Introduction

HB 2287, HD 1 calls for the establishment of a new State Department of the Environment. This statement on the bill does not reflect an institutional position of the University of Hawaii.

We attach to this statement, an Environmental Center Statement (RL:0566) in the original version of HB 2287. With respect HD 1, most of the comments in the earlier statement are still pertinent to the revised version; the following summary of our conclusions regarding the original version is applicable to HD 1:

We consider that findings expressed in the bill validly demonstrate weaknesses in the State's environmental programs, weaknesses that would be reduced by the creation of the new department; and that the scope proposed for the new department is rational. There are, however, alternative means by which most of the weaknesses might be reduced as effectively or almost as effectively as the means proposed and that would not be as disruptive. If the new department is to be established there are certain changes in the provisions of the bill related to its structure and to DEnv powers that would be desirable.

Our comments on alternative means for the reduction of present limitations to environmental programs of the sort that would be transferred to the new department appear on the fourth and fifth pages of the original statement.

HD 1 differs from the original version of HB 2287 in at least two substantive respects, 1) the proposed organization of the new department, and 2) certain provisions for referrals and repeals in the Environmental Impact Statement (EIS) system.
Departmental organization

As we pointed out in our earlier statement (next to last page) there were inconsistencies in the provisions of Section 2 of the original bill regarding the organization of the proposed new department. We suggested that the organization should be prescribed in much less detail, and the prescriptions proposed in HD 1 are much more general and appropriate.

EIS-system referrals and repeals

The EIS law (HRS 343) provides at present for:

1) optional referrals of draft EIS's by preparing accepting agencies or agencies to the Environmental Council for advice concerning the acceptability of the EIS's (HRS 343-5 (b) and (c)).

2) appeals by applicant to the Council regarding agency determinations that their EIS's are not acceptable (HRS 34305(c)).

Like the original version of HB 2287, HD 1 would substitute the new Department for the Council with respect to referrals for advice concerning the acceptability of EIS's. The new Department may never have to prepare EIS's, and the EIS's prepared by agencies of other departments might appropriately be referred to the new department for recommendations as to acceptability as proposed on page 49, line 1 of HD 1.

The new department would, however, be the accepting authority with respect to any EIS that may be required for an action proposed by an applicant because the action requires a permit from the new department. Hence, the substitution of "department" for "council" on page 50, line 17 of HD 1 would put the department in the position of referring some of its own EIS-acceptability decisions to itself for recommendations.

We believe that the Council will continue to be the most appropriate body to make recommendations concerning the acceptability of EIS's, whether the EIS's have been prepared by an agency or by an applicant, and that the "department" should not be substituted for the "council" in the lines of the bill to which reference is made above.

HD 1 would not merely amend but delete completely the present provision for applicant appeals to the Council regarding agency decisions as to EIS acceptability (p. 51, l. 15 to p. 52, l. 1 of HD 1). This would leave to dissatisfied applicants only recourse to the courts. The present provision for appeal to the Council was made recognizing that appeals to the courts are much more costly and time consuming than appeals to the Council, and we believe that the provisions for appeal to the Council should not be deleted as proposed on pages 51-52 of the bill.

Departmental powers and duties

We wish to call attention to comments on the last page of our earlier statement concerning certain inappropriate provisions and duplications in the powers and duties proposed for the new department in Section 8 of the bill (pp. 38-40 of HD 1).