

Hawaii Developers Council
c/o 44-420 Kaneohe Bay Drive
Kaneohe, Hawaii 96744

LATE

February 14, 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 Frederic Berg, Member of the Board of Directors of the Hawaii Developers Council. The Hawaii Developers Council's membership consists of local developers and associated professions such as legal, engineering, contracting, architectural, financial, sales and escrow. We currently have approximately 250 members: We seek to educate our members and the public about issues pertinent to the development industry.

The Council 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:

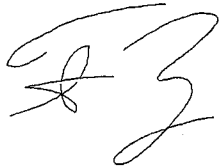
1. The only projects that are excluded from this new requirement are:
 - a. One single family residence;
 - b. Projects that already have an approved EA or EIS.
2. Projects without an EA or EIS will be required to prepare one which will result in:
 - a. Increased costs, and
 - b. Delays to the project;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

The Council, 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.

We appreciate this opportunity to express our views.

Aloha,

A handwritten signature in black ink, appearing to be 'F. Berg', written in a cursive style.

Frederic Berg
Hawaii Developer's Council



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SB 2808
RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

Senate Committee on Energy and Environment
Senate Committee on Transportation and International Affairs
Joint Public Hearing – February 14, 2008
2:00 p.m., State Capitol, Conference Room 414

By
Peter Rappa, Environmental Center
Jacquelin Miller, Environmental Center

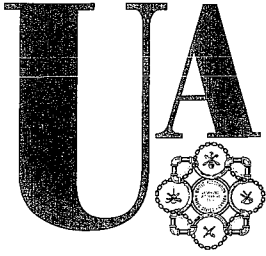
SB 2808 exempts state or county lands from chapter 343 HRS, the state's environmental impact statement law for specified uses of existing public street, road, highway, trail, or bikeways. Our statement on this measure does not represent an institutional position of the University of Hawaii.

We disagree with the opening statement of this bill. Recent court cases have clarified language that have been in the state EIS law since it was first passed, they did not expand coverage to new areas. The requirement for conducting an environmental assessment for all actions using state/county lands or funds was a requirement under the EIS process first established by a Governor's Executive Order in August 1971.

The amendment to chapter 343 HRS in this bill would set up a distinct exemption for actions 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 amendment is overly broad. A number of proposed actions take place on existing streets and right-of-ways that may have a significant impact and require an environmental assessment. Redoing sewer lines, for example, may require closing down sections of existing streets for long periods of time creating an impact to local businesses, motorist, pedestrians and others. These types of projects are routinely scrutinized in environmental assessments and Environmental Impact Statements. For smaller scale projects, section 343-6 (7) allows for exemptions to the law.

The Environmental Center will be participating in a study that would examine issues dealing with chapter 343 HRS, if it is funded by the Legislature. We ask that legislators make no changes to the law until we have a chance to complete the study and make comprehensive improvements to the environmental impact assessment/statement process.

Thank you for the opportunity to comment on this bill.



Founded 1889

**PLUMBERS AND FITTERS LOCAL 675
UNITED ASSOCIATION**



February 14, 2008

The Honorable Senator Ron Menor
Committee on Energy and Environment
The Honorable J. Kalani English
Committee on Transportation and International Affairs
State Capitol, Room 414
415 South Beretania Street

Subject: Testimony in Support of SB 2808 Relating To Environmental Impact Statements

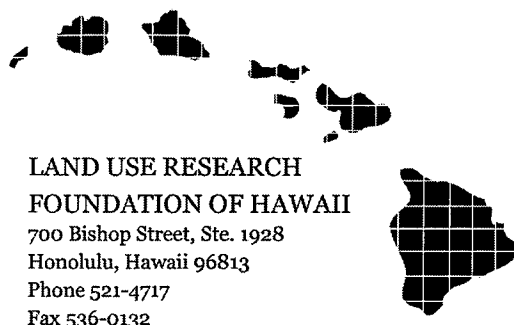
Chairs Menor and English and Members of the Committees:

My name is Vernon K. Ta'a and I am speaking on behalf of Mr. Reginald Castanares, Business Manager and Financial Secretary-Treasurer of the Plumbers and Fitters Union Local 675. Mr. Castanares is in strong support of the intent and purpose of SB 2808.

We do agree that recent court decisions went far beyond the legislative intent of the Act. We are confident that this measure will 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.

We urge your passage of this measure.

LATE



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February 14, 2008

The Honorable Senator Ron Menor, Chair, and Members
Committee on Energy and the Environment
The honorable J. Kalani English, Chair, and Members
Committee on Transportation and International Affairs
State Senate, Conference Room 414
Honolulu, Hawaii 96813

Subject: Senate Bill No. 2808 Relating to the Environmental Impact Statements (EA exemption for minor work touching public roadways)

Dear Chair Morita and Members:

My name is David Arakawa, I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable and rational land use planning, legislation and regulations affecting common problems in Hawaii.

We appreciate the opportunity to provide our testimony **in support of S.B. No. 2808, and offer comments.**

S.B. No. 2808. This bill would amend Chapter 343, Hawaii Revised Statutes (HRS) by adding a new section to be appropriately designated and to read as follows:

“§343 - _____ Environmental assessment not required; when.
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. This section shall not be interpreted as exempting the entirety of a development project from this chapter.”

Background. Since the Chapter 343 was implemented, one of the “triggers” for the preparation of an Environmental Assessment (“EA”) document has been the “use of state or county lands.” In the past, this term has been interpreted to mean that an EA is required for all government projects or development projects on government lands. In

the past, EAs had never been required for private applications to use or “touch” state or county roadways or rights-of-way (“ROW”) for easements, drainage, connection of waterlines and sewer lines, private driveways and access improvements, utility rights of way for overhead or underground connections, or the like (“minor work touching public roadways”).

Recent court decisions, however, have resulted in “unintended consequences” which include interpretations by some government agencies that an EA is required anytime there is such minor work touching public roadways or ROW. As a result of such interpretations, private applicant proposals for minor work within the state or county ROW now “trigger” the preparation of an EA by the applicant. These interpretations go far beyond the original intent of chapter 343, and cause unnecessary requirements and delays for private parties engaged in such minor work. S.B. No. 2808 would address these situations and provide an exemption for such minor work touching public roadways.

S.B. 2808 will still require EAs for projects involving state and county funding or development projects on government-owned lands. The EA requirement will also still apply to the entire proposed action for major private developments which have significant environmental impact – as those projects will still be required to prepare EAs and environmental impact statements for proposed amendments to state land use classifications, conservation district use applications, county general plans, shoreline setback uses, etc.

Conclusion. We understand that there are bills at the legislature this session which would provide funding for a comprehensive review of Chapter 343. While LURF supports a comprehensive review of Chapter 343, it also recognizes that legislation is immediately needed this session to address the unintended consequences of recent court decisions which have expanded the situations where an environmental assessment is required beyond those originally intended by the legislature. Under the current interpretation, an environmental assessment could be required for minor access improvements, easements and utility projects which touch a state or county right of way. There are several bills proposed this session, which address this issue by exempting existing public streets, roads, highways, trails or bikeways from the applicability of the EIS law under certain circumstances. We believe that the exemptions proposed in this bill are immediately needed, that it would not jeopardize health, safety or environmental concerns, and said exemptions could be made to sunset upon any future legislation arising from the comprehensive review of Chapter 343.

LURF appreciates the opportunity to express our views on this matter and we urge you and your committee **to pass this measure**