

# OFFICE OF PLANNING STATE OF HAWAII

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Statement of  
**MARY ALICE EVANS**  
Director, Office of Planning  
before the  
**SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT**  
Wednesday, February 12, 2020  
1:30 PM  
State Capitol, Conference Room 224

in consideration of  
**SB 3152**  
**RELATING TO ENVIRONMENTAL IMPACT STATEMENTS.**

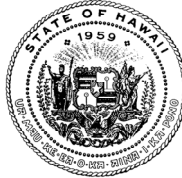
Chair Gabbard, Vice Chair Ruderman, and Members of the Senate Committee on Agriculture and Environment.

The Office of Planning (OP) offers **comments** on SB 3152 that amends Chapter 343, Hawaii Revised Statutes, by adding definitions for “cultural assessment” and “cultural impact assessment” and by requiring environmental assessments include a cultural assessment and environmental impact statements include a cultural impact assessment.

OP is concerned that requiring a separate cultural assessment study or cultural impact assessment study whenever an environmental assessment or environmental impact statement, respectively, is prepared, regardless of the nature of the action being proposed or its context, may lead to unnecessary costs and delay. Proposed actions in already-built environments or secure areas (e.g., airfields) are highly unlikely to impact existing cultural practices, yet SB 3152 would still require that a qualified ethnographer be hired to prepare the study.

Thank you for this opportunity to testify.

DAVID Y. IGE  
GOVERNOR OF HAWAII



KEITH KAWAOKA  
ACTING DIRECTOR

BRUCE S. ANDERSON, Ph.D.  
DIRECTOR OF HEALTH

**STATE OF HAWAII**  
**OFFICE OF ENVIRONMENTAL QUALITY CONTROL**  
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**Testimony COMMENTING on SB3152**  
**RELATING TO THE ENVIRONMENTAL IMPACT STATEMENT LAW**

COMMITTEE ON AGRICULTURE AND ENVIRONMENT  
SENATOR MIKE GABBARD, CHAIR  
SENATOR RUSSELL E. RUDERMAN, VICE CHAIR

Testimony of Keith Kawaoka  
Acting Director, Office of Environmental Quality Control  
Attached Agency to the Department of Health

Hearing Date: February 12, 2020  
1:30 p.m.

Room Number: 224

**OEQC's Position:** The Office of Environmental Quality Control (OEQC), which administers Chapter 343, Environmental Impact Statements, Hawai'i Revised Statutes (HRS), appreciates the intent but has some concerns about this bill. OEQC believes that the existing process already sets forth a path for an agency to assess cultural impacts in the context of an environmental assessment. Re-defining "cultural assessment" and "cultural impact assessment" in Chapter 343, HRS is not necessary.

**Purpose and Justification:** In November 19, 1997, after meeting with various stakeholder on the subject of cultural impacts, the Environmental Council adopted the "Guidelines for Assessing Cultural Impacts." The Guidance already addresses and alerts agencies about cultural impacts to include cultural practices and cultural features through the environmental assessment process. It clearly articulates two areas of major concern – cultural impact assessment methodology and cultural impact assessment contents. Over the years, various preparers of environmental assessments, contrary to the policy statement explicitly articulated in the 1997 document, have advocated the preparation of stand-alone cultural impact

1 assessments outside of the context of the Chapter 343, HRS environmental assessment process. However,  
2 promoting this notion of stand-alone cultural impact assessments has engendered considerable confusion  
3 amongst agencies and applicants and the promoted the expenditure of resources for documents with no  
4 direct nexus to the process articulated in Chapter 343, HRS.

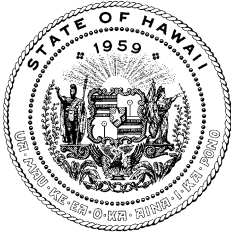
5 Act 50 in 2000 clarified that environmental assessments and environmental impact statements should  
6 identify and address effects on Hawaii's culture, cultural practices, and traditional and customary rights.

7 The environmental assessment (and not a cultural assessment or a cultural impact assessment) is the sole  
8 document authorized by Chapter 343, HRS, for an agency to assess the significance of the direct, indirect  
9 and cumulative effects of a proposed action on the environment. The approving agency (of an applicant  
10 action) or the proposing agency (of an agency action) has direct control of the environmental assessment  
11 document that addresses economic welfare, social welfare and cultural practices.

12 Currently, there are no provisions, in statutes or rules, for a “cultural assessment” or a “cultural impact  
13 assessment” outside of the environmental assessment process. Existing guidance provides for the  
14 assessment of cultural impacts, not on a stand-alone basis, but wholly within the context of the  
15 environmental assessment process. The use of information presented within the environmental  
16 assessment process is subject to the judgment and discretion of the proposing agency or the approving  
17 agency in making its determination as to whether a proposed action will have significant effects on the  
18 environment.

19 Should an agency choose not to use information related to cultural impacts within the context of the  
20 environmental assessment process, an aggrieved party has the right to a judicial challenge under the  
21 provisions of section 343-7(b), HRS.

