

To: The Honorable Nicole Lowen, Chair, the Honorable Lisa Marten, Vice Chair, and Members of the House Committee on Energy and Environmental Protection and

The Honorable David Tarnas, Chair, the Honorable Patrick Pihana Branco, Vice Chair, and Members of the House Committee on Land and Water

From: Hawai'i Reef and Ocean Coalition (by Ted Bohlen)

Re: Hearing **HB1803**, PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF HAWAII TO RECOGNIZE AND PROTECT THE INHERENT AND INALIENABLE RIGHT OF ALL PEOPLE TO CLEAN WATER AND AIR AND HEALTHY ECOSYSTEMS, INCLUDING CLIMATE, AND TO THE PRESERVATION OF THE NATURAL, CULTURAL, SCENIC, AND HEALTHFUL QUALITIES OF THE ENVIRONMENT.

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**Hearing: Tuesday, February 8, 2022, 8:40 a.m., by video conference.**

Aloha Chair Lowen, Vice Chair Marten, and members of the House Committee on Energy and Environmental Protection and Chair Tarnas, Vice Chair Pihana Branco and Members of the House Committee on Land and Water:

The Hawai'i Reef and Ocean Coalition is a group focused on protecting coral reefs and marine life. **The Hawai'i Reef and Ocean Coalition STRONGLY SUPPORTS HB1803, but proposes amendments that are appended in a proposed draft HD1.**

Hawai'i has very fragile ecosystems, from coral reefs that are suffering from warming oceans, to drinking water polluted with petroleum spilled from underground storage tanks. These fragile ecosystems need protection now more than ever, as environmental threats are growing worse and we are facing an existential climate crisis and rapid declines in aquatic life.

This bill proposes a constitutional amendment to Article I, the Hawaii Bill of Rights, to provide more protection of environmental rights. If approved by voters, the Green Constitutional Amendment as drafted "in this bill would recognize and protect the right to clean water and air and healthy ecosystems, including climate, and to the preservation of the natural, cultural, scenic, and healthful qualities of the environment. Hawaii's Constitution currently has some protections for "a clean and healthful environment," but only "as defined by laws relating to environmental quality," not as a fundamental right (Article XI, Section 9). Because "a **healthful environment and climate**," and "**healthy ecosystems**" are currently not recognized and protected as fundamental, inalienable rights in our Bill of Rights, protecting these basic human needs

sometimes becomes an afterthought in government laws and decision making, and sometimes is not considered at all. The inclusion of this fundamental right in Article I would complement, not supplant, the existing recognized role of government as public trustee of all public natural resources in Article XI, Section 1.

We all need clean water and air, and a healthful environment and climate, to live healthy, long and good quality lives. And so it is just and right that we should ensure our environmental rights are protected as firmly and powerfully as the other fundamental rights we hold dear. We need environmental protection rights raised up to be on par with other fundamental rights such as speech, assembly and religious freedoms.

This Constitutional amendment would provide a new and important tool for protecting the State's environment. This new amendment may fill a significant gap where there is not yet a law to address a serious environmental condition or threat, until legislative protections can catch up, and strengthen enforceable environmental rights that belong to all the people of Hawaii. HIROC particularly applauds the inclusion of **healthy ecosystems** in the rights that would be guaranteed in this amendment, if adopted, as they would directly affect the public interest in the health of coral reefs and other aquatic life. HIROC was formed out of concern for this overlooked (and typically degraded) public interest. A **healthful Climate** is also critical, as corals and other marine life are dying primarily from warming, more acidic oceans.

This Green Constitutional Amendment would be a powerful value-added tool for advancing economic development in ways that also ensures environmental protection. The recognition of fundamental environmental rights can also benefit the State. The amendment could also provide a foundation for government efforts to pursue polluters. In Pennsylvania and Montana, two states with Bill of Rights protection for environmental rights, the legal actions filed reportedly have been to address serious issues of public concern – protecting drinking water, supporting government action to secure responsible party clean-up of toxic contamination, and protecting local zoning authority intended to protect local environments. New York recently became the third state to adopt a Green Constitutional Amendment. In addition to Hawai'i, at least nine other states are considering similar amendments at this time.

