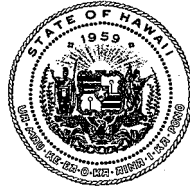


**SB 2808**



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

BRENNON T. MORIOKA  
INTERIM  
DIRECTOR

Deputy Directors  
FRANCIS PAUL KEENO  
BRIAN H. SEKIGUCHI

IN REPLY REFER TO:

February 14, 2008

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

SENATE BILL NO. 2808

COMMITTEE ON ENERGY AND ENVIRONMENT  
COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS

We support the intent of this bill. However, we recommend rewording the first sentence of the proposed new section to read as follows:

**Except when an environmental assessment is otherwise required under section 343-5(a), an environmental assessment shall not be required for an action that proposes....**

If the Legislature does not amend Chapter 343, Hawaii Revised Statutes, the Department of Transportation (DOT) will continue to encounter situations in which an applicant has requested DOT permits to construct improvements within the State highway right-of-way (ROW) to allow development of private property and the counties will continue to encounter situations in which an applicant has requested county permits for development, which will also require DOT permits for improvements within the State highway ROW. In such situations,

- Section 343-5, Hawaii Revised Statutes, will require preparation of an environmental assessment (EA) "at the earliest practical time" prior to approval of an action, which proposes use of the State ROW.
- Under Section 11-200-7, Hawaii Administrative Rules, the proposed use of the State ROW is considered a component or phase of a larger action, which involves the proposed development of private property.
- Under Section 11-200-8(A)(3), Hawaii Administrative Rules, only minor new structures such as 1 single-family home, a building containing 4 dwelling units, a commercial building designed for under 20 occupants, or utility extensions for such minor structures can be exempted from EA requirements.

Under SB 2808, a private applicant's proposal to construct improvements within the highway ROW will no longer "trigger" EA requirements. With proposed amendments, SB 2808 would clearly not affect other EA "triggers" such as expenditure of state or county funds for significant highway improvements, amendments of county general plans, use of the Conservation District, use of the shoreline setback area, or use of public lands other than public highways. Finally, with proposed amendments, when an EA is required, the EA must address the entire proposed action including any proposed use of the highway ROW.

LINDA LINGLE  
GOVERNOR OF HAWAII



LAURENCE K. LAU  
Acting Director

STATE OF HAWAII  
OFFICE OF ENVIRONMENTAL QUALITY CONTROL  
235 S BERETANIA ST. SUITE 702  
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**Committee on Energy and Environment &  
Committee on Transportation and International Affairs  
SB 2808, Relating to Environmental Impact Statements**

**Testimony of Laurence K. Lau**  
Acting Director of the Office of Environmental Quality Control  
**February 14, 2008**  
**2:00 p.m.**

1 **Office's Position:** The Office of Environmental Quality Control (Office) supports an exemption  
2 of environmentally insignificant actions from environmental assessments and **offers comments.**

3 **Fiscal Implications:** None.

4 **Purpose and Justification:** This measure establishes an exemption under Chapter 343, Hawaii  
5 Revised Statutes (HRS), dealing with highway right of way related work. Specifically, the bill  
6 adds a new section to HRS chapter 343 to read:

7 For purposes of section 343-5(a), an environmental assessment shall not be required for  
8 an action that proposes the use of state or county lands or funds, if the use of state or  
9 county lands or the expenditure of state or county funds is limited to an existing public  
10 street, road, highway, easement, drainage, waterline, access improvement, utility right of  
11 way, or the like. This section shall not be interpreted as exempting the entirety of a  
12 development from this chapter.

13 We see a need for quick action for the exemption of environmentally insignificant actions  
14 in and involving a highway right-of-way. Environmental assessments are being requested for

1 minor work in county or state road right-of-ways, such as connecting a new single family home  
2 driveway to a road. HRS chapter 343 was not intended to cover actions with minimal  
3 environmental effects, but we have received complaints from people with small projects who  
4 have not been able to get needed permits or approvals. On the other hand, actions that are  
5 potentially significant environmentally should continue to be subject of an EA. We support  
6 legislation that will accomplish the foregoing functional objectives.

7         The bill as worded does not distinguish between environmentally insignificant and  
8 potentially significant projects that may require the use of “an existing public street, road,  
9 highway, easement, drainage, waterline, access improvement, utility right of way, or the like.”  
10 While the bill does not exempt “the entirety of a development from this chapter,” there are cases  
11 where there are no other triggers for an environmental assessment besides state or county right of  
12 way use. To deal with that situation, it is more direct to add a new trigger that deals directly with  
13 the types of potentially significant projects that people are concerned about, instead of depending  
14 on the proposed use of state or county rights of way as a trigger. If the legislature does add a  
15 trigger, it should consult closely with the affected state and county agencies. The City  
16 Department of Planning and Permitting (DPP) claims that subdivision approvals are non-  
17 discretionary acts, and we take no position on that, but use the claim as an example of why the  
18 affected agencies should be at the table.

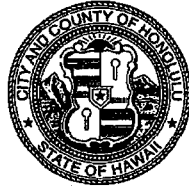
19         There may be other ways to deal with this issue. So far they have been subject to dispute,  
20 but we will continue to investigate such methods, such as using the existing rules on exemptions  
21 from EA’s, or amending county and state highway exemption lists. We favor which ever  
22 method, statute, rule or exemption list change, that provides the needed change in a timely  
23 manner.

1           We do prefer that any statutory amendment preserve the Environmental Council's  
2 authority to adopt and amend rules on exemptions. This will let the Council adopt and adapt  
3 exemptions to circumstances that arise later.

4           Thank you for the opportunity to testify on SB 2808.

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813  
TELEPHONE: (808) 768-8000 • FAX: (808) 527-6743  
INTERNET: [www.honolulu.gov](http://www.honolulu.gov) • DEPT. WEB SITE: [www.honolulu.dpp.org](http://www.honolulu.dpp.org)



MUFI HANNEMANN  
MAYOR

HENRY ENG, FAICP  
DIRECTOR

DAVID K. TANOUÉ  
DEPUTY DIRECTOR

February 14, 2008

The Honorable Ron Menor, Chair  
and Members of the Committee on Energy  
and Environment

The Honorable J. Kalani English, Chair  
and Members of the Committee on Transportation  
and International Affairs  
Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chairs Menor, English and Members:

**Subject: SENATE BILL 2808  
Relating to the Environmental  
Impact Statements**

The Department of Planning and Permitting respectfully submits the following in **support** of Senate Bill 2808. Senate Bill 2808 provides needed clarity to Chapter 343 for actions touching state or county lands that would not require an environmental assessment.

Historically, the term "use of state or county lands" has been used in the context of projects or development of government-owned lands, examples of which include public schools, parks, water treatment facilities, transportation facilities, housing projects, etc. There has been no question that whenever government-owned lands are developed an environmental assessment must be done pursuant to Chapter 343.

By way of background, recent legal challenges to private development and recent court decisions have resulted in differing application by City and State agencies when existing public right-of-ways are involved. This reinterpretation of the phrase "use of state or county lands" to include existing public roads and any work done on them such as the installation of underground or overhead utilities, private driveways or any other improvements that are ancillary to the development are an unnecessary burden on the landowner merely because his property abuts an existing public road. This reinterpretation would impose unnecessary requirements on the use of private property that is already regulated under county zoning, subdivision and building codes, and it goes far beyond the original intent of the law as other triggers exist for private development likely to have a significant environmental impact such as amendment to general plans, reclassification of conservation lands, shoreline areas, etc.,

The Honorable Ron Menor, Chair  
and Members of the Committee on Energy  
and Environment

The Honorable J. Kalani English, Chair  
and Members of the Committee on Transportation  
and International Affairs  
Re: Senate Bill 2808  
February 14, 2008  
Page 2

For all practical purposes, existing state and county roads are already in "use" since they serve all the private properties abutting them. It defies logic to conclude that use of public roads (i.e., installation of a private driveway, connection to existing sewer lines, drainage and utility connections, etc.) should be a trigger for an environmental assessment when practically every property on this island is served by a public road fronting them and such interpretation would make environmental assessments applicable to almost all private properties (except the ones served by private roads).

Additionally, this Department continues to implement improvements to streamline the processing of permits, reduce the permit processing time and regulatory burden on private property owners and businesses. We do not see how this can be accomplished if the applicability of environmental assessments is extended to all private properties served by a public road.

.Accordingly, we support the intent of this bill and request that your Committee pass the measure.

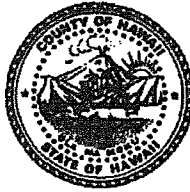
Thank you for this opportunity to comment.

Very truly yours,

  
Henry Eng, FAICP, Director  
Department of Planning and Permitting

HE: jmf  
sb2808-mh.doc

**Harry Kim**  
*Mayor*



**Christopher J. Yuen**  
*Director*

**Brad Kurokawa, ASLA**  
**LEED® AP**  
*Deputy Director*

**County of Hawaii**

**PLANNING DEPARTMENT**

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-4224  
(808) 961-8288 • FAX (808) 961-8742

February 5, 2008

Honorable Ron Menor, Chair

And Members of the Committee on Energy and Environment  
**COMMITTEE ON ENERGY AND ENVIRONMENT**  
State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

Honorable J. Kalani English, Chair

And Members of the Committee on Transportation and International Affairs  
**COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS**  
415 South Beretania Street  
State Capitol  
Honolulu, HI 96813

Dear Chairs Menor and English and Members of the Committee on Energy  
and Environment and Members of the Committee on Transportation  
and International Affairs:

**SUBJECT: SB 2808 – RELATING TO ENVIRONMENTAL IMPACT STATEMENTS:**

The Hawai'i County Planning Department supports SB 2808. The current interpretation of the state environmental assessment law, Chap. 343, forces us to require environmental assessments for land use permits when the only "trigger" under the law is a relatively minor "use" of an existing county or state road to construct turn lanes, a driveway, or other similar improvement of an existing road. For example, we recently had to defer an application for a use permit for a new church, and tell them to do an environmental assessment first, because it needed a driveway across the county right-of-way to connect with the county road.

Most land use permits require some kind of connection across, or improvement of, a state or county highway right-of-way, so this is causing the need for a large number of environmental assessments for relatively minor projects.



Honorable Ron Menor, Chair

And Members of the Committee on Energy and Environment  
COMMITTEE ON ENERGY AND ENVIRONMENT

Honorable J. Kalani English, Chair

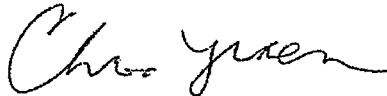
And Members of the Committee on Transportation and International Affairs  
COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS

Page 2

February 5, 2008

We think that it was not the intent of Chap. 343 to require environmental assessments for this type of project, and therefore ask for the passage of SB 2808.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

CJY:pak

Wpwin60/Chris 08 – Testimony - SB 2808 – EA Law

cc: Mayor Harry Kim  
Mr. Andy Levin  
Corporation Counsel  
Mr. Bruce McClure  
Mr. Ralph Boyea

# **BIA-HAWAII**

**BUILDING INDUSTRY ASSOCIATION**

February 7, 2008

Committees on Energy and Environment and Transportation and International Affairs

Conference Room 414

2:00 P.M.

The Honorable Senators Menor and English, Chairs, and Members  
Committee on Energy and Environment  
Committee on Transportation and International Affairs  
State Senate, Room 414  
Honolulu, Hawaii 96813

Dear Chairs Menor and English and Members:

**Subject: Senate Bill No. SB 2808 Relating to the Environmental Impact Statements**

I am Karen Nakamura, Chief Executive Officer and Executive Vice President 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 strongly supports S.B. No. 2808, to provide an immediate and short-term fix to clarify when an Environmental Assessment (EA) is required.**

S.B. No. 2808 proposes to clarify that environmental assessments do not apply to state or county lands that include the use of existing streets, roads, highways, or trails or bikeways for limited purposes.

Our concern is the "unintended consequences" of the recent court decisions. The courts relied on past decisions where any action that involved the use of a state or county road right of way was a "trigger" for the EA/EIS. Because an access improvement, easement, drainage, waterline, etc., is now viewed as a use of state or county lands when it touches (over, under, across) a state or county road right of way, the entire project is then required to prepare and environmental assessment for the entire project.

This legislation is necessary because:

1. The only projects that are excluded from this new requirement are:
  - a. One single family residence;
  - b. Projects that already have an approved EA or EIS.
2. Projects without an EA or EIS will be required to prepare one which will result in:
  - a. Increased costs, and

- b. Delays to the project;
- 3. Confusion exists right now on who the accepting authority will be if and EA/EIS is required for a project (i.e. neither State DOT nor County Planning Departments have the staff to process the potential number of EA/EIS.)
- 4. The current interpretation makes a mockery of the EA/EIS process, requiring 343 documents for in-fill and projects with insignificant environmental impacts;
- 5. If the legislative intent was that an EA/EIS would be required any time the project touches a public road, then the law should be changed to require an EA/EIS for all projects because all projects, at some point, connect to a public road.

We understand that the 2006 legislature passed Act 294 which appropriating money to the University of Hawaii environmental center to perform a comprehensive review of the State's current environmental impact statement process under chapter 343, Hawaii Revised Statutes. The study was initiated but never completed due to, as we understand, internal errors in procurement of the contract by the department of health.

BIA-Hawaii, along with a number of other organizations, has become aware of the need for a comprehensive review of Chapter 343, HRS based on the "unintended consequences" of recent court decisions. BIA-Hawaii advocates legislation to address the immediate problems created by the recent court decisions, while working on the comprehensive review of Chapter 343. The legislation to address the immediate problems should have a sunset to coincide with the comprehensive review.

Thank you for this opportunity to express our views.

*Karen I. Nakamura*

**COALITION OF HAWAII ENGINEERING AND ARCHITECTURAL  
PROFESSIONALS**

Email to: [testimony@capitol.hawaii.gov](mailto:testimony@capitol.hawaii.gov)

Hearing Date: Thursday, February 7, 2008 2:00pm, CR 414

Honorable Senators Ron Menor, Chair, Senator Gary L. Hooser, Vice Chair and Members of the Senate Committee on Energy & Environment  
Honorable Senators J. Kalani English, Chair, Senator Mike Gabbard, Vice Chair and Members of the Senate Committee on Transportation & International Affairs

**Subject: SB 2808 - Relating to Environmental Impact Statements**

Coalition of Hawaii Engineering & Architectural Professionals represents several professional Engineering and Architectural organizations including American Council of Engineering Companies Hawaii; American Institute of Architects; Hawaii Chapter of the American Society of Civil Engineers; American Public Works Association Hawaii Chapter; Structural Engineering Association of Hawaii; and the Hawaii Society of Professional Engineers.

