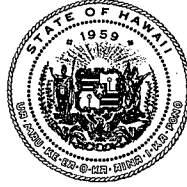


**SB 1053**



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

March 2, 2009

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

SENATE BILL NO. 1053, SD1, RELATING TO ENVIRONMENTAL REVIEW.

COMMITTEE ON WAYS AND MEANS

The Department of Transportation (DOT) **supports** this bill, which 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.

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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.