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

April 1, 2008

Honorable Representative Hermina M. Morita, Chair
Honorable Representative Mele Carroll, Vice Chair
Members of the House Committee on Energy & Environmental Protection
Hawaii State Capital
415 South Beretania Street
Honolulu, HI 96813

RE: IN SUPPORT OF SB 2808, SD2
RELATING TO ENVIRONMENTAL IMPACT STATEMENTS
Hearing: Tuesday, April 1, 2008, 10:00 p.m.

Dear Chair Morita, Vice Chair Carroll and the House Committee on Energy & Environmental Protection:

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 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, under certain conditions.

Thank you for the opportunity to submit this testimony in support of SB2808, SD2.

Sincerely,

William "Buzz" Hong
Executive Director

WBH/dg

THE UNIVERSITY OF HAWAII ENVIRONMENTAL CENTER IS PLEASED TO SUBMIT THIS TESTIMONY IN ACCORDANCE WITH ACT 132 OF 1970 WHICH CREATED THE CENTER. AUTHORS ARE MEMBERS OF THE UNIVERSITY COMMUNITY.

RL: 2208

SB 2808 SD2 HD1
RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

House Committee on Energy and Environmental Protection
House Committee on Judiciary
Joint Public Hearing – April 1, 2008
10:00 a.m., State Capitol, Conference Room 312

By
Peter Rappa, Environmental Center
Jacquelin Miller, Environmental Center

SB 2808 SD2 HD1 Clarifies that when two or more agencies have jurisdiction, the Office of Environmental Quality Control shall determine which agency has the responsibility of preparing an environmental assessment after consultation with and assistance from the affected state of county agencies and makes clarification to the rule making powers of the Environmental Council. We emphasize that our testimony on this measure does not represent an official position of the University of Hawaii.

The Environmental Center has been involved with the state's EIS process under Chapter 343 HRS since the inception of the law. We have commented on the process in many forums including legislation amending the law since 1976. We have also conducted two reviews of the process, one in 1978 and again in 1991, which resulted in major changes to the way environmental assessments and environmental impact statements are prepared. We are set to participate in another study of the EIS this year. The changes to chapter 343 HRS in this bill clarify and update the law rather than change it. We concur that the proposed changes makes the law internally consistent and procedurally correct. The proposed changes should not interfere with the proposed review of the state EIS process which the Environmental Center will participate in conducting.

Thank you for the opportunity to comment on this bill.

2500 Dole Street, Krauss Annex 19, Honolulu, Hawai'i 96822-2313
Telephone: (808) 956-7361 • Facsimile: (808) 956-3980

Testimony to the House Committees on Energy and Environmental Production 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 Donald Bryan. I am a resident of the Hamakua Coast on the Big Island.

I strongly support the original intention of SB 2808, to clarify the circumstances under which an EA or EIS is required.

There are many unintended consequences created by recent Hawaii Supreme Court rulings on Chapter 343. One of these consequences is the creation of a requirement for any business purchasing power or selling power to the grid to conduct an Environmental Impact Statement on the entity's entire business operations. The EIS requirement basically would put any new business which requires access over state right-of-ways on "hold" for up to three years and has a truly staggering financial impact on any startup.

The grid, as you are aware, runs almost entirely along state highway right-of-ways. With recent court decisions, the original intention of Chapter 343 to review environmental impacts of significant projects has been distorted to require such expensive and time-consuming research for the most negligible activity on state property, including, crossing over a few feet of highway right-of-way, entirely in the air, to connect to island wide transmission lines. My concern is the message that this sends to new business, especially to providers of renewable power--is it reinforcing the verbal encouragement that has been so much in the news? Or is it the project-killing addition of more expensive and time-consuming processes irrelevant to the project at hand?

Surely discouraging development of renewable power cannot have been the intention of the drafters of Chapter 343.

I urge you to move Senate Bill 2808 towards passage.

Donald P. Bryan
PO Box 8
O'okala, Hawaii 96774

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

March 31st, 2008

TESTIMONY to be PRESENTED to the
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
AND
HOUSE COMMITTEE ON JUDICIARY
For hearing on Tuesday, April 1, 2008, 10 AM, Conf. Rm. 312

by

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

IN SUPPORT (WITH RESERVATIONS) OF

SENATE BILL 2808, SD 2, HD 1 PROPOSED
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.

