



# University of Hawaii at Manoa

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## HB 2683 HD 2 RELATING TO ENVIRONMENTAL PROTECTION AND HEALTH

Senate Committee on  
Agriculture and Environmental Protection

Public Hearing - March 18, 1992  
6:00 PM; Room 305 SOT

By  
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HB 2683 would create a new line agency, the Department of Environmental Protection (DEP), incorporating existing environmental regulatory functions of the Department of Health and other state agencies and assigning coordinating responsibilities to enhance cooperation within state government in the management of Hawaii's environment.

Related legislation has been considered in past sessions dating back to 1972. The present bill incorporates features of HB 157 and SB 9 from last year which, in turn, grew out of prior legislative proposals. In addition, we are aware of at least two other bills which have been submitted this year proposing some form of a Department of the Environment. All of this activity emerges from a widely recognized need for more effective environmental management. In this regard, Hawaii is certainly not unique.

Last year's legislature laid a foundation for a Department of Environmental Protection in Act 293, Session Laws of Hawaii, 1991. In addition, a Task Force was established to assist the Governor in preparing an organizational and functional plan for the new department. The report of the Task Force has been provided to the legislature, and much of the Environmental Center testimony on HB 2683 is drawn from our participation in and contribution to the preparation of that report. In general, we concur with the findings of the Task Force.

GENERAL COMMENTS

Our major concern with the present system of statewide environmental management is the lack of a clearly defined structural framework which provides a consistent set of environmental guidelines to be incorporated in all branches of government. We have suggested that the original structure of the State's environmental management system which placed the Office of Environmental Quality Control (OEQC) in the Governor's office provided the appropriate line of authority to assure that environmental policy was implemented uniformly. Creating a Department of Environmental Protection will elevate the state's environmental agenda to an equal footing with other line agencies. However, no improvement will materialize unless the Governor's office imposes strong environmental priorities on all of the line agencies.

Similarly, the efficacy of the new department will depend on the leadership of the administration, the political will of the legislature, and adequate resources. Structural rearrangement alone will not produce better environmental management.

Our reviewers repeatedly have stressed the importance of regulatory enforcement. Although the authority for enforcement of regulations is implicit in the proposed departmental function, we suggest that a more explicit commitment would be desirable. We note that the Attorney General has acknowledged the potential for improvement in the provision of legal services for environmental protection in Attachment II of the DEP Task Force Report. In particular, the criteria subscripts pertaining to timeliness and extreme lateness for cases listed on the Assignment Types table indicate a backlog of up to one year in resolution of certain pending cases. Hence, enforcement of environmental regulations would be greatly strengthened by providing additional positions for environmental prosecution staff in the Department of the Attorney General.

A significant portion of the authority for local environmental protection is delegated to the state through various federal statutes. However, the federal government reserves the right to intervene if local enforcement is perceived ineffective. In the past, federal approaches to environmental issues have not addressed site specific aspects of Hawaii's environment. It therefore is important for the state to maintain local jurisdiction over regional environmental issues. A department of Environmental Protection and augmented resources for environmental legal support in the Attorney General's Office would help ensure that local control over environmental management is retained.

As a final general comment, we emphasize that management needs will change in response to emerging developments in both human and natural systems. Consequently, a crucial component of the new department must be the provision for ongoing analyses to identify new management needs. Given the changing nature of the environment, establishment of a fixed format for the new department is less desirable than assuring that additions or amendments can be incorporated as needed to meet developing needs.

### SPECIFIC COMMENTS

The most substantive comments we have to offer on HB 2683 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.

When OEQC and the Environmental Council were established in 1970, they were placed 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 the primary responsibility of the former OEQC should be to provide technical support to the Council; that the Council be 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 continue to 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. At any rate, additional amendment of Chapter 341 will be required to reflect the administrative placement of OEQC and the Council, either in the DEP, or, as we have suggested, in a reorganized form in the governor's office.

#### Powers and Duties of the DEP

As itemized on pages 4-9, the powers and duties of the new department are very specific and often redundant. We surmise that the intent of this specificity is to define clearly the role of the DEP in government. However, our reviewers are concerned that tasks which are not directly assignable to a specific category will not be undertaken by the new department. Rather than trying to define precisely the department's functional responsibilities, it seems more realistic to set out 5-10 general goals and objectives and let the DEP develop specifics over the next several years. New tasks may be added as the capabilities of the agency and the requirements of the managed environment become better appreciated. Such an evolutionary approach also will help resolve many of the apparent overlaps between the new department and other agencies (i.e., educational programs [DOE]; research [UH]; laboratory analyses [DOH, UH], etc.).

#### The Role of the Environmental Center

We suggest that the inclusion of the Environmental Center under paragraph (b), Section 26 (pages 11 and 12), is inappropriate. This section specifically addresses planning and regulation, yet the Environmental Center has neither function. Our role, as detailed in Section 341-5(b) HRS is advisory within the framework of the explicit University functions of research, service, and education.

The following specific issues were cited by our reviewers:

Page 4, Section 1. Change "Develop" to "Implement" and drop "coordination of planning." Coordination should be done through the Governors' Council.

Pages 4 and 5, 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.

Page 4, Section 2(D). An emergency response plan must be developed in coordination with evaluation of environmental risks, yet this responsibility was not included under the functions of the DEP.

Page 6, 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 and other agencies.

Page 6, Section 9. Add ministerial functions to the review function to be performed by the new department under Chapter 343.

Page 7, lines 3-8. The monitoring of native, threatened, endangered, or introduced species would appear more appropriately a function of the DLNR or the DOA. Also, we are not aware that "indicator" is defined in the HRS.

Page 7, Section 14. We would recommend that any "citizen's volunteer monitoring program" be left independent of government direction. Such an idea may be useful, but it also may prove difficult to manage with regard to quality assurance.

Page 8, Section 20. 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.

Page 8, Section 22. We would prefer to see this responsibility pursued in cooperation with the University much as presently designated under Section 341-4(b) HRS.

Page 10, line 11. Laboratory facilities probably should be shared to avoid duplication. It would be advisable to specify who will be the primary user, and to assign the laboratory administration to that organization.

Page 10, line 15. Why is environmental risk assessment not in the DEP?

Page 21, lines 5-15. The distinction between epidemiological (DOH) and Hazardous Material (DEP) responsibilities in this section is tenuous.

Page 23, line 6. This is an important addition to the EIS applicability screen suggested by the Center's 1991 EIS System Report (p. 41).