

**DEPARTMENT OF BUSINESS,  
ECONOMIC DEVELOPMENT & TOURISM**

NEIL ABERCROMBIE  
GOVERNOR

RICHARD C. LIM  
DIRECTOR

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Statement of  
**RICHARD C. LIM**  
Director  
Department of Business, Economic Development, and Tourism  
before the  
**HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION**

Tuesday, March 20, 2012  
9:00 a.m.  
State Capitol, Conference Room 325

in consideration of  
**SB 2873, SD1, HD1**  
**RELATING TO ENVIRONMENTAL IMPACT STATEMENTS**

Chair Coffman and Vice Chair Kawakami and Members of the Committee on Energy and Environmental Protection>

DBEDT **strongly opposes** SB 2873, HD1 as it repeals the current Act 87 (2009) language that allows agencies to exempt secondary impacts/actions from EA/EIS reviews. HD 1 establishes a new, discretionary approval process that will add cost, time, and increase the risk of litigation to public and private projects that need minor utility line connections for broadband communication fiber, telephone, cable television lines, and potential renewable energy projects. Passage of this bill is likely to obstruct Hawaii's ability to deploy clean energy infrastructure in accordance with the Hawaii Clean Energy Initiative.

DBEDT urges this Committee to amend the HD 1 by restoring the original language in SB 2873.

Thank you for the opportunity to offer comments on this measure.

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



GARY L. HOOSER  
DIRECTOR

**STATE OF HAWAII**  
OFFICE OF ENVIRONMENTAL QUALITY  
CONTROL

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**COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION**

**SB 2873 SD1 HD1, RELATING TO ENVIRONMENTAL IMPACT STATEMENTS**

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

**March 20, 2012**

1 **Office's Position:** Support

2 **Fiscal Implications:** None

3 **Purpose and Justification:** This measure proposes to amend chapter 343, Hawaii Revised  
4 Statutes, to clarify and make permanent current exemptions for secondary actions that occur  
5 within the highway or public right-of-way.

6 The clarifications in HD1 ensure that there is no misunderstanding as to the intent of this  
7 measure.

8 Thank you.



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

March 20, 2012

**S.B 2873, S.D. 1, H.D. 1  
RELATING TO ENVIRONMENTAL IMPACT STATEMENTS**

HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

The Department of Transportation strongly opposes House Draft 1 amendments to Senate Bill 2873 SD 1.

We respectfully request that the original Senate Bill 2873 be reconsidered.

Going back to the original Senate Bill 2873 and permanently amending Chapter 343, Hawaii Revised Statutes, to clarify current exemptions for secondary actions and require that applicants prepare environmental assessments when required. Amending this chapter will relieve the DOT from conducting an environmental assessment (EA) when they are not the initiators of the EA process and will prevent unnecessary delays for actions that are clearly exempt from the EA requirements.

The Department of Transportation has had the exemption for several years and has effectively addressed the problem of secondary action reviews with no discernable negative effect on the public.

We also would like the removal of the sunset date within the existing law as noted in original Senate Bill 2873. Should the exemption sunset, DOT would need to go back to spending staff and consultant time and money reviewing and processing secondary action applications with negligible benefit to the environment. The range of processing times and costs may be several months and several thousands of dollars (for simple projects such as a home driveway access) to possibly a year or more and tens of thousands of dollars if a consultant needs to be retained to process an environmental review due to any opposition to the minor work project. The time for this review and processing will delay project completion.

Thank you for the opportunity to provide testimony.



**BIA-HAWAII**  
BUILDING INDUSTRY ASSOCIATION

Testimony to the House Committee on Energy & Environmental Protection  
Tuesday, March 20, 2012  
9:00 a.m.  
State Capitol - Conference Room 325

**RE: SENATE BILL NO. 2873 SD1 HD1 RELATING TO ENVIRONMENTAL IMPACT STATEMENTS**

Chair Coffman, Vice Chair Kawakami, and members of the committee:

I am Gladys Marrone, Director of Government Relations for the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the BIA-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** SB 2873 SD1 HD1, and **strongly supports the original version of S.B. No. 2873**, which would permanently amend chapter 343, Hawaii Revised Statutes to clarify current exemptions for secondary actions and require that applicants prepare environmental assessments when required.

The original language is needed because of the recent court decisions where any action that involved the use of a state or county road right of way was a "trigger" for the EA/EIS. Because an access improvement, easement, drainage, waterline, etc., is now viewed as a use of state or county lands when it touches (over, under, across) a state or county road right of way, the preparation of an environmental assessment would be required.