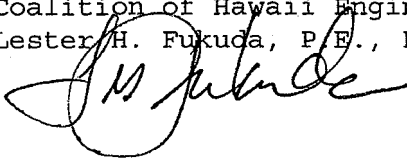
Our coalition is in SUPPORT of SB 2808 Relating to Environmental Impact Statements. This bill will help to reduce the log jam of small utility connection projects that are currently stopped at the State Department of Transportation (SDOT) and waiting for environmental assessments to be submitted. We agree with the bill and that recent court decisions have expanded the requirements for environmental assessments (EA's) well beyond the reasonable intent of the Law.

Small utility connections or utility crossings, single driveway connections to existing state or county highways should not be required to file environmental assessments. The current position taken by SDOT is critically holding up public and private projects and forcing unnecessary expenditures for EA's and possibly jeopardizing the viability of the project or funding sources.

We urge you to Support SB 2808 - Relating to Environmental Impact Statements. Mahalo for this opportunity to express our business concerns and for your consideration of this important bill.

Sincerely,

Coalition of Hawaii Engineering & Architectural Professionals  
Lester H. Fukuda, P.E., FACEC





**AIA Hawaii State Council**  
A Council of The American Institute of Architects

ENE/TIA  
2-7-08  
2:00 pm Room 414

February 7, 2008

Honorable Ron Menor, Chair  
Senate Committee on Energy & Environment  
Honorable J. Kalani English, Chair  
Senate Committee on Transportation & International Affairs

Re: **Senate Bill 2808**  
**Relating to Environmental Impact Statements**

Dear Chair Menor, Chair English and Members of the Committees,

My name is Daniel Chun, Government Affairs Chair of The American Institute of Architects (AIA). AIA **SUPPORTS** SB 2808 that seeks to clarify the current confusion related to design and construction that proposes a very limited use of state or county lands - namely a "public street, road, or highway as defined in section 291-1."

Our long experience in the construction permitting process is that these limited uses were previously considered as an "Agency Exemption" and / or "Exemption Class." While being considered "exempt", the construction still required application for permits, review by the appropriate agencies, and observation of the construction by the licensed design professional. Even if this bill is passed there will still be public review and required approvals for construction projects.

The text of SB 2808 seems superior to other bills of this type because SB 2808 deals specifically with "Environmental assessment not required." In contrast the text of SB 2037 Section 2 removes "existing public street, road, or highway" from the definition of state or county lands; implying that no impacts upon existing public streets need be considered even when an EA /EIS is otherwise required.

Environmental Assessments are already required for a number of development projects in sensitive areas or for projects that require some special county zoning approvals. We need to "reinstate" the exemptions from chapter 343 that are listed on the OEQC web site. Thank you for this opportunity to **SUPPORT SB 2808.**

A handwritten signature in black ink, appearing to read "Daniel Chun", is located at the bottom right of the page. The signature is fluid and cursive.



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Email: har@hawaii Realtors.com

February 6, 2008

**The Honorable Ron Menor, Chair**

Senate Committee on Energy & Environment

**The Honorable J. Kalani English, Chair**

Senate Committee on Transportation & International Affairs

State Capitol, Room 414

Honolulu, Hawaii 96813

**RE: S.B. 2808 Relating to Environmental Impact Statement**  
**Hearing Date: February 7, 2008 @ 2:00 p.m., Room 414**

Dear Chairs Menor, English, and members of the Senate committees on Energy & Environment and Transportation & International Affairs:

On behalf of our 10,000 members in Hawaii, the Hawaii Association of REALTORS® (HAR) **supports the intent** of S.B. 2808.

S.B. 2808 will help for the expedited completion of right of ways and clarifies when an environmental assessment is necessary. The bill will not diminish the importance of Chapter 343 but clarifies the unintended consequences and ramifications. Environmental consideration will continue to be given consideration in decision making on any proposed community development.

Mahalo for the opportunity to testify.



General Growth Properties, Inc.

Senator Ron Menor, Chair  
Senate Committee on Energy and Environment

Senator J. Kalani English, Chair  
Senate Committee on Transportation and International Affairs

Thursday, February 14; 2:00 p.m.  
Conference Room 414

**RE: SB 2808 Relating to Environmental Impact Statements -  
Testimony in SUPPORT**

Aloha Chairs Menor and English, Vice Chairs Hooser and Gabbard and Members of the Committees:

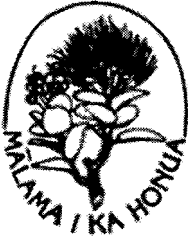
My name is Jan Yokota, Vice President Development – Hawaii Region of General Growth Properties. General Growth Properties **supports** SB 2808.

The purpose of SB 2808 is to clarify that environmental assessments are not required for projects that use existing state and county streets, roads, highways, trails or bikeways for limited purposes such as easements, drainage, waterlines, access improvements and utility rights of way. Recent court decisions suggest that an environmental assessment is required for such uses because they fall within the “use of state or county land” trigger of Chapter 343, Hawaii Revised Statutes. Therefore, clarification of this environmental assessment trigger is necessary.

If the legislature had intended to require an environmental assessment for such incidental uses, it would have explicitly required one for all projects because all projects connect to public roads at some point. Indeed, the current interpretation of Chapter 343, if allowed to stand, will result in increased costs and delays to all construction projects. Additionally, environmental assessments will be required for projects with insignificant environmental impacts, and there will likely be a large increase in number of environmental assessments required even though there are a limited number of accepting authorities.

General Growth Properties strongly urges the committees to pass SB 2808. Clarification on when environmental assessments are required is needed immediately. Thank you for the opportunity to testify on this matter.

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& Construction  
Hawaii Region  
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www.ggp.com



# Sierra Club Hawai'i Chapter

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

## SENATE COMMITTEE ON ENERGY AND ENVIRONMENT SENATE COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS February 7<sup>th</sup>, 2008, 2:00 P.M.

(Testimony is 3 pages long)

### TESTIMONY IN STRONG OPPOSITION TO SB 2808

Chairs Menor and English and members of the committees:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, is strongly opposed to SB 2808. This measure would weaken our three-decade old Hawaii Environmental Protection Act, not only by eliminating the environmental review of potentially damaging projects, but upsetting the current process that is in place with the Environmental Council and the exemption requirements. Hawaii's sustainability is at risk if we provide sweeping exemptions to our environmental disclosure process. We also believe any changes to our environmental review law are premature until a thorough and objective analysis of the law is complete. The following testimony details our strong opposition to SB 2808.

#### **Hawaii's Environmental Protection Act has served Hawai'i well**

Hawai'i residents have benefited from our environmental review law for nearly 30 years. It is a process that has been tested time and time again—and it works. Because of the law, Hawai'i is better planned, offers a higher quality of life, and is more sustainable.

The eloquent mandate of Chapter 343 is simple: it requires agencies and developers to tell the truth. The intent of our environmental review law is quite clear—to ask tough questions and disclose impacts of actions using state land or money. Please remember: the environmental review law is not about permitting; it is about disclosure. The law requires that environmental, cultural, and socio-economic impacts are fully disclosed so that decision makers can make informed decisions about permitted activities.

The intent behind HRS Chapter 343, Hawaii's Environmental Impact Statement statute ("HEPA"), is clear and broad:

*§343-1 Findings and purpose. The legislature finds that the quality of humanity's environment is critical to humanity's well being, that humanity's activities have broad and profound effects upon the interrelations of all components of the environment, and that an environmental review process will integrate the review of environmental concerns with existing planning processes of the State and counties and alert decision makers to significant*



*environmental effects which may result from the implementation of certain actions. **The legislature further finds that the process of reviewing environmental effects is desirable because environmental consciousness is enhanced, cooperation and coordination are encouraged, and public participation during the review process benefits all parties involved and society as a whole.** It is the purpose of this chapter to establish a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations.*  
(emphasis added)

The lawmakers who enacted HEPA (which was a parallel to the National Environmental Policy Act) had the foresight to provide a mechanism to disclose environmental, economic, and social impacts of government actions. The purpose of the environmental review law was to ensure adequate disclosure of impacts from activities using state funds or land. The law provides for comments from the public and serves as a tool for decision makers to use in selecting the optimal choice for public resources. Public oversight of public resources is essential in a democracy. It provides for checks and balances between government and the public at large. HEPA ensures some form of accountability of our agencies—if they plan to take action that may diminish the quality of life or adversely impact the environment that everyone shares, HEPA discloses those impacts before they occur. Without such a disclosure, the state would blindly take actions without knowing what the future costs or benefits would be. The essence of our environmental review process is used to understand and fix problems *before they occur*.

### **Senate Bill 2808 is unnecessary and undermines our existing review process**

The amendment proposed to HRS 343 in SB 2808 is unnecessary, as a process exists to deal with minor projects. While the Sierra Club is sympathetic to those who are concerned about the potential for complete environmental reviews being required on projects with little real impact, the law already wisely provides for an exemption process. If a triggered project is truly minor, then it would be excluded via categorical exemption. The Hawai'i Supreme Court went through this analysis in the Maui Kahana Sunset case, but correctly ruled that a new subdivision didn't qualify as a "minor improvement" that was exempt.

By right, the Sierra Club believes that every development should be automatically subject to our environmental review law, subject to exemption. Notably, the California's equivalent of our law (California Environmental Quality Act) does not contain any triggers, but rather applies broadly, subject to exemptions.

Finally, if the "exempt classes of action" are outdated or the interpretation of the exemptions dramatically changed, the proper amendment process would be to request the Environmental Council to review and suggest changes to Hawaii Administrative Rules (11-200-8). This has been done repeatedly in the past.

### **Senate Bill 2808 would eliminate environmental review of potentially damaging projects**

Despite the litany "horror" stories described by proponents of SB 2808 (some of which should be exempted through the existing process), the real effect of SB 2808 would be

that some major projects avoid environmental scrutiny provided by HRS 343. Consider one of the frequently cited case law cases for this measure, Koa Ridge.

Castle & Cooke's massive Koa Ridge development was required by the Supreme Court (unanimous ruling) to complete an environmental review before they could seek their Land Use Commission reclassification. Koa Ridge was proposed as a master-planned community of 7500 housing units and a hospital on 1250 acres of land (most of it prime agricultural land) on either side of H2 freeway in Central O'ahu.

The development had significant environmental and social impacts. The development was outside of the county development plan when it was proposed. The project was to use an estimated 3.76 million gallons of freshwater daily while potentially reducing the groundwater recharge of the existing agricultural land on which it was to be built. The U.S. Department of Agriculture stated in their testimony on the development that "This project would consume a significant acreage of prime farm lands." Urban centers surrounding the project actually decreased in population during the decade prior to the Koa Ridge proposal. According to the developer's analysis, the traffic from the massive project would contribute to the deterioration in traffic flow around the project and increase commute time along the H2 and H1 freeways. At full build-out, the project would have required over 50 megawatts of new electricity. Koa Ridge would have completely altered the landscape of Central Oahu, converting over 1000 acres of high-quality agricultural land to urban uses permanently.

***If any project should undergo an environmental review, Koa Ridge was it. Yet the ONLY trigger to require this review was the fact that their sewer trunk line was to go underneath Kamehameha Highway. Senate Bill 2808 would remove this trigger.***

**No changes should be made to the Hawaii Environmental Protection Act until a comprehensive study is complete**

Any changes to HRS 343 are premature before a thorough analysis of the entire law is complete. Changes may do lasting damage if the consequences of such amendments are not fully analyzed at the outset. Further, it is not fair to developers or communities to continue to change the rules of the game. Measures to provide funding for to the Legislative Reference Bureau to contract with University of Hawai'i experts for such a study are currently pending. We support funding a comprehensive, objective study of Hawaii's environmental review law as a means to further improve planning for Hawaii's sustainable future.

We strongly urge you to hold SB 2808 in committee today.

Thank you for the opportunity to testify.

# LIFE OF THE LAND

*Ua Mau Ke Ea O Ka Aina I Ka Pono*

76 North King Street, Suite 203, Honolulu, Hawai'i 96817

Phone: (808) 533-3454 \* E-Mail: [henry@lifeoftheland.net](mailto:henry@lifeoftheland.net)

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Committee on Energy and Environment

Chair: Sen. Ron Menor

Vice Chair: Gary Hooser

Committee on Transportation and International Affairs

Chair: Sen. J Kalani English

Vice Chair: Sen. Mike Gabbard

Date: Thursday, February 14, 2008

Time: 2:00 p.m.

Room: 414

Bill: SB 2808 EIS Band-Aid

Aloha Chairs Menor, English, Vice Chairs Hooser, Gabbard and Members of the Committees,

Life of the Land is Hawai'i's own environmental and community action group advocating for the people and the `aina since 1970. Our mission is to preserve and protect the life of the land through sustainable land use and energy policies and by promoting open government through research, education, advocacy, and litigation.

SB 2808 would place a band-aid on an existing law. There would be many unintended consequences. Many existing proposals would suddenly be exempt from the need for compliance with Chapter 343. Take, for instance, Waimanalo.

The state highway through Waimanalo consists of the two lanes actually built, and an additional two lanes laid out. The state owns the land. The state wants four lanes, the county and community want to keep the width at two lanes. The two additional lanes are within the state right-of-way. Under SB 2808 this project would be exempt from Chapter 343.

**SB 2808:** "For purposes of section 343-5(a), an environmental assessment shall not be required for an action that proposes the use of state or county lands or the use of state or county funds, if the use of the state or county land or the expenditure of state or county funds is limited to an existing public street, road, or highway, as defined in section 291-1, for an easement, drainage, waterlines, access improvements, utility right of way, or the like."

**HRS §291-1** "Public street, road, or highway" includes the entire width, including berm or shoulder, of every road ... and any public highway, as defined in section 264-1.

**HRS §291-1 §264-1 Public highways and trails.** (a) All roads, alleys, streets, ways, lanes, bikeways, and bridges in the State, opened, laid out, or built by the government are declared to be public highways.

