

LINDA LINGLE  
GOVERNOR



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

BRENNON T. MORIOKA  
DIRECTOR

Deputy Directors  
MICHAEL D. FORMBY  
FRANCIS PAUL KEENO  
BRIAN H. SEKIGUCHI

IN REPLY REFER TO:

April 1, 2008

**TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION**

**SENATE BILL NO. 2808, HD 1**

**COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION**

**COMMITTEE ON JUDICIARY**

The Department of Transportation (DOT) supports proposed HD 1 amendments to Senate Bill No. 2808.

Legislation is needed this session to address the growing confusion and controversy over Environmental Assessment (EA) requirements for applicant actions, which involve both development of private property and improvements within a public highway right-of-way. After several meetings with affected parties, it is our conclusion that these statutory changes would assist in the rule making process to provide OEQC with the ability to play a more prominent role in the environmental review process and provide clarity to resolve conflicting interpretations of the statutes and rules.



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
OFFICE OF ENVIRONMENTAL QUALITY CONTROL  
235 SOUTH BERETANIA STREET  
LEIOPAPA A KAMEHAMEHA, SUITE 702  
HONOLULU, HAWAII 96813  
Telephone (808) 586-4185  
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COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

COMMITTEE ON JUDICIARY

**SB2808 SD2 Proposed HD1, Relating to Environmental Impact Statements**

**Testimony of Katherine Puana Kealoha**  
Interim Director of Environmental Quality Control  
**April 1, 2008**

1 **Department's Position:** The Office of Environmental Quality Control (Office) **strongly**  
2 **supports** the proposed House draft version of SB2808, SD2.

3 **Fiscal Implications:** None.

4 **Purpose and Justification:** The proposed HD1 for SB2808, SD2, amends subsection 343-5(d),  
5 Hawai'i Revised Statutes in order to clarify the process of preparing an environmental  
6 assessment when there are two or more state or county agencies with jurisdiction over a  
7 proposed action. The draft also amends subsection 343-6(a), HRS by rearranging the rule  
8 making authorities of the Environmental Council to conform to a general chronology of the  
9 existing environmental review process (i.e., exemptions precede environmental assessments,  
10 environmental assessments precede environmental impact statements).

11 The Office has been coordinating with relevant agencies and the affected community to  
12 ensure that the language in the proposed draft is effective and appropriate in implementing the  
13 environmental protection laws of the State of Hawai'i.

1           The approval of the proposed amendments for SB2808, SD2, relating to environmental  
2 impact statements, will improve a situation pertaining to exemptions for actions in the right-of-  
3 way. The approval will also enable the Office, affected agencies, and project applicants to move  
4 forward with the processing of exempt actions and the acceptance of environmental assessments  
5 and environmental impact statements.

6           The Office, therefore, strongly supports approval of this bill.

7           Thank you for the opportunity to testify.



**The Chamber of  
Commerce of Hawaii**

*Since 1850*

**Testimony to the House Committees on Energy and Environmental Protection  
and Judiciary**

**Tuesday, April 1, 2008 at 10:00 a.m.  
Conference Room 312, State Capitol**

**RE: SENATE BILL NO. 2808 SD1 HD1 RELATING TO ENVIRONMENTAL  
IMPACT STATEMENTS**

Chairs Morita and Waters, Vice Chairs Carroll and Oshiro, 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 the intent of S.B. No. 2808 SD2, HD1, to provide an immediate and short-term fix to clarify when an Environmental Assessment (EA) is required.

The Chamber is the largest business organization in Hawaii, representing over 1100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, 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.

Originally, S.B. No. 2808 proposed 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 concerns remain the need to provide immediate relief from 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.

Since the initial Senate hearings on the bill, there have been several meetings called by the State DOT which included at times, representatives from the City and County of Honolulu, private business organizations such as the Chamber, BIA, and NAIOP, and environmental organizations such as Earth Justice, Life of the Land, Sierra Club and the former director of the University of Hawaii's Environmental Center.

In seeking an "Administrative" solution to the problem, there seems to have been some conceptual agreement among the parties that minor actions/uses such as drive way and utility connections should not, on their own, be a trigger for 343 HRS. The challenge has been in finding a solution that differentiates between these major and minor actions/uses.

