

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  
TRANSPORTATION  
and  
ENERGY & ENVIRONMENTAL PROTECTION**

**Monday, March 19, 2012  
11:00 AM  
State Capitol, Conference Room 309**

**In consideration of  
SENATE BILL 3010, SENATE DRAFT 2  
RELATING TO TRANSPORTATION.**

Senate Bill 3010, Senate Draft 2, proposes to exempt temporarily, the Department of Transportation and its contractors from certain state requirements for certain bridge rehabilitation projects. The Department of Land and Natural Resources' (Department) attention to this bill is limited to the exemptions of state requirements under its purview (1 – 11 in SECTION 2), in particular, Chapters 6E and 174C, Hawaii Revised Statutes (HRS), relating to historic preservation and the State Water Code, respectively. The Department offers the following comments.

Chapter 6E, HRS

Many bridges serve as an excellent example of engineering of a specific time period. The Department would ask that the potentially valuable historical resource aspect of bridges be taken into serious consideration in expediting the alteration of bridges for purposes of efficiency.

Chapter 174C, HRS

Assuming that no permanent diversion of stream water is proposed, the only permit required for bridge rehabilitation and replacement under the State Water Code is a Stream Channel Alteration Permit ("SCAP"). The State Water Code requires SCAPs prior to altering a stream channel in order to understand, and mitigate as appropriate, potential impacts on fisheries, wildlife, recreation, aesthetic, scenic, and other beneficial instream uses. Under the State Water Code, SCAPs must be acted upon within ninety days. Ninety days for action on a permit is reasonable and not excessive.

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

GUY H. KAULUKUKUI  
FIRST DEPUTY

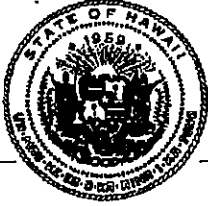
WILLIAM M. TAM  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
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CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

The State Water Code already exempts the maintenance of existing facilities from SCAPs. If the proposed bridge rehabilitation work is limited to maintaining, repairing, and/or strengthening existing structures, the work may be exempt from a SCAP under Section 174C-71(3)(A), HRS.

However, replacing bridges may entail significant alteration of the stream channel bed and banks and may impose unknown impacts on the stream itself. Across the board exemptions of the entire State Water Code is not appropriate and is not consistent with the State's constitutional duty to protect streams.

Thank you for the opportunity to testify.



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

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Statement of  
**JESSE K. SOUKI**  
Director, Office of Planning  
Department of Business, Economic Development, and Tourism  
before the  
**HOUSE COMMITTEE ON TRANSPORTATION  
AND  
HOUSE COMMITTEE AND ENERGY AND ENVIRONMENTAL PROTECTION**  
Monday, March 19, 2012  
11:00 AM  
State Capitol, Conference Room 309  
  
in consideration of  
**SB 3010 SD 2**  
**RELATING TO TRANSPORTATION.**

Chairs Souki and Coffman, Vice Chairs Ichiyama and Kawakami, and Members of the House Committees on Transportation and Energy and Environmental Protection.

The Office of Planning (OP) administers Hawaii Revised Statutes (HRS) Chapter 205A, the Coastal Zone Management (CZM) law. SB 3010 SD 2 proposes to exempt the department of transportation and its contractors from a series of state requirements, including HRS Chapter 205A. In particular, the bill proposes to exempt 10 specific bridge projects from the series of state requirements.

Enacted in 1975, the Special Management Area (SMA) Permit is an essential part of the federal and state approved Hawaii CZM Program. SMA permits are only required for development within a narrow band of land along the coast stretching inland from the shoreline and generally to the first state highway. Certain developments are exempt because

they have no substantial adverse environmental or ecological or cumulative effects.

Developments not in excess of \$500,000 require minor permits, which involve an assessment and no hearing. Developments that exceed \$500,000 require a public hearing. A description of the Hawaii CZM Program is attached.

