

HB 402

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.  
ACTING DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
File:

## HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

### HB402, RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.  
Acting Director of Health

February 3, 2011

1 **Department's Position:** The Office of Environmental Quality Control (OEQC) supports the intent of  
2 HB402. However, we have very strong with reservations about the prescribed process in the proposed  
3 amendments.

4 **Fiscal Implications:** The amendments proposed to Chapter 343, Hawaii Revised Statutes, requires a  
5 sequence of multi-agency approvals that may create a longer time period for the review and approval of  
6 minor or critical projects, and will also increase project costs to agencies and applicants to conduct  
7 public hearings and other requirements as proposed.

8 **Purpose and Justification:** HB402 amends the statutory language of Chapter 343, Hawaii Revised  
9 Statutes to requires all environmental assessments and environmental impact statements to include a  
10 cultural impact assessment that must be approved by the Office of Hawaiian Affairs (OHA), after a  
11 review by the State Historical Preservation Division (SHPD). An additional proposed requirement to  
12 conduct at least one hearing for every environmental assessment or environmental impact statement will  
13 increase the burden on all agencies, whom are already struggling with staffing and funding needs.

14 While OEQC believes that there is a need for strengthening the protection of Hawaiian cultural  
15 resources, we are not convinced that the multi-agency review sequence and conducting public hearings

1 for every environmental study, including projects with an anticipated finding of no significant impact  
2 (FONSI), is the most effective way of accomplishing what a cultural impact assessments should do.

3 The current process set forth under the statute and rules, provides for early consultation under the  
4 provisions of Section 11-200-9, Hawaii Administrative Rules. The proposing agency (for 5(b) actions),  
5 or the applicant (for 5(c) actions) is required to “seek, at the earliest practicable time, the advice and  
6 input of the county agency responsible for implementing the county’s general plan for each county in  
7 which the proposed action is to occur, and consult with other agencies having jurisdiction or expertise as  
8 well as those citizen groups and individuals which the proposing agency reasonably believes to be  
9 affected.”

10 Furthermore, Section 343-6, HRS, empowers the State Environmental Council to adopt, amend,  
11 or repeal rules which shall “[p]rescribe the procedures for the preparation and contents of an  
12 environmental assessment” and “[p]rescribe the contents of an environmental impact statement.”

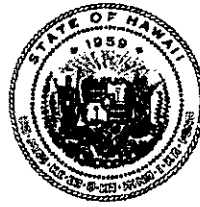
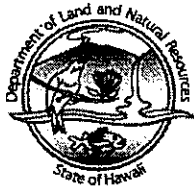
13 Rather than mandate the preparation an additional document in the environmental assessment, or  
14 environmental impact statement, as the current bill suggests, OEQC respectfully suggests that concerned  
15 parties dialogue, and petition the Environmental Council to initiate rulemaking under Section 343-6,  
16 HRS, to address their concerns regarding cultural impacts.

17 OEQC also believes that a dialogue with SHPD, OHA, OEQC, and other agencies, can find an  
18 administrative solution under the existing regulatory framework to the very legitimate concerns  
19 expressed by OHA in HB402.

20 Thank you for the opportunity to testify.

HB 402

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.  
INTERIM CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI  
FIRST DEPUTY

WILLIAM M. TAM  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**Testimony of  
WILLIAM J. AILA, JR.  
Chairperson**

**Before the House Committee on  
ENERGY AND ENVIRONMENTAL PROTECTION**

**Thursday, February 3, 2011  
8:30 A.M.  
State Capitol, Conference Room 325**

**In consideration of  
HOUSE BILL 402  
RELATING TO ENVIRONMENTAL IMPACT STATEMENTS**

House Bill 402 proposes to require that environmental assessments and environmental impact statements include cultural impact assessments that assess impacts and effects on native Hawaiian culture. The Department of Land and Natural Resources (Department) supports the requirements for cultural impact assessments in Chapter 343, Hawaii Revised Statutes (HRS), but has concerns with the additional processing steps proposed in this measure.

All mitigation plans, burial treatment plans, surveys, reports, and any other documents required under Chapter 6E, HRS, would require approval by the Department prior to being included in the cultural impact assessment. The bill also requires at least one public meeting in the affected community and approval of the cultural impact assessment by the Office of Hawaiian Affairs (OHA) prior to acceptance of an environmental assessment or statement. Prior approval by the Department's State Historic Preservation Division and OHA will significantly increase the amount of time it takes to complete an environmental assessment or impact statement leading to increased costs for agency and applicant actions. We are often operating on tight time frames for expenditure of federal funds.





