



COMMENTS OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-FIFTH LEGISLATURE, 2010

Bill No. <sup>SB</sup> 2818

ON THE FOLLOWING MEASURE:

S.B. NO. 2818, S.D. 2, RELATING TO ENVIRONMENTAL PROTECTION.

BEFORE THE:

HOUSE COMMITTEES ON ENERGY AND ENVIRONMENTAL PROTECTION AND WATER, LAND, AND OCEAN RESOURCES AND ON ECONOMIC REVITALIZATION, BUSINESS, AND MILITARY AFFAIRS.

Date 3/8 Time 803

DATE: Tuesday, March 9, 2010 TIME: 11:15 a.m.

Cat AF AS AX B.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Mark J. Bennett, Attorney General, or Edward G. Bohlen, Deputy Attorney General

Type 1 2 WI

Chairs Morita, Ito, and McKelvey and Members of the Committees:

The Attorney General opposes this bill and respectfully requests that it be held. The Attorney General suggests instead that a task force be established to analyze the recommendations embodied in the report that will be issued this year by the University of Hawaii Environmental Center, and to consider and address potential problems that the Attorney General and others have identified.

For more than thirty years, environmental impact reviews have been required where a proposed action that is not exempt involves certain specific triggers set forth in chapter 343, Hawaii Revised Statutes. The bill as amended would continue to require an environmental assessment for a "use of state or county land or funds," limiting that trigger to "major" uses. The bill, however, would add a trigger for "[t]he issuance to a person of a major discretionary approval, such as a zoning approval or a permit by one or more agencies." While the current system needs reform, this proposal would make things even worse. This bill's large changes could harm both property development and environmental protection in Hawaii.

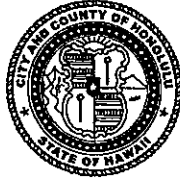
The three biggest potential problems with the bill, among many, are: (1) it would likely make the environmental review process even more cumbersome; (2) it would hamstring economic development by requiring unnecessary environmental reviews for even more actions with minimal environmental impact; and (3) it would surely cause uncertainty and lead to litigation over vague key terms such as "major" and "discretionary" that will be subject to interpretation.

The University of Hawaii Environmental Center is still working on its final report, which it will not finish until perhaps this summer. It would be unwise to pass this major revision of law before the University of Hawaii Environmental Center has had an opportunity to complete its work, and without extensive input from, and discussion among, various interested parties.

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813  
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MUFI HANNEMANN  
MAYOR



DAVID K. TANOUE  
DIRECTOR  
ROBERT M. SUMITOMO  
DEPUTY DIRECTOR

March 9, 2010

Bill No. SB 2818

The Honorable Hermina M. Morita, Chair  
and Members of the Committee on Energy &  
Environment Protection  
The Honorable Ken Ito, Chair  
and Members of the Committee on Water, Land &  
Ocean Resources  
The Honorable Angus L. K. McKelvey, Chair  
and Members of the Committee on Economic  
Revitalization, Business & Military Affairs  
The State House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Date 3/8

Time 1155

Cat AF AS  B

Type 1 2 WI

Dear Chairs Morita, Ito, McKelvey and Members:

**Subject: SENATE BILL No. 2818, SD 2  
Relating to Environmental Protection**

The Department of Planning and Permitting (DPP) **opposes** Senate Bill No. 2818, SD 2. We feel that the proposed changes will increase uncertainty in the entitlement process and will require increases in public and private resources at an especially difficult economic time. Furthermore, the ten-year expiration date for Environmental Assessments (EAs) and Environmental Impact Statements (EISs) is unjustified.

The stated purpose of the proposed revision to the bill is to improve the environmental review process in the State to create a more streamlined, transparent, and consistent process. We believe the result will be the opposite. Pursuant to proposed Section 343-5(a), the proposed triggers for EAs are a *major* use of state lands and funds, or a *major* discretionary approval by an agency. The lack of clarity inherent in these triggers will lead to an unpredictable process, dampening any economic recovery. The current system may be decades old and could use some minor improvements, but it is well understood, and the triggers for environmental reviews are clear.

Placing a deadline on the validity of an EA or EIS (as proposed in Section 343-6(a)(14)(B)) will fundamentally change the nature of what an environmental document is supposed to do. Changing the deadline from the earlier-proposed seven to ten years does not alleviate this concern

The Honorable Hermina M. Morita, Chair  
and Members of the Committee on Energy &  
Environment Protection  
The Honorable Ken Ito, Chair  
and Members of the Committee on Water, Land &  
Ocean Resources  
The Honorable Angus L. K. McKelvey, Chair  
and Members of the Committee on Economic  
Revitalization, Business & Military Affairs  
The State House of Representatives  
Senate Bill No. 2818, SD2  
March 9, 2010  
Page 2

- The EA or EIS is supposed to provide decision makers with the best possible information about projected impacts and possible mitigations **available at the time of decision** so that they make the best informed decision. After the decision, there is no need to update the EIS or EA, since the decision has been made; and, once made, an owner or operator is legally vested.
- Revocation of an entitlement requires due process as a matter of law. Typically, revocation of an entitlement requires a vote by the decision makers, at which time a new or supplemental EIS/EA could be required. This leads to tremendous uncertainty for projects.

A land use decision is not a temporary one, nor should it be short-term in nature. Commitments from both the public and private sectors are based on the constancy of these decisions which often involves a long time to achieve build-out due to financial and other constraints, dependence on the actions of others, and unforeseen challenges. Therefore, a specified duration for the validity of an EIS or EA is unjustified given the complexity and range of proposed actions; one size does not fit all.

In summary, Chapters 341 and 343, HRS may benefit from minor changes and updates, but this bill goes much further than improvement, and represents a profound change in the project entitlement process.