OP opposes this bill for the following reasons:

- 1) The Hawaii CZM Program was enacted by the state legislature in 1977, and approved by the U.S. Department of Commerce in 1978. The CZM Program balances Hawaii's coastal resource use, economic development and protection of cultural and environmental areas in a sustainable manner so that Hawaii's residents and visitors will continue to benefit from the rich resources the coast and ocean provides. HRS §205A-5 requires that all agencies shall enforce the objectives and policies set forth in HRS §205A-2.
- 2) The proposed exemptions, including SMA permit exemption, conflict with the intent of HRS Chapter 205A, Part II - SMAs, which was established by the legislature.
- 3) At the administration's direction, OP is working on an alternative project review processes for state projects within an SMA that are consistent with the federal and state CZM goals and objectives. Recommendations for alternative project review process, in consultation with affected state agencies, will be completed before the next legislative session. The alternative processes to SMA permitting will  
(a) ensure that both federal grant and federal permitted projects are reviewed in the streamlined federal consistency process; and (b) create a streamlined state

review process, with programmatic consistency review for similar project types (e.g., bridge projects), for state projects within an SMA that are located on state land.

- 4) SB 3010 SD 2 would jeopardize federal approval of the Hawaii CZM Program, and in turn, the State of Hawaii may lose approximately \$2 million of federal funds annually. This loss of federal funding translates to a loss of nine positions at OP, six positions at the planning department of Hawaii County, four positions at the planning department of Kauai County, and four positions at the planning department of Maui County. These positions perform CZM-related activities such as update and implementation of the Ocean Resources Management Plan, federal consistency reviews, coastal non-point pollution control activities, as well as administration of SMA permits and shoreline setback provisions and violation investigations thereof.

Thank you for the opportunity to provide testimony on this measure.



# Hawaii CZM Program

Coastal Zone Management  
Office of Planning, State of Hawaii



## ABOUT THE PROGRAM

*Partnering with Hawaii's communities to promote a sustainable coastal environment by building upon our heritage and inspiring island stewardship.*

Hawaii's CZM Program was enacted to provide a common focus for state and county actions dealing with land and water uses and activities. As the State's resource management policy umbrella, it is the guiding perspective for the design and implementation of allowable land and water uses and activities throughout the state.

Unlike single-purpose programs, the Hawaii CZM Program focuses its work on the complex resource management problems of coastal areas in the part of the State that is under the highest stress. Within a framework of cooperation among federal, state and local levels, the Hawaii CZM program employs a wide variety of regulatory and non-regulatory techniques to address coastal issues and uphold environmental law. Among them are stewardship, planning, permitting, education and outreach, technical assistance to local governments and permit applicants, policy development and implementation, and identification of emerging issues and exploration of solutions.

## PROGRAM COMPONENTS

### FEDERAL CONSISTENCY

The national Coastal Zone Management Act requires derelict federal activities and development projects to be consistent with approved state coastal programs to the maximum extent practicable. Federally permitted, licensed or assisted activities occurring in, or affecting, the state's coastal zone must be in agreement with the Hawaii CZM Program's objectives and policies.

### SPECIAL MANAGEMENT AREA (SMA) PERMITS

SMA Permits are management tools to assure that permitted uses and activities that are defined as developments in the SMA are designed and carried out in compliance with the CZM objectives and policies and SMA guidelines. It is independently implemented by each of the four counties according to their respective ordinances and rules.

### OCEAN RESOURCES MANAGEMENT PLAN (ORMP)

The ORMP is a statewide plan mandated by Hawaii Revised Statutes ch. 205A. It is based on a three-perspective framework: Connecting Land and Sea; Preserving Our Ocean Heritage; and Promoting Collaboration and Stewardship. The plan builds upon traditional Hawaiian management principles and uses an integrated and area-based approach to natural and cultural resource management.

### MARINE AND COASTAL ZONE ADVOCACY COUNCIL (MACZAC)

Composed of twelve advisory members statewide with diverse backgrounds in business, environment, native Hawaiian practices, terrestrial and marine commerce, recreation, research and tourism, MACZAC advises the Director of the Office of Planning on marine and coastal zone management planning, coordination, and facilitation of functions of the Hawaii CZM Program.