22 Thank you for the opportunity to testify.



# STATE ENVIRONMENTAL COUNCIL

DEPARTMENT OF HEALTH, STATE OF HAWAII  
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Robert Parsons  
Ron Terry  
Michael Tulang  
N. Mahina Tuteur

Testimony of  
**Puananionaona P. Thoene**

Council Chair on behalf of the State Environmental Council

Before the  
**SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT**

Wednesday, February 12, 2020

1:30 PM

State Capitol, Conference Room 224

providing comments on  
**Senate Bill 3152**

Chair Gabbard, Vice Chair Ruderman, and Members of the Senate Committee on Agriculture and Environment,

The Environmental Council (Council) is established by HRS § 341-3, which also directs membership of the Council “to assure a broad and balanced representation of educational, business, and environmentally pertinent disciplines and professions, such as the natural and social sciences, the humanities, architecture, engineering, environmental consulting, public health, and planning; educational and research institutions with environmental competence; agriculture, real estate, visitor industry, construction, media, and voluntary community and environmental groups.”

The functions of the Council are to serve as a liaison between the Office of Environmental Quality Control (OEQC) Director and the general public to make recommendations concerning ecology and environmental quality. The Council monitors the progress of the State, county, and federal agencies in achieving the State’s environmental goals and policies. It issues an annual report with recommendations for improvement to the Governor, the Legislature, and the general public (HRS § 341-6). Finally, the Council promulgates administrative rules for implementing Chapter 343, HRS (HRS § 343-6). Last year, the Council, working with OEQC, completed rulemaking to update the Environmental Impact Statement (EIS) rules, Hawai’i Administrative Rules Title 11, Chapter 200.1 (the “EIS Rules”).

While the Council supports the intent of this bill, and recognizes the need for both quality cultural impact assessments and better guidelines for assessing impacts on cultural practices and resources, it raises concerns because the bill as written: (1) could require additional rulemaking to establish criteria for cultural impact assessments and may necessarily require definitions of “cultural resources” and “cultural practices”; (2) appears to require disclosure of cultural practices regardless of whether or not a practitioner wants to disclose such practices; (3) is unclear as to whether or not an additional comment period is required separate and apart from the draft EA or draft EIS comment periods; and (4) is unclear as to how it would impact challenges to EAs and EISs; and (5) seems to require a cultural assessment or cultural impact assessment for actions that may not impact cultural resources or practices. For the reasons explained below, the Council recommends that the bill be deferred until guidelines for cultural

impact assessments can be updated through guidance rather than through rulemaking, as this bill would require.

As this bill recognizes, Act 50 (2000) requires EISs to include consideration of the impacts to native Hawaiian cultural resources and practices. The updated EIS Rules make this requirement explicit in the significance criteria for determining whether or not an EIS must be prepared in connection with an action. See HAR § 11-200.1-13. HAR sections 11-200.1-18 (contents of a draft environmental assessment ("EA")), 11-200.1-21 (contents of a final EA), 11-200.1-24 (contents of a draft EIS), and 11-200.1-27 (contents of a final EIS, requiring compliance with HAR § 11-200.1-24). In particular, HAR § 11-200.1-24(i) requires "[s]pecial emphasis" on "environmental resources that are rare or unique to the region and the action site (including natural or human-made resources of historic, cultural, archaeological, or aesthetic significance)[.]" Therefore, consideration of important cultural resources and practices are required in every EA and EIS. Although this bill recognizes that cultural impact assessments are part of the current EIS process, the bill incorrectly states that there is no regulatory guidance on cultural impact assessments. In 1997, the Council adopted the *Guidelines for Assessing Cultural Impacts*, which is available on the OEQC website.

Prior to the EIS Rules update completed last year, the rules had not been updated since 1996. The process took almost three years and included outreach with agency, private, and public stakeholders. During this process, the Council considered several comments related to cultural resources and practices, from both the public and Council members. For example, the Council was requested to promulgate rules on specific criteria for mitigation measures and was also asked to provide definitions of "mitigation," "cultural resources" and "cultural practices." The Council declined to define these terms because it feels that any definition of such terms must be done only after consultation with cultural practitioners, agencies more familiar with cultural practices and resources, and other various stakeholders. Without having done such outreach at this time, the Council cannot recommend one way or another whether such definitions should be included in the HRS Chapter 343 process.

The Council is in the process of updating its guidance on cultural assessments. In the last few months, the Council has begun discussions with several stakeholders on the feasibility of holding a discussion forum as a starting point for our community outreach process. The Council understands that this process will take some time, perhaps even as long as the rules update did, but endeavors to create guidance and a process that would seemingly achieve the goals of this proposed bill.

The definition of "cultural impact assessment" proposed by this bill is problematic in that it requires that the cultural impact assessment ("CIA") disclose the "cultural practices of the community and State." Respectfully, this should not be a requirement unless agreed to after consultation with stakeholders. The Council understands that cultural practices are personal in nature and often vary from 'ohana to 'ohana, community to community, and even within communities. Some practitioners and communities are reluctant to identify the location of cultural resources and even practices. Therefore, the decision for cultural practitioners to participate in a cultural assessment or cultural impact assessment and what information is disclosed should remain voluntary.