Waimanalo Neighborhood Board Regular Meeting, January 8, 2001

**Kalaniana'ole Highway Improvements:** Scot Urada, representing the Highways Division of the State Department of Transportation (DOT), reported the following \_ (1) Scope of the project is to improving the roadway of Kalaniana'ole Highway from Olomana Golf Course to Waimanalo Beach Park with community input and support including the Waimanalo Neighborhood Board. (2) Community opposed widening the highway into four lanes. (3) Public comments solicited by Representative Kenny Goodenow in January 2000 sent to DOT. (4) Presently, DOT has hired the engineering consulting firm of Akinaka & Associates to do the design. Cost of design is \$250,000.  
[www.co.honolulu.hi.us/refs/nco/nb32/01/32janmin.htm](http://www.co.honolulu.hi.us/refs/nco/nb32/01/32janmin.htm)

AMENDMENT #6 TO THE OAHU TRANSPORTATION IMPROVEMENT PROGRAM  
FY 2002 THRU FY 2004 S36 Kalaniana'ole Highway Improvements, Waimanalo Town  
(*Olomana Golf Course Road to Waimanalo Beach Park*) *Install left-turn lanes at six intersections, improve Deferred DES from FY 2003 to FY 2004 drainage inside highway right-of-way, improve existing bus stops, install bike lanes or paths, install sidewalks and paved driveways, replace/update existing traffic signal system, and make bus stops and shoulders compliant with Americans with Disabilities Act guidelines.* [oahumpo.org/TIP/TIP02-04/0204\\_Amendment6.PDF](http://oahumpo.org/TIP/TIP02-04/0204_Amendment6.PDF)

Revised Ordinances of Honolulu: The vision for Koolaupoko will be implemented in part through application of the general policies and principles for public facilities and infrastructure, which are presented in the following sections. **3.1 TRANSPORTATION SYSTEMS** The highway widening and interchange projects cited in the 1995 revision of the ORTP (see **Table 4-1**) are intended to increase roadway capacity. This is inconsistent with the vision expressed in Chapter 2 of this Plan. Consequently, it recommended that none of those projects be implemented. Highway improvements should be limited to minor additions of turn lanes or stacking lanes, enhancements of landscaping and pedestrian and bicycle facilities, and traffic control features that improve safety and traffic flow and the aesthetic appearance of the right-of-way.

**Table 4-1 Highway Projects Listed in the Oahu Regional Transportation Plan, 1995 Update (Implementation of these projects is not recommended by this Plan)**

Widen Kalaniana'ole Highway to four lanes between Waimanalo Beach Park and Saddle City (2006 - 2020) [www.co.honolulu.hi.us/refs/roh/klaupoko/24kp\\_ch4.htm](http://www.co.honolulu.hi.us/refs/roh/klaupoko/24kp_ch4.htm)

Henry Curtis  
Executive Director

**testimony**

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**From:** randy ching [oahurandy@yahoo.com]  
**Sent:** Tuesday, February 05, 2008 7:20 PM  
**To:** testimony  
**Subject:** ENE/TIA: in opposition to SB2808 (relating to environmental impact statements)

Energy and Environment Cmte/Transportation and International Affairs Cmte  
Chair Menor, Vice Chair Hooser and Chair English, Vice Chair Gabbard  
In opposition to SB2808 (relating to environmental impact statements)

SB2808 hearing on Thursday, February 7  
2 p.m. in conference room 414

Chairs Menor and English, Vice Chairs Hooser and Gabbard, and members of the committees,

I am opposed to SB2808, a bill that removes the public roadway trigger from our environmental review law, Chapter 343.

As you may know, this was exactly the trigger that led to an environmental review requirement for both the sprawling Koa Ridge development in Central Oahu and the Kahana Sunset project on Maui. For these projects, the public roadway "use" was the only opportunity to require an environmental review for the entire project. Imagine a permitting process for upwards of 7500 homes on prime agricultural lands (original Koa Ridge project) with no environmental review to guide decision making. Hawaii's environmental review law -- which simply requires the disclosure of environmental, social, and cultural impacts before permitting begins -- has helped to make our state more sustainable and better planned. We need more disclosure, not less.

Please hold off on any amendments to Chapter 343 until a comprehensive study of the law is complete. Thank you for this opportunity to testify.

Randy Ching  
Sierra Club, Oahu Group chair  
942-0145  
oahurandy@yahoo.com

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February 4, 2008

**To: Senator Ron Menor, Chair  
Senator Gary Hooser, Vice Chair  
Committee on Energy & Environmental  
And  
Senator J. Kalani English, Chair  
Senator Mike Gabbard, Vice Chair  
Committee on Transportation and International Affairs  
Hearing: SB 2808  
February 7, 2008  
Conference Room**

**From: Makaala Kaaumoana, Vice Chair  
Hui Ho'omalua i ka 'Aina  
Hanalei, Kauai**

**Re: Hearing on SB2808  
2:00 pm February, 7, 2008 Room 414**

Aloha Chairs Menor, English and committee members,

Mahalo for the opportunity to testify against SB 2808.  
Our organization has worked since 1983 for community based resource management.  
We accept our kuleana and facilitate community engagement in open and factual planning and implementation of pono projects.

We depend on the EIS process to provide public announcements and facilitate community input for projects of which we might otherwise be unaware.

Trails and roads are often cultural assets and provide access for traditional activities. Our experience on Kauai has taught us that projects sponsored by the County and/or State may in fact require more environmental review than smaller private efforts. Spending the public's money should require the most stringent review possible.

I urge you to table SB 2808.

Me ka pono,  
Makaala Kaaumoana

*Kaaumoana  
POB 1205  
Kilauea, HI  
96754  
808-828-1205*

February 6, 2008

The Honorable Senator Ron Menor, Chair  
Senate Committee on Energy and Environment  
The Honorable Senator J. Kalani English, Chair  
Senate Committee on Transportation and International Affairs  
Hawai'i State Capitol  
Honolulu, HI 96813

RE: Testimony opposing of SB 2808 Relating to Highways

Chair Menor, Chair English and Members of the Committees:

Thank you for this opportunity to present testimony in opposition to SB 2808 on behalf of Na Leo Pohai, the public policy affiliate of The Outdoor Circle.

We strongly believe that despite the extra costs and effort, it is important to continue to require environmental assessments on projects that use state or county lands or use state or county funds, even when the project is limited to existing public streets, roads or highways. This would include projects requiring an easement, drainage, water lines, access improvements, utility rights of way and the like.

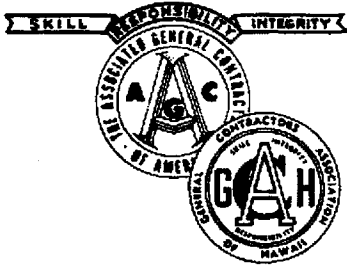
Environmental assessments provide an important opportunity for local oversight and public involvement in projects that involve state or county property and infrastructure. They ensure that these projects are more broadly considered for their potential impacts and potential cumulative impacts on the environment. This is particularly critical in a state that is dependent upon maintaining a high level of environmental quality for the benefit of residents and visitors alike.

Weakening Hawaii's environmental review laws is a short cut to lowering the quality of our environment. It increases the likelihood that certain projects might degrade the beauty of our state and the quality of the environment that supports the state's largest industry—tourism.

Please hold SB 2808.

Mahalo

Bob Loy  
Director of Environmental Programs



## GENERAL CONTRACTORS ASSOCIATION OF HAWAII

1085 AHUA STREET • HONOLULU, HAWAII 96819-4493 • PHONE 808-833-1681 • FAX 808-839-4167

E-MAIL ADDRESS: [gca@gcahawaii.org](mailto:gca@gcahawaii.org) • WEBSITE: [www.gcahawaii.org](http://www.gcahawaii.org)

February 5, 2008

TO: THE HONORABLE SENATORS MENOR AND ENGLISH, CHAIRS, AND  
MEMBERS COMMITTEE ON ENERGY AND ENVIRONMENT,  
COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS

SUBJECT: S. B. 2808 RELATING TO THE ENVIRONMENTAL IMPACT STATEMENTS

Dear Chairs Menor and English and Members:

The General Contractors Association (GCA), an organization comprised of over five hundred and forty (540) general contractors, subcontractors, and construction related firms, **strongly supports** the passage of S.B. 2808, to provide an immediate and short-term fix to clarify when an Environmental Assessment (EA) is required.

S.B. No. 2808 proposes to clarify that environmental assessments do not apply to state or county lands that include the use of existing streets, roads, highways, or trails or bikeways for limited purposes.

Our concern is the “unintended consequences” of the recent court decisions. The courts relied on past decisions where any action that involved the use of a state or county road right of way was a “trigger” for the EA/EIS. Because an access improvement, easement, drainage, waterline, etc., is now viewed as a use of state or county lands when it touches (over, under, across) a state or county road right of way, the entire project is then required to prepare and environmental assessment for the entire project.

This legislation is necessary because:

1. The only projects that are excluded from this new requirement are:
  - a. One single family residence;
  - b. Projects that already have an approved EA or EIS.
2. Projects without an EA or EIS will be required to prepare one which will result in:
  - a. Increased costs, and
  - b. Delays to the project;
3. Confusion exists right now on who the accepting authority will be if and EA/EIS is required for a project (i.e. neither State DOT nor County Planning Departments have the staff to process the potential number of EA/EIS.)



SENATE BILL NO. SB 2808  
RELATING TO THE ENVIRONMENTAL IMPACT STATEMENTS  
FEBRUARY 5, 2008

4. The current interpretation makes a mockery of the EA/EIS process, requiring 343 documents for in-fill and projects with insignificant environmental impacts;
5. If the legislative intent was that an EA/EIS would be required any time the project touches a public road, then the law should be changed to require an EA/EIS for all projects because all projects, at some point, connect to a public road.

We understand that the 2006 legislature passed Act 294 which appropriating money to the University of Hawaii environmental center to perform a comprehensive review of the State's current environmental impact statement process under chapter 343, Hawaii Revised Statutes. The study was initiated but never completed due to, as we understand, internal errors in procurement of the contract by the department of health.

The GCA along with a number of other organizations, has become aware of the need for a comprehensive review of Chapter 343, HRS based on the "unintended consequences" of recent court decisions. GCA advocates legislation to address the immediate problems created by the recent court decisions, while working on the comprehensive review of Chapter 343. The legislation to address the immediate problems should have a sunset to coincide with the comprehensive review.

Thank you for considering our concerns on the above bill.



**The Chamber of  
Commerce of Hawaii**  
Since 1850

**Testimony to the Senate Committee on Energy & Environment and  
Transportation and International Affairs  
Thursday, February 7, 2008 at 2:00 p.m.  
Conference Room 414, State Capitol**

**RE: SENATE BILL NO. 2808 RELATING TO ENVIRONMENT IMPACT  
STATEMENTS**

Chairs Menor and English, Vice Chairs Hooser and Gabbard, and Members of the Committees:

My name is Christine Camp, Chair of The Chamber of Commerce of Hawaii, Land Use and Transportation Committee. The Chamber strongly supports SB 2808, to provide an immediate and short-term solution to clarify when an Environmental Assessment (EA) is required. The Chamber strongly supports SB 2808, to provide an immediate and short-term solution to clarify when an Environmental Assessment (EA) is required. However, we prefer the language contained in SB 2037 which proposes to amend Section 343-5, (a), (1) Hawaii Revised Statutes, by simply adding the following:

*For purposes of this section, state or county lands shall not include an existing public street, road, or highway as defined in section 291-1, or any existing trail or bikeway.*

The Chamber is the largest business organization in Hawaii, representing 1100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. The organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

S.B. No. 2808 proposes to clarify that environmental assessments do not apply to state or county lands that include the use of existing streets, roads, highways, or trails or bikeways for limited purposes.

Our concern is the "unintended consequences" of the recent court decisions. The courts relied on past decisions where any action that involved the use of a state or county road right of way was a "trigger" for the EA/EIS. Because an access improvement, easement, drainage, waterline, etc., is now viewed as a use of state or county lands when it touches (over, under, across) a state or county road right of way, the entire project is then required to prepare and environmental assessment for the entire project.

Page 2

The Chamber of Commerce of Hawaii Testimony on SB 2808  
Thursday, February 7, 2008

This legislation is necessary because:

1. The only projects that are excluded from this new requirement are:
  - a. One single family residence that are smaller than 3,500 sf.;
  - b. Permits on restaurants seating less than 20 in capacity;
  - c. Individual Multi-family structures that are fewer than 4 units; and
  - d. Projects that already have an approved EA or EIS.
2. Projects without an EA or EIS will be required to prepare one which will result in:
  - a. Increased costs, and
  - b. Delays to the project;
3. Confusion exists right now on who the accepting authority will be if and EA/EIS is required for a project (i.e. neither State DOT nor County Planning Departments have the staff to process the potential number of EA/EIS.)
4. The current interpretation makes a mockery of the EA/EIS process, requiring 343 documents for in-fill and projects with insignificant environmental impacts;
5. If the legislative intent was that an EA/EIS should be required any time the project touches a public road, then the law would have stated as such when it was originally created because all projects, at some point, connect to a public road.

We understand that the 2006 legislature passed Act 294 which appropriating money to the University of Hawaii environmental center to perform a comprehensive review of the State's current environmental impact statement process under chapter 343, Hawaii Revised Statutes. The study was initiated but never completed due to, as we understand, internal errors in procurement of the contract by the department of health.

The Chamber, along with a number of other organizations, has become aware of the need for a comprehensive review of Chapter 343, HRS based on the "unintended consequences" of recent court decisions. The Chamber is advocating legislation to address the immediate problems created by the recent court decisions, while working on the comprehensive review of Chapter 343. The legislation to address the immediate problems should have a sunset to coincide with the comprehensive review.

Thank you for this opportunity to express our views.



# Kiewit

**BUILDING GROUP**

February 7, 2008

The Honorable Senators Menor and English, Chairs, and Members  
Committee on Energy and Environment  
Committee on Transportation and International Affairs  
State Senate, Room 414  
Honolulu, Hawaii 96813

Dear Chairs Menor and English and Members:

**Subject: Senate Bill No. SB 2808 Relating to the Environmental Impact Statements**

My name is Lance K. Wilhelm, member of the Chamber of Commerce of Hawaii, Land Use and Transportation Committee. 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

**Chamber strongly supports S.B. No. 2808, to provide an immediate and short-term fix to clarify when an Environmental Assessment (EA) is required.**

S.B. No. 2808 proposes to clarify that environmental assessments do not apply to state or county lands that include the use of existing streets, roads, highways, or trails or bikeways for limited purposes.

Our concern is the "unintended consequences" of the recent court decisions. The courts relied on past decisions where any action that involved the use of a state or county road right of way was a "trigger" for the EA/EIS. Because an access improvement, easement, drainage, waterline, etc., is now viewed as a use of state or county lands when it touches (over, under, across) a state or county road right of way, the entire project is then required to prepare and environmental assessment for the entire project.

This legislation is necessary because:

1. The only projects that are excluded from this new requirement are:
  - a. One single family residence;
  - b. Projects that already have an approved EA or EIS.
2. Projects without an EA or EIS will be required to prepare one which will result in:
  - a. Increased costs, and
  - b. Delays to the project;

3. Confusion exists right now on who the accepting authority will be if and EA/EIS is required for a project (i.e. neither State DOT nor County Planning Departments have the staff to process the potential number of EA/EIS.)
4. The current interpretation makes a mockery of the EA/EIS process, requiring 343 documents for in-fill and projects with insignificant environmental impacts;
5. If the legislative intent was that an EA/EIS would be required any time the project touches a public road, then the law should be changed to require an EA/EIS for all projects because all projects, at some point, connect to a public road.

