



UNIVERSITY
of HAWAII
MĀNOA

Bill No. SB 2957

Date 3/8

Time 1459

Cat AF AS AX B

Type 1 2 WI

RL: 2264

SB 2957 SD 1
RELATING TO THE ENVIRONMENT

House Committee on Energy and Environmental Protection
House Committee on Water, Land, and Hawaiian Affairs Ocean Resources
Joint Public Hearing – March 9, 2010
9:30 a.m., State Capitol, Conference Room 325

By

Peter Rappa, Environmental Center and Sea Grant College Program
Karl Kim, Professor, Department of Urban and Regional Planning
Denise Antolini, Professor, William S. Richardson School of Law
Nicole Lowen, Environmental Center
Scott Glenn, Urban and Regional Planning

SB 2957 SD 1 provides an exemption for projects that protect, preserve, and enhance the environment, land, or natural resources, under certain conditions, and requires the Environmental Council to make a determination of whether the exemption should be applicable after a public hearing. Our statement on this measure does not represent an institutional position of the University of Hawaii.

We understand the intent of this legislation and agree that many projects which are now required to prepare an environmental assessment to determine if they will have significant impact on the environment should be exempt. We disagree with the approach presented in this bill. We have submitted to the Hawaii State Legislature a study of Hawaii's environmental review system on January 1, 2010, pursuant to Act 1, 2008. 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 chapters 341 and 343 HRS embodied in SB 2818. In the study and in SB 2818 we suggest a comprehensive approach to address problems with the applicability of chapter 343 HRS including exempt-actions. Our changes, should they pass the legislature, will address the issues that SB 2957 attempts to address. We request the committees defer this bill at this time.

A copy of the report was distributed to all legislators and is available to the public on the study blog at:

<http://hawaiieisstudy.blogspot.com/>

Thank you for the opportunity to testify on this legislation

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
PARKS
Bill No. SB 2957

**Department of Land and Natural Resources
Testimony Transmittal Cover Sheet**

Date Submitted: March 8, 2010

Date 3/8
Time 1607
Cat-AF AX B:
Type 1 WI

Testifier's Name/Title: Paul Conry, Forestry and Wildlife Division Administrator

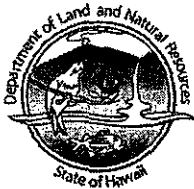
Committee Name: HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION and WATER, LAND, & OCEAN RESOURCES (EEP-WLO)

Day and Date: Tuesday, March 9, 2010
Time/Location: 9:30 AM, Conference Room 325

Measure Number: SB 2957, SD 1 – RELATING TO THE ENVIRONMENT

Requested Copies: 2 (including original) to Room 317 in the State Capitol

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the House Committees on
ENERGY AND ENVIRONMENTAL PROTECTION
and
WATER, LAND, & OCEAN RESOURCES**

**Tuesday, March 9, 2010
9:30 am
State Capitol, Conference Room 325**

**In consideration of
SENATE BILL 2957, SENATE DRAFT 1
RELATING TO THE ENVIRONMENT**

Senate Bill 2957, Senate Draft 1 proposes to provide an exemption to Chapter 343, Hawaii Revised Statutes (HRS), for qualified actions that protect native species, habitat and ecosystems. While the Department of Land and Natural Resources (Department) acknowledges the intent behind this measure, the Department nonetheless prefers the language in House Bill 2960, House Draft 1, passed out earlier by this Committee, which is consistent with and utilizes the current Chapter 343, HRS, provisions for environmental review and exemptions and does not create new administrative processes.

The Department, as well as its many public and private partners, annually spend substantial amounts of money and staff time preparing environmental assessments for conservation projects on lands set aside for conservation including fencing for control of feral animals, field camps, helicopter landing zones and dip tanks for fire control. The Department supports efforts to streamline the process of implementing these environmentally friendly projects so that funding can be focused on implementation of on-the-ground management. However, it appears this bill, would create a new administrative process of additional review and publication in the Environmental Notice for exemptions related to native species, habitats, and ecosystems unique to this class and not other types of exemptions.

**LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT**

**RUSSELL Y. TSUJI
FIRST DEPUTY**

**KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER**

**AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIHOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS**



The Chamber of Commerce of Hawaii
The Voice of Business in Hawaii

Bill No. SB 2957

Testimony to the House Committees on Energy & Environmental Protection and
Land & Ocean Resources
Tuesday, March 9, 2010; 9:30 a.m.
Conference Room 325

Date 3/8

Time 1400

Cat-AF AS AX (B)

RE: SENATE BILL NO. 2957 SD1 RELATING TO THE ENVIRONMENT

Type 1 (2) WI

Chairs Morita and Ito, Vice Chairs Coffman and Har, 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 is opposed to S.B. No. 2957 SD 1, 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 bill proposes to amend Chapter 343 HRS to create an exemption from the preparation of an environmental assessment for any action approved by the department of land and natural resources that protects, preserves, or enhances native species, native habitat, or native ecosystem function.