Requiring the preparation of a 343 HRS document for projects with insignificant environmental impacts makes a mockery of the EA/EIS process. If the legislative intent was that an EA/EIS would be required any time the project touches a public road, then the law should be changed to require an EA/EIS for all projects because all projects, at some point, connect to a public road.

SB 2873 SD1 HD1 essentially adds a new "discretionary approval" process by saying that the "agency MAY EXEMPT that secondary action" (emphasis added). This change is contrary to the original language, and will impede, delay, or stop important State and private projects.

For the foregoing reasons, BIA-Hawaii **opposes** SB 2873 SD1 HD1, and **strongly supports the original language of SB 2873**.

Thank you for this opportunity to express our views.

March 16, 2012

The Honorable Representative Denny Coffman, Chair:  
House Committee on Energy and Environmental Protection  
Hawai'i State Capitol  
Honolulu, HI 96813

RE: Testimony opposing SB2873 SD1 relating to Environmental Impact Statements

Chair Coffman and Committee members:

The Outdoor Circle (TOC) opposes this legislation.

We believe that Chapter 343 currently provides the mechanisms for exempting minor actions. Existing law already gives agencies the authority to quickly exempt any project or action that is expected to have no or negligible environmental impacts. However, sometimes these projects aren't as innocuous as they appear and they cannot qualify for an exemption under Ch. 343. That's the beauty of the law. It has flexibility.

Please hold this legislation.

Respectfully,

Bob Loy  
Director of Environmental Programs



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

**Testimony to the House Committee on Energy & Environmental Protection**

**Tuesday, March 20, 2012**

**9:00 a.m.**

**State Capitol - Conference Room 325**

**RE: SENATE BILL NO. 2873 SD1 HD1 RELATING TO ENVIRONMENTAL  
IMPACT STATEMENTS**

Chair Coffman, Vice Chair Kawakami, and members of the committee:

The Chamber of Commerce of Hawaii strongly supports S.B. No. 2873 SD1 HD1 which proposes to permanently amend chapter 343, Hawaii Revised Statutes to clarify current exemptions for secondary actions and require that applicants prepare environmental assessments when required.

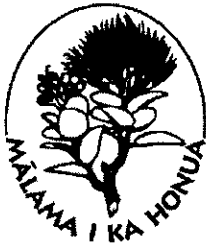
The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

The legislation is needed because of the recent court decisions where any action that involved the use of a state or county road right of way was a "trigger" for the EA/EIS. Because an access improvement, easement, drainage, waterline, etc., is now viewed as a use of state or county lands when it touches (over, under, across) a state or county road right of way, the entire project is then required to prepare and environmental assessment for the entire project.

Requiring the preparation of a 343 HRS document for projects with insignificant environmental impacts makes a mockery of the EA/EIS process. If the legislative intent was that an EA/EIS would be required any time the project touches a public road, then the law should be changed to require an EA/EIS for all projects because all projects, at some point, connect to a public road.

The Chamber strongly supports S.B. No. 2873 SD1 HD 1 which effectively excludes the installation and development of infrastructure and utilities within an existing public right-of-way or highway as the use of state or county lands for purposes of requiring an environmental assessment.

Thank you for this opportunity to express our views.



# Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803  
808.538.6616 [hawaii.chapter@sierraclub.org](mailto:hawaii.chapter@sierraclub.org)

## HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

March 20, 2012, 9:00 A.M.  
(Testimony is 2 pages long)

### TESTIMONY OPPOSING SB 2873 (SD1, HD1) WITH PROPOSED AMENDMENTS

Aloha Chair Coffman and members of the Committee:

The Sierra Club, Hawai'i Chapter, with 10,000 dues paying members and supporters statewide, *opposes* SB 2873. This bill continues an statutory exemption from the environmental review process because of the Department of Transportation's inability to follow the law like other agencies, developers, or the public.

The Department of Transportation openly acknowledges its projects are one of the largest causes invasive species throughout Hawai'i. Accordingly, DOT should be held to a higher standard for the environment, not a lower one.

Approximately three years ago, perhaps as a result of the Superferry decision, DOT argued that it could not determine what projects -- normally subject to an exemption from Chapter 343 -- might have secondary impacts that impact the environment. As applied, normally an exemption, like an exemption for all fencing on conservation land, would have a catch-all, "unless this project is so large in scope and has the potential of adversely impacting the environment." DOT claimed it could not perform this analysis.