Broad language is characteristic of fundamental Constitutional rights such as speech, assembly and religion. Such rights should be broadly drafted so their vitality will carry well into the future. The terms "clean water and air," and "healthy ecosystems," are no less clear than the language in other Hawai'i Bill of Rights provisions, e.g., the right to "peaceably to assemble", the "right of the people to privacy," the right to be free from "excessive bail"; these terms are all open to interpretation. Hawaii's government officials and courts are well-equipped to define, interpret and apply constitutional environmental rights language using standard principles of

legislative interpretation and constitutional law – they have done so successfully with other Article 1 amendments; they are well equipped to do so as needed for environmental rights as well.

In Hawai‘i, environmental protection is rooted in the traditions and collective conscience of the people. It is deeply honored and valued as part of the culture, beliefs, way of life, and economy. Native Hawaiians have had a traditional and on-going special relationship to the environment and ‘aina.

**Hawai‘i Reef and Ocean Coalition asks the Committees to revise the wording of the proposed Green Constitutional Amendment.** These changes clarify the meaning and simplify the language. It is important to recognize the rights as “fundamental, “ to include future generations, to correct language around climate, and to clarify “healthy native ecosystems,” and add beaches. **These changes are captured in the draft proposed bill HD1 appended to this testimony. The amendment would now read:**

**“The fundamental right of the people, including future generations, to clean water and air, a healthful environment and climate, healthy native ecosystems, and beaches, shall be protected and shall not be infringed.”**

**Here is a proposed draft HD1 bill. Thanks to Representative Perruso!:**

THE HOUSE OF REPRESENTATIVES

THIRTY-FIRST LEGISLATURE, 2022

STATE OF HAWAII H.B. NO.1803 PROPOSED HD1

A BILL FOR AN ACT

PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF HAWAII TO RECOGNIZE AND PROTECT THE INHERENT AND INALIENABLE RIGHT OF ALL PEOPLE TO CLEAN WATER AND AIR AND HEALTHY ECOSYSTEMS, INCLUDING CLIMATE, AND TO THE PRESERVATION OF THE NATURAL, CULTURAL, SCENIC, AND HEALTHFUL QUALITIES OF THE ENVIRONMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. The purpose of this Act is to propose an amendment to article I of the Constitution of the State of Hawaii stating that: The fundamental right of the people, including future generations, to clean water and air, a healthful environment and climate, healthy native ecosystems, and beaches, shall be protected and shall not be infringed. This fundamental right is rooted in the traditions and collective conscience of the state's people, including Native Hawaiians' traditional and ongoing special relationship to the environment and 'āina. The amendment will complement existing Constitutional provisions and raise up protection of the human health, natural, and cultural values of the environment that are essential to support life in Hawaii.

SECTION 2. Article I of the Constitution of the State of Hawaii is amended by adding a new section to be appropriately designated and to read as follows:

“ENVIRONMENTAL RIGHTS

The fundamental right of the people, including future generations, to clean water and air, a healthful environment and climate, healthy native ecosystems, and beaches, shall be protected and shall not be infringed.”

SECTION 3. The question to be printed on the ballot shall be as follows: ”Shall the Constitution of the State of Hawaii be amended to add a new section to Article I, the Bill of Rights, to read: The fundamental right of the people, including future generations, to clean water and air, a healthful environment and climate, healthy native ecosystems, and beaches, shall be protected and shall not be infringed?”

SECTION 4. New constitutional material is underscored.

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

INTRODUCED BY: \_\_\_\_\_

Report Title: Constitutional Amendment; Green Amendment; Environmental Rights

Description: Proposes a constitutional amendment stating that: The fundamental right of the people, including future generations, to clean water and air, a healthful environment and climate, healthy native ecosystems, and beaches, shall be protected and shall not be infringed.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

Mahalo for the opportunity to testify! Please pass this very important legislation!

HAWAI'I REEF AND OCEAN COALITION (by Ted Bohlen).