Under the current law, it would appear that the "trigger" for an environmental assessment for actions that protect, preserve, or enhance native species, native habitat, or native ecosystem functions would be the use of State owned lands or conservation zoned lands. Unless a different trigger is involved, these types of actions on privately owned lands in the agricultural, urban or rural districts may not require an EA.

If the problem primarily involves state owned or conservation zoned lands, a more appropriate approach would be for the Department of Land and Natural Resources to amend their current exempt list to include these types of actions.

However, the "Legislative Fix" by amending Chapter 343 has been an on-going experience. When Chapter 343 HRS was originally created in 1974, the underlying philosophy and approach was based on disclosing and mitigating impacts from a proposed agency or applicant actions (usually land-use based) for consideration by agencies in rendering their "discretionary" decisions on the actions.

Over time, this philosophy and approach has been shifted by subsequent legislation that moved the environmental review process towards being project based as opposed to land use based. For example, adding specific triggers for helicopter landing sites and waste water treatment facilities.

In recent years, the Legislature attempted to address a similar situation where an EA was triggered by driveway and utility connections to a state owned road right-of-way. It is unclear as to why the Legislature granted only at "temporary" relief for these actions when it would appear that the same legislative intent stated here "to ease the regulatory burden on beneficial conservation projects" as expressed in the Senate Committee report for this bill should also apply to easing the regulatory burden for driveway or utility connections to a state road right-of-way.

This pattern of "legislative fixes" points to legislation that treats the symptoms and not the underlying problems. Why does Chapter 343 require constant amendments when there is an Administrative Rules and Exempt list mechanism in place that should deal with these non-significant actions?

We would prefer that a more reasonable approach be taken by providing sufficient staffing and funding to have the Administrative Rules and Exempt list(s) updated rather than to continue amending Chapter 343.

We respectfully cannot support the bill as presently drafted.

Thank you for the opportunity to share our views with you.

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

Bill No. SB 2957

March 9, 2010

Date 3/9

Time 1459

Cat AF AS AX **(B)**

Type 1 **(2)** WI

The Honorable Hermina Morita, Chair and Members
Committee on Energy and Environmental Protection
The Honorable Ken Ito, Chair and Members
Committee on Water, Land, and Ocean Resources
State House of Representatives
State Capitol, Room 325
Honolulu, Hawaii 96813

Dear Chairs Morita and Ito, and Committee Members:

Subject: Senate Bill No. SB 2957 SD 1, Relating to the Environment

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 is opposed to S.B. No. 2957 SD 1, as presently drafted.

The bill proposes to amend Chapter 343 HRS to create an exemption from the preparation of an environmental assessment for any action approved by the department of land and natural resources that protects, preserves, or enhances native species, native habitat, or native ecosystem function.

Under the current law, it would appear that the “trigger” for an environmental assessment for actions that protect, preserve, or enhance native species, native habitat, or native ecosystem functions would be the use of State owned lands or conservation zoned lands. There are no triggers for these types of actions on privately owned lands in the agricultural, urban or rural districts so an EA would not be required to conduct these types of activities on private lands outside of the Conservation District.

If the bulk of the problem involves state owned or conservation zoned lands, a more appropriate approach would be for the Department of Land and Natural Resources to amend their current exempt list to include these types of actions.

However, the “Legislative Fix” by amending Chapter 343 has been an on-going experience. When Chapter 343 HRS was originally created in 1974, the underlying philosophy and approach was based on disclosing and mitigating impacts from a proposed agency or applicant actions—usually land use based—for consideration by

agencies in rendering their "discretionary" decisions on the actions at the earliest practicable time.

Over time, this philosophy and approach has been shifted by subsequent legislation that required the environmental review process to be project-based as opposed to land use based. For example, adding specific triggers for helicopter landing sites and waste water treatment facilities.

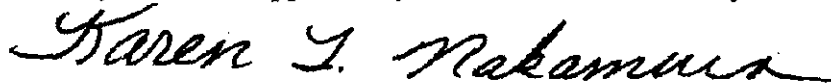
In recent years, the Legislature attempted to address a similar situation where an EA was triggered by driveway and utility connections to a state owned road right of way. It is unclear as to why the Legislature granted only at "temporary" relief for these actions when it would appear that the legislative intent to "ease the regulatory burden on beneficial conservation projects" as expressed in the Senate Committee report for this bill should also apply for driveway or utility connection to a state road right of way.