There is no logical basis for DOT's inability to determine whether a traffic connection or the like would impact the environment based on the cumulative impact or the unusual nature of the specific application. Accordingly, this Committee should hold this bill and not continue this odd exemption based on agency incompetence.

To the extent this Committee decides to continue this exemption, the carefully crafted language used in prior years should be used. The proposed amendments appear to expand the reach of the "secondary" exemption, perhaps so as to allow the tail to wag the dog.

*Original Language:*

"§343- Exception to applicability of chapter. (a)  
Notwithstanding any other law to the contrary, any primary  
action that requires a permit or approval that is not subject to  
a discretionary consent and that involves a secondary action  
that is ancillary and limited to the installation, improvement,  
renovation, construction, or development of infrastructure  
within an existing public right-of-way or highway shall be  
exempt from this chapter.

(b) As used in this section:

"Discretionary consent" means:

- (1) An action as defined in section 343-2; or
- (2) An approval from a decision-making authority in an  
agency, which approval is subject to a public  
hearing.

"Infrastructure" includes waterlines and water facilities,  
wastewater lines and wastewater facilities, gas lines and gas  
facilities, drainage facilities, electrical, communications,  
telephone, and cable television utilities, and highway, roadway,  
and driveway improvements.

"Primary action" refers to any action outside of the  
highway or public right-of-way that is on private property.

"Secondary action" refers to any infrastructure within the  
highway or public right-of-way."

Mahalo for the opportunity to testify.



## **kawakami1 - Marissa**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 19, 2012 4:01 PM  
**To:** EEPtestimony  
**Cc:** kimokelii@aol.com  
**Subject:** Testimony for SB2873 on 3/20/2012 9:00:00 AM

Testimony for EEP 3/20/2012 9:00:00 AM SB2873

Conference room: 325  
Testifier position: Oppose  
Testifier will be present: No  
Submitted by: Kimo Kelii  
Organization: Nanakuli-Mailii Neighborhood Board #36 & NHHCA  
E-mail: [kimokelii@aol.com](mailto:kimokelii@aol.com)  
Submitted on: 3/19/2012

**Comments:**

Aloha Kakou Honorable Legislators,

ATTN: House of Representative Committee on Energy & Environmental Protection - Chair, Rep D. Coffman; Vice Chair, Rep D. Kawakami; and committee members;

PLEASE OPPOSE AND DENY THE PASSAGE OF SB 2873, SD1, HD1!

As an advocate and staunch supporter of environmental concerns and issues here on the Waianae Coast because of all the Hazardous Waste Facilities located near and around the Nanakuli community (PVT Landfill, Waimanalo Gulch Landfill, HECO Kahe Point Power Plant, Chevron & Tesoro Refinery Plants, HPOWER Plant, etc.) I strongly oppose this bill's intention with exempting Environmental Assessments from being conducted as of being a "Secondary" type of request rather than a primary.

Bottom line, the Federal Government's Environmental Protection Agency requires that the general public and especially the impacted community and its residents have a "Right to Know" about any changes, expansions or revisions to any Waste or Utility type of facilities or areas!

I am appalled to think that our Legislators want to deny the affected community and its residents the ability to at least have the "Right to Know" that an entity that has health and safety ramifications located within its geographical boundaries wants to expand or remodel its facilities can go about doing so with no or little input from the impacted community or residents!

A O'le Pono! This is not Right!

Mahalo Nui Loa, Kimo Kelii (Waianae Coast Community Leader)

**kawakami1 - Marissa**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 19, 2012 1:07 PM  
**To:** EEPtestimony  
**Cc:** tony@rmasalesco.com  
**Subject:** Testimony for SB2873 on 3/20/2012 9:00:00 AM

Testimony for EEP 3/20/2012 9:00:00 AM SB2873

Conference room: 325  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Anthony Borge  
Organization: RMA Sales  
E-mail: [tony@rmasalesco.com](mailto:tony@rmasalesco.com)  
Submitted on: 3/19/2012

**Comments:**

In support of S.B. 2873 HD1 Relating to Environmental Impact Statements

RMA Sales is 50 year old locally owned and operated business with over 16 employees. We supply windows/doors, hurricane/security screens and other related building materials throughout the State. This bill would shorten the environmental review process by not requiring Chapter 343 documents for projects with insignificant environmental impact from the review process. This will result in saving time, money and needless delays in transforming a project into beneficial reality while sustaining the environment.

Respectively submitted by Anthony Borge