

SB 2875

RELATING TO TRANSPORTATION.

Amend chapter 266, Hawaii Revised Statutes, to exempt the Department of Transportation, Harbors Division, from the permit and site plan approvals requirements relating to submerged lands within the conservation district.

NEIL ABERCROMBIE
GOVERNOR



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

IN REPLY REFER TO:

February 13, 2012

**SB 2875
RELATING TO TRANSPORTATION**

SENATE COMMITTEE(S) ON WATER, LAND & HOUSING and
TRANSPORTATION & INTERNATIONAL AFFAIRS

The Department of Transportation (DOT) strongly supports this Administration bill to amend Chapter 266, Hawaii Revised Statutes, to provide an exemption from the permit and site plan approvals requirements relating to submerged lands within the conservation district. The bill proposes to exempt submerged lands within the State's commercial harbors system from the provisions of Chapter 183C, Hawaii Revised Statutes, relating to permits and site plans approvals. This exemption will enable the Harbors Division to more efficiently implement needed projects to meet the growing needs of the maritime industry.

Sufficient oversight already exists for submerged lands within the State's commercial harbors system for the preservation of the ecosystem, flora and fauna as the DOT will continue to be subject to the requirements of Chapter 343, Hawaii Revised Statutes, as well as the permit requirements by the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and oversight by the State Department of Health for federal programs such as the Clean Water Act. We believe this proposal eliminates the delay for obtaining a permit and site plan approval that through other review processes are in place to address environmental concerns and the public interest. This proposal will allow the DOT Harbors Division to more timely and efficiently implement harbor projects.

We urge your support for this bill.





SB 2875
RELATING TO TRANSPORTATION
Committee on Water, Land, and Ocean Resources

February 13, 2012

1:20 p.m.

Room 224

The Office of Hawaiian Affairs (OHA) **OPPOSES SB 2875**, which would exempt all work involving submerged lands used for state commercial harbor purposes from permitting and site plan approval requirements established for conservation lands currently required under Chapter 183C, Hawai'i Revised Statutes.

Although OHA recognizes the importance of maintaining and rehabilitating the State's commercial harbor systems in a timely manner, the guidelines contained in Chapter 183C are crucial for protecting Hawai'i's conservation lands. State law related to conservation lands requires the Department of Land and Natural Resources (DLNR) to regulate land use through permitting and regulate construction of structures through site plan approvals. This process ensures review of the proposed land use and related construction by a state agency that is constitutionally obligated to conserve and protect Hawai'i's natural resources for future generations and ensure protection of Native Hawaiian traditional and customary rights. Haw. Const. Art. XI Section 1, Haw. Const. Art. XII Section 7.

Chapter 343, Hawai'i Revised Statutes, and federal permitting, without Chapter 183C, do not provide sufficient oversight for submerged lands and adequate protection of individuals' due process rights. Chapter 343's Environmental Assessment and Environmental Impact Statement requirements only require disclosure of the effects of a proposed action, suggested mitigation, and alternatives. They do not result in the approval or denial of a project. Nor do they result in the approval or denial of a permit. For submerged lands in the conservation district, these determinations are made by the DLNR pursuant to Chapter 183C. Additionally, federally mandated permit requirements (e.g., U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency) do not ensure consideration and protection of rights conferred by the Hawai'i State Constitution.

SB 2875 would exempt *all* activities on submerged lands for state commercial harbor purposes, regardless of size, scope, or potential impacts. This would undermine the purpose for which Chapter 183C was enacted – to conserve, protect, and preserve important natural and cultural resources of the state and to promote their long-term sustainability and the public health, safety, and welfare. OHA urges this legislature to

continue its support of responsible project planning and to reject piecemeal one size fits all exemptions.

Submerged lands are generally ceded lands and involve fragile environments and resources that require the additional scrutiny afforded by Chapter 183C. We should encourage their protection for Hawai'i's current and future generations. As such, OHA urges the committee to HOLD SB 2875. Mahalo for the opportunity to testify on this important measure.



LAND USE RESEARCH
FOUNDATION OF HAWAII

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February 12, 2012

Senator Donovan M. Dela Cruz, Chair
Senator Malama Solomon, Vice Chair
Senate Committee on Water, Land, and Housing

Senator J. Kalani English, Chair
Senator Will Espero, Vice Chair
Senate Committee on Transportation and International Affairs

Support of SB 2875, Relating to Transportation (Exempts DOT, Harbors division from permit and site plan approval requirements relating to submerged lands within the Conservation District.)

Monday, February 13, 2012, 1:30 p.m., in CR 224

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 testimony **in strong support of SB 2875.**

SB 2875. This bill amends Chapter 266, Hawaii Revised Statutes ("HRS"), to exempt the Department of Transportation, Harbors Division ("DOT"), from the permit and site plan approvals requirements under HRS Chapter 183C, which applies to activities in, on or under submerged lands comprising the commercial harbors system within the conservation district.

