

# SB 3010

RELATING TO TRANSPORTATION.

Exempts temporarily the department of transportation and its contractors from certain state requirements for certain bridge rehabilitation projects.

REVISED Feb. 6, 2012

NEIL ABERCROMBIE  
GOVERNOR



GLENN M. OKIMOTO  
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JADINE URASAKI

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

IN REPLY REFER TO:

February 6, 2012

**SB 3010  
RELATING TO TRANSPORTATION**

SENATE COMMITTEE(S) ON TRANSPORTATION AND INTERNATIONAL AFFAIRS  
and ON ENERGY AND ENVIRONMENT  
and ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS

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

As noted in SECTION 1, the DOT owns approximately two hundred eighty-nine bridges that are rated deficient, categorized as either functionally obsolete or structurally deficient. At the current rate of rehabilitation or replacement of one to three bridges per year, it will take well over fifty years to address all deficient bridges. Concurrently, existing bridges not on the current deficient list will continue to age, worsen in condition, and inevitably be added to the list.

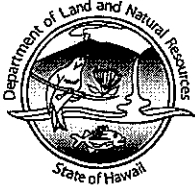
This bill will support the DOT in accelerating the construction of approximately thirty bridges currently in the design phase, thereby lessening the quantity of deficient bridges before they pose a potential hazard to the public.

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. We also acknowledge and are aware of other agency concerns with respect to what this bill does and are willing to work with them to get an Administration policy call.

Thank you for the opportunity to provide testimony.



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 Senate Committee on  
TRANSPORTATION AND INTERNATIONAL AFFAIRS**

**Monday, February 6, 2012  
1:15 PM  
State Capitol, Conference Room 224**

**In consideration of  
SENATE BILL 3010  
RELATING TO TRANSPORTATION.**

Senate Bill 3010 exempts 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, Chapter 6E, Hawaii Revised Statutes (HRS), relating to historic preservation. The Department offers the following comments.

For the most part, bridge projects have a federal funding nexus. Pursuant to the National Historic Preservation Act, when a project does receive federal funds, the project must assess potential effects on historic resources and avoid, minimize or mitigate any effects. Thus for most bridges, exempting Chapter 6E, HRS, will not achieve the desired result of this bill.

In addition, 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.

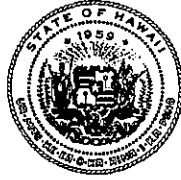
**WILLIAM J. AILA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT**

**GUY H. KAULUKUKUI  
FIRST DEPUTY**

**WILLIAM M. TAM  
DEPUTY DIRECTOR - WATER**

**AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS**

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



LORETTA J. FUDDY, ACSW, MPH  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
File:

**COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS  
COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS  
COMMITTEE ON ENERGY AND ENVIRONMENT**

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

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

**February 6, 2012  
1:15 p.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 This bill is unnecessary. The DOH proactively provides training, workshop, and outreach to  
7 potential applicants and permittees. The DOH is a member of the General Contractors Association  
8 (GCA) Environmental Committee, which includes representatives from government agencies, counties,  
9 and private sectors. The DOH attends GCA's monthly meeting regularly. Our partnerships with  
10 interested parties are a faster and more efficient process to address noise, air and water pollution issues.

11 The DOH is concerned that the proposed temporary exemption may extend beyond permitting to  
12 other requirements as specified in HRS, Chapter 342B, 342D, 342E, and 342F. We believe that  
13 establishing an exemption for such projects sets a bad precedent. The exemption of any project from  
14 environmental regulation should be based on the project's environmental impact and not on the

1 scheduling needs. In addition, all construction projects including bridge replacement/rehabilitations  
2 should employ measures to control fugitive dusts, noise, and storm water runoff.

3 Certain specified bridge projects may require federal delegated permits under HRS  
4 Chapters 342B and 342D. The DOH will work with DOT and its contractors in early consultation to  
5 ensure the proper implementation of the requirements and that the processing of any permits can meet  
6 the project scheduling dates.

