

**SB 1053**



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

February 12, 2009

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION  
SENATE BILL NO. 1053, RELATING TO ENVIRONMENTAL REVIEW.

COMMITTEE ON ENERGY & ENVIRONMENT

COMMITTEE ON TRANSPORTATION,  
INTERNATIONAL & INTERGOVERNMENTAL AFFAIRS

The Department of Transportation (DOT) **supports** this bill, which will authorize an agency to transfer the responsibility for preparing and funding environmental assessments (EA) and environmental impact statements (EIS), to the private entity (user) who will actually be using the state or county lands or when new improvements necessary to accommodate the private entity's operations are to be constructed with state or county funds.

In general, HRS Section 343-5 requires an EA for projects that propose the use of state or county lands or the use of state or county funds. Whether an agency proposes the action or an applicant proposes the action that requires agency approval, the law requires that the EA be prepared by the agency. Moreover, the agency is to prepare the EA for such action "at the earliest practicable time to determine whether an environmental impact statement shall be required." However, preparation of the necessary document is both expensive and time-consuming.

Furthermore, the Hawaii Supreme Court in its August 31, 2007 decision in The Sierra Club v. The Department of Transportation of the State of Hawaii, 115 Haw. 299 (2007), clearly held that the "Chapter 343" process does not allow the State to consider physical improvements to its property "in isolation." The State must also consider and analyze the secondary and cumulative impacts of the project facilitated by the physical improvements.

By analogy, Harbors Division is currently completing an EIS for large capacity ferry vessels for the physical improvements that were made at our harbors to accommodate and facilitate the operations of said vessels. This EIS was required by Act 2, Second Special Session 2007. Moreover, under current law, the EIS is required to consider not only impacts from the harbor improvements, but impacts from the vessels' operations as well. These vessels are private undertakings. Nevertheless, the State is required to fund and prepare the EIS. Under these circumstances, where the new improvements were made to accommodate the private entity's operations, the State should have the legal authority to delegate the responsibility for the preparation of the EIS, to the private entity.

The amendments proposed in this bill will allow the State and the counties to require the user of state or county lands or the user of improvements constructed with state or county funds, to prepare and fund the necessary EA and/or EIS.

The proposed legislation permits the State and counties to fairly shift the cost for the necessary environmental reviews, to the actual user of the state and county lands or funds. We believe that the actual user (and not the government or the taxpayers) should pay for these reviews.

Accordingly, we ask for your favorable consideration of this bill.



SENATE COMMITTEES ON ENERGY AND ENVIRONMENT AND TRANSPORTATION,  
INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS

February 12, 2009  
State Capitol, Room 225  
2:50 p.m.

**Subject: Senate Bill No. 1053 Relating to Environmental Review**

Chairs Gabbard and English and members of the committee:

My name is Jim Tollefson, President of the Chamber of Commerce of Hawaii. The Chamber of Commerce of Hawaii works on behalf of its members and the entire business community to:

- Improve the state's economic climate
- Help businesses thrive

The Chamber of Commerce of Hawaii has the following concerns regarding S.B. No. 1053 as proposed.

The proposed legislation would amend Chapter 343 HRS and allow for the preparation of the environmental assessment may be made by the agency or the agency may designate the person who is the proposed user of the state or county facility or improvement, to prepare and fund the environmental assessment on behalf of the agency, if the state or county facility or improvement is necessary to accommodate the person's operations.

It is unclear what the proposed legislation is attempting to address in that currently, one of the triggers for an EA-EIS is any use of state or county lands. It is our understanding that agencies currently require an EA-EIS be prepared and submitted by an applicant with their request to use the state or county owned land or facility. In other words, the agency currently requires the applicant prepare the necessary Chapter 343 HRS document as part of the disposition process.

We recommend that S.B. No. 1053 be held.

Thank you for the opportunity to provide comments.

**BIA-HAWAII**  
BUILDING INDUSTRY ASSOCIATION

February 12, 2009

Senator Mike Gabbard, Chair  
SENATE COMMITTEE ON ENERGY AND ENVIRONMENTAL  
Senator Kalani English, Chair  
SENATE COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND  
INTERGOVERNMENTAL AFFAIRS  
State Capitol, Room 225  
415 South King Street  
Honolulu, Hawaii 96813

Dear Chairs Gabbard and English:

**Subject: Senate Bill No. 1053 Relating to Environmental Review**

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-HAWAII has the following concerns regarding S.B. No. 1053 as proposed.

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We recommend that S.B. No. 1053 be held.

Thank you for the opportunity to provide comments.



