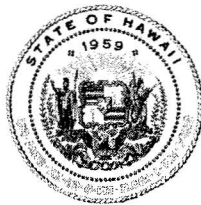


NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the House Committees on
HAWAIIAN AFFAIRS
and
CULTURE & THE ARTS**

**Wednesday, February 16, 2011
8:30 AM
State Capitol, Conference Room 329**

**In consideration of
HOUSE BILL 402
RELATING TO ENVIRONMENTAL IMPACT STATEMENTS**

House Bill 402 proposes to require that environmental assessments and environmental impact statements include cultural impact assessments that assess impacts and effects on native Hawaiian culture. The Department of Land and Natural Resources (Department) supports the requirements for cultural impact assessments in Chapter 343, Hawaii Revised Statutes (HRS), but has concerns with the additional processing steps proposed in this measure.

All mitigation plans, burial treatment plans, surveys, reports, and any other documents required under Chapter 6E, HRS, would require approval by the Department prior to being included in the cultural impact assessment. The bill also requires at least one public meeting in the affected community and approval of the cultural impact assessment by the Office of Hawaiian Affairs (OHA) prior to acceptance of an environmental assessment or statement. Prior approval by the Department's State Historic Preservation Division and OHA will significantly increase the amount of time it takes to complete an environmental assessment or impact statement leading to increased costs for agency and applicant actions. We are often operating on tight time frames for expenditure of federal funds.

WILLIAM J. AILA, JR.
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
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

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



GARY L. HOOSER
INTERIM DIRECTOR

STATE OF HAWAII
OFFICE OF ENVIRONMENTAL QUALITY
CONTROL

235 S BERETANIA ST. SUITE 702
HONOLULU, HAWAII 96813
Tel. (808) 586-4185
Fax. (808) 586-4186
Email: oeqc@doh.hawaii.gov

HOUSE COMMITTEE ON HAWAIIAN AFFAIRS
HOUSE COMMITTEE ON CULTURE & THE ARTS

HB 402, RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

Testimony of Gary Hooser
Interim Director of the Office of Environmental Quality Control

February 16, 2011

- 1 **Office's Position:** While supporting the intent of HB402, the Office of Environmental Quality
- 2 Control (OEQC) has strong reservations about the prescribed process in the proposed
- 3 amendments.
- 4 **Fiscal Implications:** The amendments proposed to Chapter 343, Hawaii Revised Statutes,
- 5 requires a sequence of multi-agency approvals that may create a longer time period for the
- 6 review and approval of minor or critical projects, and will also increase project costs to agencies
- 7 and applicants to conduct public hearings and other requirements as proposed.
- 8 **Purpose and Justification:** HB402 amends the statutory language of Chapter 343, Hawaii
- 9 Revised Statutes by requiring all environmental assessments and environmental impact
- 10 statements to include a cultural impact assessment that must be approved by the Office of
- 11 Hawaiian Affairs (OHA), after a review by the State Historical Preservation Division (SHPD).
- 12 An additional requirement to conduct at least one hearing for every environmental assessment or
- 13 environmental impact statement will increase the burden on all agencies, whom are already
- 14 struggling with staffing and funding needs.

1 While OEQC believes that there is a need for strengthening the protection of Hawaiian
2 cultural resources, we are not convinced that the multi-agency review sequence and conducting
3 public hearings for every environmental study, including projects with an anticipated finding of
4 no significant impact (FONSI), is the most effective way of accomplishing what a cultural
5 impact assessments should do.

6 The current process set forth under the statute and rules, provides for early consultation
7 under the provisions of Section 11-200-9, Hawaii Administrative Rules. The proposing agency
8 (for 5(b) actions), or the applicant (for 5(c) actions) is required to “seek, at the earliest
9 practicable time, the advice and input of the county agency responsible for implementing the
10 county’s general plan for each county in which the proposed action is to occur, and consult with
11 other agencies having jurisdiction or expertise as well as those citizen groups and individuals
12 which the proposing agency reasonably believes to be affected.”

13 Furthermore, Section 343-6, HRS, empowers the State Environmental Council to adopt,
14 amend, or repeal rules which shall “[p]rescribe the procedures for the preparation and contents of
15 an environmental assessment” and “[p]rescribe the contents of an environmental impact
16 statement.”

17 Rather than mandate the preparation of an additional document in the environmental
18 assessment or environmental impact statement, as the current bill suggests, OEQC respectfully
19 suggests that concerned parties dialogue, and petition the Environmental Council to initiate
20 rulemaking under Section 343-6, HRS, to address their concerns regarding cultural impacts.