Furthermore, although the Council's 1997 *Guidelines for Assessing Cultural Impacts* encouraged preparers of EAs to analyze the impact of a proposed action on cultural practices and features, the Council wants to highlight that the current rules do not require that a separate cultural

assessment be prepared in connection with an EA. An EA is sufficient for actions that do not have significant impacts. If an action does have significant impacts, including significant impacts to cultural resources and practices, then the next step in the process is to prepare an EIS. If significant impacts to cultural resources and practices are identified in the EIS process, in most cases, the EIS will include a separate cultural impact assessment although again, under the current rules, the separate document is not required.

When a cultural impact assessment is included, the final, rather than the draft, report is typically made available with the draft EIS. This bill seeks to make the draft CIA available for comment in addition the draft EIS. This requirement is unclear as to whether it injects a separate review and comment period into the existing Chapter 343 process. The bill may have unintended impacts on other aspects of HRS Chapter 343.

Documents prepared under HRS Chapter 343 are meant to be disclosure documents and to identify the impacts of the proposed action. This bill appears to require a cultural assessment or cultural impact assessment for all actions, even those that may not impact cultural resources or practices. The process should be allowed to remain as is to address impacts generated by the proposed action without having to include additional studies on impacts that do not relate to the proposed action.

Mahalo for the opportunity to testify on this measure and for your consideration

TO: Senator Mike Gabbard, Chair  
Senator Russell E. Ruderman, Vice Chair  
Senate Committee on Agriculture and Environment

FROM: Angus Raff-Tierney, M.A., Legislative Committee Chair,  
Society for Hawaiian Archaeology  
angusrafftierney@yahoo.com

**SOCIETY FOR HAWAIIAN  
ARCHAEOLOGY**



HEARING: February, 12 2020, 1:30 PM, Conference Room 224

SUBJECT: Testimony in **SUPPORT** of SB 3152, Relating to Environmental Impact Statements

I am Angus Raff-Tierney, Chair of the Legislative Committee of the Society for Hawaiian Archaeology (SHA). We have over 150 members including professional archaeologists and advocates of historic preservation. On behalf of SHA, I am providing the following testimony in **SUPPORT** of (Relating to Environmental Impact Statements).

Many of our members conduct Cultural Impact Assessment work in support of EISs and these changes to Chapter 343, HRS should bring clarity to the process. Our members have often encountered inconsistencies with CIA's that stem in part from how the statutes are currently written. SB 3152 brings clarity to the state EIS process by defining "cultural assessment" and "cultural impact assessment." These CIA also suffer from a lack of public notice and participation. SB 3152 would help this requiring cultural assessments to be available for public review and comment in connection with draft environmental assessments.

Should the bill pass out of this committee, we request to be consulted as a stakeholder in future deliberations on an amended bill. Should you have any questions, please feel free to contact me at the above email. Mahalo for considering our testimony.

<https://hawaiianarchaeology.org/>

The Society for Hawaiian Archaeology is a registered tax-exempt organization established in 1980 to promote and stimulate interest and research in the archaeology of the Hawaiian Islands, encourage a more rational public appreciation of the aims and limitations of archaeological research, serve as a bond among those interested in Hawaiian archaeology, both professionals and non-professionals, and aid in directing their efforts into more scientific channels as well as encourage the publication of their results, advocate and assist in the conservation of archaeological data, discourage unethical commercialism in the archaeological field and work for its elimination.

**SB-3152**

Submitted on: 2/4/2020 7:52:44 PM

Testimony for AEN on 2/12/2020 1:30:00 PM

| Submitted By                 | Organization | Testifier Position | Present at Hearing |
|------------------------------|--------------|--------------------|--------------------|
| Benton Kealii Pang,<br>Ph.D. | Individual   | Support            | No                 |

Comments:

As a native Hawaiian, I support SB3152. Codifying the definition of cultural impact statements and cultural assessments will go a long way to inform the public on cultural impacts. Please pass SB3152.



**SB-3152**

Submitted on: 2/6/2020 8:44:21 PM

Testimony for AEN on 2/12/2020 1:30:00 PM

| Submitted By                | Organization | Testifier<br>Position | Present at<br>Hearing |
|-----------------------------|--------------|-----------------------|-----------------------|
| Jennifer Azuma<br>Chrupalyk | Individual   | Support               | No                    |

Comments:

**SB-3152**

Submitted on: 2/10/2020 5:58:52 PM

Testimony for AEN on 2/12/2020 1:30:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|--------------|--------------|--------------------|--------------------|
| Andrea Quinn | Individual   | Support            | No                 |

Comments:

Dear Honorable Committee Members:

Please support SB3152. Some cultural practices can negatively impact the environment, such as lay nets with respect to the marine environment. Our marine life is our most valuable economic resource, and the reefs are already turning into virtual deserts due to fertilizer runoff, sunscreens, aquarium collecting and climate change. Lay nets, which are used to indiscriminately catch fish, and are often a threat to marine mammals when lost, are just one more assault upon marine life.

Thank you for your time.

Andrea Quinn

Kihei, Maui