Executive Vice President & Chief Executive Officer  
BIA-Hawaii



**February 12, 2009**

Senator Mike Gabbard, Chair  
SENATE COMMITTEE ON ENERGY AND ENVIRONMENTAL  
Senator Kalani English, Chair  
SENATE COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND  
INTERGOVERNMENTAL AFFAIRS  
State Capitol, Room 225  
415 South King Street  
Honolulu, Hawaii 96813

Dear Chairs Gabbard and English:

**Subject: Senate Bill No. 1053 Relating to Environmental Review**

My name is Dean Uchida, Vice President of the Hawaii Developers' Council (HDC). We represent over 200 members and associates in development-related industries. The mission of Hawaii Developers' Council (HDC) is to educate developers and the public regarding land, construction and development issues through public forums, seminars and publications.

It is also the goal of HDC to promote high ethics and community responsibility in real estate development and related trades and professions.

The HDC has the following concerns regarding S.B. No. 1053 as proposed.

The proposed legislation would amend Chapter 343 HRS and allow for the preparation of the environmental assessment may be made by the agency or the agency may designate the person who is the proposed user of the state or county facility or improvement, to prepare and fund the environmental assessment on behalf of the agency, if the state or county facility or improvement is necessary to accommodate the person's operations.

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We recommend that S.B. No. 1053 be held.

Thank you for the opportunity to provide comments.



# Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803  
808.537.9019 hawaii.chapter@sierraclub.org

## SENATE COMMITTEE ON ENERGY & ENVIRONMENT SENATE COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS

February 12, 2008, 2:50 P.M.

(Testimony is 1 page long)

### TESTIMONY IN OPPOSITION TO SB 1053

Chair Gabbard, Chair English, and members of the Committees:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, opposes SB 1053, allowing an agency to have a developer conduct an environmental assessment ("EA") or environmental impact statement ("EIS") on their behalf.

As an initial matter, the Sierra Club observes that the legislature allocated funding for a comprehensive two-year review of Chapter 343. The Sierra Club has participated in this study in good faith based on the understanding no changes would be made to Chapter 343 until this study is completed and the recommendations reviewed. This avoids the problem of piecemeal changes that fail to solve the perceived underlying issues.

To the extent this Committee wishes to proceed with this bill, the Sierra Club suggests amending page 1, line 15, and striking the language "to prepare and . . . ." <sup>1</sup> The Sierra Club supports the concept of making the person who benefits from an EA/EIS pay for the process, but believes the agency should retain control of the process. Serious questions arise about the impartiality of the EA when it is conducted by someone desiring a particular outcome. The analysis may be directed towards achieving that outcome, rather than fulfilling the intent of Chapter 343.

Thank you for the opportunity to testify.

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<sup>1</sup> To this end, if this suggestion were adopted many of the other portions of this Bill become unnecessary and can also be struck.



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SB 1053  
RELATING TO ENVIRONMENTAL REVIEW

Senate Committee on Energy and Environment  
Senate Committee on Transportation, International and Intergovernmental Affairs

Joint Public Hearing – February 12, 2009  
2:50 p.m., State Capitol, Conference Room 225

By  
Peter Rappa, Environmental Center  
Karl Kim, Urban and Regional Planning  
Denise Antolini, Environmental Law Program

SB 1053 allows an agency to transfer the responsibility for preparing and funding environmental assessments and environmental impact statements to the user of the state or county land or new improvements to be constructed with state or county funds necessary to accommodate the user's operations. We emphasize that our testimony on this measure does not represent an official position of the University of Hawaii.

In accordance with Act 1 HB No. 2688 HD 1, Section 10, the Legislative Reference Bureau has contracted with the University of Hawaii to conduct a study of the State's environmental review process. The research is being carried out by lead investigator Karl Kim, Department of Urban and Regional Planning, associate investigators Denise Antolini, Environmental Law Program and Peter Rappa, Environmental Center. In conducting this research, we are interviewing those most involved in the state environmental impact statement process (EIS) including federal, state and county agency personnel, consultants, nongovernmental organizations (NGO), University faculty and others.

Many suggestions for changes to chapter 343 HRS have been identified in our study including the changes called for in this bill. We recommend that a comprehensive revision to chapter 343 HRS take place after the results of the study are presented next year as required in Act 1 2008 and that the provisions of this bill be deferred until then. Any changes to the chapter 343 HRS passed during this legislative session will affect the completeness of the study. Our recommendations may suggest changes to the law that will necessitate the repeal of this bill at a later date should it become law.

Thank you for the opportunity to comment on this bill.