We understand that the 2006 legislature passed Act 294 which appropriating money to the University of Hawaii environmental center to perform a comprehensive review of the State's current environmental impact statement process under chapter 343, Hawaii Revised Statutes. The study was initiated but never completed due to, as we understand, internal errors in procurement of the contract by the department of health.

The Chamber, along with a number of other organizations, has become aware of the need for a comprehensive review of Chapter 343, HRS based on the "unintended consequences" of recent court decisions. The Chamber is advocating legislation to address the immediate problems created by the recent court decisions, while working on the comprehensive review of Chapter 343. The legislation to address the immediate problems should have a sunset to coincide with the comprehensive review.

Thank you for this opportunity to express our views.



Lance K. Wilhelm



**TESTIMONY BEFORE THE SENATE COMMITTEES ON  
ON  
ENERGY AND THE ENVIRONMENT  
&  
TRANSPORTATION AND INTERNATIONAL AFFAIRS**

**SENATE BILL 2808  
BY  
STEVEN GOLDEN**

**THURSDAY, FEBRUARY 7, 2008**

Chairs Menor and English, and members of the Committees:

I am Steve Golden, Vice President of External Affairs for The Gas Company. Thank you for the opportunity to provide testimony on Senate Bill 2808, relating to Environmental Impact Statements.

**The Gas Company supports the passage of S.B. 2808** which would clarify the language in Chapter 343, Hawaii Revised Statutes, to not require environmental assessments (EAs) if the action in question proposes use of existing state or county roads for utilities exercising utility rights of way, among other things.

The language proposed in this bill would give the Council of Environmental Quality Control a clear statutory basis to administer its rules at HAR Section 11-20-8(a) (3) (D) to grant exemptions from the EA requirements for routine utility installations, including gas mains and services, under existing state and county roads or along the existing medians or state or county rights of way.

We believe that the uncertainty in the current status of the environmental laws and rules, in light of recent court precedent, has unnecessarily burdened the franchise rights of The Gas Company to add new customers by installing underground pipelines. Our franchise allows us to “lay pipes, mains, conduits,” etc. “in, on, above, along or under public rights of way throughout the State of Hawaii.”

For example, The Gas Company has been asked to furnish new gas service for Kaiser Hospital that requires us to install a utility gas line for 1600 feet under Moanalua Road. The State Highways Division asked Kaiser to submit a copy of its EA for its existing facilities—an EA that does not exist because it was not required for the area covered by the rules in effect when the hospital was built. Subsequently the issue has arisen as to whether The Gas Company itself must prepare an EA prior to installing a line and meter to connect the hospital. If such a requirement is imposed, gas service needed by the hospital could be delayed for several months.

The Gas Company appreciates your Committees' willingness to clarify the status of the law so that we as a utility can continue to carry on our business and serve Hawaii's homes and businesses with efficient gas energy.

Thank you for allowing The Gas Company to present these comments.



*The Forum for Commercial Real Estate*

NAIOP Hawaii  
P.O. Box 1601  
Honolulu, Hawaii 96806

Telephone: (808) 845-4994 -- Fax: (808) 847-6575 -- E-mail: [barbie@naiophawaii.org](mailto:barbie@naiophawaii.org)-- Web site:  
[www.naiophawaii.org](http://www.naiophawaii.org)

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**VIA EMAIL**

The Honorable Ron Menor, Chair, and  
Members of the Senate Committee  
on Energy and the Environment

The Honorable J. Kalani English, Chair, and  
Members of the Senate Committee on  
Transportation and International Affairs

Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: Testimony in Support of SB 2808, "Relating to Environment Impact Statements"

Dear Chairs Menor and English and Members of the Committees:

I am submitting this testimony **in support** of the above referenced bill, on behalf of the Hawaii chapter of the National Association of Industrial and Office Properties ("NAIOP Hawaii"). NAIOP Hawaii is an association of property owners, managers, developers, financial institutions and real estate related professionals who are involved in the areas of commercial and industrial real estate in the State of Hawaii.

The *Superferry* case stated that even if exemption determinations from Chapter 343 are given by an agency for actions within its exemption list, such determinations are always subject to being second-guessed and overruled by the courts if a judge believes that, contrary to the administrative record, the project will have "significant secondary" or "cumulative" effects, even if those effects are not directly related to the action being considered by the agency. This means that ultimately an exemption determination has no value, because it is always subject to being second-guessed by judges—in the *Superferry* case, years later.

The specific problem here dates back to the *Kahana Sunset* decision in 1997. There, the Hawaii Supreme Court ruled that because a pipeline would run through a public right-of-way, it meant an environmental review had to be done for the entire project. Given *Superferry*, state and



The Honorable Ron Menor, Chair, and  
Members of the Senate Committee  
on Energy and the Environment  
The Honorable J. Kalani English, Chair, and  
Members of the Senate Committee on  
Transportation and International Affairs  
February 6, 2008  
Page 2

county agencies are now taking the position that any time an action involves public roads, they are not going to take the risk of giving an exemption that may be overturned by the courts, and instead will require that at least an environmental assessment be prepared. (See, for example, Hawaii County Planning Director Chris Yuen's October 3, 2007 memo, stating that in light of *Superferry*, if there is any use of a state or county road, an environmental assessment will likely be required to be done for the entire project.)

Since almost all projects somehow involve public roads, they are all now potentially subject to having to go through the Chapter 343 process, even when it is obvious that there will be no adverse environmental effects. This is totally contrary to the original intent of Chapter 343, which provided that only actions undertaken in discrete categories trigger 343. This bill would clarify that if the only nexus between the project and 343 review is that it touches or involves a public road or trail, that does not trigger 343. Obviously, if Chapter 343 is otherwise triggered, this amendment would not affect that.

We believe that this is a fair and valid measure, which will preserve environmental review while exempting those projects to which the law was never intended to apply. We urge that the committee act favorably on this bill.

Thank you for the opportunity to testify on this matter.

Sincerely,



James K. Mee  
Chair, Legislative Affairs Committee



**EARTHJUSTICE**

*Because the earth needs a good lawyer*

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**SENATE COMMITTEES ON:  
ENERGY & ENVIRONMENT  
TRANSPORTATION & INTERNATIONAL AFFAIRS**

**ATTN: CHAIRS RON MENOR & KALANI ENGLISH  
VICE CHAIRS GARY L. HOOSER & MIKE GABBARD**

**Testimony Opposing SB 2808: Relating to Environmental Impact Statements**

**February 7, 2008, 2:00 p.m.  
Conference Room 414**

Aloha Chairs Menor and English, Vice Chairs Hooser and Gabbard, and Committee Members:

Earthjustice is a non-profit, public interest environmental law firm with many years of experience with environmental laws such as Haw. Rev. Stat. ch. 343, also known as the Hawai`i Environmental Policy Act or HEPA, as well as its federal counterpart, NEPA. Based on this extensive background, we strongly oppose SB 2808. This bill is unnecessary and unclear, and would severely undermine HEPA.

HEPA, as interpreted by the Hawai`i Supreme Court, is not overly broad, as SB 2808 suggests. As the Court's decisions make clear, the law already provides numerous exclusions for truly minor actions via duly promulgated categorical exemptions. This includes "construction or placement of minor structures accessory to existing facilities," Haw. Admin. R. § 11-200-8(a)(6). Thus, truly minor actions are already exempt from HEPA. However, when the use of public land or funds is part of a larger project that is not minor, then HEPA applies -- as it should. SB 2808 is therefore unnecessary.

SB 2808 is also unclear and contradictory. The bill is less than precise about the kinds of uses that are exempt. The bill also goes on to state that the "entirety of a development project" is not exempted. However, in eliminating the trigger by which HEPA would apply to the project in the first place, SB 2808 effectively exempts the entire project. Such ambiguity will spawn litigation.

Finally, SB 2808 would eviscerate HEPA. The use of public lands or funds is often the only trigger that applies to many development projects. The Sierra Club (Koa Ridge) and Kahana Sunset cases decided by the Hawai`i Supreme Court are prime examples of major development projects that would not have

had the benefit of HEPA review, but for the uses of public lands that SB 2808 seeks to exclude. Proponents of SB 2808 cannot point to a single truly minor project that was inappropriately subjected to HEPA review. On the other hand, many major projects escape HEPA review for lack of an applicable trigger, either by happenstance or because developers aggressively redesign their projects to avoid any triggers. In sum, SB 2808 would seriously diminish an important trigger in HEPA and reduce the already limited scope of the law.

Along these lines, it is important to realize that NEPA, as well as CEQA, the California state review law, apply broadly to actions requiring discretionary approval, subject to categorical exemptions. This highlights that the scope of HEPA is already limited as is, and that categorical exemptions, not amendments like SB 2808, are the proper means to exempt minor projects. If anything, HEPA should be amended to apply to more -- not less -- actions, in line with its federal and state counterparts.

SB 2808 unnecessarily undermines HEPA and its declared overall purpose of encouraging environmental review so that "environmental consciousness is enhanced, cooperation and coordination are encouraged, and public participation during the review process benefits all parties involved and society as a whole." Haw. Rev. Stat. § 343-1. We strongly urge you to kill this bill.

Very truly yours,



Isaac H. Moriwake  
Attorney  
Earthjustice

**Testimony to the Senate Committee on Energy & Environment and  
Transportation and International Affairs  
Thursday, February 7, 2008 at 2:00 p.m.  
Conference Room 414, State Capitol**

**RE: SENATE BILL NO. 2808 RELATING TO ENVIRONMENT  
IMPACT STATEMENTS**

Chairs Menor and English, Vice Chairs Hooser and Gabbard, and Members of the Committees:

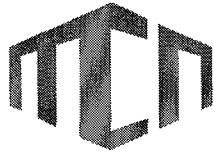
My name is Kathryn Matayoshi, Executive Director of the Hawaii Business Roundtable. The Roundtable supports SB 2808, to provide an immediate and short-term solution to clarify when an Environmental Assessment (EA) is required.

S.B. No. 2808 proposes to clarify that environmental assessments do not apply to state or county lands that include the use of existing streets, roads, highways, or trails or bikeways for limited purposes.

Our understanding is that recent court decisions have had the unintended consequence of requiring EAs or EIS where they were previously not considered to be required. This bill provides a temporary and narrow solution while a broader, more comprehensive evaluation of the existing laws can be conducted.

We also understand that the 2006 legislature appropriated money for the University of Hawaii environmental center to perform a comprehensive review of the State's current environmental impact statement process under chapter 343, Hawaii Revised Statutes. The Roundtable supports a comprehensive review of Chapter 343, HRS, and supports this bill as an interim measure pending completion of the study.

Thank you for your consideration.



# MAUI CONTRACTORS ASSOCIATION

February 5, 2008

Honorary Chair Ron Menor  
Committee on Energy and Environment  
Honorary Chair J. Kalani English  
Committee on Transportation and International Affairs  
State Capitol, Room 414  
Honolulu, HI 96813

Re: SB 2808 Relating to Environmental Impact Statements

Dear Chair Menor, Chair English and Committee Members,

Maui Contractors Association supports SB 2808 relating to Chapter 343 Environmental Impact Statements. This Bill clarifies that an environmental assessment shall not be required for an action that proposes the use of state or county lands or the use of state or county funds, if the use of the state or county land or the expenditure of state or county funds is limited to an existing public street, road, or highway, as defined in section 291-1, for an easement, drainage, waterlines, access improvements, utility right of way, or the like.

This Bill provides more certainty and predictability in the development process which is essential for our industry.

Thank you for the opportunity to comment.

Sincerely,

Jacqueline Haraguchi  
Executive Director



P.O. Box 3590  
Honolulu, HI 96811-3590  
Telephone (808) 544-0500

February 6, 2008

**The Honorable Ron Menor**  
Chairman-Committee on Energy and Environment  
**The Honorable J. Kalani English**  
Chairman-Committee on Transportation and Intenational Affairs  
State Senate  
415 South Beretania Street  
Honolulu, HI 96813

Sent via email: [testimony@capitol.hawaii.gov](mailto:testimony@capitol.hawaii.gov)

Re: SB 2808 Relating to Environmental Impact Statements **(In Support)**

Dear Chairs Menor & English:

My name is Clint Arnoldus, CEO & President of Central Pacific Bank, testifying in support of SB 2808. CPB is a full-service commercial bank with 39 branches statewide.

While we believe that environmental assessments play an important role in protecting our fragile community, recent court decisions appear to have expanded the application of the environmental laws well beyond the original legislative intent. The requirement of conducting environmental assessments on otherwise permitted projects solely because they touch state roads is too broad an interpretation that will add unnecessary delays and costs to projects. This measure would add reasonableness to the law.

Accordingly, I ask for your support of this bill and thank you for the opportunity to testify.

Aloha,

A handwritten signature in black ink that reads 'Clint Arnoldus'.

Clint Arnoldus  
President & Chief Executive Officer  
Email: [clint.arnoldus@centralpacificbank.com](mailto:clint.arnoldus@centralpacificbank.com)



## *Hawaii's Thousand Friends*

25 Malunui Ave., Suite 102., PMB 282 • Kailua, HI 96734 • Phone/Fax: (808) 262-0682 E-mail: htf@lava.net

February 7, 2008,

Testimony via email

### COMMITTEE ON ENERGY AND ENVIRONMENT

Senator Ron Menor, Chair  
Senator Gary Hooser, Vice Chair

### COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS

Senator J. Kalani English, Chair  
Senator Mike Gabbard, Vice Chair

### SB 2808 RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

Committee Chairs and members:

Hawaii's Thousand Friends, a statewide non-profit land use organization, **opposes** exempting the use of state or county lands or funds as a Chapter 343 Environmental Impact Statements trigger when used for an existing public street, road, or highway, an easement, drainage, waterlines, access improvements, or utility right of way.

#### **Hawai`i Supreme Court Citizens for Protection of North Kohala Coastline, 91 Hawai`i 94 (1999)**

In this case the County's approval of a Special Management Area Permit for a proposed 387-acre development (including a hotel, residential subdivision, 18-hole golf course, etc.). Citizens for Protection of North Kohala Coastline argued that the proposed construction of two underpasses below the Akoni Pule Highway for golf carts and maintenance vehicles to travel to portions of the golf course situated on either side of the highway constitute the use of state lands within the meaning of HRS Chapter 343, thereby requiring environmental review of the project.

The land consuming hotel with increased traffic and pressures on sewers, water and roads did not trigger Chapter 343 environmental review and public input. The 18-hole golf course requiring a million gallons of water a day did not trigger Chapter 343 environmental review and public input. A large residential subdivision with increased impacts on schools and other public services did not trigger Chapter 343 environmental review and public input. It was the two underpasses beneath a **public highway**, ruled the court, that constitutes "use of State lands" within the meaning of HRS §343-5(a)(1) thus triggering environmental review and public input.