**HB402**  
**RELATING TO ENVIRONMENTAL IMPACT STATEMENTS**  
House Committee on Energy and Environmental Protection

February 3, 2011

8:30am

Room: 325

---

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB402, which would require all Environmental assessments (EAs) and Environmental Impact Statements (EISs) to include a Cultural Impact Assessment (CIA). The bill would also require OHA's approval of CIAs.

HB402 provides an opportunity to fulfill the intent of Act 50, Session Laws of Hawaii 2000, which required EISs to analyze the impacts a proposed project would have on cultural practices. Unfortunately, Act 50 did not provide minimal requirements for what must be included in a cultural assessment. In addition, administrative rules for CIAs also do not exist. Instead, the public can only evaluate the adequacy of a CIA against the Environmental Council's unenforceable administrative guidelines. As a result, in the ten years since the passage of Act 50, we still see vast inconsistencies in the manner in which CIAs disclose a project's cultural impacts.

HB402 addresses this by specifying the minimal requirements for a cultural impact assessment. The bill would also assist the state in fulfilling its obligations relating to the Hawai'i Supreme Court's ruling in the *Ka Pa'akai o Ka 'Āina v. Land Use Commission* case. In its ruling, the court held that state agencies must, at a minimum, make findings and conclusions regarding 1) the identity and scope of valued cultural, historical, or natural resources; 2) the extent that the rights of Native Hawaiian traditional and customary practitioners and the resources they rely upon will be affected or impaired by the proposed action; and 3) the feasible action that the agency will take to reasonably protect Native Hawaiian rights.

Finally, providing OHA with approval authority over CIAs will help to ensure that CIAs serve as an effective decision-making tool for policy makers, Native Hawaiians and the general public.

Therefore, OHA strongly urges the Committee to PASS HB402. Mahalo for the opportunity to testify on this important matter.



coffman3 - Sean

---

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 02, 2011 8:43 PM  
**To:** EEPtestimony  
**Cc:** NaLeoHawaiian@aol.com  
**Subject:** Testimony for HB402 on 2/3/2011 8:30:00 AM

Testimony for EEP 2/3/2011 8:30:00 AM HB402

Conference room: 325  
Testifier position: support  
Testifier will be present: No  
Submitted by: Mahelani Sylva  
Organization: Individual  
Address: 4160 Hoala Street, 22C Lihue, HI 96766  
Phone: 808-635-4735  
E-mail: [NaLeoHawaiian@aol.com](mailto:NaLeoHawaiian@aol.com)  
Submitted on: 2/2/2011

Comments:

HB 402

RELATING TO ENVIRONMENTALLY IMPACT STATEMENTS Environmental Impact statements; Cultural Impact Assessments; OHA Requires all environmental assessments and environmental impact statements to include a cultural impact assessment. Requires OHA's approval of cultural impact assessments.

House Committee of Energy & Environmental Protection (EEP) Rep. Hermina M. Morita, Chair Rep. Denny Coffman, Vice Chair Public Hearing - Thursday, February 3, 2011 8:30 am, State Capital, Conference Room 325

Madam Chair Morita and Members of the House Committee on Energy & Environmental Protection,

Mahalo for the opportunity to testify in strong support of HB 402.  
This bill is long overdue.

Mahalo, for your attention to this matter.

Respectfully,

Mahelani Sylva  
P. O. Box 927  
Lihue, HI 96766  
Kaua'i Moku  
808-635-4735





HB 402

**Denise Antolini**  
59-463 Alapi`o Road Pūpūkea, O`ahu 96712  
(808) 638-5594

**Hearing on HB402**  
House Committee on Energy and Environmental Protection  
Hearing: Feb. 3, 2011 8:30 am  
Conference Room 325

Dear Chair Morita, Vice-Chair Coffinan, and Members of the Committee:

I write in **SUPPORT of HB402**, which would strengthen the cultural assessment process by adding specific legislative intent, standards, and procedures to H.R.S. Chapter 343.

After ten years of experience with Act 50, Hawaii is ready to embrace cultural assessment as a statutory requirement of the environmental review process.

Thank you.

Emailed to: [ENEstimony@capitol.hawaii.gov](mailto:ENEstimony@capitol.hawaii.gov)