21 OEQC also believes that a dialogue with SHPD, OHA, OEQC, and other agencies, can
22 find an administrative solution under the existing regulatory framework to the very legitimate
23 concerns expressed by OHA in HB402.

24 Thank you for the opportunity to testify.

**Testimony to the House Committees on Hawaiian Affairs and
Culture & the Arts
Wednesday, February 16, 2011; 8:30 a.m.
Conference Room 329**

**RE: HOUSE BILL NO. 402 RELATING TO ENVIRONMENTAL IMPACT
STATEMENTS**

Chairs Hanohano and Wooley, Vice Chairs Lee and Belatti, and Members of the Committees:

The Chamber of Commerce of Hawaii opposes H.B. No. 402, as it proposes to revise Chapter 343 HRS by adding a new category of assessments and approvals.

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 require all environmental assessments and environmental impact statements to include a cultural impact assessment, and this new cultural impact assessment must be approved by the Office of Hawaiian Affairs (OHA), prior to acceptance of the environmental assessment or environmental impact statement.

Currently, Chapter 343 HRS requires the preparation of an informational document (i.e. EA/EIS) which discloses the environmental effects of a proposed action on the economic welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed action, measure proposed to minimize adverse effects, and alternatives to the action and their environmental effects.

The bill proposes to elevate “cultural assessment” by creating its own separate report (i.e. Cultural Impact Assessment) which must be approved by OHA in a process that is separate and apart from the EA/EIS process. Creating this additional layer of reporting and approval within the Chapter 343 HRS process confuses the original intent of Chapter 343 HRS.

The overall intent of Chapter 343 HRS is to provide a public disclosure process of information for certain types of land uses. There is no approval or denial within the Chapter 343 process. It is meant to disclose impacts and propose mitigation measures which could be considered by the various agencies in rendering their discretionary approvals on the proposed action.

Under current practices, OHA is invited to review and comment on the EA/EIS. If OHA objects to anything being proposed in the EA/EIS from cultural standpoint, the proposing agency or applicant must provide a response or propose mitigation measures to address OHA’s concern. It

is up to the accepting authority to determine if the comments have adequately been addressed in determining its acceptance or non-acceptance of the EA/EIS. If the document is deemed acceptable, the agency must then render its decision on the discretionary action before it, which triggered the 343 HRS requirement. A proposed action may have an accepted EA/EIS but be denied the discretionary permit. It is a two step process. The Chapter 343 HRS process is not a permit and should not be viewed as a permit. It is merely a public disclosure document.

We believe that the proposed bill creates an unnecessary redundancy and moves the Chapter 343 HRS process away from its original intent of being a public disclosure document. For these reasons, we are opposed to H.B. 402.

Thank you for this opportunity to express our views.

NAIOP

COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION
HAWAII CHAPTER

February 14, 2011

The Hon. Faye Hanohano, Chair and
Members of the House Committee on
Hawaiian Affairs

The Hon. Jessica Wooley, Chair, and
Members of the Committee
on Culture and the Arts

State Capitol, Room 329
415 South Beretania Street
Honolulu, Hawaii 96813

Re: Testimony In Opposition To House Bill No. 402 Relating to Environmental
Impact Statements

Dear Chairs Hanohano and Wooley and Committee Members:

I am submitting this testimony on behalf of NAIOP Hawaii. We are the Hawaii chapter of NAIOP, the Commercial Real Estate Development Association, which is the leading national organization for developers, owners and related professionals in office, industrial and mixed-use real estate. The local chapter comprises property owners, managers, developers, financial institutions and real estate related professionals who are involved in the areas of commercial and industrial real estate in the State of Hawaii.

We have substantial concerns and are testifying in opposition to this bill. The intent of Act 50, Session Laws of 2000, was to insure that all cultural impacts be considered in the environmental review process, not just native Hawaiian cultural impacts. This is in line with the intent of Chapter 343, which is that all relevant impacts be considered and addressed. However, this bill would limit consideration of cultural impacts to only those affecting native Hawaiian cultural practices and sites. This would go against the intent of Chapter 343.

Second, the Environmental Impact Statement Rules of the Department of Health, contained in Hawaii Administrative Rules Ch. 11-200, already cover cultural impacts. This bill conflicts with those regulations. Further, the Environmental Impact Statement Rules already require EAs and EISs to cover impacts on all cultural resources, which would include impacts on native Hawaiian cultural practices.