The pattern of "legislative fixes" seems to point to legislation that treats the symptoms and not the underlying problems. Why does Chapter 343 require constant amendments when there is a mechanism in place that should deal with these non-significant actions?

We would prefer a more reasonable approach and provide sufficient staffing and funding to have the Administrative Rules and Exempt list(s) updated rather than to continue amending Chapter 343.

We cannot support the bill as presently drafted.

Thank you for the opportunity to share our views with you.



Chief Executive Officer
BIA-Hawaii

HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

Rep. Mina Morita, Chair, Rep. Denny Coffman, Vice Chair

HOUSE COMMITTEE ON WATER, LAND, AGRICULTURE AND OCEAN RESOURCES

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

Bill No. SB 2957

March 9, 2010 9:30 AM
Conference Room 325

Date 3/9

Senate Bill 2957 SD1
Relating to the Environment

Time 1502

Testimony submitted by

Bob Loy, Director of Environmental Programs, The Outdoor Circle

Cat AF AS AX B

This testimony is respectfully submitted in opposition to SB 2957 SD1 Type 1 WI

SB2957 is designed to streamline the approval process for projects that protect, preserve, or enhance native species, native habitat, or native ecosystem function. While the intention is worthy, we believe the legislation could open the door to unintended consequences that might not be raised or adequately addressed by the process outlined in the current draft. In fact, there really isn't much of a process described in the current draft. The bill before you requires:

- Project applicant to submit a request to the department of land and natural resources, detailing the proposed action and describing potential impacts
- DLNR, within 30 days, to publish the application in the OEQC Environmental Bulletin
- DLNR, after a 30 day comment period, to consider the comments and determine whether the proposed action qualifies for the exemption
- DLNR to produce a written report of its findings and reasons which may be reviewed by the public upon request.

Our first and strongest concern relates to placing authority for this process in a department of State government that is ill equipped to properly handle it. The DLNR is an agency that is woefully short funded and staffed. The inability of DLNR to properly deal with many of its current obligations is legendary.

The bill's original version placed the review responsibilities in the hands of the State Environmental Council. That was before the Senate was informed that the Environmental Council is essentially a non-function entity with little hope of near-term recovery. This new version shifts responsibility to the DLNR which, similar to the Environmental Council, already is hopelessly overworked and under funded.

Another major concern relates to the lack of due process. If this bill becomes law, the decisions of the DLNR will be final. The bill does not allow for any appeal or questioning of the decision. The only recourse by an aggrieved party would be court action.

Please defer this bill for future consideration—after a viable alternative is proposed.



Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803
808.538.6616 hawaii.chapter@sierraclub.org

Bill No. SB 2957

Date 3/8

Time 1807

Cal AF AS AX BI

Type 1 WI

HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

March 9, 2010, 9:30 A.M.
(Testimony is 1 page long)

TESTIMONY IN OPPOSITION TO SB 2957 (SD1)

Aloha Chair Morita and Members of the Committee:

The Hawai'i Chapter of the Sierra Club opposes SB 2957, which would remove a project that "protects, preserves, or enhances native species, native habitat, ecosystem function," from state environmental review. While we support the intent of this bill, we believe this measure may have unintended consequences and is legally unnecessary.

Our current environmental review process already has a means to exempt all projects -- *not just beneficial ones* -- that have little or no impacts on the environment. The exemption process is a tried and true process that works in many states and under the federal NEPA process. We suggest giving the suggestions made by the UH team an opportunity to be vetted and worked through. This may create a better system for environmentalists and developers alike.

We remain concerned that the operative phrase in this measure may create a loophole in the environmental review process. For example, this language would exempt:

- The shooting of poison "paint balls" in conservation districts from helicopters to kill invasive species;
- The construction of roads through pristine, natural forest for fence construction; and
- The development of air-fields in protected habitat.

We suggest strengthening the already-existing exemption process as the best means for handling this perceived problem. For example, under the rule-making process, specific language could be constructed that exempted small fencing projects, but required larger fencing projects (say larger than a quarter of mile) to undergo more scrutiny.

Mahalo for this opportunity to provide testimony.