Therefore, please file Senate Bill No. 2818, SD 2.

Thank you for this opportunity to comment.

Very truly yours,

  
for David K. Tanoue, Director  
Department of Planning and Permitting

DTK:jmf  
sb2818sd2-ks.doc

Bill No. SB 2818



March 9, 2010

Date 3/6

Time 11:55

Cat: AF AS AX B

Type 1 2 WI

The Honorable Hermina Morita, Chair and Member  
Committee on Energy and Environmental Protection  
The Honorable Ken Ito, Chair and Member  
Committee on Water, Land, and Ocean Resources  
The Honorable Angus McKelvey, Chair and Member  
Committee on Economic Revitalization, Business and Military Affairs  
State House of Representatives  
State Capitol, Room 325  
Honolulu, Hawaii 96813

Dear Chairs Morita, Ito and McKelvey, and Members:

**Subject: Senate Bill No. SB 2818, SD2, Relating to Environmental Protection**

My name is Lance Wilhelm, 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.

**HDC strongly opposes S.B. No. 2818 SD 2, as presently drafted.**

We are participating on a Working Group convened by both Senator Gabbard and Representative Morita to see what, if any, proposed changes to Chapter 343 could be considered by the legislature this session.

At this time, there is no agreement on what, if any, changes should be made to chapter 343. We have no objection to using S.B. 2818 as a "vehicle" if an agreement is reached by the working group before the end of session. We remain opposed to the current language in SB 2818, SD2.

Thank you for this opportunity to express our views.

# HISTORIC HAWAII FOUNDATION

Bill No. SB2818

VIA WEB: [www.capitol.hawaii.gov/emailtestimony](http://www.capitol.hawaii.gov/emailtestimony)

Date 3/8

TO: Rep. Hermina M. Morita, Chair  
Rep. Denny Coffman, Vice Chair  
Committee on Energy & Environmental Protection

Time 753

Rep. Ken Ito, Chair  
Rep. Sharon E. Har, Vice Chair  
Committee on Water, Land & Ocean Resources

Cat-AF AS AX  B

Rep. Angus L.K. McKelvey, Chair  
Rep. Isaac W. Choy, Vice Chair  
Committee on Economic Revitalization, Business & Military Affairs

Type  1  2 WI

FROM: Kiersten Faulkner, Executive Director  
Historic Hawaii Foundation

Committee: Tuesday, March 9, 2010  
11:15 a.m.  
Conference Room 325

RE: **SB2818, SD2 Relating to Environmental Protection**

On behalf of Historic Hawaii Foundation (HHF), I am writing with comments on SB2818, SD2, which makes sweeping changes to the state's laws regarding assessment and disclosure of impacts to natural, cultural and historic resources from certain projects.

Under Section 6 of the bill, the nine triggers under which environmental assessments or environmental impact statements are currently required would be eliminated, including that of having an impact on any historic site designated on the Hawaii State or National Registers of Historic Places.

The historic registers are the official lists of those sites, buildings and properties that are worthy of preservation due to their qualities related to history, architecture, archaeology, culture, environmental, social, educational or recreational value. The process of designating properties on the historic registers is painstaking, based on specific criteria and standards. Once so designated, it is important that these historic and cultural sites be considered thoughtfully and thoroughly prior to any action being taken that could have an adverse effect, and that effect should be avoided, minimized or mitigated. This has long been recognized in both federal and state statute. Eliminating that review trigger for the state's environmental reviews would open a loophole that would result in destruction or desecration of the most significant sites in Hawaii.

**Therefore, HHF recommends that SB2818, SD2, be amended to restore the applicability requirements for environmental assessments and environmental impact statements, including that of any use of a historic site designated on the Hawaii State or National Registers of Historic Places.**

P.O. Box 1658 • Honolulu, HI 96806 • Tel: 808-523-2900 • FAX: 808-523-0800 • [www.historichawaii.org](http://www.historichawaii.org)

Historic Hawai'i Foundation was established in 1974 to encourage the preservation of historic buildings, sites and communities on all the islands of Hawai'i. As the statewide leader for historic preservation, HHF works to preserve Hawai'i's unique architectural and cultural heritage and believes that historic preservation is an important element in the present and future quality of life, environmental sustainability and economic viability of the state.

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

CHIYOME LEINAALA FUKINO, M.D.  
DIRECTOR OF HEALTH

Date 3/8  
Time 1034

Cat AF AS AX (B)

In reply, please refer to:

File:  
Type (1) 2 WI

HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION  
HOUSE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES  
HOUSE COMMITTEE ON ECONOMIC REVITALIZATION, BUSINESS, &  
MILITARY AFFAIRS

SB2818, SD2, RELATING TO ENVIRONMENTAL PROTECTION

Testimony of Chiyome Leinaala Fukino, M.D.  
Director of Health

March 9, 2010  
11:15 A.M.

1 **Department's Position:** We respectfully oppose this measure and ask that it be held for further review.

2 **Fiscal Implications:** Unquantified.

3 **Purpose and Justification:** The bill proposes major changes to the environmental review system,  
4 primarily of HRS chapter 343.

5 The department has serious concerns that the bill is overly broad and most, if not all, of our  
6 permits, approvals, grants, and loans will be covered by the new environmental review process. Rather  
7 than streamlining the process, such broadening will severely strain our limited resources and hamper our  
8 ability to perform our core functions of protecting public health and the environment.

9 Clearly, many areas in the University of Hawaii, Environmental Center's yet to be finalized  
10 report deserve a thorough review and discussion amongst the many interested and affected parties before  
11 a major revision of law is enacted. We prefer that there be more time for all affected parties to review  
12 the UH's report after it is finalized, to better understand the likely effects of the widespread changes  
13 being proposed, and to discuss the proposals.