Third, environmental assessments and environmental impact statements are informational documents. It is not a permit process. However, this bill would give the right to OHA to "approve" all cultural impact assessments as a prerequisite before an EA or EIS can be accepted. Essentially, this turns the environmental review process into another layer of discretionary permitting by OHA. Like all other State and county agencies, OHA presently has the right to comment on the adequacy of an EA or EIS, and if it feels that

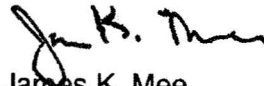
Chairs Hanohano and Morita and Wooley &
Committee Members
February 14, 2011
Page 2

protection of Hawaiian cultural practices and sites is inadequate, it has the right subsequently to oppose the granting of permits. But there should not be another layer of permitting created as part of the environmental review process, under which all proposed projects within Chapter 343 must first obtain OHA approval before they can move forward.

Finally, complying with all the requirements established by this bill would be cost-prohibitive in many cases, and especially so with regard to preparation of environmental assessments.

Thank you for the opportunity to testify on this measure.

Very truly yours,

A handwritten signature in black ink, appearing to read "James K. Mee".

James K. Mee
Chair, Legislative Affairs Committee

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

February 16, 2011

Representative Faye Hanohano, Chair
Committee on Hawaiian Affairs
Representative Jessica Wooley, Chair
Committee on Culture and the Arts
State Capitol, Room 329
415 South Beretania Street
Honolulu, Hawaii 96813

Chairs Hanohano and Wooley and Members of the Respective Committees:

Subject: **House Bill No. HB 402 Relating to the Environmental Impact Statements**

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 opposes H.B. No. 402, as it proposes to revise Chapter 343 HRS by adding a new category of assessments and approvals.

The bill proposes to require all environmental assessments and environmental impact statements to include a cultural impact assessment, and this new cultural impact assessment must be approved by the Office of Hawaiian Affairs (OHA), prior to acceptance of the environmental assessment or environmental impact statement.

Currently, Chapter 343 HRS requires the preparation of an informational document (i.e. EA/EIS) which discloses the environmental effects of a proposed action on the economic welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed action, measure proposed to minimize adverse effects, and alternatives to the action and their environmental effects.

The bill proposes to elevate "cultural assessment" by creating its own separate report (i.e. Cultural Impact Assessment) which must be approved by OHA in a process that is separate and apart from the EA/EIS process. Creating this additional layer of reporting and approval within the Chapter 343 HRS process confuses the original intent of Chapter 343 HRS.

The overall intent of Chapter 343 HRS is to provide a public disclosure process of information for certain types of land uses. There is no approval or denial within the Chapter 343 process. It is meant to disclose impacts and propose mitigation measures which could be considered by the various agencies in rendering their discretionary approvals on the proposed action.

Under current practices, OHA is invited to review and comment on the EA/EIS. If OHA objects to anything being proposed in the EA/EIS from cultural standpoint, the proposing agency or applicant

must provide a response or propose mitigation measures to address OHA's concern. It is up to the accepting authority to determine if the comments have adequately been addressed in determining its acceptance or non-acceptance of the EA/EIS. If the document is deemed acceptable, the agency must then render its decision on the discretionary action before it, which triggered the 343 HRS requirement. A proposed action may have an accepted EA/EIS but be denied the discretionary permit. It is a two step process. The Chapter 343 HRS process is not a permit and should not be viewed as a permit. It is merely a public disclosure document.

We believe that the proposed bill creates an unnecessary redundancy and moves the Chapter 343 HRS process away from its original intent of being a public disclosure document. For these reasons, we are opposed to H.B. 402.

Thank you for this opportunity to express our views.

A handwritten signature in black ink that reads "Karen I. Nakamura". The signature is written in a cursive, flowing style.

Chief Executive Officer
BIA-Hawaii



Aha Kiole Advisory Committee

Legislative Testimony

HB 402: Relating to Environmental Impact Statements

Submitted to: Committee on Hawaiian Affairs; Committee on Culture and the Arts

February 16, 2011

8:30am

Room: 325

Submitted by: The Aha Kiole Advisory Committee: Vanda Hanakahi, Moloka'i (Chair), Leslie Kuloloio, Kahoolawe, (Vice-Chair); Timmy Bailey, Maui; Winifred Basques, Lana'i; Pi'ilani Ka'awaloa, (Po'o) Hawai'i; Charles Kapua, O'ahu; Sharon Pomroy, Kaua'i; Keith Robinson, (Konohiki) Ni'ihau.

