

LINDA LINGLE  
GOVERNOR



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

February 12, 2009

Bill No. HB1164 BRENNON T. MORIOKA  
DIRECTOR  
Support  N Deputy Directors  
MICHAEL D. FORMBY  
FRANCIS PAUL KEENO  
BRIAN H. SEKIGUCHI  
JIRO A. SUMADA  
Date 2/10  
Time 1404 IN REPLY REFER TO:  
Cat AF  AS AX BC  
Type  1 2 WI

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

HOUSE BILL NO. 1164, RELATING TO ENVIRONMENTAL REVIEW.

COMMITTEE ON  
ENERGY AND ENVIRONMENTAL PROTECTION

The Department of Transportation (DOT) **supports** this bill, which is an Administration Initiative.

This bill will authorize an agency to transfer the responsibility for preparing and funding environmental assessments (EA) and environmental impact statements (EIS), to the private entity (user) who will actually be using the state or county lands or when new improvements necessary to accommodate the private entity's operations are to be constructed with state or county funds.

In general, HRS Section 343-5 requires an EA for projects that propose the use of state or county lands or the use of state or county funds. Whether an agency proposes the action or an applicant proposes the action that requires agency approval, the law requires that the EA be prepared by the agency. Moreover, the agency is to prepare the EA for such action "at the earliest practicable time to determine whether an environmental impact statement shall be required." However, preparation of the necessary document is both expensive and time-consuming.

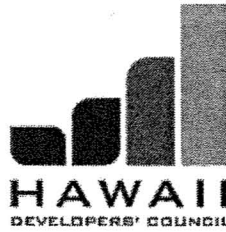
Furthermore, the Hawaii Supreme Court in its August 31, 2007 decision in The Sierra Club v. The Department of Transportation of the State of Hawaii, 115 Haw. 299 (2007), clearly held that the "Chapter 343" process does not allow the State to consider physical improvements to its property "in isolation." The State must also consider and analyze the secondary and cumulative impacts of the project facilitated by the physical improvements.

By analogy, Harbors Division is currently completing an EIS for large capacity ferry vessels for the physical improvements that were made at our harbors to accommodate and facilitate the operations of said vessels. This EIS was required by Act 2, Second Special Session 2007. Moreover, under current law, the EIS is required to consider not only impacts from the harbor improvements, but impacts from the vessels' operations as well. These vessels are private undertakings. Nevertheless, the State is required to fund and prepare the EIS. Under these circumstances, where the new improvements were made to accommodate the private entity's operations, the State should have the legal authority to delegate the responsibility for the preparation of the EIS, to the private entity.

The amendments proposed in this bill will allow the State and the counties to require the user of state or county lands or the user of improvements constructed with state or county funds, to prepare and fund the necessary EA and/or EIS.

The proposed legislation permits the State and counties to fairly shift the cost for the necessary environmental reviews, to the actual user of the state and county lands or funds. We believe that the actual user (and not the government or the taxpayers) should pay for these reviews.

Accordingly, we ask for your favorable consideration of this bill.



February 12, 2009

Bill No. 1164

Support Y N

Date 2/11/09

Time 7:10a

Cat AF AS AX (B)C

Type (1) 2 WI

Representative Hermina Morita, Chair  
HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION  
State Capitol, Room 312  
415 South King Street  
Honolulu, Hawaii 96813

Dear Chair Morita:

**Subject: House Bill No. 1164 Relating to Environmental Review**

My name is Dean Uchida, Vice President of the Hawaii Developers' Council (HDC). We represent over 200 members and associates in development-related industries. The mission of Hawaii Developers' Council (HDC) is to educate developers and the public regarding land, construction and development issues through public forums, seminars and publications.

It is also the goal of HDC to promote high ethics and community responsibility in real estate development and related trades and professions.

The HDC questions the need for H.B. No. 1164 as proposed.

The proposed legislation would amend Chapter 343 HRS and allow for the preparation of the environmental assessment may be made by the agency or the agency may designate the person who is the proposed user of the state or county facility or improvement, to prepare and fund the environmental assessment on behalf of the agency, if the state or county facility or improvement is necessary to accommodate the person's operations.

It is unclear what the proposed legislation is attempting to address in that currently one of the triggers for an EA-EIS is any use of state or county lands. It is our understanding that agencies currently require an EA-EIS be prepared and submitted by an applicant with their request to use the state or county owned land or facility. In other words, the agency currently requires the applicant prepare the necessary Chapter 343 HRS document as part of the disposition process.

It is unclear from the present draft of the bill, why the statute needs to be amended for something that is being done administratively right now. We recommend that S.B. No. 1053 be held.

Thank you for the opportunity to provide comments.

**BIA-HAWAII**  
BUILDING INDUSTRY ASSOCIATION

February 12, 2009

Representative Hermina Morita, Chair  
HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION  
State Capitol, Room 325  
415 South King Street  
Honolulu, Hawaii 96813

Bill No. 1164

Support Y N

Date 2/11/09

Time 7:30a

Cat AF AS AX BC

Type 9 2 WI

Dear Chair Morita and Members of the Committee on Energy and Environmental Protection::

**Subject: House Bill No. 1164 Relating to Environmental Review**

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 questions the need for H.B. No. 1164 as proposed.

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Thank you for the opportunity to provide comments.



Executive Vice President & Chief Executive Officer  
BIA-Hawaii



HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

February 12 at 9:00 a.m.  
State Capitol, Room 312  
415 South King Street  
Honolulu, Hawaii 96813

Bill No. 1164

Support Y N

Date 2/11/09

Time 11:33a

Cat AF AS AX  B C

**Subject: House Bill No. 1164 Relating to Environmental Review**

Chair Morita and members of the committee:

Type  1 2 WI

My name is Jim Tollefson, President of the Chamber of Commerce of Hawaii. 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

The Chamber of Commerce of Hawaii questions the need for H.B. No. 1164 as proposed.

The proposed legislation would amend Chapter 343 HRS and allow for the preparation of the environmental assessment be made by the agency or the agency may designate the person who is the proposed user of the state or county facility or improvement, to prepare and fund the environmental assessment on behalf of the agency, if the state or county facility or improvement is necessary to accommodate the person's operations.

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