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SB 2167-82 RELATING TO THE ENVIRONMENT

Statement for
Senate Committee on
Ecology, Environment and Recreation
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By
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SB 2167 would amend the Environmental Impact Statement Act, HRS Chapter 343 so as to abolish the Environmental Quality Commission and transfer its responsibility to administer the EIS system to the Office of Environmental Quality Control. The bill would also amend certain of the provision of HRS Chapter 341 regarding the latter Office and the Environmental Council. A draft of this statement on the bill was reviewed by and revised in accordance with suggestions of the Legislative Subcommittee of the Environmental Center. However, it does not represent an institutional position of the University.

Administration of EIS System

The Environmental Quality Commission was created specifically to administer the EIS system. The Office of Environmental Quality Control was created several years before the EIS system was established. The Environmental Council provides advice to the Office of Environmental Quality Control. There is a great deal of confusion as to the differences in the responsibilities of these three bodies in part because of the similarity of their names. The changes proposed in SB 2167 would at least reduce this confusion by reducing the number of bodies. This would be a significant benefit. However, certain aspects of the composition of the three bodies and their responsibilities, and of the history of their present assignments, should be considered before it is decided whether the proposed changes should be made.

The Commission is composed entirely of private persons (not merely composed mainly of such persons as stated in SB 2167). The Council, also, is composed of private persons. In the case of both bodies, the members are appointed by the Governor in accordance with certain prescriptions intended to provide breadth of environmental interests. The Commission is, however, an executive body, which is served by a small paid staff, whereas the Council is an advisory body attached to the Office (OEQC).

The Office is, like the Commission, an executive body. It is structurally different in that it is composed of a paid staff and, nominally, a director. (At present the director's position is vacant and the staff is depleted.)

It is useful to recognize three different types of EIS system administrative functions:

1. Operational functions;
2. General policy determination; and
3. Determinations related to specific projects covered by the system.

The operational functions such as keeping track of environmental assessments and EIS's and publication of the EIS-system (EQC) Bulletin require administrative, secretarial, and clerical skills, but do not require either special scientific or technical capabilities or significant exercise of administrative judgement.

In its broadest aspects, EIS-system policy is, of course, determined by the EIS-system Act. However, the Act requires that, in important aspects, policy determination be made through regulations promulgated by the body administering the system. Policy determination at this level requires some scientific and technical understanding, and more familiarity with the institutions and economy of the state. However, on the basis of information of these objective kinds, the determining body must make subjective judgements. In the subjective aspects of its policy determinations, the body is expected to represent the public and not specialists.

The specific project-related determinations also require the combination of scientific and technical understanding and subjective judgements, the former to a greater extent and the latter to a lesser extent than in the case of general policy determination.

The operational functions could be performed at least as well by the Office (OEQC) with its larger staff, as the Commission with its small staff and, indeed, it is not clear that, even if the Commission is retained, it needs a staff independent of the Office. The staff of the Office, as authorized, should have considerably more scientific and technical competence than that of the Commission. The greater concerns are, however, with the placement of responsibilities for making the subjective judgements associated with general policy determination and specific project-related determinations.

When the EIS system was established, the Commission was created to administer it, primarily so that these responsibilities would not be added to others of the Office (OEQC), thus increasing the powers of the Office and its Director. Aside from the issue of mere concentration of power, however, there is the issue of whether the responsibility for making subjective judgements on behalf of the public is best vested: a) in an office with a paid staff (and in actuality by the Director of the Office); b) in a body of unpaid public representatives such as the Commission; or c) with the Director as advised by a body of unpaid representatives. The resolution of this issue itself involves a subjective judgement on which the Environmental Center cannot advise. However, in relation to the issue, there are some alternatives to the proposed transfer of EIS-system responsibility that should be considered.

The most extreme alternative would be to transfer all of the powers of the Commission to the Council instead of the Office. This would not be wise, because the routine duties in operating the EIS-system would be handled better by the Office than by the Council or the Commission. Intermediate alternatives would involve transferring to the Council,

rather than to the Office, some of the powers to make general policy and/or project-related determinations that must involve subjective judgements. These intermediate alternatives seem worthy of thorough consideration.

SB 2167 seems intended to provide that the Environmental Council will advise the Director of the Office in his exercise of the EIS-system responsibility, although, as phrased in the bill, the advisory responsibility of the Council is general and not specifically related to the EIS system. At the very least, the advisory role of the Council in these matters might be made explicit.

Placement of Office of Environmental Quality Control

The Office of Environmental Quality Control is now placed in the Department of Health (DOH) for administrative purposes. SB 2167 would transfer it to the Department of Budget and Finance, still for administrative purposes. There is evidence that, in its present placement in the DOH Office, the Office is not independent of DOH policy, as it must be to exercise its present legislatively directed responsibilities. With this placement it cannot effectively influence DOH actions and policies when such influence is necessary to the proper coordination of these activities and policies with those of other departments. The problem will be much greater if the Office is to administer the EIS system, particularly with regard to EIS's on approval of the DOH.

Having less direct responsibilities for environmental management than the Department of Health, the Department of Budget and Finance may well be a more satisfactory department in which to house the Office, but still for administrative purposes alone.

Other matters

The bill proposes a prescription as to the composition of the Environmental Council different from the prescriptions applying at present to better the Council or the Commission. Two members would be appointed from each of seven interest or professional groups. The Director of the Office (OEQC) would be a 15th member. It would be impossible with this prescription to appoint, for example, anthropologists from the Bishop Museum, high-school teachers of environmental subjects, professional planners, or economists not associated with public utilities or private industry. The problem is not with representation of the seven groups, but with their proposed exclusive representation.

Although SB 2167 seems intended to involve the Environmental Council in an advisory capacity in matters relating to the EIS system, it would delete two present responsibilities of the Council: 1) that to provide public liaison for the Office, and 2) that to prepare an annual report on environmental management.

The proposed elimination of the public liaison function should be very carefully considered, because public liaison has been, since the Council was first established, one of its most important functions.

The annual reports were originally required as a means to provide for monitoring of the performance of State and county agencies with respect to the Environmental Policy Act (HRS 244). In actual practice, the reports have been prepared by the Office with nominal Council advice. It would be appropriate to amend the law to sanction that practice. In simply eliminating the responsibility for preparing the reports rather than transferring the responsibility to the Office, the monitoring provided through the reports would effectively be terminated.

SB 2167 would also specify what the salary of the Director of the Office of Environmental Quality Control should be. Among present problems regarding the Office, there is not only the problem that it has no regular director but that no provisions have been made for the Director's salary in the State's budget. However, it would be unusual to specify the salary of the director of a state agency in the enabling legislation for the agency as is proposed. Such a specification would have the effect of freezing the salary, regardless of inflation, until the law were further amended. It would seem that some other means should be adopted to provide for the salary of the director.