Aloha Chair Hanohano, Vice-Chair Lee of the Committee on Hawaiian Affairs; and Chair Wooley and Vice-Chair Belatti, Committee on Culture & the Arts

Thank you for the opportunity to testify in strong support of HB 402 which would require tht all Environmental Assessments (EA's) and Environmental Impact Statements (EIS) would include OHA's approval of submitted Cultural Impact Assessments (CIA's).

The Aha Kiole Advisory Committee as the pass-through for the 43 traditional moku and Native Hawaiian customary resource practitioners support this bill because nothing is more important to Native Hawaiians as the land, the ocean and the natural and cultural resources upon which they depend. Over the years, practitioners have watched their resources diminished and impaired even with laws that mandate the EIS and EA. We believe that if cultural assessments are approved by the Office of Hawaiian Affairs, it will add a needed level of protection for traditional resource practitioners who often have no say in decision-making that impact the very resources they depend upon for subsistence.

Mahalo nui loa,

Vanda Hanakahi, Chair, Moloka'i

Aha Kiole Advisory Committee

P.O. Box 507

Ho'olehua, HI 96729

Phone: 808-336-6184

kaiwilauula@yahoo.com

ASSOCIATION OF HAWAIIAN CIVIC CLUBS

Supporting House Bill 402

**Committee on Hawaiian Affairs and Culture & the Arts
Wednesday; February 16, 2011; 8:30 a.m.; Rm. 329**

Aloha Madam Chair Hanohano, Madam Chair Wooley and members of the joint committees. The Association of Hawaiian Civic Clubs supports this bill that basically brings clarity to sections of the environmental impact law that give important relevance to cultural impact statements.

On January 22, 2011 the Board of Directors of the Association of Hawaiian Civic Clubs met in a quarterly meeting and voted to support the legislative package being introduced by the Office of Hawaiian Affairs. I am here today to voice that support for cultural impact statements as described in HB402.

In amending Chapter 343 of Hawaii Revised Statutes it adds specificity to cultural impact statements that have an effect on native Hawaiian culture. This explicit language was missing from the law when it was passed in 2000, and as an organization that advocates for the native Hawaiian culture on many levels, we believe it will help to protect those vestiges of our culture that would otherwise remain ignored.

We proudly note that the Kona Hawaiian Civic Club was very much involved in the *Ka Paakai o ka aina* lawsuit that insisted upon the importance of cultural resources. We supported these actions at that time and support the addition of OHA approval to assessments.

Thank you for your consideration. We urge the passage of this measure.

Contact: Jalna Keala at 373-3070 or jalna.keala@hawaiiantel.net



Hanalei Watershed Hui

February 15, 2011

Testimony HB 402

In Strong Support

House Committee on Hawaiian Affairs and House Committee on Culture and the Arts
Hearing: HB 402 at 8:30 a.m. in Room 329

Aloha Chairs Hanohano and Wooley and committee members,

The Hanalei Watershed Hui is a community based nonprofit working to restore, protect and sustain the ecology, cultures and economies of Hanalei. We implement a Watershed Action Plan developed by our community to address concerns related to our history and future. We work every day to protect our cultural resources and need this law to help us do our job correctly.

HB402 provides an opportunity to fulfill the intent of Act 50, Session Laws of Hawaii 2000, which required EISs to analyze the impacts a proposed project would have on cultural practices. Unfortunately, Act 50 did not provide minimal requirements for what must be included in a cultural assessment. In addition, administrative rules for CIAs also do not exist. Instead, the public can only evaluate the adequacy of a CIA against the Environmental Council's unenforceable administrative guidelines. As a result, in the ten years since the passage of Act 50, we still see vast inconsistencies in the manner in which CIAs disclose a project's cultural impacts.

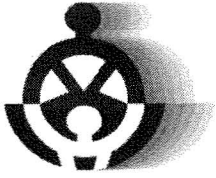
Providing OHA with approval authority over CIAs will help to ensure that CIAs serve as an effective decision-making tool for policy makers, Native Hawaiians and the general public.

Please pass HB 402.

Me ka pono,

Makaala Kaaumoana
Executive Director

E malama kumu wai ~ Protect the source
5299C Kuhio Hwy, P. O. Box 1285, Hanalei, Kaua'i, HI 96714
Telephone/Facsimile (808) 826-1985 E-mail: hanaleiriver@hawaiian.net
www.hanaleiwatershedhui.org
The Hanalei Watershed Hui is an equal opportunity employer and provider.