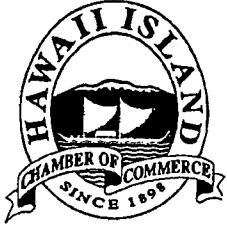
SB 2808 fails to differentiate between major from minor actions, removes a portion of the law that applies to proposed actions on private property and undercuts requirements to determine secondary or cumulative effects of a proposed development.

In closing we remind you of the legislative §343-1 findings and purpose:

“The legislature finds that the quality of humanity’s environment is critical to humanity’s well being, that humanity’s activities have broad and profound effects upon the interrelations of all components of the environment, and that an environmental review process will integrate the review of environmental concerns with existing planning processes of the State and counties and alert decision makers to significant environmental effects which may result from the implementation of certain actions. The legislature further finds that the process of reviewing environmental effects is desirable because environmental consciousness is enhanced, cooperation and coordination are encouraged, and public participation during the review process benefits all parties involved and society as a whole.

It is the purpose of this chapter to establish a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations.”





# Hawaii Island Chamber of Commerce

106 Kamehameha Avenue  
Hilo, Hawaii 96720  
Phone: (808) 935-7178  
Fax: (808) 961-4435  
email: [hicc@interpac.net](mailto:hicc@interpac.net)  
[gohilo.com](http://gohilo.com)

**Testimony to the Senate Committee on Energy & Environment and  
Transportation and International Affairs  
Thursday, February 14, 2008 at 2:00 p.m.  
Conference Room 414, State Capitol**

**RE: SUPPORTING SENATE BILL NO. 2808 RELATING TO ENVIRONMENT IMPACT  
STATEMENTS**

Chairs Menor and English, Vice Chairs Hooser and Gabbard, and Members of the Committees:

My name is Robert Williams and I am President of the Hawaii Island Chamber of Commerce. Our Chamber has over 700 members including more than 300 Big Island businesses. I am here today representing our Chamber's support of SB 2808. It is critically important for the Legislature to take action this year to remedy a situation created by the Department of Transportation (DOT) memo of May 2007 regarding the Attorney General's opinion of the decision in the Koa Ridge case. The DOT memo said that they would not continue processing applications from landowners for improvements within State right of ways unless the owner could show that there has been compliance with Chapter 343.

The results from the DOT memo are that now the DOT and the counties are requiring an EA or EIS for a landowner's entire property when that landowner has to do work inside or adjacent to a government road right of way. Examples of actions that are now requiring an EA or EIS are driveways, aprons, channelized lanes, and connections to utility lines located in the government road right of way. The list of exemptions in Chapter 343 is quite limited. While it includes single family homes up to 3500 SF and multifamily homes up to four units, it does not include larger homes, businesses, or small subdivisions that would not normally be required to do an EA or EIS.

The Hawaii Island Chamber of Commerce is a strong supporter of the EA and EIS process. We believe that an EA or EIS serves a very important function in protecting our environment. However, the process is cheapened when the permitted action does not require an EA or EIS, but is triggered for the process simply by needing to connect to a government road or public utility. The trigger should be the scale, location, or zoning of the project as determined by existing state and county laws.

This issue is impacting landowners and businesses everyday as applicants for permits from the County of Hawaii or the DOT are being told that their application cannot be processed without an EA or EIS as they will be working within the government road right of way. To complete the EA or EIS process takes at least 6 to 12 months and costs \$30,000 to \$50,000 or more. Does it really make sense to ask a business owner that only needs to pave a driveway apron or connect to a utility to his or her new business location to perform a costly and time consuming process that has no benefit to the public, government, or himself.

We ask you to fix this unintended problem with Chapter 343 by supporting SB 2808.

Thank you for allowing me to share our views with you today.

Robert G. Williams  
President



February 7, 2008

Senator Ron Menor, Chair;  
 Senator Gary Hooser, Vice-Chair &  
 Members of the Senate Committee on Energy & Environment; and

Senator Kalani English, Chair;  
 Senator Mike Gabbard, Vice Chair &  
 Members of the Senate Committee on Transportation and International Affairs

*Testimony for Thursday, February 14, 2008 at 2:00 p.m.*  
*Conference Room 414, State Capitol*  
*Submitted Via Fax: 1-800-586-6659*

**RE: SENATE BILL NO. 2808 RELATING TO ENVIRONMENT IMPACT STATEMENTS**

Dear Chairs Menor and English, Vice Chairs Hooser and Gabbard, and Members of the Committees:

I am writing today on behalf of the Maui Chamber of Commerce, an organization comprised of over 940 members, 88% of which are small businesses with 25 or fewer employees. We work on behalf of members and the entire business community to improve the state's economic climate, support the business sector, and to foster positive action on issues of common concern.

Like the Chamber of Commerce of Hawaii, our organization strongly supports SB 2008, to provide an immediate and short-term solution to clarify when an Environmental Assessment (EA) is required. We too prefer the language contained in SB 2037 which proposes to amend Section 343-5. (a), (1) Hawaii Revised Statutes, by simply adding the following.

*For purposes of this section state or county lands shall not include an existing public street, road, or highway as defined in section 291-1, or any existing trail or bikeway.*

S.B. No. 2808 proposes to clarify that environmental assessments do not apply to state or county lands that include the use of existing streets, roads, highways, or trails or bikeways for limited purposes.

Our concern is the "unintended consequences" of the recent court decisions. The courts relied on past decisions where any action that involved the use of a state or county road right of way was a "trigger" for the EAVEIS. Because an access improvement, easement, drainage, waterline, etc., is now viewed as a use of state or county lands when it touches (over, under, across) a state or county road right of way, the entire project is then required to prepare and environmental assessment.

Page 2  
Maui Chamber of Commerce Testimony on SB 2808  
Thursday, February 14, 2008

This legislation is necessary because:

1. The only projects that are excluded from this new requirement are:
  - a. One single family residence, and
  - b. Projects that already have an approved EA or EIS;
2. Projects without an EA or EIS will be required to prepare one which will result in:
  - a. Increased costs, and
  - b. Delays to the project;
3. Confusion exists right now on who the accepting authority will be if and when an EAVEIS is required for a project (i.e. neither State DOT nor County Planning Departments have the staff to process the potential number of EAVEIS:);
4. The current interpretation makes a mockery of the EAVEIS process, requiring 343 documents for in-fill and projects with insignificant environmental impacts;
5. If the legislative intent was that an EAVEIS would be required any time the project touches a public road, then the law should be changed to require an EAVEIS for all projects because all projects, at some point, connect to a public road.

We understand that the 2006 legislature passed Act 294, appropriating money to the University of Hawaii Environmental Center to perform a comprehensive review of the State's current environmental impact statement process under Chapter 343, Hawaii Revised Statutes. The study was initiated but never completed due to, as we understand it, internal errors in procurement of the contract by the Department of Health.

The Maui Chamber of Commerce, along with a number of other organizations, has become aware of the need for a comprehensive review of Chapter 343, HRS based on the "unintended consequences" of recent court decisions. We are advocating for legislation to address the immediate problems created by the recent court decisions, while working on the comprehensive review of Chapter 343. The legislation to address the immediate problems should have a sunset to coincide with the comprehensive review. Therefore, we urge your support of SB 2808.

Thank you for considering our position. We look forward to your favorable support.

Sincerely,



Pamela Tumpap  
President

**Committee on Energy and Environment  
and  
Committee on Transportation and International Affairs  
Hearing  
Thursday, February 14, 2008, 2:00 p.m.  
Conference Room 414**

**Senator Ron Menor, Chair  
and  
Senator J. Kalani English, Chair**



**Testimony on SB2808**

Dear Chairs Menor and English and Members of the Committees:

My testimony is in **STONG SUPPORT** of SB2808. My name is Lynn McCrory and I am the President of PAHIO Development, Inc. We are a locally owned and operated time share development company on the island of Kauai.

SB2808 clarifies that an environmental assessment (EA) is not required when an existing public street, an easement, drainage, waterlines, access improvements, utility right of way or the like from a development project would access either state or county lands or require the use of state or county funds.

The completion of an EA was not intended for situations as listed above. Only as a result of the recent court decision, could it be construed that any of the above could require an EA to be completed. This is not what was intended, and will result in an EA being completed for insignificant environmental impacts.

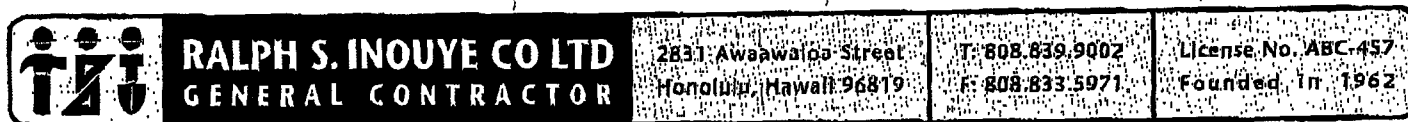
I would ask that you consider the inclusion of "waste water lines" to the listing, so as to not exclude this public use. I humbly ask for your consideration for **SUPPORT** of SB2808 with the inclusion noted above. Mahalo!

Me ke aloha pumehana  
With warm aloha,

PAHIO DEVELOPMENT, INC.

A handwritten signature in black ink, appearing to read "Lynn P. McCrory", written in a cursive style.

Lynn P. McCrory  
President



February 12, 2008

TO: THE HONORABLE SENATORS MENOR AND ENGLISH, CHAIRS, AND  
MEMBERS COMMITTEE ON ENERGY AND ENVIRONMENT, COMMITTEE  
ON TRANSPORTATION AND INTERNATIONAL AFFAIRS

SUBJECT: S. B. 2808 RELATING TO THE ENVIRONMENTAL IMPACT STATEMENTS

Dear Chairs Menor and English and Members:

Ralph S. Inouye Co., Ltd. (RSI), general contractor, **strongly supports** the passage of S.B. 2808, to provide an immediate and short-term fix to clarify when an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS) may be required, pending a more comprehensive review of Chapter 343, HRS, the EIS Law.

S.B. No. 2808 proposes to clarify that environmental assessments do not apply to state or county lands that include the use of existing streets, roads, highways, or trails or bikeways for limited purposes.

Our concern is the "unintended consequences" of the recent court decisions. The courts relied on past decisions where any action that involved the use of a state or county road right of way was a "trigger" for the EA/EIS. Because an access improvement, easement, drainage, waterline, etc., is now viewed as a use of state or county lands when it touches (over, under, across) a state or county road right of way, the entire project is then required to prepare and environmental assessment for the entire project.

This legislation is necessary because:

1. The only projects that are excluded from this new requirement are:
  - a. One single family residence;
  - b. Projects that already have an approved EA or EIS.
2. Projects without an EA or EIS will be required to prepare one which will result in:
  - a. Increased costs, and
  - b. Delays to the project;
3. Confusion exists right now on who the accepting authority will be if and EA/EIS is required for a project (i.e. neither State DOT nor County Planning Departments have the staff to process the potential number of EA/EIS.)

SENATE BILL NO. SB 2808  
RELATING TO THE ENVIRONMENTAL IMPACT STATEMENTS  
FEBRUARY 12, 2008

4. The current interpretation makes a mockery of the EA/EIS process, requiring 343 documents for in-fill and projects with insignificant environmental impacts;
5. If the legislative intent was that an EA/EIS would be required any time the project touches a public road, then the law should be changed to require an EA/EIS for all projects because all projects, at some point, connect to a public road.

We understand that the 2006 legislature passed Act 294 which appropriated money to the University of Hawaii environmental center to perform a comprehensive review of the State's current environmental impact statement process under chapter 343, Hawaii Revised Statutes. The study was initiated but never completed due to, as we understand, internal errors in procurement of the contract by the department of health.

RSI along with a number of other companies and organizations, has become aware of the need for a comprehensive review of Chapter 343, HRS based on the "unintended consequences" of recent court decisions. RSI advocates legislation to address the immediate problems created by the recent court decisions, while working on the comprehensive review of Chapter 343. The legislation to address the immediate problems should have a sunset to coincide with the comprehensive review.

Thank you for considering our concerns on the above bill.

Very Truly Yours,

RALPH S. INOUE CO., LTD.



Lance M. Inouye  
President

LMI:ma



KENNETH K. KUROKAWA, P.E.  
LAMBERT J. YAMASHITA, P.E.  
DONOHUE M. FUJII, P.E.  
STANLEY T. WATANABE  
TERRANCE S. ARASHIRO, PE

**February 14, 2008**

**Committees on Energy and Environment and  
Transportation and International Affairs  
Conference Room 414  
2:00 P.M.**

**Dear Chairs Menor and English and Members:**

**Subject: Senate Bill No. SB 2808 Relating to the Environmental Impact  
Statements**

Austin, Tsutsumi & Associates, Inc. is a 55 employee, locally owned and managed, civil engineering firm in business for over 70 years. **We strongly support SB 2808 "Relating to Environmental Impact Statements" that would provide an immediate and a short-term fix to clarify when an Environmental Assessment (EA) is required.**

SB2808 proposes to clarify that environmental assessments do not apply to state or county lands that include the use of existing streets, roads, highways, or trails or bikeways for limited purposes.

Our concern is the "unintended consequences" of the recent court decisions. The courts relied on past decisions where any action that involved the use of a state or county road right of way was a "trigger" for the EA/EIS. Because an access improvement, easement, waterline crossing, etc., is now viewed as a "use" of state or county lands when it touches (over, under, across) a state or county road right of way, the project is required to prepare an environmental assessment for the entire project. We believe that this is an unreasonable requirement that must be addressed.

Austin, Tsutsumi & Associates, Inc. appreciates the continuing efforts of your committee and the members of the House to improve the business climate in Hawaii. We trust that this letter will make a difference and thank you for the opportunity to testify in **support of SB2808.**

Sincerely,

Terrance S. Arashiro, PE  
Vice President  
Austin, Tsutsumi & Associates, Inc.

**testimony**

---

**From:** Fred Moore [discover@hsimechanical.com]  
**Sent:** Wednesday, February 13, 2008 9:50 AM  
**To:** testimony  
**Cc:** Karen Iwamoto  
**Subject:** SB 2808 . . .

**February 14, 2008**  
**Committees on Energy and Environment and Transportation and International Affairs**  
**Conference Room 414**  
**2:00 P.M.**

**Dear Chairs Menor and English and Members:**

**Subject: Senate Bill No. SB 2808 Relating to the Environmental Impact Statements**

I am Fred Moore, President - HSI Mechanical, Inc. A Hawai'i Small Business since 1979.

