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HB 3412 RELATING TO THE ENVIRONMENT

House Committee on Energy and Environmental Protection

**Public Hearing - February 7, 1998
9:00A.M., Room 312 State Capitol**

By
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to: HB 3412 would amend Chapters 46, 201, 341, 342B, 342D, 342E, 342J, and 344, HRS

- 1) transfer air, water, and hazardous waste permitting to DBEDT, leaving enforcement responsibilities with DOH;
- 2) transfer OEQC and the Environmental Council to DBEDT;
- 3) establish policy criteria for weighing environmental protection against private economic initiatives, and;
- 4) establish streamlined permitting for all state permits.

This testimony is compiled from voluntarily submitted opinions of the listed academic reviewers, and does not constitute an institutional position of the University of Hawaii.

Although no explicit rationale for this proposed restructuring of environmental management is given in the measure, this committee has publicly announced its intent to:

- encourage economic development while protecting natural resources;
- create win-win programs which balance economic and environmental needs, and;
- create partnerships with basic industries without reducing the authority exercised over environmental quality.

It is not apparent that this measure will contribute constructively to these goals. Lacking technical competence in the areas related to air, water or hazardous waste permitting, DBEDT would be fully reliant on transferred staff from DOH to evaluate permit application information.

This measure seems to imply either that the DOH is intrinsically inefficient and unreasonably biased against economic development, or that DBEDT is somehow better at permit processing than DOH. If there's evidence to support these beliefs, we haven't seen it.

However, we do see an underlying misunderstanding of the process of permitting and permitting enforcement. Most of the permits affected by this measure are considered ministerial as opposed to discretionary by DOH. Thus, responsibility for permit preparation lies with the applicant, and the departmental function is to ascertain that:

- 1) the application is complete, and;
- 2) the information provided is sufficient and accurate.

Because air, water, and hazardous waste permit conditions and criteria are set by federal law, a state agency has little discretion with regard to content requirements. Efficiency of permit processing, i.e. evaluation of completeness and accuracy, will be proportional to the experience and expertise of those individuals processing the permits, as well as directly dependent on levels of agency funding and adequate staffing. If the same people are processing the permits, it seems unlikely that any substantive increase in efficiency will be gained, unless, of course, DBEDT imposed policy of carte blanche in the interest of "promoting a friendly business climate." If such an eventuality is intended, it certainly would not constitute the "win-win" balance of economic and environmental needs that purportedly is sought.

The Environmental Center has long been a proponent of reorganizing the state's environmental management system. In response to Act 293 SLH 1991, we participated in extensive deliberations of the Department of Environmental Protection Task Force. The Task Force noted that at the State level there were over 50 major programs, offices, divisions, and regulatory bodies involved in environmental management, housed primarily within 5 agencies. The final report of that Task Force stated:

The current system managing the State's environmental resources is diffused among State, County, and Federal planning, management and regulatory agencies and is poorly coordinated and inadequate.

This measure would further fracture the state's environmental management system by creating additional separations of function between departments. We recommend instead reorganization in the direction of consolidation. Creating a Department of Environmental

Protection, as recommended by the Task Force, could significantly improve coordination and communication, while reducing redundancy in the administration of environmental programs.

We have a number of specific concerns which are itemized below.

1. At the present time, management of many federal environmental laws, including issuance of certain permits, has been delegated by EPA to the Department of Health. Consultation with EPA and their approval would need to be obtained before any transfers of these permit responsibilities could be initiated.
2. Some of the proposed amendments would imbue both DBEDT and DOH with joint responsibilities. (Pg 6, line 14; pg 7 lines 8,9;.... etc.). In some cases, DOH is charged with the responsibility of enforcing rules made by DBEDT (Pg 14 lines 5-14). There is no indication of which agency would prevail in the case of differing opinions. Nor is there any indication of opportunity for input from DOH to rulemaking by DBEDT, even though DOH harbors expertise on environmental issues relative to air and water quality.
3. Transferring OEQC and the Environmental Council to DBEDT offers no obvious benefit. Furthermore, the provision that in the case of inconsistencies with the law and enforcement functions that either the director of DBEDT or DOH are given the authority to "conclusively resolve the inconsistency..." creates a major potential for conflict.
4. Regarding environmental policy, Chapter 344 has a clear statement of purpose. That purpose is to promote and encourage wise environmental management. There is no mention of economic development in this purpose statement, nor should there be. Chapter 344 is an Environmental Policy statute, not an economic development statute.

The provisions of HB 3412 would change that overall focus of HRS 344 and insert economic development as the overriding policy of the state with environmental protection a second ranked priority. The bottom line of the proposed changes would be, when given a choice between environmental protection and development, the latter is required.

Implementation of the various sections of the proposed changes seems problematic to say the least. What is "no or little impact" to whom or to what? How would it be determined? Impacts of a road may be highly beneficial to the businesses along the proposed right-of-way but devastating to native or endangered species, farms, communities, or even homes that are unfortunate enough to be in the way. Under existing laws and rules, developments or other economic initiatives that are determined to be in the best interests of the community can proceed. These proposed changes are not necessary.