## PROGRAM FACTS

Coastal Population in 2000:

1,524,153

Miles of Coastline:

1,052

Ocean Economy in 2009:

\$5,229,102,400

CZM Funds:

2010: \$2,068,000 / 2011: \$2,018,000

State and Other Matching Funds:

2010: \$1,891,000 / 2011: \$1,844,000

Total Funds:

2010: \$3,959,000 / 2011: \$3,862,000

CZM Partners:

Federally: NOAA, EPA, USACE, USN, USCG, USFWS, NMFS, HAWAII, PCC, BARI, WREMC

State/County: DEED, DOA, DOD, DOR, DNR, DOT, OHA, HCP, HIC, DEC, DMB, MACZAC, DR, SOEST, Sea Grant, the City and County of Honolulu, County of Kauai, County of Maui, County of Hawaii

Others: The Nature Conservancy

Federally Funded Hawaii CZM Program Staff: Office of Planning: 8, Hawaii County: 6, Kauai County: 2, Maui County: 2

Coastal Zone Management Program is the National Oceanic and Atmospheric Administration's (NOAA) Coastal Zone Management Program (CZMP). The CZMP was established in 1972.

## KEY ACCOMPLISHMENTS

- ORMP Policy and Working Group collaborated with the Sea Grant Hawaii, Center for Island Climate Adaptation (ICAP) to finalize *A Framework for Climate Change Adaptation in Hawaii*. The framework lays out a proposed step-by-step process for the State to develop plans and make informed decisions on climate change adaptation.
- Collaborated with the State Department of Health in the development of a Watershed Planning Guidance to promote the application of Coastal Nonpoint Pollution Control Program (CNPCP) management measures from the broader concept of watershed planning.
- Implemented CNPCP management measures for urban pollution prevention by funding a collaborative effort between the National NEMO Network and local partners to design and conduct a community workshop on low impact development and tools to reduce nonpoint source pollution.
- Funded hurricane wind speed studies and customized design standards which were incorporated into the State Building Code and adopted in 2010.
- Funded a partnership project between the County of Hawaii and community group Kā Ohana O Hōnuāpō to develop an integrated habitat restoration plan for Hōnuāpō estuary as a vital part of the broader resource management plan for the part and implementation of the CNPCP management measures for wetlands, riparian areas, and vegetated treatment systems.
- Provided funding towards technical support needed for certification of the Kawaiū Marsh Levee. The levee protects the immediate Coconut Grove residential area of 1,425 housing units and the Greater Kailua area against flood events while perpetuating the 830 acre Kawaiū Marsh as a wetland.
- Partnered with the Hawaii Community Development Authority (HCDA) to fund a collaborative planning process for the Mahua-hua Ai o Ho'i project, which will restore the Heeia wetlands and reduce nonpoint source pollution at the shoreline, and return the lands to productivity by clearing alien vegetation, repairing environmental damage to the land and water, restoring taro fields, and develop economic opportunities such as selling of agricultural crops grown on the land.

## FUTURE INITIATIVES

Since establishment in 1978, the Hawaii CZM Program has undertaken a number of initiatives in a variety of areas related to the coastal zone. Most recently, the program is involved in the following initiatives:

### ADAPTING TO CLIMATE CHANGE

The Office of Planning, Hawaii CZM Program through its ORMP Policy and Working Groups, and other stakeholders development a state-wide climate change adaptation policy to be included as a Priority Guideline in Part III of the Hawaii State Planning Act (Hawaii Revised Statutes, ch. 226). The Hawaii CZM Program is also partnering with ICAP and the USACE, Honolulu District to develop an adaptation planning process bringing together outreach and social marketing and technical analysis.

### OCEAN RESOURCES MANAGEMENT PLAN (ORMP) UPDATE

The Hawaii CZM Program will be updating its Ocean Resource Management Plan in 2012-2013. The update will involve obtaining input from various stakeholders, including the public, on the current plan, with a goal to develop a revised plan that is functional in nature. Coordination will also be made with other ocean and coastal area stakeholders that are also updating their respective plans.

### NATIONAL OCEAN POLICY

The Hawaii CZM Program was awarded a \$250,000 grant to develop the Hawaii Sub-regional Ocean Partnership in a manner that fosters meaningful engagement of partners and the public in order to ensure successful implementation of the priorities of the updated ORMP. The Office of Planning is also a partner in the grant awarded to the University of Hawaii's Social Science Research Institute (SSRI) on behalf of the U.S. Territories in the Pacific (American Samoa, Commonwealth of the Northern Mariana Islands (CNMI), Guam), and Hawaii. This grant will develop and establish the Pacific Regional Ocean Partnership.

The Office of Planning and Hawaii CZM Program will also continue to implement objectives of the National Ocean Policy through its existing ORMP, and examine new initiatives to promote ocean spatial planning.