**HSI Mechanical, Inc. strongly supports SB 2808 “Relating to Environmental Impact Statements” that would provide an immediate and a short-term fix to clarify when an Environmental Assessment (EA) is required.**

SB2808 proposes to clarify that environmental assessments do not apply to state or county lands that include the use of existing streets, roads, highways, or trails or bikeways for limited purposes.

My concern is the “unintended consequences” of the recent court decisions. The courts relied on past decisions where any action that involved the use of a state or county road right of way was a “trigger” for the EA/EIS. Because an access improvement, easement, drainage, waterline, etc., is now viewed as a use of state or county lands when it touches (over, under, across) a state or county road right of way, the entire project is then required to prepare and environmental assessment for the entire project.

Thank you for the opportunity to share my views with you.

With Aloha, Fred Moore  
President, HSI Mechanical, Inc.  
808-478-8482



**February 14, 2008**  
**Committees on Energy and Environment and Transportation and International**  
**Affairs**  
**Conference Room 414**  
**2:00 P.M.**

**Dear Chairs Menor and English and Members:**

**Subject: Senate Bill No. SB 2808 Relating to the Environmental Impact Statements**

I am Peter Cooper, President of Cooper and Cooper LLC. Cooper & Cooper is a boutique development management firm focusing on complex and interesting real estate projects within the Hawaiian Islands.

**I strongly support SB 2808 “Relating to Environmental Impact Statements” that would provide an immediate and a short-term fix to clarify when an Environmental Assessment (EA) is required.**

SB2808 proposes to clarify that environmental assessments do not apply to state or county lands that include the use of existing streets, roads, highways, or trails or bikeways for limited purposes.

My concern is the “unintended consequences” of the recent court decisions. The courts relied on past decisions where any action that involved the use of a state or county road right of way was a “trigger” for the EA/EIS. Because an access improvement, easement, drainage, waterline, etc., is now viewed as a use of state or county lands when it touches (over, under, across) a state or county road right of way, the entire project is then required to prepare and environmental assessment for the entire project.

Thank you for the opportunity to share my views with you.



**Associated Builders and Contractors of Hawaii**  
**80 Sand Island Access Road, M-119**  
**Honolulu, Hawaii 96819**

February 13, 2008

TESTIMONY to be PRESENTED to the  
SENATE ENERGY & ENVIRONMENT AND TRANSPORTATION AND  
INTERNATIONAL AFFAIRS COMMITTEES,  
For hearing on Thursday, February 14, 2008, 2:00 P.M., Room 414

by

Karl F. Borgstrom, President  
ASSOCIATED BUILDERS & CONTRACTORS OF HAWAII

IN SUPPORT OF

SENATE BILL 2808  
RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

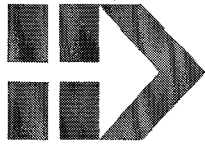
CHAIRS AND MEMBERS OF THE COMMITTEES:

Recent court decisions have resulted in unintended consequences impacting every development and construction project in the State of Hawaii that abuts a public roadway, to the effect that the installment of easements, access improvements, or service connections which are tangential to an existing state or county road would trigger environmental impact assessments and possibly environment impact statement requirements.

The Associated Builders and Contractors of Hawaii believes that a literal interpretation and application of the courts' language would effectively halt virtually all construction projects that of necessity must be connected to services but otherwise have no environmental impact.

We therefore strongly support the intent of SB 2808 to clarify that environmental assessments do not apply to state or county lands that include the use of existing streets, roads, highways, or trails and bikeways for such limited purposes.

Thank you for your consideration; should the need arise, ABC Hawaii will respond to any requests of the Committees for additional information regarding this matter.



# HAWAIIAN DREDGING CONSTRUCTION COMPANY

P.O. Box 4088  
Honolulu, HI 96812-4088  
Phone: (808) 735-3211  
Fax: (808) 735-7416

February 12, 2008

February 14, 2008

Committees on Energy and Environment and Transportation and International Affairs  
Conference Room 414  
2:00 P.M.

Dear Chairs Menor and English and Members:

SUBJECT: SUPPORT FOR SENATE BILL 2808 RELATING TO EIS

My name is Kirt Pruyn, and I am the Manager of Business Development & Community Relations for Hawaiian Dredging Construction Company. Founded in 1902, Hawaiian Dredging is Hawaii's largest and oldest full-service general contractor, currently employing over 1,300 employees.

We strongly support SB 2808 "Relating to Environmental Impact Statements" because it would provide an immediate, reasonable, and absolutely necessary short-term fix to clarify when an Environmental Assessment (EA) is required.

SB2808 would clarify that environmental assessments do not apply to state or county lands that include the use of existing streets, roads, highways, or trails or bikeways for limited purposes.

Our concern is shared by many in the community and goes to the "unintended consequences" of recent court decisions. The courts relied on past decisions where any action that involved the use of a state or county road right of way was a "trigger" for the EA/EIS. Because an access improvement, easement, drainage, waterline, and the like is now viewed as a use of state or county lands when it touches (over, under, across) a state or county road right of way, the entire project is stopped and required to prepare an environmental assessment which can result in great additional expense and time delays.

Certainly this was not a foreseen and intended consequence of the court's actions. The current interpretation makes a mockery of the EA/EIS process, requiring "343" documents for in-fill and projects with insignificant environmental impacts.

We appreciate the need for a comprehensive review of Chapter 343, HRS based on the "unintended consequences" of recent court decisions, but urge passage of this immediate and interim legislation to address the current and significant problems created by the recent court decisions.

Mahalo for the opportunity to share our views with you.

HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO  
Gentry Pacific Design Center, Suite 215A  
560 N. Nimitz Highway, #50  
Honolulu, Hawaii 96817  
(808) 524-2249 - FAX (808) 524-6893

February 13, 2008

Honorable Senator Ron Menor, Chair  
Honorable Senator Gary L. Hooser, Vice Chair  
Members of the Senate Committee on Energy and Environment  
Hawaii State Capital  
415 South Beretania Street  
Honolulu, HI 96813

RE: **IN SUPPORT OF SB 2808**  
RELATING TO ENVIRONMENTAL IMPACT STATEMENTS  
Hearing: Thursday, February 14, 2008, 2:00 p.m.

Dear Chair Menor, Vice Chair Hooser and the Senate Committee on Energy and Environment:

For the Record my name is Buzz Hong the Executive Director for the Hawaii Building & Construction Trades Council, AFL-CIO. Our Council is comprised of 16-construction unions and a membership of 26,000 statewide.

The Council supports the passage of SB2808, which exempts lands from environmental impact statement law, state or county lands for specified uses of existing public street, road, highway, trail, or bikeways.

Thank you for the opportunity to submit this testimony in support of SB2808.

Sincerely,

William "Buzz" Hong  
Executive Director

WBH/dg

COMMITTEE ON ENERGY AND ENVIRONMENT

Senator Ron Menor, Chair  
Senator Gary L. Hooser, Vice Chair

COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS

Senator J. Kalani English, Chair  
Senator Mike Gabbard, Vice Chair

Re: SB 2808 RELATING TO ENVIRONMENTAL IMPACT STATEMENTS  
Hearing on Thursday, February 7, 2008 @ 2 pm in Conference Room 414

Dear Chairs Menor and English and Vice Chairs Hooser and Gabbard:

I **strongly oppose** SB 2808 which exempts lands from environmental impact statement law, state or county lands for specified uses of existing public street, road, highway, trail, or bikeways. As we have seen with the widening of Kalaniana'ole Highway and more recently the Queen Street extension, many iwi kupuna were found and some inexcusably ground up in pile drivings or left in storage for years. If you allow this exemption of our laws pertaining to historic preservation (HRS 343-5a), you are giving developers permission to build their projects with impunity. That must not happen.

Mahalo,

*Jeannine*

Jeannine Johnson  
5648 Pia Street  
Honolulu, Hawai'i 96821  
Ph: 373-2874 / 523-5030 (w)  
Email: [jeannine@hawaii.rr.com](mailto:jeannine@hawaii.rr.com)  
"PUPUKAHI I HOLOMUA"  
(Unite in Order to Progress)

Dear Honorable Chair and Members:

Please accept this testimony in FAVOR of SB 2808.

SB 2808 will address the immediate negative impact caused by recent legal interpretations of Chapter 343 by certain State and County Departments. In a nutshell, the interpretations are generally requiring an EA for simply connecting utilities or using legal access points to State and County roads.

The intent of Chapter 343 was never to require EA's for such simple connections and use of public roadways. If the project requires an EA via its own "trigger", then the language in SB 2808 does not exempt the project from an EA.

This is the right bill to address a new issue without compromising the integrity of Chapter 343.

Mahalo,

David Goode  
President  
KSD Hawaii  
8 Kiopa'a Street, Suite 201  
Pukalani, Hawaii 96768  
Phone: (808) 572-3011, ext. 206  
Fax: (808) 572-8378

Leonard K.P. Leong  
Vice President

February 12, 2008



The Honorable Senators Menor and English, Chairs, and Members  
Committee on Energy and Environment  
Committee on Transportation and International Affairs  
State Senate, Room 414  
Honolulu, Hawaii 96813

Reference: Senate Bill No. SB 2808

Dear Chairs Menor and English and Members:

Royal Contracting Co., Ltd supports the SB No. 2808 to provide an immediate and short term fix to clarify when an Environmental Assessment is required.

Use of roads and highway for limited purposes should not require an environmental assessment.

Easements, access improvements (driveway) utility connections should not require an Environmental Assessment.

The public trust on the EIS system needs to be reaffirm.

Very truly yours,

ROYAL CONTRACTING CO., LTD.

  
Leonard K.P. Leong  
Vice President

February 7, 2008

The Honorable Senators Menor and English, Chairs, and Members  
Committee on Energy and Environment  
Committee on Transportation and International Affairs  
State Senate, Room 414  
Honolulu, Hawaii 96813

Dear Chairs Menor and English and Members:

**Subject: Senate Bill No. SB 2808 Relating to the Environmental Impact Statements**

- My name is Joseph Mastrantonio and I have been a small Real Estate Developer in Honolulu for the past 30 years.

**I strongly supports S.B. No. 2808, to provide an immediate and short-term fix to clarify when an Environmental Assessment (EA) is required.**

S.B. No. 2808 proposes to clarify that environmental assessments do not apply to state or county lands that include the use of existing streets, roads, highways, or trails or bikeways for limited purposes.

Our concern is the "unintended consequences" of the recent court decisions. The courts relied on past decisions where any action that involved the use of a state or county road right of way was a "trigger" for the EA/EIS. Because an access improvement, easement, drainage, waterline, etc., is now viewed as a use of state or county lands when it touches (over, under, across) a state or county road right of way, the entire project is then required to prepare and environmental assessment for the entire project.

This legislation is necessary because:

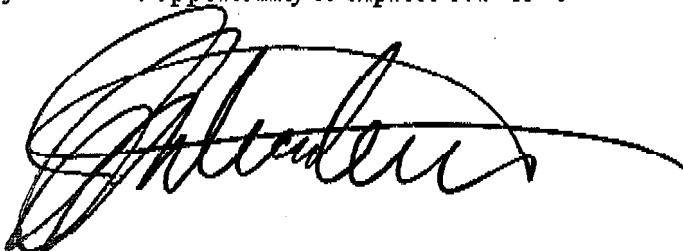
1. The only projects that are excluded from this new requirement are:
  - a. One single family residence;
  - b. Projects that already have an approved EA or EIS.
2. Projects without an EA or EIS will be required to prepare one which will result in:
  - a. Increased costs, and
  - b. Delays to the project;
3. Confusion exists right now on who the accepting authority will be if and EA/EIS is required for a project (i.e. neither State DOT nor County Planning Departments have the staff to process the potential number of EA/EIS.)
4. The current interpretation makes a mockery of the EA/EIS process, requiring 343 documents for in-fill and projects with insignificant environmental impacts;
5. If the legislative intent was that an EA/EIS would be required any time the project touches a public road, then the law should be changed to require an EA/EIS for all projects because all projects, at some point, connect to a public road.



We understand that the 2006 legislature passed Act 294 which appropriating money to the University of Hawaii environmental center to perform a comprehensive review of the State's current environmental impact statement process under chapter 343, Hawaii Revised Statutes. The study was initiated but never completed due to, as we understand, internal errors in procurement of the contract by the department of health.

The Chamber, along with a number of other organizations, has become aware of the need for a comprehensive review of Chapter 343, HRS based on the "unintended consequences" of recent court decisions. The Chamber is advocating legislation to address the immediate problems created by the recent court decisions, while working on the comprehensive review of Chapter 343. The legislation to address the immediate problems should have a sunset to coincide with the comprehensive review.

Thank you for this opportunity to express our views.

A handwritten signature in black ink, appearing to read "P. H. ...", with a long horizontal flourish extending to the right.

**testimony**

---

**From:** stoked.nihilist@gmail.com on behalf of Kim Kido [kidokimb@hawaii.edu]  
**Sent:** Wednesday, February 06, 2008 9:09 AM  
**To:** testimony  
**Subject:** Testimony SB 2808 EIS Exemptions

COMMITTEE ON ENERGY AND ENVIRONMENT

Senator Ron Menor, Chair  
Senator Gary L. Hooser, Vice Chair

COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS

Senator J. Kalani English, Chair  
Senator Mike Gabbard, Vice Chair

**DATE:** Thursday, February 7, 2008  
**TIME:** 2:00 p.m.  
**PLACE:** Conference Room 414

State Capitol

415 South Beretania Street

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Members of ENE/TIA, JDL:

This bill seeks to drive the final nail into the coffin of Chapter 343. I strongly oppose it. The public needs more disclosure, not less. The public has a right to know how their resources are being affected by development, on state land or otherwise.

What this bill seeks to exempt was exactly what triggered the EIS process for the Koa Ridge development in Central Oahu, one that sought to construct over 7000 homes on prime agricultural lands. Take it from someone in the building industry: allowing development to sprawl is not sustainable. Had the EIS process not been enacted, the public at large may never have known what was at stake.

Kim Kido  
Honolulu, HI 96817

**testimony**

---

**From:** Helen [heleny@hawaii.rr.com]  
**Sent:** Wednesday, February 06, 2008 11:55 AM  
**To:** testimony  
**Subject:** SB 2808

Committee on Energy and Environment:  
Senator Ron Menor and Senator Gary Hooser

I am strongly opposed to SB 2808. Hawaii is facing much rapid change and therefore any exemptions of any lands should be governed by strong laws relating to the environment. Environmental Impact States are a necessary and open means of protection. If anything they should be strengthened.

Thank you,           Helen Yahner  
                          Kauai

**testimony**

---

**From:** Kevin Kelly [kevink@hawaii.edu]

**Sent:** Wednesday, February 06, 2008 12:33 PM

**To:** testimony

**Subject:** COMMITTEE ON ENERGY AND ENVIRONMENT, February 7, 2:00 p.m.

Dear Chairs Menor and English, vice-chairs Hooser and Gabbard,

Thank you for the opportunity to testify IN OPPOSITION to SB2808.