Associated Builders and Contractors of Hawaii strongly supports the amendments in SB 2808 SD 2 which state that for purposes of section 343-5(a) an environmental impact assessment shall not be required when the use of state or county lands or funds is limited to existing streets, roads, highways, or trails and bikeways for purposes of easements, drainage, waterlines, access, or a utility hookup. We support the language that states that these exemptions are not intended to apply to the entirety of a development project.

We also support the amendments proposed in HD 1, which essentially prescribe the way forward in the council's adoption, amendment, or repeal of rules with regard to environment assessments. **However, HD 1 does not, in and of itself, resolve the immediate problems for the design and construction industry in Hawaii addressed effectively by SD 2. Therefore it is our position that rather**

than abandon SD 2 in favor of HD 1, this legislature should work out a compromise that combines the language and intent of the two drafts, thus resolving the need for a short term remedy as well as providing a mechanism for resolution of these questions and environmental concerns over the longer term.

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.

THE GAS COMPANY

TESTIMONY BEFORE THE HOUSE COMMITTEES
ON
ENERGY AND ENVIROMENTAL PROTECTION
AND
JUDICIARY
SENATE BILL 2808 SD 2 HD 1
BY
STEVEN GOLDEN

TUESDAY, APRIL 1, 2008

Chairs Morita and Waters 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 SD 2 HD 1, relating to Environmental Impact Statements.

The Gas Company supports the passage of S.B. 2808 SD 2 HD 1 which would clarify the language in Chapter 343, Hawaii Revised Statutes, by requiring the Environmental Council to adopt rules to, among other things, establish procedures whereby specific types of actions are exempt from the preparation of an environmental assessment and create procedures for preparing, processing and reviewing environmental assessments.

We are, however, concerned about the interim period prior to the adoption of the rules which will likely take several months to finalize. Accordingly, we recommend that this bill be amended to include statutory language to clarify that an EA is not required for routine utility installations, including gas mains and services, under existing state and county roads or state or county rights of way until the rules are adopted.

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."

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.

OFFICE OF HAWAIIAN AFFAIRS

Legislative Testimony

SB 2808, SD2, HD1, RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

House Committees on Energy & Environmental Protection, and Judiciary

April 1, 2008 10:00 a.m.
Room: 211

The Office of Hawaiian Affairs (OHA) **OPPOSES** S.B. 2808, S.D. 2, Proposed H.D. 1, which seeks to give the Office of Environmental Quality Control the ability to determine which of multiple conflicting jurisdictional agencies shall prepare an environmental assessment after consultation and assistance from the affected State or County agencies.

OHA notes that this bill is unnecessary because it basically replicates the existing language of Hawaii Revised Statutes section 343-6 without improving or clarifying it. Instead, the order of the subsections is merely re-arranged.

OHA further opposes this bill because it proposes to remove the current requirement of a "simultaneous" request for approval of proposed actions that may create a jurisdictional conflict among two or more state or county agencies. (Hawaii Revised Statutes § 343-5).

The current "simultaneous" request is much clearer. By removing the timing requirement, this proposed legislation would open the possibility for an unprepared or conniving applicant to request approval for one portion of their project months or years before making another required request for approval on another portion of their project. There is no language that specifies when or how far apart these requests can be made. This is important because the environmental review process is designed to reveal to reviewers and decision makers all of the potential significant effects of a completely envisioned proposed project and allow for public input as to how to mitigate or remove those effects, protect the environment and human health, and potentially create a better project.

If there is no simultaneous request for approval requirement, there is no need for an applicant to present a complete project for approval. Thus, review can become

segmented and cumulative effects analysis in particular becomes more difficult, if not impossible. This is exactly what Hawai'i's environmental review is intended to prevent. SB 2808, SD2, HD1, would obfuscate our important environmental review laws and process.

OHA urges the Committees to HOLD SB 2808, SD2, HD1, because it offers no clarification of our environmental reviews and process but rather confuses them. Thank you for the opportunity to testify.

LAND USE RESEARCH
FOUNDATION OF HAWAII
700 Bishop Street, Ste. 1928
Honolulu, Hawaii 96813
Phone 521-4717
Fax 536-0132

Via E-Mail

April 1, 2008

The Honorable Representative Hermina M. Morita, Chair, and Members
Committee on Energy and Environmental Protection
The Honorable Representative Tommy Waters, Chair, and Members
Committee on Judiciary
Hawaii State House of Representatives
Conference Room 312
Honolulu, Hawaii 96813

RE: Opposition to SB 2808, SD1 Proposed HD1 Relating to EIS
Support of SB 2808, SD1 Relating to EIS
(EA exemption for minor work touching public roadways)

Dear Chairs Morita, Chair Waters, and Committee Members:

My name is David Arakawa, and 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 regulation.

