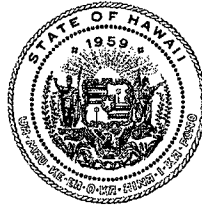
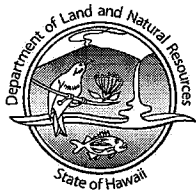


SB 762

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 Senate Committee on
ENERGY AND ENVIRONMENT

Tuesday, February 17, 2009
2:45 PM
State Capitol, Conference Room 225

In consideration of
SENATE BILL 762
RELATING TO THE ENVIRONMENTAL IMPACT STATEMENT LAW

Senate Bill 762 would amend Section 343-5, Hawaii Revised Statutes - "The Environmental Impact Law" by adding a new trigger for any proposed development on lands with an average slope of twenty per cent or more". The Department of Land and Natural Resources (Department) supports the concept to avoid unintended consequences from activities undertaken on land which is steep or prone to rockfall, landslide or mass wasting, but prefers the approach proposed in the Administration's Senate Bill 958, RELATING TO LAND FAILURE.

Senate Bill 958 (RELATING TO LAND FAILURE) takes a comprehensive planning approach to development in hazardous areas. Senate Bill 958 would require precautionary actions imposed by the counties for development in potentially hazardous areas; it removes the liability of landowners regarding natural conditions on their land that cause damage outside the land; and it gives government agencies the authority to mitigate or require mitigation of land failure hazards on private property. Section 4 of Senate Bill 958 would require a study or hazard assessment prior to issuing development permits or approvals for development on areas with a slope of 20% or greater that pose or may pose a hazard to any person or structure on or adjacent to the subdivision or project site. The approach taken in Section 4 of Senate Bill 958 achieves the intent to do the level of planning required to protect human life and property, and the Department believes that this can be achieved considerably faster and more cost effectively than requiring a full environmental assessment for all developments on land greater than 20% slope, as called for in Senate Bill 762.

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
STATE PARKS

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

February 17, 2009

Senator Mike Gabbard, Chair
COMMITTEE ON ENERGY AND ENVIRONMENT
Conference Room 225
State Capitol
415 South Beretania Street

Senator Gabbard:

Subject: **Senate Bill No. SB 762 Relating to Environmental Impact Statement Law**

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 in strong opposition to S.B. No. 762 as proposed.

The proposed legislation would amend Chapter 343 HRS and require an environmental assessment for any development on lands with an average slope of 20% or greater.

It is our understanding that when Act 246, SLH 1974 was passed and established Chapter 343 HRS, the legislation reflected an understanding that all public actions would require an environmental impact statement/assessment which is reflected in item No. 1 of the EIS/EA triggers. The legislation was intended to identify specific areas where an EIS/EA would be required for private uses.

The underlying intent was that the law would require government give systematic consideration to the environmental, social and economic consequences of proposed development projects prior to allowing construction to begin. The law also assures the public the right to participate in planning projects that may affect their community.

A land use or activity may trigger EA/EIS if it is one of the 9 listed in 343, unless the program or project is declared exempt. Any action that proposes:

1. Use of state or county lands or the use of state or county funds;
2. Use within any land classified as conservation;
3. Use within a shoreline area;
4. Use within a designated National Register or Hawaii Register historic site;
5. Use within the "Waikiki Special District";
6. Amendments to existing county general plans to urban, except for amendments to any existing county general plan initiated by a county;
7. Reclassification of any conservation lands;
8. Construction of new or modification of existing helicopter facilities that may affect:

- a. Any land classified as a conservation;
 - b. A shoreline area; or
 - c. Any use of National or Hawaii Register historic site, or any historic site that is under consideration for placement on the National or the Hawaii Register of Historic Places; and,
9. Any of the following:
- a. Wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent;
 - b. Waste-to-energy facility;
 - c. Landfill;
 - d. Oil refinery; or
 - e. Power-generating facility.

Currently, Chapter 343 HRS provides for a distinction between discretionary and ministerial consents (approvals). §343-2, Definitions provides the following:

"Approval" means a discretionary consent required from an agency prior to actual implementation of an action.

"Discretionary consent" means a consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a ministerial consent.

The distinction is between discretionary and ministerial consents indicates that the Chapter 343 HRS was never intended to be applied to ministerial consents (approvals) such as subdivisions, building permits, meter hook-ups, etc. The disclosure process outlined in Chapter 343 HRS was intended to be done in general at the zoning stage or was limited over time to specific actions or activities.

That is why the appropriate place to trigger Chapter 343 for an EA is at the first "discretionary consent" such as County Zoning or reclassification of lands by the State Land Use Commission. Then the EA is done prior to the ministerial consents such as subdivision, building permit, meter hook-ups, etc.


