HB 2075-84
RELATING TO THE ENVIRONMENT

Statement for
House Committees on
Judiciary
and
Energy, Ecology and Environmental Protection
Public Hearing – 24 February 1984

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HB 2075-84 would amend HRS Chapter 343, the State Environmental Impact Statement (EIS) Law, by adding a provision for appeals to the Environmental Council of a kind of EIS-system determination for which there is no provision for appeals to the Council under the present law. This statement on the bill does not reflect an institutional position of the University of Hawaii.

In the State EIS system, a determination is made by an agency whether an EIS is required for an action. A determination that an EIS is not required is referred to as a "negative declaration". One that an EIS is required is referred to as a "preparation notice". HB 2075 would add to HRS 343-5(b) a provision for appeal to the Council of either a negative declaration or a preparation notice relating to an action proposed by an applicant, and to HRS 343-5(c) a similar provision for appeals in the case of actions proposed by agencies. HRS 343 currently provides for appeal to the Council only in the case of unaccepted EIS's.

HB 2075 has evolved in response to both agency and public concern with the occasional inappropriate issuance of negative declarations and the present costly and cumbersome judicial appeal procedure. Under the existing statutes and rules, agencies or individuals usually become aware of a project only after a Preparation Notice or Negative Declaration has been filed with the Environmental Council and the determination published in the EC Bulletin. Thus, the bulletin notice appears only after the decision that an EIS is (or is not) required has been made. At this point, an agency or individual with knowledge of significant environmental concerns pursuant to the project has no recourse other than legal action under the present system. Litigation is an option not likely to be implemented by an agency and is usually too costly for individuals.
We believe that many of the concerns raised with regard to inadequate assessments and hence inappropriate negative determinations could be resolved outside of the courts by provision of an appeal process to the Environmental Council, a neutral third party. Such out-of-court settlements would be both environmentally and financially beneficial to all concerned. We therefore consider the provisions of HB 2075 appropriate and that implementation of these provisions would represent a substantial improvement in the State EIS system.

Although we consider the provisions of HB 2075 appropriate, we wish to call attention to the implication of the fairness argument regarding appeals of determinations whether EIS's are acceptable or not. If it is fair that an applicant be allowed to appeal to the Council an agency determination that his EIS is unacceptable, it is also fair that those who are concerned that an agency's determination that the EIS is acceptable also be allowed to appeal to the Council. It is our impression that the number of court challenges of EIS acceptance decisions has been smaller than the number of court challenges of negative declarations. Nevertheless, the same rationale applies to appeals to the Council concerning EIS acceptance decisions as applies to appeals concerning negative declarations. We suggest that HB 2075 be amended to provide for appeals to the Council concerning agency acceptances of EIS's on applicant actions.

We would not recommend that acceptances of EIS's on agency actions be subject to appeal to the Council, because such acceptances are determined by the governor or mayors.
SB 2136-84
RELATING TO THE ENVIRONMENT

Statement for
Senate Committee on Health
8 March 1984

The attached statement on HB 2075-84 is equally applicable to the companion bill, SB 2136-84.

Attachment
HB 2075, HD 1
RELATING TO THE ENVIRONMENT

Statement for
Senate Committee on Health
Public Hearing - 28 March 1984

The attached statement on the original version of HB 2075-84 remains applicable to the version in HD 1.

Attachment