We appreciate the opportunity to provide our testimony **in opposition to the Proposed HD1 to S.B. No. 2808, SD1, which does not address the major problems that are immediately facing numerous projects and will cost Hawaii's homeowners, families and small businesses hundreds of thousands of dollars in unnecessary costs and delays. WE do not understand the purpose of the minor language revisions proposed in HD1 and the questionable "rearranging the section numbers."**

On the other hand, LURF **supports SB 2808, SD1, which squarely addresses the immediate issues and problems, 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 S.B. 2808, SD1 are immediately needed and would not jeopardize health, safety or environmental concerns.**

Proposed HD1 makes minor language revisions, rearranges sections and does not address the serious and immediate problems. We cannot understand how the proposed HD1 will address the serious and immediate problems

which now require minor projects to prepare an Environmental Assessment ("EA"). It appears that HD1 is might be some kind of attempt to address the ongoing disputes between the State Department of Transportation and the various Counties regarding which agency is responsible for preparing the EA. In pertinent part, the HD1 proposed the following "revisions:"

- Proposed amendments to Section 343-5, Hawaii Revised Statutes ("HRS"), as follows (statutory material to be repealed is bracketed and new statutory material is underscored):

  "(d) Whenever an applicant [simultaneously] requests approval for a proposed action [from two or more agencies] and there is a question as to which [agency] of two of more state or county agencies with jurisdiction has the responsibility of preparing the environmental assessment, the office, after consultation with [the agencies involved,] and assistance from the affected state or county agencies, shall determine which agency shall prepare the assessment."
- Section 343-6 (a) HRS is deleted and replaced with the identical language;
- The following Sub-Sections of 343-6(a) are "rearranged" with the identical language, as follows:
  - Original (1) is proposed (6);
  - Original (2) is proposed (1);
  - Original (3) remains (3);
  - Original (4) is proposed (7);
  - Original (5) is proposed (9);
  - Original (6) is proposed (8);
  - Original (7) is proposed (2);
  - Original (8) is proposed (5); and
  - Original (9) is proposed (4).

HD1 will only cause further delays, uncertainty and costs. Currently, the State and Counties disagree on which agencies are responsible for preparing the EAs for minor projects. Under HD1, the Office of Environmental Quality Control ("OEQC ") must determine which government agency has the responsibility to prepare the EA for minor projects, prior to that agency requesting an exemption. If HD1 is adopted, there will be a myriad of delays and no certainty that minor projects will be granted exemptions:

- **Delays and costs to establish procedures for consultation with agencies.**
  - How many months will the Chapter 91 process take for OEQWC to establish rules relating to consultation with the agencies?
  - How much will this cost? Who will pay these costs?
- **Delays and costs for OEQC consultation with agencies.**
  - How many consultations will there be?
  - How many months will the consultations take?
  - How much will this cost? Who will pay these costs?
- **Delays and costs for OEQC to establish procedures and criteria determine which agency is responsible for preparing an EA.**
  - How many months will the Chapter 91 process take for OEQC to establish procedures and criteria to determine which agency is responsible?
  - Can the permit applicant, an intervenor, or member of the public administratively challenge and/or file a court appeal regarding OEQC's proposed procedures and criteria? If so, how many years will that take?
  - How much will this cost? Who will pay these costs?