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



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

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**Committee Transportation and International Affairs**  
**Committee on Public Safety, Government Operations, and Military Affairs**  
**Committee on Energy and Environment**

**SB 3010, Relating to Transportation**

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

**February 6, 2012**

1 **Office's Position:** Strongly oppose

2 **Fiscal Implications:** None

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

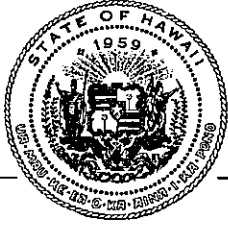
1 Existing law under Chapter 343 already allows for the easy exemption of projects which  
2 are minor in nature, or for other reasons, are expected to have no or negligible impacts on the  
3 environment.

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 but if there are impacts then to disclose those impacts and suggest mitigation. It forces an  
13 agency to be accountable and to look closely at decisions effecting sensitive areas and sometimes  
14 irreplaceable natural resources. Exemptions put into place by statute eliminate the requirement  
15 for accountability and allow important decisions impacting the environment and other important  
16 public interests to be made behind the shield and shadow of a statutory requirement.

17 For these reasons the Office of Environmental Quality Control is strongly opposed to SB  
18 3010.

19 Thank you.



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

NEIL ABERCROMBIE  
GOVERNOR  
RICHARD C. LIM  
DIRECTOR  
MARY ALICE EVANS  
DEPUTY DIRECTOR  
JESSE K. SOUKI  
DIRECTOR  
OFFICE OF PLANNING

**OFFICE OF PLANNING**

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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 INTERNATIONAL  
AFFAIRS,  
HOUSE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS,  
AND MILITARY AFFAIRS  
AND  
HOUSE COMMITTEE ON ENERGY AND ENVIRONMENT**  
Monday, February 6, 2012  
1:15 PM  
State Capitol, Conference Room 224

in consideration of  
**SB 3010**  
**RELATING TO TRANSPORTATION.**

Chairs English, Espero and Gabbard, Vice Chairs Espero, Kidani and English,  
and Members of the House Committees on Transportation and International Affairs,  
Public Safety, Government Operations and Military Affairs and Energy and  
Environment.

The Office of Planning (OP) administers Hawaii Revised Statutes (HRS) Chapter 205A, the Coastal Zone Management (CZM) law. The special management area (SMA) permitting system is part of the federal and State approved Hawaii CZM Program. SB 3010 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 28 specific bridge projects from the series of state requirements.



We oppose this bill for the following reasons:

- 1) Pursuant to HRS §205A-1, Hawaii coastal zone management area means all lands of the State and the area extending seaward from the shoreline to the limit of the State's police power and management authority, including the United States territorial sea. HRS §205A-5 requires that all agencies shall enforce the objectives and policies defined in HRS §205A-2.
- 2) The SMA is a narrow subset of the coastal zone, which includes the most sensitive coastal areas of the state along the shoreline. The SMA permit was first established in 1975 with the enactment of Act 176, known as the Shoreline Protection Act. It was enacted to avoid permanent losses of valuable coastal resources and the foreclosure of management options. The proposed SMA permit exemptions conflict with the intent of HRS Chapter 205A, Part II - SMAs, which was established by the legislature.
- 3) Whether any uses, activities, or operations within a SMA constitutes "development" should be determined by the existence of their potential environmental impacts. Any projects from the department of transportation including those of its contractors, which could potentially result in significant adverse environmental or ecological effect, should be subject to the requirements of a SMA permit in order to avoid losses of valuable coastal resources.
- 4) At the administration's direction, OP is working on alternative processes for state projects that are consistent with the CZM Program. Recommendations

for alternative processes, in consultation with state agencies, including the department of transportation, will be completed before the next legislative session.

- 5) SB 3010 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 review of SMA permits and shoreline setback applications and violation investigations thereof.