I believe this bill will set back environmental law in Hawaii and in a time where we are looking for ways to protect our environment and find sustainable ways to live in our island ecosystem. This legislation moves our society in the wrong direction; away from environmental protection. If anything, we need to insure that public funds are used in ways that promote stewardship of the environment.

Thank you,  
Kevin Kelly  
Kahuku

**testimony**

---

**From:** Laurel Brier [browerr001@hawaii.rr.com]  
**Sent:** Wednesday, February 06, 2008 12:33 PM  
**To:** testimony  
**Subject:** SB 2808 - CEE and CTIA - 2/7/08 2pm

Testimony to  
COMMITTEE ON ENERGY AND ENVIRONMENT  
COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS

SB 2808  
To be heard February 7, 2008 at 2pm

Please oppose any legislation that will weaken our environmental laws. SB 2808 removes the roadway trigger from the current environmental review law which has helped protect our lands in the past from uncontrolled development. It may be appropriate for there to be an exemption for trails and bikeways but not street, roads or highways.

Thank you for protecting our environment. There is no more important job to be done.

Aloha,  
The Brier and Brower family from Anahola, Hawaii

**testimony**

---

**From:** diane rosenkranz [d.rosenkranz@yahoo.com]

**Sent:** Wednesday, February 06, 2008 12:15 PM

**To:** testimony

**Subject:** SB 2808 Testimony

Testimony for the following: SB 2808 - **Opposed!**

Testimony to be submitted to the following committees:

COMMITTEE ON ENERGY AND ENVIRONMENT

Senator Ron Menor, Chair

Senator Gary L. Hooser, Vice Chair

COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS

Senator J. Kalani English, Chair

Senator Mike Gabbard, Vice Chair

NOTICE OF HEARING

**DATE:** Thursday, February 7, 2008

**TIME:** 2:00 p.m.

**PLACE:** Conference Room 414

State Capitol

415 South Beretania Street

Aloha,

My name is Diane Rosenkranz and I **strongly oppose** the passing of SB 2808 for the following reasons:

- 1) This is a measure that would significantly weaken Hawaii's three-decade old environmental review.
- 2) Hawaii's environmental review law -- which simply requires the disclosure of environmental, social, and cultural impacts before permitting begins -- has helped to make our state more sustainable and better planned. We need more disclosure, not less.

Please hold off on any amendments to Chapter 343 until a comprehensive study of the law is complete.

Mahalo for your consideration.

Warm regards,

Diane Rosenkranz

*Grant Solutions*

(808) 651-5197

[d.rosenkranz@yahoo.com](mailto:d.rosenkranz@yahoo.com)

P.O. Box 1170 Kekaha, HI 96754

*Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has.- Margaret Mead*

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Never miss a thing. [Make Yahoo your homepage.](#)

**testimony**

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**From:** Lee Roy [leeroy@hawaii.rr.com]  
**Sent:** Wednesday, February 06, 2008 1:01 PM  
**To:** testimony  
**Subject:** committee on Energy and Environment Bill SB 2808 hearing date: Feb. 7 @ 2pm.

I believe as a taxpayer my right is to be able to remain involved and informed regarding use of public land and or money. Please DO NOT support Bill SB 2808. Lee Brooke Roy (resident)



**testimony**

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**From:** Barbara Elmore [brelmore8@yahoo.com]  
**Sent:** Wednesday, February 06, 2008 1:10 PM  
**To:** testimony  
**Subject:** Testimony with concerns about SB 2808  
**Follow Up Flag:** Follow up  
**Flag Status:** Red

February 6, 2008

TO: Committee on Energy and Environment and  
Committee on Transportation and  
International Affairs

RE: SB 2808

Honorable Chairmen and Senators:

I am a resident of Kaua'i and I am concerned about the implications of SB 2808. I feel that this proposal would significantly weaken Hawaii's environmental review laws, at a time when it is even more important than ever to protect our fragile environment.

I don't think it's a good idea to remove the public roadway trigger from our environmental review law, Chapter 343 (for easement, drainage, waterlines, access improvements, utilities, etc.)

Thank you for your consideration.

Barbara Elmore  
P.O. Box 3142  
Lihu'e, HI 96766  
(808) 245-9687  
brelmore8@yahoo.com

## testimony

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**From:** Les Gale [happydreamr@hotmail.com]  
**Sent:** Wednesday, February 06, 2008 5:53 PM  
**To:** testimony  
**Cc:** happydreamr@hotmail.com  
**Subject:** Testimony relating to E.I. statements.

Aloha, Senators of the "Committee on Energy and Environment. And Senators of the"Committee on Transportation and International Affairs.

Date; Thursday, February 7, 2008

Time; 2:00 p.m.

Place; Conference Room 414

State Capitol

415 South Beretania Street

I support the "Environmental Impact Statements"!! I don't think the E. I. S. should be changed/lessened for any one, corporation or government. Unless it's to tighten up or make the E. I. S. stronger!

I've seen too many "Superferry" scenarios in the construction industry to believe that what certain/special interest want is for the the best for me or all of us.

I do believe a strong E.I.S. that is enforced is usually my first and last defence. Mahalo and aloha Les Gale/Elaine Valois

**testimony**

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**From:** Kathleen Pahinui [pahinui001@hawaii.rr.com]  
**Sent:** Wednesday, February 06, 2008 6:49 PM  
**To:** testimony  
**Subject:** Testimony Against SB 2808 Relating to Environmental ImpactStatements

THE SENATE  
THE TWENTY-FOURTH LEGISLATURE  
REGULAR SESSION OF 2008

COMMITTEE ON ENERGY AND ENVIRONMENT  
Senator Ron Menor, Chair  
Senator Gary L. Hooser, Vice Chair

COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS  
Senator J. Kalani English, Chair  
Senator Mike Gabbard, Vice Chair

NOTICE OF HEARING  
DATE: Thursday, February 7, 2008  
TIME: 2:00 p.m.  
PLACE: Conference Room 414  
State Capitol  
415 South Beretania Street

A G E N D A  
SB 2808 Testimony

**RELATING TO ENVIRONMENTAL IMPACT STATEMENTS.**

**Exempts lands from environmental impact statement law, state or county lands for specified uses of existing public street, road, highway, trail, or bikeways.**

Aloha Senator Menor and Senator English and respective Committee Members:

I do not support SB2808. Not allowing infrastructure changes to trigger an EIS will allow developers to make improvements for large scale projects without any community input as to the impact of said projects.

I know this can be a cumbersome and expensive process but it is the only one we have that allows the public some way of restraining uncontrolled growth. It acts as a brake, a time-out to make sure that what is being requested really makes sense and is in everyone's best interest. And we just do not have the environmental resources to support every project that is on the books.

Please do not support weakening the one tool that our communities have to allow proper review of a project.

Mahalo for your time and consideration,

Kathleen M. Pahinui  
North Shore, Oahu

Please provide 15 copies for:  
Senate ENE, TIA and JDL Hearing on SB 2808  
Relating to Environmental Impact Statements

DATE: Thursday, February 7, 2008  
TIME: 2:00 p.m.  
PLACE: Conference Room 414

## Testimony in OPPOSITION to SB 2808

While some may argue that environmental law has been unreasonably onerous in select cases, on balance, environmental law has served the public interest very well.

Our environmental law is not the problem, but rather it is the unwillingness of certain parties to follow the law. SB 2808 creates loopholes that would certainly be used against the public interest of studying, identifying and addressing potential environmental impacts of proposed development. Beware the unintended consequences of this bill.

Please do not weaken Hawaii Environmental Law. Please oppose passage of SB 2808.

Respectfully,



Gil Riviere  
65-137 Hukilau Lp  
Waialua, HI 96791

**testimony**

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**From:** Wanda Hope Carter [wanda@lava.net]  
**Sent:** Wednesday, February 06, 2008 1:07 PM  
**To:** testimony  
**Subject:** SB 2808

Hello, I am against this bill as I feel it will weaken Hawaii's environmental review process. I think preserving Hawaii's unique environment should be a priority for citizens and for the current status and future of tourism in the state, especially the fastest grown type of tourism in the world, eco-tourism. Thank you for considering my thoughts.

Wanda Hope Carter

*Wanda Hope Carter*

<http://InspirationMotivation.com>

**testimony**

---

**From:** Nancy E. Burns [nebpellc@hawaii.rr.com]

**Sent:** Wednesday, February 06, 2008 1:08 PM

**To:** testimony

**Subject:** Testimony to the Senate Committee on Energy & Environment and Transportation and International Affairs  
Thursday, February 7, 2008 at 2:00 p.m.

Testimony to the Senate Committee on Energy & Environment and

Transportation and International Affairs

Thursday, February 7, 2008 at 2:00 p.m.

Conference Room 414, State Capitol

RE: SENATE BILL NO. 2808 RELATING TO ENVIRONMENT IMPACT STATEMENTS

Chairs Menor and English, Vice Chairs Hooser and Gabbard, and Members of the Committees:

My name is Nancy Burns and I am a licensed civil engineer in the State of Hawaii. I am writing in **support** of legislation that corrects the seemingly arbitrary requirement for virtually every project in the state to provide an Environmental Assessment (EA) due to their "use" of public right-of-ways. This creates a financial hardship for many people of this state with no justifiable reason. For instance, if a person wanted to build a home with an ohana for their elderly parents and they needed to access a state highway, they would need to spend thousands of dollars and face months of delay in obtaining an EA. This is before they can even start to think about construction as they would be risking too much if their EA was not approved or it was delayed due to government processing times. Does this make any sense at all?????

Most projects are required to obtain permits and other approvals prior to construction that safeguard the environment making the requirement to prepare an EA for every project redundant and a waste of public and private resources with little or no benefit to the public or the environment. The interpretation that all projects connecting to a public right-of-way require an EA lacks common sense and creates more red tape without providing any additional protection for the environment or the people. Land owners will be spending vast amounts of time and money preparing EA's and tax payers will be paying government employees vast amounts of money to review these reports with little or no benefit. Please prevent this waste of time and money and fix the law.

Thanks you for allowing me to present this testimony.

Nancy E. Burns, P.E.

73-1487 Hao Street

Kailua Kona, HI 96740

Testimony before the joint hearing of the Senate Committee on Energy and Environment and the Senate Committee on Transportation and International Affairs.

From: John T. Harrison, PhD

Chair Menor, Chair, English, Vice Chair Hooser, Vice Chair Gabbard and members of the joint committees:

I respectfully oppose the amendments proposed to Chapter 343, HRS in SB 2808 for the following reasons.

**1. Inaccuracies in the proposed legislative findings.**

I take issue with the assertion in section 1 that “recent court decisions have expanded the application of environmental assessments beyond legislative intent.” Here are summaries of the major relevant Supreme Court rulings:

**Kahana Sunset Owners Assn. v. Maui County, 86 Haw. 66 (1997)**

**An environmental assessment for the proposed Napilihau development is required.**

“The proposed Napilihau development would install a new, 36-inch drainage line beneath Napilihau Street, connecting to an existing 24-inch culvert beneath Lower Honoapi'ilani Highway. It is undisputed that this constitutes ‘use of state or county lands,’ which is within the class of actions that triggers HEPA [HRS § 343-5(a) (1).] An environmental assessment is therefore mandatory, unless the project falls within an exemption” [at 71.]

“It is apparent from the context of the exemptions [HAR § 11-200-8 (1996)] that the regulations intend to exempt only very minor projects from the ambit of HEPA. A completely new drainage system, serving over 300 residences, is qualitatively incompatible with the type of projects contained in this list of exemptions. Therefore, an exemption for this project from the requirements of HEPA is inconsistent with both the letter and intent of the administrative regulations.... Allowing the Maui Planning Commission's interpretation would be to approve a categorical finding that any drain installed within a street is not going to have a significant environmental impact. This reading is inconsistent with both the letter and the intent of HEPA” [at 72.]

“We note that the administrative rules were amended on August 31, 1996, to narrow administrative agencies' authority to declare projects exempt from HEPA. HAR § 11-200-8 (1996) now states that "agencies declaring an action exempt under this section shall obtain the advice of other outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption" [at 72 n4.]

“HRS § 343-5(c) provides that "acceptance of a required final statement shall be a



condition precedent to approval of the request and commencement of proposed action." Where the legislative mandate is clear, we will not excuse compliance with the plain language of the statute based on [the County's] assertion that the information adduced in the contested case hearing was the functional equivalent of the required environmental assessment" [at 73.]

**Sierra Club v. State Office of Planning, LUC, Castle & Cooke, Pacific Health Community, City & County of Honolulu, and Neighborhood Board No. 25, 109 Haw. 411 (2006)**

1. The court rejects defendant's argument that 343 is not triggered because the petition is not an action. HRS 343-2 defines action as any program or project to be initiated by an agency or applicant. Statutory language is clear and unambiguous: the project is an action because it is a project initiated by the applicant developers [at 415.] In addition, the project proposes use of state lands because sewage and water transmission lines require tunneling beneath state highways [at 415.] Also, "The project is an action that proposes the use of state lands and an EA that addresses the environmental effects of the entire Project is required" [at 416.]

2. The meaning of "earliest practicable time" within the context of 343-5(c) is determinative. The court rejects Defendant's arguments that the legislature's rejection of a proposal to establish a trigger in all boundary amendments is evidence of legislative intent that 343 is never applicable to boundary reclassifications; and because 343-5(a)(7) does specify that an EA is required for reclassification of conservation land, '*expressio unius est exclusio alterius*' dictates [at 416.] "Had the legislature intended to exempt all reclassification petitions from the EA requirement, it could have easily so indicated....In the instant case, the reclassification is the initial step of a project that proposes the use of state lands; it is the proposed use of state land that triggers the EA requirement, and the request for approval of the reclassification petition that provides the earliest practicable time' at which to prepare the EA" [at 416-417.] "The fact that the project may change does not eliminate the statutory requirement of an EA at the earliest practicable time....Early environmental assessment comports with the purpose of HEPA" [at 418-419,] citing Citizens (Mahukona), and explaining that in that case the court ruled only that the Hawai'i County Council was the proper agency to approve a district boundary amendment, but did not rule on whether or not "an EA was or was not required to assist the decision-making of the Hawai'i County Council" [at 419.]

3. The court rejects defendants' argument that EA requirement cannot be triggered at the reclassification stage because the LUC is not an agency that can 'receive the request for approval' pursuant to 343-5(c).