- **Delays and costs for OEQC to make the determination of the Agency responsible for preparing the EA.**
    - Will the procedures require hearings? Written submissions? Legal challenges? Allow requests for postponements?
    - Will the procedures allow participation by the permit applicant, an intervenor, or member of the public appeal
    - How many months will it take for the OEQC to determine which Agency is responsible for preparing the EAs?
    - How much will this cost? Who will pay these costs?
- **Delays and costs for Appeals of OEQC decision regarding responsibility for EA Preparation.**
    - Can an Agency appeal OEQC's decision regarding the responsible agency to the Courts?
    - If an Agency can appeal OEQC's decision, how many years will such an agency appeal take?
    - Can the permit applicant, an intervenor, or member of the public administratively challenge or file a court appeal regarding OEQC's decision regarding the responsible agency? If so, how many years will that take?
    - How much will this cost? Who will pay these costs?
- **Delays and costs for OEQC to establish exemption procedures and criteria.** The OEQC must establish procedures and criteria whereby specific types of actions may be declared exempt from the preparation of an EA.
    - How many months will the Chapter 91 process take for OEQC to establish procedures and criteria to establish exemption procedures?
    - Can the permit applicant, an intervenor, or member of the public administratively challenge and/or file a court appeal regarding OEQC's proposed exemption procedures and criteria? If so, how many years will that take?
    - How much will this cost? Who will pay these costs?
- **Delays and costs to go through the process of obtaining a declaration of exemption.**
    - Will the procedures require hearings? Written submissions? Legal challenges? Allow requests for postponements?
    - Will the procedures allow participation by the permit applicant, an intervenor, or member of the public appeal?
    - How many months will it take for the OEQC to grant a declaration of exemption?
    - How much will this cost? Who will pay these costs?
- **After all of those delays and costs - there is no guarantee that the OEQC will grant exemptions.**
- **Delays for Appeals of the grant or denial of exemption.**
    - Can an Agency appeal OEQC's decision regarding the grant or denial of an exemption? If so, how many years will such an agency appeal take?
    - Can the permit applicant, an intervenor, or member of the public administratively challenge or file a court appeal regarding OEQC's decision regarding the grant or denial of an exemption? If so, how many years will that take?
    - How much will this cost? Who will pay these costs?

SB 2808, SD2 will directly and responsibly addresses the serious and immediate problems. This SD2 version of the bill would amend Chapter 343, HRS, by adding a new section to exempt the following specific and narrow situations from EA requirements:

- Certain projects involving the use of state or county lands or state or county lands, or when the expenditure of state or county funds limited to an existing public street, road, or highway for limited purposes such as an easement, drainage, waterlines, access improvements, utility right-of-way; or the like; and
- Certain projects involving a modification or disposal of highway access rights or use, occupancy, or work within the public right-of-way to serve private development outside the highway right of way; provided that the proposed development outside the highway right-or-way does not involve:
    - Any action by the State Land Use Commission or Board of Land and Natural Resources,
    - The use of 5 or more acres that has not been disturbed by intensive human use since 1840; or
    - Any use of plants or animals that are not, but could potentially become established in Hawaii.

SB 2808 SD2 also further limits the above exemptions, as follows:

- This section shall not be interpreted as exempting the entirety of a development project from this chapter;
- All exemptions under this section shall be inapplicable when the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment; and
- In recognition that a comprehensive review of Chapter 343, HRS will be done within the next year, the SD2 version provides that this Act shall be repealed one year after the effective date of this Act.

Justification

- **For the past 30 years or so, Environmental Assessments were never required for minor work touching public roadways.** It is our understanding that ever since Chapter 343 was implemented, one of the "triggers" for the preparation of an EA has been the "use of state or county lands." In the past, however, this term has been interpreted to mean that an EA is required for all government projects or development projects on government lands. Thus, 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").
- **New interpretations by government agencies have expanded the original intent of Chapter 343 and sometimes cause unintended consequences.** Government agency and legal interpretations of recent court decisions, have resulted in the requirement by some government agencies that an EA is required anytime there is such minor work touching public roadways or ROW. There have been unintended consequences of such interpretations, and as a result, 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.

- **EAs will still be required for state and county projects and major private developments.** We understand that 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 or development plans, shoreline setback uses, etc. Also, the provisions stating that the exemption will not apply to entire developments and the provisions relating to cumulative impact further assure that projects with environmental impacts will be required to prepare EAs.

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 to address the unintended consequences of recent court decisions which have expanded the situations under which an EA is required beyond those originally intended by the legislature. Under the current interpretation by some government agencies, an EA could be required for any and all minor access improvements, easements and utility projects which touch a state or county right of way. We believe that **the proposed HD1 will not do anything to help the situation**, however, **the exemptions proposed in S.B. 2808, SD2 are immediately needed and would not jeopardize health, safety or environmental concerns**.

LURF appreciates the opportunity to express our views on this matter and we urge you **to hold Proposed HD1, and to pass SB 2808, SD2.**

2008/senate/sb2808sd2proposedhd1eisexemption(eep-jud)080401.doc