



# University of Hawaii at Manoa

## Environmental Center

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HB 2683

RELATING TO ENVIRONMENTAL PROTECTION AND HEALTH

House Committees on  
Energy and Environmental Protection  
Health  
Judiciary

Public Hearing - January 28, 1992  
6:30 pm, Washington Intermediate School

By

John Harrison, Environmental Center  
Jacquelin Miller, Environmental Center  
Peter Rappa, Sea Grant and Environmental Center  
Doak Cox, Emeritus, Environmental Center  
Kem Lowry, Urban and Regional Planning  
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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 assigning coordinating responsibilities to enhance cooperation within state government in the management of Hawaii's environment. This proposal seeks more effective solutions to growing environmental concerns through the consolidation of government regulatory and policy-making functions.

Precedent 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. For the most part, we concur with the findings of the Task Force; however, we would direct the Committee members' attention to the Minority Position paper appended to the Report Summary, as this paper reflects the Center's particular suggestions.

#### GENERAL COMMENTS

As in the past, our major concern relates to the line of authority for implementation of environmental management. Clearly, there are trade-offs in the vestiture of this authority in a separate agency. Although it is desirable to localize regulatory accountability, environmental management cuts across the jurisdiction of many departments, and it is only at the chief executive level that competing agendas can be resolved. Our support for establishing a DEP emerges from the opportunity for significant improvement in environmental advocacy in government that such a change would offer. However, no improvement will materialize unless the Governor is himself a strong environmental advocate and impresses the need for consideration of environmental perspectives throughout all line agencies.

Similarly, the efficacy of the new department remains entirely dependent on the political will of the administration and the legislature to provide leadership and adequate resources for meaningful improvement in environmental management. Structural rearrangement alone will not displace the need for adequate funding to achieve rational environmental management goals.

Our reviewers repeatedly have emphasized that regulatory efficacy is directly proportional to the adequacy of regulatory enforcement. Although the authority for enforcement of regulations is implicit in the proposed departmental function, we suggest that a more explicit commitment, perhaps through adjunctive enhancement of the Department of the Attorney General, would be desirable. We note that enforcement is particularly crucial in Hawaiian environmental regulatory programs. A significant portion of the authority for local environmental protection is delegated to the state under the provisions of various federal statutes. However, the federal government reserves the right to intervene if local enforcement is perceived to be ineffective. In the past, federal approaches to environmental issues have inappropriately addressed site specific aspects of Hawaii's subtropical insular ecosystems. It therefore is advantageous to the state to maintain local jurisdiction over regional environmental protection.

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 Office of Environmental Quality Control (OEQC) and Council under the DEP. Although the bill is silent on the specific disposition of functions and administrative relationships of the OEQC, the transfer of OEQC to the DEP is implicit in the provisions of Section 18, page 38. By contrast, the Council is apparently preserved and provided new responsibilities, such as the advisory relationship with the Environmental Intervenor. 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 primary responsibility of the former OEQC should be to provide technical support to the Council; that the Council be reduced in size and 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 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.

The following specific issues were cited by our reviewers:

Page 4, line 1. Why is noise pollution excluded?

Page 4, line 12. 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 4, line 15. Why is environmental risk assessment not in the DEP?

Page, line 18. We are concerned that the sharing of functional responsibilities will create problems, both in the assumption of leadership and in the recognition by the public of who is the responsible party. It would be better to have jurisdictional authorities explicitly defined.

Page 5, lines 4 and 10. How is "planning" defined?

Page 5, line 15. The reason for including the University of Hawaii here is not clear. If the intent is to reflect the UH role in environmental research, that is more explicitly and appropriately articulated later in the bill.

Pages 5 and 6, Section 26- (c). The CCRC appears to be a good idea, but we suggest that its membership should include people skilled in conflict resolution. Also, there should be a provision for department heads to designate representatives to the CCRC.

Pages 10 and 11, Section 6. Again, we suggest that a lead agency be designated for formulation of a water quality plan. However, we strongly concur that both DOH and DEP should be coordinating efforts in this area.

Page 22, line 3. This is an important addition to the EIS applicability screen suggested by the Center's 1991 EIS System Report (p. 41).

Page 23, Section 11. We reiterate our concern over shared responsibilities.

Pages 25-31. Powers and Duties of the Department of Environmental Protection.

Page 25, Section 1. Take out the part, "...and shall coordinate and direct all state government agencies in matters concerning environmental protection." This should be a duty of the new Governor's Council.

Page 25, Section 1. Change "Develop" to "implement" and drop "coordination of planning." Coordination to be done through Governors' Council.

Page 25 and 26, 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 26, Section 3. We are not sure what is meant by "artificial scenic qualities."

Page 27, Section 4. We think that the Department should regulate the use, storage, and handling of solid, liquid, and gas waste.

Page 27, Section 7. We note that the new department will be given responsibility for recycling and disposal of solid waste but will not include the State Litter Office (page 7, line 14). We recommend the State Litter Office be placed in the new department because part of its function is the reduction of solid waste and the encouragement of recycling.

Page 27, 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 28, Section 9. Add ministerial function to review function, to be performed by the new department under Chapter 343.

Page 28, Section 10. What is "the ecological process" that should be researched?

Page 28, Section 11. Change to, Coordinate with the Environmental Center of the University of Hawaii and state agencies. This reflects the legislative intent of Chapter 341.5(b) to have the Environmental Center coordinate education, research, and service efforts of the University related to environmental matters.

Page 29, Section 16. Reword this section to say "Undertake an extensive public information and education program to inform and involve public and private organizations and groups and the general public about laws and regulations as they apply to environmental protection programs in the State of Hawaii."

Page 29, Section 19. 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 26, 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 27, Section 4. We favor deleting the word, "all", in line 1. A significant amount of pollution is naturally caused and unpreventable (i.e., volcanic emission, weathering and erosion, etc.).

Page 27, line 15. Litter is included, yet litter was excluded from the DEP functional responsibilities earlier.

Page 28, Section 13. 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 30, Section 21. We would prefer to see this responsibility pursued in cooperation with the University much as presently designated under Section 341-4(b) HRS.

Pages 31 and 32, Section 14. We support the concept of a Public Intervenor, however, we prefer a system modeled after that of Wisconsin. The Public Intervenor is appropriately a unit of the Office of the Attorney General, an arrangement which preserves the functional integrity of the agencies, while allowing for the independence of the intervenor in prosecution of environmental cases.