HRS 343-(5)(a) sets forth 3 elements for when an EA is required in an applicant action: a) applicant proposes a 5(a) specified action; b) the action requires agency approval; and c) the action is not exempt. These elements are satisfied in this case.

a) The applicant developer has "proposed the action" and not merely sought approval of a boundary amendment because the "LUC must consider the entire project in determining whether

to reclassify land. Pursuant to § 15-15-50, the reclassification petition must include... (10) *an assessment of the impacts of the proposed use or development upon the environment, agricultural, recreational, cultural, historical, scenic flora and fauna, groundwater, or other resources of the area[.]*” (emphasis in the original). Indeed, the LUC conducted a detailed review of the entire project before granting the amendment, and placed 26 conditions thereon based on its review...but for the LUC’s comprehensive review of the Project as a whole, it would not have approved the reclassification scheme” [at 417.]

b) The second element is also present because the project requires LUC approval of the petition before the project can proceed. HRS 343-2 defines “approval” as a “discretionary consent required...prior to actual implementation...” “In turn, ‘discretionary consent’ is defined as a consent sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a ministerial consent.’ State Land Use Law refers to the granting of a petition for a district boundary amendment as an ‘approval’ by the LUC.” [See HRS § 205-4(g) at 418.]

c) The court quotes 343-6(a)(7) Exemptions, and cites HAR 11-220-8 exemption classes and states “no party in the instant case has asserted that the action in the instant case is exempt.”

Nowhere in either of these opinions does the court depart from legislative intent as expressed in Chapter 343. Indeed, the Court repeatedly cites statutory and regulatory underpinnings of its findings. Hence, the claim of Section 1 in the proposed measure is specious.

## **2. Applicability of Chapter 343, HRS to private actions as opposed to actions proposing use of public lands or funds.**

From its initial encoding of statutory provisions for environmental review (Act 246, L. 1974) through subsequent amendments up to the present, two fundamental principles consistently apply. First, the EIS law is intended to create a system of environmental review ensuring equal consideration of environmental concerns and economic and technical considerations (§343-1 HRS.) Second, construing the EIS system as one for explicit analysis of the environmental impacts of all human actions is unthinkable. Thus the integral application of statutory provisions for applicability (§343-(5a) HRS) and exemption (§343-6(a)(7) HRS) and relevant regulatory provisions attendant upon these statutory sections has been both legislatively and legally established to distinguish between major actions having potentially significant impacts and minor actions for which no significant effects are expected.

A long standing concern regarding environmental review relates to a disproportionate history of actions on private lands that have not received review under the EIS law and

have engendered significant consequences through various impacts that, had the actions been reviewed, could have been avoided or mitigated. The effect of the proposed amendment to §343-5 would be to remove a substantial provision of the law that invokes applicability to proposed actions on private property. In addition the proposed language undermines existing regulatory provisions for exemptions that draw attention to actions having potentially significant secondary or cumulative effects and actions proposed in areas with particular environmental sensitivity (§11-200-8(b) HAR.) A third major flaw in proposed language of SB 2808 lies in its failure to offer any provision to distinguish major from minor actions. Such distinctions are crucial to the underlying theory for judicious implementation of exemption from environmental review under Chapter 343, and under existing regulations, agencies are provided guidance to encourage appropriate review when warranted. All of these issues relating to review of proposed actions under the State EIS law are long standing, and were fully discussed before the legislature on multiple occasions. Hence, contrary to presumptive arguments of section 1, the proposed act flies in the face of both legislative intent and court findings.

**3. Pending comprehensive review of the State EIS system, substantive changes to existing law are not presently warranted.**

As noted in prior testimony before the legislature, measures are proceeding that would reinstate and expand the comprehensive review of Chapter 343 by the University of Hawai'i. To tinker at the margins of the existing law while this comprehensive analysis is underway would be unwise.

Thank you for the opportunity to testify on this measure.

John T. Harrison, PhD.  
3232 Kaohnani Drive  
Honolulu, Hawai'i 96817

**testimony**

---

**From:** Andree Paradis [AParadis@islandpacificacademy.com]

**Sent:** Wednesday, February 06, 2008 1:43 PM

**To:** testimony

**Subject:** SB2808 PROTECT OUR ENVIRONMENT PLEASE

THIS BILL SEEMS LIKE IT WOULD BE WORKING BACKWARDS TOWARDS PROTECTING WHATS LEFT OF HAWAII TO DEVELOP. WHAT ARE PEOPLE THINKING?

ANDREE PARADIS  
909 HAUMEA ST.  
KAPOLEI, HI  
96707

2/6/2008

**testimony**

---

**From:** David Ross [services@rekona.com]  
**Sent:** Wednesday, February 06, 2008 10:59 PM  
**To:** testimony  
**Subject:** FW: Testimony to the Senate Committee on Energy & Environment and Transportation and International Affairs Thursday, February 7, 2008 at 2:00 p.m.

Testimony to the Senate Committee on Energy & Environment and  
Transportation and International Affairs  
Thursday, February 7, 2008 at 2:00 p.m.  
Conference Room 414, State Capitol

**RE: SENATE BILL NO. 2808 RELATING TO ENVIRONMENT IMPACT STATEMENTS**

Chairs Menor and English, Vice Chairs Hooser and Gabbard, and Members of the  
Committees:

My name is David Ross and I am a licensed civil engineer in the State of Hawaii. I am writing  
in support of SB 2808.

Today, I met with a client who will potentially be required to provide a EA or EIS for a 160 acre  
site, because he is applying to the Hawaii State Department of Transportation, Highways  
division, for a permit to build a private road access. This will involve asphalt pavement of a  
22ft-wide driveway apron from the existing roadway to the boundary, a distance of 15 ft. There  
is no exemption because for the EA/EIS because the driveway will serve more than one lot.

Requiring this kind of expense and extra paperwork is not sound government. The intent of  
the EA, EIS, should not be to burden relatively simple improvement projects with studies that  
are not commensurate to the scope of the project being proposed.

Bill 2808 addresses this issues and will help provide a framework for an appropriate use of the  
Environmental Assessment and Environmental Impact Statement. Please seriously consider  
and support Bill 2808.

Mahalo,

David M. Ross, Jr., PE,  
Ross Engineering, Inc., 77-6219A Kaunalumalu Dr, Holualoa, Hawaii 96725  
Tel1:808-322-7152; Fax1:866-456-4408 toll free; Tel2:866-324-3173 toll free  
Email: [services@rekona.com](mailto:services@rekona.com)

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2/7/2008

## testimony

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**From:** Law Office, Megan [hemplaw.megan@hawaiiantel.net]  
**Sent:** Thursday, February 07, 2008 9:30 AM  
**To:** testimony  
**Subject:** SB 2808

Hi, I am a concerned citizen on Kauai, respectfully requesting that legislators do not make any amendments to HRS Chapter 343 that will weaken environmental review law. Specifically, please do not remove the public roadway trigger from our environmental review law. While economic health is important, the health of our environment far outweighs economic concerns, for without our environment what do we have? Nothing! Please help concerned citizens in protecting our environment. If we continue to bypass and alter our environmental laws soon we will not have an environment left to protect.

Please help,  
my hope is in your hands.

Megan Deets

**testimony**

---

**From:** Paige Krest [paigemarie-kauai@msn.com]  
**Sent:** Thursday, February 07, 2008 10:20 AM  
**To:** testimony  
**Subject:** SB 2808 OPPOSED

Testimony for the following: SB 2808 - **Opposed!**

Testimony to be submitted to the following committes:

COMMITTEE ON ENERGY AND ENVIRONMENT

Senator Ron Menor, Chair

Senator Gary L. Hooser, Vice Chair

COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS

Senator J. Kalani English, Chair

Senator Mike Gabbard, Vice Chair

NOTICE OF HEARING

DATE: Thursday, February 7, 2008

TIME: 2:00 p.m.

PLACE: Conference Room 414

State Capitol

415 South Beretania Street

Aloha,

My name is Paige Krest and I **strongly oppose** the passing of SB 2808.

Debilitating Hawaii's three-decade old environmental review in order to 'modernize' Hawaii's Environmental Impact Study process in my opinion would be a step backwards in regards to making our island more sustainable. Hawaii is unique in many ways and should be a model for the rest of the world to live responsibly and make progress within the particular areas limits. The focus should not be commensurate gain.

Please help make Hawaii an active participant in positive change by showing the importance of environmental, social, and cultural impacts.

2/7/2008

Please hold off on any amendments to Chapter 343 until a comprehensive study of the law is complete.

Mahalo for your consideration.

Sincerely,

Paige Krest  
P. O. Box 1600  
Hanalei, HI 96714  
808-651-0023

---

Climb to the top of the charts! Play the word scramble challenge with star power. [Play now!](#)



**testimony**

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**From:** Judy Dalton [dalton@aloha.net]  
**Sent:** Thursday, February 07, 2008 1:27 PM  
**To:** testimony  
**Subject:** SB 2808 Please do not make amendments to Chapter 343, Feb 7 2am ENE/TIA

THE SENATE  
THE TWENTY-FOURTH LEGISLATURE  
REGULAR SESSION OF 2008

COMMITTEE ON ENERGY AND ENVIRONMENT

Senator Ron Menor, Chair  
Senator Gary L. Hooser, Vice Chair

COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS

Senator J. Kalani English, Chair  
Senator Mike Gabbard, Vice Chair

NOTICE OF HEARING

DATE:

Thursday, February 7, 2008

TIME:

2:00 p.m.

PLACE:

Conference Room 414

State Capitol

415 South Beretania Street

SB 2808

Testimony

RELATING TO ENVIRONMENTAL IMPACT STATEMENTS.

Exempts lands from environmental impact statement law, state or county lands for specified uses of existing public street, road, highway, trail, or bikeways.

Aloha Committee on Energy and Environment Chairman Senator Menor, Vice Chair Senator Senator Hooser, Committee on Transportation and Internal Affairs Chairman Senator English, Vice Chair Senator Gabbard, and Committee members

Please refrain from making any amendments to Chapter 343 until a comprehensive study of the law is completed. At a time when our environment needs more protection than ever, weakening Hawaii's environmental review law is unwarranted.

The current triggers have led to environmental reviews in the past. With no environmental review to guide decision making we put Hawaii's future at risk.

Thank you for considering my comments,

Judy Dalton  
4330 Kauai Beach Drive  
Lihue, HI 96766  
808-246-9067

## testimony

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**From:** ALTON ARAKAKI [arakakia@msn.com]  
**Sent:** Tuesday, February 12, 2008 10:11 PM  
**To:** testimony  
**Cc:** Sen. Russell Kokubun  
**Subject:** Testimony Against SB2808

Testimony on SB2808  
Alton Arakaki  
Kaunakakai, Hawaii

*Exempts lands from environmental impact statement law, state or county lands for specified uses of existing public street, road, highway, trail, or bikeways.*

I am against SB2808. The recent completed Hawai'i 2050 plan documents the value people of Hawaii place on their island environment and describe the need for the State to achieve economic security and social stability in our community without sacrificing our environmental and cultural values like we have in the past. It is best that we first implement the 2050 plan before we start dismantling the plan that many in the State participated in formulating. To determine the extent and boundaries, as SB2808 attempts to legislate, of what the people of Hawaii intended when they placed their environmental and cultural values at such high level in the 2050 plan is too open and will invite misinterpretation. It is presumptuous and most of all premature.

Do not start dismantling and compromising the Hawaii 2050 plan before it is implemented. Dismantling the plan now will only disenfranchise the people from participating in government sponsored processes and activities. And we continue to wonder why people don't participate in voting at elections.

**February 14, 2008**  
**Committees on Energy and Environment and Transportation and**  
**International Affairs**  
**Conference Room 414**  
**2:00 P.M.**

**Dear Chairs Menor and English and Members:**

**Subject: Senate Bill No. SB 2808 Relating to the Environmental Impact Statements**

I am Michael S. Chu, a resident and a practicing landscape architect in Hawaii.

**I strongly support SB 2808 "Relating to Environmental Impact Statements" that would provide an immediate and a short-term fix to clarify when an Environmental Assessment (EA) is required.**

SB2808 proposes to clarify that environmental assessments do not apply to state or county lands that include the use of existing streets, roads, highways, or trails or bikeways for limited purposes.

My concern is the "unintended consequences" of the recent court decisions. The courts relied on past decisions where any action that involved the use of a state or county road right of way was a "trigger" for the EA/EIS. Because an access improvement, easement, drainage, waterline, etc., is now viewed as a use of state or county lands when it touches (over, under, across) a state or county road right of way, the entire project is then required to prepare and environmental assessment for the entire project.

Thank you for the opportunity to share my views with you.

Submitted By

A handwritten signature in black ink, appearing to read "Michael S. Chu", with a long horizontal stroke extending to the right.

MICHAEL S. CHU

FEB 13 2008

Hilo, Hawaii  
February 11, 2008

Senator Lorraine R. Inouye  
1<sup>st</sup> Senatorial District  
Hawaii State Capitol, Rm. 201  
415 South Beretania St.  
Honolulu, Hi 96813

SUBJECT: SB: ~~2028~~ <sup>2808</sup>  
Environmental Impact Statements

Dear Senator Inouye,

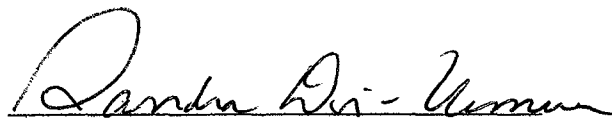
Today, I called your office in Honolulu in support of SB ~~2028~~ <sup>2808</sup>. The reason I am in favor of this bill is because my Aunty and Mom who both own a parcel, less than one acre in Lalamilo, Waimea are being asked by the Department of Transportation to do an Environmental assessment in order to connect a water pipeline across the Mamalahoa Highway. Because of their age, their intention is to sub-divide the property in order to pass it on their children.

The connecting of the pipeline was not a problem until the earthquake damaged the reservoirs therefore causing the lowered water pressure to the pipeline on their side of the property. Because of this, they will have to connect the pipeline across Mamalahoa Highway.

This assessment will cost them approximately \$8,500.00. I truly believe people like my Aunt and Mom should not have to be told to do an Environmental Assessment on a property so small in size just to connect one pipeline.

Because of their very sad situation, I am asking you to please, for the sake of not only them, but people who are in similar situations, support this bill.

Thank you very much.

  
Sandra Doi - Uemura

## testimony

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**From:** Judy Mick [ppchawaii@yahoo.com]  
**Sent:** Wednesday, February 13, 2008 4:18 PM  
**To:** testimony  
**Subject:** Committee on Energy and Environment-Opposing SB 2808

I am writing to strongly oppose SB 2808 which I feel will weaken Hawaii's environmental review process.

Because this bill exempts the use of public lands and public monies from scrutiny ,it will lessen the citizen participation which we presently have and this is counterproductive for a fair and democratic way to proceed in our government decisions.

Mahalo for your consideration.  
Mick, Kailua-

Aloha, Judith

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