



# Sierra Club Hawai'i Chapter

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**LATE**

## SENATE COMMITTEE ON ENERGY & ENVIRONMENT

February 14, 2012, 9:00 A.M.  
(Testimony is 2 pages long)

### TESTIMONY OPPOSING SB 2873 WITH PROPOSED AMENDMENTS

Aloha Chair Gabbard 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. DOT's amendments appear deliberate to expand the reach of the "secondary" exemption, perhaps so as to allow the tail to wag the dog.

*Proposed Amendments (proposed amendments are bolded):*

"§343- **Exception to applicability of chapter.** (a) Notwithstanding any other law to the contrary, ~~[if at the time an application for a secondary action is submitted, a]~~ **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, that secondary action shall be exempt from this chapter[.]; provided that the applicant shall submit documentation from the appropriate agency confirming that no further discretionary approvals are required.

(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 **that is ancillary to the primary action.**"

Mahalo for the opportunity to testify.

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February 23, 2012

The Honorable Senator Mike Gabbard, Chair:  
Senate Committee on Energy and Environment  
Hawai'i State Capitol  
Honolulu, HI 96813

RE: Late Testimony opposing SB2873 relating to Environmental Impact Statements

Chair Gabbard 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.

SB 2873 throws a one-size-fits-all blanket over all minor projects. This type of policy making removes the safety net now provided in Ch. 343 that snares those few projects that will end up creating more impacts than originally met the eye.

Please hold this legislation.

Respectfully,

Bob Loy  
Director of Environmental Programs