Thank you for the opportunity to offer these comments.



UNIVERSITY  
of HAWAII<sup>®</sup>  
MĀNOA

Water Resources Research Center  
Environmental Center

February 05, 2012  
RL: 2276

SB 3010  
RELATING TO TRANSPORTATION

Senate Committee on Transportation and International Affairs  
Senate Committee on Public Safety, Government Operations, and Military Affairs  
Senate Committee on Energy and Environment  
Public Hearing – Monday, February 06, 2012  
1:15 p.m., State Capitol, Conference Room 224

By  
David Penn, Environmental Center  
**COMMENTS ONLY**

Dear Chairs English, Espero, and Gabbard, Vice Chairs Espero, Kidani, and English, and committee members,

Senate Bill 3010 would allow the Department of Transportation (DOT) to fast-track the completion of over 28 highway bridge rehabilitation and replacement projects statewide. In order to justify legislative approval of the exemptions from regulatory requirements that are proposed in the bill, we would expect the legislature to carefully examine the trade-offs between the anticipated social benefits of the exemptions and their potential environmental impacts. This process is normally conducted under Hawaii Revised Statutes § 343, and government agencies use the results of this process to decide about their issuance of discretionary approvals and permits under established environmental regulations. The Environmental Center is concerned that the legislature may not have sufficient information about the potential environmental impacts and legal consequences of the unregulated construction proposed in the bill.

Many of the state's resource management statutes implement federal environmental laws under authority that is delegated to the state by the federal government. Therefore, exempting state projects from Hawaii Revised Statutes (HRS) chapters 6E, 180, 180C, 205A, 342 (various), and others would not exempt the projects from overlying federal regulations and could compromise the federal funding that the state receives for associated programs. For example, under the federal Clean Water Act (CWA), many of the waterbodies that would be affected by

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the bridge construction projects included in the bill suffer from impaired water quality, and some of these impaired waterbodies are subject to pollutant loading limits established by the Department of Health (DOH) with the approval of the U.S. Environmental Protection Agency (EPA). Similarly, in order to operate under a CWA Section 404 permit issued by the U.S. Army Corps of Engineers, the DOT must obtain a CWA Section 401 water quality certification from the DOH. DOH issues the 401 certification under the authority of HRS § 342D, Water Pollution Control, which is the subject of one of the statutory exemptions proposed in the bill.

We also note that under HRS § 343, some of the projects included in the bill may already be the subject of a DOT determination of “no significant impact.” In general, an agency determination of “no significant impact” is premised on an assumption that various regulatory processes identified in the final environmental assessment will ensure the continuing insignificance of project-related environmental impacts. Would the legislature intend for SB 3010 to apply retroactively to these determinations, thus revoking the good-faith actions of the DOT in subjecting itself to state environmental regulation?

Thank you for considering our testimony on this proposed legislation. Please note that our testimony is advisory only and should not be construed to represent an official institutional position of the University of Hawaii.



**CONTROLPOINT**  
Surveying, Inc.

February 3, 2012

Before the Senate Committee on Public Safety,  
Government Operations and Military Affairs,  
and Senate Committee on Energy and Environment

Subject: Testimony in Support of SB 3010 Relating to Transportation  
Hearing: Feb 6, 2010, 1:15 pm, Conference Room 224

Honorable Chair, Co-Chair and Members,

I am Ed Yeh, owner of ControlPoint Surveying, Inc. I wish to testify in favor of this bill which exempts certain requirements for some bridge rehabilitation projects.

I am involved on the topographic survey of some of the bridges and am aware of the many requirements. By allowing these temporary exemptions, it would greatly speed up the process to prepare the design documents so contractors may bid and construct these projects. The beneficiary of these speeded up processes would be the people of Hawaii who would have jobs and the use of the improved bridges much sooner.

Would you please consider passing this bill? Thank you for letting me submit my support of SB3010.

