

LATE

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.  
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In reply, please refer to:  
File:

## COMMITTEE ON ENERGY AND ENVIRONMENT

### SB139, Relating to Developer Liability

Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.  
Acting Director of Health

February 8, 2011  
3:00 P.M.

1 **Department's Position:** The Department of Health opposes this measure.

2 **Fiscal Implications:** Uncertain, but potentially huge staffing requirement, as exposure to measurable  
3 levels of hazardous substances is likely at virtually every new development project in Hawaii.

4 **Purpose and Justification:** SB139 seeks to add developer liability for exposure to hazardous  
5 substances to HRS 128D. Adding these two new concepts, "developer liability" and "exposure to  
6 contaminated substances", creates a new, duplicative and vague liability section to the statute, without  
7 clear environmental benefit.

8 The existing liability language in HRS 128D-6 provides a broad definition of responsible parties  
9 which already includes developers, in their capacities as "owners or operators" of facilities. 128D-6  
10 holds responsible parties strictly liable for "releases or threatened releases, which causes the incurrence  
11 of response costs of a hazardous substance". This measure would add additional liability to developers  
12 for "exposure of any person, property or natural resources to a hazardous substance".

13 This definition is overly broad, and moves away from assigning liability based on risks of  
14 hazardous substances to liability for exposure, whether harmful or not. Further, it does not limit sources  
15 of exposures to environmental releases or threatened releases that occur on a property, but could include

February 8, 2011

**The Honorable Mike Gabbard, Chair**  
Senate Committee on Energy and Environment  
State Capitol, Room 225  
Honolulu, Hawaii 96813

**RE: S.B. 139 Relating to Developer Liability**

**HEARING: Tuesday, February 8, 2011 at 3:00 p.m.**

Aloha Chair Gabbard, Vice-Chair English, and Members of the Committee:

I am Myoung Oh, Government Affairs Director of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, testifying on behalf of its 8,500 members. HAR **opposes** S.B. 139 which establishes developer liability for exposure to hazardous substances in the course of residential or commercial development activity.

HAR understands the tremendous duties required for all parties involved in the construction and development of residential or commercial development. However, HAR expresses serious concern on the overly broad definition of developer within this measure as it applies to, "persons, corporations, organizations, partnerships, associations and other entities that are involved in the erecting, enlarging, altering, or engaging in any new residential activity."

The overly broad definition could potentially include contractors, subcontractors, REALTORS®, homeowners and any other legal entities that are directly or indirectly involved in the development activity.

For the forgoing reasons, we respectfully recommend that this bill be deferred.

Mahalo for the opportunity to testify.