Since 1974, the Courts have expanded the interpretation of the law such that an action that involves any government owned road right of way would trigger Chapter 343 no matter if the action was ministerial in nature such as a utility or driveway (ingress/egress) connection. We do not believe the legislature intended the Chapter 343 requirement for ministerial type actions.

The Chapter 343 process should remain a public disclosure process that identifies impacts and mitigation measures to be considered by agencies in rendering their "discretionary" decisions. To apply this process to any use of lands of 20% slope or more regardless of the zoning or permit required (ministerial or discretionary) would create unnecessary confusion and uncertainty in the land use entitlement and permitting process.

This proposal suggests that the Chapter 343 document and process be viewed as another layer of permitting. We do not believe that this was the intent of the law. The existing process produces a disclosure document for consideration by the agency assessing the discretionary permit.

BIA-Hawaii strongly recommends that S.B. No. 762 be held

Thank you for the opportunity to provide comments.

A handwritten signature in black ink that reads "Karen L. Nakamura". The signature is written in a cursive style with a large initial 'K' and a long, sweeping tail on the 'a'.

Executive Vice President & Chief Executive Officer
BIA-Hawaii



KAMEHAMEHA SCHOOLS

WRITTEN TESTIMONY TO THE HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

By

Giorgio F. Caldarone, Regional Asset Manager
Endowment/Land Assets Division
Kamehameha Schools

Hearing Date: Tuesday, February 17, 2009
2:45 p.m., Senate Conference Room 225

February 10, 2009

TO:

SUBJECT: Opposition to S.B. No. 762 – Relating to Environmental Impact Statement Law.

My name is Giorgio F. Caldarone, and I am the Regional Asset Manager, Land Assets Division of the Endowment Group for the Kamehameha Schools. I am providing this testimony in opposition to S.B. No. 762 relating to Environmental Impact Statements (EIS) Law. This Bill broadens the breath and reach of this statute that has to date applied to state and local government projects and developments.

This Bill instead would require private citizens to prepare and submit EIS including the attendant hearings for public comments, a costly and time consuming effort. Further, this Bill will dramatically add to the cost for development in Hawai'i. The pragmatic impact of this Bill will be to increase the cost of housing and any commercial or industrial development as well as lengthens the time to bring any such project to completion and use. It will likely pit thousands of existing homeowners against any future upslope developers and land owners. This is unnecessary and bad public policy.

Kamehameha Schools respectfully requests that you do not pass this Bill.



SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

February 17, 2009 at 2:45 p.m.

Conference Room 225

State Capitol

415 South Beretania Street

Subject: Senate Bill No. SB 762 Relating to Environmental Impact Statement Law

Chair Gabbard and Members of the Committee:

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 is in strong opposition to S.B. No. 762 as proposed.

The proposed legislation would amend Chapter 343 HRS and require an environmental assessment for any development on lands with an average slope of 20% or greater.

It is our understanding that when Act 246, SLH 1974 was passed and established Chapter 343 HRS, the legislation reflected an understanding that all public actions would require an environmental impact statement/assessment which is reflected in item No. 1 of the EIS/EA triggers. The legislation was intended to identify specific areas where an EIS/EA would be required for private uses.

The underlying intent was that the law would require government give systematic consideration to the environmental, social and economic consequences of proposed development projects prior to allowing construction to begin. The law also assures the public the right to participate in planning projects that may affect their community.

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8. Construction of new or modification of existing helicopter facilities that may affect:
 - a. Any land classified as a conservation;

- b. A shoreline area; or
 - c. Any use of National or Hawaii Register historic site, or any historic site that is under consideration for placement on the National or the Hawaii Register of Historic Places; and,
9. Any of the following:
- a. Wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent;
 - b. Waste-to-energy facility;
 - c. Landfill;
 - d. Oil refinery; or
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This proposal suggests that the Chapter 343 document and process be viewed as another layer of permitting. We do not believe that this was the intent of the law. The existing process produces a disclosure document for consideration by the agency assessing the discretionary permit.

We strongly recommend that S.B. No. 762 be held. Thank you for the opportunity to provide comments.



UNIVERSITY
of HAWAII®
MĀNOA

RL:2239

SB 762
RELATING TO THE ENVIRONMENTAL IMPACT STATEMENT LAW

Senate Committee on Energy and Environment

Public Hearing – February 17, 2009
2:45 p.m., State Capitol, Conference Room 225

By
Peter Rappa, Environmental Center
Karl Kim, Urban and Regional Planning
Denise Antolini, Environmental Law Program

SB 762 requires an environmental assessment for any development on lands with an average slope of 20% or greater. We are testifying as individual faculty and our views do not represent an official position of the University of Hawaii.