14 Thank you for this opportunity to testify.



UNIVERSITY  
of HAWAII  
MĀNOA

RL: 2265

Bill No. SB2818

Date 3/8

Time 1118

Cat AF AS AX

Type  2 WI

SB 2818 SD 2  
RELATING TO ENVIRONMENTAL PROTECTION

House Committee on Energy & Environmental Protection  
House Committee on Water, Land, & Ocean Resources  
House Committee on Economic Revitalization, Business & Military Affairs  
Joint Public Hearing - March 9, 2010  
11:15 a.m., State Capitol, Conference Room 325

By

Peter Rappa, Environmental Center  
Karl Kim, Urban and Regional Planning  
Denise Antolini, Richardson School of Law  
Nicole Lowen, Environmental Center  
Scott Glenn, Urban and Regional Planning

Our statement on this measure does not represent an institutional position of the University of Hawaii.

A team of researchers including the authors of this testimony undertook a study of the state's environmental review system pursuant to Act 1, 2008 and submitted an in-depth report to the Legislature on January 1, 2010. Based on an extensive stakeholder process, the study assessed the system's effectiveness and proposes a comprehensive set of specific recommendations for statutory amendments to H.R.S. Chapters 341 and 343. SB 2818 was based on the recommendations of the study included in the team's report to the legislature. SD1 and SD2 include several important changes to the original bill.

After the initial hearing on SB 2818 on February 2, 2010, Senator Gabbard, Chair of the Committee of Energy and Environment, convened a Working Group to discuss possible improvements to the bill. The principals of the UH study team are part of the working group, as are representatives of the environmental and development communities, the Environmental Council, and the Office of Environmental Quality Control. The working group has been meeting since February 16, will meet again on Monday March 8, and two more times in March, and has been making positive progress. We ask the House Committees on to allow this bill to move forward so that the Working Group can continue to find common ground to present to the Legislature.





The Nature Conservancy  
Hawai'i Program  
923 Nu'uuanu Avenue  
Honolulu, HI 96817

(808) 537-4508  
(808) 545-2019  
www.nature.org/hawaii

Testimony of The Nature Conservancy of Hawai'i  
Supporting the Intent of S.B. 2818 SD2 Relating to Environmental Protection  
House Committees on Energy & Environmental Protection,  
Water, Land & Ocean Resources, and Economic Revitalization, Business & Military Affairs  
Tuesday, March 9, 2010, 11:15am, Room 325

*The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawai'i's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for native species in Hawai'i. Today, we actively manage more than 32,000 acres in 11 nature preserves on O'ahu, Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.*

The Nature Conservancy supports the intent of S.B. 2818 SD 2, particularly the effort to streamline the environmental review process and including a discretionary approval screen. We have been participating in the working group established to review S.B. 2818 and support keeping the bill alive in the House to promote further discussion and hopeful passage of legislation this year.

We also share the following particular comments regarding the effect of the State environmental review process on certain conservation projects that we believe should be addressed via statutory or regulatory exemption.

Conservation work that protects, preserves, or enhances the environment, land, and natural resources is often caught up in the same time consuming and expensive environmental review process as projects that have negative impacts on the environment. While it is appropriate that higher protection is afforded to lands with conservation value, e.g., lands in the State conservation district, it often comes at a stroke too broad that does not distinguish between constructing residential homes versus engaging in conservation work to protect native forests or control invasive species. Conservation actions have to go through the same expensive level of review for environmental impacts as development.

Environmental review for the TNC's conservation work has been a significant burden:

- o Each EA takes 6-12 months;
- o Each EA takes ~1 FTE (part of 2-4 people's time);
- o Each EA costs \$100,000-\$200,000;
- o TNC has done 15 EAs in last 15 years;
- o Five of our preserves have had two EAs each;
- o One preserve is getting its third EA for conservation work.

Bill No. SB2818

Date 3/8

Time 1128

Cat AF AS AX **(B)**

Type **(1)** 2 WI

BOARD OF TRUSTEES

S. Haunani Apoliona Christopher J. Benjamin Zadoc W. Brown, Jr. Samuel A. Cooke Peter H. Ehrman Kenton T. Eldridge  
Peter Ho Stanley Hong J. Douglas Ing Mark L. Johnson Dr. Kenneth Kaneshiro Bert A. Kobayashi, Jr.  
Faye Watanabe Kurren Duncan MacNaughton Bonnie McCloskey Wayne Minami Michael T. Pfeffer  
H. Monty Richards Jean E. Rolles Scott Rolles James Romig Crystal Rose Eric Yecaman

**SB 2818 SD2  
RELATING TO ENVIRONMENTAL PROTECTION**

**SEAN O'KEEFE  
DIRECTOR – ENVIRONMENTAL AFFAIRS  
ALEXANDER & BALDWIN, INC.**

**MARCH 9, 2010**

Date 3/8

Time 1:33P

Cat-AF AS AX  B

Type  1  2 WI

Chairs Morita, Ito, and McKelvey, and Members of the House Committees on Energy and Environmental Protection, Water, Land and Ocean Resources, and Economic Revitalization, Business and Military Affairs:

I am Sean O'Keefe, testifying on behalf of Alexander & Baldwin, Inc. (A&B) on SB 2818, SD2, "A BILL FOR AN ACT RELATING TO ENVIRONMENTAL PROTECTION." We respectfully oppose this bill.