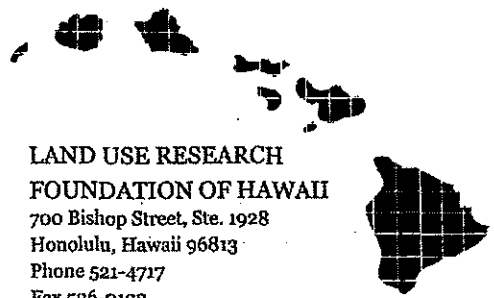
Bill No. SB 2957

Date 3/8

Time 2258

Cat: AF AS AX B

Type 1 2 WI



LAND USE RESEARCH
FOUNDATION OF HAWAII
700 Bishop Street, Ste. 1928
Honolulu, Hawaii 96813
Phone 521-4717
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Via: www.capitol.hawaii.gov/emailtestimony

March 9, 2010

Testimony in Support of SB 2957, SD1 – Relating to Environment
(Exemptions from environmental assessments for specific functions)

House Committees on Energy & Environmental Protection
Water Land & Ocean Resources
Hearing Date: Tuesday, March 9, 2010 at 9:30 a.m. CR 325

Honorable Chair Hermina Morita, Vice Chair Denny Coffman and Members of the House Committee on Energy & Environmental Protection, and Honorable Chair Ken Ito, Vice Chair Sharon Har and Members of the House Committee on Water, Land and Ocean Resources,

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, 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 appreciates this opportunity to provide our comments and testify in support of the intent of SB 2957, SD1 which would provide an exemption from environmental assessment requirements for actions that protect, preserve, or enhance native species, native habitat, or native ecosystem functions.

SB 2957, SD1. The purpose of this bill is to provide exemptions for projects that protect, preserve, and enhance the environment, land or natural resources under certain conditions. The Task Force of Reinventing Government identified this issue as one of the concepts to adopt. This bill is consistent with the recommendations of the Task Force of Reinventing Government.

LURF's Position. LURF supports the intent of SB 2957, SD1, but believes that the proposed amendment should be limited to all projects that have no significant negative effects on the environment. Environmental assessments can take six to twelve months, and cost approximately \$100,000 to \$200,000, per project. Recently, the Department of Land and Natural Resources has taken note of this concern and proposed significant

changes to administrative rules governing conservation work on private lands in conservation districts.

It is important to avoid any unintended result or additional burdens on a conservation project manager, and if the provisions in the bill do not take into consideration the Department of Land and Natural Resources' (DLNR) planned updates to the Conservation District Use Application and Permit process, which is also seeking to ease regulatory burdens on beneficial projects. Thus, LURF supports the following recommendations of the Nature Conservancy:

- (1) Clarify the kinds of projects that may be eligible for the exemption to actions that protect, preserve, or enhance native species, native habitat, or native ecosystem functions, including:
 - (A) Invasive species control using approved methods in accordance with state and federal law; and
 - (B) The installation of barriers to control non-native animals and of dip tanks, helicopter landing zones, or field camps for fire control;
- (2) Remove the public hearing requirement and replace it with a public notification process;
- (3) Change the determining authority from the Environmental Council to the Department of Land and Natural Resources; and
- (4) Remove the requirement that for any exemption granted the applicant must submit a report documenting the implementation of the action.

LURF respectfully requests that this Committee consider the comments and recommendations of the DLNR, the Nature Conservancy, Building Industry Association – Hawaii Chapter (BIA), and Hawaii Developer's Council (HDC). It is apparent that the concept is clear, but the process that is proposed may create an even more cumbersome and costly process for the use of time as well as dollars.

We respectfully urge this Committee to **favorably consider SB 2957, SD1** and to take into account the comments the Nature Conservancy, DLNR, BIA & HDC.

Thank you for the opportunity to provide our **support of the intent of SB 2957, SD1**

Testimony of The Nature Conservancy of Hawai'i
(Provided by Mark Fox, Director of External Affairs)
Strongly Supporting the Intent of S.B. 2957 SD1 Relating to the Environment
House Committee on Energy & Environmental Protection
House Committee on Water, Land & Ocean Resources
Tuesday, March 9, 2010, 9:30am, Rm. 325

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawaii'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 (TNC) strongly supports the intent of S.B. 2957 SD1, particularly the goal of streamlining the environmental review process for legitimate projects that will be beneficial to the environment. We appreciate the concern about whether to address an exemption process for beneficial projects in the statute versus an administrative process where agencies establish lists of exemptions. Either way, this issue needs to be addressed right away because projects to protect and enhance our natural resources are being delayed if not stopped entirely.

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 assessment 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 land use 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. Currently, many beneficial conservation actions have to go through the same expensive level of review for environmental impacts as development.

Environmental review under HRS Ch. 343 for TNC's conservation work has been a significant burden:

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

BOARD OF TRUSTEES

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