In accordance with Act 1 HB No. 2688 HD 1, Section 10, the Legislative Reference Bureau has contracted with the University of Hawaii to conduct a study of the State's environmental review process. The research is being carried out by lead investigator Karl Kim, Department of Urban and Regional Planning, associate investigators Denise Antolini, Environmental Law Program and Peter Rappa, Environmental Center. In conducting this research, we are interviewing those most involved in the state environmental impact statement process (EIS) including federal, state and county agency personnel, consultants, nongovernmental organizations (NGO), University faculty and others.

Many suggestions for changes to chapter 343 HRS have been identified in our study including the changes called for in this bill. We recommend that a comprehensive revision to chapter 343 HRS take place after the results of the study are presented next year as required in Act 1 2008 and that the provisions of this bill be deferred until then. Any changes to the chapter 343 HRS passed during this legislative session will affect the completeness of the study. Our recommendations may suggest changes to the law that will necessitate the repeal of this bill at a later date should it become law.

Thank you for the opportunity to comment on this bill.



Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803
808.537.9019 hawaii.chapter@sierraclub.org

SENATE COMMITTEE ON ENERGY AND ENVIRONMENT February 17, 2009, 2:45 P.M.

(Testimony is 1 pages long)

TESTIMONY COMMENTING ON SB 762

Chair Gabbard and members of the Committee:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, supports the intent of SB 762, requiring an environmental assessment for any development on lands with an average slope 20% or greater. We believe this amendment would provide valuable information for decision makers and, hopefully, lead to greater protection for environmental concerns.

The Sierra Club observes, however, that the legislature recently allocated funding for a comprehensive two-year review of Chapter 343. To the extent this expenditure has been made, the Sierra Club, therefore, suggests no changes be made to Chapter 343 until the results of this study are completed and the recommendations can be reviewed.

Thank you for the opportunity to testify.



LAND USE RESEARCH
FOUNDATION OF HAWAII
700 Bishop Street, Ste. 1928
Honolulu, Hawaii 96813
Phone 521-4717
Fax 536-0132

Via Capitol Website

February 17, 2009

**Senate Committee on Energy and Environment
Hearing Date: February 17, 2009, at 2:45 PM in CR 225**

**Testimony in Opposition to SB 762. Relating to Environmental Impact
Statement Law
(Requires an environmental assessment for any development on lands with
an average slope of 20% or greater.)**

Honorable Chair Mike Gabbard, Vice-Chair J. Kalani English
and ENE 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 appreciates the opportunity to provide our testimony **in opposition to SB 762**, which would require an environmental assessment (EA) for any development proposed on lands with an average slope of twenty per cent or greater.

LURF's Position. We respectfully oppose SB762, based on, among other things, the following:

- **The Legislature should avoid making major changes in environmental laws, and should wait for the results of the Chapter 343 Environmental Review Study in 2010.** Pursuant to Act 1 (HB 2688, HD1, 2008), The Legislative Reference Bureau has contracted with the University of Hawaii (UH) to conduct a study of the State's environmental review process. The research for the study is being done by UH Department of Urban and Regional Planning, the Environmental law Program of the William S. Richardson School of Law at UH Manoa and the UH Environmental Center, which will be presented to

the legislature prior to the 2010 session. The study will: (1) Examine the effectiveness of the current environmental review system created by chapters 341, 343, and 344, Hawaii Revised Statutes (HRS); (2) Assess the unique environmental, economic, social, and cultural issues in Hawaii that should be incorporated into an environmental review system; (3) Address larger concerns and interests related to sustainable development, global environmental change, and disaster-risk reduction; and (4) Develop a strategy, including legislative recommendations, for modernizing Hawaii's environmental review system so that it meets international and national best-practices standards. The Legislature should refrain from passing laws such as SB 762, until the Chapter 343 Study is completed.

- **SB 762 does not state any purpose or factual basis for imposing a new requirement for an EA.** The bill does not explain why an EA would be necessary on all lands with an average slope of twenty per cent or more, or whether there are any other more reasonable alternatives to address the issues which gave rise to this proposed legislation.
- **The twenty percent average slope requirement is overly broad.** This new requirement is not based on any scientific or other data, and will indiscriminately and adversely affect thousands of acres on the Big Island and other counties.
- **SB 762 is duplicative and unnecessary.** It is our understanding that existing County rules and regulations relating to zone changes and subdivisions already address issues relating to development on lands with an average slope of twenty percent or greater.
- **SB 762's duplicative and unnecessary layer of government regulation and review, will delay the entitlement process for years.** The preparation and processing of EAs are quite time-consuming, and will be a hindrance to the prompt review and approval of developments.
- **The EA requirements of SB 726 will increase the costs of housing.** EAs are costly, and the requirements of SB 762 will increase the costs of housing developments, and such costs will be passed on to homebuyers.
- **The definitions in SB 762 are inconsistent with Chapter 343, HRS.**

Based on the above, we respectfully request that **SB 762 be held** in the Senate Committee on Energy and Environment

Thank you for the opportunity to express our **opposition to SB 762.**