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SB 1868-80
RELATING TO PERMIT APPLICATIONS

Statement for
Senate Committees on
Economic Development, Energy and Natural Resources
Government, Operations and Efficiency
Public Hearing - 7 February 1980

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SB 1868-80 is intended to simplify the procedure for obtaining permission for projects for which multiple permits are now required by law. This statement on the bill does not reflect an institutional position of the University of Hawaii.

The cumbersomeness of the process of securing permission for projects that, by law, require several permits, often from different agencies, has often been noted. Studies of methods by which the permit system and related systems might be simplified have been made by several parties, including the Environmental Center. SR 21 (1980) calls for the establishment of a task force to investigate possible simplifications of the system.

It may be assumed that there were originally valid concerns for all of the permit requirements. If these concerns no longer exist, the requirements should be dropped. However, any simplifications of the permit system should assure that proposed projects are reviewed in the light of those concerns that are still valid. We do not doubt that improvements of the permit system may be developed, but SB 1868 confuses permit decision-making processes with other related processes, and under the procedure it prescribes appropriate reviews of proposed projects would be jeopardized.

SB 1868 would provide for filing a single master permit application for a project with the Department of Planning and Economic Development (DPED). It would be the duty of DPED to contact all agencies that might be concerned with the project. It would be the duty of all agencies to notify DPED within five days thereafter whether they are indeed concerned with the project and if so what supplementary information would be required for them to judge whether any pertinent permit under their jurisdiction should be granted. If the DPED failed to notify a concerned agency, or if the agency failed to respond within five days after notification, the permit requirements of that agency

would, in essence be waived. The reduction in the contacts between an applicant for permits and the permit-granting agencies through the interposition of DPED in the process is likely to result in confusion and poor permit decisions.

SB 1868 provides that if DPED fails to notify some agency that should have permit granting authority over a project because the master application contains false, misleading, or deceptive information or fails to provide pertinent information, the agency not notified may still require a permit for the project. However, the bill does not specify who may determine that the master application is defective.

The bill provides also that, when the DPED transmits to each concerned agency a copy of the master application and the supplementary information requested by the agency, any minimum period for the permit determination of that agency would begin automatically.

Although use of the master application system would be binding only on state agencies, the DPED would be required to solicit the cooperation of federal and county agencies in its use.

Although the bill would require that the master application contain information as to the nature of the project, the waste discharge that will result from it, and uses of or interferences with natural resources contemplated, the burden it would place in DPED to assure notification of all concerned agencies would be great, because a failure by DPED to notify a concerned agency would result in nullifying the ability of that agency to perform its legal regulatory functions.

Because the DPED would have to inform the agencies "immediately" if an agency's powers were not to be over nullified, the master application form would have to be drafted in such a way that the determination of all possibly concerned agencies could be made promptly by DPED personnel lacking the specialized judgements of agency personnel on the basis of unequivocal indications in the information required on the form. It would be wise to assure that the form could be so drafted before the bill is passed.

After it was determined in the agency what permits would be required for the project, it would be relatively simple to determine what information would be required for the permit decision that had not been provided in the master application. However, the five-day limit placed on the response of the agency may result in practice either in the failure of an agency to determine what permits are required for the project or in the agency's requiring the submission of information not pertinent to the permits that are actually required. We suggest that the five-day limit may be too short.

Because the proposed time allowances are small, they should be precisely defined. "Immediately" should be defined in terms of days after receipt of the master application. If the beginning of the five days for the response of an agency is the date of receipt of a copy of master application by the agency, it would seem that the period allowed for the agency to make its permit decision should begin on the day it receives the additional information it requires rather than on the day DPED sends the information to the agency.

We note that the "permits" that the bill would explicitly include in the master permit system (page 4, lines 20-21) are granted by agencies in various departments as follows:

"Permit" requirements under HRS	Program	Agency
6E-10	Historic preservation	DAGS
177-19	Ground water	BLNR
181-4	Strip mining	BLNR
183-41	Forest and water reserves	BLNR
183-43	Forest reserves	DLNR
205-4	Land use districts	DPED
220-1	Aquaculture	BLNR
262-7	Airport zoning	DOT
264-6	Highways	DOT
266-16	Harbors	DOT
343-4	Environmental Impact Statements	various
195	Natural Area Reserves	DLNR
340E	Safe drinking water	DOH
342	Environmental quality	DOH

The authority under HRS 205-4 relates to land-use district boundary changes and that under Hrs 343-4 relates to environmental impact statements rather than actual permits.

Land-use district boundary changes are not now regarded as permits and do not seem to fall within the definition of "permit" in SB 1868. A land-use boundary change may be sought so as to allow the undertaking of a single project, but conceptually such a change is intended to reflect a more general change in the land uses that, by policy, are permissible on the land.

Environmental impact statements are documents providing information useful in arriving at permit decisions. They are subject to acceptability decisions, and time limitations are provided in the EIS system. However, they are by nature quite different from permits.

With the exception of the requirements under HRS 205-4, none of the authority rests in an agency in DPED. (The authority in HRS 205-4 rests in the Land Use Commission, which is attached to DPED.)