Thank you for your time.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Ed Yeh', with a stylized flourish at the end.

Yue-Hong "Ed" Yeh  
PRESIDENT  
Tel: 808.591.2022, Ext 110

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Honolulu, HI 96819  
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# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 6, 2012

TO: HONORABLE SENATORS J. KALANI ENGLISH, CHAIR, WILL ESPERO,  
VICE CHAIR, AND MEMBERS OF THE COMMITTEE ON  
TRANSPORTATION AND INTERNATIONAL AFFAIRS

HONORABLE SENATORS WILL ESPERO, CHAIR, MICHELLE KIDANI,  
VICE CHAIR AND MEMBERS OF THE COMMITTEE ON PUBLIC SAFETY,  
GOVERNMENT OPERATIONS AND MILITARY AFFAIRS

HONORABLE SENATORS MIKE GABBARD, CHAIR, J. KALANI  
ENGLISH, VICE CHAIR AND MEMBERS OF THE COMMITTEE ON  
ENERGY AND ENVIRONMENT

SUBJECT: **SUPPORT OF S.B. 3010, RELATING TO TRANSPORTATION.** Exempts temporarily the department of transportation and its contractors from certain state requirements for certain bridge rehabilitation projects.

### HEARING

DATE: Monday, February 6, 2012  
TIME: 1:15 P.M.  
PLACE: Conference Room 224

Dear Chairs English, Espero and Gabbard and Members:

The General Contractors Association (GCA) is an organization comprised of over six hundred (600) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is celebrating its 80<sup>th</sup> anniversary this year; it remains the largest construction association in the State of Hawaii. GCA is testifying **in support** of S.B. 3010, Relating to Transportation

This bill proposes to exempt the Department of Transportation and its contractors from the requirements of twenty specified statutes for a period of five years to expedite the rehabilitation and renovation of twenty eight bridges throughout the state.

The GCA **strongly supports** this measure to insure the continued safety of our construction equipment and trucks and the general public who travel over these bridges. The enumerated bridges have been identified by the Department of Transportation as structurally deficient or functionally obsolete and thus may present a danger to the public if not remedied. Many of Hawaii's bridges were designed and constructed prior to the development and use of the heavy equipment, trucks and other vehicles that currently must traverse these bridges, thus presently a traffic hazard and potential for accidents to occur.

This bill would expedite the much need rehabilitation of these old bridges and the exemption used only as necessary.

The GCA strongly supports the passage of this measure and recommends its passage by the committee.

Thank you for the opportunity to present our views on this bill.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, February 02, 2012 6:44 PM  
**To:** TIATestimony  
**Cc:** normann@nagamineokawa.com  
**Subject:** Testimony for SB3010 on 2/6/2012 1:15:00 PM

Testimony for TIA/PGM/ENE 2/6/2012 1:15:00 PM SB3010

Conference room: 224  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Norman Nagamine  
Organization: Individual  
E-mail: [normann@nagamineokawa.com](mailto:normann@nagamineokawa.com)  
Submitted on: 2/2/2012

**Comments:**

Subject Line: Testimony in Support of SB 3010

Before the Senate Committee on Public Safety, Government Operations and Military Affairs, and Senate Committee on Energy and Environment

Hearing on Feb 6, 2010, 1:15 pm, Conference Room 224

Honorable Chair, Co-Chair and Members,

I am Norman Nagamine, a Professional Engineer. I wish to testify in favor of this bill which exempts certain requirements for some bridge rehabilitation projects.

I am involved on the design of two of the bridges and am aware of the many requirements. I am certain that allowing these temporary exemptions would greatly speed up the process to prepare the design documents so contractors may bid and construct these projects. The beneficiary of these speeded up processes would be the people of Hawaii who would have jobs and the use of the improved bridges.

Would you please consider passing this bill? I would welcome your questions or comments. Thank you for letting me express my opinions.

Norman Nagamine  
Pearl City, HawaiiTel: 536-2626