LURF's Position. LURF supports this measure, because it would allow DOT to plan and more effectively and efficiently implement projects in a timely manner to meet the growing needs of the maritime industry. We understand that the cargo system for Hawaii is dependent on the State commercial harbors system, as ninety-eight percent of imported goods pass through the State's commercial harbors. If necessary DOT capital projects are not completed, or harbor facilities are not maintained and/or rehabilitated in a timely manner due to unnecessary permit delays, there could be significant detrimental impacts to the operations of harbors facilities and the delivery of goods.

Sufficient oversight will continue to exist for submerged lands within the State commercial harbors system for the preservation and protection of the ecosystem, flora and fauna, as DOT will continue to be subject to the requirements of HRS Chapter 343 and the laws relating to Environmental Assessments and Environmental Impact Statements; to the requirements by the U.S. Army Corps of Engineers; to the U.S.

Senate Committee on Water, Land, and Housing
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Environmental Protection Agency; as well as oversight by the State Department of Health for Federal programs such as the Clean Water Act.

For the reasons stated above, LURF is in **support of SB 2875**, and respectfully urges your favorable consideration of this bill.

Thank you for the opportunity to present testimony regarding this matter.

HISTORIC HAWAII FOUNDATION

To: Sen. Donovan M. Dela Cruz, Chair
Sen. Mālama Solomon, Vice Chair
Committee on Water, Land and Housing
Sen. J. Kalani English, Chair
Sen. Will Espero, Vice Chair
Committee on Transportation and International Affairs

From: Kiersten Faulkner
Executive Director, Historic Hawai'i Foundation

Committee Date: Monday, February 13, 2012
1:20 p.m.
Conference Room 224

Subject: SB 2875, Relating to Transportation

On behalf of Historic Hawai'i Foundation (HHF), I am writing in opposition to SB 2875, Relating to Transportation. The bill would exempt the Department of Transportation, Harbors Division, from the permit and site plan approvals requirements relating to submerged lands within the conservation district.

Since 1974, Historic Hawai'i Foundation has been a statewide leader for historic preservation. HHF's 850 members and numerous additional supporters work to preserve Hawaii's unique architectural and cultural heritage and believe that historic preservation is an important element in the present and future quality of life, economic viability and environmental sustainability of the state.

The State Department of Transportation is the steward and caretaker for many historic and cultural properties, including sites and objects that may be located within submerged lands. These include culturally significant properties, as well as historic artifacts or objects that may be related to a specific setting or environment.

Under HRS 6E-8, State departments consult with the historic preservation division to review proposals and determine whether they could cause an adverse effect to a historic property, including those located on submerged lands, and the project may proceed with the concurrence of the historic preservation division. This process provides a safeguard to avoid, minimize or mitigate adverse effects to the State's historic and cultural properties. The process also works in conjunction with similar requirements under the National Historic Preservation Act and the National Transportation Act, which require that undertakings involving federal funding, permitting or approvals also obtain SHPD concurrence prior to proceeding.

HHF finds that these review and approval processes are critically important to avoid irreversible and permanent impairment to the historic and cultural properties that are entrusted to the State to ensure their preservation, interpretation and appropriate treatment for the enjoyment of present and future generations. Eliminating the permit and site plan approvals would expose Hawai'i's heritage to irreversible harm and destruction of irreplaceable historic and cultural resources.

Therefore, HHF opposes SB2875.

Historic Hawai'i Foundation

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Historic Hawai'i Foundation was established in 1974 to encourage the preservation of historic buildings, sites and communities on all the islands of Hawai'i. As the statewide leader for historic preservation, HHF works to preserve Hawai'i's unique architectural and cultural heritage and believes that historic preservation is an important element in the present and future quality of life, environmental sustainability and economic viability of the state.



**Testimony to the Senate Committees on Water, Land and Housing, and
Transportation and International Affairs**

February 13, 2012

1:20 p.m.

State Capitol - Conference Room 224

RE: SENATE BILL NO. 2875 RELATING TO TRANSPORTATION

Chairs Dela Cruz and English, Vice Chairs Solomon and Espero, and members of the committees:

The Chamber of Commerce of Hawaii respectfully provides the following testimony on S.B. 2875. The bill proposes to amend Chapter 266, Hawaii Revised Statutes, to exempt the Department of Transportation, Harbors Division, from the permit and site plan approvals requirements relating to submerged lands within the conservation district.

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 Chamber of Commerce of Hawaii takes no position on this Administration bill; however, we question the need for an exemption from the Conservation District Use Application (CDUA) process for all commercial harbors.

In their justification for the exemption, the State Department of Transportation states that: “Sufficient oversight already exists for submerged lands within the State commercial harbors system for the preservation of the ecosystem, flora and fauna as the Department of Transportation will continue to be subject to the requirements of chapter 343, HRS, as well as the permit requirements by the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and oversight by the State Department of Health for federal programs such as the Clean Water Act.

This exemption will allow the Harbors Division to plan and more effectively and efficiently implement projects in a timely manner to meet the growing needs of the maritime industry.