Papa Ola Lokahi
Nana I Ka Pono Na Ma

Papa Ola Lokahi
894 Queen Street
Honolulu, Hawaii 96813

Phone: 808.597.6550 ~ Facsimile: 808.597.6551

Papa Ola Lokahi

is a non-profit Native Hawaiian organization founded in 1988 for the purpose of improving the health and well-being of Native Hawaiians and other native peoples of the Pacific and continental United States.

Board of Directors
Member Organizations

Hoola Lahui Hawaii

Hui No Ke Ola Pono

Hui Malama Ola Na OIwi

ALU LIKE

Ke Ola Mamo

E Ola Mau

University of Hawaii

Hawaii State Department of Health

Na Puuwa

Office of Hawaiian Affairs

Ex-Officio Members

Hawaii Primary Care Association

Ke Alaula

Executive Director

Hardy Spoehr

TESTIMONY: HB 402/HSCR67, RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

HOUSE COMMITTEE ON HAWAIIAN AFFAIRS

Rep. Faye Hanohano, Chair
Rep. Chris Lee, Vice Chair

HOUSE COMMITTEE ON CULTURE & THE ARTS

Rep. Jessica Wooley, Chair
Rep. Della Au Belatti, Vice Chair

Wednesday, February 16, 2011
8:30 a.m.

Conference Room 329
State Capitol

Hardy Spoehr, Executive Director

Aloha Chairs Hanohano and Wooley, Vice Chairs Lee and Belatti, and Members of the House Committees on Hawaiian Affairs and on Culture and the Arts. Papa Ola Lokahi (POL) strongly supports this legislation.

It is consistent with our traditional values of Aloha `aina and Malama Hawai'i. Further, it repairs legal deficiencies in past legislation on EIS requirements. And, finally, it is a necessary protocol given the recent action by the President of the United States approving the UN Declaration on the Rights of Indigenous Peoples. Passing this legislation gives support to improving the health and wellbeing of Native Hawaiians and all those who hold fast to those values of island people and call Hawai'i home.

Thank you for providing strong support for this legislation.

Leimana DaMate

Legislative Testimony

IN SUPPORT of HB 402: Relating to Environmental Impact Statements

Submitted to: Committee on Hawaiian Affairs; Committee on Culture and the Arts

Date: February 16, 2011, 8:30 a.m., Room 325

Aloha Chair Hanohano, Vice-Chair Lee of the Hawaiian Affairs Committee; Chair Wooley and Vice Chair Belatti of the Committee on Culture and the Arts, and Committee Members,

Thank you for the opportunity to testify in strong support of HB 402 which requires that all Environmental Impact Statements (EIA) and Environmental Assessments (EA) strengthen the mandatory Cultural Impact Statements (CIS) and Assessments (CIA) and include the Office of Hawaiian Affairs (OHA) approval of the CIS and CIA before any final approvals are made on applications requiring the EIS or EA.

When Act 50 was passed in 2000, it came about through the Hawaii State Supreme Court decision in the case of *Kapa'akai o Ka 'Aina v. Land Use Commission*. This case was significant because up to that point, EIS's and EA's did not consider the scope of Native Hawaiian cultural, historical or the gathering rights in site-specific areas. *Ka Pa'akai O Ka 'Aina* was comprised of three different Native Hawaiian entities – the Kona Hawaiian Civic Club, the main plaintiff in the case of which I was the president at the time; Ka Lahui, an entity focused on sovereign rights, and the Protect Kohanaiki 'Ohana, the group involved with the PASH decision. This historical background is important because the entire intent of the case which took almost 8 years was to protect Native Hawaiian customary practices in site-specific areas – exactly what an EIS or EA should do. However, when Act 50 came into being, the language that actually was meant to be included was not.

After 11 years, this oversight is to be corrected in HB 402. Further, the genesis of the Aha Moku System was in the *Ka Pa'akai O Ka 'Aina* case. Act 50 should have been part of the process that would have identified and protected natural resources and areas that are very valuable to Native Hawaiians of whatever specific area is being proposed for development. That did not happen.

I urge the passage of HB 402 which fulfills the original intent of Act 50.

Mahalo,

Leimana DaMate

92-8926 Hibiscus Drive, Capt. Cook, HI 96704

Phone: 808-497-0800

Email: Leimana@fastnethi.com