Under the existing Hawaii Revised Statutes (HRS) Chapter 343, Environmental Impact Statements, a proposed action which meets any of thirteen "triggers" requires an environmental assessment (EA), unless exempted, to determine whether the proposed action may have a significant effect on the environment such that an environmental impact statement must be prepared. Implementing regulations under Hawaii Administrative Rules (HAR) Chapter 11-200 establish the criteria to be used in determining whether impacts are "significant".

This bill would substantially overhaul the State's existing environmental review process by, among other things, eliminating the existing two-tiered screening process and mandating that any action requiring a "major discretionary approval" from an agency would, unless specifically exempted by the agency, require an environmental

assessment. The term “major” is not defined in the bill, so it is unclear what discretionary approvals, if any, could be excluded by the use of this vague modifier – a question which the courts are likely to be called upon, perhaps repeatedly, to answer. What is clear is that a vast number of state and county permit processes – including many required for actions of minimal environmental impact – will be burdened with unwarranted additional environmental review, contributing to excessive and unnecessary delays. By eliminating the existing trigger screen, the proposed revisions will result in a massive and unnecessary expansion in the number of actions requiring environmental review – particularly while the new and greatly expanded exemption lists that will be required are being developed – overwhelming the system and paralyzing economic activity in the state.

In establishing the original environmental review triggers contained in HRS Chapter 343, and in revising those triggers from time to time as it deemed necessary, the Legislature has sought to ensure that major projects with the potential for significant environmental impacts would be subject to the environmental review process. We believe that the proposed revision would cast an enormously larger net, resulting in significant “by-catch” of projects with relatively minor impacts that the existing trigger system, coupled with the judicious application of exemptions, has been largely successful in preventing. While we recognize that the proposed bill includes provisions for agency exemptions, we anticipate that the sheer number of exemptions that would become necessary to address the myriad of discretionary approvals with limited environmental impacts will dwarf the existing exemption lists and will not only prove to be unwieldy, but will also greatly increase the likelihood of specific exemptions being

subjected to legal challenges, particularly over vague terms such as “major” and “discretionary”. We respectfully request that the existing “trigger” system under HRS Chapter 343 be retained and that the Legislature continue to review and revise these triggers as experience dictates (for example, to clarify the applicability of environmental review requirements to utility or right-of-way connections).

A&B would also like to express its concern regarding the proposal to allow the adoption of interim rules to implement the provisions of this bill. As proposed, implementing regulations would be adopted with no public notice, with no opportunity for public comment, and without the approval of the Governor, in direct contravention of HRS Chapter 91, Administrative Procedure. This provision is wholly inconsistent with the spirit and purpose of HRS Chapter 343, which is intended to encourage transparency and public participation.

A&B believes strongly that the complete overhaul of the environmental review system proposed in this bill is unwarranted. We believe that the major provisions of this bill will create confusion and uncertainty among both agencies and applicants regarding when environmental review is required, result in an immediate, enormous and unnecessary increase in the number of environmental assessments and environmental impact statements required to be prepared, spawn a great deal of litigation, and result in little if any environmental benefit.

Based on the aforementioned, we respectfully request that this bill be held in Committee. Thank you for the opportunity to testify.

**Cyndi Apana**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 09, 2010 5:58 AM  
**To:** EEPtestimony  
**Cc:** hlpc@hawaiiantel.net  
**Subject:** Testimony for SB2818 on 3/9/2010 11:15:00 AM

Bill No. SB2818

Testimony for EEP/WLO/EBM 3/9/2010 11:15:00 AM SB2818

Conference room: 325  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Jacqui Hoover  
Organization: Hawaii L eeward Planning Conference  
Address: P.O. Box 2159 Kamuela, HI 96743  
Phone: 808.885.9588  
E-mail: [hlpc@hawaiiantel.net](mailto:hlpc@hawaiiantel.net)  
Submitted on: 3/9/2010

Date 3/9

Time 558

Cat AF AS AX **(B)**

Type 1 **(2)** WI

Comments:

**BIA-HAWAII**  
BUILDING INDUSTRY ASSOCIATION

Bill No. SB 2818

March 9, 2010

Date 3/8

Time 1409

Cat-AF AS AX  B

Type 1  2 WI

The Honorable Hermina Morita, Chair and Member  
Committee on Energy and Environmental Protection  
The Honorable Ken Ito, Chair and Member  
Committee on Water, Land, and Ocean Resources  
The Honorable Angus McKelvey, Chair and Member  
Committee on Economic Revitalization, Business and Military Affairs  
State House of Representatives  
State Capitol, Room 325  
Honolulu, Hawaii 96813

Dear Chairs Morita, Ito and McKelvey, and Members:

**Subject: Senate Bill No. SB 2818, SD2, Relating to Environmental Protection**

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 opposes S.B. No. 2818 SD 2, as presently drafted.**

We are participating on a Working Group convened by both Senator Gabbard and Representative Morita to see what, if any, proposed changes to Chapter 343 could be considered by the legislature this session.

At this time, there is no agreement on what, if any, changes should be made to chapter 343. We have no objection to using S.B. 2818 as a "vehicle" if an agreement is reached by the working group before the end of session. We remain opposed to the current language in SB 2818, SD2.

Thank you for this opportunity to express our views.

*Karen Y. Nakamura*

Chief Executive Officer  
BIA-Hawaii



Bill No. SB 2818

Date 3/8

Time 1459

Testimony to the House Committees on Energy & Environmental Protection,  
Water, Land & Ocean Resources, and Economic Revitalization, Business &  
Military Affairs  
Tuesday, March 9, 2010; 11:15 a.m.  
Conference Room 325

Cat AF AS AX B

Type 102 WI

**RE: SENATE BILL NO. 2818 SD2 RELATING TO ENVIRONMENTAL PROTECTION**

Chairs Morita, Ito and McKelvey, Vice Chairs Coffman, Har and Choy, and Members of the Committees:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). The Chamber strongly opposes Senate Bill 2818 SD2, relating to Environmental Protection, as presently drafted.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 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 its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber is not part of the Working Group convened by the chair of the Senate Energy Committee, to see what, if any, proposed changes to Chapter 343 could be considered by the legislature this session. We respectfully believe that broader participation by the business community in such processes is valuable and that it is necessary for such groups to be as balanced as possible in their composition.

