SB 89
RELATING TO EXEMPTIONS FROM THE EIS LAW
FOR SMALL-SCALE AQUACULTURE PROJECTS

Statement for
Senate Committee on
Agriculture
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Introduction

SB 89 would amend the State Environmental Impact Statement (EIS) law, HRS 343, by adding a new section (343.5.1) that would exempt certain small scale aquaculture projects from certain EIS system requirements. This statement does not reflect an institutional position of the University of Hawaii on the bill.

The exemption proposed would not apply to all aquaculture projects nor would those projects to which it would apply be exempted from all parts of the EIS-system process. We will discuss, in turn, the criteria used in identifying the projects that would be exempted and, then, the nature of the proposed exemption itself.

Criteria for projects to be exempted

Three criteria are proposed for distinguishing the projects to which the exemption would apply. They would be projects that:

1) Are not subject to the National Environmental Policy Act of 1969 (NEPA);

2) Do not involve historic sites on the National or Hawaii Registers; and

3) Involve areas of less than one hundred acres or discharges of less than 10 million gallons of water per day.
NEPA applies only to those projects to be carried out by federal agencies or that require the permission of those agencies. Few private or state aquaculture projects would be subject to NEPA requirements per se, but an EIS may be required for a Corps of Engineers permit for the outfall. The rational for citing NEPA requirements in the first of the proposed criteria for exemption is not clear.

We understand from archaeological experts in the University community that less than 10 percent of the sites in the state having significant historic and archaeological importance are actually on either the National Register or the Hawaii Register of Historic Sites. The failure of the Registers to include more of the sites stems from the magnitude of the task of surveying the sites and proving their importance. There has been no comprehensive statewide survey of archaeological sites, and there has been little attempt to add significant sites to the register even when their locations are known because of a lack of funding and support. About 800 sites were recently taken off the state register because of procedural error (lack of proper notification of land owners). Only a fraction of these sites have been restored to the register. Aquaculture ponds are most frequently located near the shore near likely sites for early Hawaiian settlements, and many important archaeological sites have been located in the areas of existing or planned aquaculture projects. Most of these sites would probably not be found on the Registers, and hence most of the projects would be exempted from the provisions of the EIS-system through which their impacts on the sites would be investigated and disclosed.

With respect to the exemption for aquaculture projects involving less than 100 acres and discharging less than 10 million gallons of effluent per day, we note that the potential for environmental impact is poorly correlated with the acreage involved, or the rate of effluent discharge, but is more related to the pollutants in the effluent and the water that will be affected by the discharge. The bill makes no distinction among discharges to streams, ponds, sheltered coastal waters, or open coastal waters; and we must point out that the impacts will be very different in these several environments even with discharge of the same pollutants at the same rates. It was not clear whether the area criterion in the bill applies to land area, water area, or both.

In summary, the criteria proposed for identifying the projects to be exempted from part of the EIS system do not seem rational. With the proposed exemption, some projects that will have very significant detrimental environmental impacts would escape the full study and disclosure of those impacts that is required by the EIS system and there will be no investigation of alternatives to mitigate these impacts.

The Exemption

The exemption proposed is restricted to the preparation of environmental impact statements (EIS's). The preparation, review, and acceptance of EIS's are but the last stages of the EIS system. Other stages include the initial environmental assessment through which the potential for significant environmental impacts is estimated, the issuance of a negative declaration in the case of those projects found to lack such a potential, or a preparation notice in the case of those found to have such a potential. The issuance of the notice to
prepare an EIS provides an opportunity for public consultation in the preparation and public review when the draft EIS is filed. While the consultation process would presumably not be required in the case of an exempted aquaculture project, because no EIS would be required, such a project would still be subject to environmental assessment and the issuance of either a negative declaration or a preparation notice, even if the preparation notice had no effect. The result of the proposed exemption would thus be an irrational legal process.

The purpose of the assessment stage, we must emphasize, is NOT to require full investigation of the potential for significant environmental impacts of a project, but merely to define whether such investigation is required. The results of assessment are not subject to the review through which inadequacies in the investigation may be brought to light. Although the environmental assessment would still be required, even for the exempted aquacultural projects, full investigation of the nature and extent of their environmental impacts would not be legally required, and the purposes of HRS Chapter 343 would not be met.

Summary

We assume that the purpose in proposing SB 89 is to eliminate the costs of meeting EIS-system requirements from the costs of developing small-scale aquaculture projects. The EIS system costs are, however, very small compared with the overall project development costs and far outweighed by the environmental detriments that, if not identified and disclosed in advance, may result from the projects. It has been our observation, based on some 14 years of experience in reviewing the original and subsequent legislative development of the EIS system, the regulations pertaining to that system, and the documents prepared under that system, that misunderstanding and misinterpretation of the environmental assessment process of the state EIS system is largely responsible for delays and added costs in implementing projects.

It should be noted that, in the case of private projects, the present law applies EIS-system requirements to only those that will be carried out in certain specific areas, and it exempts from the requirement of preparing EIS's even those projects if they are found through assessment to have no potential for significant environmental impacts. We consider that it would be inconsistent to extend the exemptions in the case of projects of a certain restricted type.
The attached statement on SB 89 is equally applicable to the companion bill, HB 186.