**Hawaii CZM Program**  
Coastal Zone Management

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01/09/2012

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.  
DIRECTOR OF HEALTH

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In reply, please refer to:  
File:

**COMMITTEE ON TRANSPORTATION  
COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION**

**S.B. 3010, S.D. 2, Relating to Transportation**

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

**March 19, 2012  
11:00 a.m.**

1 **Department's Position:** Department of Health respectfully opposes this bill.

2 **Fiscal Implications:** None

3 **Purpose and Justification:** This bill provides the Department of Transportation (DOT) and its  
4 contractors temporary exemption from state laws including Hawaii Revised Statutes (HRS), Chapters  
5 342B, 342D, 342E, and 342F, but only to the extent as necessary to expedite specified bridge projects.  
6 The projects under this bill shall meet federal requirements that are a necessary condition to the receipt  
7 of federal funds by the State.

8 This bill is unnecessary. The DOH proactively provides training, workshop, and outreach to  
9 potential applicants and permittees. The DOH is a member of the General Contractors Association  
10 (GCA) Environmental Committee, which includes representatives from government agencies, counties,  
11 and private sectors. The DOH attends GCA's monthly meeting regularly. Our partnerships with  
12 interested parties are a faster and more efficient process to address noise, air and water pollution issues.

13 The DOH is concerned that the proposed temporary exemption may extend beyond permitting to  
14 other requirements as specified in HRS, Chapter 342B, 342D, 342E, and 342F. We believe that

*Promoting Lifelong Health & Wellness*



1 establishing an exemption for such projects sets a bad precedent. The exemption of any project from  
2 environmental regulation should be based on the project's environmental impact and not on the  
3 scheduling needs. In addition, all construction projects including bridge replacement/rehabilitations  
4 should employ measures to control fugitive dusts, noise, and storm water runoff.

5 The DOH will work with DOT and its contractors in early consultation to ensure the proper  
6 implementation of the requirements and that the processing of any permits can meet the project  
7 scheduling dates.

8 Thank you for the opportunity to testify on this measure.

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



GARY L. HOOSER  
DIRECTOR

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**COMMITTEE ON TRANSPORTATION**

**COMMITTEE ON ENERGY & ENVIRONMENT PROTECTION**

**SB 3010 SD2, RELATING TO TRANSPORTATION**

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

**March 19, 2012**

1 **Office's Position:** Oppose

2 **Fiscal Implications:** None

3 **Purpose and Justification:** The Office of Environmental Quality opposes this measure which  
4 would exempt the reconstruction and/or replacement of up to 27 bridges around the State from  
5 complying with 20 different permit or review requirements designed to protect the public interest  
6 and environmental protections.

7 Chapter 341, Hawaii Revised Statutes – states unequivocally that “The legislature finds  
8 that the quality of the environment is as important to the welfare of the people of Hawaii as is the  
9 economy of the State. The legislature further finds that the determination of an optimum balance  
10 between economic development and environmental quality deserves the most thoughtful  
11 consideration, and...the most intensive care.”

12 The broad-based exempting of projects via statute from all environmental review is  
13 contrary in the extreme, to the very basis of the law itself.

1 Existing law under Chapter 343 already allows for the easy exemption of projects which  
2 are minor in nature, or for other reasons, are expected to have no or negligible impacts on the  
3 environment.

4 Almost by definition every bridge on this list is adjacent to sensitive areas, may be  
5 historical in nature and depending on the size and scope of the bridge improvements, may have  
6 significant impacts on both the immediate and the surrounding area. But unless these bridges  
7 undergo some kind of environmental review, we will not know, and thus, there is no mechanism  
8 to ensure that appropriate measures are taken to mitigate or prevent sometimes irreversible  
9 negative impacts.

10 Chapter 343, in essence, merely requires someone in some position of authority to look at  
11 the project, and determine if there are in fact significant impacts and if not, it can be exempted.  
12 However if there are impacts then those impacts must be disclosed appropriate mitigation  
13 suggested. Chapter 343 requires an agency to be accountable and to look closely at decisions  
14 impacting sensitive areas and sometimes irreplaceable natural resources. Exemptions put into  
15 place by statute eliminate the requirement for accountability and allow important decisions  
16 impacting the environment and other important public interests to be made behind the shield and  
17 shadow of a statutory requirement.