At this time, we understand that there is no agreement on what, if any, changes should be made to chapter 343. There was near unanimous initial testimony by all sides opposing S.B. 2818, and we object to using S.B. 2818 as a "vehicle" for the working group to try to reach an agreement before the end of session. Requiring the working group to use this bill has complicated their task immensely.

This bill continues to be a complete re-write of most sections of HRS 343, substantially as initiated by the UH Study. This would set aside two decades of settled case law regarding the EA and EIS process and fundamental definitions under the law. Yet it does not appear to either identify or address any specific problem, real or perceived, with the current HRS 343. This bill would create uncertainty that would jeopardize much needed capital investment in our State, exacerbate the shortage of work force housing and derail the Legislature's other efforts at economic revitalization and job creation. We remain strongly opposed to the current language in SB 2818, SD2.

Thank you for this opportunity to express our views.



EARTHJUSTICE

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES  
NORTHWEST ROCKY MOUNTAIN WASHINGTON, DC INTERNATIONAL

Bill No. SB 2818

REPRESENTATIVE HERMINA M. MORITA, CHAIR  
REPRESENTATIVE DENNY COFFMANN, VICE-CHAIR  
HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

Date 3/8

REPRESENTATIVE KEN ITO, CHAIR  
REPRESENTATIVE SHARON E. HAR, VICE-CHAIR  
HOUSE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES

Time 1459

REPRESENTATIVE ANGUS L.K. McKELVEY, CHAIR  
REPRESENTATIVE ISAAC W. CHOY, VICE-CHAIR  
HOUSE COMMITTEE ON ECONOMIC  
REVITALIZATION, BUSINESS, & MILITARY AFFAIRS

Cat AF AS AX  B

Type 1  2 WI

TESTIMONY RE: SENATE BILL NO. 2818, SD2  
RELATING TO ENVIRONMENTAL PROTECTION

March 9, 2010, 11:15 a.m.  
Conference Room 325

Good morning Chairs Morita, Ito and McKelvey, Vice-Chairs Coffman, Har and Choy, and members of the committees:

My name is David Lane Henkin, and I am an attorney with Earthjustice. We appreciate the opportunity to offer this testimony regarding Senate Bill No. 2818, SD 2, which proposes a comprehensive overhaul of Chapter 343. We support the intent of SB 2818, which seeks to improve Hawai'i's procedures for environmental review, but have concerns about some of the specific proposed language in the current draft of the legislation.

Earthjustice is currently participating a working group that brings together a diverse group of stakeholders to seek consensus about changes to Chapter 343. We respectfully ask the committees to keep SB 2818 alive to provide a vehicle for continued discussions about ways to improve Chapter 343.

Thank you again for the opportunity to offer this testimony.



**Testimony of  
Bob Loy  
Director of Environmental Programs  
The Outdoor Circle  
Committees on Energy and the Environment,  
Water, Land, Agriculture and Hawaiian Affairs, and Economic Revitalization, Business and Military  
March 9, 2010**

**Testimony in Opposition to SB 2818 SD2**

I am Bob Loy testifying on behalf of The Outdoor Circle. We support the original intent of SB2818 but no longer support the legislation before us today.

Our original support of the measure was based upon SB2818's intent to right the ships of the Environmental Council and the Office of Environmental Quality Control. We have many other concerns about other parts of the legislation but were willing to support it under the assumption that the other issues would be worked out as the bill moved along. But a legislatively appointed committee that is privately working to try to resolve the many issues raised by the legislation has not yet made recommendations on what the legislation should say.

So either we are wasting our time testifying today or the members of that committee are wasting their time trying to resolve differences in legislation that could dramatically alter the approval landscape for projects that impact the environment of Hawaii.

Thus, we will wait and see if a credible bill is presented before the end of the session. If so, we will review it and provide substantive comments at the appropriate time.

Bill No. SB 2818  
Date 3/8  
Time 1504  
Cat AF AS AX **(B)**  
Type 1 **(2)** WI



The REALTOR® Building  
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Bill No. SB 2818

March 8, 2010

**The Honorable Hermina M. Morita, Chair**  
House Committee on Energy & Environmental Protection

Date 3/8

**The Honorable Ken Ito, Chair**  
House Committee on Water, Land & Ocean Resources

Time 1632

**The Honorable Angus L.K. McKelvey, Chair**  
House Committee on Economic Revitalization, Business, & Military Affairs  
State Capitol, Room 325  
Honolulu, Hawaii 96813

Cat-AF AS AX (B)

Type 1 (2) WI

**RE: S.B. 2818, S.D.2, Relating to Environmental Protection**

**HEARING: Tuesday, March 9, 2010 at 11:15 a.m.**

Aloha Chair Morita, Chair Ito, Chair McKelvey and Members of the Joint Committees:

I am Myoung Oh, Government Affairs Director of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, submitting testimony on behalf of its 8,800 members in Hawai'i. HAR **opposes** S.B. 2818, S.D.2 which amends the environmental impact statements chapter (Chapter 343) of the Hawai'i Revised Statutes.