The “just in time” cargo system for Hawaii is dependent upon the State commercial harbors system as 98 percent of imported goods passes through its harbors. Significant impacts to facility operations and delivery of goods can occur if necessary capital projects are not completed or harbor facilities are not maintained and/or rehabilitated in a timely manner due to unnecessary permit delays.”

Our understanding is that all submerged lands in the State are zoned Conservation. Any use of these lands requires an approved Conservation District Use Application (CDUA) from DLNR. The CDUA establishes the “land use” of the property, and once approved, the state owned submerged lands are usually set aside through and executive order that allows the agency to manage these lands for the established land use. Once established, as long as the activities conducted on the property are consistent with the established land use, no additional CDUA is required. The process appears to have been set up to allow government agencies the flexibility to manage their on-going uses/activities on the property once the land use has been established through the CDUA process and further documented in the set aside of the lands to the agency.

As such once the land use is established, we do not understand how the CDUA process would result in “Significant impacts to facility operations and delivery of goods can occur if necessary capital projects are not completed or harbor facilities are not maintained and/or rehabilitated in a timely manner due to unnecessary permit delays.”

Furthermore, since the DOT proposes to comply with Chapter 343 HRS, as well as the permit requirements by the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and oversight by the State Department of Health for federal programs such as the Clean Water Act, why was the CDUA process singled out as the only permit that would delay harbor projects?

There does not appear to be a public health or public safety need for this exemption. We believe that without identifying specific public benefits from these types of exemptions, other government agencies will request a similar exemption. For example, DOT Highways and DOT Airports could provide similar rationale for exempting their respective projects from the CDUA process.

Finally, if this legislation is approved, the legislature is essentially creating two different standards for harbor facilities. One for government harbors that would be exempt from the CDUA requirements and one for all other harbors (i.e. DLNR Small Boat Harbors, commercial harbors, and private harbors).

Thank you for this opportunity to express our views.

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

**Testimony to the Senate Committees on Water, Land and Housing and
Transportation and International Affairs**

February 13, 2012

1:20 p.m.

State Capitol - Conference Room 224

RE: SENATE BILL 2875 - RELATING TO TRANSPORTATION

Chairs Dela Cruz and English, Vice Chairs Solomon and Espero, and members of the committees:

My name is Gladys Quinto Marrone 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 respectfully provides the following testimony on S.B. 2875. The bill proposes to amend Chapter 266, Hawaii Revised Statutes, to exempt the Department of Transportation, Harbors Division, from the permit and site plan approvals requirements relating to submerged lands within the conservation district.

BIA-Hawaii takes **no position** on this Administration bill; however, we question the need for an exemption from the Conservation District Use Application (CDUA) process for all commercial harbors.

In their justification for the exemption, the State Department of Transportation states that:

“Sufficient oversight already exists for submerged lands within the State commercial harbors system for the preservation of the ecosystem, flora and fauna as the Department of Transportation will continue to be subject to the requirements of chapter 343, HRS, as well as the permit requirements by the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and oversight by the State Department of Health for federal programs such as the Clean Water Act.

This exemption will allow the Harbors Division to plan and more effectively and efficiently implement projects in a timely manner to meet the growing needs of the maritime industry.

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Senators Dela Cruz and English, Chairs
Committees on Water, Land, and Housing and Transportation and International Affairs
February 13, 2012
S.B. 2875
BIA-Hawaii Testimony

completed or harbor facilities are not maintained and/or rehabilitated in a timely manner due to unnecessary permit delays.”

Our understanding is that all submerged lands in the State are zoned Conservation. Any use of these lands requires an approved Conservation District Use Application (CDUA) from DLNR. The CDUA establishes the “land use” of the property and, once approved, the state-owned submerged lands are usually set aside through an executive order that allows the agency to manage these lands for the established land use. Once established, as long as the activities conducted on the property are consistent with the established land use, no additional CDUA is required. The process appears to have been set up to allow government agencies the flexibility to manage their on-going uses/activities on the property once the land use has been established through the CDUA process and further documented in the set aside of the lands to the agency.

As such, once the land use is established, we do not understand how the CDUA process would result in “Significant impacts to facility operations and delivery of goods can occur if necessary capital projects are not completed or harbor facilities are not maintained and/or rehabilitated in a timely manner due to unnecessary permit delays.”

Furthermore, since the DOT proposes to comply with Chapter 343 HRS, as well as the permit requirements by the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and oversight by the State Department of Health for federal programs such as the Clean Water Act, it is unclear as to why was the CDUA process was singled out as the only permit that would delay harbor projects.

There does not appear to be a public health or public safety need for this exemption. We believe that without identifying specific public benefits from these types of exemptions, other government agencies will request a similar exemption. For example, DOT Highways and DOT Airports could provide similar rational for exempting their respective projects from the CDUA process.

Finally, if this legislation is approved, the legislature is essentially creating two different standards for harbor facilities. One would be for government harbors that would be exempt from the CDUA requirements and one for all other harbors (i.e. DLNR Small Boat Harbors, commercial harbors, and private harbors).

Thank you for this opportunity to express our views.