitude of environmental issues confronting the state is growing with the increase in population and development. This increase serves to exacerbate an already overloaded management system. While we recognize that merely reorganization alone is not likely to solve all the problems, it is our belief that a dedicated, environmental department would assure that environmental concerns are not subsidiary to the primary mission of a parent agency.

Composition of a Department of Environmental Protection
One can argue interminably about what functions of what agencies should go into a Department of Environmental Protection. By the very nature of the word "environment", arguments can be made for inclusion of many functions of the Departments of Health, Agriculture, Land and Natural Resources, or even the Office of State Planning. As presently proposed, the DEP functionally constitutes a Department of Pollution Control, while leaving conservation aspects of environmental protection to their existing locations. Environmental issues are multifaceted, making it impossible to draw absolute lines between what should or should not be included. Any decision must be judgemental, based on awareness of environmental issues and needs and on administrative feasibility. To the extent that our experience provides, we offer the following comments with regard to the composition of a Department of Environmental Protection.

Page 7, line 18. Placement of OEQC and the Environmental Council. SB 603 would transfer the functions and authority of the Office of Environmental Quality Control and the Environmental Council to the new Department of Environmental Protection.

Pages 49-54. Sets forth some 21 "powers and duties" of the DEP.

Pages 56-58. Designates the make-up and duties of the council.

The most substantive comments we have to offer on SB 603 deal with the placement, composition, and duties of the OEQC and Council under the DEP. We do not concur with the transfer of the OEQC and the Council to DEP. Regardless of the good intentions of the drafters of this legislation to assure broad direction of environmental management via the stated duties of the DEP to "coordinate and direct all state government agencies in matters concerning environmental protection" the subordination of matters within one line agency to the director of another probably is inappropriate, and experience has shown that one agency director is not likely to dictate policy to other agency directors. We foresee a similar problem with regard to the transfer of rulemaking to the DEP for HRS 343. Because HRS 343 applies to all agencies, DEP would be placed in the position of determining policy and enforcement of other, equal-agency actions.

When OEQC and the Environmental Council were established in 1970, they were place within the office of the Governor with the express purpose of providing interagency coordination and guidance, over and above the line agency's authority. Subsequent placement in the Department of Health "for administrative purposes" has significantly reduced the multiple agency coordination function of OEQC and the advisory role of the Council with regard to state environmental management.

At the federal level, the problem of coordination of departments was recognized when the Environmental Protection Agency was being structured. It was acknowledged that to serve the designated and desired coordination function and to offer overall guidance on matters pertaining to the environment, the oversight authority must be above the line agencies. Thus, at the federal level, it was determined that the oversight-coordinating
authority must report directly to the President. Similarly, the President’s Council on Environmental Quality, CEQ, serves as a very high level advisory body to the President on all matters pertaining to the environment.

Placement and functions of OEQC and the Council

We urge that the present Environmental Council and OEQC be combined into a Governor’s Council on Environmental Quality and that this new body be placed within the Office of the Governor for administrative purposes. Furthermore, we suggest that primary responsibility of the former OEQC should be to provide technical support to the Council; that the Council be reduced in size and elevated to a high-level policy-advisory body to the Governor and include in its composition the directors of agencies with environmental responsibilities; that the Council retain its rule-making responsibilities for HRS 343; and, that the Council be responsible for the preparation of an annual report on the state of the environment including an analysis of agencies’ performance in meeting state environmental goals. Ministerial functions related to HRS 343 should be the responsibility of the DEP.

While we realize that the Governor may not be eager to have a reformulated Council attached to his office, we feel that the importance of environmental issues especially as they relate to the state’s prime industry, tourism, merits this elevation. However, if such placement is not possible, then we urge that consideration be given to attaching the OEQC and Council to the Office of State Planning with a name change to reflect the additional responsibility.

The following specific issues were cited by our reviewers:

Pages 49-53. Powers and Duties of the Department of Environmental Protection.

1. Page 9, lines 12-14. Take out the part, "...and shall coordinate and direct all state government agencies in matters concerning environmental protection." This should be a duty at the new Governor’s Council.

2. Page 49, Section 1. Change "Develop" to "implement" and drop "coordination of planning." Coordination to be done through Governors’ Council.

3. Page 49 and 50, Section 2. Delete 2, 2A, 2C, 2E and 2F. These powers should go to OSP, and/or the new Governor’s Council. The DOE and U.H. should be involved with development of education strategy. Sections 2B and 2D should remain in the new department.

4. Page 50, Section 3. We are not sure what is meant by "artificial scenic qualities."

5. Page 51, Section 4. We think that the Department should regulate the use, storage and handling of solid liquid and gas waste.
6. Page 51, Section 7. We note that the new department will be given responsibility for recycling and disposal of solid waste but will not include the State Litter Office (page 7, line 12). We recommend the State Litter Office be placed in the new department because part of its function is the reduction of solid waste and the encouragement of recycling.

7. Page 51, Section 8. Determining guides and ways to measure environmental values should be a function of the proposed Governor's Council on Environmental Quality or OSP with input from the University.

8. Page 51, Section 9. Add ministerial function to review function, to be performed by the new department under Chapter 343.

9. Page 52, Section 10. What is "the ecological process" that should be researched?

10. Page 52, Section 11. Change to, Coordinate with the Environmental Center of the University of Hawaii and state agencies. This reflects the legislative intent of Chapter 341.5(b) to have the Environmental Center coordinate education, research, and service efforts of the University related to environmental matters.

11. Page 53, Section 16. Reword this section to say "Undertake an extensive public information and education program to inform and involve public and private organizations and groups and the general public about laws and regulations as they apply to environmental protection programs in the State of Hawaii."

12. Page 53, Section 19. What is meant by the phrase, "Act as...official agency of a county in connection with the grant or advance of any federal or other funds..." if this is meant that the new department will act as an agency of the county to funnel federal grant monies there is no problem. If more is meant by this, the counties may take exception to this power.