The proposed amendments include: (a) reducing the size of the Environmental Council from 15 to 9 members; (b) revising the role of the Director of the Office of Environmental Quality Control to consist of administrative and advisory duties in support of the Environmental Council; (c) establishing the Environmental Review Special Fund; (d) amending the roles and duties of the Environmental Council and Director of the Office of Environmental Quality Control; (e) amending the types of actions that will be subject to an environmental review and the timing of the review; (f) revising the role of the Director of the Office of Environmental Quality Control to consist of administrative and advisory duties in support of the Environmental Council; (g) revising the role of the Environmental Council to include advising the Governor on environmental quality matters and rulemaking to implement Chapter 341 and 343, Hawaii Revised Statutes; and (h) establishing the Environmental Review Special Fund.

While HAR believes that the purpose of S.B. 2818, S.D.2 is laudable, we do not support this bill as currently written because there are many ambiguities in the present language. In addition, the new proposed rules and regulations created by the proposed EIS process could create substantial delays and add significant costs and risk to even the smallest and most minor of projects.

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HAR asks that the Committee consider that full impact of this measure on the EIS process. While there appears to be areas of agreement regarding this measure, a number of the interested parties have expressed concerns about unresolved issues, including increased fees, added government authority and administration, and other new procedural and substantive requirements for environmental impact statements and environmental assessments. Accordingly, HAR believes that, until the stakeholders can work out some of these issues, this measure should be deferred.

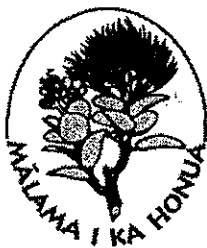
Mahalo for the opportunity to testify.

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TOTAL P.03



# Sierra Club Hawai'i Chapter

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Bill No. SB 2818

Date 3/8

Time 1836

HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION  
HOUSE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES  
HOUSE COMMITTEE ON ECONOMIC REVITALIZATION, BUSINESS, & MILITARY AFFAIRS

March 9, 2010, 11:15 A.M.  
(Testimony is 1 page long)

### TESTIMONY IN SUPPORT OF SB2818 (SD2)

Aloha Chairs Morita, Ito, and McKelvey, and Members of the Committees:

The Hawai'i Chapter of the Sierra Club respectfully requests the passage of SB 2818 (SD2) so as to continue important discussions on the future of our environmental review process.

SB 2818 (in its original form) reflected the suggestions of a University of Hawai'i review of Hawai'i's environmental review process (Haw. Rev. Stat. Chapter 343). As a result of criticism of this draft, a working group of approximately ten stakeholders was formed. This group has been actively meeting and is working on a revised draft that may satisfy some of the concerns that various groups, including the Sierra Club, have identified.

This working group may not be able to come up with comprehensive resolution. But we should give these task members an opportunity to see if differences can be overcome.

Mahalo for this opportunity to provide testimony.

Bill No. SB 2818

Date 3/8

Time 1957



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COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Hermina M. Morita, Chair  
Rep. Denny Coffman, Vice Chair

COMMITTEE ON WATER, LAND, & OCEAN RESOURCES

Rep. Ken Ito, Chair  
Rep. Sharon E. Har, Vice Chair

COMMITTEE ON ECONOMIC REVITALIZATION, BUSINESS, & MILITARY AFFAIRS

Rep. Angus L.K. McKelvey, Chair  
Rep. Isaac W. Choy, Vice Chair

SB 2818 SD2  
RELATING TO ENVIRONMENTAL PROTECTION

March 9, 2010

Committee Chairs and Members;

Hawaii's Thousand Friends opposes the elimination of the existing triggers in §343-5 and lack of time limits on EAs and EISs.

While the proposed trigger process in SB 2818 SD2 may be easier for those involved in land use and planning to understand without the current easily understood and obvious triggers in Chapter 343-5 it will be harder for the general public to know when an EA is required.

Currently the EA triggers in Chapter 343-5 are easily understood such as:

- (1) Propose use of state or county lands or the use of state or county funds...
- (2) Propose any use within any land classified as a conservation district by the state land use commission under chapter 205
- (7) Propose construction of new or expansion or modification of existing helicopter facilities...
- (9) Propose any;
  - (A) Wastewater treatment unit...
  - (C) Landfill.

The proposed language for §343-5 (a) (1) A major use of state or county lands or funds will lead to confusion, misunderstanding and possible litigation over what constitutes a major use of public lands and funds.

Equality confusing for the public is (2) The issuance to a person of a major discretionary approval, such as a zoning approval or a permit by one or more agencies. A layperson would once again have to know the definition of major and be aware of the types of permits and/or zoning approvals needed before hand in order to know if an EA has been triggered.

Elimination of the easily understood triggers in §343-5 puts the burden on the public to know and understand the various county and state land use processes and terms just to know if an EA is required.

In addition, the changes proposed in the 47 page bill sidestep the critical and frustrating question of the shelf life of an EA or EIS – 10, 15, 20 years or in perpetuity. Until that question is answered there will be more lawsuits, such as Turtle Bay, challenging the validity of an aged environmental disclosure document.

Unless the current triggers in §343-5 are retained and a time limit placed on the shelf life of an EA or EIS Hawaii's Thousand Friends recommends that SB 2818 SD2 be held for further discussion.



# Hawai'i Island Chamber of Commerce

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March 8, 2010

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To: Honorable Senator Donna Mercado Kim, Chair  
Senator Shan Tsutsui, Vice-Chair;  
and Members of the Committee on Ways and Means

From: Mike Gleason, President-Elect & Government Affairs Committee Chair  
Hawai'i Island Chamber of Commerce

**Subject: SB 2818, SD 1 Relating to Environmental Protection**

Please accept these comments from the Hawai'i Island Chamber of Commerce. HICC represents both large and small businesses on Hawai'i Island. Our mission is to help businesses and promote Hawai'i Island. We provide leadership and advocacy for the business community and promote the economic well-being of the community as a whole. My name is Mike Gleason, President-Elect and the Chair of the Government Affairs Committee.

