



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

March 19, 2012

**S.B. 3010, S.D.2
RELATING TO TRANSPORTATION**

HOUSE COMMITTEE ON TRANSPORTATION

The Department of Transportation (DOT) supports the intent of SB 3010, SD2.

This bill will support the DOT in accelerating the construction of approximately ten bridges currently in the design phase, thereby lessening the quantity of deficient bridges before they pose a potential hazard to the public.

Although this bill exempts the DOT from State requirements, it is the intent of the DOT to conform and comply with all State laws during the design and construction phases of each bridge project. Similarly, while this bill will aide the DOT in streamlining the state's project delivery process, the DOT will continue to be required to comply with all applicable Federal laws as this bill does not exempt the DOT from those requirements.

Thank you for the opportunity to provide testimony.



GLENN M. OKIMOTO
LATE TESTIMONY

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IN REPLY REFER TO:



SB 3010 SD2
RELATING TO TRANSPORTATION
House Committee on Transportation and
House Committee on Energy & Environmental Protection

March 19, 2012

11:00 a.m.

Room 309

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB 3010 SD2, which would temporarily exempt the Department of Transportation and its contractors from a plethora of state laws and requirements for 10 bridge rehabilitation projects. The exemptions provided for in SB 3010 SD2 are overly broad and may lead to irreversible consequences for Native Hawaiian traditional and customary practices and the resources and environment that Native Hawaiian culture relies upon.

Although OHA understands the need to rehabilitate or replace deficient bridges before they pose a potential hazard to the public, establishing exemptions for these projects sets a bad precedent and undermines important standards developed to protect the public. Specifically, under SB 3010 SD2, these bridge rehabilitation projects would be exempt from the environmental and cultural review requirements of Chapter 343, the land use laws of Chapter 205, the coastal zone management laws of Chapter 205A, the state historic preservation laws of Chapter 6E, and many other requirements for forest reserves, wildlife, natural area reserves, etc. Moreover, bridges are generally located along shorelines and other sensitive areas, and cross rivers that empty into sandy estuaries, which are prime areas for burials and other important cultural resources.

There is a simple and clear process in place to have projects exempted from HRS § 343 if they are expected to have negligible impacts. On the other hand, for those bridge rehabilitation projects that may have a significant impact on the environment and/or Native Hawaiian traditional and customary practices, a review is necessary to determine appropriate mitigation. As this legislature has found, "the past failure to require native Hawaiian cultural impact assessments [has] resulted in the loss and destruction of many important cultural resources and has interfered with the exercise of native Hawaiian culture." *Ka Pa'akai O Ka'aina v. Land Use Commission*, 94 Hawai'i 31, 47, fn 28 (2000). The environmental review process required by HRS § 343 not only ensures consideration of Native Hawaiian traditional and customary practices, but it also provides an opportunity for state agencies to fulfill their legal obligations to protect these rights.

Additionally, the guidelines contained in Chapter 205A are crucial for planning and protecting Hawai'i's special management areas (SMAs). SMA permits also often require that certain environmental impacts be minimized before a project can be approved, including acts that would result in reductions to the size of beaches and have adverse effects on water quality, fisheries, or wildlife habitat. The SMA process is where unique coastal environments are given the attention they deserve. OHA notes that the Office of Planning opposes SB 3010 SD2 and has articulated that it is working on alternative processes for state projects that are consistent with the Coastal Zone Management Program, which may be a more appropriate approach than piecemeal exemptions. OHA also notes the opposition of the Department of Land and Natural Resources, Department of Health, and Office of Environmental Quality Control.

SB 3010 SD2 threatens the protection of constitutionally recognized Native Hawaiian traditional and customary rights and the resources and places practitioners rely upon. Ma ka hana ka 'ike – the knowing is in the doing. The Native Hawaiian community will not thrive without the ability to continue the traditional practices that tie us to the 'āina, each other, and those that came before us. Therefore, OHA respectfully urges the Committee to HOLD SB 3010 SD2. Mahalo for the opportunity to testify on this measure.