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RL:1035

HB 3946 RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

House Committee on
Energy and Environmental Protection

February 6, 1992
8:00 am, Room 1310 SOT

By
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HB 3946 would amend Section 343-5 to provide for preparation of an Environmental Impact Statement (EIS) upon issuance of a negative determination pursuant to a proposed agency or applicant action. The bill additionally provides for public appeal of acceptance by the Office of Environmental Quality Control (OEQC) of an agency's determination to the Environmental Council, not to the exclusion of an individual's right to pursue judicial review through Chapter 91 proceedings.

Our statement on this bill does not represent an institutional position of the University of Hawaii.

We perceive serious errors in this bill as to the intent and process of the State EIS System as established by Chapter 343, HRS. In particular, the procedures for determination of significance of a proposed action are incorrectly perceived, and the proposed approach to Negative Declarations is consequently flawed.

Our recently completed review of the State EIS System identified the Negative Determination provisions of the existing law as among the most problematic aspects of the system. We articulated proposed amendments to address perceived problems in this area.

The proposals of HB 3946, while related to proposals in our 1991 State EIS System report, differ significantly from our recommendations developed through research and interview procedures followed in the compilation of our

report. We would prefer that issuance of a determination by an agency when a negative declaration was anticipated be preceded by a public review process similar to that instituted for Draft EIS's, although limited to a time frame which will not result in any additional time to the present 60-day interval for institution of judicial review pursuant to Chapter 91, HRS.

In addition, we note problems in the process proposed in this bill. It appears somewhat contradictory that "a statement shall be required" when a negative declaration is issued. A negative declaration articulates a determination that environmental impacts of a proposed project are not sufficiently significant to warrant preparation of a statement. Thus this proposed process effectively eliminates any option other than preparation of a EIS. We note that, on the average, 35-40 EIS's are filed each year with OEQC. By contrast, roughly 350 negative determinations are filed annually. Were a statement to be required for all determinations, enormous quantities of public and private resources would have to be diverted to review proposals which, in the vast majority of cases, do not warrant the time and effort required to prepare an EIS.

We are aware of a number of other proposed amendments to Chapter 343, many of which address the issue of negative declaration review in a manner more consistent with our recommendations. Thus, we do not support passage of HB 3946.