**HICC respectfully requests that this Committee to hold and defer this bill to allow the considerable time and effort that will be necessary for the members of the different businesses, agencies, organizations, and individuals who will be affected by this sweeping legislation the opportunity to improve it.**

The proposed legislation is a result of the Report to the Legislature on Hawai'i's Environmental Review System and a proposed "omnibus" bill, which was prepared pursuant to Act 1, Session Laws of Hawaii 2008 for the Legislative Reference Bureau, by a team of professors, researchers and students, from the University of Hawaii's Department of Urban and Regional Planning (DURP), the Environmental Center and the Environmental Law Program of the William S. Richardson School of Law. Act 1 of the 2008 State Legislature directed the University of Hawai'i EIS Study Team to, among other things, examine the effectiveness of the current EIS system. We have the following objections to both the bill and the process:

- The substantial changes to Chapter 343 in sum will significantly raise costs for applicants (both private and agency) and agency processors by dramatically broadening the scope of coverage to include many more projects, most of them minor. There would be no way to process these



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EAS without substantially increasing the number of government employees at many county and state agencies.

- We see little evidence that there are fundamental flaws in the existing system justifying such a wholesale change. Most disturbing is the lack of any nexus to an actual deficiency (i.e., it is a solution in search of a problem) and complete apathy about the high cost to homeowners, agencies and businesses who will now need an EIS and the agencies who will now need to process EISs under much more burdensome rules.
- There has been absolutely no study of the broad negative implications of the proposal, which was just presented to the public and Legislature in late December.
- We are concerned about the narrow backgrounds of the group who prepared the legislation, none of whom appear to have expertise and or substantive experience in the planning preparing or processing Chapter 343 documents beyond the academic and theoretical arena. Their lack of familiarity has imbued many aspects of the bill with troubling flaws.

We share many of the concerns and support the February 22, 2010 testimony of the Land Use Research Foundation of Hawai'i that we understand have been previously shared with your committee. We concur particularly with their recommendations that:

- Legislation could be adopted this session regarding issues where there is general agreement; and the study team and land use professionals can work together to provide proposed revisions to bills;
- The parties can work together to identify issues that require further study and input; volunteer to continue work on those issues in Working Groups that involve all stakeholders, perhaps request an independent, objective umbrella organization to facilitate the discussions and prepare a report to the legislation for next year

Thank you for the opportunity to express our opposition to SB 2818, SD 1.





LAND USE RESEARCH  
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Via: <http://www.capitol.hawaii.gov/emailtestimony>

**March 9, 2010**

**Comments and Opposition to SB 2818, SD2  
Relating to Environmental Protection  
(Major Changes to Chapter 343)**

Honorable Chair Hermina Morita, Vice Chair Denny Coffman and Members of the House Committee on Energy & Environmental Protection; Honorable Chair Ken Ito, Vice-Chair Sharon Har and House Committee Members of Water, Land & Ocean Resources; Honorable Chair Angus McKelvey, Vice Chair Isaac Choy and Members of the House Committee on Economic Revitalization, Business & Military Affairs,

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 requests that your House Committees **hold and defer SB 2818, SD2, to allow the UH Study Team (who drafted a Report for the legislation and the initial legislation), land use experts and professionals, environmental groups, the Senates EIS Working Group and government agencies the opportunity to work on revisions to this bill, relating to revisions to Chapter 343, Hawaii Revised Statutes. LURF also objects to some of the changes made between the original version, SB 2818, SD1 and SB 2818, SD2.**

**SB 2818, SD2.** This proposed bill includes substantial changes to Chapter 343, including, but not limited to the following: reducing the membership of the Council from 15 to 9; strips many of powers and duties of the OEQC director and places those powers in the Council, establishes the Environmental Review Special Fund; proposes major changes in the Environmental Assessment (EA) and Environmental Impact Statement (EIS) process. The bill will also call for more government processes, expenses and personnel.

**Background.** The proposed legislation is a result of the Report to the Legislature on Hawaii's Environmental Review System and a proposed "omnibus" bill, which was prepared pursuant to Act 1, Session Laws of Hawaii 2008 for the Legislative Reference Bureau, by a team of professors, researchers and students, from the University of Hawaii's Department of Urban and Regional Planning (DURP), the Environmental

Center and the Environmental Law Program of the William S. Richardson School of Law. We understand that while the team members should be commended for their hard work, this UH process lacked any expertise and or substantive experience in preparing Environmental Assessments (EA) or Environmental Impact Statements (EIS) and also lacked any expertise and responsibility for major land utilization activities and planning and permitting a major development or project through the State and County permitting process.

**LURF'S Objections.** LURF objects to the **SB 2818, SD2 and recommends deferral**, based on, among other things, the following:

- **“Don’t need to fix’ something that ain’t broken.”** Although the UH Study Team was tasked with ‘modernizing’ Chapter 343, it remains to be proven that something is wrong with the existing system which justifies the wholesale overhaul that is now being recommended. Chapter 343 has been in effect over 30 years, and there has been no major environmental disaster relating to the requirements regarding EIS’ and EAs.
- **Another new layer of government approvals with new redundant and excessive laws, rules, regulations, policies and procedures would be created.**
- **Implementation of Bill 2818, SD2 would increase government costs and personnel.** The proposed changes would increase the number of government employees, and result in additional and unnecessary costs for government and businesses.
- As a result of the **hundreds of additional and new requirements in Bill 2818, SD2 the number of potential plaintiffs and questionable lawsuits would escalate.**
- **The recommendations in the UH Report are inconsistent with the purpose of SCR 132 (2009), which established the Construction Industry Task Force,** which has made its recommendations and proposed legislation to enable the state to stimulate the economy and achieve effective economic recovery.
- **The UH Report is “not pau yet” – if it is:”not pau yet,” the Legislature should defer adopting any laws which call for a major overhaul of Chapter 343.** The report provides that “The study will continue through the summer of 2010, when the study team will prepare a final report to the Legislature discussing the results of the 2010 session regarding the statutory recommendations in this report, outlining additional proposed changes to the statutes, specifying further recommended changes to the administrative rules, suggesting agency guidance documents, and reviewing in more detail changes to Chapter 344.” This statement on page 3 of the Report, sounds like the UH Report is not pau yet.