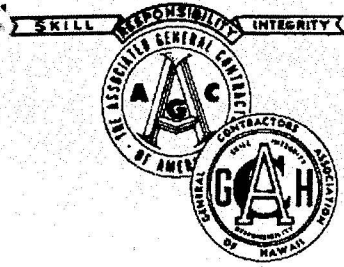
While we have not participated in all of the meetings and discussions conducted by DOT, we understand that the

proposed HD1 of SB 2808 effectively establishes a process to allow the Office of Environmental Quality Control (OEQC) to take a larger role in determining if and when an EA is required when a jurisdictional question arises. We would have preferred a less subjective, and more definitive legislative fix; however, we are also aware of the inherent challenges of finding agreement among the participants in what actions/uses are major and minor. To that end, we look forward to working with OEQC in addressing the "unintended consequences" that have arisen from the recent court actions.

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.



## GENERAL CONTRACTORS ASSOCIATION OF HAWAII

1065 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)

March 31, 2008

TO: THE HONORABLE REPRESENTATIVE HERMINA M. MORITA AND  
TOMMY WATERS, CHAIRS, AND MEMBERS OF COMMITTEE ON  
ENERGY & ENVIRONMENTAL PROTECTION AND JUDICIARY

SUBJECT: S. B. 2808, SD2 HD1 RELATING TO THE ENVIRONMENTAL IMPACT  
STATEMENTS

### NOTICE OF HEARING

DATE: Tuesday, April 1, 2008  
TIME: 10:00 am  
PLACE: Conference Room 312

Dear Chairs Morita and Waters and Committee 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 intent of S.B. No. 2808 SD2, Proposed HD1, to provide an immediate and short-term fix to clarify when an Environmental Assessment (EA) is required.

Originally, S.B. No. 2808 proposed 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 concerns remain the need to provide immediate relief from 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 an EA/EIS. Because any 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.

Since the initial Senate hearings on the bill, there have been several meetings called by the State DOT which included at times, representatives from the City and County of Honolulu, private business organizations such as the Chamber, BIA, and NAIOP, and environmental organizations such as Earth Justice, Life of the Land, Sierra Club and the former director of the University of Hawaii’s Environmental Center.

In seeking an “Administrative” solution to the problem, there seems to have been some conceptual agreement among the parties that minor actions/uses such as drive way and utility

SENATE BILL NO. SB 2808 SD2 HD1  
RELATING TO THE ENVIRONMENTAL IMPACT STATEMENTS  
APRIL 1, 2008

connections should not, on their own, be a trigger for 343 HRS. The challenge has been in finding a solution that differentiates between these major and minor actions/uses.

While we have not participated in all of the meetings and discussions conducted by DOT, we understand that the proposed HD1 of SB 2808 effectively establishes a process to allow the Office of Environmental Quality Control (OEQC) to take a larger role in determining if and when an EA is required when a jurisdictional question arises. We would have preferred a less subjective, and more definitive legislative fix; however, we are also aware of the inherent challenges of finding agreement among the participants in what actions/uses are major and minor. To that end, we look forward to working with OEQC in addressing the "unintended consequences" that have arisen from the recent court actions.

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.

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. The 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 this opportunity to express our views.

Testimony of  
Phyllis Dendle  
Director of Government Affairs

Before:  
House Committee on Energy & Environmental Protection  
The Honorable Hermina M. Morita, Chair  
The Honorable Mele Carroll, Vice Chair

House Committee on Judiciary  
The Honorable Tommy Waters, Chair  
The Honorable Blake Oshiro, Vice Chair

April 1, 2008  
10:00 am  
Conference Room 312

**SB 2808 SD2 Proposed HD1  
RELATING TO ENVIRONMENTAL IMPACT STATEMENTS**

Chair Morita, Chair Waters and committee members, thank you for this opportunity to provide testimony on SB 2808 SD2 proposed HD1 making amendments to Chapter 343 requiring updated rulemaking on environmental assessments

**Kaiser Permanente supports the intent of this bill.**

There is a need to clarify the rules for granting exemptions from environmental assessments for specific actions having minimal effect on the environment.

