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SB 1024 S.D. 3 RELATING TO ENVIRONMENT

House Committee on Energy and Environmental Protection

**Public Hearing - March 18, 1999
8:30 a.m., Room 312, State Capitol**

By
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SB 1024 SD3 combines contents of three prior Senate bills into one measure which,

1. Consolidates management practices regarding water pollution, domestic sewage, etc. under the water pollution law; (prior SB 1024)
2. 2. Allows the DOH to establish a permanent exempt position for an ecological risk assessor, and; (prior SB 1023)
3. 3. Adds a new trigger to Chapter 343 that provides coverage of proposed actions subject to discretionary approval. (prior SB 516)

Our statement on this measure is compiled from voluntarily submitted opinions of the listed reviewers, and does not constitute an institutional position of the University of Hawaii.

Part I of this measure reflects changes which are primarily housekeeping revisions.

University opinion was mixed on Part II of this measure. Most felt that the idea has merit, but that the bill as written was overbroad and insufficiently definitive of the Assessor's duties and responsibilities. Will the appointed Assessor have the power to overturn a permit decision issued by an agency? Concerns also were voiced that over the lack of educational specifics, and over the fact that the appointed Assessor would need to be insulated from political influences.

We note that the federal Oil Pollution Act of 1990 already establishes a procedure for determining damage due to oil spills.

Also, the emergency response fund was established so that the state would have the capability to respond to oil and chemical spills without waiting for federal authorities or the responsible party to act. This measure has the appearance of another inappropriate use of the fund to pay for personnel not directly connected to oil/chemical emergency response management. Thus, in order to protect the Department of

Health from the appearance of an attempt to siphon funds from this fund, we suggest that the following language be inserted at page 11, line 13:

in section 128D-2, provided that the duties of the ecological risk assessor shall bear a rational nexus to the intent and purposes of Chapter 128D.

The intent of Part III of this measure is to close a long-standing loophole in Hawaii's environmental review law. At present, proposed actions having significant potential impacts but utilizing private funds and privately owned lands have not been subject to formal environmental review. Thus, an undertaking as massive as the construction of the Hamakua Electric Power Generating facility, being built on private lands with private funds, was not reviewed under the state's EIS law. Actions such as private resorts, golf courses, and many other major projects may be so located as to avoid environmental review under Chapter 343. The beneficial effects of this review are self-evident, and indeed, there has been at least one instance in which a private applicant has prepared an equivalent document even though not legally required to do so, as a means of deriving the advantages accruing thereunder.

The proposed measure will not open the floodgates to burdensome, unreasonable constraints on every small project that requires a building permit or a grading and grubbing permit. The EIS process is a disclosure system that employs a series of screens to ensure that only those proposed actions meriting a closer look will be examined. The attached flowchart shows the sequence of events, once a project is proposed. Immediately following the entry into the system, the first screen that is encountered is the Exemption process. Actions that will have minimal or no significant effect on the environment will proceed immediately to implementation. The EIS Rules further elaborate on the kinds of actions that are exempt, including repairs or reconstruction of existing structures, single family homes or condos of 4 or fewer dwelling units, and most other minor actions. Thus, only those actions that may have a significant environmental impact will be reviewed, and state and county agencies possess considerable experience in the rapid implementation of the exemption process.

While some may argue that this proposed measure casts too broad a net, speaking from over 60 years of collective expertise in the theory and practice of Environmental Impact Assessment, we find this to be the most effective yet unobtrusive means by which to close this egregious loophole. We understand the concerns of agencies and private business interests and landowners concerning this proposed remedy, and we have initiated discussions designed to reach a solution to the problem that is generally acceptable.

3. TRIGGERS AND EXEMPTIONS

Under the state's environmental review law, all activities fall into one of four categories:

1. Those that do not require a Chapter 343 review;
2. Those that trigger Chapter 343 but are exempt;
3. Those that trigger Chapter 343 and require the preparation of an environmental assessment; and
4. Those that trigger Chapter 343 and require the preparation of an environmental impact statement.

Project Filter Screen

