

**SB 1053**



# Sierra Club Hawai'i Chapter

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## SENATE COMMITTEE ON WAYS AND MEANS

March 2, 2009, 9:30 a.m.

*(Testimony is 1 page long)*

## TESTIMONY IN OPPOSITION TO SB 1053, SD1

Aloha Chair Kim and members of the Committees:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, opposes SB 1053 SD1, allowing an agency to have a developer conduct an environmental assessment ("EA") or environmental impact statement ("EIS") on their behalf.

As an initial matter, the Sierra Club observes that the legislature allocated funding for a comprehensive two-year review of Chapter 343. The Sierra Club has participated in this study in good faith based on the understanding no changes would be made to Chapter 343 until this study is completed and the recommendations reviewed. This avoids the problem of piecemeal changes that fail to solve the perceived underlying issues. It further prevents the very real possibility that this study will require additional resources to repeat the already conducted interviews.

To the extent this Committee wishes to proceed with this bill, the Sierra Club suggests amending page 1, line 15, and striking the language "to prepare and . . . ." <sup>1</sup> The Sierra Club supports the concept of making the person who benefits from an EA/EIS pay for the process, but believes the agency should retain control of the process. Serious questions arise about the impartiality of the EA when it is conducted by someone desiring a particular outcome. The analysis may be directed towards achieving that outcome, rather than fulfilling the intent of Chapter 343.

Thank you for the opportunity to testify.

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<sup>1</sup> To this end, if this suggestion were adopted many of the other portions of this Bill become unnecessary and can also be struck.

LURF



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Via Capitol Website

March 2, 2009

**Senate Committee on Ways and Means  
Hearing Date: Monday, March 2, 2009, at 9:30 a.m. in CR 211**

**Testimony in Opposition to SB 1053, SD1 Relating to Environmental Review  
(Transfer costs of EA/EIS to users)**

Honorable Chair Donna Mercado Kim, Vice-Chair Shan S. Tsutsui  
and Ways and Means Committee Members:

My name is Dave 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, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF respectfully **opposes SB 1053, SD1** which allows a government agency to transfer the responsibility of preparing and funding an environmental assessment (EA) and environmental impact statements (EIS) to the user of the state or county land or new improvements to be constructed with state or county funds necessary to accommodate the user's operations.

**LURF's Position.** We are writing in **opposition to SB 1053, SD1** based on, among other things, the following:

- **No explanation or justification for the legislation.** The bill does not include any explanation or justification for the legislation, so it is unclear what major facts or issues would warrant such statewide legislation which would change policies and procedures which have been in place for over 30 years.
- **Await the results of the study of the State's environmental review process.** In this case, without any explanation or justification of the urgency of this legislation, it would be premature for the legislature to make amendments to HRS Chapter 343 prior to the study of the State's environmental review process is

completed. Act 1 (2008) has directed the Legislative Reference Bureau, along with the Department of Urban and Regional Planning at the University of Hawaii (UH), Environmental Law Program at William S. Richardson School of Law, UH and the UH Environmental Center to prepare the study, which involves interviewing those involved in the state EIS process including federal, state and county agency personnel, consultants, nongovernmental organizations, University faculty and others. Testimony from the University of Hawaii agencies involved in the EIS study have opposed this bill, stating that any changes to HRS Chapter 343 passed during the legislative session will affect the completeness and outcome of the study. The UH team has also stated that the recommendations in the study may suggest changes to the law that will necessitate the repeal of this bill at a later date should it become law;

- **Agencies can recoup their up-front costs of EA/EIS preparation and funding through user fees or state taxes over the long term** (this is the same argument used by the State to support the increased up-front home prices and mortgages for new home owners due to mandatory solar systems). In its testimony, the Department of Transportation (DOT) analogizes an EIS being prepared by DOT for harbor improvements made to accommodate and facilitate the operations of large capacity ferry vessels, and argues that such a user should be required to prepare and fund the necessary EA and/or EIS for such project. We understand, however, that presently the DOT and State have the authority to charge user fees to companies who use their harbors, and such user fees can include the costs of complying with regulations, inspection and enforcement.
- **Process for charging a proposed user will be arbitrary, subjective, cumbersome, unenforceable and anti-business.** The legislation allows for a government agency to designate the person who is the proposed user of the state or county facility or improvement to 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." This new provision will be very cumbersome and hard to enforce, based on, among other things, the following:
  - If major improvements are needed to Manoa Field accommodate increasing teams in the Manoa Youth Baseball League, or if major improvements are necessary to improve Waipio Soccer Park to accommodate more AYSO teams - - will government charge the Manoa Youth Baseball League or AYSO for the costs of the EA/EIS?
  - If the State wants to expand and improve its Airport facilities to attract more airlines – will the State charge the new airlines to pay for the costs of the EA/EIS? Will such a State policy set by SB 1053, SD1, serve to attract more airlines and visitors to Hawaii?
  - If the State decides to build a new stadium, or repair Aloha Stadium, will the state charge the University of Hawaii Athletic Department and the National Football League for a new EA and EIS? Will the new State policy established by SB 1053, SD1, serve to enhance the State's opportunities to maintain or attract major sporting events?

Based on the above, we respectfully request that **SB 1053, SD1 be held** in the Senate Committee on Ways and Means.

Thank you for the opportunity to express our **opposition to SB 1053, SD1.**