Current uncertainty about exemptions from the EA process has created delays for the installation of a gas line to the Kaiser Permanente Moanalua Medical Center. We hope that with these expanded rules such uncertainty would be relieved.

Thank you for your consideration.





**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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**March 31, 2008**

**VIA EMAIL**

The Hon. Hermina M. Morita, Chair,  
and Members of the House Committee  
on Energy and Environmental Protection

The Hon. Tommy Waters, Chair,  
and Members of the House Committee  
on Judiciary

Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: Testimony **in Support** of HB2808, HD1 (Proposed), Relating to  
Environmental Impact Statements

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Dear Chairs Morita and Waters 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.

Our organization first became aware of this situation several months ago, when we heard stories of people being told they could not hook up to the public right-of-way without first having done an environmental assessment. As we have attended meetings at the Department of Transportation and Environmental Council since then, one thing that has become clear to us is that there is a lot of confusion regarding whether an assessment must be done in a specific case, which agency makes that determination, and which agency is responsible for accepting an assessment if one is done.

The Hon. Hermina M. Morita, Chair,  
and Members of the House Committee  
on Energy and Environmental Protection

The Hon. Tommy Waters, Chair,  
and Members of the House Committee  
on Judiciary

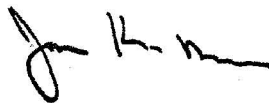
March 31, 2008

Page 2

We are in agreement with the intent of this proposed amendment to the bill, which would allow the Office of Environmental Quality Control to assist agencies and applicants in determining which agencies would be responsible for requiring and accepting an EA if one is necessary. We feel this would bring some much-needed guidance and clarity to the present situation. While we think there are other things that could be done as well to improve the situation, we think this is a good first step and support it.

Thank you for the opportunity to testify on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "James K. Mee". The signature is fluid and cursive, with a large initial "J" and "M".

James K. Mee  
Chair, Legislative Affairs Committee

Leonard K.P. Leong  
Vice President

March 31, 2008

The Honorable Representatives Hermina Morita and Tommy Waters  
Committee on Energy and Environmental Protection  
Committee on Judiciary  
State Senate, Room 312  
Honolulu, Hawaii 96813

Re: Senate Bill No. SB 2808 SD2, Proposed HD1.

Dear Chairs Morita and Waters and Members:


I am Leonard Leong and having served as a member of the State Environmental Commission . I would like to voice my support for Senate Bill No SB 2808 SD2 proposed HDI.

Allowing the Office of Environmental Quality Control to take a larger role in determining if and when an EA is required.

It is one of the responsibilities of OEOC to resolve conflicts when a question concerning EIS is raised.

This is a sensible and practical approach to solving the current problem.

Very truly yours,  
Royal Contracting Co., Ltd

  
Leonard K.P. Leong  
Vice President

# **BIA-HAWAII**

**BUILDING INDUSTRY ASSOCIATION**

Committees on Energy & Environmental Protection and Judiciary

April 1, 2008

10:00 a.m.

Room 312

The Honorable Representatives Hermina Morita and Tommy Waters, Chairs, and Members  
Committee on Energy and Environmental Protection  
Committee on Judiciary  
State Senate, Room 312  
Honolulu, Hawaii 96813

Dear Chairs Morita and Waters and Members:

**Subject: Senate Bill No. SB 2808 SD2, Proposed HD1 "Relating to Environmental Impact Statements"**

I am Karen Nakamura, Chief Executive Officer 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 the intent of S.B. No. 2808 SD2, Proposed HD1, to provide an immediate and short-term fix to clarify when an Environmental Assessment (EA) is required.**

Originally, S.B. No. 2808 proposed 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 concerns remain the need to provide immediate relief from 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 an EA/EIS. Because any 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.

Since the initial Senate hearings on the bill, there have been several meetings called by the State DOT which included at times, representatives from the City and County of Honolulu, private business organizations such as the Chamber, BIA, and NAIOP, and environmental organizations such as Earth Justice, Life of the Land, Sierra Club and the former director of the University of Hawaii's Environmental Center.