18 For these reasons the Office of Environmental Quality Control is opposed to SB 3010,  
19 SD2.

20 Thank you.

NEIL ABERCROMBIE  
GOVERNOR



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
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March 19, 2012

**S.B. 3010, S.D.2  
RELATING TO TRANSPORTATION**

HOUSE COMMITTEE ON TRANSPORTATION

GLENN M. OKIMOTO  
**LATE TESTIMONY**

Deputy Directors  
FORD N. FUCHIGAMI  
JADE BUTAY  
RANDY GRUNE  
JADINE URASAKI

IN REPLY REFER TO:

The Department of Transportation (DOT) supports the intent of SB 3010, SD2.

This bill will support the DOT in accelerating the construction of approximately ten bridges currently in the design phase, thereby lessening the quantity of deficient bridges before they pose a potential hazard to the public.

Although this bill exempts the DOT from State requirements, it is the intent of the DOT to conform and comply with all State laws during the design and construction phases of each bridge project. Similarly, while this bill will aide the DOT in streamlining the state's project delivery process, the DOT will continue to be required to comply with all applicable Federal laws as this bill does not exempt the DOT from those requirements.

Thank you for the opportunity to provide testimony.





**SB 3010 SD2**  
**RELATING TO TRANSPORTATION**  
House Committee on Transportation and  
House Committee on Energy & Environmental Protection

March 19, 2012

11:00 a.m.

Room 309

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB 3010 SD2, which would temporarily exempt the Department of Transportation and its contractors from a plethora of state laws and requirements for 10 bridge rehabilitation projects. The exemptions provided for in SB 3010 SD2 are overly broad and may lead to irreversible consequences for Native Hawaiian traditional and customary practices and the resources and environment that Native Hawaiian culture relies upon.

Although OHA understands the need to rehabilitate or replace deficient bridges before they pose a potential hazard to the public, establishing exemptions for these projects sets a bad precedent and undermines important standards developed to protect the public. Specifically, under SB 3010 SD2, these bridge rehabilitation projects would be exempt from the environmental and cultural review requirements of Chapter 343, the land use laws of Chapter 205, the coastal zone management laws of Chapter 205A, the state historic preservation laws of Chapter 6E, and many other requirements for forest reserves, wildlife, natural area reserves, etc. Moreover, bridges are generally located along shorelines and other sensitive areas, and cross rivers that empty into sandy estuaries, which are prime areas for burials and other important cultural resources.

There is a simple and clear process in place to have projects exempted from HRS § 343 if they are expected to have negligible impacts. On the other hand, for those bridge rehabilitation projects that may have a significant impact on the environment and/or Native Hawaiian traditional and customary practices, a review is necessary to determine appropriate mitigation. As this legislature has found, "the past failure to require native Hawaiian cultural impact assessments [has] resulted in the loss and destruction of many important cultural resources and has interfered with the exercise of native Hawaiian culture." *Ka Pa'akai O Ka'aina v. Land Use Commission*, 94 Hawai'i 31, 47, fn 28 (2000). The environmental review process required by HRS § 343 not only ensures consideration of Native Hawaiian traditional and customary practices, but it also provides an opportunity for state agencies to fulfill their legal obligations to protect these rights.

Additionally, the guidelines contained in Chapter 205A are crucial for planning and protecting Hawai'i's special management areas (SMAs). SMA permits also often require that certain environmental impacts be minimized before a project can be approved, including acts that would result in reductions to the size of beaches and have adverse effects on water quality, fisheries, or wildlife habitat. The SMA process is where unique coastal environments are given the attention they deserve. OHA notes that the Office of Planning opposes SB 3010 SD2 and has articulated that it is working on alternative processes for state projects that are consistent with the Coastal Zone Management Program, which may be a more appropriate approach than piecemeal exemptions. OHA also notes the opposition of the Department of Land and Natural Resources, Department of Health, and Office of Environmental Quality Control.

SB 3010 SD2 threatens the protection of constitutionally recognized Native Hawaiian traditional and customary rights and the resources and places practitioners rely upon. *Ma ka hāna ka 'ike* – the knowing is in the doing. The Native Hawaiian community will not thrive without the ability to continue the traditional practices that tie us to the 'āina, each other, and those that came before us. Therefore, OHA respectfully urges the Committee to HOLD SB 3010 SD2. Mahalo for the opportunity to testify on this measure.