**Major Concern: EIS Study process lacked the benefit of professional qualifications, experience and expertise.** The UH EIS Study Team did not include anyone who had the qualifications or experience to prepare an EA or EIS for a major project, or anyone who has taken a project or development through the State and county land use entitlement process. Based on the information provided in their Report, it appears that substantive input was also lacking from major stakeholder groups, including large property owners, the counties, the military (a major player in land use), the EPA, Hawaii land use attorneys and entitlement specialists, various professionals at the UH Schools of Engineering, Architecture, Tropical Agriculture, etc. and all of the counties. The apparent lack of input from these expert groups, combined with the inexperience of the UH EIS Study Team renders the Report deficient. We would recommend that the Legislature authorize a further study prepared by and including major input from qualified and experienced stakeholders.

**The UH Recommendations and Bill 2818, SD2 attempt to change the EIS from a “Disclosure Document” to another government permit or approval.** Attempts to change the EAs and EIS’ from a disclosure document to another government permit include, but are not limited to proposed requirements to include EIS mitigation measures as conditions in grants, permits or other approvals, requiring a record of decision to enforce the mitigation measures disclosed in the EIS, and continued government monitoring of EIS compliance and shelf-life.

**Bias of the UH EIS Report.** The UH Report appears favorable to the arguments and issues raised by the opponents of development, while disparaging, demeaning and deriding the comments and suggestions made by professionals who prepare EAs and EIS and are subject to ethical standards. The land use professionals and those who prepare EAs and EIS’ have noted that the UH EIS Report includes a general distrust for the work of State and county departments and permitting agencies to protect the environment. The UH Study Team also took sides with the Sierra Club in the ongoing Supreme Court Appeal of the Kuilima EIS.

**LURF’s Recommendation.** We commend the hard work of the UH team, however, based on the fact that the UH EIS Study process lacked the benefit of professional qualifications, experience and expertise in land use planning and permitting and expertise in the preparation of EAs and EIS’, the bias of the Report, the admission that it is incomplete, and the need for a further study by experienced professionals, we would respectfully recommend that;

- Legislation could be adopted this session regarding issues where there is general agreement; and the study team, land use professionals, the Senate EIS Working Group and the government agencies can work together to provide proposed revisions to bills;
- The parties can work together to identify issues that require further study and input; volunteer to continue work on those issues in Working Groups that involve all stakeholders, perhaps request an independent, objective umbrella organization to facilitate the discussions and prepare a report to the legislation for next year (under legislative auditor or LRB) ; and

**General Agreement on some issues.** We believe that “general agreement” can be reached on some issues, including, but not limited to the following:

- Exemptions for the use of land for utilities or rights of way
- Procedures to respond to “comment bombing”
- Allowing project to proceed directly with an EIS, without doing an EA first
- Requiring all environmental assessments and impact statements to be posted on the OEQC website

**Issues subject to misinterpretation, confusion, delays and possible litigation, which require more work and clarification.** There are some issues that may have some merit, but would require more professional input, discussion and clarification with stakeholders before adopted as law.

- Definition of “Discretionary” vs. “Ministerial” permit triggers
- Definitions of permit, project, action, phasing, primary and secondary and cumulative impacts
- Definition of “Significant Effects”
- Expansion of “energy consumption” effect to include “substantial quantities of greenhouse gases”
- Expansion of “hazard” effects to include erosion caused by climate change during the lifetime of the project (should government be doing this too?)
- Standards and procedures for the requirement of a Supplemental EIS

**Disagreement on other issues.** There are some issues that may remain irresolvable, including, but not limited to the following:

- 10-Year Shelf Life of EA or EIS - Most major private and public projects cannot be finished in 10 years. What will happen in 10 years? Will the project be required to change? This will cause havoc with project financing!
- Allows the Council to adopt “Interim Rules “(until 2014) without Chapter 91 public review and comment. What about transparency and public involvement?
- Expanding judicial appeal rights to include the lack of a supplemental EA or EIS
- Granting “Aggrieved Party” status (to allow lawsuits) to any party who provides a written comment to the EIS or EA.
- Reducing the authority of OEQC and its Executive Director
- Increasing the Authority of the Environmental Council
- Establishment of a new Environmental Review Special Fund
- New fees for filing, publication and other administrative services
- Use of Record of Decisions to constitute a “contract” with government (when there are other existing processes and required documents that document decision making and monitoring of projects).
- Requires agencies to “monitor” to ensure that their “decisions” with respect to the EIS are carried-out and implemented by the lead agency (EIS’ are disclosure documents, not permit approvals with conditions).

- Requirement to include mitigation measures (as identified in EIS) on grants, permits or other approvals (EIS' are disclosure documents, not permit approvals with conditions).

**CONCLUSION.** Based n the above, we respectfully request that your committees defer this bill and allow the various stakeholders and the Senate EIS Working Group to work together on legislation. Thank you for the opportunity to express our **opposition to SB 2818, SD2.**