In seeking an "Administrative" solution to the problem, there seems to have been some conceptual agreement among the parties that minor actions/uses such as drive way and utility connections should not, on their own, be a trigger for 343 HRS. The challenge has been in finding a solution that differentiates between these major and minor actions/uses.

While we have not participated in all of the meetings and discussions conducted by DOT, we understand that the proposed HD1 of SB 2808 effectively establishes a process to allow the Office of Environmental Quality Control (OEQC) to take a larger role in determining if and when an EA is required when a jurisdictional question arises. We would have preferred a less subjective, and more definitive legislative fix; however, we are also aware of the inherent challenges of finding agreement among the participants in what actions/uses are major and minor. To that end, we look forward to working with OEQC in addressing the "unintended consequences" that have arisen from the recent court actions.

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.

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*

**Janice Lehner**

---

**From:** Jeannine Johnson [jeannine@hawaii.rr.com]  
**Sent:** Sunday, March 30, 2008 2:25 PM  
**To:** EEPtestimony  
**Subject:** Testimony in Strong Opposition to SB2808 RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Hermina M. Morita, Chair  
Rep. Mele Carroll, Vice Chair

COMMITTEE ON JUDICIARY

Rep. Tommy Waters, Chair  
Rep. Blake K. Oshiro, Vice Chair

Re: SB 2808, SD2 RELATING TO ENVIRONMENTAL IMPACT STATEMENTS  
Hearing on Tuesday, April 1, 2008 @ 10 pm in Conference Room 312

Aloha kākou:

I **strongly oppose** SB 2808 SD2 which exempts from environmental assessments, state or county lands that include the use of existing streets, roads, highways, or trails or bikeways for limited purposes, or a modification or disposal of highway access rights or use, occupancy, or work within a public highway right-of-way to serve private development outside the highway right-of-way, under certain conditions. 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 will weaken Hawaii's environmental review process and give 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)

3/31/2008

March 31, 2008

The Honorable Representatives Hermina M. Morita and Tommy Waters, Chairs  
And Members of the Committees on Energy & Environmental Protection and Judiciary

Subject: S. B. 2808, SD2 HD1 Relating to the Environmental Impact Statements

**NOTICE OF HEARING**

DATE: Tuesday, April 1, 2008

TIME: 10:00 am

PLACE: Conference Room 312

Dear Chairs Morita and Waters and Members of the Committees:

Ralph S. Inouye Co., Ltd. (RSI), general contractor, and a member of the General Contractors Association of Hawaii, supports the intent of S. B. No. 2808 SD2, Proposed HD1, to provide an immediate and short term fix to clarify when an Environmental Assessment (EA) is required.

Originally, S.B. No. 2808 proposed 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.

RSI's concern remains the need to provide immediate relief from 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 an EA/EIS. Because any 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.

Since the initial Senate hearings on the bill, there have been several meetings called by the State DOT which included at times, representatives from the City and County of Honolulu, private business organizations such as the Chamber, BIA, and NAIOP, and environmental organizations such as Earth Justice, Life of the Land, Sierra Club and the former director of the University of Hawaii's Environmental Center.

In seeking an "Administrative" solution to the problem, there seems to have been some conceptual agreement among the parties that minor actions/uses such as drive way and utility connections should not, on their own, be a trigger for 343 HRS. The challenge has been in finding a solution that differentiates between these major and minor actions/uses.

The Honorable Representatives Hermina M. Morita and Tommy Waters, Chairs  
And Members of the Committees on Energy & Environmental Protection and Judiciary  
March 31, 2008  
Page 2

While we have not participated in all of the meetings and discussions conducted by DOT, we understand that the proposed HD1 of S.B. 2808 effectively establishes a process to allow the Office of Environmental Quality Control (OEQC) to take a larger role in determining if and when an EA is required when a jurisdictional question arises. We would have preferred a less subjective, and more definitive legislative fix; however, we are also aware of the inherent challenges of finding agreement among the participants in what actions/uses are major and minor. To that end, we look forward to working with OEQC in addressing the "unintended consequences" that have arisen from the recent court actions.

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 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 this opportunity to express our views.

Very truly yours,

RALPH S. INOUE CO., LTD.



Lance M. Inouye  
President

LMI:ma